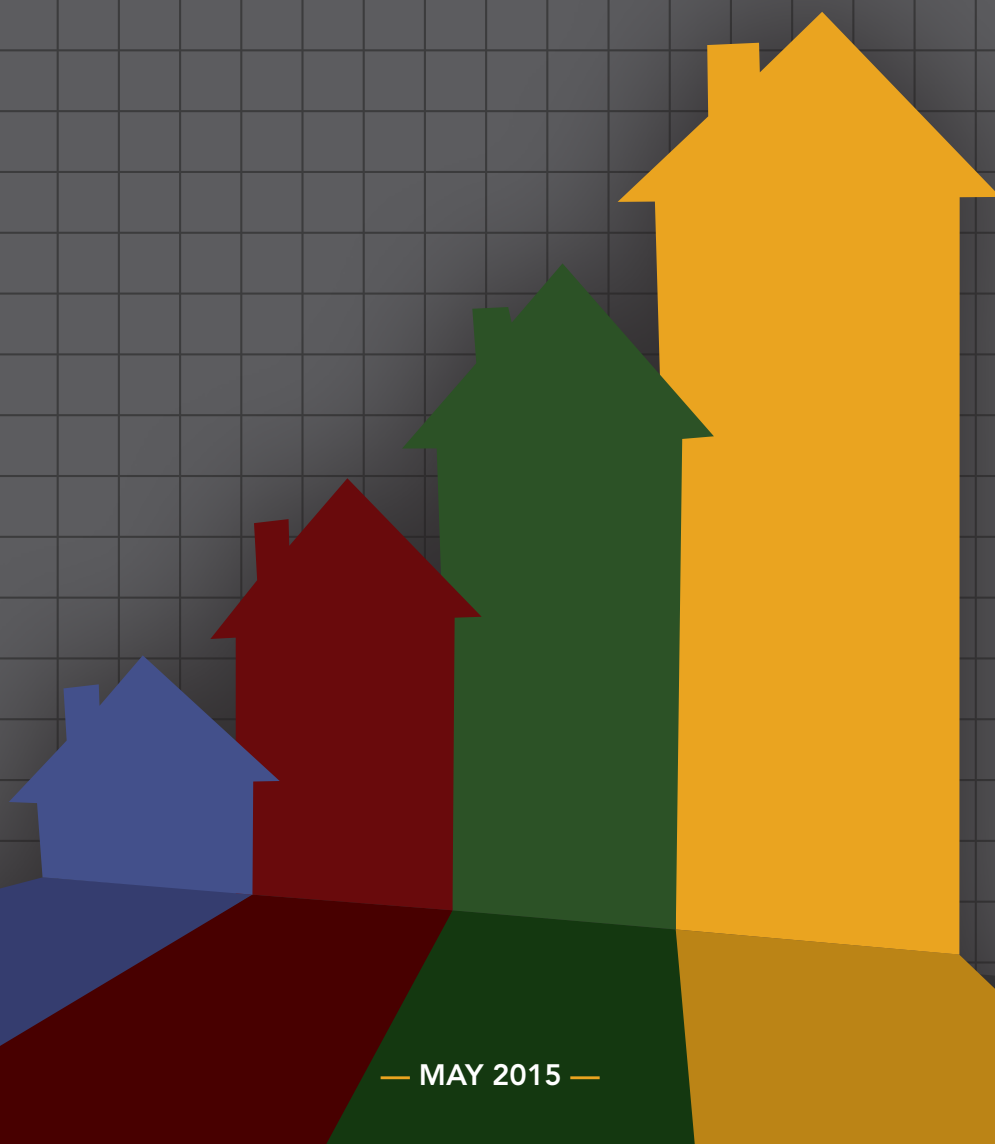




# DEVELOPING EFFECTIVE MUNICIPAL HOUSING PLANS

*A Guide for Nonprofits and Advocates on  
Implementing the New Jersey Supreme Court's  
March 2015 Decision on Fair Share Housing*



— MAY 2015 —

*This report is funded by **Together North Jersey**, an initiative funded in part through a Sustainable Communities Regional Planning Grant from the U.S. Department of Housing and Urban Development. The work that provided the basis for this report was supported by funding under an award from the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The authors of the report are solely responsible for the accuracy of the data, statements and interpretations contained in this document. Such statements and interpretations do not necessarily reflect the views of Together North Jersey Steering Committee or its individual members or any other agency or instrumentality of the Government.*



***Thanks and Acknowledgements to our contributors:***

**David N. Kinsey**

**Vito Gallo**

**Fair Share Housing Center**

**Housing and Community Development Network of New Jersey staff**

**Design & Layout by: SixThirteen Creative**

# Contents

---

Introduction .....	2
Glossary .....	3
The Mount Laurel Doctrine, Fair Housing Act, and COAH:	
A Brief History, 1971 - 2015 .....	4
The Supreme Court's March 2015 Decision .....	7
Affordable Housing Need and Municipal Fair Share Housing Obligations .....	8
Preparing a Housing Element and Fair Share Plan .....	11
Options for Municipalities to Satisfy Their Affordable Housing Obligations .....	12
Key Principles, Rules, and Incentives in Developing Municipal Housing Plans .....	16
Municipal Affordable Housing Trust Funds and Development Fees Update .....	19
Participating in Municipal Fair Share Housing Planning: Action Steps .....	19
Impact of Affordable Housing on Communities and People's Lives .....	20
Conclusion .....	20

# Introduction

**IN A MILESTONE DECISION, THE NEW JERSEY SUPREME ON MARCH 10, 2015 DECLARED THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING (“COAH”) TO BE “MORIBUND” AND RETURNED ENFORCEMENT OF THE FAIR HOUSING ACT AND THE MOUNT LAUREL DOCTRINE TO NEW JERSEY’S TRIAL COURTS.** Coming after more than a decade of delays, false starts, and litigation, the decision reaffirms the Mount Laurel Doctrine on municipal affordable housing obligations and ushers in a new era of intense fair share housing planning and, hopefully, affordable housing production. This guide aims to help nonprofits and advocates understand and participate in this process, as municipalities, builders, planners, nonprofits, advocates, and citizens strive to prepare and adopt updated municipal housing elements and fair share plans, create realistic housing opportunities, and obtain court determinations of municipal fair share housing obligations and approvals of compliance plans.

This guide begins with a brief history of the Mount Laurel Doctrine, its origins, achievements, and role in the production of affordable housing in New Jersey over the past 45 years, and provides some facts on housing built and affordable housing needs. Next the guide explains the Supreme Court’s decision in *In re N.J.A.C. 5:96 and 5:97*, 221 N.J. 1 (2015), its background, key rulings, and process, guidance, and standards established for updating municipal housing plans. Determining municipal fair share housing obligations is a critical step in housing planning; the guide explains how the Supreme Court envisioned that these numbers would be established and presents an initial proposed set of constitutional housing obligations for 1999-2025 prepared by Fair Share Housing Center, assisted by David N. Kinsey, PhD, FAIP, PP.

More than one-half of New Jersey’s municipalities have adopted housing elements and fair share plans; all need to be at least updated and most will undergo substantial revision and amendment. The guide describes the purpose, required content, and typical process for preparing and adopting these plans. Municipalities can create affordable housing opportunities that satisfy their fair share housing obligations in several ways. The guide identifies the principal compliance mechanism options, their key features, and advantages and disadvantages, and uses case studies of actual developments to illustrate the most common mechanisms.

While COAH may be “moribund” and many of its post-1999 rules invalidated by the courts, several important principles and rules were established that should be considered in preparing municipal housing elements and fair share plan and providing incentives for compliance. This guide highlights several of these key principles and rules. Securing adequate financial

resources for housing development is always a challenge in ensuring that local housing plans are more than “paper plans”; the guide also provides an update on municipal affordable housing trust funds — a significant resource available for the collection and disbursement of development fees.

To assist nonprofits and advocates in participating in fair share housing planning at the municipal level, this guide spells out what steps municipalities must take, opportunities for public comment and influence, and judicial proceedings that may be anticipated. Finally, to underscore the crucial point that decent, affordable housing helps communities, families, and individuals in myriad ways, the guide concludes with some findings of recent research and cases studies of the impacts of affordable housing.

## **GLOSSARY** *Several words and phrases will be used throughout this guide and are defined here:*

**Affordable Housing** Housing whose cost (gross rents, including utilities, or mortgage payment, insurances, property taxes, and homeowner fees) is less than 30% of gross monthly income, adjusted for household size, for rental housing and 28% of gross monthly income, adjusted for household size, for ownership units

**Fair Share Housing** The portion of a region’s housing needs for which a municipality must create realistic housing opportunities for low and moderate income households

**Housing Choice Vouchers** (a.k.a. Tenant-based Section 8) – Portable monetary subsidies for very low- and extremely low-income households which to be used for payment of rent. [http://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_choice\\_voucher\\_program\\_section\\_8](http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8)

**Low Income** A gross monthly income less than 50% of the regional median household income, adjusted for household size

**Low and Moderate Income Housing** Affordable housing occupied by and limited to income-qualified low and moderate income households

**Moderate Income** A gross monthly income between 50% to 80% of the regional median household income, adjusted for household size

**Section 811** Provides funding for the development and operation of supportive rental housing for very low- and extremely low-income adults with disabilities. [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/progdesc/disab811](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/progdesc/disab811)

**Section 202** Provides funding for the development and operation of supportive rental housing for very low-income elderly households. [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/progdesc/eld202](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/progdesc/eld202)

**Very Low Income** A gross monthly income less than 30% of the regional median household income, adjusted for household size

## THE MOUNT LAUREL DOCTRINE, FAIR HOUSING ACT, AND COAH: *A Brief History, 1971-2015*

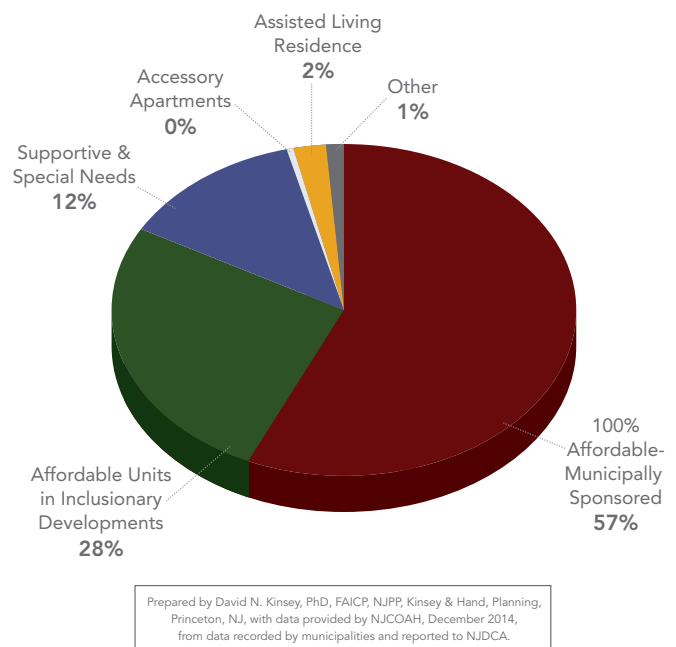
The Mount Laurel Doctrine, based on the New Jersey State Constitution, requires all municipalities, and state agencies with land use authority, to plan, zone for, and take affirmative actions to create realistic opportunities for their “fair share” of their region’s present and prospective need for housing affordable to low and moderate income people. First articulated by the New Jersey Supreme Court in two landmark planning and civil rights decisions, Mount Laurel I (1975) and Mount Laurel II (1983), the Mount Laurel Doctrine prohibits economic discrimination against the poor by the state and municipalities in their exercise of their land use powers.

This doctrine on exclusionary zoning and affordable housing arose in part from efforts by the longtime black community of Mount Laurel Township (Burlington County) to block being forcibly removed from their once rural community as it underwent rapid suburbanization in the 1960s. When Mount Laurel Township stymied the attempt of a local nonprofit to develop 36 affordable garden apartments, the residents organized and, assisted by Camden Regional Legal Services attorneys, began the Mount Laurel litigation marathon in 1971. Civil rights and housing advocates, as well as developers, pursued similar litigation in central and northern New Jersey as well in the 1970s-1980s, which all culminated in Mount Laurel II in 1983.

In direct response to the Mount Laurel II decision, in 1985 the Legislature and Governor enacted the Fair Housing Act, which established COAH as the state agency responsible for calculating and allocating the need for affordable housing and reviewing and approving municipal plans to satisfy local fair share housing obligations. COAH developed and implemented its fair share housing calculation and allocation methodology, regularly adopted

procedural and substantive rules, and reviewed and approved municipal housing elements and fair share plans in two rounds or cycles, from 1997-1993 and 1993-1999. More than one-half of New Jersey’s municipalities participated in the COAH process, while some non-participating municipalities were sued for alleged non-compliance with Mount Laurel and other municipalities opted to have Mount Laurel compliance determined by trial courts.

### **64,744 Total New Affordable Housing Units Built in New Jersey, 1980-2014** *Counted by NJ COAH*



As its second round came to a close in 1999, COAH paused, and delayed proposing Third Round rules and fair share obligations until 2004. After the Appellate Division invalidated critical portions of these rules in 2007, COAH adopted its second iteration of Third Round Rules in 2008, which the Appellate Division again significantly invalidated in 2010. Again, hundreds of municipalities engaged in fair share housing planning and participated in both iterations of the COAH Third Round process, with more than 300 municipal housing elements and fair share plans



submitted to COAH in the late 2000s. And again, developers and public interest litigants sued some non-participating municipalities for alleged non-compliance with Mount Laurel and other municipalities sought trial court jurisdiction for adjudication of Mount Laurel compliance.

Since Mount Laurel II in 1983, a significant amount of different types of affordable housing has been built in New Jersey, totaling about 92,000 housing units. About 65,000 of these units can be attributed to implementation of the Mount Laurel Doctrine, while the remainder was developed mostly in urban municipalities not under COAH or trial court jurisdiction under Mount Laurel. In the early years of Mount Laurel implementation, most of the built affordable housing was developed by the private sector, in mixed income inclusionary developments. More recently, 100% affordable housing developments, often sponsored by municipalities, and often developed in partnership with nonprofit housing developers, have become more popular with municipalities and now constitute more than half of the built affordable units counted by COAH.

Supportive and special needs housing, typically but not always developed, owned, and operated by nonprofit organizations, has also become an increasingly popular compliance mechanism. It is the third most significant type of affordable housing built, with almost 8,000 “units,” in part because COAH recognizes the bedroom as the unit of credit. More than one-half of these “units” have been in different types of group homes; other types include residential health care facilities, boarding homes, transitional housing for the homeless, and permanent supportive housing.

## CONVERSIONS/ADAPTIVE REUSE *of Old Schools, Factories, etc.*



**Project Name:** Springside Apartments

**Project Address:** 1508 Mount Holly Road (Route 541), Burlington Twp., Burlington County, NJ

**Developer:** joint undertaking of MEND, Conifer Realty LLC and the Township of Burlington

**Year Completed:** October 2013

**Total Units:** 74

**Type & Tenure:** Rental Apartments

**Affordable Housing Set-Aside:**

15 units for Frail Elderly (age 62+), 43 units for Elderly (55+), 16 units for mentally ill adults (18+) requiring supportive services

**Funding Sources:** NJHMFA Mortgage, Municipal Housing Trust Funds, Burlington County HOME Funds, Historic Tax Credits, Low Income Housing Tax Credits

**Description:** A three story former grammar school built 1915/1927/1952 and closed in 2007 because of functional obsolescence and asbestos concerns was redeveloped with 74 apartments for low/mod income tenants

## AGE-RESTRICTED SENIOR SUPPORTIVE *Rental Housing*

**PRINCETON COMMUNITY HOUSING (PCH)**, a nonprofit housing corporation has collaborated with Princeton in the purchase and renovation of housing units on Shirley Court and John Street. Princeton utilized the municipal Write-Down/Buy-Down Affordable Program to fund the purchase of market rate housing. PCH renovated, took ownership and presently manages two moderate income rentals on Shirley Court and one low income rental on John Street. Through the use of municipal trust fund dollars and other funding sources, PCH will convert vacant and foreclosed townhouses into livable, vibrant, affordable homes.

Borough leaders recognized the potential of the underutilized properties and entered into a partnership with PCH make the homes available to income-eligible families.

### **VERY LOW INCOME ELDERLY**

**Project Name:** Harriet Bryan House

**Project Address:** 310 Elm Road in Princeton

**Developer:** Princeton Community Housing

**Year Completed:** 2007

**Total Units:** 67

**Type & Tenure:** Rental

**Affordable Housing Set Aside:** 67 one-bedroom apartments for very low income elderly residents

**Funding Sources:** HUD Project Rental Assistance Program supplies rent subsidies, HUD-202 grant, Federal Home Loan Bank, Municipal Funding and Balanced Housing Program.

**Description:** offers its residents a Congregate Care Program, providing a daily hot meal, light housekeeping, grocery shopping, and personal care as needed.

**Fact:** In 1938, Princeton was one of the first communities in New Jersey to construct housing through the use of federal funds. The former Borough of Princeton created the Housing Authority of the Borough of Princeton (HABOP) in order to construct low- and moderate-income housing on Franklin and Maple Terraces. Additional HABOP rental developments were constructed in the Post WWII era and in more recent decades.



*“Princeton has a long-standing commitment to building affordable housing, a commitment that dates to the creation of the Princeton Borough Housing Authority in 1938 and Princeton Community Housing in 1967, decades before the creation of COAH. We value having a diversity of housing types that meet the needs of residents from a range of incomes. But as cost-of-living expenses rise, many longtime residents find it increasingly difficult to afford to live in town. If we are to keep our present economic diversity, we need to do more to provide affordable options.”*

**— Liz Lempert, Mayor of Princeton**



## THE SUPREME COURT'S March 2015 Decision

---

The Supreme Court's decision arose from litigation over three iterations of rules and fair share methodologies proposed and adopted by COAH since the putative beginning of its Third Round, in 1999. The 1985 Fair Housing Act had directed COAH to determine housing regions and municipal fair share housing obligations, based on their region's projected needs for affordable housing. Twice COAH performed this duty, in 1994 and 1999, but in 2004 and again in 2008 COAH's rules relied on a different methodology it called "growth share," which determined housing need based on jobs and residential growth. Fair Share Housing Center, the Coalition for Affordable Housing and the Environment, the New Jersey Builders Association, and others twice challenged the validity of the rules, and twice the Appellate Division invalidated key portions and remanded to COAH to adopt revised rules, in 2007 and 2010. The Network participated in the appeals as a member of the Coalition and as *amicus curiae*. In 2013 the Supreme Court affirmed the Appellate Division's decision and directed COAH to adopt new rules, based on the Prior Round methodology, within five months. After further delay, COAH proposed new rules in April 2014, not based on the Prior Round methodology, but the COAH board reached an impasse at its October 2014 meeting and failed to adopt any Third Round rules. In accordance with the Supreme Court's order, Fair Share Housing Center filed a motion to enforce litigant's rights, asking the Court to transfer responsibility for implementing and enforcing the Fair Housing Act and Mount Laurel Doctrine to trial courts.

The Supreme Court's unanimous decision reaffirmed the Mount Laurel Doctrine, declared COAH to be "moribund," and created a process for municipalities to "... subject themselves to judicial review for constitutional compliance, as was the case before the Fair Housing Act was enacted." The Court recognized two kinds of municipalities: (a) those that had filed a Third Round fair share housing plan with COAH that

COAH had approved (68 municipalities) and (b) those "participating" municipalities that had filed a Third Round plan after 2008 that was still pending at COAH (314 municipalities). The Court did not discuss those municipalities whose Mount Laurel compliance was already engaged before the trial courts as defendants in exclusionary zoning and declaratory judgment actions (65± municipalities).

To establish an orderly compliance review and approval process by trial courts, the Supreme Court provided a 90-day period before its decision would take effect, on June 8, 2015. The Court also established a 30-day deadline, July 8, 2015, for municipalities that had been in the COAH process to file a declaratory judgment and seek judicial review of their fair share housing plans by trial courts. On and after July 9, 2015, Fair Share Housing Center and

***"... previous methodologies employed in the First and Second Round Rules should be used to establish present and prospective statewide and regional housing need ... ."***

other interested parties can file a noncompliance action against a municipality. Towns with Third Round approvals from COAH must file a declaratory action by July 8, 2015, updating, amending, and supplementing their fair share housing plans and seeking immunity from further litigation while their plans are under review by the trial courts, or face litigation alleging noncompliance. Participating towns must also file a declaratory action by July 8, 2015, and may request up to five months to update, amend, and supplement their fair share housing plans and seek initial immunity from further litigation while their plans are under preparation and review by the trial courts, or face litigation alleging noncompliance.

The Supreme Court stated unambiguously how Third Round fair share housing obligations were to be determined: "... previous methodologies employed in the

First and Second Round Rules should be used to establish present and prospective statewide and regional housing need ...” The Supreme Court assigned the trial courts the responsibility for actually determining fair share housing obligations: “The parties should demonstrate to the [trial] court computations of housing need and municipal obligations based on those [Prior Round] methodologies.”

## **AFFORDABLE HOUSING NEED** *and Municipal Fair Share Housing Obligations*

---

How much affordable housing for low and moderate income households is needed in New Jersey and where? These questions can be answered in two different ways: (a) calculate the number of households who spend too much of their income on housing costs or (b) project future housing needs for a selected target year for a target group of households in targeted communities.

New Jersey currently has a total of about 3.2 million households, of which 43%, i.e., about 1.4 million households, have incomes below 80% of median household income and are considered low and moderate income households under Mount Laurel and the Fair Housing Act. The current median household income in New Jersey is \$70,165, which means that on a statewide basis households with annual incomes less than \$56,132 are considered low and moderate income, with appropriate adjustments for household size (households with more people have a higher median income, households with fewer people have a lower median income), county, and region.

One standard approach to calculating housing need is to determine the share of household income devoted to housing costs, whether a mortgage, taxes, etc. for homeowners, or rent and utilities for renters.

Households who spend more than 30% of their income on rental housing costs are considered to be “cost-burdened” and their housing is not considered “affordable,” under longstanding, nationally accepted standards. For homeownership, the standard is a maximum of 28% of household income. Consequently, these households have

less disposable income to spend on food, transportation, health care, clothing, and other essential of daily life. By this metric, 72% of New Jersey’s low and moderate income households need affordable housing — that is, 875,310 New Jersey low and moderate income households are cost-burdened and a critical part of the broader context of housing need. However, COAH excluded cost-burdened households and their affordable housing needs from its calculations of municipal housing obligations under the Fair Housing Act, a determination upheld by the Supreme Court in its March 2015 decision.

Consequently, a different approach to defining housing need has been used in New Jersey under the Mount Laurel Doctrine. This approach projects the new housing needs of anticipated future new low and moderate income households in New Jersey. Under this fair share concept, housing need in the future is projected by region and then allocated fairly to each region’s municipalities. This component of housing need is called “prospective need” under Mount Laurel and the Fair Housing Act.

*The parties should demonstrate to  
the court computations of housing need  
and municipal obligations based on those  
[Prior Round] methodologies.*

In addition to the need for new affordable housing for projected new households, low and moderate income households currently living in substandard and overcrowded housing often need housing rehabilitation assistance in order to live in decent housing. This component of housing need is called “present need” under Mount Laurel and the Fair Housing Act.

A third component of housing need is the “prospective need” projected in the past that may not yet have been satisfied and is a continuing municipal responsibility. This component of housing need is called “prior round obligation” and was calculated by COAH in 1994 for the period 1987-1999, its First and Second Rounds, also

known as the “Prior Round.” The Supreme Court’s March 2015 opinion stated unambiguously: “...our decision today does not eradicate the prior round obligations...”

Using the COAH Prior Round methodology implemented successfully in the 1980s-1990s, as directed by the Supreme Court, nonprofit Fair Share Housing Center, assisted by David N. Kinsey, PhD, FAICP, PP, calculated and in April 2015 presented fair share housing obligations for all three components for all 565 New Jersey municipalities for the Third Round, defined as 1999-2025. A 12-page “Municipal Summary, Fair Share Housing Obligations, 2015,” prepared by Fair Share Housing Center, is listed and available in the Resources section at the end of this publication. At this point, no court has yet accepted these, or any other, Third Round fair share calculations, and all parties will be able to present arguments about what the calculations should be over the next few months.

Fair Share Housing Center estimated the statewide total of “present need” of New Jersey’s municipalities at about 62,000 housing units, as of 2010, that needed rehabilitation and were occupied by low and moderate income households. For the second component, Fair Share Housing Center reprinted COAH’s previous calculations of Prior Round Obligation, a total of about 86,000 units allocated by region among the state’s municipalities. For the third component, Fair Share Housing Center projected and allocated on a regional basis, and then calculated the net capped (20% and 1,000 unit caps) prospective need for all 565 New Jersey municipalities during 1999-2025 at a statewide total of about 200,000 new affordable housing units.

Under the Prior Round methodology, certain qualifying municipalities, designated by the New Jersey Department of Community Affairs for additional state financial assistance as “urban aid municipalities,” are not allocated a Prior Round Obligation or a Prospective Need obligation. Many already have significant income-restricted affordable housing built over the past several decades. They are not, however, exempted from their present need responsibilities. Also, under the Prior Round methodology

## SPECIAL NEEDS *Housing*

### SMALL SCALE DISABLED HOUSING MANUFACTURED HOUSING

**Project Name:** Pine Tree Manufactured Home Park

**Project Address:** 232 Highway 35 South,  
Eatontown, NJ 07724

**Developer:** Affordable Housing Alliance

**Year Completed:** March 2013

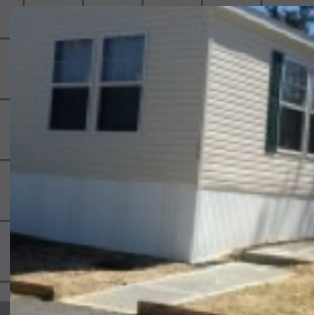
**Total Units:** 130

**Type & Tenure:** Manufactured Housing

**Affordable Housing Set Aside:** 130

**Funding Sources:** Funding included Eatontown municipal contribution, DCA-Balanced Housing, Neighborworks America, Robinhood Fund, Hurricane Sandy NJ Relief Fund, and private financing.

**Description:** Acquisition and reconstruction of a 120 unit manufactured home park with upgrades to include 30 new units and code compliant foundations. New water and natural gas system including multiple on site hydrant systems. Pilot solar panel services on five units, new community center, laundry and children’s playground.





## INFILL HOUSING



**Project Name:** The Abbett Avenue Apartments

**Project Address:** 38-42 Abbett Avenue, Morristown

**Developer:** Homeless Solutions Inc.

**Year Completed:** 2008

**Total Units:** 12

**Type & Tenure:** Rental apartments

**Affordable Housing Set Aside:** 12 unit for families

**Funding Sources:** Low Income Housing Tax Credit, County, HOME funds, privately raised

**Description:** The housing development is located in a New Jersey “Smart Growth” and a Transit Village zone, supporting the State Development & Redevelopment Plan. The site is within walking distance to jobs, shopping and amenities, and mass transit options (the Morristown train station and five different bus routes). The design of the buildings substantially exceeds the Green Building requirements of New Jersey affordable housing government programs. The apartments are Energy Star rated, with selected roofing, appliances, and high efficiency heating and cooling systems. Low VOC paints and caulks were used, bamboo flooring (formaldehyde free), linoleum (instead of vinyl), Hardi Plank cement board siding, and water-saving toilets, faucets and shower heads are among the other green features. In 2009, the project received a Governor’s Conference Excellence in Housing Award for “Outstanding Affordable Housing Development.”

some other municipalities have a zero Prospective Need obligation due to projected “filtering,” what COAH called a secondary source of housing supply. Both types of municipalities may nevertheless choose to undertake local initiatives to create new affordable housing opportunities, through redevelopment, inclusionary zoning, and partnerships with nonprofit developers, recognizing that many of their current and likely future residents are cost-burdened because their housing costs exceed accepted national standards.

While the COAH Prior Round methodology specifically excludes people who live in group homes and other facilities classified as “group quarters” by the U.S. Census Bureau, the demand for supportive and special needs housing far exceeds the supply in New Jersey. One way to assess the need for supportive and special needs housing is to recognize that currently the New Jersey Department of Human Services provides housing through state licensed beds or rental vouchers/subsidies to approximately 15,000 individuals with serious mental illness or developmental disabilities, while 145,000 very low income New Jersey residents (living on less than \$800 monthly) who are blind or disabled receive Supplemental Security Income (SSI) benefits from federal Social Security. Furthermore, people living in state and county institutions will need housing in the future. Also, an estimated 1,500 people are chronically homeless in New Jersey, while the most recent 2014 Point In Time count identified 13,900 people experiencing homelessness on the night of January 28, 2014.

Finally, natural disasters, such as Superstorm Sandy in 2012, exacerbate housing needs by quickly reducing and affecting the supply of decent affordable housing. For example, nearly all public housing authorities in New Jersey experienced at least some roof damage and flooding from Sandy. While not all occupied by low and moderate income households, approximately 40,500 homeowners’ primary residences and 15,600 rental units sustained “severe” or “moderate” damage from Sandy, according to the Federal Emergency Management Agency.

## PREPARING A HOUSING ELEMENT and Fair Share Plan

---

Housing planning has been an integral, mandatory part of local land use planning in New Jersey since enactment of the Fair Housing Act, as municipalities must, under the Municipal Land Use Law as amended by the Act in 1985, adopt a housing plan element of the master plan in order to exercise the power to zone and regulate land use. As defined by COAH, a “fair share plan” is the document in which the municipality details specifically the affirmative actions it will take to create a “realistic opportunity” to satisfy its fair share housing obligations, including proposed or adopted ordinances and resolutions. The housing plan element is prepared and adopted by the municipal planning board. Under COAH rules, the municipal governing body must endorse the fair share plan. In practice, typically a single document, a housing element and fair share plan, is prepared and adopted by the planning board and endorsed by the governing body.

The Fair Housing Act specifies the essential elements of the municipal housing plan, which must be designed to “achieve the goal of access to affordable housing to meet present and prospective housing needs” and pay “particular attention to low and moderate income housing”:

- Inventory of the municipality’s housing stock, including affordable housing and substandard housing capable of being rehabilitated;
- Projection of the municipality’s housing stock, including probable future low and moderate income housing;
- Analysis of the municipality’s demographic characteristics;
- Analysis of the municipality’s employment characteristics;
- Determination of the municipality’s present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs and;
- Consideration of the lands most appropriate for construction of low and moderate income housing and structures most appropriate for conversion and

rehabilitation for low and moderate income housing, including land proposed by developers committed to providing low and moderate income housing.

The housing plan must be prepared by a New Jersey licensed professional planner, who conducts the required analyses and surveys, in consultation and cooperation with other municipal staff, professionals (e.g., attorney and engineer), consultants, planning board members, governing body members, developers, advocates, property owners, and the public. At a minimum, the planning board must give ten days published public notice of the required public hearing on adoption, revision, or amendment of the housing plan element, provide notice to adjoining municipalities, and make available the proposed plan for public review. At a minimum, a governing body must give ten days published public notice of the required public hearing, and direct notice to affected property owners, of any proposed zoning ordinance amendment to implement the housing plan element. In practice, the housing element and fair share plan is typically prepared as a single, integrated document, discussed informally with and by the planning board and governing body, and made available to the public in draft form and adopted form at the municipal clerk’s office, and often posted on the municipal website.

A typical plan details sites and projects slated to produce affordable housing, provides maps locating sites and portraying any site constraints, includes draft and adopted zoning amendments, contains agreements with developers and evidence of site plan and use variance approvals, documents claimed credits for completed affordable housing, and provides municipal revenue projections, as well as funding and bonding commitments, to support affordable housing activities.

Municipalities may be expected to build their 2015 housing elements and fair share plans on the base of previously adopted plans, most dating from 2008. That said, in many cases municipalities will need to work with non-profits and others to find additional opportunities and update their plans.

## OPTIONS FOR MUNICIPALITIES

### *to Satisfy their Affordable Housing Obligations*

Municipalities have several well-established options to consider and adopt in their housing plans for satisfying their constitutional obligations. At the outset it is critical to recall the Supreme Court's applicable standards established in Mount Laurel II in 1983 for determining compliance. First, a "realistic opportunity" must be provided for satisfying the municipality's fair share obligation, with "realistic" depending "...on whether there

is a likelihood-to the extent economic conditions allow- that the lower income housing will actually be constructed." Second, municipal compliance must be "... determined solely on an objective basis: if the municipality has *in fact* provided a realistic opportunity for the construction of its fair share ..., it has met the *Mount Laurel* obligation ..., if it has not, then it has failed to satisfy it."

For all options, three ingredients are essential: (a) a suitable site or property with permissive zoning or land use approvals, (b) a developer with capacity, and (c) adequate financial resources.

## AGE-RESTRICTED HOUSING *Including Assisted Living*

**Project Name:** The Village at St. Peter's Senior Housing (VASP)

**Project Address:** Pleasantville, New Jersey

**Developer:** Diocesan Housing Services Corporation of the Diocese of Camden (NJ), Inc

**Year Completed:** 2012

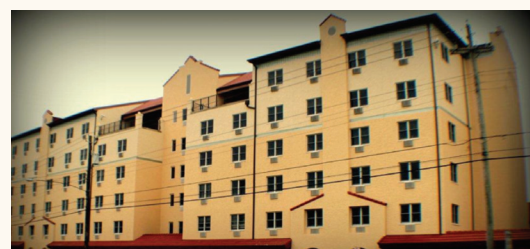
**Total Units:** 74

**Type & Tenure:** Rental Apartments with an affordable housing set-aside targeted to seniors, 62 years and older, with incomes at or below 50 percent of the Area Median Income (AMI).

**Funding Sources:** Combined the HUD-202 program with 4 percent tax credits

**Description:** This senior housing replaced a vacant convent and stimulated economic development of surrounding businesses. The project won a 2012 Governor's Housing Conference award for Housing and Economic development because it led to new businesses that continue to thrive today. The building's exterior is complementary in style to the church's Spanish Colonial architecture, retaining the historic fabric of the neighborhood.

*"Villages at St. Peter's is a shining example of a true public-private partnership, representing many years of coordination between local, state, and federal governments and private industry leaders to create affordable homes for our seniors," said DCA Acting Commissioner Richard E. Constable, III, who is Chair of the HMFA. "Not only are the rents affordable, but the sponsorship by Diocesan Housing Services Corporation and Catholic Charities ensures that the seniors residing here will have access to transportation services, meal programs and medical/ health programs on-site at no cost."*





**1. Present Need – Rehabilitation:** The present need component of the fair share obligation signifies that low and moderate income households are living in substandard and overcrowded housing in the municipality. To satisfy this need, most municipalities establish, fund, and administer a local housing rehabilitation program, using municipal staff, consultants, or a county community development housing improvement program. COAH rules importantly require housing rehabilitation to be available to rental properties that serve low and moderate income households. COAH rules also provide that a municipality's present need can alternatively be satisfied through new construction of affordable housing.

**2. 100% Affordable (family or senior):** The most popular option, and the source of more than one-half of the built affordable units counted by COAH, is 100% affordable housing developments, developed by the private and nonprofit sectors, often in partnership with municipalities, and typically relying for substantial equity on federal Low Income Housing Tax Credits allocated on a competitive basis by the New Jersey Housing and Mortgage Finance Agency and other subsidies. Mostly developed as rental housing, municipalities often support 100% affordable developments by donating surplus land or buildings ripe for conversion, as well as by providing negotiated public subsidies from municipal housing trust funds, bonding, and tax abatements.

This option is popular from the municipal perspective for at least two reasons. First, COAH rules provide in some circumstances for a rental bonus, up to a cap, so that certain rental family affordable units count as two credits towards the municipal housing obligation. Second, 100% affordable housing makes unnecessary the market rate units that underwrite inclusionary development, enabling municipalities to minimize population changes, including families with school-age children, and increases in property taxes to support increased municipal services and costs.

**3. Inclusionary Development and Zoning:** Mixed income private sector development, including housing affordable to low and moderate income households, is the second most significant source of built affordable housing. Inclusionary development typically involves a set-aside of 20% of the total units as affordable housing in homeownership projects and 15% of the total units in rental projects; these percentages are the maximum presumptive set-asides prescribed by COAH Second Round rules. Sale or rental of the market-rate units internally subsidizes the cost of income-restricted affordable units. Set-asides can be lower or higher, depending on the permitted densities, housing types, and negotiations between a municipality and a developer. The affordable units in these mixed income developments, whether townhouses, apartments, stacked flats, or small lot houses, should be indistinguishable from the exterior and scattered among the market-rate units.

Inclusionary development may be implemented through zoning by establishment of a new zoning district that requires or allows inclusionary development, depending on the municipal objective, or by an overlay zone with inclusionary provisions. Inclusionary development may also be instituted as a compliance mechanism as part of a municipally-adopted redevelopment or rehabilitation plan, which acts as the zoning for a designated redevelopment area. Inclusionary development need not be new construction on a greenfield site; obsolete or underutilized nonresidential structures can be converted to residential use with an inclusionary component. Inclusionary zoning is a prime example of incentive-based affordable housing development, as the private sector will respond to economically feasible densities and set-asides on suitable, appropriately located sites.

**4. Supportive and Special Needs Housing:** Different groups of people with low incomes have special needs for a decent, supportive place to live, including: people with mental illness and developmental disabilities, people with adult onset physical disabilities, disabled veterans, victims of domestic violence, youth aging out

## HOMES FOR FAMILIES AND PEOPLE WITH SPECIAL NEEDS *Integrated Together*

**Project Address:** 700 Heritage Court, Pennington

**Developer:** Project Freedom

**Year Completed:** 2013

**Total Units:** 72 units will be affordable to someone making less than 60 % of the area median income, and the units will be marketed to persons who are disabled, as well as to the general population

**Type & Tenure:** Rental apartments

**Affordable Housing Set-Aside:** 52 units will be affordable to someone making less than 60 % of the area median income, and the units will be marketed to persons who are disabled, as well as to the general population. 10 units to individuals who are developmentally disabled, in cooperation with the Division of Developmental Disabilities and 10 units to those individuals who come from the Division of Mental Health.

**Funding Sources:** HMFA has committed a first mortgage of \$4.7 million to the project, as well as \$1 million in financing from the Special Needs Housing Trust Fund. The project will also receive \$9.3 million in equity generated by the sale of federal Low Income Housing Tax Credits. Other project funding includes \$600,000 in Mercer County HOME funds and \$1.4 million from the Federal Home Loan Bank. Additional financial assistance has also been provided through the Hopewell Township Affordable Housing Trust Fund and a loan from TD Bank.

**Description:** The goal here is to create housing which can totally integrate the special needs individual and his family into the mainstream of American living.



of foster care, and the homeless in need of permanent affordable housing. In COAH Prior Round rules and subsequent practice, COAH recognized these specialized housing types and others, which it formerly called “alternative living arrangements,” as meeting fair share obligations. About 12% of the built affordable units counted by COAH are supportive and special needs housing. Municipalities seeking to welcome such state-licensed housing in their plans may provide land and/or funding, acquire houses suitable for conversion to group homes, amend zoning to make such housing permitted uses, support use variances, negotiate a PILOT (payment in lieu of taxes), and take other affirmative steps to create this type of affordable housing that is developed mostly, but not entirely by the nonprofit sector. Two incentives for municipalities in COAH rules have encouraged this housing type: first, the housing is considered to be rentals that may qualify for rental bonuses and second, the unit of credit against fair share obligations is the bedroom.

**5. Assisted Living Residences:** An assisted living residence is a specialized housing type licensed by the New Jersey Department of Health and Senior Services that provides apartment style living and congregate dining and other services, typically for older persons. Assisted living residences can be developed under an inclusionary model in which a percentage of the units are set-aside for income-eligible low and moderate households. State law on licensing assisted living residences developed since 2001 requires the reservation of 10% of the beds for Medicaid-eligible persons and provides that any beds so reserved shall be recognized as fulfilling low and moderate income housing requirements in municipal ordinances. Municipalities can provide for in their plans and encourage development of inclusionary assisted living residences by adopting permissive zoning and taking other affirmative steps.

**6. Accessory Apartments:** An accessory apartment is a self-contained, independent housing unit created either

within an existing house, through conversion of an existing structure attached to a house, or by an addition to the house. Municipalities can encourage and make possible the creation of affordable accessory apartments by first amending zoning to permit a second dwelling unit on an otherwise single family lot and by providing financial assistance to homeowners to undertake the necessary construction or renovations. This is not, however, a very common, productive compliance mechanism, as COAH has counted only 111 affordable accessory apartments created.

**7. Redevelopment:** Redevelopment under New Jersey’s Local Redevelopment and Housing Law is not an affordable housing type, but rather an increasing popular mechanism for rebuilding communities by transforming distressed areas, a process that encourages available sites that may be developed to include affordable housing. Municipalities may designate redevelopment or rehabilitation areas that meet statutory criteria, then prepare and adopt redevelopment or rehabilitation plans, either with or without the possibility of condemnation to facilitate site assembly by a municipally designated redeveloper.

**8. Market to Affordable Program:** COAH rules authorize credits against fair share obligations, up to a cap, for municipal programs that purchase existing market-rate housing and sell or rent the housing, once rehabilitated, if necessary, to low and moderate income households. Municipalities subsidize the difference between the cost to acquire and renovate the market-rate unit and the restricted price or rent of the housing for income eligible households.

**9. Expiring Controls:** COAH Third Round rules also authorize credits against fair share obligations for extensions of the term of affordability controls on existing affordability housing built after April 1, 1980, once rehabilitated, if necessary. Affordable housing developed under COAH’s First Round rules were generally subject to 20-year minimum terms of affordability controls, later extended to a 30 year maximum in COAH’s Second Round rules and in 2004

changed to a minimum of 30 years in the Housing Affordability Controls rules (UHAC) adopted by the New Jersey Housing and Mortgage Finance Agency. This means that controls on affordable units built in the mid-1980s generally began to expire in the mid 2000s, while 30-year controls generally began to expire in the 2010s. Municipalities may extend the term of controls through agreement with the housing owner or by other means and options authorized by COAH rules, local ordinances, and the deed restrictions on affordable ownership and rental units. While this mechanism does not increase the supply of affordable housing, it does ensure that affordable units continue to be available only to income-eligible households.

HOMEOWNERSHIP *New Construction*



**Project Name:** Summit Interfaith & Community Build

**Project Address:** 39 Morris Ave. Summit

**Developer:** Collaborative effort between the City of Summit, the Summit Affordable Housing Corporation and Morris Habitat for Humanity Habitat of Morris County

**Year Completed:** Winter 2011                      **Total Units:** 6

**Type & Tenure:** Homeowner Condominiums

**Affordable Housing Set Aside:** 6 Families

**Funding Sources:** The city contributed \$530,000 from their Affordable Housing Trust Fund for property acquisition. The remaining \$865,400 was raised through the collaborative efforts of the Summit Affordable Housing Corporation, Morris Habitat and faith-based congregations from in and around the Summit area through grants, donations of materials and services, and various fund-raising event.



## KEY PRINCIPLES, RULES, AND INCENTIVES *in Developing Municipal Housing Share Plans*

In developing a new, amended, revised, or updated 2015 municipal housing element and fair share plan, all participants in the plan preparation, adoption, and review process must be mindful of certain well-established principles and rules. While in the absence of a functioning COAH there is no single valid set of Third Round rules, the Fair Housing Act, including its 2008 amendments, provides several clear statutory requirements, while COAH Second Round (i.e., Prior Round) rules (N.J.A.C. 5:93) and certain Third Round rules that have not been invalidated (N.J.A.C. 5:94 and N.J.A.C. 5:97) also establish important, applicable

standards. These rules also provide incentives to municipalities that influence municipal choices of compliance mechanisms. A non-exhaustive list of these principles, rules, and incentives follows. Ultimately, which standards trial courts will apply in their reviews of Third Round compliance plans will emerge in declaratory judgment and exclusionary zoning proceedings.

**1. “Realistic opportunity”:** It bears repeating that the bedrock principle for determining whether a municipal housing plan satisfies a municipality’s constitutional housing obligations is whether a “realistic opportunity” has been created for satisfying the obligations.

**2. COAH Second Round Rules and COAH Handbook:** As the courts have invalidated significant parts of COAH’s 2004 and 2008 iterations of Third Round rules, the most comprehensive, valid set of standards to guide preparation and review of 2015 municipal housing plans are the COAH Second Round Rules, published in the New Jersey Administrative Code at N.J.A.C. 5:93. To introduce the COAH process to local officials, guide planners and others through its rules, assist the public in understanding how a municipal housing plan is developed, and provide sample ordinances and resolutions, COAH published a Handbook from time-to-time. The 2001 edition of the COAH Handbook, available from the Network as resource to this guide, is a helpful companion to the Second Round rules. Due to amendments to the Fair Housing Act and changes in housing planning practice, the COAH Second Round rules should be used cautiously. For example, such changes include: elimination of “regional contribution agreements,” requirements that certain affordable units be accessible and adaptable, and use of the term “supportive and special needs housing” (instead of the out-of-date “alternative living arrangements”).

**3. Site Suitability:** A critical component of the “realistic opportunity” evaluation is whether the sites proposed for affordable housing development are suitable. In Mount Laurel II, the Supreme Court established general site suitability standards, although in the context of builder’s remedy litigation, that are still valid decades later: “... the proposed project ... [must be] ... located and

### BROWNFIELD INCLUSIONARY TRANSIT ORIENTED RENTAL REDEVELOPMENT



Estling Village is a 100-unit privately developed rental inclusionary development in Denville, Morris County, at 30 Estling Lake Road, in sight and walking distance of NJ Transit’s Denville train station. Developed by JMF Properties, LLC, the brownfield site was formerly a manufacturing building and in arrears in its property taxes. Currently (2015) under construction after environmental remediation, the townhouse style apartments have a 15% set-side and will provide 15 affordable rental units.



## A VERY SPECIAL HOMES DEVELOPMENT in Tenafly

**Project Name:** A Very Special Homes Development in Tenafly

**Project Address:** 311 Tenafly Road, Tenafly

**Developer:** Bergen County United Way /Madeline

**Year Completed:** 2016

**Total Units:** 6

**Type & Tenure:** Rental

**Affordable Housing Set-Aside:** 10 individuals with developmental disabilities.

**Funding Sources:** Bergen County's United Way, Borough of Tenafly, Housing mortgage Finance Agency, County of Bergen, Division of Community Development

**The development of this project has received the support and praise of Tenafly, including the mayor. In speaking to the Bergen Record, Mayor Peter Rustin said, "We have a lot of high functioning people with disabilities who don't have a place to live, a lot of people locally that have that need. This would go a long way to help a number of these people out."**

designed in accordance with sound zoning and planning concepts, including its environmental impact" and "It is only if the proposed development ... is contrary to sound planning principles, or represents a substantial environmental hazard, that it should be denied." COAH rules have articulated these principles with more precision, with a dozen site suitability criteria such as access to appropriate streets, compliance with flood hazard area constraints, and adjacent to compatible land uses (see COAH Second Round rules, N.J.A.C. 5:93-5.3).

**4. Minimum Rental Affordable Housing:** COAH Second Round rules require municipal housing plans to provide for at least 25% of fair share obligations to be satisfied by rental affordable housing.

**5. Housing Affordable to Very Low Income Households:** Municipal housing plans must ensure that at least 13% of the low and moderate income housing units made available in a municipality are affordable to very low income households. COAH Third Round rules and court precedent require that at least half of those units must be available to very low income families (i.e. 6.5% of all low and moderate income units).

**6. Incentives for Very Low Income Housing:** Bonuses may be available for municipalities that exceed the 13% very low income minimums, including half for families, in 100% affordable housing, inclusionary developments, and market to affordable housing restricted to very low income households.

**7. Inclusionary Developments:** A minimum 20% set-aside is required, to the extent economically feasible, in new inclusionary developments within the jurisdiction of New Jersey's regional planning agencies: Meadowlands Commission, Pinelands Commission, Fort Monmouth Economic Revitalization Planning Authority, and Highlands Council. Throughout the state, municipalities must provide, through their zoning powers, incentives to ensure the economic feasibility of inclusionary development, including increased densities and reduced costs, and may in some cases include reduced set-asides. COAH rules also require presumptive minimum gross densities in built-up communities of six (6) units per acre with a 20% set-aside. For rental housing, COAH rules require a presumptive minimum gross density of ten (10) units per acre with a 15% set-aside.



**8. Minimum Family Housing:** COAH Third Round rules require municipal housing plans to provide that at least 50% of the housing addressing the fair share obligation is for families, without age restrictions.

**9. Senior Cap:** Municipalities may include age-restricted affordable housing in their housing plans, but only up to a cap of 25% of municipal fair share housing obligations.

**10. Incentives for Rental Affordable Housing:** COAH Second Round rules offer a bonus of one credit for every rental affordable unit available to the general public and one-third credit for age-restricted units. COAH Third Round rules offer this bonus only for rental affordable housing in excess of the minimum rental affordable housing requirement. Also, this bonus is not available retrospectively against Prior Round obligations if the housing was not built within a reasonable period.

**11. Smart Growth Bonus:** COAH Third Round Rules offer a bonus of one-third credit for each affordable housing unit built in a Transit Oriented Development that is either in Planning Area 1 (Metropolitan) or Planning Area 2 (Suburban) and in a “designated center” under the State Development and Redevelopment Plan.

**12. Redevelopment Bonus:** COAH Third Round Rules offer a bonus of one-third credit for each affordable housing unit built in a designated redevelopment area or rehabilitation area established under the Local Redevelopment and Housing Law.

**13. Bonus Caps:** COAH rules provide that a municipality may receive only one type of bonus for each affordable unit and cap bonuses at 25% of both the Prior Round and the Third Round obligation.

## NONPROFIT MIXED HOUSING COLLABORATIONS

**Project Name:** Camp Kilmer Homes

**Project Address:** Truman Road, Edison

**Developer:** The project is being developed as part of a joint venture between the Edison Housing Authority, Fort Lee-based for-profit development company Albert Group, and Monarch Housing Associates, an affordable housing advocacy and development nonprofit based in Cranford. Triple C Housing will provide case management and support services for the homeless units.

**Year Completed:** 2015

**Total Units:** 120

**Type & Tenure:** Rental apartments

**Affordable Housing Set-Aside:** 30 units of supportive housing for the homeless individuals.

**Funding Sources:** The project also is being financed through a \$5 million New Jersey Housing and Mortgage Finance Agency construction loan, \$2.1 million NJHMFA permanent mortgage, \$3.5 million NJHMFA Community Development Block Grant multifamily restoration funding and \$8.8 million from the sale of low-income housing tax credits. Included in the funding is \$10 million from Community Development Block Grant Disaster Recovery funds through the Fund for Restoration of Multifamily Housing and the Superstorm Sandy Special Needs Housing Fund.

**Description:** The Kilmer Collaborative was established by the Middlesex County Continuum of Care, a organization comprised of social service agencies serving the homeless. Kilmer Homes addressed a condition of the former military base closure that 25% of affordable housing units be made available to the homeless.





## MUNICIPAL AFFORDABLE HOUSING

### *Trust Funds and Development Fees Update*

Since the late 1980s, municipalities have collected development fees from residential and non-residential development, which did not include affordable housing, for the purpose of funding affordable housing activities. Deposited in municipal housing trust funds, more than \$890 million has been collected and at least \$337 million has been spent, a flexible funding source that has helped many municipalities address their fair share housing obligations. Over time the fee schedule has increased and is now 1.5% of the equalized assessed value of the improvement for residential development, provided no increase in density is permitted, and 2.5% of the equalized assessed value of the improvement for nonresidential development. During 2010-2013, a statewide moratorium was in effect for the nonresidential fee.

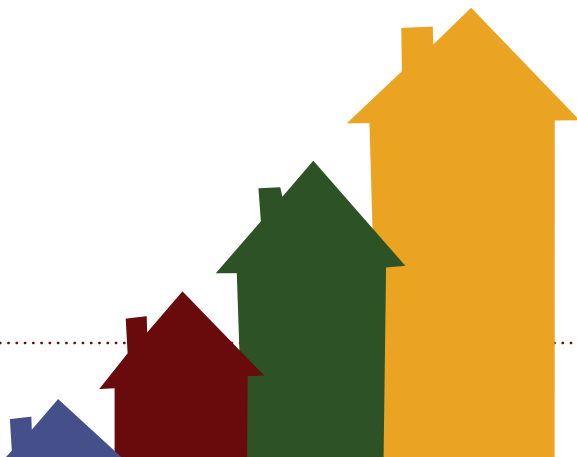
In 2012, when municipalities had available balances of about \$252 million, the Governor proposed to seize and redirect certain uncommitted funds to the state's General Fund, but the Appellate Division blocked that attempted diversion. In an April 2015 decision, the Appellate Division ruled that neither COAH nor any part of the executive branch could take the funds. Instead, trial courts would be responsible for reviewing and approving, on a case-by-case basis, municipal proposals to use local housing trust funds to help nonprofits and developers build affordable housing and expand housing opportunities for low and moderate income households. NJ Spotlight, an online news service, provides an interactive map on its website with the estimated balances available in every municipal housing trust fund as of 2012, the date of the most recent data available from COAH.

## PARTICIPATING IN MUNICIPAL FAIR SHARE HOUSING PLANNING:

### *Action Steps*

Nonprofit housing developers and advocates have a special opening in 2015 and beyond to help municipalities expand housing opportunities through fair share housing planning, now that the Supreme Court has put an end to years of delay and decisively reinvigorated the process of determining, planning for, and satisfying constitutional housing obligations throughout New Jersey. To ensure that effective municipal housing elements and fair share plans are prepared, discussed openly, adopted, filed with trial courts, reviewed, and approved, and vigorously implemented, nonprofit housing developers and advocates can and should take a variety of actions step, including:

- Encourage municipalities to satisfy their fair share housing obligations.
- Meet with planners, planning board members, governing body members, and mayors to urge compliance, propose options for municipal consideration, and offer cooperation, support, and partnerships.
- Attend and participate at local public meetings on housing planning.
- Inquire what the municipal fair share housing obligation is and how and when the municipality intends to comply.
- Request that drafts of housing plans be available for public review and comments, and be posted on municipal websites.
- Participate at required planning board and governing body public hearings on consideration of proposed 2015 housing elements and fair share plans.
- Pursue opportunities for municipally-sponsored affordable housing development with nonprofit partners.
- Encourage municipalities to establish realistic timetables for actually getting affordable housing built.



## GREENFIELD INCLUSIONARY RENTAL AFFORDABLE HOUSING



The Avery is 450-unit, three-story, privately-developed inclusionary rental complex of townhouses and stacked flats on a greenfield site fronting on U.S. Route 130 (10 Lincoln Square) in Willingboro, Burlington County. Developed at a density of 16 units/acre, the project is currently (2015) 50% completed and occupied. Developed by Weiss Properties under a settlement of Mount Laurel builder's remedy litigation, the community has a 15% set-aside of rental affordable housing.

- Encourage municipalities to invest wisely local housing trust funds in projects to produce affordable housing, with bonding if necessary to ensure projects are realistic.
- Encourage municipalities to provide incentives to reduce the costs of and increase the likelihood of developing affordable housing, such as waivers or reductions of municipal fees, early and truly expedited processing of development applications by planning boards and zoning boards of adjustment, use of local housing trust funds, payments in lieu of taxes (PILOTs), timely triggers for municipal resolutions of intent to bond if sufficient other public subsidies are not available.
- Encourage municipalities to meet deadlines for filing declaratory judgments to establish Mount

Laurel compliance.

- Monitor the review of fair share plans and amendments filed with trial courts.
- Object, if necessary, to unrealistic, insufficient, and inadequate provisions of housing elements and fair share plans filed with trial courts and participate, with the assistance of legal counsel, in compliance proceedings before trial courts.

## IMPACT OF AFFORDABLE HOUSING *on Communities and People's Lives*

A recent Princeton University study of a 100% affordable housing development in suburban New Jersey found that affordable housing in communities of higher opportunity had dramatic positive impacts on residents' mental health, personal safety, and economic independence. Children had more parental support for academics, could study more per week with a quiet place to study, experienced less school disorder and violence, and attended better, more competitive schools, with no overall effect on their grades. These housing opportunities had no adverse effect on crime in the community, municipal property taxes, property values in the community, and specifically property values in adjacent neighborhoods. See Douglas S. Massey, et al., *Climbing Mount Laurel: The Struggle for Affordable Housing and Social Mobility in an American Suburb*, Princeton University Press, 2013.

## CONCLUSION

New Jersey's Mount Laurel doctrine makes the state a national leader in breaking down the barriers of exclusionary zoning and producing affordable housing. After a decade plus of fits and starts and delays, the Supreme Court has now charted a path towards widespread, renewed compliance with the doctrine. The state's affordable housing needs are significant, throughout the state in all types of communities. The renewed municipal fair share planning unleashed by the Court provides important opportunities to meet that need and realize the vision of the Mount Laurel doctrine and the Fair Housing Act.

## RESOURCES *(available on Network website: [www.hcdnnj.org/njfairhousing](http://www.hcdnnj.org/njfairhousing))*

### A. **New Jersey Supreme Court decision, *In re N.J.A.C. 5:96 and 5:97*, 221 N.J. 1 (2015)**

The Supreme Court's unanimous decision reaffirmed the Mount Laurel Doctrine, declared COAH to be "moribund," and created a process for municipalities to "... subject themselves to judicial review for constitutional compliance, as was the case before the Fair Housing Act was enacted."

Here is the link the full decision: <http://caselaw.findlaw.com/nj-supreme-court/1694079.html>

### B. **Municipal Summary, Fair Share Housing Obligations, 2015**

This is a list by municipality of present need, 2010, prior round obligation, 1987-1999 and third round net prospective need, 1999-2025, developed by Fair Share Housing Center. It must be noted that no trial or appellate court has yet (April 2015) accepted these fair share calculations.

<https://hcdnnj.memberclicks.net/assets/documents/njfh%20kinsey%202015%20report%20for%20fshc%20on%20fair%20share%20obligations%201999-2025%20-%204-16-15.pdf> AND

<https://hcdnnj.memberclicks.net/assets/documents/njfh%20municipal%20summary%202015.pdf>

### C. **COAH Handbook 2001** – COAH wrote the handbook "to introduce elected and appointed municipal officials

to the COAH process; b. to guide planners and other professionals through the procedural and substantive rules of COAH; c. to assist the general public in understanding how an affordable housing plan is developed." While a historical document, it is still relevant because it explains COAH's Second Round rules, N.J.A.C. 5:93, which mostly remain valid and in place as municipalities prepare 2015 housing elements and fair share plans.

[https://hcdnnj.memberclicks.net/assets/documents/njfh%202001%20coah%20handbook\\_001.pdf](https://hcdnnj.memberclicks.net/assets/documents/njfh%202001%20coah%20handbook_001.pdf)

### D. **New Jersey Spotlight, Municipal Affordable Housing Trust Funds, interactive map:**

<http://www.njspotlight.com/stories/15/04/09/affordable-housing-trust-funds/>

This interactive map of COAH data provides, by municipality, municipal affordable housing trust fund balances as of July 2012 and the number of affordable housing units completed in COAH's first two rounds

### E. **Together North Jersey Regional Fair Housing & Equity Assessment, March 2015:**

[http://togethernorthjersey.com/?page\\_id=16936](http://togethernorthjersey.com/?page_id=16936)

This report provides an analysis of segregation, racial and ethnic concentrations of poverty, access to places of high "opportunity," distribution of recent infrastructure investments and explores other regulatory and private market barriers to fair housing choice in the 13-county North Jersey Transportation Planning Authority region of New Jersey.

### F. **Together North Jersey "Housing Baseline Assessment Report" written by Alan Mallach for the Housing Community Development Network of New Jersey**

[http://togethernorthjersey.com/wp-content/uploads/2014/02/Baseline+Housing+Report\\_final.pdf](http://togethernorthjersey.com/wp-content/uploads/2014/02/Baseline+Housing+Report_final.pdf)



*Copyright 2015. All Rights Reserved.*

**HOUSING *and* COMMUNITY DEVELOPMENT**  
**NETWORK *of* NEW JERSEY**

---

*145 West Hanover Street | Trenton, NJ 08618*

*P (609) 393-3752 | F (609) 393-9016*

*info@hcdnnj.org*

**HCDNNJ.ORG**