

2001

COAH

*Handbook*



# COAH

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### 2001

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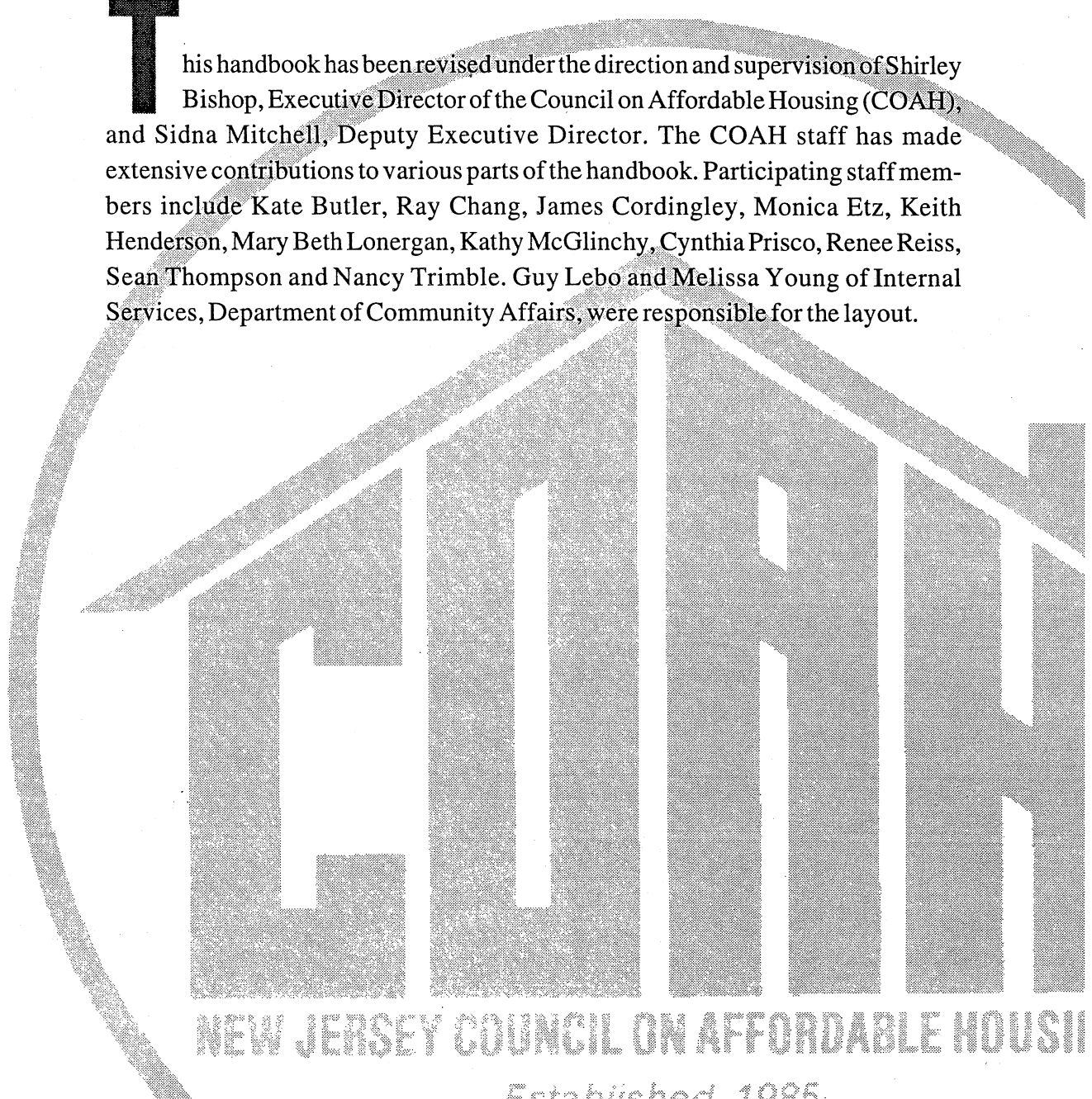
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# *acknowledgments*

**T**his handbook has been revised under the direction and supervision of Shirley Bishop, Executive Director of the Council on Affordable Housing (COAH), and Sidna Mitchell, Deputy Executive Director. The COAH staff has made extensive contributions to various parts of the handbook. Participating staff members include Kate Butler, Ray Chang, James Cordingley, Monica Etz, Keith Henderson, Mary Beth Lonergan, Kathy McGlinchy, Cynthia Prisco, Renee Reiss, Sean Thompson and Nancy Trimble. Guy Lebo and Melissa Young of Internal Services, Department of Community Affairs, were responsible for the layout.



NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

*Established 1985*



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# *preface*

**By virtue** of the (Fair Housing Act), the three branches of government in New Jersey are now committed to a common goal: the provision of a realistic opportunity for the construction of needed lower income housing. It is a most difficult goal to achieve.

- Chief Justice Robert N. Wilentz,  
writing for the unanimous court in the  
**Hills Development Co. v. Township of Bernards**

**In sustaining the constitutionality of the Fair Housing Act, the court stated:**

**The Act** that we review and sustain today represents a substantial effort by the other branches of government to vindicate the Mount Laurel constitutional obligation. This is not ordinary legislation. It deals with one of the most difficult constitutional, legal and social issues of our day – that of providing suitable and affordable housing for citizens of low and moderate income. In Mount Laurel II, we did not minimize the difficulty of this effort – we stressed only its paramount importance – and we do not minimize its difficulty today. But we believe that if the Act before us works in accordance with its expressed intent, it will assure a realistic opportunity for lower income housing in all parts of the state where sensible planning calls for such housing.

-[Hill Dev. Co., *supra*, 103 N.J. at 21.]



# *introduction*

This handbook has several purposes:

- a. 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 and
- d. to provide sample ordinances, resolutions, models and other documents that have proved useful to COAH participants.

The handbook must be used in conjunction with COAH's Procedural and Substantive Rules (N.J.A.C. 5:91 and 5:93). Pertinent rules will be referenced throughout the handbook.



# background

In 1975, in the case of *Southern Burlington County NAACP v. Township of Mt. Laurel* (Mt. Laurel I), the New Jersey Supreme Court ruled that developing municipalities have a constitutional obligation to provide a realistic opportunity for the construction of low and moderate income housing. In its 1983 *Mt. Laurel II* decision, the Supreme Court reaffirmed and expanded the *Mt. Laurel* doctrine and stated that *all* municipalities share in the obligation. The Supreme Court also provided guidance in determining a municipality's fair share and authorized specific judicial remedies to ensure that municipalities meet their constitutional obligation. On July 2, 1985 the Fair Housing Act (FHA) was enacted, creating the Council on Affordable Housing (COAH) as an administrative alternative to the courts.

In its 1986 *Hills Development Corporation v. Bernards Township* decision (Mt. Laurel III), the Supreme Court declared the FHA constitutional and allowed the transfer to COAH of virtually all litigation then pending before the courts.

COAH is an 11-member bipartisan body appointed by the Governor on the advice and consent of the Senate. The members, by law, must represent the interests of categories of local government, the providers and users of affordable housing and the general public. Members are appointed to six-year terms.

COAH is directed to provide a regulatory framework that allows municipalities to prepare a comprehensive planning and implementation response to the constitutional obligation. COAH's primary responsibilities are to establish housing regions, quantify regional housing need and provide guidelines for municipalities to use in addressing their fair share obligations.

COAH acts as an administrative alternative to the confrontational, often lengthy and costly approach to affordable housing through litigation. COAH offers substantive certification to municipalities that choose to address their fair share of the region's need for low and moderate income housing. Once certified, municipalities enjoy the presumption of validity against allegations of exclusionary zoning. It takes clear and convincing evidence to overturn COAH's certification.

Towns also enjoy priority access to the state's Balanced Housing Fund, federal low income tax credits and other sources of housing subsidies to help implement their certified housing elements. There are a number of other benefits municipalities have when they participate at COAH including: regional contribution agreements (RCAs), mandatory development fee ordinances and developer agreement guidelines; mediation as opposed to litigation for purposes of resolving objections; local control over land use and the knowledge that participants will be treated fairly across the state, with flexible rules that are realistic, up-front and evenly applied.

In upholding the constitutionality of the FHA, on February 20, 1986, the New Jersey Supreme Court also assigned COAH the quasi-judicial role of imposing scarce resource restraints where necessary to allow for a realistic opportunity for affordable housing to emerge. Thus, COAH hears and decides motions for the imposition of building constraints and the related allocation of limited sewer, water and/or vacant land capacity in a municipality.

Other responsibilities include: coordination with the State Planning Commission; reviewing and certifying RCAs; defending certified towns against allegations of exclusionary zoning; monitoring progress; reporting and recommending improvements to the Governor and legislature.

In December 1990, the New Jersey Supreme Court directed COAH to determine criteria for mandatory development fee ordinances and to review and approve the ordinances for municipalities. These criteria were promulgated on January 21, 1992.



COAH is an administrative organization, not a production agency or funding source. Housing subsidies can be found in the Balanced Housing fund in the Department of Community Affairs (DCA), bonding and tax credits in the Housing and Mortgage Finance Agency (HMFA) and in other federal and county agencies. (See source of funds.)

In brief, COAH is the administrative alternative to the courts in providing affordable housing. It is at the front end of the housing delivery system, where local land use, zoning and development ordinances are certified as realistic. COAH helps establish the framework in which affordable housing may be built by municipalities, nonprofits and the private sector. COAH does this with certifications of local land use ordinances that carry the presumption of validity for a six-year cycle.

In addition to establishing an administrative body, the FHA also made the housing element a mandatory part of the municipal master plan effective August 1, 1988. The housing element must address the low and moderate income needs of the municipality and contain the information required by the FHA. The objective of a housing element is to create realistic affordable housing opportunities recognizing the unique character, limitations, resources and growth potential of the municipality.

After the municipal planning board has adopted the housing element and fair share plan, the documents may be filed with COAH along with a copy of the governing body's endorsement of the housing element and fair share plan. The plan may remain on file for two years.

The municipality may petition for substantive certification at the time of filing the housing element and fair share plan or at any time within two years after filing to remain under COAH's jurisdiction.

The FHA's basic objective is to encourage municipalities to make affordable housing judgments and choices based on sound land use planning principles. The FHA offers municipalities more flexibility and control in addressing the constitutional obligation than court-imposed solutions. The time needed to undertake pro-active planning rather than reactive decisions is one of the benefits afforded to municipalities that seek the COAH route to providing low and moderate income housing. (See COAH fact sheet.)

# *the coah process*

The original process, in effect since 1986, has been streamlined and simplified to reduce the expenditure of staff time at both the municipal and state level. Various steps have been consolidated and documents have been eliminated. The amendments have been designed to provide participants with a realistic picture of what to expect from COAH's process. It is also designed to expedite COAH's action, while simultaneously providing the participants with input into COAH's review.

The COAH process is a voluntary one. No municipality is forced to participate and any municipality is free to pursue its interests in a judicial forum.

The basic process is not a complicated one:

The planning board adopts a plan to meet its municipality's fair share of affordable housing and the governing body petitions COAH for substantive certification;

The interested public is given a reasonable opportunity to comment or object;

The objections are resolved through a process of mediation or may be referred to the Office of Administrative Law (OAL) for a recommendation;

COAH makes the decision to certify, certify with conditions, dismiss or deny the petition;

The municipality adopts the appropriate ordinances and/or amendments necessary to meet applicable requirements and

The implementation of the plan begins or continues.



# determining the obligation

One of the first steps in preparing a housing element and fair share plan is establishing the number of low and moderate income units a municipality must address. The municipality's number is derived from the Supreme Court's *Mt. Laurel II* opinion in which the court found that numberless approaches to the low and moderate income housing obligation had not been successful.

The court, in *Mt. Laurel II*, stated that it would favor approaches to housing allocations that were directed by a state plan and recognized the strong link between the location of jobs and the need for housing. In listening to the public while developing its rules, COAH agreed that there should be a relationship between the 1987-1993 and 1993-1999 estimates of need and that municipalities that addressed their previous obligation should receive credit for their response.

The housing obligation is a regional obligation and each region is defined by the legislature as at least two and no more than four contiguous counties. (See COAH housing regions in the Appendix.)

Simply stated, the need estimates consist of a present need and a prospective need. Present need is an estimate of substandard units occupied by low and moderate income households (potential rehabilitation). It is estimated through use of the 1990 census for each municipality. Some communities, typically urban centers, have a disproportionate share of substandard units occupied by low and moderate income households.

Under the concept of reallocated present need, a standard of deterioration is developed for each housing region. In examining the census estimates of substandard housing units occupied by low and moderate income households within each municipality, the municipal responsibility is limited by this regional standard. Thus, if the regional standard is two percent and within a specific municipality three percent of the occupied housing stock represents substandard units occupied by low and moderate income households, the municipal responsibility is capped at the regional standard of two percent. The remaining obligation becomes a regional obligation assigned to other municipalities within the housing region.

In 1986, COAH adopted a 1987-1993 prospective need. This prospective need was a projection of new low and moderate income households that were likely to form over the 1987-1993 projection period. Much of this projected growth did not occur and COAH did not think it reasonable to make municipalities responsible for a projected increase in households that did not occur. As a result, in developing its second round housing allocations, COAH modified the 1987-1993 prospective need based on its best estimate of the growth that actually occurred.

COAH then projected a 1993-1999 prospective need for each housing region based on the best projections available. These projections are more conservative in projecting growth and are the same projections that were incorporated in the State Development and Redevelopment Plan (SDRP) and the State's Comprehensive Housing Assistance Strategy (CHAS).

The regional reallocated present need and the 1993-1999 prospective need are distributed to the municipal level based on regional shares of nonresidential ratables (as measured by equalized assessed value), an income factor and a factor that is sensitive to the amount of undeveloped land by municipality and weighted by the State Planning Commission planning areas. COAH found that the nonresidential ratable is an excellent surrogate for employment in specific municipalities. Therefore, the nonresidential ratable factor is sensitive to the link between jobs and housing need. It reflects COAH's belief that there is a direct responsibility to provide affordable housing inherent in accepting nonresidential ratables.



The income factor also reflects COAH's belief that wealthier municipalities have a greater responsibility and financial capacity to house low and moderate income households. The undeveloped land factor is weighted by SDRP planning areas so that the availability of land is tempered by the existence of infrastructure and the goals of the SDRP.

Urban aid municipalities that meet specific criteria are exempt from the regional reallocated present need and prospective need. For all other municipalities, the municipal need includes substandard housing units occupied by low and moderate income households, a portion of the region's reallocated present need, a reduced 1987-1993 prospective need based on estimates of actual growth and a projection of 1993-1999 need.

COAH believes that some of the municipal need may be addressed by the existing housing stock and the private sector without municipal intervention. Thus, COAH has projected how much of this need is likely to be addressed without municipal intervention and reduced the municipal need based on this projection. The projection method is described in N.J.A.C. 5:93-2 and Appendix A to the rules. Basically, municipalities that have permitted two- to four-family structures and multi-family housing receive greater reductions from this component than other municipalities.

Some municipalities completed their 1987-1993 housing obligation and some did not. Those that did provide housing, received a one-to-one credit for each affordable housing unit (rental units result in greater credits) and credits for units transferred by way of an RCA. The rules also provide for the possibility of a one-to-one reduction for every unit provided through municipal zoning (N.J.A.C. 5:93-3.5). In general, municipalities with similar characteristics that addressed the 1987-1993 need will have lower obligations than those that chose not to address their previous obligations.

## **Data Refinements**

COAH employed a great deal of data in developing the housing allocations. It is possible that some of the data is incorrect. To the extent that incorrect data has been used, the municipal housing allocations may go up or down. The following paragraphs provide some examples of the way errors may be corrected.

Admittedly, the census is an imperfect way to estimate substandard housing occupied by low and moderate income households at the municipal level. Therefore, COAH has developed a structural conditions survey that may be used by any party in COAH's process to convince COAH that the municipal estimate of units to be rehabilitated should be modified. (See Technical Appendix C in N.J.A.C. 5:93 for survey forms.)

## **Credits/Reductions (N.J.A.C. 5:93-3)**

Municipalities may also receive a credit for affordable housing units constructed during the 1980s. For the most part, these housing units must be restricted and affordable to low and moderate income households. However, there are provisions within N.J.A.C. 5:93-3.2 for municipalities to receive credit for housing units built by the private market between 1980 and the adoption of COAH's initial rules if they are in sound condition, are affordable to income eligible households at the time of petition and still occupied by low and moderate income households. (See credits without controls in the Appendix.) Also see N.J.A.C. 5:93-3.1(e) and 3.3 for units constructed subsequent to December 15, 1986.

COAH's estimates of substandard units occupied by low and moderate income households are based on the 1990 census. Thus, any rehabilitation activity completed subsequent to April 1, 1990 that conforms to COAH's criteria is also eligible for credit up to the indigenous need number.

Reductions are also possible for housing units zoned but not as yet constructed, for the transfer of units via an RCA, for rental bonuses and for units created in substantial compliance with the terms of a grant of substantive certification.

## **Municipal Adjustments (N.J.A.C. 5:93-4)**

COAH recognizes that there may be circumstances unique to a municipality, wherein an entire development resource (land, water or sewer) may be exhausted without providing the realistic opportunity for affordable housing. This subchapter establishes standards and procedures to demonstrate that a municipality's new construction obligation is limited by a lack of sufficient land, water or sewer. However, the rehabilitation component (substandard units occupied by low and moderate income households minus spontaneous rehabilitation) may not be reduced or deferred by such limitations. This subchapter introduces the concept of realistic development potential (RDP). (See lack of land process in the Appendix.)

### **Lack of Land (N.J.A.C. 5:93-4.2)**

To support this adjustment, a detailed municipal land use map and an inventory of vacant parcels by lot and block must be submitted. COAH will review the map and inventory to identify parcels most likely to develop for low and moderate income housing. In addition to vacant parcels, COAH may include certain sites that, although devoted to specific uses, would have residential development potential if appropriately zoned. Examples include, but are not limited to, farms in SDRP Planning Areas 1, 2 and 3, golf driving ranges, nurseries and golf courses not owned by club members.

A municipality may also exclude land that is owned by a local government if it has adopted a resolution authorizing an agreement with another entity that such land is to be used for a public purpose other than housing as detailed, in N.J.A.C. 5:93-4.2(c).

A further exclusion is any vacant contiguous parcels of land in private ownership that accommodates less than five dwelling units, as per the COAH standard in N.J.A.C. 5:93-4.2(f).

Sites may be excluded, in whole or part, due to: restrictive covenants that run with the land; steep slopes, if regulated by a steep slope ordinance; wetlands; floodplain; the necessity for a buffer surrounding an historic structure; surrounding land uses that are incompatible with residential development and the need to devote land for active and passive recreational purposes.

Municipalities should not expect COAH to agree to the exclusion of land reserved for active and passive recreational purposes unless they are prepared to purchase the land within one year of substantive certification. These exclusions are grouped under the following headings along with a description of the necessary documentation:

#### **Restrictive Covenants**

A site may be excluded from consideration for low and moderate income housing if it is restricted for agricultural use through the Right to Farm Act (P.L. 1983 c. 31) (N.J.S.A. 32) (N.J.S.A. 4:1C-1 et seq.) or the Agricultural, Retention and Development Act (N.J.S.A. 32) (N.J.S.A. 4:1C-11 et seq.).

To request an agricultural adjustment, municipalities should submit a copy of the deed restricting the land for agricultural purposes.

#### **Environmental Constraints**

A site that is environmentally constrained may be eliminated from consideration for low and moderate income housing for any of the following reasons:

- In areas of the state regulated by the Pinelands Commission, Division of Coastal Area Facilities Review Act (CAFRA) and the Hackensack Meadowlands Development Commission, COAH will adhere to the policies delineated by the governing agencies for those areas.  
*Documentation:* Appropriate maps showing the location of the restricted areas
- Inland wetlands as delineated by the U.S. Army Corps of Engineers or the New Jersey Department of Environmental Protection (DEP).  
*Documentation:* National Wetlands Inventory Maps provided by the U.S. Fish and Wildlife Service

- Flood hazard areas as defined by N.J.A.C. 7:13.  
*Documentation:* Federal Emergency Management Administration (FEMA) National Flood Insurance Program Rate Maps
- Sites with slopes in excess of 15 percent.  
*Documentation:* U.S.G.S. Topographic Quadrangles and the municipal ordinance governing development on steep slopes throughout the municipality

To request an environmental adjustment for a site, the following information should be submitted:

- Vacant land survey describing by block and lot number any environmental constraints
- Appropriate mapping showing the location of the constraint(s)
- A recent aerial map of the municipality

#### **Historic Site Considerations [N.J.A.C. 5:93-4.2(e)3]**

A site designated as an historic site on the New Jersey Register of Historic Places prior to the petition for substantive certification may be eliminated from consideration for low and moderate income housing. In addition, land within a reasonable buffer area of an eligible historic site may be excluded.

#### **Active and Passive Recreation Land [N.J.A.C. 5:93-4.2(e)4 and 5] Considerations**

Up to three percent of a municipality's developed and developable acreage may be reserved for active recreation purposes. In addition, land designated for conservation, parklands or open space may be excluded. For this purpose, the term "active recreation" means leisure time activities usually of a more formal nature and performed with others, often requiring equipment and taking place at prescribed locations, sites or fields. Active recreation sites include swimming areas, playgrounds, tot lots, play fields, and tennis and other court game facilities. Active recreation does not include areas designated for bike riding, hiking, walking and picnicking. Passive sites are conservation, parklands and open space lands.

All sites so reserved or designated must be verified by the appropriate agency. An open space inventory that has been filed with DEP's Office of Green Acres may be submitted as evidence of all designated open space areas in a municipality. However, if no inventory exists, the section of the municipal master plan pertaining to recreation or open space, should be submitted, as well as the county master plan, if appropriate.

Recreation areas owned and operated by local school boards are not to be included in the calculations of existing municipal open space areas.

Any land designated on a municipal master plan as dedicated for conservation, parklands or open space and owned, leased, licensed or operated by a county, municipality or tax-exempt organization including a board of education or by more than one municipality may be excluded as in N.J.A.C. 5:93-4.2(e) 5.

Please note that if land is reserved for future recreation or open space, the Municipal Land Use Law stipulates that a municipality has one year to enter into a contract to acquire the property or institute condemnation proceedings (N.J.S.A. C.40:55D-44). Sites that are not acquired within the time limit may be subject to an affordable housing obligation if deemed necessary by COAH.

#### **Lack of Water and Sewer Capacity (N.J.A.C. 5:93-4.3)**

In the event that a municipality has sufficient land but lacks sufficient water or sewer capacity to support an inclusionary development, COAH will defer the requirement to address the municipal fair share until adequate capacity is available. This durational adjustment does not relieve the municipality of its responsibility to plan and appropriately zone for its fair share of affordable housing. Such deferral will be conditioned upon specific commitments relative to reservations of infrastructure capacity, permit approvals, application endorsements and housing element and fair share ordinance amendments as may be necessary to facilitate inclusionary development.

If a municipality demonstrates that the lack of land, water or sewer limits its ability to address its rehabilitation component as well as its inclusionary component, COAH may require that it apply for federal and/or state housing rehabilitation funds. (See sources of funds.)

**Realistic Development Potential (RDP) [N.J.A.C. 5:93-4.2 (e), (f), (g), (h)]**

Once sites or parts of sites are eliminated from consideration, the municipal RDP may be determined using the remaining suitable sites. The acreage of each remaining site is multiplied by a gross density that is appropriate to the site. Normally, the density is at least six units per acre. However, the assumed density is generally higher if the infrastructure and character of the area indicate that higher densities are appropriate. COAH will assume that 20 percent of the units will be for low and moderate income households.

The result of this site-by-site analysis yields the RDP for the municipality. It is important to understand that all sites that meet COAH criteria are used to determine the RDP of the municipality. However, a municipality need not use all of these sites in devising a plan. A municipality may reserve sites for other uses by entering into an RCA or permitting higher densities on other sites within the municipality. Therefore, the municipality maintains the flexibility of devising a plan that addresses its RDP.

Where the RDP is less than the municipal calculated need, the unmet need remains as a goal to be addressed. Municipalities that seek vacant land adjustments are expected to capture a contribution toward affordable housing as development or redevelopment occurs in the municipality. Such a contribution may take the form of overlay zoning, a redevelopment zone, accessory apartments (N.J.A.C. 5:93-9) and/or a development fee ordinance (N.J.A.C. 5:93-8).

Municipalities that have already received vacant land adjustments from the first round are presumed to have addressed their RDP. These municipalities may receive substantive certification by capturing a contribution toward affordable housing as development or redevelopment occurs and by addressing any rehabilitation obligation.

# *preparing the housing element & fair share plan*

## **The Housing Element and Its Components**

COAH defines the housing element as that portion of a municipality's master plan consisting of reports, statements, proposals, maps, programs and text designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low and moderate income housing. At a minimum, it contains the following according to N.J.A.C. 5:93-5.1:

- An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated;
- A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing for the six years subsequent to the adoption of the housing element, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;
- An analysis of the municipality's demographic characteristics, including, but not limited to, household size, income level and age;
- A determination of the municipality's present and prospective share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing;
- A consideration of the lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation of, low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing;
- A map of all sites designated by the municipality for the production of low and moderate income housing and a listing of each site that includes its owner, acreage, lot and block;
- The location and capacities of existing and proposed water and sewer lines and facilities relevant to the designated sites;
- Copies of necessary DEP approvals and amendments to areawide water quality management plans for sewer service;
- A copy of the most recently adopted municipal master plan and, where required, the immediately preceding adopted master plan;
- For each designated site, a copy of the New Jersey Freshwater Wetlands maps where available. When such maps are not available, municipalities must provide appropriate copies of the National Wetlands Inventory maps provided by the U.S. Fish and Wildlife Service;



- A copy of appropriate United States Geological Survey Topographical Quadrangles for designated sites and
- Any other documentation pertaining to the review of the municipal housing element as may be required by COAH.

## **The Fair Share Plan and Its Components**

A municipality looks first at its precredited need number which may have a rehabilitation component and a new construction component. To determine the number of units that can potentially be rehabilitated, take the number in the indigenous need column and subtract the number in the rehab column. Then, by subtracting this resulting number from the precredited need number, the new construction component is determined.

For example, assume that Boroughsville has a precredited need of 168. In the indigenous need column there is the number of 45. Subtract the -4 in the rehab column from the 45 to get the number of units---in this case, 41---that can potentially be rehabilitated. Then subtract the 41 rehabilitation component from the 168 precredited need number to establish the new construction component of 127.

Starting with its precredited need number, a municipality works through COAH's rules for eligible credits, reductions and adjustments. The result is the fair share obligation or in the second round, the calculated need. The municipality then prepares a fair share plan or that plan or proposal (in a form that may readily be converted into an ordinance) by which a municipality seeks to satisfy its obligation to create a realistic opportunity for low and moderate income housing. It details the affirmative measures the municipality will undertake to achieve its fair share and addresses necessary implementing zoning and the requirements of N.J.A.C. 5:93-7 through 11.

COAH encourages municipalities to discuss the components of a housing element and fair share plan, on an informal basis, with COAH staff prior to filing and/or petitioning.

It is important to keep in mind that the fair share plan must be in the form of a draft ordinance so as to facilitate its adoption as an ordinance by the governing body of the municipality. A fair share ordinance must be adopted within 45 days of COAH's substantive certification action. Failure to do so will void the certification [N.J.A.C. 5:91-5.3(d)].

COAH rules have a number of different provisions regulating the development of affordable housing and the appropriate rules must be carefully read and incorporated into the ordinance.

## Major Provisions of a Fair Share Plan

Title	Rule Number	Description
Phasing of Low/Moderate Income and Market Housing	<u>N.J.A.C.</u> 5:93-5.6(d)	Indicates a schedule for construction
Age-Restricted Housing	<u>N.J.A.C.</u> 5:93-5.14	Limits age-restricted units to 25 percent of an obligation based on a formula. (See charts)
Rental Housing	<u>N.J.A.C.</u> 5:93-5.15	Encourages the provision of rental units and a variety of housing types. Rental provisions are established by minimum densities, maximum setbacks and yield bonuses toward meeting the fair share. COAH requires a realistic opportunity for at least 25 percent of new units to be low/moderate income rental units. (See illustrative rents and utility allowance schedule)
Regional Contribution Agreement (RCA)	<u>N.J.A.C.</u> 5:93-6	Establishes the parameters for a sending municipality to enter into a contract with one or more receiving municipalities in the same region for up to 50 percent of the sender's affordable housing obligation. There is a minimum per unit payment to the receiver of \$20,000. (See models)
Low and Moderate Income Split	<u>N.J.A.C.</u> 5:93-7.2	With certain exceptions for federal low income tax credit developments, COAH requires that at least half of all units be affordable to low income households and at least one-third of all units in each bedroom distribution be affordable to low income households. (See 1999 income limits)
Low Income Tax Credits	<u>N.J.A.C.</u> 5:93-7.2	Exempts inclusionary development constructed with federal low income tax credits from certain minimum COAH requirements.
Bedroom Distribution and Pricing	<u>N.J.A.C.</u> 5:93-7.3 and <u>N.J.A.C.</u> 7.4	Provides a mix of bedroom types, a range of affordability for sales and rental units and income standards for eligible applicants. COAH has a computerized pricing program on disk that is available upon request.
Development Fees and Spending Plans	<u>N.J.A.C.</u> 5:93-8	Establishes the parameters for development fee ordinances and the accompanying spending plan. Fees collected may be used only for the provision of eligible affordable housing. (See models)
Affordability Controls	<u>N.J.A.C.</u> 5:93-9	Addresses continued affordability of affordable units including resale controls, length of affordability controls and pricing of units.
Control/Elimination of Cost Generating Factors	<u>N.J.A.C.</u> 5:93-10	Requires municipalities to eliminate local standards or practices that unnecessarily increase residential development costs or impede the development process.
Regional Affirmative Marketing Plan	<u>N.J.A.C.</u> 5:93-11	Requires municipal strategy to attract applicants for low and moderate income units from the entire housing region.
Responsible Municipal Entity	<u>N.J.A.C.</u> 5:93-11.2	Requires a representative of the municipality to attend an affirmative marketing training program, unless the marketing function is undertaken by an experienced agency.

# achieving the fair share

## Options

Once a municipality has determined its fair share after adjustments and/or credits, a plan must be developed to describe how the remaining obligation will be achieved during the six-year certification period. COAH regulations provide an extensive menu of options. These are:

Rehabilitation of substandard housing

Zoning for inclusionary developments

Municipally sponsored new construction and gut rehabilitation

Regional contribution agreements (RCAs)

Provisions of alternative living arrangements and other innovative approaches such as group homes, congregate housing and transitional facilities

Creation of accessory apartments

Purchase of existing, never occupied housing

Write-down/buy-down program of for sale, previously owned market housing

ECHO (elder cottage housing opportunities) housing

Age-restricted housing including Assisted Living facilities

Rental housing with bonus credit

Conversions (old schools, factories, buildings) into affordable housing

Each option is described in detail in N.J.A.C. 5:93-5.2 through 5.15, N.J.A.C. 5:93-6 and is summarized below. Note that COAH has established specific requirements and/or limitations relative to rental housing and age-restricted housing.

## Rehabilitation of Substandard Units (N.J.A.C. 5:93-5.2)

Where there is sufficient land to address the entire housing obligation, a municipality may address its rehabilitation component through rehabilitation or new construction. If a municipality is submitting a program for rehabilitation, the municipality must demonstrate that the program has adequate funding and an experienced entity to administer and market the program. A municipality may not initiate an in-house rehabilitation program where none previously existed to address its rehabilitation obligation.

In addressing the rehabilitation component through rehabilitation, the following minimum documentation must be submitted to COAH:



- A stable funding scheme for the program including the amount and source of funding available. Please note that a municipality must allocate a minimum of \$10,000 per unit, of which at least \$8,000 is allocated to actual capital or hard costs of replacing a deficient major system(s) and the remainder may be used for administrative or soft costs. If a municipality is applying for funding from other outside funding, a secure funding source such as municipal bonding is required in the event that the application is not approved. If the municipality's application is approved, the amount of funding can replace the funds provided by the municipality. (See resolution of intent to bond) Although COAH requires a stable funding source, municipalities need not provide all rehabilitation dollars at the time of substantive certification. COAH requires that sufficient dollars be available in the first year after certification to fund one-third of the rehabilitation and that one-sixth be funded in each subsequent year.
- A description of the experienced administrative entity to implement the program. This should include a description of staff responsibilities including procedures for income qualification of applicants. A municipality has three options regarding administration of the program: continue an on-going program in-house, enter into an agreement with a participating governmental agency such as the county or hire an outside experienced firm. Many counties in New Jersey administer active rehabilitation programs using state and federal grants. (See New Jersey counties with active rehabilitation programs.) Ultimately, the municipality is responsible for designating an experienced administrative entity.
- A detailed marketing program that clearly describes the outreach efforts to be used in implementing the program. COAH expects that a combination of media approaches - cable television, radio and print - plus appropriate mailing to residents, local civic, social, religious and fraternal groups will be included in the marketing program. COAH will monitor the effectiveness of such programs and may require changes to increase rehabilitation activity.

## **Zoning for Inclusionary Developments (N.J.A.C. 5:93-5.3, 5.4, 5.5 and 5.6)**

Sites designated for inclusionary development must be available, suitable, developable and approvable as defined in N.J.A.C. 5:93-1.3

- **Available Site**

Available site means a site with clear title, free of encumbrances which preclude development for low and moderate income housing.

- **Suitable Site**

Suitable site means a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with environmental policies delineated in N.J.A.C. 5:93-4.

- **Developable Site**

Developable site means a site that has access to appropriate water and sewer infrastructure, is consistent with the applicable areawide water quality management plan or is included in an amendment to the areawide water quality management plan with DEP.

- **Approvable Site**

Approvable site means a site that may be developed for low and moderate income housing in a manner consistent with the regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate income housing.

- **Consistency with the State Development and Redevelopment Plan (SDRP)**

Based on a Memorandum of Understanding between COAH and the State Planning Commission (SPC), both agencies recognize the interdependence of planning for infrastructure and planning for low and moderate income

housing. As a result, COAH encourages, but does not require, that new inclusionary development in Planning Areas (PA) 1, 2 and 3 be in centers.

However, in PA 4 and 5, COAH requires that new affordable housing sites that were not part of a previously certified plan be in designated centers. To accomplish this, municipalities may be required to expand existing centers or create new centers. A municipality may also request a waiver from center designation. Such a request is forwarded to the Office of State Planning for review and recommendation. Sites in PA 4 and 5 which were part of a previously certified plan from round one do not require a waiver. Such sites may be included in a municipality's second round plan without filing for center designation. COAH encourages and may require the use of sites in PA 1 and 2 prior to approving sites in PA 4 and 5 to which infrastructure must be extended. Sites with infrastructure have priority over sites not currently serviced by infrastructure.

- Documentation

Specific sites must be selected for rezoning and appropriate mapping must be submitted demonstrating that the sites are in compliance with COAH rules. The municipal plan must also show how many low and moderate income units will be provided on each site and should outline the new construction component in a simple summary statement. Each site must be identified by name of owner, acreage and block and lot.

**Example:**

No. or Site	No. of Mkt.	Unit Low/Mod	Acreage	Density Setaside	Name	Bl./Lot
Smith Site	14/1, 3 & 4	85	15	25	4	15%
Jones Site	23/15-19	160	40	25	8	20%

More specifically, the plan must provide the following minimum documentation including maps where appropriate:

- Site description - A general description of each site to be zoned, including, but not limited to, the following: acreage (broken down into buildable and non-buildable), current zoning, surrounding land uses and street access. Submit maps showing the location of the site(s).
- Environmental information - A description of any environmental constraints including: steep slopes, wetlands and flood plain areas. This should include calculations of the amount of acreage that is environmentally constrained and any remaining buildable acreage. Documentation should include U.S.G.S. National Wetlands Inventory and FEMA Flood Insurance Program maps.
- Utility availability - Information should be submitted regarding location, size and capacity of lines and facilities which service the area as well as the status of the areawide water quality management plan and any amendments. Documentation should include maps showing the location of the utilities.
- Inclusionary development proposal - A description of the total number of units for each site, the number of low and moderate income units, the number of sales and rental units per site and the overall density at which the site will be developed.

Every municipality must create a realistic opportunity for at least 25 percent of its new construction component to be rental units. To encourage the provision of new rental housing, COAH has established minimum densities and maximum setasides and will award a rental bonus for each rental unit with a firm commitment up to its rental component. Please refer to N.J.A.C. 5:93-5.15 for specific guidance. Also, refer to N.J.A.C. 5:93-5.6 for criteria for determining appropriate densities and setasides for inclusionary developments.

Municipalities should pay particular attention to the proposed location of affordable units within inclusionary developments. COAH encourages the integration of affordable units with market rate units.

## Municipally Sponsored New Construction and Gut Rehabilitation

A municipality may elect to provide low and moderate income units through a municipal construction program rather than inclusionary zoning. A municipal construction program must address four major areas of concern: (1) municipal control of the site(s); (2) an administrative mechanism; (3) funding and (4) timetables for construction of the units. More specifically, the following minimum documentation must be submitted:

- *Site control and information* - The municipality must demonstrate that it has control or has the ability to control the site(s). Control may be in the form of ownership or an option on the property. (The FHA permits municipalities to condemn land for the construction of low and moderate income housing.)

In addition, documentation must be submitted showing that the site is available, suitable, developable and approvable as per N.J.A.C. 5:93-1.3 and is consistent with the State Plan. The documentation should include all of the information required of an inclusionary site and should also state the number of low and moderate income units to be provided on the site.

- *Administrative entity* - An administrative entity should be named for the project indicating who will monitor construction, income qualify applicants and administer the units once they are occupied. If an administrative entity does not already exist in-house, the municipality may contract with an outside experienced agency. In either case, a description of the experienced agency is required and, in the case of administration by an outside agency, a written agreement between the administrative agency and the municipality should be submitted. The Housing Affordability Service (HAS), within DCA, provides this service on a contractual basis. Please call (609) 292-9795 for more information.

- *Funding* - The municipality must submit detailed information demonstrating to COAH there is adequate funding.

The documentation must include: proforma for the project and evidence that the municipality has adequate and stable funding. This should include, if appropriate, documentation indicating the bonding capacity of the municipality and if outside funding will be used; documentation indicating the subsidy amount available to the municipality and any applications still pending. In the case where an application for outside funding is still pending, the municipality must provide a stable alternative source, such as intent to bond, in the event that the funding request is not approved. As outside funds become available, the municipality may reduce its reliance on municipal resources.

- *Timetable for construction* - A schedule should be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for state and federal permits and funding, selection of a contractor and sponsor and construction schedule. N.J.A.C. 5:93-5.5(a)(4) requires that construction begin within two years of substantive certification.

## Regional Contribution Agreements (RCAs)

The FHA permits a municipality (sender) to transfer up to 50 percent of its fair share obligation to another municipality (receiver) within its region by means of a contractual agreement between the municipalities. (See sample agreement and other RCA documents in the Appendix.) Such agreement, which must be submitted to COAH for approval prior to execution, must specify at a minimum, the number of units to be transferred and the amount of compensation to be paid to the receiving municipality. COAH has established rules for such a transfer:

- The sending municipality may not transfer any portion of its rehabilitation component (indigenous need minus spontaneous rehabilitation).
- At least 50 percent of the units transferred must be affordable to low income households.
- At least \$25,000 must be transferred from the sending to the receiving municipality for each unit transferred. The per unit cost of transferring a rental obligation will be higher.

- The sending municipality's contribution may be prorated over a six-year period if agreed to by the receiving municipality and COAH. However, funds to be used for a scattered site rehabilitation program must be available over a five-year period starting from approval of the RCA.
- The receiving municipality must prepare and submit project plan to COAH and HMFA. However, if the receiving municipality has received RCA recipient certification pursuant to N.J.A.C. 5:91-11.4, project plan review by HMFA is not required. RCA recipient certification runs for three years and is renewable.
- Each RCA is subject to review for consistency with sound, comprehensive regional planning by the county planning board of the receiving municipality. County approval is not required if the receiving municipality has RCA recipient certification.
- There are other rules governing the approval and implementation of RCAs. Refer to N.J.A.C. 5:91-11.1 et seq. and N.J.A.C. 5:93-6.1 et seq. N.J.A.C. 5:93-6.1 provides a series of formulas for a variety of situations impacting the number of units that may be transferred. Note that the cumulative nature of the calculations may substantially affect the number of units that may be transferred.
- COAH maintains a directory of municipalities that are receiving municipalities in approved RCAs and a listing of other municipalities that have expressed an interest in or willingness to participate in an RCA as receiving municipalities.
- When entering into the RCA, the sending municipality is responsible for providing the funding and the receiving municipality, for implementing the RCA. The receiving municipality must enter into an Escrow Agreement with COAH and the banking institution which permits COAH to monitor performance and to suspend disbursements if, after notice and hearing, COAH finds that the implementation of the RCA is threatened. RCA transferred funds may be used for any activity identified in N.J.A.C. 5:93-5.
- Several other regulations should be noted here:
  - While cosmetic improvements may be included in the cost of rehabilitation, the housing must be substandard, must require at least \$8,000 in major system(s) repair and must be restored to the applicable local housing code standard in the receiving municipality. A major system involves heating and cooling, electrical, plumbing, roof, structural and weatherization activity. RCA scattered site rehabilitation must average \$16,000 per unit.
  - If the sending municipality chooses to meet its inclusionary rental housing obligation (N.J.A.C. 5:93-5.15) or portion thereof through an RCA, it must structure the agreement to specifically require the creation or gut rehabilitation of rental units. Such units are credited on a one-to-one basis to the sending municipality. The receiving municipality must prepare a project plan for the creation or gut rehabilitation of rental units.
  - The receiving municipality will not receive credit toward its fair share obligation for the obligation it accepts with the RCA.
  - COAH will not review or approve an RCA without a contractual agreement signed by both parties.

## **Innovative Approaches**

Municipalities are encouraged to use a variety of innovative approaches to achieve their fair share. N.J.A.C. 5:93-5.8 through 5.15 discuss such approaches:

- Alternative living arrangements such as residential health care facilities, transitional facilities for the homeless, group homes and congregate housing may be eligible for credit on a bedroom basis. Providers of such housing are often willing to enter into agreements with municipalities to build such housing in return for land donations or other subsidies with little or no impact on municipal budgets. Civic, religious, fraternal and labor union groups

should be contacted for information. See N.J.A.C. 5:93-1.3 for a definition of "alternative living arrangement" and N.J.A.C. 5:93-5.8 for details.

- Accessory apartments may be credited toward the municipal fair share. Up to 10 units, which are exempt from COAH's bedroom mix requirements but are subject to the 25 percent age-restricted maximum, if they are so reserved, may be credited. A \$10,000 municipal subsidy per apartment is required to create a new accessory apartment. See N.J.A.C. 5:93-1.3 for a definition of "accessory apartment" and N.J.A.C. 5:93-5.9 for additional descriptions. (See model accessory apartment ordinance.)
- Illegal accessory apartments may be eligible for credit if a municipality addresses the criteria in N.J.A.C. 5:93-5.9(a) and (e). No municipal subsidy is required.
- The purchase of existing housing that has never been occupied or has been vacant for at least 18 months may be credited toward the municipal fair share obligation. COAH will review such proposals in a manner similar to its review of municipally sponsored construction or gut rehabilitation. In the event that such housing must be rehabilitated or completed, the municipality must demonstrate how and when such work will be done and must assume responsibility for offering housing in sound condition at affordable prices or rents to low and moderate income families. A program for providing such housing must be consistent with COAH regulations and N.J.A.C. 5:93-7 and 5:93-11 except that the bedroom mix must conform as best as practical to N.J.A.C. 5:93-7.3. (See N.J.A.C. 5:93-5.10.)
- Write-down/buy-down program (N.J.A.C. 5:93-5.11) may be used to address up to 10 units of a municipality's obligation. The municipality must commit a minimum of \$20,000 per house to purchase a previously occupied for sale and market house that is in standard condition and reduce the selling price. The housing must be deed restricted for 30 years to remain affordable and the municipality must identify an experienced administrative entity to run the program.
- Elder cottage housing opportunities (ECHO) housing may address up to 10 units of a municipality's rehabilitation obligation. The municipality must lease or purchase the ECHO housing for at least six years. (See N.J.A.C. 5:93-5.12.)
- Age-restricted housing may be used to address, generally, up to 25 percent of a municipality's fair share obligation (See N.J.A.C. 5:93-5.14 for various formulas.) and receive rental bonuses of one-third for up to 50 percent of the rental obligation (N.J.A.C. 5:93-5.15).
- Rental housing is part of every municipality's fair share obligation (N.J.A.C. 5:93-5.15). Housing open to the general public (often called family housing) may be eligible for a two-for-one credit up to the rental component. Group homes that are not age-restricted are eligible for the two-for-one credit and the credit is by the bedroom. In Assisted Living residences, the credit is by the apartment/unit, not the bedroom.
- Assisted Living facilities have arrived in the state and may now be considered for low and moderate income credit. No Assisted Living facility has been included in a COAH - certified plan to date. As a result, COAH has issued policy guidelines that will become regulations.

In collaboration with the staff of the New Jersey Housing and Mortgage Finance Agency (HMFA), COAH articulated the following criteria for an Assisted Living apartment to qualify for COAH credit:

- 1) An Assisted Living facility may have two categories of low and moderate income residents: private pay residents and Medicaid Waiver residents;
- 2) Residents must qualify as moderate income (between 50 and 80 percent of median income) or low income (below 50 percent of median income); all Medicaid Waiver recipients meet COAH income eligibility criteria;
- 3) At least half of the affordable units must be affordable to a low income household or all of the affordable units must be affordable to a household at 60 percent of median income;
- 4) Rents must be affordable so as not to exceed 30 percent of gross monthly income including an allowance for utilities;

- 5) A 30-year deed restriction must be placed on the Assisted Living facility; provisions governing the occupancy of low and moderate income units in an Assisted Living facility must meet those found in HMFA's Assisted Living Permanent Financing Deed Restriction;
- 6) Assisted Living residences will be considered as age-restricted housing and, as such, fall within a COAH formula that caps the number of such apartments that may be credited towards a COAH obligation;
- 7) A municipality may be eligible to receive bonus credits for Assisted Living apartments if they fall within the COAH formula for rental bonus credits and age-restricted units;
- 8) The apartments must be affirmatively marketed to the COAH housing region;
- 9) HMFA regulations and underwriting guidelines provide that up to 80 percent of gross household income may be used for rent, food and services based on bedroom type. No more than 30 percent of the eligible income may be charged for rent;
- 10) For a fee, HMFA will serve as the experienced entity to administer and monitor the low and moderate income apartments in an Assisted Living facility.

The credit is by the apartment not the bedroom.

COAH has recently learned that Medicaid, which is a health insurance program for people whose incomes are below poverty level, has a Medicaid Waiver program that pays for health related services for low income persons. The individual must be deemed clinically eligible, to reside in an Assisted Living facility. COAH would credit those units that contain Medicaid Waiver residents as meeting a COAH obligation provided such units are deed restricted for 30 years and fall within the age-restricted cap.

## **Other Innovative Programs**

COAH encourages municipalities to seek out or develop other methods or programs for the provision of affordable housing. Such innovations should be discussed with or submitted to COAH staff on an informal basis before being incorporated into a fair share plan. While innovative proposals must meet basic COAH requirements, any proposal that creates a realistic opportunity for the provision of low and moderate income housing will be seriously considered. It is important to note that income supplement programs fall under affordability assistance programs and do not create a new unit.

*Note: There are many nonprofit housing organizations in New Jersey that are experienced in all aspects of providing affordable housing. You may wish to contact the Housing and Community Development Network of New Jersey in Trenton for advice and assistance. (See sources of funds.)*

# entering the coah process

## Filing a Housing Element

To enter the COAH process, the municipality must first submit a housing element and fair share plan adopted by the municipal planning board along with a resolution adopted by the governing body that:

- a. endorses the plan and
- b. requests that the plan remain on file without a petition or
- c. forwards a resolution by the governing body petitioning COAH and requesting that COAH review and certify the plan.

To fall within COAH's jurisdiction, the municipality should enter the process before its current substantive certification or judgment of repose expires or a case is transferred to COAH by court order. If a case is transferred, the housing element and fair share plan along with the resolution must be filed with COAH within 60 days of the transfer. (See sample resolutions in the Appendix.)

## Amendments

A housing element and fair share plan filed with COAH may be amended at any time prior to petitioning for substantive certification or to the initiation of an exclusionary zoning lawsuit. Such amendment does not extend the period in which a municipality may petition for substantive certification and receive the considerations described in N.J.A.C. 5:91-3.6.

A certified housing element and fair share plan may also be amended by following the procedures in N.J.A.C. 5:91-13.

## Petition for Substantive Certification

At any time within two years of filing a housing element, a municipality may petition COAH for substantive certification of its housing element and fair share plan. (See sample resolution to petition.) A court-transferred municipality is deemed to have petitioned as of the date of the court-ordered transfer to COAH. Along with the petition, the municipality must publish notice of such petition or transfer in a newspaper of general circulation within the municipality and county. (See sample notice.) This notice gives interested parties 45 days to comment on or object to the housing element and fair share plan (N.J.A.C. 5:91-4). COAH's review process begins after the expiration of the 45-day objector period.

When the petition is filed, COAH will provide owners of sites designated in the plan for low and moderate income housing with individual written notice of the filing. Such owners may participate in any subsequent mediation and have the same rights granted to objectors to the plan.

The filing of the petition within the two-year period subsequent to submission of the plan confers important benefits on the municipality:



First, COAH will not award site-specific relief to a developer except in extraordinary circumstances. Generally, extraordinary means that there is no alternative to the site in dispute that is suitable for the production of the required low and moderate income housing.

The second benefit available to a municipality that petitions for substantive certification within two years of filing a housing element and fair share plan is that objectors have the burden of proof when questioning aspects of a municipal submission.

Third, the municipality maintains control of its planning and zoning options, which it does not have before the court.

Finally, the municipality secures priority access to state funding sources which are not available to municipalities that do not petition.

These benefits are offered because the municipality has complied with the FHA. COAH believes that these benefits will encourage sound planning and discourage litigation. Municipalities that do not comply with the FHA will not receive these benefits and litigants may realistically expect site specific relief.

## Comment Period/Objections

Any person may file an objection to a housing element and fair share plan within the 45-day comment period. N.J.A.C. 5:91-4.1(a)(1-6) describes the form and substance for such objections. COAH may make a judgment concerning the completeness of the objection and determine if the objector meets the applicable requirements. Incomplete and/or deficient filings will be returned to the objector who will have 14 days to correct and resubmit (N.J.A.C. 5:91-4.2). If the resubmitted objections conform to COAH requirements, the objector may participate in COAH's administrative process.

### No Objections Filed

Pursuant to N.J.A.C. 5:91-5.2, COAH staff will review the housing element and fair share plan and prepare a report for the municipality. The report will either be a COAH Compliance Report (if the municipal plan is ready for COAH action) or a report requesting additional information to be filed with COAH within 60 days. (See sample resolution if housing plan is to be amended prior to certification but not as a result of mediation.)

The COAH Compliance Report will be sent to the municipality and all parties on the service list prior to COAH action and they will be given 14 days to comment. After the comment period, COAH will grant substantive certification if the plan is consistent with N.J.A.C. 5:91-5.3(a).

If substantial amendments are necessary and require the designation of additional inclusionary sites, a change in inclusionary sites, a substantial increase in density or a fundamental change in approach, the municipality will be directed to refile its housing element and fair share plan and to repetition for substantive certification within a timetable established by COAH. The municipality must provide notice of repetition as required in N.J.A.C. 5:91-3.3(c). Repetitioning will require an objector period as defined in N.J.A.C. 5:91-4.1. A conditional substantive certification does not trigger a notice of repetitioning as required in N.J.A.C. 5:91-3.3(c).

Within 45 days of the grant of substantive certification, the municipality must adopt its fair share housing ordinance including implementing zoning ordinances. Failure to adopt in a timely manner will void the grant of substantive certification.

It should be noted that municipalities that petition for substantive certification or are sued within two years of filing a housing element will be given two opportunities to file compliant housing plans. It is only when such a municipality does not address COAH's criteria twice, that COAH may deny or dismiss the municipal submission (See N.J.A.C. 5:91-5.4).

### Objections

COAH rules recognize three distinct categories of municipalities when they deal with objections and treat each differently. The three categories of municipalities are:

- (a) those that petitioned within two years of filing (See N.J.A.C. 5:91-6.2);
- (b) those that petitioned more than two years after filing, but prior to an exclusionary lawsuit (See N.J.A.C. 5:91-6.3.) and
- (c) those that were sued for exclusionary zoning and were transferred to COAH by the court prior to filing, or those who filed but did not petition within the two-year time limit and were subsequently sued and transferred to COAH by the court. (See N.J.A.C. 5:91-6.4.)

The process and philosophy for each category is somewhat different. Municipalities that petition within two years of filing have complied with the FHA in category (a) and receive two opportunities to develop an acceptable plan. COAH will not award site specific relief to objectors to such plans and the objectors must carry the burden of proof to any evidentiary hearing following mediation. With this philosophy, COAH is trying to encourage sound planning and discourage litigation.

Municipalities in categories (b) and (c) have not complied with the FHA and will receive less deference because COAH has determined that objector input is necessary to provide affordable housing.

## **Mediation (N.J.A.C. 5:91-7.1 and 7.2)**

When objections are filed to a municipal housing element and fair share plan, COAH will conduct a negotiation within the context of its rules called mediation.

COAH staff will prepare a COAH Premediation Report (if the plan meets COAH criteria) or a report requesting additional information to be submitted to COAH within 60 days of receipt of the report [N.J.A.C. 5:91-6.2(b)] and circulated to the municipality and service list. [N.J.A.C. 5:91-6.2(c)]

COAH will initiate the mediation process even if there are problems associated with the housing element and fair share plan because these problems may be resolved in mediation.

### **Participants and/or Objectors**

Each objector may be represented by no more than three persons unless otherwise allowed by the COAH mediator. The municipality is permitted four representatives, including a member of the municipal planning board [N.J.A.C. 5:91-7.2(g)]. The municipal representatives must be specifically authorized by municipal resolution to participate in mediation and to execute any written agreements reached during the process.

The parties are bound by any agreements entered into during mediation when such agreements are in writing and signed by the parties.

### **Mediator**

The COAH mediator has the widest possible latitude and flexibility in conducting the mediation and may refer to any person, document, report, study or decision to facilitate the resolution of the issues [N.J.A.C. 5:91-7.2(a), (b), (f), (h)].

### **Time Constraints [N.J.A.C. 5:91-7.2(d)]**

As a general rule, 90 days from the time of the first mediation session is the maximum amount of time that COAH will pursue mediation. However, this time period may be extended for good cause upon the request of the mediator.

### **The COAH Mediation Report (N.J.A.C. 5:91-7.3)**

At the end of mediation, the mediator will prepare a COAH Mediation Report. The purpose of the report is to summarize the results of the mediation. The report will stipulate areas of agreement and issues that remain in

dispute. The report will be circulated to the parties for a 14-day comment period. Any comments together with the COAH Mediation Report will be presented to COAH at its public meeting.

### **Amended Plan as a Result of Mediation**

If there are substantial amendments to the originally adopted housing element and fair share plan, the municipality must publish notice of an amendment(s) in a newspaper of general circulation within seven days after the COAH Mediation Report is presented at a COAH meeting. The newspaper notice must state that the plan will be amended as a result of mediation and also describe the amendments. The notice must state that any comments or objections must be filed with both the municipality and COAH no later than 45 days after publication of the notice. (See sample notice in the Appendix.)

At the end of the 45 days if there are no objections to the COAH Mediation Report, the municipal planning board amends the housing element and forwards the amendment to the governing body. Thereafter, the governing body endorses the amendment by resolution and forwards the amendment and resolution to COAH for review and approval. No repetition is necessary.

If there are objections to the amendment at the end of the 45-day period, COAH may reopen mediation as per N.J.A.C. 5:91-7.6.

If there are no material contested issues of fact and as a result of mediation, there will be substantial amendments to the originally adopted housing element, the municipality's planning board will have to amend its adopted housing element and fair share plan within 60 days after the COAH Mediation Report is presented at a COAH meeting. During the same 60-day period, the governing body must endorse the amended housing element and fair share plan, repetition for substantive certification and publish notice of repetition. A repetition will also require an objector period as per N.J.A.C. 5:91-4.

## **Grant of Substantive Certification**

COAH will issue substantive certification to a municipality's housing element and fair share plan if:

- The municipality's proposed housing element and fair share plan comply with N.J.A.C. 5:91 and N.J.A.C. 5:93;
- The housing element and fair share plan are not inconsistent with the achievement of the low and moderate income housing needs of the region pursuant to N.J.A.C. 5:91 and N.J.A.C. 5:93 and
- The elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations, and the affirmative measures in the housing element and fair share plan make the achievement of the municipality's fair share of low and moderate income housing realistically possible.

Any grant of substantive certification may contain conditions and terms that COAH considers necessary. COAH may condition a grant of substantive certification upon specific changes in the housing element or fair share plan. If, within 60 days of COAH's conditional approval, the municipality submits changes satisfactory to COAH, COAH will issue substantive certification.

Within 45 days of the grant of substantive certification, the municipality must adopt its implementing ordinance(s) as approved by COAH. COAH's grant of substantive certification will be void and of no force and effect in the event that the municipality fails to timely adopt its fair share ordinance(s).

## **Amendments to Substantive Certification**

The municipality or any other party may request an amendment to a certified housing element and fair share plan at any time after certification. Amendments that are minor or technical in nature may be requested by motion [N.J.A.C. 5:91-12]

and 5:91-13.1(c) and 13.3]. Amendments that require a change in site, a substantial increase in density or other zoning requirements that result in a change of housing structure on a specific site or a fundamental change in approach must include a petition, notice to the public and the opportunity for the public to review. Approval of any amendment is at the discretion of COAH. (See sample resolution in the Appendix.)

## **Interim Certification**

COAH is in the process of determining its third round methodology and developing new rules which are to be adopted and effective in 2002. Since COAH's present affordable housing obligations cover a 12-year period from 1987-1999, COAH has a process for municipalities to participate in the COAH process in the intervening time before the third round regulations are effective.

If a municipality files an adopted housing element and fair share plan pursuant to N.J.A.C. 5:93 et seq. and petitions for substantive certification after June 6, 2000, COAH may grant an Interim Substantive Certification that is valid for up to one year after the effective date of COAH's third round methodology and rules. To remain under the jurisdiction of COAH, municipalities that receive Interim Substantive Certification must petition before the one-year date lapses to address a third round obligation.

Municipalities that have second round certifications that expire prior to or within one year after the effective date of the adoption of COAH's third round methodology and rules may have their second round certifications extended if there is a resolution from the governing body that commits to continuing to implement the COAH certified second round plan and to addressing a third round obligation with a newly adopted housing element and fair share plan. (See sample resolution in Appendix.)

# *sources of funding & other assistance*

The FHA does not require a municipality to raise or expend municipal revenues to provide low and moderate income housing. However, there are a variety of funding sources, public and private, which can be used to provide the necessary financing.

## **Development Fees**

The New Jersey Supreme Court has determined that mandatory development fees are both statutorily and constitutionally permissible. N.J.A.C. 5:93-8 provides detailed guidance on a development fee ordinance relating how and when such fees can be collected and retained and by whom. N.J.A.C. 5:93-5.1 (c) and 8.16 discuss how such funds can be expended. The amounts of such fees are established at N.J.A.C. 5:93-8.10 and 8.11 and are summarized below.

Except as set forth in N.J.A.C. 5:93-8.3 through 8.6 inclusive, COAH will not review or approve any development fee ordinance unless the municipality has petitioned for substantive certification or there is a request from the court.

No municipality, except urban aid municipalities complying with N.J.A.C. 5:93-8.3, may impose or collect development fees unless the municipality has adopted a housing element and COAH has approved its development fee ordinance.

No municipality may spend development fees unless COAH has approved a plan for spending such fees. With the exception in N.J.A.C. 5:93-8.3, municipalities that have not received substantive certification or a judgment of repose may not spend development fees until they have received substantive certification or a judgment of repose. When no increase in site density is involved, the fee is a maximum of one-half of one percent of the equalized assessed value of each unit in a residential development and, when an increase in density is involved, the fee is a maximum of six percent of the equalized assessed value of each additional unit plus one-half of one percent for each originally permitted unit. In some instances, higher negotiated fees may be approved by COAH [N.J.A.C. 5:93-8.10 (d)].

Nonresidential development fees may be a maximum of one percent of the equalized assessed value of the development unless a higher negotiated fee, based upon other financial incentives offered by the municipality, is approved by COAH [N.J.A.C. 5:93-8.11 (b)].

Except as in N.J.A.C. 5:93-8.10 (c), inclusionary developments are exempt from development fees. All other forms of new construction may be subject to such fees. (See model development fee ordinance in the Appendix.)

## **New Jersey Department of Community Affairs (DCA)**

DCA administers a number of state and federally funded housing programs, specifically designed as subsidies for low and moderate income housing. DCA's Division of Housing and Community Resources administers the Neighborhood Preservation Program (NPP), the Balanced Housing Program and several federally funded programs such as the Small Cities Community Development Block Grant



Program (CDBG), the Homeownership and Opportunity for People Everywhere (HOPE) programs and the HOME programs. The division may be contacted at (609) 633-6264.

## **New Jersey Housing and Mortgage Finance Agency (HMFA)**

HMFA was created to present a strong, unified advocate for housing production, financing and improvement within the state. HMFA promotes safe and affordable housing by providing low-interest construction and mortgage loans for single- and multiple-unit dwellings. It offers low-interest mortgage programs for first-time and urban homebuyers; HMFA administers the federal low income tax program in New Jersey. HMFA raises its housing finance funds through the sale of tax-exempt and taxable bonds to private-sector investors. HMFA's programs may play a large role in financing a municipality's fair share of affordable housing. The agency can be contacted at (609) 278-7400.

## **United States Department of Housing and Urban Development (HUD)**

HUD maintains two offices in New Jersey, Camden and Newark, and directly administers affordable housing programs for the larger municipalities in New Jersey. Programs such as public housing, senior citizen and developmentally challenged housing programs are directly administered for all municipalities. A municipality electing to sponsor new construction or gut rehabilitation should contact the HUD Newark office for possible financial assistance. Some of HUD's programs may provide low-cost or otherwise subsidized mortgages or mortgage insurance directly to homeowners for the purchase and/or rehabilitation of affordable housing. The telephone number of the Multifamily Division is (973) 622-7900, ext. 3400.

Many of HUD's innovative housing programs are administered and funded through its Community Planning and Development Division (CPD) located in Newark. The telephone number is (973) 622-7900 ext. 3300. The National Affordable Housing Act of 1990 (NAHA) authorized the HOME grant program which is designed to expand the supply of decent, safe, sanitary and affordable housing, particularly rental housing, and to support state and local governments in providing such housing.

Although funds are made available on a formula basis, the ability of a municipality to provide matching funds from any other source can be an important factor in obtaining a grant. Grant funds are also made available to urban counties through the Urban County CDBG Program. Eligible counties, in turn, distribute these funds to municipalities within their boundaries. Such funds are often used to provide or assist in the provision of low and moderate income housing and related infrastructure. Municipal officials should contact the CPD program manager for the sub area or county in which they are located or the county agency that is responsible for administering the block grant program.

## **United States Department of Agriculture, Rural Economic and Community Development (formerly Farmers Home Administration)**

Rural Development provides loans, loan guarantees and grants for the construction or rehabilitation of low and moderate income housing in municipalities of less than 10,000 population. For the most part, these are made directly to low and moderate income households to foster homeownership in rural areas. However, Rural Development also makes loans, on favorable terms, for the construction of multi-family rental housing in rural areas. Applicants for such loans may be nonprofit organizations, consumer cooperatives and state or local public agencies and the loan repayment period may be as long as 50 years. Rural Development also makes rural housing preservation grants to public agencies and nonprofit organizations to rehabilitate units in rural areas for very low and low income households.

- Rural Development has five area offices in New Jersey in addition to the state office in Mount Holly (609-265-3600).

- The area office at 101 Bilby Road, Hackettstown, covers the counties of Bergen, Essex, Hudson, Hunterdon, Morris, Passaic, Somerset, Sussex, Union and Warren. The telephone number is 908-852-5424 and the FAX number is 908-852-4666.
- The area office at 2615 Route 38, Mt. Holly, covers the counties of Burlington, Mercer and Middlesex. The telephone number is 609-267-1606 and the FAX number is 609-261-3007.
- The area office at 1317 South Main Road, Vineland, covers the counties of Atlantic, Cape May, Camden and Cumberland. The telephone number is 856-205-1225 and the FAX is 856-205-0691.
- The area office at 44 Washington Street, Toms River, covers the counties of Monmouth and Ocean. The telephone number is 732-349-1067 and the FAX number is 732-505-8572.
- The area office at 51 Cheney Road, Woodstown, covers the counties of Gloucester and Salem. The telephone number is 856-769-1127 and the FAX number is 856-769-0718.

## The Housing and Community Development Network of New Jersey

The Housing and Community Development Network of New Jersey (The Network) is a statewide association of over 160 nonprofit housing development corporations, individuals and other organizations that support the creation of housing opportunities for low and moderate income residents.

The Network is committed to enhancing the ability of nonprofit housing corporations to create and preserve long-term affordable housing in New Jersey. Chief among its objectives are identifying additional resources to build the organizational and technical capacity of nonprofit housing development corporations and increasing public awareness of these organizations as important vehicles in meeting New Jersey's housing and community development needs.

The Network operates a Technical Assistance and Training Center for nonprofit housing corporations and publishes a Membership Directory, highlighting the accomplishments and plans of 88 of its nonprofit housing developer members, and a Funding Resource Manual that identifies both public and private organizations involved in funding affordable housing in New Jersey. Copies can be obtained by contacting the Network at One West State Street, P.O. Box 1746, Trenton, New Jersey, 08607 or by calling (609) 393-3752.

## The Banking Industry

In addition to the entities identified above, many banks in New Jersey have developed and funded programs for the provision of affordable housing. Banks that are active in your municipality and county should be contacted and encouraged to participate in helping to finance your fair share plan.

Many, in part due to federal community lending requirements of the Community Reinvestment Act (CRA), are interested in various forms of public-private partnerships wherein relatively small amounts of public funds may leverage substantial private investment.

For additional assistance in exploring this source of funds, the following organizations may be helpful:

- New Jersey Mortgage Bankers Association (973) 379-7447
- New Jersey Bankers Association (609) 924-5550
- The New Jersey League-Thrift Institutions  
Community Investment Corporation of New Jersey (TICIC) (908) 272-8500

The Federal Reserve Bank has a computer program, called Partners, which is designed as an aid for bankers, community groups, government agencies and other organizations involved in providing funding or housing for low and moderate income people. For more information, call (404) 589-7358 or check the web site: <http://woodrow.mpls.frb.fed.us>. and search for Partners or <http://minneapolisfed.org/banking/develop/partners.html>.

# *performance monitoring*

## **Monitoring**

The FHA gives COAH the responsibility for monitoring municipal performance in meeting the certified fair share plan, RCA fund disbursement and completion, drawdowns from housing trust funds and implementation of development fee ordinances. For the most part, this evaluation is accomplished through periodic reporting requirements. If you are interested, you may call the COAH office to schedule a time and date to review the monitoring forms.

Shortly after the granting of substantive certification, COAH staff meets with the appropriate municipal official(s) to review the required post-certification actions and to review the applicable reporting forms and submission schedules. It is important that the municipal official(s) and/or staff that will be responsible for the implementation of the fair share plan attend this post-certification meeting. COAH staff works closely with appropriate municipal staff to arrange this meeting at a mutually acceptable time and place.

COAH encourages municipalities to tailor housing elements to suit their individual needs and COAH staff members are available to answer questions that arise in the course of the process. In addition, a member of the COAH staff will, upon request, be available to visit your community to discuss the process in more detail. COAH staff can be reached at (609) 292-3000.

While this manual has not attempted to address all of the issues relating to the COAH process, we hope that it has been a helpful starting point. As noted in the introduction, the manual must be used in conjunction with COAH rules to fully understand the process and take advantage of the available administrative remedies.



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# **About COAH**

**Jane M. Kenny, Chairman**

**Shirley M. Bishop, Executive Director**

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The Council on Affordable Housing (COAH) was created by the Fair Housing Act of 1985 as the State Legislature's response to a series of New Jersey Supreme Court cases known as the Mount Laurel decisions. The Supreme Court established a constitutional obligation for each of the 566 municipalities in the state to establish a realistic opportunity for the provision of fair share low and moderate income housing obligations, generally through land use and zoning powers. The legislature provided an administrative alternative to this constitutional obligation via the Fair Housing Act.

With 11 members appointed by the Governor on the advice and consent of the Senate, COAH is empowered to: (1) define housing regions, (2) estimate low and moderate income housing needs, (3) set criteria and guidelines for municipalities to address their fair share numbers and then (4) review and approve housing elements/fair share plans and regional contribution agreements (RCAs) for municipalities. As a quasi-judicial organization, COAH can also impose resource restraints and consider motions regarding housing plans.

In December 1990 the New Jersey Supreme Court directed COAH to determine criteria for development fee ordinances and then to review and approve the ordinances for municipalities.

COAH is an administrative and regulatory organization. It does not produce, fund or compel municipalities to expend local funds to build affordable housing. Funding is usually provided by the New Jersey Department of Community Affairs (DCA) through its various housing programs or by the New Jersey Housing and Mortgage Finance Agency (HMFA) using its bonding capabilities or its federal low income housing tax credit allocations. Some municipalities also expend their own funds or utilize bonding resources.

COAH does provide municipalities that choose to enter its process and obtain substantive certification of their fair share plans with an administrative shield from developer's lawsuits. Often such lawsuits result in the imposition of "builder's remedies" (four market units for each low and moderate income unit).

## **The COAH Process**

New Jersey municipalities enter the COAH process voluntarily. They do so by filing a housing element (required by the Municipal Land Use Law as part of each municipality's master plan) and a fair share plan establishing a realistic opportunity for the provision of a predetermined number of units affordable to low and moderate income households.

Within two years of such filing, municipalities must petition COAH for substantive certification (approval) of such plans if a municipality is to remain under COAH's jurisdiction. Petitioning assures continued protection from lawsuits while COAH reviews, sometimes requests revisions and possibly mediates objections from interested parties before COAH grants or denies substantive certification.

Certification is granted for a six-year period if a municipality petitioned before June 6, 2000, and may be withdrawn if a municipality fails to assure the continuing realistic opportunity for its fair share housing obligation. If a municipality petitioned after June 6, 2000, COAH may grant an Interim Substantive Certification which will be valid for up to one year after COAH's third round methodology and rules

become effective. COAH also offers an extended certification for municipalities with expiring second round certifications.

Often municipalities can meet a portion of their fair share obligation through rehabilitation of existing units. To provide a realistic opportunity for the construction of new units, municipalities may zone specific sites for residential developments by the private sector. Developers must agree to build a fixed percentage of affordable units---usually 20 percent---of the total constructed on the site, to market to low and moderate income households and to maintain affordability for 30 years.

Other methods for meeting the obligation include municipally sponsored construction using for-profit or nonprofit builders, the purchase of existing units for sale or rent to eligible households, regional contribution agreements (RCAs), the creation of accessory apartments within existing structures, a write-down/buy-down program and the provision of alternative or congregate living arrangements including group homes for the physically handicapped or developmentally disabled.

The Fair Housing Act permits certified or court-ordered municipalities to transfer up to 50 percent of their fair share obligations to one or more municipalities within the applicable housing region. The sending municipality must transfer a negotiated payment now established at \$25,000 per. Funds may be used to subsidize new construction or to rehabilitate existing units for occupancy by low or moderate income households. More than \$145 million has been approved for transfer to urban areas as of June 2, 2001.

## **Schedule of Meetings**

COAH normally meets on the first Wednesday of each month at the HMFA building in the Roebing complex off South Clinton Avenue in Trenton. The DCA commissioner serves as the COAH chairman. Meetings generally begin at 9:30 a.m. and are open to the public. After the completion of its published agenda, COAH provides for any members of the interested public to speak on any issue related to affordable housing.

## **Model Provisions for a Fair Share Ordinance Council on Affordable Housing (COAH)**

- A. This section of the (municipality) Code sets forth regulations regarding low and moderate income housing units in (municipality) that are consistent with the provisions of N.J.A.C. 5:93 et. seq. as effective on June 6, 1994. These rules are pursuant to the Fair Housing Act of 1985 and (municipality)'s constitutional obligation to provide for its fair share of low and moderate income housing.
1. (Municipality)'s fair share obligation will be divided equally between low and moderate income households as per N.J.A.C. 5:93-2.20.
  2. Except for inclusionary developments constructed pursuant to low income tax credit regulations:
    - a. at least half of all units within each inclusionary development will be affordable to low income households; and
    - b. at least half of all rental units will be affordable to low income households; and
    - c. at least one-third of all units in each bedroom distribution pursuant to N.J.A.C. 5:93-7.3 will be affordable to low income households.
  3. Inclusionary developments that are not age-restricted will be constructed in conjunction with realistic market demands so that:
    - a. the combination of efficiency and one bedroom units is at least 10 percent and no greater than 20 percent of the total low and moderate income units; and
    - b. at least 30 percent of all low and moderate income units are two bedroom units; and
    - c. at least 20 percent of all low and moderate income units are three bedroom units; and
    - d. low and moderate income units that are age-restricted may utilize a modified bedroom distribution. At a minimum, the number of bedrooms will equal the number of age-restricted low and moderate income units within the inclusionary development.
  4. In conjunction with realistic market information, the following criteria will be used in determining maximum rents and sale prices:
    - a. efficiency units will be affordable to a one person household; and
    - b. one bedroom units will be affordable to 1.5 person households; and
    - c. two bedroom units will be affordable to three person households; and
    - d. three bedroom units will be affordable to 4.5 person households; and
    - e. median income by household size will be established by a regional weighted average of the uncapped Section 8 income limits published by HUD as per N.J.A.C. 5:93-7.4(b); and
    - f. the maximum sales prices of low and moderate income units within each inclusionary development will be affordable to household earning no more than 70 percent of median income. In averaging an affordability range of 55 percent for sales units, the municipal

ordinance will require moderate income sales units to be available for at least two different prices and low income sales units to be available for at least two different prices; and

- g. for both owner-occupied and rental units, the low and moderate income units will utilize the same heating source as market units within an inclusionary development; and
  - h. low income units will be reserved for households with a gross household income less or equal to 50 percent of the median income approved by COAH; moderate income units will be reserved for households with a gross household income less than 80 percent of the median income approved by COAH as per N.J.A.C. 5:93-7.4 (g); and
  - i. the regulations outlined in N.J.A.C. 5:93-9.15 and 9.16 will be applicable for purchased and rental units.
5. For rental units, developers and/or municipal sponsors may:
- a. establish one rent for a low income unit and one for a moderate income unit for each bedroom distribution; and
  - b. gross rents, including an allowance for tenant-paid utilities, will be established so as not to exceed 30 percent of the gross monthly income of the appropriate household size as per N.J.A.C. 5:93-7.4 (f). The tenant-paid utility allowance will be consistent with the utility allowance approved by HUD for use in New Jersey; and
  - c. the maximum rents of low and moderate income units within each inclusionary development will be affordable to households earning no more than 60 percent of median income. In averaging an affordability range of 52 percent for rental units, developers and/or municipal sponsors of rental units may establish one rent for a low income unit and one rent for a moderate income unit for each bedroom distribution.
6. For sale units:
- a. the initial price of a low and moderate income owner-occupied for-sale housing unit will be established so that after a downpayment of five percent, the monthly principal, interest, homeowner and private mortgage insurance, property taxes (based on the restricted value of the low and moderate income unit) and condominium or homeowner fee do not exceed 28 percent of the eligible gross monthly income; and
  - b. master deeds of inclusionary developments will regulate condominium or homeowner association fees or special assessments of low and moderate income purchasers at (state percent) percentage of those paid by market purchasers. This (state percent) percentage is consistent with the requirements of N.J.A.C. 5:93-7.4(e). Once established within the master deed, the (state percent) percentage will not be amended without prior approval from COAH; and
  - c. (Municipality) will follow the general provisions concerning uniform deed restriction liens and enforcement through certificates of occupancy or reoccupancy on sale units as per N.J.A.C. 5:93-9.3; and
  - d. (Municipality) will require a certificate of reoccupancy for any occupancy of a low or moderate income sales unit resulting from a resale as per N.J.A.C. 5:93-9.3(c); and
  - e. municipal, state, nonprofit and seller options regarding sale units will be consistent with N.J.A.C. 5:93-9.5 – 9.8. Municipal rejection of repayment options for sale units will be consistent with N.J.A.C. 5:93-9.9; and

- f. the continued application of options to create, rehabilitate or maintain low and moderate income sale units will be consistent with N.J.A.C. 5:93-9.10; and
- g. eligible capital improvements prior to the expiration of controls on sale units will be consistent with N.J.A.C. 5:93-9.11; and
- h. the regulations detailed in N.J.A.C. 5:93-9.12 – 9.14 will be applicable to low and moderate income units that are for sale units.

7. In zoning for inclusionary developments the following is required:

- a. low and moderate income units will be built in accordance with N.J.A.C. 5:93-5.6(d):

Minimum % of Low/Moderate Income Units Completed	% of Market Housing Units Completed
0	25
10	25 + 1 unit
50	50
75	75
100	<u>90</u>
	100

- b. a design of inclusionary developments that integrates low and moderate income units with market units is encouraged as per N.J.A.C. 5:93-5.6 (f)

8. A development fee ordinance was approved by COAH and adopted by (municipality) on (date). (See Code citation.)

9. To provide assurances that low and moderate income units are created with controls on affordability over time and that low and moderate income households occupy these units, (municipality) will designate (administrative agency or municipal authority) with the responsibility of ensuring the affordability of sales and rental units over time. (Administrative agency or municipal authority) will be responsible for those activities detailed in N.J.A.C. 5:93-9.1(a).

- a. In addition, (administrative or municipal authority) will be responsible for utilizing the verification and certification procedures outlined in N.J.A.C. 5:93-9.1(b) in placing households in low and moderate income units; and

- b. newly constructed low and moderate income sales units will remain affordable to low and moderate income households for at least 30 years.

(Administrative or municipal authority) will require all conveyances of newly constructed units to contain the deed restriction and mortgage lien adopted by COAH and referred as Technical Appendix E as found in N.J.A.C. 5:93; and

- c. housing units created through the conversion of a nonresidential structure will be considered a new housing unit and will be subject to 30-year controls on affordability. (Administrative agency or municipal authority) will require COAH's appropriate deed restriction and mortgage lien.

10. Regarding rehabilitated units:

- a. rehabilitated owner-occupied single family housing units that are improved to code standard will be subject to affordability controls for at least six years.

- b. rehabilitated renter-occupied housing units that are improved to code standard will be subject to affordability controls for at least 10 years.

11. Regarding rental units:

- a. newly constructed low and moderate income rental units will remain affordable to low and moderate income households for at least 30 years. (Administrative agency or municipal authority) will require the deed restriction and lien and deed of easement referred as Technical Appendix H as found in N.J.A.C. 5:93; and
- b. affordability controls in accessory apartments will be for a period of at least 10 years, except if the apartment is to receive a rental bonus credit pursuant to N.J.A.C. 5:93-5.15, then the controls on affordability will extend for 30 years (N.J.A.C. 5:93-5.9); and
- c. alternative living arrangements will be controlled in a manner suitable to COAH, that provides assurances that such a facility will house low and moderate income households for at least 10 years except if the alternative living arrangement is to receive a rental bonus credit pursuant to N.J.A.C. 5:93-5.15, then the controls on affordability will extend for 30 years (N.J.A.C. 5:93-5.8).

12. Section 14(b) of the Fair Housing Act N.J.S.A. 52:27D-301 et. seq. incorporates the need to eliminate unnecessary cost generating features from (municipality)'s land use ordinances. Accordingly (municipality) will eliminate development standards that are not essential to protect the public welfare and to expedite or fast track municipal approvals/denials on certain affordable housing developments. (Municipality) will adhere to the components of N.J.A.C. 5:93-10.1 – 10.3.

13. (Municipality) has a fair share obligation of (number) units of which (number) is new construction.

This ordinance will apply to all developments that contain proposed low and moderate income units that are listed below and any future developments that may occur:

# Model Provisions for an Affirmative Marking Ordinance

(Municipality), (county), has a fair share obligation of (number) units of which (number) provide new affordable housing opportunities. This ordinance will apply to all new developments that contain proposed low and moderate income units that are listed below and any future developments that may occur:

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The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of sex, age or number of children, to housing units which are being marketed by a developer/sponsor, municipality and/or designated administrative agency of affordable housing. The plan will address the requirements of N.J.A.C. 5:93-11. In addition, the plan prohibits discrimination in the sale, rental, financing or other services related to housing on the basis of race, color, sex, religion, handicap, age, familial status/size or national origin. (Municipality) is in the housing region consisting of (list all counties in housing region). The affirmative marketing program is a continuing program and will meet the following requirements:

- All newspaper articles, announcements and requests for applications for low and moderate income units will appear in the following daily newspapers/publications. (One regional newspaper is sufficient as long as the combined outreach efforts attract sufficient applicants.) Traditionally, municipalities place at least one ad in a regional newspaper, one ad in a countywide newspaper and one ad in a local newspaper.

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- The primary marketing will take the form of at least one press release sent to the above publications and a paid display advertisement in each of the above newspapers. Additional advertising and publicity will be on an "as needed" basis.

- The advertisement will include the:
  - street address
  - direction to housing units;
  - number of bedrooms per unit;
  - range of selling prices/rents;
  - size of units;
  - household income limits and
  - location of applications including business hours and where/how applications may be obtained.

- All newspaper articles, announcements and requests for applications for low and moderate income housing will appear in the following neighborhood-oriented weekly newspapers, religious publications and organizational newsletters within the region:

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- If applicable, the following regional radio and/or cable television station(s) will be used:

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The following is the location of applications, brochure(s), sign(s), and/or poster(s) used as part of the affirmative marketing program including specific employment centers within the region:

- municipal building
- municipal library
- developer's sales/rental office on site
- senior center
- other

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The following is a list of community contact person(s) and/or organization(s) in (\_\_\_\_\_), (\_\_\_\_\_), (\_\_\_\_\_), (\_\_\_\_\_) counties that will aid in the affirmative marketing program with particular emphasis on contacts that will reach out to groups that are least likely to apply for housing within the region:

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Applications will be mailed to prospective applicants upon request. Additionally, applications will be sent to the chief administrative employees of each of the following agencies in the counties of (list counties in housing region):

- \_\_\_\_\_ Office on Aging
- \_\_\_\_\_ Housing Agency or Authority
- \_\_\_\_\_ Library
- \_\_\_\_\_ Area Community Action Agencies

The following is a description of the random selection method that will be used to select occupants of low and moderate income housing:

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(Municipality) is ultimately responsible for administering the affirmative marketing program. (Municipality) has delegated this responsibility to (administrative agency). (Administrative agency) will income qualify low and moderate income households; place income eligible households in low and moderate income units upon initial occupancy; provide for the initial occupancy of low and moderate income units with income qualified households; continue to qualify households for reoccupancy of units as they become vacant during the period of affordability controls; assist with advertising and outreach to low and moderate income households if in contract; and enforce the terms of the deed restriction and mortgage loan as per N.J.A.C. 5:93-9. The (municipal contact person) within (municipality) is the designated housing officer to act as liaison to the (administrative agency). The (administrative agency) will provide counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualification, responsibilities of homeownership, rental lease requirements and landlord/tenant law. The following service providers have agreed to perform the above services:

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Households who live or work in the COAH-established housing region may be given preference for sales and rental units constructed within that housing region. Applicants living outside the housing region will have an equal opportunity for units after regional applicants have been initially serviced. (Municipality) intends to comply with N.J.A.C. 5::93-11.7.

Developers of low and moderate income housing units may assist in the marketing of the affordable units in their respective developments if so designated by (municipality).

The marketing program will commence at least 120 days before the issuance of either temporary or permanent certificates of occupancy. The marketing program will continue until all low and moderate income housing units are initially occupied and for as long as affordable units are deed restricted and occupancy or reoccupancy of units continues to be necessary.

(Administrative agency) will comply with monitoring and reporting requirements as per N.J.A.C. 5:93-11.6 and 12.1.



## Example of Resolution of Governing Body Filing an Adopted Housing Element without a Petition

**WHEREAS**, the (municipality) Planning Board has considered the housing element and fair share plan of (municipality) and at a meeting of the planning board held on (date) did adopt said housing element and fair share plan as a part of the Master Plan of (municipality) pursuant to the Municipal Land Use Law; and

**WHEREAS**, the governing body of (municipality), (county), by this resolution endorses the housing element and fair share plan as adopted by the (municipality) Planning Board on (date).

**NOW THEREFORE BE IT RESOLVED** that the governing body of (municipality), (county), pursuant to the provisions of N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:91-2.2 requests the Council on Affordable Housing (COAH) to accept for filing without a petition the housing element and fair share plan of (municipality) as adopted by the (municipality) Planning Board on (date), and which is hereby endorsed by the governing body of (municipality).

**Date:** \_\_\_\_\_

**Certified by:** \_\_\_\_\_

## Model Planning Board Resolution Amending the Adopted Housing Element

**WHEREAS**, the Planning Board of (municipality), (county), State of New Jersey, did on (date) adopt a Master Plan pursuant to N.J.S.A. 40:55D-28 and 89; and

**WHEREAS**, pursuant to N.J.S.A. 40:55D-28(b)(3) a housing element is an essential part of said Master Plan; and

**WHEREAS**, the Planning Board of (municipality) on (date) held a public hearing on the said housing element and fair share plan for which hearing notice was duly provided pursuant to N.J.S.A. 40:55D-13 and did adopt same on (date); and

**WHEREAS**, the Planning Board of (municipality) on (date) held a public hearing on an amended housing element and fair share plan for which hearing notice was duly provided pursuant to N.J.S.A. 40:55D-13; and

**WHEREAS**, the planning board has determined that the amended housing element and fair share plan are consistent with the goals and objectives of the (municipality), (year). Master Plan update and that adoption of the amended plan and implementation of same is in the public interest and protects public health and safety and promotes the general welfare.

**NOW THEREFORE BE IT RESOLVED** by the Planning Board of (municipality), (county), State of New Jersey, as follows:

The board hereby adopts the amended housing element and fair share plan.

\_\_\_\_\_  
Chairman of the Planning Board

I hereby certify that this is a true copy of the resolution adopting the amended housing element of (municipality), (county), on (date).

\_\_\_\_\_  
Certified by Planning Board Secretary

June 2001

## Example of Resolution of Governing Body Petitioning

**WHEREAS**, the (municipality) Planning Board has considered the housing element and fair share plan at a meeting of the planning board held on (date) and did adopt said "Housing Element and Fair Share Plan" as part of the Master Plan of (municipality); and

**WHEREAS**, (municipality), (county), endorses the housing element and fair share plan and desires to petition the Council on Affordable Housing (COAH) for substantive certification of this plan.

**NOW THEREFORE BE IT RESOLVED** by the governing body of (municipality), (county), that the housing element of (municipality), as adopted by the planning board of (municipality) as a part of the Master Plan thereof, be submitted to COAH together with the fair share plan and that this resolution be considered by COAH as a petition for substantive certification by (municipality); and

**BE IT FURTHER RESOLVED** that (municipality) be authorized to publish notice of the petition for substantive certification in a newspaper of county-wide circulation and that a copy of this resolution, the adopted housing element and proposed fair share plan, and supporting documentation be made available for public inspection at the (municipality) clerk's office during regular business hours at (address), on Monday through Friday, for a period of 45 days following the date of publication of said legal notice.

I hereby certify that this resolution was duly adopted at a meeting of the governing body of (municipality) on (date).

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Signature of Clerk

## **Resolution by Governing Body of Intent to Bond for Shortfall**

**WHEREAS,** (municipality) in (county) has petitioned the Council on Affordable Housing (COAH) for substantive certification of its adopted housing element and fair share plan; and

**WHEREAS,** COAH has determined that (municipality) must allocate funds for (list housing activity); and

**WHEREAS,** (municipality) anticipates that funding will come from the following sources to satisfy said obligation: (\_\_\_\_\_); and

**WHEREAS,** in the event that the above funding sources prove inadequate to meet (municipality)'s funding obligation, (municipality) shall provide sufficient funding to address any shortfalls.

**NOW THEREFORE BE IT RESOLVED** by the governing body of (municipality), (county), State of New Jersey, that the governing body does hereby agree to fund any shortfall in its affordable housing program that may arise whether due to inadequate funding from other sources or for any other reason; and

**BE IT FURTHER RESOLVED** that said shortfall shall be funded by bonding if there are no other resources.

**Adopted:** \_\_\_\_\_ (date) \_\_\_\_\_

**Certified By:** \_\_\_\_\_

## Legal Notice Petition for Substantive Certification

**NOTICE OF PETITION:**

**NOTICE** is hereby given that (municipality), (county), has petitioned the New Jersey Council on Affordable Housing (COAH) for substantive certification of its housing element and fair share plan, pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:91-3.1 et seq. Copies of said adopted housing element and fair share plan and supporting documentation are available for public inspection at the (municipality) municipal building, located at (address), New Jersey, during regular business hours. Objections or comments, if any, to the housing element and fair share plan must be filed with COAH, 101 South Broad Street, PO Box 813, Trenton, New Jersey, 08625-0813, and with the municipal clerk within 45 days of publication of this notice.

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Municipal Clerk

**Legal Notice**  
**Amendment to Housing Element/Fair Share Plan**  
**As a Result of Mediation**

**NOTICE:** As a result of mediation, there will be substantial amendments to the adopted housing element and fair share plan as originally filed by (municipality), (county), and the housing element/fair share plan will be amended to include (explain the amendment in detail; for example: lot, block, site, number of additional inclusionary sites, and/or a change in inclusionary sites, a substantial increase in density or a fundamental change in approach).

The COAH Mediation Report is available for public inspection at the municipal clerk's office at (address) during regular business hours for a period of 45 days from this notice.

Objections or comments to the amendments to the mediated housing element and fair share plan must be filed with the Council on Affordable Housing (COAH), 101 South Broad Street, P.O. Box 813, Trenton, New Jersey, 08625-0813 and with (municipality) within 45 days of the date of publication of this notice.

**Legal Notice**  
**Repetition for Substantive Certification**  
**(Not As A Result of Mediation)**

**NOTICE** is hereby given that the (municipality) Planning Board, subsequent to public hearing adopted a housing element and fair share plan as an amendment to the (year) Master Plan on (date). The adopted plan is an amendment to a previously adopted housing element and fair share plan, for which (municipality), (county), had petitioned the Council on Affordable Housing (COAH) for substantive certification on (date).

A copy of the amended housing element and fair share plan is available for public inspection at the office of the municipal clerk at the municipal building, located at (address), during regular business hours. Any interested party may file comments or objections to the plan with the Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, New Jersey, 08625-0813 and with (municipality) no later than 45 days from publication of this notice.

## Resolution of Governing Body to Amend Certified Plan

**WHEREAS**, the (municipality) Planning Board has considered an amendment to the adopted and certified housing element and fair share plan at a public meeting of the planning board held on (date), and did amend said "Housing Element and Fair Share Plan" as part of the Master Plan of (municipality); and

**WHEREAS**, (municipality), (county), desires to amend its certified plan.

**NOW THEREFORE BE IT RESOLVED** by the governing body of (municipality), (county), that the housing element and fair share plan of (municipality), as amended by the planning board of (municipality) as part of the Master Plan thereof, be submitted to the Council on Affordable Housing (COAH) for review and approval; and

**BE IT FURTHER RESOLVED** that all objectors and owners of sites in both the certified plan and the amendment to the plan have received notice of the amendment; and

**BE IT FURTHER RESOLVED** that (municipality) be authorized to publish notice of the amendment for substantive certification in a newspaper of county-wide circulation and that a copy of this resolution and the amendment to the housing element and fair share plan and supporting documentation be made available for public inspection at the (municipality) clerk's office during regular business hours at (address), on Monday through Friday for a period of 30 days following the date of publication of said legal notice.

I hereby certify that this resolution was duly adopted at a meeting of the (municipality) governing body on (date).

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**Signature of Clerk**

**Legal Notice**  
**Amendment to Substantive Certification**  
**(Previously Certified Plan)**

**NOTICE** is hereby given that the (municipality) Planning Board, adopted a housing element/fair share plan on (date) which was certified by the Council on Affordable Housing (COAH) on (date). Now, (municipality), (county), is proposing to amend its certified housing element and fair share plan.

(Insert Brief Description of Amendment)

A copy of the amendment to the housing element/fair share plan is available for public inspection at the office of the municipal clerk, municipal building, located at (address), during regular business hours. Any interested party may file comments or objections to the plan with the Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, New Jersey 08625-0813 and (municipality) within 30 days of publication of this notice.

June 2001

## **Municipal Resolution to Extend Expiring Second Round Certification**

**WHEREAS**, (municipality) received substantive certification from the New Jersey Council on Affordable Housing (COAH) on (date) for a period of six years, and this substantive certification will expire on (date); and

**WHEREAS**, COAH has adopted a rule permitting a municipality to extend its second round substantive certification for up to one year after the effective date of the adoption of COAH's third round methodology and rules if a municipality requests an extension, commits to continuing to implement the certified second round plan and also commits to addressing its third round obligation with a newly adopted housing element and fair share plan; and

**WHEREAS**, (municipality) must commit to either filing a newly adopted housing element and fair share plan addressing the third round obligation with COAH or petitioning for a third round substantive certification prior to the expiration of the extended second round substantive certification.

**NOW THEREFORE BE IT RESOLVED** by the governing body of (municipality), (county), State of New Jersey, that (municipality) requests COAH, under its procedure at N.J.A.C. 5:91-14.3, to extend substantive certification for up to one year after the effective date of the adoption of COAH's third round methodology and rules; and

**BE IT FURTHER RESOLVED** that (municipality) hereby commits to continue to implement its certified second round plan; and

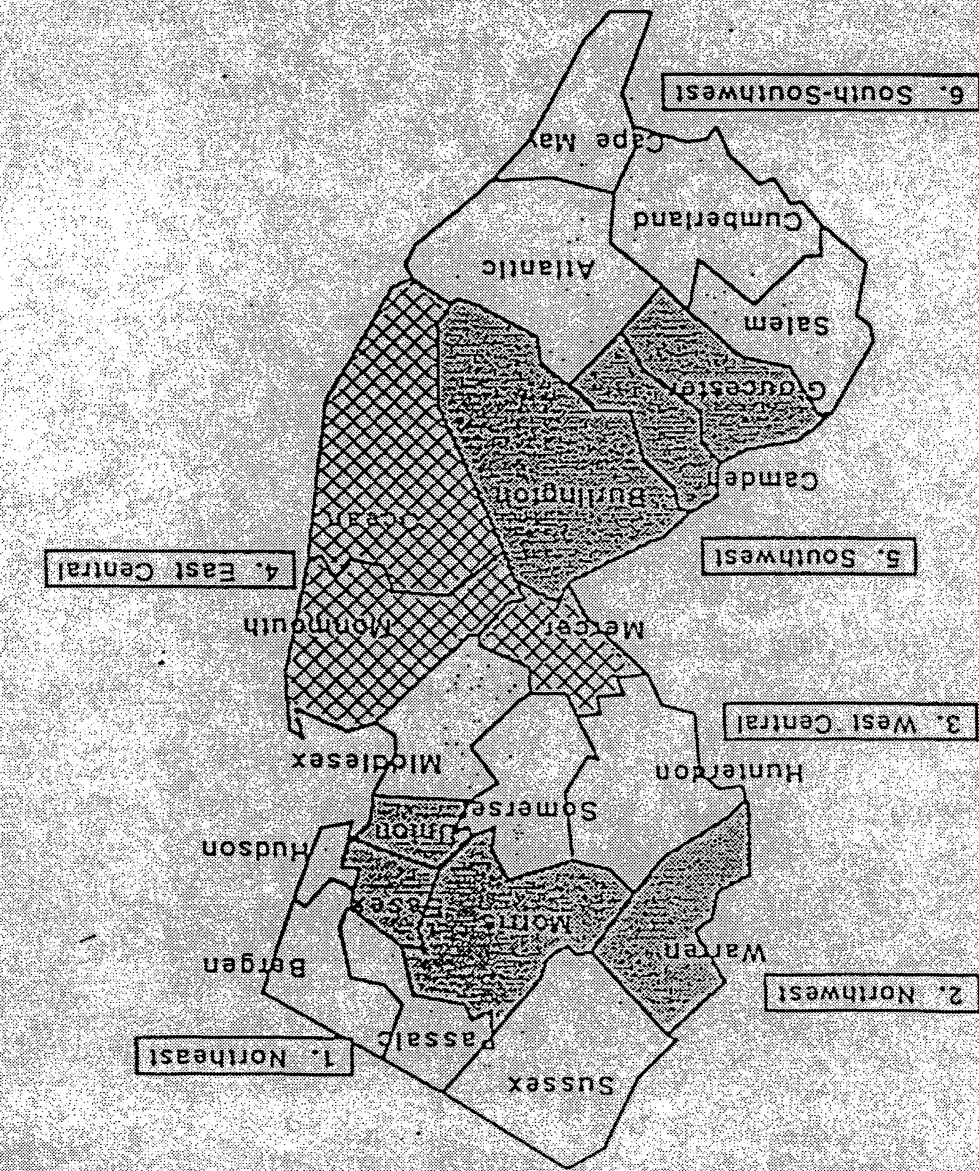
**BE IT FURTHER RESOLVED** that (municipality) hereby commits to address its third round fair share obligation with a newly adopted housing element and fair share plan within one year after the effective date of COAH's third round methodology and rules; and

**BE IT FURTHER RESOLVED** that (municipality) shall either file the newly adopted housing element and fair share plan addressing the third round obligation with COAH or petition for a third round substantive certification prior to the expiration of this extended second round substantive certification.

DATE: \_\_\_\_\_

# COAH Housing Regions

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING  
HOUSING REGIONS (1993-1999)



GROUP 1 NORTHEAST	GROUP 2 NORTHWEST	GROUP 3 WEST CENTRAL	GROUP 4 EAST CENTRAL	GROUP 5 SOUTHWEST	GROUP 6 SOUTH- SOUTHWEST
BRADY	ESSEX	MIDDLESEX	MONMOUTH	CAMDEN	ATLANTIC
PASSAIC	MORRIS	SOMERSET	OCEAN	GLOUCESTER	CAPE MAY
HUDSON	UNION	HUNTERDON	MERCER	BURLINGTON	CUMBERLAND
SUSSEX	WARREN				SALEM

## **Lack of Vacant Land Adjustment Process**

A municipality with a scarcity of vacant land may request a vacant land adjustment under the provisions of N.J.A.C. 5:93-4.2 Lack of Land. The three-step process to prepare a vacant land adjustment is summarized as follows:

- Step 1. Vacant Land Inventory

A map of existing land uses is prepared and must include all vacant land parcels in the municipality. A transparent overlay, at the same scale, is prepared to depict environmental constraints. A tabular inventory of the vacant parcels, keyed to the map, is prepared to provide the required information on each vacant parcel.

- Step 2. Vacant Land Exclusions

Based upon the criteria and reasons provided in the COAH rule, vacant parcels which are not suitable and developable are then excluded from consideration as sites for affordable housing. [See N.J.A.C. 5:93-4.2(e) and (f)]

- Step 3. Realistic Development Potential (RDP)

Each remaining vacant land parcel which is considered suitable and developable is assigned a presumptive density of at least six units/acre and a 20 percent setback. The number of affordable units for each parcel is calculated and summed to obtain the RDP of the municipality.

# WORKSHEET I

## Maximum Age-Restricted Units (N.J.A.C. 5:93-5.14)\*

You cannot age-restrict all of the affordable units in your municipality and receive COAH credit. How many can be age-restricted? Look at the formulas below for the one that applies to your municipality.

1. *If your municipality has previously received COAH certification or a judgment of repose and is not seeking a vacant land adjustment:*

$$25\% \text{ of } \left\{ \begin{array}{l} \text{Precredited need} \\ -\text{Prior cycle credits} \\ -\text{Credits pursuant to } \underline{\text{N.J.A.C. 5:93-3.4}} \\ -\text{Impact of the 20\% cap} \\ -\text{Impact of the 1,000-unit limitation} \end{array} \right.$$

Less any first round age-restricted units

2. *Or, if your municipality received or is seeking a vacant land adjustment:*

$$25\% \text{ of } \left\{ \begin{array}{l} \text{Realistic development potential} \\ -\text{Rehabilitation component} \\ -\text{Credits pursuant to } \underline{\text{N.J.A.C. 5:93-3.4}} \end{array} \right.$$

Less any first round age-restricted units

3. *Or, if you have never received COAH certification or a judgment of repose and are not seeking a vacant land adjustment:*

$$25\% \text{ of } \left\{ \begin{array}{l} \text{Precredited need} \\ -\text{Prior cycle credits} \\ -\text{Credits pursuant to } \underline{\text{N.J.A.C. 5:93-3.4}} \\ -\text{Impact of the 20\% cap} \\ -\text{Impact of the 1000-unit limitation} \end{array} \right.$$

\*If you have transferred or are planning to transfer housing units via an RCA, see Worksheet II.

The maximum number of age-restricted units that may receive the .33 rental bonus is limited to 50 percent of your rental obligation as per N.J.A.C. 5:93-5.15(d)2. In other words, if your municipality's rental obligation is 100, you may receive credit for up to 100 age-restricted rental units but receive bonus credits for no more than 50 units or 17 rental bonuses (50 x 0.33).

**WORKSHEET II**  
**Maximum Age-Restricted Units That May Receive COAH**  
**Credit in an RCA Sending or Receiving Municipality**  
**[N.J.A.C. 5:93-5.14(b) + 6.1(b)]**

1.a. For a sending municipality that has not received or is not seeking a vacant land adjustment, the number of units that may be age-restricted in the sending municipality is based on the following formula:

25% of  $\left\{ \begin{array}{l} \text{Preacted need} \\ \text{-Rehabilitation component} \\ \text{-Prior cycle credits} \\ \text{-Transferred or proposed RCA units} \\ \\ \text{Less any first round age-restricted units} \end{array} \right.$

1.b. For a sending municipality that has received or is seeking a vacant land adjustment, the number of units that may be age-restricted in the sending municipality is based on the following formula:

25% of  $\left\{ \begin{array}{l} \text{Realistic development potential} \\ \text{-Transferred or proposed RCA units} \\ \text{-Less any first round age-restricted units} \end{array} \right.$

2. For a receiving municipality, the following steps should be taken to determine the maximum number of age-restricted units from the sending municipality that may receive RCA monies:

Step 1. Determine the sending municipality's maximum age-restricted component based on N.J.A.C. 5:93-5.14.

Step 2. Subtract the maximum number of age-restricted units that are eligible for COAH credit in the sending municipality, based on N.J.A.C. 5:93-6.1(b)1 or 2.

Step 3. The balance of the age-restricted units not built or planned to be built in the sending municipality may be constructed in the receiving municipality and receive RCA credit.

The sum of the maximum age-restricted units in both the sending and receiving municipalities should equal the calculations in Worksheet I.

[Note: In addition, the receiving municipality may still age-restrict its own maximum number of units as permitted in N.J.A.C. 5:93-5.14 (See Worksheet I.) for credit towards its own affordable housing obligation].

## COAH Adopts 2001 Income Limits

The Council on Affordable Housing (COAH) adopted the 2001 regional income limits at its May 2, 2001 meeting. COAH adopted the maximum increase allowed on the re-rental of affordable units at its April 4, 2001 COAH meeting. The income limits are used to determine the eligibility of low and moderate income households, to price new sales and rental units and to index the maximum resale price of existing sales units.

Low income is defined as 50 percent or less of the median gross household income for households of the same size within the housing region. Moderate income means more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region.

As of April 4, 2001, affordable rents may be raised a maximum of 3.6 percent, based on the U.S. Consumer Price Index (CPI) for the Northeast Region. However, federal low income tax credit developments may increase rents based on the federal low income tax credit regulations.

The income limits are based on the U.S. Department of Housing and Urban Development's (HUD's) Section 8 income limits (uncapped) according to COAH's six housing regions. COAH started using regional income limits, rather than county ones, in 1994.

In Region 1, Bergen, Hudson, Passaic and Sussex counties have a 2.95 percent maximum sales increase. In these counties the median income for a four-person household is \$68,801. Thus moderate income for a household of four people falls between \$55,041 and \$34,401 while less than \$34,401 or less is considered low income.

For Region 2 (Essex, Morris, Union and Warren counties) where the median income for a four-person household is \$74,000, the maximum sales increase for an affordable unit is 4.82 percent. Therefore, a household of four people earning between \$59,200 and \$37,000 could qualify for moderate income housing while a four-person household earning \$37,000 or less could be eligible for low income housing in that region.

The highest median income for a four-person household (\$85,000) is in Region 3 (Hunterdon, Middlesex and Somerset counties) where the maximum allowable increase is 5.2 percent. A household of four people earning between \$68,000 and \$42,500 is considered moderate income. Four-person households earning \$42,500 or less are low income.

In Region 4, the median income in Mercer, Monmouth and Ocean counties is \$66,933 for a household of four people, an increase of 3.76 percent. Thus, moderate income for the same size household falls between \$53,546 and \$33,466; from \$33,466 and below is considered low income in that region for a four-person household.

In Burlington, Camden and Gloucester counties, which comprise Region 5, the median income for a four-person household rose 3.98 percent to \$60,100. A four-person household earning between \$48,080 and \$30,050 may be eligible for moderate-income housing. A four-person household earning \$30,050 or less may be eligible for low-income housing.

For Region 6—Atlantic, Cape May, Cumberland and Salem counties—the median income for a household of four people is \$50,772, an increase of 1.63 percent. Moderate-income levels for a four-person household are between \$40,618 and \$25,386. The \$25,386 number and below is low income.

While the increase from 2000 to 2001 determines the percentages allowed for pricing new sales, resales, rentals and re-rentals of affordable units, these figures are merely maximum limits. The real estate market may determine that developers, landlords and owners will have to ask less than the

maximum permitted sales or rental price, as owners or landlords of market housing often have to do, to sell or rent their units.

See COAH's rules, N.J.A.C. 5:93-7.4 establishing rents and prices of units, for more information on pricing. N.J.A.C. 5:93-9.15 refers to annual indexed increases on sales and rental units while controls are in place.

# 2001 Regional Income Limits

Adopted May 2, 2001

		1	1.5*	2	3*	4	4.5*	5	6	7	8	%**	
		Person	Person	Person	Person	Person	Person	Person	Person	Person	Person	Increase	
<b>Region 1</b>	Bergen	Median	\$48,161	\$51,601	\$55,041	\$61,921	\$68,801	\$71,553	\$74,305	\$79,809	\$85,314	\$90,818	3.6%R
	Hudson	Moderate	\$38,529	\$41,281	\$44,033	\$49,537	\$55,041	\$57,243	\$59,444	\$63,848	\$68,251	\$72,654	2.95%S
	Passaic	Low	\$24,080	\$25,800	\$27,520	\$30,961	\$34,401	\$35,777	\$37,153	\$39,905	\$42,657	\$45,409	
	Sussex												
<b>Region 2</b>	Essex	Median	\$51,800	\$55,500	\$59,200	\$66,600	\$74,000	\$76,960	\$79,920	\$85,840	\$91,760	\$97,680	3.6%R
	Morris	Moderate	\$41,440	\$44,400	\$47,360	\$53,280	\$59,200	\$61,568	\$63,936	\$68,672	\$73,408	\$78,144	4.82%S
	Union	Low	\$25,900	\$27,750	\$29,600	\$33,300	\$37,000	\$38,480	\$39,960	\$42,920	\$45,880	\$48,840	
	Warren												
<b>Region 3</b>	Hunterdon	Median	\$59,500	\$63,750	\$68,000	\$76,500	\$85,000	\$88,400	\$91,800	\$98,600	\$105,400	\$112,200	3.6%R
	Middlesex	Moderate	\$47,600	\$51,000	\$54,400	\$61,200	\$68,000	\$70,720	\$73,440	\$78,880	\$84,320	\$89,760	5.2%S
	Somerset	Low	\$29,750	\$31,875	\$34,000	\$38,250	\$42,500	\$44,200	\$45,900	\$49,300	\$52,700	\$56,100	
<b>Region 4</b>	Mercer	Median	\$46,853	\$50,199	\$53,546	\$60,239	\$66,933	\$69,610	\$72,287	\$77,642	\$82,996	\$88,351	3.6%R
	Morrmouth	Moderate	\$37,482	\$40,160	\$42,837	\$48,191	\$53,546	\$55,688	\$57,830	\$62,113	\$66,397	\$70,681	3.76%S
	Ocean	Low	\$23,426	\$25,100	\$26,773	\$30,120	\$33,466	\$34,805	\$36,144	\$38,821	\$41,498	\$44,175	
<b>Region 5</b>	Burlington	Median	\$42,070	\$45,075	\$48,080	\$54,090	\$60,100	\$62,504	\$64,908	\$69,716	\$74,524	\$79,332	3.6%R
	Camden	Moderate	\$33,656	\$36,060	\$38,464	\$43,272	\$48,080	\$50,003	\$51,926	\$55,773	\$59,619	\$63,466	3.98%S
	Gloucester	Low	\$21,035	\$22,538	\$24,040	\$27,045	\$30,050	\$31,252	\$32,454	\$34,858	\$37,262	\$39,666	
<b>Region 6</b>	Atlantic	Median	\$35,541	\$38,079	\$40,618	\$45,695	\$50,772	\$52,803	\$54,834	\$58,896	\$62,958	\$67,020	3.6%R
	Cape May	Moderate	\$28,433	\$30,463	\$32,494	\$36,556	\$40,618	\$42,243	\$43,867	\$47,117	\$50,366	\$53,616	1.63%S
	Cumberland	Low	\$17,770	\$19,040	\$20,309	\$22,848	\$25,386	\$26,402	\$27,417	\$29,448	\$31,479	\$33,510	
	Salem												

Affordable rents may be raised a maximum of 3.6 percent, based on the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index (CPI), Northeast Region, All Urban Consumers Housing. However, low income tax credit developments may increase based on the low income tax credit regulations.

\* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:93-7.4.

\*\* This last column is used for calculating the maximum resale and rent increases for units as per N.J.A.C. 5:93-9.15.

R=Rents; S=Sales

**Illustrative\***  
**2001**  
**Low and Moderate Income**  
**Sales Prices for New Construction**

Region 1    **Bergen – Hudson – Passaic - Sussex**

Size	Low Income (40%)	Maximum Low (50%)	Average (57.5%)	Maximum Moderate (80%)
1 Bedroom	\$46,440	\$58,040	\$66,750	\$92,880
2 Bedroom	\$55,720	\$69,650	\$80,100	\$111,450
3 Bedroom	\$64,390	\$80,490	\$92,570	\$128,790

**Note:** One bedroom housing is affordable to a 1.5 person household  
Two bedroom housing is affordable to a three person household  
Three bedroom housing is affordable to a 4.5 person household

\* Illustrative Only:    The prices will vary depending upon municipal tax rate, county equalization ratio, permanent interest rate and condominium association fee, if applicable.

**Illustrative\***  
**2001**  
**Low and Moderate Income**  
**Sales Prices for New Construction**

Region 2 Essex – Morris – Union – Warren

Size	Low Income (40%)	Maximum Low (50%)	Average (57.5%)	Maximum Moderate (80%)
1 Bedroom	\$49,940	\$62,430	\$71,800	\$99,900
2 Bedroom	\$59,930	\$74,920	\$86,160	\$119,880
3 Bedroom	\$69,260	\$86,580	\$99,560	\$138,530

**Note:** One bedroom housing is affordable to a 1.5 person household  
Two bedroom housing is affordable to a three person household  
Three bedroom housing is affordable to a 4.5 person household

- Illustrative Only: The prices will vary depending upon municipal tax rate, county equalization ratio, permanent interest rate and condominium association fee, if applicable.

**Illustrative\***  
**2001**  
**Low and Moderate Income**  
**Sales Prices for New Construction**

Region 3 Middlesex – Somerset - Hunterdon

Size	Low Income (40%)	Maximum Low (50%)	Average (57.5%)	Maximum Moderate (80%)
1 Bedroom	\$57,370	\$71,710	\$82,470	\$114,750
2 Bedroom	\$68,840	\$86,060	\$98,970	\$137,690
3 Bedroom	\$79,550	\$99,440	\$114,360	\$159,110

**Note:** One bedroom housing is affordable to a 1.5 person household  
Two bedroom housing is affordable to a three person household  
Three bedroom housing is affordable to a 4.5 person household

\* Illustrative Only: The prices will vary depending upon municipal tax rate, county equalization ratio, permanent interest rate and condominium association fee, if applicable.

**Illustrative\***  
**2001**  
**Low and Moderate Income**  
**Sales Prices for New Construction**

Region 4 Mercer – Ocean – Monmouth

Size	Low Income (40%)	Maximum Low (50%)	Average (57.5%)	Maximum Moderate (80%)
1 Bedroom	\$45,170	\$56,460	\$64,940	\$90,350
2 Bedroom	\$54,200	\$67,760	\$77,920	\$108,410
3 Bedroom	\$62,630	\$78,300	\$90,050	\$125,290

**Note:** One bedroom housing is affordable to a 1.5 person household  
Two bedroom housing is affordable to a three person household  
Three bedroom housing is affordable to a 4.5 person household

\* Illustrative Only: The prices will vary depending upon municipal tax rate, county equalization ratio, permanent interest rate and condominium association fee, if applicable.

**Illustrative\***  
**2001**  
**Low and Moderate Income**  
**Sales Prices for New Construction**

Region 5 Burlington – Camden - Gloucester

Size	Low Income (40%)	Maximum Low (50%)	Average (57.5%)	Maximum Moderate (80%)
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1 Bedroom	\$40,560	\$50,700	\$58,310	\$81,130
2 Bedroom	\$48,670	\$60,840	\$69,970	\$97,350
3 Bedroom	\$56,250	\$70,310	\$80,850	\$112,500

**Note:** One bedroom housing is affordable to a 1.5 person household  
Two bedroom housing is affordable to a three person household  
Three bedroom housing is affordable to a 4.5 person household

\* Illustrative Only: The prices will vary depending upon municipal tax rate, county equalization ratio, permanent interest rate and condominium association fee, if applicable.

**Illustrative\***  
**2001**  
**Low and Moderate Income**  
**Sales Prices for New Construction**

Region 6 Atlantic – Cape May – Cumberland - Salem

Size	Low Income (40%)	Maximum Low (50%)	Average (57.5%)	Maximum Moderate (80%)
------	---------------------	----------------------	--------------------	---------------------------

1 Bedroom	\$34,260	\$42,830	\$49,260	\$68,530
2 Bedroom	\$41,110	\$51,400	\$59,110	\$82,240
3 Bedroom	\$47,520	\$59,400	\$68,310	\$95,040

**Note:** One bedroom housing is affordable to a 1.5 person household  
Two bedroom housing is affordable to a three person household  
Three bedroom housing is affordable to a 4.5 person household

\* Illustrative Only: The prices will vary depending upon municipal tax rate, county equalization ratio, permanent interest rate and condominium association fee, if applicable.

**Illustrative  
2001**

**Low and Moderate Income Rents for New Construction  
and/or Gut Rehabilitation  
for Region 1 (Bergen, Hudson, Passaic, Sussex)**

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**Low Income (45% Median)**

<u>Size</u>	<u>Gross Rent</u>		<u>Utility Allowance *</u>		<u>Net Rents</u>
1 Br	\$580	-	\$72	=	\$508
2 Br	\$696	-	\$88	=	\$608
3 Br	\$804	-	\$106	=	\$698

**Moderate Income (70% Median)**

<u>Size</u>	<u>Gross Rent</u>		<u>Utility Allowance *</u>		<u>Net Rents</u>
1 Br	\$ 903	-	\$72	=	\$ 831
2 Br	\$1,083	-	\$88	=	\$ 995
3 Br	\$1,252	-	\$106	=	\$1,146.

One rent may be set for low income units by bedroom size and one rent may be set for moderate income units by bedroom size. However, the rents must average 57.5 percent of median.

**Note:** One bedroom units are affordable to 1.5 person households.  
Two bedroom units are affordable to three person households.  
Three bedroom units are affordable to 4.5 person households.

**\* Illustrative Only**

**Illustrative  
2001  
Low and Moderate Income Rents for New Construction  
and/or Gut Rehabilitation  
for Region 2 (Essex, Morris, Union, Warren)**

---

**Low Income (45% Median)**

<u>Size</u>	<u>Gross Rent</u>	-	<u>Utility Allowance *</u>	=	<u>Net Rents</u>
1 Br	\$624	-	\$72	=	\$552
2 Br	\$749	-	\$88	=	\$661
3 Br	\$865	-	\$106	=	\$759

**Moderate Income (70% Median)**

<u>Size</u>	<u>Gross Rent</u>	-	<u>Utility Allowance *</u>	=	<u>Net Rents</u>
1 Br	\$ 971	-	\$72	=	\$ 899
2 Br	\$1,165	-	\$88	=	\$1,077
3 Br	\$1,346	-	\$106	=	\$1,240

One rent may be set for low income units by bedroom size and one rent may be set for moderate income units by bedroom size. However, the rents must average 57.5 percent of median.

**Note:** One bedroom units are affordable to 1.5 person households.  
Two bedroom units are affordable to three person households.  
Three bedroom units are affordable to 4.5 person households.

\* Illustrative Only

**Illustrative  
2001  
Low and Moderate Income Rents for New Construction  
and/or Gut Rehabilitation  
for Region 3 (Middlesex, Somerset, Hunterdon)**

---

**Low Income (45% Median)**

<u>Size</u>	<u>Gross Rent</u>		<u>Utility Allowance *</u>		<u>Net Rents</u>
1 Br	\$717	-	\$72	=	\$645
2 Br	\$860	-	\$88	=	\$772
3 Br	\$994	-	\$106	=	\$888

**Moderate Income (70% Median)**

<u>Size</u>	<u>Gross Rent</u>		<u>Utility Allowance *</u>		<u>Net Rents</u>
1 Br	\$1,115	-	\$72	=	\$1,043
2 Br	\$1,338	-	\$88	=	\$1,250
3 Br	\$1,547	-	\$106	=	\$1,441

One rent may be set for low income units by bedroom size and one rent may be set for moderate income units by bedroom size. However, the rents must average 57.5 percent of median.

**Note:** One bedroom units are affordable to 1.5 person households.  
Two bedroom units are affordable to three person households.  
Three bedroom units are affordable to 4.5 person households.

\* Illustrative Only

**Illustrative  
2001  
Low and Moderate Income Rents for New Construction  
and/or Gut Rehabilitation  
for Region 4 (Mercer, Ocean, Monmouth)**

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**Low Income (45% Median)**

<u>Size</u>	<u>Gross Rent</u>		<u>Utility Allowance *</u>		<u>Net Rents</u>
1 Br	\$564	-	\$72	=	\$492
2 Br	\$677	-	\$88	=	\$589
3 Br	\$783	-	\$106	=	\$677

**Moderate Income (70% Median)**

<u>Size</u>	<u>Gross Rent</u>		<u>Utility Allowance *</u>		<u>Net Rents</u>
1 Br	\$ 878	-	\$72	=	\$ 806
2 Br	\$1,054	-	\$88	=	\$ 966
3 Br	\$1,218	-	\$106	=	\$1,112

One rent may be set for low income units by bedroom size and one rent may be set for moderate income units by bedroom size. However, the rents must average 57.5 percent of median.

**Note:** One bedroom units are affordable to 1.5 person households.  
Two bedroom units are affordable to three person households.  
Three bedroom units are affordable to 4.5 person households.

**\* Illustrative Only**

**Illustrative  
2001  
Low and Moderate Income Rents for New Construction  
and/or Gut Rehabilitation  
for Region 5 (Burlington, Camden, Gloucester)**

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**Low Income (45% Median)**

<u>Size</u>	<u>Gross Rent</u>		<u>Utility Allowance *</u>		<u>Net Rents</u>
1 Br	\$507	-	\$72	=	\$435
2 Br	\$608	-	\$88	=	\$520
3 Br	\$703	-	\$106	=	\$597

**Moderate Income (70% Median)**

<u>Size</u>	<u>Gross Rent</u>		<u>Utility Allowance *</u>		<u>Net Rents</u>
1 Br	\$ 788	-	\$72	=	\$716
2 Br	\$ 946	-	\$88	=	\$858
3 Br	\$1,093	-	\$106	=	\$987

One rent may be set for low income units by bedroom size and one rent may be set for moderate income units by bedroom size. However, the rents must average 57.5 percent of median.

**Note:** One bedroom units are affordable to 1.5 person households.  
Two bedroom units are affordable to three person households.  
Three bedroom units are affordable to 4.5 person households.

\* Illustrative Only

**Illustrative  
2001**

**Low and Moderate Income Rents for New Construction  
and/or Gut Rehabilitation  
for Region 6 (Atlantic, Cape May, Cumberland, Salem)**

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**Low Income (45% Median)**

<u>Size</u>	<u>Gross Rent</u>		<u>Utility Allowance *</u>		<u>Net Rents</u>
1 Br	\$428	-	\$72	=	\$356
2 Br	\$514	-	\$88	=	\$426
3 Br	\$594	-	\$106	=	\$488

**Moderate Income (70% Median)**

<u>Size</u>	<u>Gross Rent</u>		<u>Utility Allowance *</u>		<u>Net Rents</u>
1 Br	\$666	-	\$72	=	\$594
2 Br	\$799	-	\$88	=	\$711
3 Br	\$924	-	\$106	=	\$818

One rent may be set for low income units by bedroom size and one rent may be set for moderate income units by bedroom size. However, the rents must average 57.5 percent of median.

**Note:** One bedroom units are affordable to 1.5 person households.  
Two bedroom units are affordable to three person households.  
Three bedroom units are affordable to 4.5 person households.

\* Illustrative Only

**New Jersey Department of Community Affairs  
Division of Housing and Community Resources  
Section 8 Housing Program**

**Allowances for Tenant-Furnished Utilities and Services  
Effective Date: January 9, 2001**

UTILITIES OR SERVICE	UNIT* TYPE	ZERO BR	ONE BR	TWO BR	THREE BR	FOUR BR	FIVE BR
<b>1. HEATING/COOLING</b>							
NATURAL GAS and BOTTLE GAS	1	19	27	34	42	53	61
	2	15	21	26	32	41	47
	3	10	15	19	23	29	34
OIL	1	27	38	48	59	75	86
	2	21	29	37	46	58	66
	3	15	21	27	33	41	47
ELECTRIC	1	30	41	53	65	83	94
	2	23	32	41	50	64	73
	3	16	23	29	36	45	52
CENTRAL A/C	1	7	10	13	16	20	23
	2	6	8	10	12	15	18
	3	4	6	7	9	11	13
Room A/C units @ \$5.00 each =							
<b>2. COOKING</b>							
NATURAL GAS/BOTTLE GAS		10	11	12	14	16	17
ELECTRIC		3	4	5	6	8	9
<b>3. OTHER ELECTRIC</b>		21	28	35	42	53	60
<b>4. WATER HEATING</b>							
NATURAL GAS/BOTTLE GAS		8	12	15	18	23	27
ELECTRIC		14	20	26	31	40	46
OIL		11	16	21	25	32	37
<b>5. WATER</b>		16	21	25	29	35	40
<b>6. SEWER</b>		16	21	25	29	35	40
<b>7. TRASH COLLECTION</b>		18	18	18	18	18	18
<b>8. APPLIANCES</b> (Lease or Installment Purchase)							
Range/Microwave		12	12	12	12	12	12
Refrigerator		16	16	16	16	16	16
<b>TOTAL</b>							

\*Unit Type Code:

1. Single Family Detached or Mobile Home
2. Duplex or Two Family
3. Garden Apts., Low Rise, High Rise, Row House or Townhouse

## New Jersey Counties with Active Rehabilitation Programs

<p><b>Atlantic County</b> Office of Economic Development 1333 Atlantic Avenue Atlantic City, New Jersey 08401 (609) 345-6700</p>	<p><b>Mercer County</b> Department of Housing &amp; Community Development 640 South Broad Street PO Box 8068 Trenton, New Jersey 08650-0068 (609) 989-6858</p>
<p><b>Bergen County</b> Community Development 25 E. Salem St. Room 601 Hackensack, New Jersey 07601 (201) 645-2559</p>	<p><b>Middlesex County</b> Housing &amp; Community Development County Administration Building 1 JFK Square - 2<sup>nd</sup> Floor New Brunswick, New Jersey 08901 (732) 745-3025</p>
<p><b>Burlington County</b> Office of Community Development PO Box 6000 Mount Holly, New Jersey 08060 (609) 265-5072</p>	<p><b>Monmouth County</b> Department of Community Development 1 East Main Street Freehold, New Jersey 07728 (732) 431-7490</p>
<p><b>Camden County</b> PO Box 100 Blackwood, New Jersey 08012 (856) 374-6335</p>	<p><b>Morris County</b> Division of Community Development PO Box 900 Morristown, New Jersey 07963-0900 (973) 285-6061</p>
<p><b>Essex County</b> Division of Housing &amp; Community Development 50 South Clinton Street, Ste.4300 East Orange, New Jersey 07018 (973) 395-8450</p>	<p><b>Ocean County</b> Department of Planning 129 Hooper Avenue PO Box 2191 Toms River, New Jersey 08754-2191 (732) 929-4718</p>
<p><b>Gloucester County</b> Planning Department 1200 North Delsea Drive Clayton, New Jersey 08312 (856) 863-6661</p>	<p><b>Somerset County</b> Department of Community Development 20 Grove Street, PO Box 3000 Somerville, New Jersey 08876 (908) 231-7000</p>
<p><b>Hudson County</b> Division of Community Development Brennan Courthouse 583 Newark Avenue Jersey City, New Jersey 07306 (201) 795-6188</p>	<p><b>Union County</b> Division of Planning &amp; Development Administration Building- 6<sup>th</sup> Floor Elizabethtown Plaza Elizabeth, New Jersey 07207 (908) 527-4036</p>
<p><b>Hunterdon County</b> Hunterdon County Housing Corp. 8 Gauntt Place Flemington, New Jersey 08822 (908) 806-4196</p>	<p><b>Warren County</b> Housing Program 415-B Front Street Belvidere, New Jersey 07823 (908) 475-3989</p>

# Model Accessory Apartment Ordinance

## Section I

An accessory apartment is hereby enacted for the purpose of providing additional opportunities for low and moderate income housing in (municipality).

Definition – An accessory apartment is a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance which is created to be occupied by a low or a moderate income household. The accessory apartment may be created within an existing dwelling unit, may be created within an existing structure on the lot or be an addition to an existing home or accessory building.

All accessory apartment units shall meet the following conditions:

- a. The bulk requirements of the zone in which the accessory apartment is created shall be met;
- b. Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all local building codes;
- c. The accessory apartment shall be rented only to a household which is either a low or moderate income household at the time of initial occupancy of the unit;
- d. The accessory apartment shall, for a period of at least 10 years from the date of the issuance of a certificate of occupancy, be rented only to a low or moderate income household;
- e. Rents of accessory apartments shall be affordable to low or moderate income households as per Council on Affordable Housing (COAH) regulations and shall include a utility allowance;
- f. No more than 10 accessory apartments shall be used to address (municipality's) fair share obligation unless a waiver is granted by COAH.
- g. There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale within the requirements of paragraphs (c) and (d) above;
- h. Each accessory apartment shall have living/sleeping space, cooking facilities, a kitchen sink and complete sanitary facilities for the exclusive use of its occupants. It shall consist of no less than two rooms, one of which shall be a full bathroom;
- i. The accessory apartment shall have a separate door with direct access to the outdoors;
- j. The potable water supply and sewage disposal system for the accessory apartment shall be adequate;
- k. The accessory apartment shall be affirmatively marketed to the housing region and
- l. In the case of an accessory apartment created illegally or without proper permits which the property owner desires to legitimize as an accessory apartment under this ordinance, all of the requirements of this ordinance in addition to meeting COAH criteria shall apply, except that no subsidy need be provided by the municipality.

## Section II

The (municipality) shall designate an administrative entity to administer the accessory apartment program.

- a. (Administrative agency) shall administer the accessory apartment program including advertising, income qualifying prospective renters, setting rents and annual rental increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports and affirmatively marketing the accessory apartment program;
- b. (Administrative agency) shall only deny an application for an accessory apartment if the project is not in conformance with COAH's requirements, the municipal development ordinance or this ordinance. All denials shall be in writing with the reasons clearly stated and
- c. In accordance with COAH requirements, (municipality) shall provide at least \$10,000 to subsidize the physical creation of an accessory apartment conforming to the requirements of this section and COAH requirements. Prior to the grant of such subsidy, the property owner shall enter into a written agreement with (municipality) insuring that (i) the subsidy shall be used to create the accessory apartment and (ii) the apartment shall meet the requirements of this ordinance and COAH regulations.

## Section III

Applicants for the creation of an accessory apartment shall submit to (administrative agency):

- a. A sketch of floor plan(s) showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another structure;
- b. Rough elevations showing the modification of any exterior building façade to which changes are proposed and
- c. A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition if any, along with the minimum building setback lines; the required parking spaces for both dwelling units and any man-made conditions which might affect construction.

**BE IT FURTHER ORDAINED**, that this ordinance shall take effect immediately upon publication following final passage and the filing of a copy hereof with the Planning Board of (municipality), (county), as provided by law.

# Governing Body Resolution Stating Intent to Become a Regional Contribution (RCA) Receiving Municipality

**WHEREAS**, the Fair Housing Act at N.J.S.A. 52:27D-312 allows a municipality to transfer up to 50 percent of its fair share obligation to another municipality within its housing region by means of a regional contribution agreement (RCA) into which two municipalities voluntarily enter; and

**WHEREAS**, (municipality), (county), is interested in becoming a receiving municipality in an RCA within the housing region; and

**WHEREAS**, (municipality), (county), is interested in rehabilitating deficient housing and/or creating new affordable housing and/or gut rehabilitation.

**NOW THEREFORE BE IT RESOLVED** that (municipality), (county), is indicating its intent to become an RCA receiving municipality and requests that the Council on Affordable Housing (COAH) place (municipality) on its list of potential receiving municipalities.

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Resolution Authorizing the Execution of a  
Regional Contribution Agreement (RCA) between  
(Sending Municipality and Receiving Municipality)**

**WHEREAS**, (sending municipality) has a fair share obligation to provide housing opportunities to households of low and moderate income as established by the New Jersey Supreme Court and by the New Jersey Fair Housing Act, N.J.S.A. 52:27d-301 et seq.; and

**WHEREAS**, the Fair Housing Act provides that municipalities within the same region, as defined by the Council on Affordable Housing (COAH), may meet up to 50 percent of that obligation through a regional contribution agreement (RCA), under which the sending municipality makes a cash payment to another municipality, known as the receiving municipality, which undertakes to provide low and moderate income housing which is credited toward the sending municipality's fair share obligation; and

**WHEREAS**, (sending municipality) proposes to transfer (number) units of its fair share obligation at a cost of (amount) per unit or (total amount) in the form of an RCA with (receiving municipality); and

**WHEREAS**, (sending municipality) and the (receiving municipality) are in the same region as defined by COAH; and

**WHEREAS**, the (receiving municipality) desires to provide affordable housing for its low and moderate income residents, which action will be furthered by funds made available through the RCA; and

**WHEREAS**, the RCA is in the best interest of (receiving municipality).

**NOW THEREFORE BE IT RESOLVED**, that the Mayor of (receiving municipality) in (county) is hereby authorized to execute such documents and exhibits as may be necessary to effectuate the RCA.

**DATED:**

\_\_\_\_\_

\_\_\_\_\_  
(Title)

**Resolution Authorizing the Execution of a  
Regional Contribution Agreement (RCA) between  
(Sending Municipality and Receiving Municipality)**

**WHEREAS**, (sending municipality) has a fair share obligation to provide housing opportunities to households of low and moderate income as established by the New Jersey Supreme Court and by the New Jersey Fair Housing Act, N.J.S.A. 52:27d-301 et seq.; and

**WHEREAS**, the Fair Housing Act provides that municipalities within the same region, as defined by the Council on Affordable Housing (COAH), may meet up to 50 percent of that obligation through a regional contribution agreement (RCA), under which the sending municipality makes a cash payment to another municipality, known as the receiving municipality, which undertakes to provide low and moderate income housing which is credited toward the sending municipality's fair share obligation; and

**WHEREAS**, (sending municipality) proposes to transfer \_\_\_\_\_ units of its fair share obligation at a cost of \$\_\_\_\_\_ per unit for a total of \$\_\_\_\_\_ in the form of an RCA with (receiving municipality); and

**WHEREAS**, (sending municipality) and the (receiving municipality) are in the same region as defined by COAH; and

**WHEREAS**, the (receiving municipality) desires to provide affordable housing for its low and moderate income residents, which action will be furthered by funds made available through the RCA; and

**WHEREAS**, the RCA is in the best interest of (sending municipality).

**NOW THEREFORE BE IT RESOLVED**, that the Mayor of (sending municipality), (county), is hereby authorized to execute such documents and exhibits as may be necessary to effectuate the RCA.

**DATED:** \_\_\_\_\_ (Title)

**Model RCA Contract**  
**Regional Contribution Agreement (RCA) between**  
**Sending Municipality and Receiving Municipality**

**THIS AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between (sending municipality) and (receiving municipality).

**WHEREAS**, the Fair Housing Act, N.J.S.A. 52:27D-301 to -329 at -312, allows two municipalities to enter into a contractual agreement, known as a regional contribution agreement (RCA), for the transfer of up to 50 percent of a sending municipality's fair share obligation to a receiving municipality within its housing region; and

**WHEREAS**, both of said municipalities believe that the execution of this RCA will be beneficial to the residents of their respective communities and the housing region; and

**NOW THEREFORE**, in consideration of the premises herein set forth, and the mutual covenants and promises herein contained, the parties do by and between themselves agree as follows:

**Article 1. TRANSFER OF HOUSING OBLIGATION**

The receiving municipality hereby agrees to accept, and the sending municipality agrees to transfer \_\_\_\_\_ low and moderate-income units. The sending municipality has a fair share number of \_\_\_\_\_ and the above number combined with other approved or proposed RCAs is equal to or less than 50 percent of the sending municipality's fair share obligation. The receiving municipality agrees to apply the funds to be paid to it hereunder so as to create or rehabilitate at least \_\_\_\_\_ units of low and moderate-income housing. At least half of these units will be affordable to low income households. In the case of scattered site rehabilitation of occupied units, the receiving community will ensure, as best as practicable, that low-income households occupy 50 percent of the rehabilitated units.

**Article 2. SENDING MUNICIPALITY'S RESPONSIBILITIES**

The sending municipality agrees to pay, and the receiving municipality agrees to accept the sum of \$ \_\_\_\_\_ per unit transferred in payments totaling \$ \_\_\_\_\_.

2.1. Payments will be made according to the following schedule and in the following amounts:

Payment Schedule	Amount
1 <sup>st</sup> payment _____ days after effective date of this Agreement _____	
2 <sup>nd</sup> payment _____ after 1 <sup>st</sup> payment _____	

(Note: All payments must be made no later than five years after the effective date. Payments for a rental obligation must be transferred in the first payment. In addition, the payment schedule found here should be coordinated with Article 7. Effective Date.)

2.2. The forestated payments and payment schedule are the responsibility of the sending municipality and will be paid in accordance with the above schedule regardless of any anticipated source of funding, such as developer fees.

2.3. The sending municipality will obtain any and all financing necessary to fulfill its obligation to make the payments set forth above to the receiving municipality.

2.4. The parties acknowledge that the sending municipality's payments to the receiving municipality as set forth above include payment on a per unit basis to defray costs of administration as allowed by the rules of the Council on Affordable Housing (COAH) incurred by the receiving municipality in connection with this Agreement and that said amount is within COAH guidelines for such costs.

2.5. The sending municipality is responsible for obtaining: (choose one)

(a) substantive certification of its housing element and fair share from COAH as provided under the Fair Housing Act.

(b) approval of the RCA and a judgment of repose from the court as provided under the Fair Housing Act.

2.6. The sending municipality must forward the following documents to the receiving municipality's county planning board or agency:

1. master plan of sending municipality and
2. zoning ordinances of sending municipality.

If both sender and receiver are in the same county, only a formal letter to the county planning board requesting review of the RCA and the RCA project plan need be forwarded.

### **Article 3. RECEIVING MUNICIPALITY'S RESPONSIBILITIES**

The receiving municipality will prepare a project plan to implement and achieve the purposes of this Agreement to provide a realistic opportunity for low and moderate income housing within the receiving municipality convenient to employment opportunities which will be consistent with sound regional planning. Such project plan will be submitted to the New Jersey Housing and Mortgage Finance Agency (HMFA), the county planning board or agency and COAH for review and approval in accordance with COAH regulations.

3.1. The parties hereto agree that the receiving municipality will submit/has submitted its project plan to HMFA by/on (state date or deadline).

3.2. The receiving municipality will apply to the appropriate agencies for all governmental approvals, whether municipal, county or state.

3.3. The receiving municipality may apply for appropriate grants in aid, which may be available. Any monies realized through such grants will not affect the amount of the sending municipality's contribution.

3.4. The funds contributed by the sending municipality will be utilized by the receiving municipality for \_\_\_\_\_, which is an eligible housing activity under COAH's regulations.

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**For RCAs where the sending municipalities petitioned for substantive certification or amended a certified plan to include an RCA prior to January 2, 2001**

3.5. For scattered site rehabilitation of occupied units, the receiving municipality will expend a minimum of \$8,000 per unit in hard costs to repair/replace a major system(s) with an average of \$16,000 per unit in hard costs.

**For RCAs where the sending municipalities petitioned for substantive certification or amended a certified plan to include an RCA after January 2, 2001**

3.5. For scattered site rehabilitation of occupied units, the receiving municipality will expend a minimum of \$10,000 per unit in hard costs to repair/replace a major system(s) with an average of \$20,000 per unit in hard costs.

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3.6. The receiving municipality will submit all semi-annual monitoring reports required by COAH in a timely manner.

3.7. The receiving municipality will establish a separate interest-bearing escrow account for all monies received pursuant to the RCA. This escrow agreement will permit COAH to effectively monitor disbursements of the funds received pursuant to the RCA. This account will be monitored on a quarterly basis.

3.8. The receiving municipality will submit annually to COAH and HMFA its municipal audit, signed by the mayor, showing the disbursement of all RCA funds.

3.9. All interest generated from the RCA funds and retained by the receiving municipality may only be utilized for eligible housing activities under COAH's rules or to offset inflation and generally may not be used to exceed the 20 percent cap on administration.

3.10 Any change in the project plan or in the administration of the program subsequent to approval by HMFA must be reviewed by the executive director of HMFA when requested by COAH, for determination as to whether a new feasibility analysis and approval is required.

3.11 The receiving municipality must annually submit to the New Jersey Housing and Mortgage Finance Agency (HMFA) of documentation acceptable to agency staff evidencing that there exists a sufficient number of eligible applicants, projects, and/or units to demonstrate continued project plan feasibility.

3.12. The receiving municipality agrees to designate an administrative entity to assure that the applicable affordability controls will be maintained over time.

3.13. It is agreed that the receiving municipality's obligations pursuant to this Article are not limited to the above. The receiving municipality agrees that it will complete the project pursuant to this Agreement in accordance with the regulations of COAH.

3.14. The receiving municipality must forward the following documents to its county planning board or agency and request review and approval

1. master plan of receiving municipality;
2. zoning ordinances of receiving municipality and.
3. project plan

#### **Article 4. CREDIT TO HOUSING OBLIGATION**

The receiving municipality agrees that it will not claim credit toward its own housing obligation for any low or moderate-income RCA units, as defined by the Fair Housing Act, but that all such credit will insure to the benefit of the sending municipality. All RCA units will be permanently identified in the appropriate records of the receiving municipality as having been rehabilitated or created to meet the fair share obligation of the sending municipality.

#### **Article 5. EXCESS FUNDS**

Transferred funds in excess of the amount necessary to implement this Agreement will **(choose one)**

(a) be retained and utilized by the receiving municipality for the continued production of low and moderate income housing and/or the rehabilitation thereof and/or construction of supporting infrastructure improvements consistent with the regulations of COAH.

or

(b) be returned to the sending municipality according to N.J.A.C. 5:93-6.2(e). In no instance shall the transferred and contracted amount of \$\_\_\_\_\_ per unit be considered excess funds and returnable.

If the excess funds are utilized by the receiving municipality, they may only be used to produce or rehabilitate additional low and/or moderate income units and/or for a capital expenditure ancillary to or benefiting low and moderate income households and/or to offset inflation. All interest generated must remain in the escrow account until expended on an eligible housing activity. The specific use of excess funds is subject to COAH approval and will require the following:

- a. a brief description of the project including the number of units;
- b. total development costs, including administration, and breakdown of financing;
- c. amount of funds to be expended;
- d. estimated start date;
- e. projected date of completion and
- f. balance of funds in the RCA account(s).

**Article 6. CONTINGENCIES**

This Agreement is contingent upon completion of the following: **(choose one)**

- a) COAH's granting of substantive certification to (sending municipality).
- b) The court approving the RCA and (sending municipality) receiving a judgment of repose from the court.
- c) (Please list other contingencies, if applicable)

**Article 7. EFFECTIVE DATE**

This Agreement is considered a contractual agreement and will become effective upon **(choose one)**

- (a) the granting of substantive certification by COAH to the housing element and fair share plan (sending municipality.) or
- (b) the granting of an amendment to substantive certification by COAH to the housing element and fair share plan (sending municipality.) or
- (c) the court approving the RCA and granting a judgment of repose to ( sending municipality),  
or
- (d) the granting of an amendment to the judgment of repose and approval of the RCA by the court.

This Agreement will be executed no later than \_\_\_\_\_ days after **(choose one)** the sending municipality

(a) receives substantive certification from COAH or an amendment to its certified plan as per N.J.S.A. 52:27D-312. or

(b) the court approves the RCA and issues a judgment of repose or an amendment to the judgment of repose as per N.J.S.A. 52:27D-312

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals, this month, day and year first above written.

ATTEST

\_\_\_\_\_

Date:

\_\_\_\_\_

Date:

(Receiving Municipality)

By: \_\_\_\_\_

(Sending Municipality)

By: \_\_\_\_\_

[Note: For RCAs in which receiver has received RCA Recipient Certification]

**Model**  
**Regional Contribution Agreement (RCA) between**  
**Sending Municipality and Receiving Municipality**

**THIS AGREEMENT** is made on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by and between the (sending municipality) and (receiving municipality).

**WHEREAS**, the Fair Housing Act, N.J.S.A. 52:27D-301 to -329 at -312, allows two municipalities to enter into a contractual agreement, known as a regional contribution agreement (RCA), for the transfer of up to 50 percent of a sending municipality's fair share obligation to a receiving municipality within its housing region; and

**WHEREAS**, both of said municipalities believe that the execution of this RCA will be beneficial to the residents of their respective communities and the housing region; and

**NOW THEREFORE**, in consideration of the premises herein set forth, and the mutual covenants and promises herein contained, the parties do by and between themselves agree as follows:

**Article 1. TRANSFER OF HOUSING OBLIGATION**

The receiving municipality hereby agrees to accept, and the sending municipality agrees to transfer \_\_\_\_\_ low and moderate-income units. The sending municipality has a fair share number of \_\_\_\_\_ and the above number combined with other approved or proposed RCAs is equal to or less than 50 percent of the sending municipality's fair share obligation. The receiving municipality agrees to apply the funds to be paid to it hereunder so as to create or rehabilitate at least \_\_\_\_\_ units of low and moderate income housing. At least half of these units will be affordable to low income households. In the case of scattered site rehabilitation of occupied units, the receiving community will ensure, as best as practicable, that 50 percent of the rehabilitated units are occupied by low income households.

**Article 2. SENDING MUNICIPALITY'S RESPONSIBILITIES**

The sending municipality agrees to pay, and the receiving municipality agrees to accept the sum of \$ \_\_\_\_\_ per unit transferred in payments totaling \$ \_\_\_\_\_.

2.1. Payments will be made according to the following schedule and in the following amounts:

Payment Date	Amount
1 <sup>st</sup> payment ____ days after effective date of this Agreement	_____
2 <sup>nd</sup> payment _____ after 1 <sup>st</sup> payment	_____

(Note: All payments must be made no later than five years after the effective date. Payments for a rental obligation must be transferred in the first payment. In addition, the payment schedule found here should be coordinated with Article 7. Effective Date.)

2.2 The above stated payments and payment schedule are the responsibility of the sending municipality and will be paid in accordance with the above schedule regardless of any anticipated source of funding, such as developer fees.

2.3 The sending municipality will obtain any and all financing necessary to fulfill its obligation to make the payments set forth above to the receiving municipality.

2.4. The parties acknowledge that the sending municipality's payments to the receiving municipality as set forth above include payment on a per unit basis to defray costs of administration as allowed by the rules of the Council on Affordable Housing (COAH) and other reasonable and necessary expenses, including the cost of infrastructure, incurred by the receiving municipality in connection with this Agreement and that said amount is within COAH guidelines for such costs.

2.5. The sending municipality is responsible for obtaining: (choose one)

(a) substantive certification of its housing element and fair share from COAH as provided under the Fair Housing Act.

(b) approval of the RCA and a judgment of repose from the court as provided under the Fair Housing Act.

### **Article 3. RECEIVING MUNICIPALITY'S RESPONSIBILITIES**

3.1 (Receiving municipality) received RCA Recipient Certification from COAH on (date). The RCA Recipient Certification, a three-year renewable alternative to a project-by-project approval of a municipality's project plan, is for the following class(es) of housing activity: **(Note: include only those activities for which the receiving municipality received recipient certification)**

- a. limited or moderate rehabilitation of one- to four-family buildings;
- b. substantial rehabilitation or new construction of one- to four-family buildings including infill housing;
- c. substantial rehabilitation, new construction or adaptive reuse of non-residential buildings into multifamily buildings containing more than four units; and
- d. substantial rehabilitation or new construction of special needs housing including transitional housing for the homeless.

COAH's Recipient Certification approval relied on the recommendation of approval from the New Jersey Housing and Mortgage Finance Agency (HMFA) and the (county of receiving municipality's) Planning Board. Once a municipality has been certified in a category, it will be considered to have an approved project plan in that category during the three-year RCA certification period. The receiving municipality must file with COAH, the receiving municipality's county planning board and HMFA a summary of each project for which RCA funds will be expended when the project has been identified. The summary should include:

- i. brief project description including address and number of units;
- ii. total development cost and breakdown of financing;
- iii. estimated start date and
- iv. project completion date

If (receiving municipality) chooses to expend RCA funds on a project(s) outside of its certified housing category, a formal project plan approval must be obtained from COAH, HMFA and the receiving municipality's county planning board.

Any change in the administration of the program subsequent to approval by HMFA must be reviewed by the executive director of HMFA when requested by COAH, for determination as to whether a new feasibility analysis and approval is required

3.2. The receiving municipality will apply to the appropriate agencies for all governmental approvals, whether municipal, county or state.

3.3. The receiving municipality may apply for appropriate grants in aid which may be available. Any monies realized through such grants will not affect the amount of the sending municipality's contribution.

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**For RCAs where the sending municipalities petitioned for substantive certification or amended a certified plan to include an RCA prior to January 2, 2001**

3.4. For scattered site rehabilitation of occupied units, the receiving municipality will expend a minimum of \$8,000 per unit in hard costs to repair/replace a major system(s) with an average of \$16,000 per unit in hard costs.

**For RCAs where the sending municipalities petitioned for substantive certification or amended a certified plan to include an RCA after January 2, 2001**

3.4 For scattered site rehabilitation of occupied units, the receiving municipality will expend a minimum of \$10,000 per unit in hard costs to repair/replace a major system(s) with an average of \$20,000 per unit in hard costs.

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3.5. The receiving municipality will submit all semi-annual monitoring reports required by COAH in a timely manner.

3.6. The receiving municipality will establish a separate interest-bearing escrow account for all monies received pursuant to the RCA. This escrow agreement will permit COAH to effectively monitor disbursements of the funds received pursuant to the RCA. This account will be monitored on a quarterly basis.

3.7. The receiving municipality will submit annually to COAH and HMFA its municipal audit, signed by the mayor, showing the disbursement of all RCA funds.

3.8. All interest generated from the RCA funds and retained by the receiving municipality may only be utilized for an eligible housing activity under COAH's rules or to offset inflation and generally may not be used to exceed the 20 percent cap on administration.

3.9. The receiving municipality agrees to designate an administrative entity to assure that the applicable affordability controls will be maintained over time.

3.10. It is agreed that the receiving municipality's obligations pursuant to this Article are not limited to the above. The receiving municipality agrees that it will complete the project pursuant to this Agreement in accordance with the regulations of COAH.

**Article 4. CREDIT TO HOUSING OBLIGATION**

The receiving municipality agrees that it will not claim credit toward its own housing obligation for any low or moderate-income RCA units, as defined by the Fair Housing Act, but that all such credit will insure to the benefit of the sending municipality. All RCA units will be permanently identified in the appropriate records of the receiving municipality as having been rehabilitated or created to meet the fair share obligation of the sending municipality.

**Article 5. EXCESS FUNDS**

Transferred funds in excess of the amount necessary to implement this Agreement will

**(choose one)**

(a) be retained and utilized by the receiving municipality for the continued production of low and moderate income housing and/or the rehabilitation thereof and/or construction of supporting infrastructure improvements consistent with the regulations of COAH.

**or**

(b) be returned to the sending municipality according to N.J.A.C. 5:93-6.2(e). In no instance shall the transferred and contracted amount of \$\_\_\_\_\_ per unit be considered excess funds and returnable.

If the excess funds are utilized by the receiving municipality, they may only be used to produce or rehabilitate additional low and/or moderate income units and/or for a capital expenditure ancillary to or benefiting low and moderate income households and/or to offset inflation. All interest generated must remain in the escrow account until expended on an eligible housing activity. The specific use of excess funds is subject to COAH approval and will require the following:

- a. a brief description of the project including the number of units;
- b. total development costs, including administration, and breakdown of financing;
- c. amount of funds to be expended;
- d. estimated start date;
- e. projected date of completion and
- f. balance of funds in the RCA account(s).

#### **Article 6. CONTINGENCIES**

This Agreement is contingent upon completion of the following: **(choose one)**

- a) COAH's granting of substantive certification to (sending municipality). **or**
- b) The court approving the RCA and (sending municipality) receiving a judgment of repose from the court.
- c) (Please list other contingencies, if applicable)

#### **Article 7. EFFECTIVE DATE**

This Agreement is considered a contractual agreement and will become effective upon **(choose one)**

- (a) the granting of substantive certification by COAH to the housing element and fair share plan of (sending municipality.) **or**
- (b) the granting of an amendment to substantive certification by COAH to the housing element and fair share plan of (sending municipality.) **or**
- (c) the court approving the RCA and granting a judgment of repose to ( sending municipality), **or**
- (d) the granting of an amendment to the judgment of repose and approval of the RCA by the court.

This Agreement will be executed no later than \_\_\_\_\_ days after **(choose one)** the sending municipality

(a) receives substantive certification from COAH or an amendment to its certified plan as per N.J.S.A. 52:27D-312. or

(b) the court approves the RCA and issues a judgment of repose or an amendment to the judgment of repose as per N.J.S.A. 52:27D-312

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals, this month, day and year first above written.

ATTEST

(Receiving Municipality)

\_\_\_\_\_  
Date

By: \_\_\_\_\_

(Sending Municipality)

\_\_\_\_\_  
Date

By: \_\_\_\_\_

**Model**  
**Regional Contribution Agreement (RCA)**  
**Escrow Agreement**

This Escrow Agreement made this \_\_\_\_ day of \_\_\_\_, 20\_\_, by and between the **COUNCIL ON AFFORDABLE HOUSING (COAH)** and (receiving municipality) (**MUNICIPALITY**) and (bank) (**BANK**).

**WITNESSETH:**

**WHEREAS**, the Fair Housing Act (Act), N.J.S.A. 52:27D-301 et seq., permits a municipality to transfer up to 50 percent of its fair share obligation to another municipality within the same region by means of a voluntary contractual agreement referred to as a Regional Contribution Agreement (RCA); and

**WHEREAS**, the Act requires COAH to review and approve the RCA; and

**WHEREAS**, COAH has approved the RCA between (receiving municipality) and (sending municipality) on \_\_\_\_, 20\_\_; whereby (sending municipality) has agreed to transfer \_\_ units of its fair share obligation to (receiving municipality) at a cost of \$ \_\_\_\_ per unit and (receiving municipality) has agreed to accept the same; and

**WHEREAS**, COAH approval of the RCA requires (receiving municipality) to establish a separate interest-bearing escrow account for all monies received pursuant to the RCA with (sending municipality); and

**WHEREAS**, COAH approval of the RCA further requires (receiving municipality), upon execution of the RCA, to enter into an escrow agreement with COAH to enable COAH to monitor disbursements of the monies received pursuant to the RCA and to halt disbursements of monies if implementation of the RCA is in jeopardy; and

**WHEREAS**, (receiving municipality) and (sending municipality) executed the RCA on \_\_\_\_\_.

**NOW, THEREFORE**, COAH and (name of receiving municipality) and the Bank agree as follows:

1. Designation of Escrow Agent

COAH and (receiving municipality) hereby designate (bank) as their escrow agent, upon terms and conditions set forth herein, for the purpose of (a) receiving payments made by (sending municipality) to (receiving municipality) pursuant to the RCA, (b) holding such sums in the escrow account, hereinafter described, and (c) disbursing the monies solely for the creation of the \_\_ units of housing in (receiving municipality), as set forth in the project plan, pursuant to the terms of this agreement.

2. Escrow Account

Upon receipt of the initial contribution from (sending municipality), (receiving municipality) shall deposit said monies with the escrow agent and said escrow agent shall establish a separate, independent and segregated interest-bearing account to be known as \_\_\_\_\_ RCA Escrow Account (Account) and shall deposit therein such initial contribution, as well as all subsequent RCA contributions received from (sending municipality). At no time shall the escrow agent co-mingle the funds deposited in the Account with any other funds or accounts held or maintained by the escrow agent, nor shall the escrow agent at any time set off any amount on deposit in the Account against (a) any indebtedness owed to the escrow agent by (receiving

municipality), (sending municipality) or any other party; (b) any other obligation owed to the escrow agent by (receiving municipality), (sending municipality) or any other party; or (c) any claim which the escrow agent may have against (receiving municipality), (sending municipality) or any other party, whether arising under the Agreement or otherwise.

3. Application of Amounts on Deposit

The funds in the account shall be used for the construction, rehabilitation and/or approved activity of low and moderate income housing in (receiving municipality) as set forth in the RCA entered into between (receiving municipality) and (sending municipality) and the project plans which are incorporated into the RCA contract. The Bank shall disburse all funds solely to (name of receiving municipality), unless notified otherwise by COAH and/or (name of receiving municipality).

4. Cessation of Disbursements from Funds

COAH shall have the authority to halt disbursements to (name of receiving municipality) from the Escrow Account upon written notice to the Bank. COAH shall have such authority if it determines, after notice and hearing to (name of receiving municipality), that the implementation of the RCA is in jeopardy. Upon receipt of written notice to cease disbursements from the Account, the Bank shall immediately halt disbursements until further written notice from COAH to resume disbursements. COAH shall provide (name of receiving municipality) with copies of all written notices.

5. Remainder of Funds at Completion of RCA

Any monies, including interest, remaining in the Account at the time of completion of the RCA units shall only be used to continue with eligible housing activities pursuant to the rules of COAH and with prior approval of COAH or be returned to the sending municipality according to N.J.A.C. 5:93-6.2(e), if determined by the RCA Contract. The Escrow Account shall be closed when all principal and interest have been expended on approved housing activities or returned to the sending municipality, if determined by the RCA Contract.

6. Termination of the Escrow Agreement

This Escrow Agreement shall terminate when (receiving municipality) has constructed and/or rehabilitated units transferred pursuant to the RCA between (name of sending municipality) and (receiving municipality), to the satisfaction of COAH and when all excess funds have been expended on eligible housing activities or returned to the sending municipality, if determined by the RCA Contract. COAH shall provide the Bank and (receiving municipality) with written notice that all units have been constructed and all excess funds expended on eligible housing activities or returned to the receiving municipality before this agreement is deemed terminated.

7. Standard of Care; Indemnification

The Bank shall use reasonable care and due diligence in the performance of all of its duties hereunder. (Receiving municipality) shall indemnify COAH and hold it harmless from and against all liabilities, losses or damage incurred under COAH with respect to any action COAH may take under this Escrow Agreement with the exception of liabilities, losses or damages solely caused by negligent acts, omissions, errors or willful misconduct by COAH.

8. Records and Accounts

The Bank shall keep accurate financial records and accounts of all transactions relating to the Account, including but not limited to all deposits to the Account, disbursements from the Account and interest earned on the Account which shall be made available for inspection by COAH and (name of receiving municipality), or their respective designees, at any reasonable

time. (Receiving municipality) shall provide COAH with reports on a quarterly basis which set forth the amount, date and description of all draw downs from the Account as well as any other information COAH may require to monitor implementation of the RCA.

9. Notices

All notices, certificates, or other communications hereunder shall be delivered by hand or mailed by certified mail to the parties at the following addresses:

a. If to COAH:

Executive Director  
New Jersey Council on Affordable Housing  
101 South Broad Street  
Trenton, New Jersey 08625-0813

b. If to (receiving municipality):

c. If to the Bank:

Any of the parties hereby may designate different or additional addresses by notice in writing given to the other parties.

10. Further Assurances

The parties hereto shall authorize, execute, acknowledge and deliver such further resolutions, conveyance, transfers, assurance, and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights and interests granted hereunder.

11. Agreement Subject to Act

This Agreement is subject to the Act, and nothing contained herein shall be interpreted so as to limit or restrict in any way the discretion and authority vested in COAH by the Act.

12. Amendments

This Agreement may not be amended, supplemented, or modified except by a written instrument executed by all the parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date set forth above.

\_\_\_\_\_  
Date

\_\_\_\_\_  
on behalf of (name of Receiving Municipality)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Shirley M. Bishop, P.P., Executive Director  
on behalf of the New Jersey Council on Affordable Housing

\_\_\_\_\_  
Date

\_\_\_\_\_  
on behalf of the Bank

# Model Development Fee Ordinance

## 1. Purpose

In Holmdel Builder's Ass'n V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 et seq., and the State Constitution subject to the Council on Affordable Housing's (COAH) adoption of rules. The purpose of this ordinance is to establish standards for the collection, maintenance and expenditure of development fees pursuant to COAH's rules. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low and moderate income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees.

## 2. Residential Development Fees

- a. Within the (name of zoning districts), developers shall pay a development fee of one-half of one percent of the (equalized assessed value for residential development/or the coverage amount of the Home Owner Warranty document of a for-sale unit or the appraised value on the document utilized for construction financing for a rental unit) provided no increased density is permitted.
- b. If a "d" variance is granted pursuant to N.J.S.A. 40:55D-70d(5), then the additional residential units realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of \_\_\_percent [municipality establishes the fee; may be up to six percent] rather than the development fee of one half of one percent. However, if the zoning on a site has changed during the two-year period preceding the filing of the "d" variance application, the density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the "d" variance application.

The fee may be realized on the equalized assessed value or on the coverage amount on the Home Owner's Warranty document for each additional for sale unit or on the appraised value on the

## NOTES

1. No ordinance to collect fees will be in effect until it has been certified by COAH as per N.J.A.C. 5:93-8.

A municipality may begin imposing and collecting fees when it has adopted a housing element, petitioned for substantive certification and received COAH's approval of its development fee ordinance. (Urban aid cities need not file an adopted housing plan or petition for certification.) A municipality may not spend development fees until COAH has approved a plan for spending fees and granted substantive certification.

- 2(a). The one-half of one percent is a maximum standard. A municipality may impose a lesser fee. However, it is also possible to negotiate a higher fee as per N.J.A.C. 5:93-8.10(d). All negotiated fees are subject to COAH approval. The municipality must designate which standard will be utilized to calculate the fee in the ordinance.

document utilized for construction financing for each additional rental unit.

## NOTES

- c. Within the zoning districts listed below, a density bonus has been permitted. Residential developers within these zones pay a development fee of up to six percent of (the equalized assessed value for each additional unit that may be realized/or the coverage amount on the Home Owner Warranty document for each additional for sale unit or the appraised value on the document utilized for construction financing for each additional rental unit).

Example: if the rezoning permits extra units to be constructed, the fee shall be six percent of the value option selected above for the extra units. On the initial units, the developer shall pay a development fee of one-half of one percent on the value option selected above

<b>Zoning District</b>	<b>Existing Density</b>	<b>Increased Density</b>	<b>Calculated Density</b>
------------------------	-------------------------	--------------------------	---------------------------

- d. Developers within the following zoning districts may pay a fee in lieu of constructing a low or moderate income housing unit.

- 1)
- 2)
- 3)
- 4)

### 3. Nonresidential Development Fees

- a. Developers within (name of zoning district) shall pay a fee of one percent of either the equalized assessed value for non-residential development or the appraised value utilized on the document for construction financing.
- b. If a "d" variance is granted pursuant to N.J.S.A. 40:55D-70d(4), then the additional floor area realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of \_\_\_\_\_ percent [municipality establishes; may be up to six percent] rather than the development fee of one percent. However, if the zoning on a site has changed during the two-year period preceding the filing of the "d" variance application, the density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the "d" variance application. The development fee may be based on either the equalized assessed value for nonresidential

2(c). This section is optional. The six percent fee is a maximum standard. A municipality may impose a lesser fee. Municipalities may not reduce densities from pre-existing levels and then require developers to pay increased fees in exchange for an increased density. (N.J.A.C. 5:93-8.12). In reviewing the development fee ordinance, COAH will require a description of any changes to the municipal zoning ordinance over the last two years or a longer period, if determined by COAH (N.J.A.C. 5:93-8.8). The municipality must designate which standard will be utilized for the fee calculation. This standard must be consistent with 2(a) above.

2(d). This section is optional. For COAH to approve the "fee in lieu" provision, COAH must determine that the municipal housing element and fair share plan provide a realistic opportunity for addressing the municipal fair share obligation. The fee standards are to be based on the internal cost of subsidizing a low and moderate income unit within the inclusionary development [N.J.A.C. 5:93-8.10(c)] and will be reviewed by COAH.

3(a). The one percent fee is a maximum standard. A municipality may impose a lesser fee. However, it is also possible to negotiate a higher fee as per N.J.A.C. 5:93-8.11(b). All negotiated fees are subject to COAH approval. The municipality must stipulate which standard will be utilized for nonresidential fee calculation.

development or the appraised value utilized on the document for construction financing.

NOTES

4. Eligible Exaction, Ineligible Exaction and Exemptions

- a. Developers of low and moderate income units shall be exempt from paying development fees.
- b. Developers that have received preliminary or final approval prior to the effective date of this ordinance shall be exempt from paying a development fee unless the developer seeks a substantial change in the approval.
- c. Developers of (specific types of development),  
  
[Example: retail] shall be exempt from paying a development fee.
- d. Within (name of zoning district(s)), developers shall be exempt from paying a development fee.

4(b). Examples of a substantial change include a substantial alteration in site layout, development density or types of uses within the development.

4(c) and (d). Both of these sections are optional. Municipalities are not required to provide these exemptions.

5. Collection of Fees

- a. Developers shall pay 50 percent of the calculated development fee to (the municipality) at the issuance of building permits. At the issuance of certificates of occupancy, the appropriate development fee shall be based on one of the options in N.J.A.C. 5:93-8-10. The developer shall be responsible for paying the difference between the fee calculated at building permit and paid at issuance of certificate of occupancy. The entire fee may also be paid at the issuance of the certificate(s) of occupancy.

5. The language provided assumes that municipalities will choose to collect development fees as soon as possible. However, a municipality may choose to collect all fees at certificate of occupancy. The municipality must designate the option selected.

6. Housing Trust Fund

- a. There is hereby created an interest bearing housing trust fund in (bank) for the purpose of receiving development fees from residential and nonresidential developers. All development fees paid by developers pursuant to this ordinance shall be deposited in this fund. No money shall be expended from the housing trust fund unless the expenditure conforms to a spending plan approved by COAH.
- b. If COAH determines that (the municipality) is not in conformance with COAH's rules on development fees, COAH is authorized to direct the manner in which all development fees collected pursuant to this ordinance shall be expended. Such authorization is pursuant to: this ordinance, COAH's rules on development fees and the written authorization from the governing body to the (name of bank in which the housing trust fund is located).

7. Use of Funds

- a. Money deposited in a housing trust fund may be used for any activity approved by COAH for addressing (the municipality's) low and moderate income housing obligation. Such activities may include, but are not necessarily limited to, housing rehabilitation, new construction, regional contribution agreements, the purchase of land for low and moderate income housing, extensions and/or improvements of roads and infrastructure to low and moderate income housing sites, assistance designed to render units more affordable to low and moderate income households and administrative costs necessary to implement (municipality's) housing element. The expenditure of all money shall conform to a spending plan approved by COAH.
- b. At least 30 percent of the revenues collected shall be devoted to render units more affordable unless exempt as per N.J.A.C. 5:93-8-16(c). Examples of such activities include, but are not limited to, down payment and closing cost assistance, low interest loans and rental assistance.
- c. No more than 20 percent of the revenues shall be expended on administrative costs necessary to develop, revise or implement the housing element. Examples of eligible administrative activities include personnel, consultant services, space costs, consumable supplies and rental or purchase of equipment directly associated with plan development or plan implementation.

The following definitions should be added to or amended within your current affordable housing ordinances:

"COAH" means the New Jersey Council on Affordable Housing

"Development fees" means money paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules.

"Equalized assessed value" means the value of a property determined by the municipal tax assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of issuance of a building permit may be obtained utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the municipal tax assessor.

- 7. All development fee ordinances must include authorization for COAH to direct the expenditure of development fees pursuant to N.J.A.C. 5:93-8.18 (Penalties).

7(b). COAH may waive this requirement in whole, or in part, if the municipality demonstrates the ability to address the affordability assistance requirement from another source. Expenditures for rehabilitation, municipal new construction and RCAs are exempt from this requirement.

7(c). The municipality need not devote any development fees toward administration. Development fees may not be used to defray the cost of existing staff. However, COAH will permit fees to be used to defray the cost of staff whose responsibility is to implement a housing element.

## NOTES

“Judgment of repose” means a judgment issued by the Superior Court approving a municipality’s plan to satisfy its fair share obligation.

“Substantive certification” means a determination by COAH approving a municipality’s housing element and fair share plan in accordance with the provisions of the Fair Housing Act and the rules and criteria as set forth herein. A grant of substantive certification shall be valid for a period of six years in accordance with the terms and conditions therein.

Judgment of Repose – This definition is not relevant to municipalities that have received substantive certification

**MODEL**  
**Bonus Development Fees as a Result of a “d” variance**  
**N.J.A.C. 5:93-8.10 and 8.11**

**Residential Development Fees**

If a “d” variance is granted pursuant to N.J.S.A. 40:55D-70d(5), then the additional residential units realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of \_\_\_\_\_ percent [*municipality establishes; may be up to six percent*] rather than the development fee of one half of one percent. However, if the zoning on a site has changed during the two-year period preceding the filing of the “d” variance application, the density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the “d” variance application.

and/or

**Nonresidential Development Fees**

If a “d” variance is granted pursuant to N.J.S.A. 40:55D-70d(4), then the additional floor area realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of \_\_\_percent [*municipality establishes; may be up to six percent*] rather than the development fee of one percent. However, if the zoning on a site has changed during the two-year period preceding the filing of the “d” variance application, the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two-year period preceding the filing of the “d” variance application.

# New Jersey Council on Affordable Housing (COAH) Model Development Fee Spending Plan

## INTRODUCTION

(Municipality), (county), has a development fee ordinance that was approved by the Council on Affordable Housing (COAH) on (date). This spending plan is prepared in accordance with N.J.A.C. 5:93-5.1(c) and includes the following:

1. Projection of development fee revenues based on known development approvals and historic rate of development activity.
2. A description of the administrative mechanism that the municipality will use to collect and distribute revenues.
3. A description of the anticipated use of all development fees.
4. A schedule for the creation or rehabilitation of housing units (if applicable).
5. If the municipality envisions being responsible for public sector or nonprofit construction of housing, a pro-forma statement of the anticipated costs and revenues associated with the development (if applicable).
6. The manner in which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan (if applicable).

To date, (municipality) has collected \$ \_\_\_\_\_ in development fees. All development fees collected and interest generated by the fees are deposited in a separate interest-bearing account in (bank) for the purposes of affordable housing.

## PROJECTION OF REVENUES FOR CERTIFICATION PERIOD

To calculate a projection of revenues anticipated between (date of spending plan) and the expiration of substantive certification, (municipality) considered the following:

1. Based on the residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals, (municipality) anticipates the collection of \$ \_\_\_\_\_ in development fees at issuance of building permits and/or certificates of occupancy during the period of substantive certification.
2. (Municipality) considered all projects currently before the planning board for development approvals. Based on an estimate of when these may apply for building permits and certificates of occupancy, (municipality) anticipates the collection of \$ \_\_\_\_\_ in development fees during the period of substantive certification.
3. Additionally, (municipality) looked at the historic rate of development and determined that between now and the expiration of substantive certification, an additional \$ \_\_\_\_\_ in development fees could be anticipated.
4. Therefore, (municipality) has projected a total of \$ \_\_\_\_\_ in development fee revenues to be collected between now and the expiration of substantive certification. All development fees collected and interest generated by the fees will be deposited in a separate interest-bearing account in (bank) for the purposes of affordable housing.

## ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues is proposed by (municipality):

(NOTE: This is only an example. If your municipality already has a procedure for collection and expenditure of development fee revenues, please describe it here in detail).

**1. Collection of development fee revenues:**

The planning board secretary notifies the (building code official or construction code official or housing officer) whenever a preliminary or final approval is granted for a development which is subject to a development fee.

When a request is made for a building permit, the (building code official or construction official or housing officer) determines if the project is subject to the imposition of a mandatory development fee. If so, the (building code official or construction code official or housing officer) obtains an approximate value of the completed project from the developer or tax assessor who calculates the fee based on (the equalized assessed value or the coverage amount of the Home Owner Warranty document for residential units or the appraised value on the document utilized for construction financing). (NOTE: The municipality must select the option here.)

The developer may pay up to 50 percent of the estimated development fee to the (building code official or construction code official or housing officer) at the time the building permit is issued. The funds are then forwarded to the (chief financial officer or municipal treasurer) and deposited in the affordable housing trust fund, or the developer may pay the entire development fee at the issuance of the certificate of occupancy. (NOTE: The municipality must select the option here.)

Upon request of a certificate of occupancy by the developer, the (building code official or construction code official or housing officer) will notify the township tax assessor to calculate the value of the project and set the fee based on (the equalized assessed value or the coverage amount of the Home Owner Warranty document for residential units or the appraised value on the document utilized for construction financing). (NOTE: The municipality must designate the option that is consistent with the above two paragraphs.)

The balance of the development fee or the full fee will be paid by the developer to the (building code official or construction code official or housing officer) upon issuance of the certificate of occupancy. The funds are then forwarded to the (chief financial officer or municipal treasurer) and deposited in the affordable housing trust fund.

**2. Distribution of development fee revenues:**

The (affordable housing board or the housing committee) adopts and forwards a resolution to the governing body recommending the expenditure of development fee revenues as set forth in this spending plan. The governing body reviews the request for consistency with the spending plan and adopts the recommendation.

The use and release of the funds require the adoption of a resolution in accordance with the COAH-approved spending plan. Once a request is approved, the (municipal treasurer or chief financial officer) releases the revenues from the trust fund for the specific use as per the governing body's resolution.

**DESCRIPTION OF ANTICIPATED USE OF DEVELOPMENT FEES:**

1. (Municipality) will dedicate \_\_\_\_\_ percent of development fees collected each year to be used for administrative purposes as follows:

**(provide detailed description)**

NOTE: N.J.A.C 5:93-8.16(e) stipulates that a maximum of 20 percent of development fees collected each year may be utilized for administrative purposes such as salaries and benefits for municipal employees or consultant fees necessary to develop or implement municipal housing programs such as rehabilitation, new construction, RCAs, housing elements and/or affirmative marketing programs. Administrative funds

may be used to income qualify households and monitor implementation. Development fees may be used to defray the costs of staff that are implementing a housing plan.

2. (Municipality) will devote \_\_\_\_\_ percent of development fees collected each year to render units more affordable units as follows:

**(provide detailed description of the proposed affordability assistance program )**

NOTE: N.J.A.C. 5:93-8.16(c) specifies that, unless exempt, at least 30 percent of development fees collected each year must be devoted to affordability assistance such as down payment assistance, rental assistance and closing cost assistance. Development fees collected to finance an RCA or rehabilitation or a new construction project are exempt from this requirement.

3. The remaining \_\_\_\_\_percent of development fee revenues collected each year will be used as follows:

**(provide detailed explanation)**

NOTE: N.J.A.C. 5:93-8.16(a) specifies what activities a municipality may undertake with development fees. These activities include, but are not limited to, rehabilitation, new construction, RCAs, purchase of land and improvements to land, roads or infrastructure directly related to the affordable housing in the plan.

**ONLY IF APPLICABLE:**

**SCHEDULE FOR REHABILITATION OF HOUSING UNITS**

(Municipality) intends to use development fee revenues for the rehabilitation of housing units. The rehabilitation schedule, which will parallel the schedule set forth in the (certified/pending) housing element and fair share plan, is show below:

<u>YEAR</u>	<u>NUMBER OF REHABS</u>	<u>FUNDS NEEDED</u>
1.		
2.		
3.		
4.		
5.		

**ONLY IF APPLICABLE:**

**PUBLIC SECTOR/NONPROFIT HOUSING:**

**Description of Total Development Cost Breakdown and Source of Funding**

**UNEXPECTED SHORTFALL OF FUNDS:**

Pursuant to the housing element and fair share plan, the governing body of (municipality) has adopted a resolution agreeing to fund any shortfall of funds required for implementing (specify housing programs). In the event that a shortfall of anticipated revenues occurs, (municipality) will

**(describe method of handling the shortfall of funds)**

NOTE: COAH normally requires a municipality to pass a resolution of intent to bond for any unanticipated shortfall in a rehabilitation program or municipal construction project. Please attach a copy of the resolution.

**SUMMARY**

(Municipality) intends to spend development fee revenues pursuant to N.J.A.C. 5:93-8.16 and in conjunction with the housing programs outlined in the housing element and fair share plan dated (date).

(Municipality) has collected \$\_\_\_\_\_ to date and anticipates an additional \$\_\_\_\_\_ in development fee revenues before the expiration of substantive certification for a total of \$\_\_\_\_\_. The municipality will dedicate \_\_\_\_\_ percent to administrative costs, \_\_\_\_\_ percent to render units and \_\_\_\_\_ percent towards **(describe)**. Any shortfall of funds will be offset by **(describe)**.

## Resolution Requesting Review and Approval of Development Fee Spending Plan

**WHEREAS**, the governing body of (municipality), (county) forwarded a development fee ordinance to the Council on Affordable Housing (COAH) for review and approval; and

**WHEREAS**, N.J.A.C. 5:93-5.1(c) requires a municipality with an adopted development fee ordinance to prepare a plan to spend development fees that includes the following:

1. A projection of revenues anticipated from imposing fees on development, based on historic development activity;
2. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;
3. A description of the anticipated use of all development fees;
4. A schedule for the creation or rehabilitation of housing units;
5. If the municipality envisions being responsible for public sector or nonprofit construction of housing, a pro-forma statement of the anticipated costs and revenues associated with the development;
6. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan; and

**WHEREAS**, (municipality) has prepared a spending plan that comports with N.J.A.C. 5:93-5.1(c).

**NOW THEREFORE BE IT RESOLVED** that the governing body of (municipality), (county) requests that COAH review and approve (municipality's) spending plan.

# Escrow Agreement for Development Fees

This Escrow Agreement made this \_\_\_\_ day of (month), (year), by and between the Council on Affordable Housing (COAH) and (municipality) and (bank).

WITNESSETH:

**WHEREAS**, a municipality may impose, collect and expend development fees in accordance with the regulations of the COAH, see N.J.A.C. 5:93-8.1 et seq., and with the approval of COAH; and

**WHEREAS**, on (date) COAH approved Ordinance \_\_\_\_ (Development Fee Ordinance) of (municipality) establishing standards for the collection, maintenance and expenditure of development fees consistent with COAH's rules and establishing the provision of low and moderate income housing as the sole use of fees collected pursuant to the Development Fee Ordinance; and

**WHEREAS**, on (date) the governing body of (municipality) passed on second reading the Development Fee Ordinance amending the Code of the Municipality for the purpose of establishing standards for the collection, maintenance and expenditure of development fees pursuant to COAH's rules establishing the provision of low and moderate income housing as the sole use of fees collected pursuant to this ordinance; and

**[Pick one of the following statements which pertains to your municipality.]**

**WHEREAS**, on (date), COAH approved a spending plan of (municipality) establishing standards for the expenditure of development fees pursuant to COAH's rules; and

or

**WHEREAS**, although COAH has not yet approved a spending plan for (municipality), all development fee expenditures must conform to an approved spending plan; and

**WHEREAS**, said Development Fee Ordinance, consistent with COAH's approval, requires an interest-bearing housing trust fund to be established for the purpose of receiving collected development fees and provides that no money shall be expended from the housing trust fund unless the expenditure conforms to the Development Fee Ordinance, a spending plan approved by COAH and the conditions set out at N.J.A.C. 5:93-8.18(a); and

**WHEREAS**, COAH's approval of the Development Fee Ordinance further requires (municipality), upon adoption of the ordinance, to enter into an escrow agreement with COAH to enable COAH to monitor disbursement of collected development fees and to direct expenditure of development fees, after proper notice and a hearing, if their imposition, collection and/or expenditure are not in conformance with the terms of the Development Fee Ordinance, as approved by COAH, the conditions set out at N.J.A.C. 5:93-8.18(a) and the COAH-approved spending plan.

**NOW THEREFORE**, COAH, (municipality) and the Bank agree as follows:

## 1. Designation of Escrow Agent

COAH and (municipality) hereby designate (bank) as their escrow agent, upon terms and conditions set forth herein, for the purpose of (a.) receiving development fees collected by (municipality), (b.) holding such sums in the escrow account, hereinafter described and (c.) disbursing the monies upon the direction of the (title of municipal officer) of (municipality) consistent with the COAH-approved spending plan.

## 2. Escrow Account

The municipality shall deposit all development fees with the escrow agent and said escrow agent shall establish a separate, interest bearing account to be known as (\_\_\_\_\_) Account (Account) and shall deposit therein such initial funds, as well as all subsequent development fee monies received

from (municipality). At no time shall the escrow agent co-mingle the funds deposited in the Account with any other funds or accounts held or maintained by the escrow agent, nor shall the escrow agent at any time set off any amount on deposit in the Account against (a.) any indebtedness owned to the escrow agent by (municipality) or any other party; (b.) any other obligation owed to the escrow agent by (municipality) or any other party or (c.) any claim which the escrow agent may have against (municipality) or any other party.

### 3. Application of Amounts on Deposit

The funds in the Account shall be used for any eligible affordable housing activity of (municipality) as set forth in a spending plan approved by COAH. The Bank shall disburse funds in the Account upon the direction of the (title of municipal officer) of (municipality), unless notified otherwise by COAH.

### 4. Cessation of Disbursements from Funds by Municipality and Direction of Disbursements by COAH

#### **COAH shall have the authority to halt disbursements by (municipality) from the**

Account upon written notice to the Bank and to direct all further disbursements. COAH shall have such authority if it determines, after notice and hearing to (municipality) that the municipality is not in compliance with all conditions set out in N.J.A.C. 5:93-8.18(a), the spending plan and the Development Fee Ordinance. Upon receipt of written notice to cease disbursement for the Account, the Bank shall immediately halt disbursements by (municipality) until further written notice from COAH. The Bank will allow disbursements by COAH on behalf of (municipality). COAH shall provide (municipality) with copies of all written notices.

In the event that any of the following conditions, as set out in N.J.A.C. 5:93-8.18(a) occur, COAH shall be authorized on behalf of (municipality) and consistent with its rules, to direct the manner in which all development fees shall be expended:

- a. Failure to submit a plan pursuant to N.J.A.C. 5:93-5.1(c) within the time limits imposed by COAH;
- b. Failure to meet deadlines for information required by COAH in its review of a housing element, development fee ordinance or plan for spending fees;
- c. Failure to proceed through COAH's administrative process toward substantive certification in a timely manner;
- d. Failure to address COAH's conditions for approval of a plan to spend development fees within the deadlines imposed by COAH;
- e. Failure to address COAH's conditions for substantive certification within deadlines imposed by COAH;
- f. Failure to submit accurate monitoring reports within the time limits imposed by COAH;
- g. Failure to implement the plan to spend development fees within the time limits imposed by COAH, or within reasonable extensions granted by COAH;
- h. Expenditure of development fees on activities not permitted by COAH;
- i. Revocation of certification; or
- j. Other good cause demonstrating that the revenues are not being used for the intended purpose.

### 5. Standard of Care; Indemnification

**The Bank shall use reasonable care and due diligence in the performance of all of its duties hereunder. (Municipality) shall indemnify COAH and hold it harmless from and against all liabilities, losses or damage incurred under COAH with respect to any action COAH may take**

**under this escrow agreement with the exception of liabilities, losses or damages solely caused by negligent acts, omissions, errors or willful misconduct by COAH.**

**6. Records and Accounts**

The Bank shall keep accurate financial records and accounts of all transactions relating to the Account, including but not limited to all deposits to the Account, disbursements from the Account and interest earned on the account which shall be made available for inspection by COAH and (municipality), or their respective designees, at any reasonable time. (Municipality) shall provide COAH with reports on an annual basis which set forth the amount, date and description of all activity from the Account as well as other information COAH may require to monitor the Account.

**7. Notices**

All notices, certificates or other communications hereunder shall be delivered by hand or mailed by certified mail to the parties at the following addresses:

a. If to COAH: Shirley M. Bishop  
Executive Director  
New Jersey Council on Affordable Housing  
101 South Broad Street  
PO Box 813  
Trenton, NJ 08625-0813

b. If to Municipality: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. If to Bank: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any of the parties may hereby designate different or additional addresses by notice in writing given to the other parties.

**8. Further Assistance**

The parties hereto shall authorize, execute, acknowledge and deliver such further resolutions, assurances and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights and interests granted hereunder.

**9. Agreement Subject to Act**

This agreement is subject to the Fair Housing Act and the rules of COAH set at N.J.A.C. 5:93-8.1 et seq., and nothing contained herein shall be interpreted so as to limit or restrict in any way the discretion and authority vested in COAH by the Act or rules.

**10. Amendments**

This agreement may not be amended, supplemented or modified except by a written instrument executed by all the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date set forth above.

\_\_\_\_\_  
Date

\_\_\_\_\_  
on behalf of (municipality)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Shirley M. Bishop, Executive Director  
on behalf of the New Jersey Council on Affordable  
Housing (COAH)

\_\_\_\_\_  
Date

\_\_\_\_\_  
on behalf of (bank)

## Credits without Controls Application

The Fair Housing Act and the regulations of the Council on Affordable Housing (COAH) state that a municipality is entitled to a one-for-one credit for housing that was built by the private market without governmental assistance that was;

1. issued a certificate of occupancy (CO) between April 1, 1980 and December 15, 1986;
2. certified to be in sound condition as the result of an exterior survey by a licensed construction code official;
3. occupied by a household whose income does not exceed that of a moderate income household (less than 80 percent of median) and certified to same in writing under penalty of perjury; and
4. affordable to income eligible households at the time the municipality files its petition for substantive certification.

For municipalities that are considering such an application, COAH has developed procedures and forms to assist them in the process and to implement P.L. 1985, c. 222 sec. 7 and N.J.A.C. 5:93-3.2(b).

The packet contains:

1. draft cover letter to be sent to designated households
2. model or draft affordable housing questionnaire which includes certification by household member and a worksheet to assist in calculating total household income
3. exterior survey form.

### MUNICIPAL RESPONSIBILITIES:

- A. The municipality will designate a contact person within the municipality who will be responsible for the administration of the program. The municipal person will be responsible for:
  1. preparing the list of housing that was constructed between April 1, 1980 and December 15, 1986;
  2. forwarding the list to COAH;
  3. answering all questions from the public;
  4. keeping municipal representative informed as to the status of the program;
  5. having licensed code official(s) perform exterior inspections;
  6. requesting COAH to calculate sales prices and rents based on the types of eligible housing;
  7. arranging for comparables for eligible housing;
  8. compiling three comparables for eligible housing and averaging same; and
  9. forwarding tabulated list to COAH for review and certification.

- B. The municipality will prepare a list of housing which received a CO between April 1, 1980 and December 15, 1986 based upon construction official records or tax assessor records. The list which should be ordered numerically by block and lot, will include street address, date of the CO and any additions to the unit.
- C. The municipality will reproduce the questionnaire, including the worksheet and cover letter provided by COAH, and mail or deliver to those households on the list. The municipality will also provide a mailing label and/or return self-addressed envelope for the form which will be mailed directly to COAH.
- D. Following the 30-day date for return of the completed forms, COAH will provide the list of income eligible households to the municipality. The municipality will then arrange for the inspection of eligible housing by a licensed construction code official. Based upon an exterior survey, the construction official will certify housing that is in sound condition.
- E. The municipality will request that COAH calculate applicable for-sale prices and rents based on the eligible housing types.
- F. The municipality will provide three comparables of arms-length, closed sale transactions similar to the eligible housing to assess if a for-sale house is affordable.

#### COAH RESPONSIBILITIES

- A. COAH will provide an informational cover letter that the municipality will mail to owners of housing that was constructed between April 1, 1980 and December 15, 1986. COAH will also provide a questionnaire with a household certification and worksheet to assist the household in calculating gross household income. There will be a municipal code on the outside of the envelope to assist COAH in sorting forms.
- B. COAH will review the household income data and prepare a list of all income-eligible households by address. The list, which will be ordered numerically by block and lot, will include an assigned COAH unit number, date of CO, number of bedrooms, address of unit and any additions to the unit. COAH will forward the list to the designated municipal representative for an exterior survey of eligible units.
- C. COAH will calculate eligible sales prices at the time of the filing of the petition as per N.J.A.C. 5:93-7.4(e) and forward the calculations to the municipality.
- D. COAH will calculate eligible rents including a tenant-paid utility allowance at the time of the filing of the petition as per N.J.A.C. 5:93-7.4(f).
- E. After all information has been forwarded to COAH for review, COAH will provide the municipality with the number of units that meet the criteria in N.J.A.C. 5:93-3.2(b).

# Credits without Controls

## Frequently Asked Questions

### 1. Why was I selected to receive this survey when my neighbors were not?

Every resident in your municipality whose home or apartment received a certificate of occupancy between April 1, 1980 and December 15, 1986 and whose property is assessed at \$(\_\_\_\_\_) or less has been selected to complete this survey by your municipality.

### 2. If I fill out this survey does this mean more affordable units will be built in my municipality?

No. Your completion of the survey may have the exact opposite effect. All municipalities in New Jersey are obligated to provide their fair share of affordable housing. This survey will simply document the housing stock that exists in your community. COAH can then make a determination as to what housing may receive COAH credit. Each credit means one less house that your community must provide in the future.

### 3. How will I benefit if I complete the survey?

Each affordable housing credit that your municipality earns, means one less affordable house that the taxpayers must provide at a potential cost of \$20,000 per unit. Completing the survey may save you future property tax dollars.

### 4. What is COAH?

COAH refers to the Council on Affordable Housing which is part of the New Jersey Department of Community Affairs. This state agency is responsible for determining the number of affordable housing each municipality in New Jersey is obligated to provide. COAH will also determine how many affordable housing credits your municipality has earned from the survey.

### 5. Who can I call if I have other questions about the survey?

Please call our municipal hotline: (name of municipal contact person and phone number).

# Credits without Controls Draft Cover Letter

Date

Dear Householder:

The Affordable Housing Questionnaire, Worksheets and Certification that we are sending you are important parts of (municipality), (county), and the State of New Jersey's efforts to estimate the need for affordable housing in (municipality). By completing the questionnaire and certification, you will help (municipality) accurately count eligible credits that may reduce (municipality's) affordable housing obligation.

Please note that all information you provide will remain strictly confidential and will be used only by (municipality) and the New Jersey Council on Affordable Housing (COAH) for this one purpose. This information will not be available to the public or any other governmental agency.

Please take the time to fill out the questionnaire accurately and return your completed questionnaire and certification in the envelope provided within 30 days or no later than (date).

Please mark the envelope "CONFIDENTIAL" and mail to: Council on Affordable Housing, PO Box 813, Trenton, New Jersey 08625-0813.

If you have any questions, you may contact (name of municipal representative) at (phone number).

Thank you for your cooperation.

Sincerely,

Mayor

June 2001

# Sample Affordable Housing Survey

Block \_\_\_\_\_

Lot \_\_\_\_\_

Street Address \_\_\_\_\_

Municipality \_\_\_\_\_

**IMPORTANT:** THIS INFORMATION WILL REMAIN STRICTLY CONFIDENTIAL. IT WILL ONLY BE SEEN BY THE COUNCIL ON AFFORDABLE HOUSING (COAH). IT WILL NOT BE SEEN BY YOUR MUNICIPAL GOVERNMENT OR ANY OTHER GOVERNMENTAL AGENCY.

**THIS PART TO BE COMPLETED BY YOUR HOUSEHOLD BEFORE MAILING FORM BACK TO COAH**

## FOR HOMEOWNERS ONLY

If you own the home at the above address fill out 1 through 6 below

1. Name of householder preparing this form \_\_\_\_\_  
(A "householder" is a person who occupies the home)
2. The number of bedrooms in my home is \_\_\_\_\_
3. The number of people in my household is \_\_\_\_\_  
(This is the total number of people who live in the home)
4. Total gross annual income is (check one box): (gross means before taxes)

**\*\*Illustrative Only (Use COAH income limits for your county)\*\***

- |   |   |
|---|---|
| <input type="checkbox"/> \$37,482 and under **  | <input type="checkbox"/> \$57,831 - \$62,113 ** |
| <input type="checkbox"/> \$37,483 - \$42,837 ** | <input type="checkbox"/> \$62,114 - \$66,397 ** |
| <input type="checkbox"/> \$42,838 - \$48,191 ** | <input type="checkbox"/> \$66,398 - \$70,681 ** |
| <input type="checkbox"/> \$48,192 - \$53,546 ** | <input type="checkbox"/> \$70,682 and over **   |
| <input type="checkbox"/> \$53,547 - \$57,830 ** |   |

**If you need help calculating your income, please use the Voluntary Worksheet on last page.**

5. Is your home a mobile home?  Yes  No  
If yes, the monthly rental for the pad is: \$\_\_\_\_\_ per month.
6. Do you own real estate other than the property in which you reside?  Yes  No

**FILL OUT BELOW ONLY IF YOU ANSWERED YES TO QUESTION 6**

- A. My total income (See Line 22 of Schedule 1040 worksheet on last page) is \_\_\_\_\_.
- B. What is net value of the other real estate you own (Net value equals market value minus outstanding mortgage debt)?

\_\_\_\_\_

(If need more space-please use back of form)

**\*\* Total income does include:**

Annual salary (including scheduled overtime); bonuses & tips; Social Security checks; unemployment checks; welfare, disability & pension benefits; alimony & child support payments; annual interest income from savings accounts, CDs, stocks, bonds, money market & trust funds (show only interest, not principle); annual income from businesses (not stocks & bonds) owned by household members.

**\*\* Total income does not include:**

Food stamps; payments for care of foster children; personal property such as automobiles and

your own home; relocation assistance programs; scholarships; student loans; lump sum additions to family assets (such as inheritances, lottery winnings and insurance settlements); payments or credits received under the home energy assistance programs; income of live-in attendants. IRA or annuity programs are not included as income until payments are actually received by a household member.

### FOR RENTERS ONLY

**If you are a tenant fill out 1 through 8 below**

1. Name of householder preparing this form \_\_\_\_\_  
(A "householder" is a person who occupies the home)
2. The number of people in my household is \_\_\_\_\_  
(This is the total number of people who live in the home)
3. Total gross annual income is (check one box): (gross means before taxes)

**\*\*Illustrative Only (Use COAH income limits for your county)\*\***

- |   |   |
|---|---|
| <input type="checkbox"/> \$37,482 and under **  | <input type="checkbox"/> \$57,831 - \$62,113 ** |
| <input type="checkbox"/> \$37,483 - \$42,837**  | <input type="checkbox"/> \$62,114 - \$66,397 ** |
| <input type="checkbox"/> \$42,838 - \$48,191 ** | <input type="checkbox"/> \$66,398 - \$70,681 ** |
| <input type="checkbox"/> \$48,192 - \$53,546 ** | <input type="checkbox"/> \$70,682 and over **   |
| <input type="checkbox"/> \$53,547 - \$57,830 ** |   |

**If you need help calculating your income, please use the Voluntary Worksheet on last page.**

4. The number of bedrooms in my rental unit is \_\_\_\_\_
5. The monthly rent paid to the landlord is \$ \_\_\_\_\_
6. All utilities are included in monthly rent?  Yes  No
7. Check the box for any utility that your household pays separately.  
 Gas  Electric  Oil Heat  Water  Sewer  
 Other utilities
8. Do you own real estate other than the property in which you reside?  Yes  No  
If yes, please provide your exact total income and the net value of the real estate in the box below.

**FILL OUT BELOW ONLY IF YOU ANSWERED YES TO QUESTION 8**

- A. My total income (See Line 22 of Schedule 1040 worksheet on last page) is \_\_\_\_\_.
- B. What is net value of the other real estate you own (Net value equals market value minus outstanding mortgage debt)?  
\_\_\_\_\_.

(If need more space-please use back of form)

- \*\* Total income does include:**  
Annual salary (including scheduled overtime); bonuses & tips; Social Security checks; unemployment checks; welfare, disability & pension benefits; alimony & child support payments; annual interest income from savings accounts, CDs, stocks, bonds, money market & trust funds (show only interest, not principle); annual income from businesses (not stocks & bonds) owned by household members.

**\*\* Total income does not include:**

Food stamps; payments for care of foster children; personal property such as automobiles and your own home; relocation assistance programs; scholarships; student loans; lump sum additions to family assets (such as inheritances, lottery winnings and insurance settlements); payments or credits received under the home energy assistance programs; income of live-in attendants. IRA or annuity programs are not included as income until payments are actually received by a household member.

**ALL RESPONDENTS MUST FILL OUT THIS SECTION**

I understand that this information will be used to help (name of municipality) meet its affordable housing needs and that the information provided will remain strictly confidential. I certify that the information I have provided is true, accurate and complete, under penalty of **N.J.S.A. 2C:21-3.\***

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(street address)

\_\_\_\_\_  
(telephone number)

\_\_\_\_\_  
(city, state and zip code)

**After completing and signing, please mail survey in the stamped self-addressed envelope provided. Thank you very much. This information will remain strictly confidential. If you have any questions, please do not hesitate to call (name of municipal contact person and telephone number).**

**\*N.J.S.A. 2C:21-3, which applies to this certification, declares it to be a disorderly person offense to knowingly make a false statement or give false information as part of a public record.**

**VOLUNTARY INCOME WORKSHEET, IF YOU NEED IT**

Please fill in the blanks below to calculate your total household income. Be sure to include information for every member of your household over the age of 18 who is not a full-time student. If you have any questions regarding this worksheet, please call (name of contact person) at (telephone number).

1. Annual salary (including scheduled overtime), bonuses & tips	\$
2. Social security checks, unemployment checks, welfare, disability & pension income	\$
3. Alimony & child support payments received	\$
4. Annual interest income from savings accounts, CDs, stocks, bonds, money market & trust funds (show only interest, not principal)	\$
5. Annual income from businesses (not stock & bonds) owned by household members	\$
<b>TOTAL</b>	<b>\$</b>