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SUPREME COURT
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SUPREME COURT OF NEW JERSEY
NOTICE OF MOTION

**IN THE MATTER OF THE ADOPTION
OF N.J.A.C. 5:96 AND 5:97 BY
THE NEW JERSEY COUNCIL ON
AFFORDABLE HOUSING**

Supreme Court Docket
No. 67,126

On petition for certification
to:

SUPERIOR COURT
APPELLATE DIVISION

Docket No. A-5451-07T3

(Consolidated at the Appellate
Division under Lead Docket No.
A-5382-07T3)
CIVIL ACTION

On Appeal from the Council on
Affordable Housing

To: Mark Neary, Clerk
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 W. Market Street
P.O. Box 970
Trenton, NJ 08625-0970

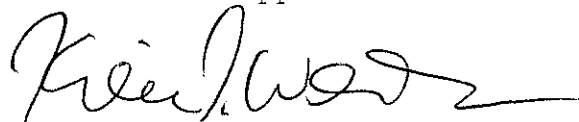
Geraldine Callahan, D.A.G.
State of New Jersey
Office of the Attorney General
Division of Law
25 Market St., P.O. Box 112
Trenton, NJ 08625

Service List

PLEASE TAKE NOTICE that, Petitioner Fair Share Housing Center, through the undersigned counsel will apply to the Supreme Court of New Jersey, on a Motion to Enforce Litigant's Rights.

PLEASE TAKE FURTHER NOTICE that in support of this motion, appellant will rely upon the enclosed brief with appendix.

Dated: 10/31/2014



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SUPREME COURT
CLERK'S OFFICE

IN THE MATTER OF THE ADOPTION
OF N.J.A.C. 5:96 AND 5:97 BY
THE NEW JERSEY COUNCIL ON
AFFORDABLE HOUSING

SUPREME COURT DOCKET NO. 67,126

Docket No.: A-5451-07T3
Lead Docket Number A-5382-07T3

CIVIL ACTION

On Appeal from the Council on
Affordable Housing, with a
remand in In re N.J.A.C. 5:96
and 5:97, 416 N.J. Super. 462,
512 (App. Div. 2010), aff'd 215
N.J. 578 (2013)

BRIEF AND APPENDIX IN SUPPORT OF FAIR SHARE
HOUSING CENTER'S MOTION TO ENFORCE LITIGANT'S RIGHTS

Brief Table of Contents

I.	Introduction	1
II.	Facts and Procedural History.....	2
	A. Adoption and invalidation of Third Round rules	2
	B. The Supreme Court’s decision and subsequent order	3
	C. Proposal of New Regulations	4
III.	Legal Argument	7
	A. The Council on Affordable Housing has violated the Supreme Court’s September 26, 2013 decision and March 14, 2014 remand order. The Court should hold that COAH no longer protects municipalities from exclusionary zoning litigation	7
	B. As part of its order, the Court should offer general guidance to trial courts in three areas: (a) coordinating matters before specified judges; (b) developing the new methodology ordered by the Court through a rapid and clear process; and (c) ensuring fair notice and opportunity to be heard for all parties	13
IV.	Conclusion	19

Table of Authorities

<u>Abbott v. Burke</u> , 163 N.J. 95 (2000).....	7
<u>AMG Realty Co. v. Tp. of Warren</u> , 207 N.J. Super. 388, 394-97 (Law Div. 1984)	17
<u>Asbury Park Bd. Of Educ. v. New Jersey Dep’t of Educ.</u> 180 N.J. 109 (2004)	14
<u>Asbury Park Bd. Of Educ. v. New Jersey Dep’t of Educ.</u> 369 N.J. Super. 481 (App. Div. 2004).....	7
<u>East/West Venture v. Borough of Fort Lee</u> , 286 N.J. Super. 311, 323 (App. Div. 1996)	18
<u>Hills Development Company v. Bernards Township</u> , 103 N.J. 1 (1986)	11,13
<u>In re Adoption of N.J.A.C. 5:94 and 5:95</u> , 390 N.J. Super. 1 (App. Div. 2007)	2
<u>In re N.J.A.C. 5:96 and 5:97</u> , 416 N.J. 462 (2010).....	3,9,17

<u>In re N.J.A.C. 5:96 and 5:97, 215 N.J. 578 (2013)</u>	1,3,8,15,17
<u>In re Six Month Extension, 372 N.J.Super. 61 (App. Div. 2004)</u>	2,12
<u>Loigman v. Committee of Middletown, 308 N.J. Super 500 (App. Div. 1998)</u>	7
<u>Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359, 364 (Law Div. 1984)</u>	18
<u>P.T. v. M.S., 325 N.J. Super 193 (App. Div. 1999)</u>	7
<u>Southern Burlington County N.A.A.C.P. v. Tp. of Mount Laurel, 92 N.J. 158 (1983)</u>	passim
<u>N.J.S.A. 52:27D-301 to 329.19</u>	2
<u>N.J.S.A. 52:27D-312</u>	16
<u>N.J.S.A. 52:27D-313</u>	1
<u>N.J.S.A. 52:27D-313(a)</u>	12,18
<u>N.J.S.A. 52:27D-314</u>	18
<u>N.J.S.A. 52:27D-316(b)</u>	12
<u>N.J.S.A. 52:27D-317</u>	12
<u>N.J.S.A. 52:27D-318</u>	12
<u>N.J.S.A. 52:27D-319</u>	12
<u>N.J.A.C. 5:93 App. A</u>	15
<u>N.J.A.C. 5:94 App. A</u>	15
<u>N.J.A.C. 5:97 App. A</u>	15
<u>N.J.A.C. 5:98</u>	5
<u>N.J.A.C. 5:99</u>	5
46 <u>N.J.R. 924(a)</u>	5
36 <u>N.J.R. 5895(a)</u>	2
40 <u>N.J.R. 2690(a)</u>	3
<u>R. 1:10-3</u>	7,13,14
<u>R. 4:38-1; Administrative Office of the Courts, Directive #08-12 (2012)</u>	14

http://www.state.nj.us/oal/rules/schedule/ (last accessed Oct. 27, 2014)	9
https://www.judiciary.state.nj.us/civil/Designated_Mount_Laurel_Judges_Roster.pdf (last accessed Oct. 27, 2014)	15
http://www.nj.gov/dca/services/lps/hss/meetings.html (last accessed Oct. 31, 2014)	11

Abbreviations for Citations to Appendix

Movant Fair Share Housing Center's Appendix Supporting Motion to Enforce Litigants' Rights	Ma
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Appendix Table of Contents

March 14, 2014 Supreme Court Order on New Jersey Council on Affordable Housing Order seeking an extension of time for the promulgation of Third Round Rules in <u>In re N.J.A.C. 5:96 and 5:97</u>	1-9
June 14, 2014 Certification of Kevin D. Walsh, Esq. in support of Petitioner's Supreme Court Motion to Enforce Litigants' Rights	10-11
March 13, 2014 Certification of Richard E. Constable, III, Commissioner of the Department of Community Affairs in support of the Council on Affordable Housing's motion for an extension of time	12-18
March 7, 2014 Appellate Division Order Granting Motion to Enforce Litigants' Rights in <u>In re N.J.A.C. 5:96 and 5:97</u>	19-23
January 28, 2014 Retention Agreement between the State of New Jersey, Department of Law and Public Safety, Division of Law and Dr. Robert W. Burchell	24-31
Excerpts of April 30, 2014 Transcript of the New Jersey Council on Affordable Housing Public Meeting	32-34
October 20, 2014 Transcript of the New Jersey Council on Affordable Housing Public Meeting	35-47
October 20, 2014 Agenda of the New Jersey Council on Affordable Housing Public Meeting	48-49
Office of Administrative Law Rule Publication Schedule	50-52
Multicounty Litigation Guidelines, Directive	53-57

#08-12
October 30, 2014 Certification of Kevin D.
Walsh, Esq. in support of Petitioner's Supreme
Court Motion to Enforce Litigants' Rights..... 58-81
September 9, 2014 Supreme Court Order denying
Fair Share Housing Center's June 14, 2014
Motion to Enforce Litigant's rights..... 82

I. Introduction

In March, this Court laid out a clear timeline for the Council on Affordable Housing (COAH) to adopt Third Round regulations as ordered by this Court, and stated that if that timeline was not met, the Court "will entertain applications for relief in the form of a motion in aid of litigants rights, including but not limited to a request to lift the protection provided to municipalities through N.J.S.A. 52:27D-313." At a meeting on October 20, 2014, two days before the October 22, 2014 deadline referenced in the March order requiring publication of rules in the New Jersey Register by November 17, 2014, COAH failed to adopt Third Round regulations. That meeting concluded with the board establishing no plan of action to address the Court's mandate, and COAH has no further meetings scheduled in 2014.

At this point, the Court is left with little choice. Given the State's complete failure to comply with the Court's Orders, particularly viewed in light of 15 years of "the limbo in which municipalities, New Jersey citizens, developers, and affordable housing interest groups have lived for too long," In re N.J.A.C. 5:96 and 5:97, 215 N.J. 578, 620 (2013), FSHC moves for the relief the Court stated it would consider at this juncture. FSHC respectfully requests that the Court "lift the protection provided to municipalities through N.J.S.A. 52:27D-313" and order that "actions may be commenced on a case-by-case basis before the Law Division or in the form of 'builders remedy' challenges."

II. Facts and Procedural History

A. Adoption and invalidation of Third Round rules.

The Fair Housing Act of 1985 ("FHA"), N.J.S.A. 52:27D-301 to -329.19 requires COAH to adopt regulations to implement the state's constitutional Mount Laurel obligations addressing the housing needs of low- and moderate-income households. Southern Burlington County v. Tp. of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II). COAH's Third Round originally was due to begin when the Second Round ended in 1999. In re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1, 11 (App. Div. 2007). When the Second Round concluded, however, COAH had not yet proposed Third Round regulations. In 2004, the Appellate Division held that COAH's failure to adopt regulations was "dramatic and inexplicable," and ordered that if COAH failed to adopt rules matters before COAH would be returned to the trial courts. In Re Six Month Extension, 372 N.J. Super. 61, 95-96, 105 (App. Div. 2004).

COAH finally adopted Third Round regulations on December 20, 2004. 36 N.J.R. 5895(a). On January 25, 2007, the Appellate Division reversed these regulations because they did not comply with the Mount Laurel doctrine and FHA. In re 5:94 and 5:95, supra, 390 N.J. Super. at 32. Noting that "[t]ime . . . is critical," the Appellate Division ordered COAH to revise the rules "within six months." Id. at 88.

COAH did not meet the July 25, 2007 deadline and repeatedly moved for, and received, extensions. On May 6, 2008, nine years

after the expiration of the Second Round, COAH adopted a second set of Third Round regulations, 40 N.J.R. 2690(a). On October 8, 2010, the Appellate Division invalidated the second set of Third Round regulations. In re N.J.A.C. 5:96 and 5:97, 416 N.J. Super. 462, 511-12 (App. Div. 2010). Noting "that more than ten years have now elapsed since expiration of the second round rules," the Appellate Division remanded the matter to COAH with a "straightforward" remedy: "determine prospective need by means of a methodology similar to the methodologies used in the prior round rules," within a five month timeframe. Id. at 511.

B. The Supreme Court's decision and subsequent order.

On March 29, 2011, the Supreme Court granted petitions for certification filed by multiple petitioners. At oral argument on November 14, 2012, the State advised the Court that it would take 30 days to prepare revised Third Round regulations if required to do so pursuant to the Appellate Division's order. Mall. The Supreme Court on September 26, 2013 affirmed the decision below and "endors[ed] the Appellate Division's quick deadline for reimposing third-round obligations based on the previous rounds' method of allocating fair share obligations among municipalities." In re N.J.A.C. 5:96 and 5:97, supra, 215 N.J. at 620.

On December 13, 2013, when it became apparent that COAH would not meet the five-month deadline, FSHC filed a Motion to Enforce Litigants' Rights. On February 26, 2014, the deadline for COAH to adopt new rules, COAH filed a motion for an extension with this

Court, supported by a certification by DCA Commissioner Richard Constable that did not mention a single task that COAH had accomplished between September 2013 and February 2014 related to the Court's remand. Ma14. Indeed, as later became clear through documents obtained in July 2014 through Open Public Records Act litigation, the State did not even enter into a contract with its primary consultant on rule development until February 6, 2014, more than four months after this Court's decision and just 20 days before the February 26 deadline. Ma24.

On March 7, 2014 the Appellate Division granted FSHC's Motion to Enforce Litigants' Rights requiring a strict timeline for COAH to adopt regulations with additional relief should COAH fail to comply with the order. Ma19-22. On March 14, 2014, the Court vacated the Appellate Division's March 7, 2014 order, granted COAH's February 26 motion for an extension, and established a timeline for COAH to propose and adopt new regulations. Ma1-9. The Court further stated that if COAH failed to comply with that order it would "entertain applications for relief in the form of a motion in aid of litigants' rights, including but not limited to a request to lift the protection provided to municipalities through N.J.S.A. 52:27D-313." Ma9.

C. Proposal of New Regulations

On April 30, 2014, almost fifteen years after the expiration of the Second Round, COAH held its first meeting in almost a year.

The COAH Board voted to propose N.J.A.C. 5:99 Substantive Rules and N.J.A.C. 5:98 Procedural Rules, which were drafted largely by outside consultants hired and supervised by the Attorney General's office. Ma24-31. The COAH Board was provided the proposed rules 24 hours in advance of the meeting. Ma33. The rules were formally proposed in the New Jersey Register on June 2, 2014, with a number of substantive differences from the rules actually voted on by the COAH Board. 46 N.J.R. 924(a).

The proposed rules are vastly different from the Prior Round regulations that this Court ordered COAH to use. On these grounds, FSHC filed a Motion to Enforce Litigants' Rights June 17, 2014. The Court denied this motion on September 9, 2014. Ma82.

The published rules were the subject of a comment period that concluded August 1, 2014. COAH received approximately 3000 comments on the proposed rules. Ma41.

On October 20, 2014, COAH held a public meeting with three agenda items, including the adoption of N.J.A.C. 5:99 Substantive Rules and N.J.A.C. 5:98 Procedural Rules. Ma48. Following public comments in opposition to the adoption of the regulations, COAH Board members made a motion that the Board go into an unscheduled executive session to discuss the adoption with the Board's attorneys. Ma40.

Following the executive session, when the agenda item on rule adoption came up, Board member John Winterstella moved that the adoption of the new regulations be tabled for 60 days.

Winterstella stated that "this in my opinion is not a resolution that will allow us to meet the requirements of the Supreme Court." Ma42. Winterstella sought further time to modify the regulations so that they would "meet the needs of our citizens of New Jersey and that comply with the Supreme Court rules as put forth and directed by the Supreme Court." Ma41. The vote on the motion to table adoption was 3-3 and thus failed. Ma45.

COAH's Acting Executive Director Sean Thompson then introduced a resolution to adopt the regulations. Thompson stated that the resolution, which was not shared with the public, "includes a list of agency initiated non-substantial changes that do not necessitate further public comment," but he did not propose any substantive amendments. Ma44. New Jersey Housing and Mortgage Finance Agency Executive Director Anthony Marchetta (an ex officio COAH Board member) moved to adopt the regulations. Ma44. The Board again voted 3-3, failing to adopt the regulations in time to be transmitted to the Office of Administrative Law (OAL) for publication in the November 17, 2014 New Jersey Register. MA44-45. Upon failing to pass the adoption resolution, the Board without further comment moved on to the next agenda item. Ma45. The Board once again went into executive session towards the end of the meeting, but took no further action and offered no further comment after coming out of executive session. Ma47.

This motion to enforce litigants' rights followed.

III. Legal Argument

- A. The Council on Affordable Housing has violated the Supreme Court's September 26, 2013 decision and March 14, 2014 remand order. The Court should hold that COAH no longer protects municipalities from exclusionary zoning litigation.

FSHC files this motion to enforce litigants' rights pursuant to R. 1:10-3 and the specific provision in the Court's March 14, 2014 order permitting a motion to enforce litigants' rights in the event COAH fails to publish adopted rules by November 17, 2014. R. 1:10-3 provides litigants with a remedy when government agencies fail to carry out court orders. See, e.g., Abbott v. Burke, 163 N.J. 95 (2000) (R. 1:10-3 used to invalidate Department of Education's failure to properly implement preschool programs); Loigman v. Committee of Middletown, 308 N.J. Super. 500, 503 (App. Div. 1998) (R. 1:10-3 used to require municipal body to comply with Open Public Meetings Act). A court may grant relief in a motion in aid of litigants' rights that addresses an agency's failure to conform to a court order. Asbury Park Bd. of Educ. v. N.J. Dep't of Educ., 369 N.J. Super. 481, 486 (App. Div.), aff'd in relevant part, 180 N.J. 109 (2004). A court should grant relief under R. 1:10-3 unless a party is incapable of compliance. See, e.g., P.T. v. M.S., 325 N.J. Super. 193, 218 (App. Div. 1999). Thus, R. 1:10-3 requires only a showing that a noncompliant party is capable of carrying out the order and did not do so.

The Court's September 26, 2013 decision directed that "COAH shall adopt regulations, as directed by the Appellate Division,

without delay," i.e. within five months. In re N.J.A.C. 5:96 and 5:97, supra, 215 N.J. at 586. The Court ordered that those regulations must be "based on the previous rounds' method of allocating fair share obligations among municipalities." Id. at 620. In granting in part COAH's motion for an extension of that five-month timeframe, this Court's March 14, 2014 order detailed a specific timeline for COAH to adopt the regulations. The Court required "that the Council shall adopt the proposed Third Round Rules on or before October 22, 2014" and required COAH to publish the adopted rules compliant with the Court's decision in the New Jersey Register on November 17, 2014. Ma3. The Court also specifically retained jurisdiction "for the sole purpose of entertaining any and all future applications to enforce the judgment of this Court requiring the adoption of new Third Round Rules as prescribed in our decision in In re Adoption of N.J.A.C. 5:96 and 5:97 and the terms of this Order." Ma4. The Court specifically anticipated what would happen if COAH did not comply with the remand instructions, writing:

It is further ORDERED that in the event that the Council does not adopt Third Round Rules by November 17, 2014, then this Court will entertain applications for relief in the form of a motion in aid of litigants' rights, including but not limited to a request to lift the protection provided to municipalities through N.J.S.A. 52:27D-313 and, if such a request is granted, actions may be commenced on a case-by-case basis before the Law Division or in the form of "builders remedy" challenges;

[Ma3-4.]

The Court's September 26, 2013 order, as modified by its March 14, 2014 order, unequivocally required COAH to adopt Third Round regulations using the Prior Round methodology by October 22, 2014 for publication in the New Jersey Register by November 17, 2014¹, and unequivocally stated the relief that would be considered via a motion to enforce litigants' rights should COAH fail to meet those deadlines. COAH was capable of complying with the order; four years from the Appellate Division's initial decision and more than a year from the Supreme Court's decision go well beyond the time reasonably needed to prepare a fair share methodology. As the Appellate Division noted, "the mandate of this opinion for COAH's adoption of new revised third round rules is straightforward: determine prospective need by means of a methodology similar to the methodologies used in the prior round rules. COAH should be able to comply with this mandate within five months without the assistance of a master or an army of outside consultants." In re 5:96 and 5:97, supra, 416 N.J. Super. at 475. COAH's counsel herself acknowledged at the 2010 Supreme Court oral argument that COAH could have revised regulations within 30 days. Mall.

¹The October 22, 2014 date remains the final deadline set by the Office of Administrative Law for rule adoption for the publication of rules in the November 17, 2014 New Jersey Register. Office of Administrative Law Rule Publication Schedule, <http://www.state.nj.us/oal/rules/schedule/> (last accessed Oct. 27, 2014).

Yet instead of performing the simple task that COAH represented to the Court it could complete in 30 days, consultants hired by the Attorney General's office developed a novel methodology that took eight months after this Court's decision to even propose. Ma33. The COAH Board, which was not involved in developing the methodology, Ma33, ultimately neither adopted that novel methodology, because there was not a majority of the Board that believed the methodology complied with the FHA and this Court's order, nor established any other way forward. At COAH's October 20 meeting, the COAH Board deadlocked 3-3 on a resolution to adopt the proposed rules. Ma45. Member John Winterstella, who first moved to table the resolution and then voted against the resolution, stated that to approve the regulations as proposed "is not sufficient to really move affordable housing in this state and protect the other issues. . . . We just - this in my opinion is not a resolution that will meet the requirements of the Supreme Court." Ma42. Similarly, member Tim Doherty recognized while voting down the resolution meant that "we'll be in violation of the Supreme Court direction" in terms of timing, the substance of the rules as proposed did not "comply with the Supreme Court rules as put forth and directed by the Supreme Court." Ma41. After the regulations were voted down, the Board went into executive session "regarding pending litigation referring to the proposed rules." Ma47. And despite the Board's clear understanding that to do nothing would be to violate this Court's order, the Board came

back out of executive session and promptly adjourned the meeting, without further discussing the rules, authorizing any further action by COAH staff or the Attorney General, or setting up any future meeting. Ibid. COAH has no meetings scheduled for the rest of 2014. See COAH Meeting Schedule <http://www.nj.gov/dca/services/lps/hss/meetings.html> (last accessed Oct. 31, 2014).

With COAH having failed to comply with the Court's order, the Court should provide the relief it suggested in its March 14, 2014 order. The Court should declare that municipalities are no longer protected from Mount Laurel litigation by COAH's administrative process and that Mount Laurel proceedings should now "commence[] on a case-by-case basis" in trial courts. This relief comports with the Court's prior decisions, which make clear that the courts will take remedial action in the face of intractable delays in Mount Laurel enforcement. See, e.g., Mount Laurel II, supra, 92 N.J. at 213, 290 (stating "We may not build houses, but we do enforce the Constitution," and criticizing inaction that lasted five years (1975-1980), about one-third of the time of current interruption in Mount Laurel compliance). Since the passage of the FHA, courts have recognized that if COAH does not fulfill its statutory duty, the proper remedy is to eliminate the requirement to exhaust administrative remedies before COAH. Hills Development Company v. Bernards Township, 103 N.J. 1, 23 (1986) (if the FHA "achieves nothing but delay, the judiciary will be forced to

resume its appropriate role"); Six Month Extension, supra, 372 N.J. Super. at 105 (stating that failure of COAH to adopt adequate rules on a timely basis "will, of course, free interested parties from the constraints that substantive certification imposes"). Indeed, the Court in its March 14 order appropriately suggested precisely this relief after 14 years of failed attempts to adopt compliant regulations, and gave COAH one final chance to come into compliance.

The relief the Court suggested also accords with case law and the FHA. This remedy originally derived from the role trial courts exercised after Mount Laurel II, supra, 92 N.J. at 290, when they provided the sole route for the enforcement of the Mount Laurel doctrine. The Legislature then structured the FHA to engraft the COAH process on top of the preexisting trial court compliance process, rather than supplanting that process altogether. See, e.g., N.J.S.A. 52:27D-313(a) (authorizing municipal filing of "an action for declaratory judgment granting it repose in the Superior Court"); N.J.S.A. 52:27D-316(b) (authorizing exclusionary zoning litigation upon exhaustion of administrative remedies); N.J.S.A. 52:27D-317 (authorizing exclusionary zoning litigation following grant of substantive certification); N.J.S.A. 52:27D-318 (providing that exhaustion requirement "automatically expires" if municipality does not proceed with COAH process and exclusionary zoning litigation proceeds); N.J.S.A. 52:27D-319 (allowing motion in trial court to be relieved from exhaustion requirement if COAH

does not act within six months of public interest or developer litigant filing an objection to municipal fair share plan). Thus, the FHA explicitly authorizes continuation of the role of trial courts initially established by Mount Laurel II. The FHA provides for exhaustion of administrative remedies before COAH only on the premise that COAH would efficiently and rapidly adjudicate these matters. See also Hills, supra, 103 N.J. at 41-42 (upholding COAH-related provisions in FHA in part because "it is a procedure that may be concluded much more quickly than ordinary Mount Laurel litigation since the time periods provided for are extremely short"). With COAH unable or unwilling to function in the time-sensitive matter the FHA envisioned, returning matters to the trial courts comports with both the letter and the intent of the FHA.

At this juncture, the potential relief mentioned by the Court in its March 14 order provides the only effective way to enforce the Mount Laurel doctrine and FHA, and this Court's prior orders. As such, the Court should grant the relief it suggested in its March 14 order.

- B. As part of its order, the Court should offer general guidance to trial courts in three areas: (a) coordinating matters before specified judges; (b) developing the new methodology ordered by the Court through a rapid and clear process; and (c) ensuring fair notice and opportunity to be heard for all parties.**

In granting R. 1:10-3 motions, courts have entered orders that specify details of implementation necessary to vindicate the

underlying purpose of R. 1:10-3, namely ensuring compliance with the previous court order. See, e.g., Asbury Park Bd. of Educ. v. Dept. of Education, 180 N.J. 109 (2004) (specifying details of implementation upon granting R. 1:10-3 motion). Thus, as part of its order granting this motion, the Court should offer general guidance to the trial courts for the adjudication of Mount Laurel matters in three main areas: the designation of Mount Laurel judges, the rapid development of a consistent methodology based upon the Court's prior order to utilize the Prior Round methodology, and an orderly process with adequate notice and opportunity to be heard for all parties.

First, the Court should consolidate proceedings for at least the initial stage of developing a fair share methodology to maximize judicial efficiency. The courts have broad discretion on how to manage cases involving "common, recurrent questions of law and fact so as to promote "the efficient utilization of judicial resources." R. 4:38-1; Administrative Office of the Courts, Directive #08-12 (2012), Ma53-57. Since 1983, the Law Division has included judges designated as Mount Laurel judges. Initially, the Supreme Court in Mount Laurel II designated three Law Division judges to hear all Mount Laurel cases throughout the state. See Mount Laurel II, *supra*, 92 N.J. at 216; Hills, *supra*, 103 N.J. at 64-65 (recognizing success of this approach). Shortly after the passage of the FHA, the judiciary replaced the three designated

judges with designated judges in each vicinage to hear Mount Laurel cases.²

For judicial efficiency and consistent implementation statewide, the Court should consider designating a small number of judges, at least for an initial period to ensure development of a consistent statewide and regional methodology. Mount Laurel and the FHA requires assessment of need at a regional level. In re 5:96 and 5:97, supra, 215 N.J. at 613. Thus, for example, in Burlington, Camden, and Gloucester Counties, which constitute one COAH Region³, it would be most efficient for one judge to adjudicate the same regional numbers. And courts must also coordinate methodology across regions to determine what each region's share is of statewide population projections. Ibid. (noting that FHA requires the present and prospective need to be estimated "at both 'State and regional levels'").

As such, the Court should designate a small number of judges to conduct proceedings that result in short order in a methodology applicable within all housing regions of the state. The Court

²Designated Mount Laurel Judges by Vicinage, See https://www.judiciary.state.nj.us/civil/Designated_Mount_Laurel_Judges_Roster.pdf (last accessed Oct. 27, 2014).

³Since the adoption of the Second Round rules in 1994, COAH has in every version of rules it has adopted allocated counties to regions as follows: Region 1: Bergen, Passaic, Hudson and Sussex; Region 2: Essex, Morris, Union and Warren; Region 3: Middlesex, Somerset and Hunterdon; Region 4: Monmouth, Ocean and Mercer; Region 5: Camden, Gloucester and Burlington; Region 6: Atlantic, Cape May, Cumberland and Salem. N.J.A.C. 5:93 App. A; N.J.A.C. 5:94 App. A; N.J.A.C. 5:97 App. A.

could then either have these judges continue to hear cases on the implementation of these fair share numbers, as happened effectively after Mount Laurel II, or return those cases back to vicinage Mount Laurel judges at that time. That said, nothing bars the relief sought in this motion from occurring under the current Mount Laurel judges at the vicinage level should the Court deem that process most desirable.

Second, the Court should reiterate that trial courts should follow the approach that the Court previously ordered COAH to use, but COAH failed to employ. The trial judges appointed to adjudicate Mount Laurel matters should be directed to follow the Court's and the Appellate Division's directive to use the Prior Round methodology, which has been proven to work. Changes to the Prior Round methodology and rules should be allowed only to the extent required by statutory changes since COAH adopted the Prior Round rules in 1994 (e.g. the statutory elimination of regional contribution agreements, N.J.S.A. 52:27D-312). Indeed, two planners who are recognized experts in Mount Laurel matters, one of whom was retained by FSHC, have already performed the necessary calculations for implementing the required methodology for the next decade. Ma58-59. The expert retained by FSHC, David N. Kinsey, PhD, FAICP, PP, prepared a report that was submitted to COAH during the recent failed Third Round rulemaking effort. Ma60-81. The trial courts should consider those and any other analyses by experts retained by litigants; of course all such

analyses should be subject to challenge by other parties and evaluation by the trial courts. The trial courts can and should establish a briefing and hearing schedule to finalize the methodology within 90 days so as to ensure there are no further harmful delays. The hearings that trial courts held to devise what became the Prior Round methodology after Mount Laurel II provide a useful precedent. See AMG Realty Co. v. Tp. of Warren, 207 N.J. Super. 388, 394-97 (Law Div. 1984). Indeed, the task at hand now is much simpler given that those courts operated on a blank slate without any existing methodology.

Third, and finally, the Court should direct that litigation proceed with the dispatch needed to end what the Court termed the "limbo in which municipalities, New Jersey citizens, developers, and affordable housing interest groups have lived for too long," In re N.J.A.C. 5:96 and 5:97, supra, 215 N.J. at 620. Trial courts can and should aim to substantially complete proceedings in the first six months following the calculation of regional need. To this end, the Court should reject any calls for blanket immunity or stays for municipalities from public interest and builder litigation. Trial courts should adjudicate motions for temporary immunity or stays on a case-by-case basis based on the facts of the particular municipality and its record in meeting its Prior Round obligation and making progress towards its Third Round obligation. See generally In re 5:96 and 5:97, 416 N.J. Super. at 512 ("[W]e decline to issue a blanket stay of proceedings before

COAH or in the courts pending completion of the remand to COAH. . . . Any [stay] application should be decided in light of the status of the individual municipality's compliance with its affordable housing obligations and all other relevant circumstances."). If temporary immunity or a stay is granted, it should be of short duration and issued only on terms that assure that it will not become a device for postponement or evasion of municipal compliance.

All Mount Laurel proceedings have the potential to foreclose the rights of lower-income people and developers willing to build homes they can afford. See, e.g., Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359, 364 (Law Div. 1984) (discussing preclusive effect of Mount Laurel litigation). As such, all actions must be conducted with adequate attention to considerations of fairness and due process, especially those in which a municipality seeks immunity or a stay. N.J.S.A. 52:27D-313(a) requires newspaper notice of a municipal petition before COAH; N.J.S.A. 52:27-314 provides that any person may file an objection to any such petition. Courts generally have followed suit in requiring notice and an opportunity to be heard. See, e.g., East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 323 (App. Div. 1996). The Court should make clear that adequate notice, e.g. newspaper notice, and an opportunity to be heard are required in any and all exclusionary zoning actions.

This Court should lay out the basic principles of (1) appointing a smaller number of judges to adjudicate at least the initial methodology or otherwise coordinating among the existing vicinage-level Mount Laurel judges; (2) providing for expeditious return to the Prior Round methodology ordered by the Court with deviations only as required by statutory change; and (3) providing adequate notice and opportunity to be heard to all parties and determination by the trial courts of the most effective way to proceed on a case-by-case basis. Trial courts can then move forward expeditiously to adjudicate Mount Laurel litigation.

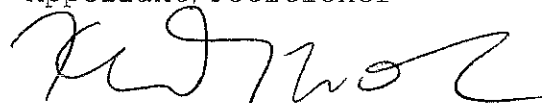
IV. Conclusion

For the foregoing reasons, FSHC respectfully requests that this Court find that COAH has not complied with its order. There are few, if any, instances of this level of noncompliance with a court order in New Jersey's modern history. After fourteen years of delay, multiple orders to adopt rules, and, most recently, an extension of nearly twice the original time for the remand in this matter with nothing to show for it, it is no longer possible to trust that COAH can or will faithfully implement the Mount Laurel doctrine. This should be the end; there should be no more extensions, no further last chances. The Court should order the relief it suggested would be available should this day come to pass in order to vindicate its authority and ensure that the rule of law prevails.

The Court thus should lift COAH's protection from Mount Laurel litigation and allow actions to proceed in the Law Division. The Court can largely leave the details of such actions to trial courts, which have decades of experience in such matters. The Court should provide general guidance to the trial courts on the number of and coordination among Mount Laurel judges; the need for a consistent methodology to be developed within 90 days that implements this Court's prior orders; and adequate notice and opportunity to be heard for all parties on any filing, especially those that would foreclose other parties' rights, to ensure that trial courts can adjudicate on a case-by-case basis the most effective route to secure compliance with this Court's orders.

Dated: 10/31/2014

Respectfully submitted,
FAIR SHARE HOUSING CENTER
Attorneys for
Appellant/Petitioner



Kevin D. Walsh, Esq.

On the brief:

Peter J. O'Connor, Esq.
Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.

SUPREME COURT OF NEW JERSEY
M-847/848 September Term 2013
067126

IN THE MATTER OF THE ADOPTION OF N.J.A.C.
5:96 AND 5:97 BY THE NEW JERSEY COUNCIL ON
AFFORDABLE HOUSING

FILED

O R D E R

MAR 14 2014


CLERK

This matter having come before the Court on motion by the Council on Affordable Housing (Council) seeking an extension of time (M-847-13) from the five-month period for the promulgation of Third Round Rules that this Court directed as part of its holding in In re Adoption of N.J.A.C. 5:96 and 5:97, 215 N.J. 578 (2013); and

The Council having submitted the sworn certification of its Chairman, the Commissioner of Community Affairs, Richard E. Constable, III, see N.J.S.A. 52:27D-305; and

The Chairman, having informed this Court that work has progressed on the development of new Third Round Rules so that he has certified, based on personal knowledge, that a proposed set of Third Round Rules will be approved by the Council by May 1, 2014, or earlier, for publication in the New Jersey Register, as prescribed in the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 to -15; and

This Court having accepted the representation of the Council, certified by its Chairman; that the Council requires

additional time to complete its preparation and formal approval of new proposed Third Round Rules for publication; and

The Court further having accepted the representation of the Council, certified by its Chairman, that the Council will complete its preparation of a Third Round Rules proposal and will approve for publication the proposed new Third Round Rules by May 1, 2014; and

The Court having also received and considered the answers submitted by the other parties in response to the Council's motion for an extension of time as well as the moving papers and answers filed in connection with the Council's motion for stay (M-848-13);

Therefore, it is ORDERED that the motion for an extension of time is granted, subject to the following conditions:

The Council shall, by May 1, 2014, complete its actions preparing and formally approving the proposed Third Round Rules as required by this Court's decision in In re Adoption of N.J.A.C. 5:96 and 5:97;

The Council shall promptly forward the proposed rules to the Office of Administrative Law (OAL), in accordance with the OAL's Rule Publication Schedule, available at <http://www.state.nj.us/oal/rules/schedule/>, so that the proposed rules are published in the June 2, 2014, edition of the New Jersey Register;

The publication of the proposed rules shall commence the following schedule, pursuant to which the Council shall complete the adoption process:

The comment period shall extend to August 1, 2014, during which time the Council shall conduct a public hearing, if such a request is made to the Council within thirty (30) days following publication of the proposed Third Round Rules in the New Jersey Register; and

The Council shall adopt the proposed Third Round Rules on or before October 22, 2014, and transmit the adopted Third Round Rules to the OAL to permit publication of the adoption notice in the November 17, 2014, edition of the New Jersey Register. The adopted Third Round Rules transmitted to the OAL shall be accompanied by a report prepared by the Council listing all parties offering written or oral comments concerning the proposed Third Round Rules, summarizing the content of all comments and submissions, and providing the Council's response to the data, views, and argument contained in the submissions as required by N.J.S.A. 52:14B-4(a)(4).

It is further ORDERED that in the event that the Council does not adopt Third Round Rules by November 17, 2014, then this

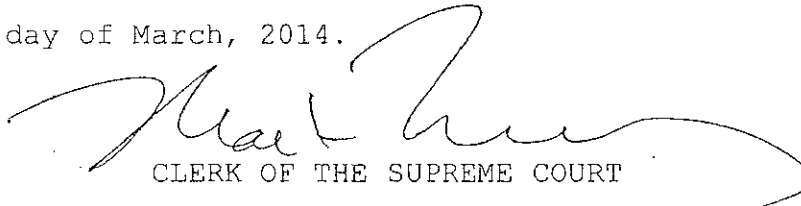
Court will entertain applications for relief in the form of a motion in aid of litigants' rights, including but not limited to a request to lift the protection provided to municipalities through N.J.S.A. 52:27D-313 and, if such a request is granted, actions may be commenced on a case-by-case basis before the Law Division or in the form of "builders remedy" challenges; and

It is further ORDERED that the Appellate Division Order filed March 7, 2014, is vacated in its entirety; and

It is further ORDERED that from this date the Court is retaining jurisdiction for the sole purpose of entertaining any and all future applications to enforce the judgment of this Court requiring the adoption of new Third Round Rules as prescribed in our decision in In re Adoption of N.J.A.C. 5:96 and 5:97 and the terms of this Order; and

It is further ORDERED that the motion by the Council for a stay (M-848-13) of the March 7, 2014, Order of the Appellate Division, is dismissed as moot.

WITNESS, the Honorable Jaynee LaVecchia, Presiding Justice, at Trenton, this 14th day of March, 2014.



CLERK OF THE SUPREME COURT

JUSTICES LaVECCHIA, PATTERSON, and FERNANDEZ-VINA, and JUDGES RODRÍGUEZ and CUFF (both temporarily assigned) join in this Order. JUSTICE ALBIN filed a dissent. CHIEF JUSTICE RABNER did not participate.

JUSTICE ALBIN, dissenting.

The Court's order further postpones the building of affordable housing for the poor, housing that is required by our constitutional jurisprudence and the Fair Housing Act. For more than ten years, the Council on Affordable Housing (COAH or Council) has failed to promulgate lawful Third Round Rules to ensure that every municipality bears its fair share of providing affordable housing. This decade-long delay represents an abysmal failure of process, and the judiciary must accept its share of blame for not demanding timely compliance.

I write this dissent because the Court has failed to make the most basic inquiries to assure that the State has filed the request for an extension of time in good faith. I would have agreed to the extension request if the State had presented an adequate explanation, rather than amorphous excuses without meaningful details, for not abiding by this Court's September 26, 2013 directive. It is impossible to tell from the certification of Richard E. Constable, III, Commissioner of the Department of Community Affairs, whether any real effort was made to comply with the Court's order. The Court's granting of the State's eleventh-hour extension request on so paltry a record -- and its failure to demand answers that would explain the most recent delay -- will be disheartening to many.

History does not give me confidence that we will see compliance with the Fair Housing Act anytime soon.

On September 26, 2013, this Court insisted that rules to govern allocating fair share obligations among municipalities "cannot wait A remedy must be put in place to eliminate the limbo in which municipalities, New Jersey citizens, developers, and affordable housing interest groups have lived for too long." In re Adoption of N.J.A.C. 5:96 & 5:97, 215 N.J. 578, 620 (2013). "[W]e endorse[d] the Appellate Division's quick deadline for reimposing third-round obligations," ibid., and thus "remanded for the promulgation of a new set of rules within five months," id. at 595. The Appellate Division's order, which we affirmed, had been entered three years earlier on October 8, 2010. In re Adoption of N.J.A.C. 5:96 & 5:97, 416 N.J. Super. 462, 511 (App. Div. 2010). That order directed COAH to adopt Third Round Rules within five months using recently available data and a methodology similar to the ones promulgated in the first two rounds. Ibid.

Significantly, when we heard oral argument on November 14, 2012 in this case, COAH's counsel represented to the Court that revised Third Round Rules would not be "incredibly difficult" to prepare because "a lot of the basics are done" and the regulations could be completed within months.

So what steps did COAH take to comply with this Court's order that required promulgation of new rules by February 26, 2014? Not once in those five months did Commissioner Constable -- who by statute is the chairman of COAH -- convene a meeting of the Council. Indeed, by all appearances, the Commissioner proceeded as a one-man COAH. It bears mentioning that in June 2011, the Governor unilaterally -- without legislative authorization -- abolished COAH, an independent agency, and transferred its responsibilities to the Department of Community Affairs. In re Plan for the Abolition of the Council on Affordable Hous., 214 N.J. 444, 448 (2013). In July 2013, however, this Court ruled that the Governor had overstepped his authority and did not have the power to eliminate COAH. Ibid. Since that ruling, COAH has never met as a body. COAH member Tim Doherty is reported to have requested, after our ruling, that Commissioner Constable convene a meeting; but Mr. Doherty never received a response. See Salvador Rizzo, "NJ Court Orders Affordable Housing Agency to Get Back to Work," Star-Ledger, Mar. 7, 2014, available at http://www.nj.com/politics/index.ssf/2014/03/nj_court_orders_affordable_housing_agency_to_get_back_to_work.html.

We have received no explanation how COAH could have met the deadline set by this Court if the Council never convened as a body. When the Fair Share Housing Center sought information

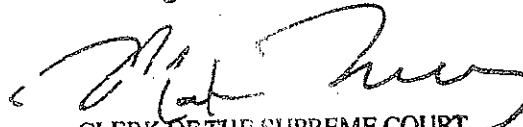
from COAH about its progress in meeting the deadline, no one deigned to respond. If COAH was unable to promulgate the regulations within a five-month period, Commissioner Constable presumably knew so early in the process. That is because adoption of the regulations requires a number of steps, beginning with the proposal of regulations, a public comment period, and final adoption by COAH. See N.J.S.A. 52:14B-4(a).

Based on the present inadequate record, it appears that Commissioner Constable permitted the clock to run out, and not until the day the regulations should have been adopted did he request an extension of the deadline. The certification submitted by Commissioner Constable offers precious little about whether COAH made good-faith efforts to comply with this Court's order. The Commissioner states that "recent, available, and reliable data has been reviewed . . . and evaluated to develop a third round methodology," but he does not say by whom. Nor does he indicate what resources were devoted to this project, why the Council that he chairs has not been convened, why counsel for COAH represented to the Court that the entire task could be completed within months, why the time goals set by the Court were unattainable, and why he waited until the day the regulations were expected to go into effect to ask for an extension that will postpone the promulgation of regulations for another eight months.

With satisfactory answers to these questions, I could join the Court's grant of an extension of the deadline. But I do not believe that this Court has done its due diligence. Instead, it has uncritically accepted Commissioner Constable's certification that tells us almost nothing. This Court deserves answers, and so does the public. The delay the Court endorses today -- without any meaningful inquiry -- is another sad chapter in the continuing saga to provide affordable housing to low- and moderate-income residents.

Because I cannot join the Court's order on the inadequate record before us, I must dissent.

The foregoing is a true copy
of the original on file in my office.


CLERK OF THE SUPREME COURT
OF NEW JERSEY

FAIR SHARE HOUSING CENTER

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SUPREME COURT OF NEW JERSEY

**IN THE MATTER OF THE ADOPTION
OF N.J.A.C. 5:96 AND 5:97 BY
THE NEW JERSEY COUNCIL ON
AFFORDABLE HOUSING**

Supreme Court Docket
No. 67,126

On petition for certification
to:

SUPERIOR COURT
APPELLATE DIVISION

Docket No. A-5451-07T3

(Consolidated at the Appellate
Division under Lead Docket No.
A-5382-07T3)
CIVIL ACTION

On Appeal from the Council on
Affordable Housing

**CERTIFICATION OF KEVIN D. WALSH
IN SUPPORT OF PETITIONER'S
MOTION TO ENFORCE LITIGANTS'
RIGHTS**

1. I, Kevin D. Walsh, Esquire, am an attorney with Fair Share Housing Center (FSHC). I make this certification in support of FSHC's Motion to Enforce Litigants' Rights.

2. On November 14, 2012, the Supreme Court of New Jersey held oral argument in the above-captioned matter.

3. Video/audio recording of the argument is available at [http://njlegallib.rutgers.edu/supct/args/A 90 91 92 93 94 10.php](http://njlegallib.rutgers.edu/supct/args/A_90_91_92_93_94_10.php) (last visited June 16, 2014).

4. During the argument, at the 2:55:06 time as recorded in the video available in the above link, Justice LaVecchia held the following dialogue with Geraldine Callahan, DAG, counsel for the Council on Affordable Housing (COAH):

Justice LaVecchia: Just a hypothetical, if the Court were to affirm the Appellate Division's invalidation of the regulations, how long would it take COAH to comply with the remand that's been ordered by the Appellate Division?

Ms. Callahan: I do not know the precise answer to that question, um -

Justice LaVecchia: How difficult would it be to reconfigure based upon Round 1 and 2 methodologies?

Ms. Callahan: I think that a lot of it is in place, so I'm not sure it would be incredibly difficult, I'm just hesitant to pin a number for the agency, but I think a lot of the -

Justice LaVecchia: Ballpark?

Ms. Callahan: - the basics are there since it's a methodology that has been used.

Justice LaVecchia: Like ballpark - months?

Ms. Callahan: A month I would say, yes.

I certify that the foregoing statements made by me are true.

I am aware that if any of the foregoing statements by me are willfully false, I am subject to punishment.

Dated:

6/16/2014



Kevin D. Walsh, Esq.



State of New Jersey

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

March 13, 2014

Mark Neary
Clerk
Supreme Court of New Jersey
P.O. 970, 25 Market Street
Trenton, New Jersey 08625-0970

Re: In re Adoption of N.J.A.C. 5:96 & 5:97
Supreme Court Docket No. 67,126
Supreme Court Docket No. M-

Corrected Certification in Support of Motion for
Extension of Time

Dear Mr. Neary:

I write in response to your letter of March 11, 2014. Thank you for the opportunity to submit a corrected certification of Richard E. Constable, III, Commissioner of the Department of Community Affairs, in support of the Council on Affordable Housing's pending motion for an extension of the time frame set forth in In Re Adoption of N.J.S.A. 5:96, 215 N.J. 578 (2013). Please find the corrected certification enclosed.

Please accept my apologies for any inconvenience that the original certification caused the Court and my gratitude for your continued assistance and courtesies.

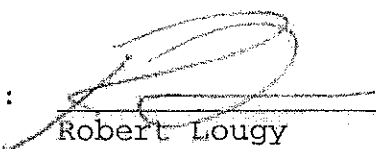


Mr. Mark Neary
March 13, 2014
Page 2 of 2

Respectfully submitted,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:



Robert Lougy
Assistant Attorney General
NJ Bar ID No: 023012002

c: All counsel (via email and first-class mail)

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SUPREME COURT OF NEW JERSEY
DOCKET NO.: 67,126

IN RE ADOPTION OF N.J.A.C. 5:96 : Civil Action
and 5:97 BY THE NEW JERSEY :
COUNCIL ON AFFORDABLE HOUSING : CERTIFICATION OF
: RICHARD E. CONSTABLE, III

I, Richard E. Constable, III, of full age, hereby certifies:

1. I am the Commissioner of the Department of Community Affairs. In that capacity, I am the chairperson of the Council on Affordable Housing ("COAH") and, as such, have personal knowledge of the within facts.

2. In its opinion in this matter, the Court recognized that "[m]ore than thirty years have passed since this Court outlined a framework through which municipalities could satisfy"

their fair share obligations and "[w]e now have decades of data on the creation of affordable housing in New Jersey." In re Adoption of N.J.A.C. 5:96, 215 N.J. 578, 606 (2013). The Court noted, among other things, data reflects "general trends in population size and the production of housing units" and significant changes in transportation patterns. Id. at 607-08. Additionally, the "economic collapse of 2008 has had a significant impact on home prices." Id. at 608. Thus, while the Court accepted the Appellate Division's five-month time frame, the Court's opinion also underscores the need to evaluate carefully the available, recent data in developing a third round methodology.

3. Consistent with the Court's opinion, recent, available, and reliable data has been reviewed and continues to be analyzed and evaluated to develop a third round methodology. Those data sources are diverse and varied. They include the 2010 United States Census data and data available from the Department of Labor Workforce Development. Also relevant and subject to the analysis is data concerning building permits and certificate of occupancy. The analysis also includes evaluating data used to develop the prior third round regulations to determine whether and to what extent it can assist or is relevant to the development of the new third round methodology.

4. This data also has been and is being used to project population and household growth. The data was extrapolated to a municipal level to estimate the number of households to be formed. The data, including data on relative household income by municipality, then allowed for a determination of how many of those households are predicted to be low and moderate income.

5. The United States Census data has been, and continues to be, analyzed to identify deteriorated units that presently are crowded, have incomplete kitchens, and/or have incomplete baths. The identification of these deteriorated units together with United States Census public use microdata sample then permits the determination of the low and moderate income share of those deteriorated units at both a county and municipal level.

6. The databases for certificates of occupancy and demolition allowed for a determination of net housing growth. Information on the secondary sources of supply - filtering, conversions, and demolitions - has been, and continues to be, reviewed to determine the effect of those secondary sources on housing availability. Additionally, available land - both vacant and redevelopable - has been and continues to be, reviewed to determine its effect on housing.

7. The completion of this process will permit calculation of statewide low and moderate income need and affordable housing figures for all municipalities. The affordable

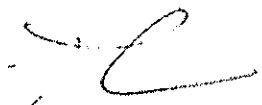
housing figures for municipalities, however, is just one step in the rulemaking process. The methodology must then be put in proper regulatory form. Those efforts include not only the new regulations, but also require reviewing the existing regulations, both procedural and substantive, to determine how the new methodology affects them and what changes may need to be made.

8. The new and/or revised regulations also must comply with the substantial requirements of the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 et seq. The APA requires not only the regulations, but also a summary of the regulations, which in this case will be significant given the magnitude of the subject matter, as well as various statements. The schedule for publication in the New Jersey Register must be adhered to as well. Thus, while substantial progress has been made to develop a new third round methodology, considerable work still remains to translate that work into a format that can be published in the New Jersey Register.

9. Substantial progress has been made in terms of the review and analysis of the most current data sources and the crafting of the various components of the proposed methodology incorporating those data sources. That process now must be completed so that affordable housing figures for all municipalities can be generated, translated into regulations, and published in accordance with APA requirements.

10. Accordingly, an extension of time until May 1, 2014 is requested to allow the regulations to be formally proposed and published in the June 2, 2014 New Jersey Register.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Richard E. Constable, III

DATED: February 26, 2014

ORDER ON MOTION

IN RE ADOPTION OF REVISED THIRD
ROUND REGULATIONS BY THE NEW
JERSEY COUNCIL ON AFFORDABLE
HOUSING N.J.A.C. 5:96 & 5:97
(NJ LEAGUE OF MUNICIPALITIES)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-005382-07T3
MOTION NO. M-002899-13
BEFORE PART H
JUDGE(S): JOSE L. FUENTES
MARIE P. SIMONELLI
MICHAEL J. HAAS

MOTION FILED: 12/17/2013
ANSWER(S) 12/27/2013
FILED: 12/27/2013
01/02/2014
01/06/2014
01/07/2014

BY: FAIR SHARE HOUSING
BY: LEAGUE OF MUNICIPALITIES
KINGS ROW HOMES
BERNARDS TWP
ATLANTIC HIGHLANDS
COAH

SUBMITTED TO COURT: January 16, 2014

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
7th day of March, 2014, HEREBY ORDERED AS FOLLOWS:

MOTION BY INTERVENOR:

MOTION TO ENFORCE LITIGANT'S
RIGHTS

GRANTED AND OTHER

SUPPLEMENTAL: See attached.

FOR THE COURT:



JOSE L FUENTES, P.J.A.D.

UNKNOWN
STATEWIDE

SLW

At this court's request, the parties presented oral argument on March 5, 2014, to supplement their submissions in connection with a motion in aid of litigant's rights filed by Fair Share Housing Center (Fair Share) pursuant to Rule 1:10-3, to enforce this court's order in In Re N.J.A.C. 5:96 and 5:97, 416 N.J. Super. 462, 511 (App. Div 2010), aff'd 215 N.J. 578 (2013), directing the Council On Affordable Housing (COAH) "to adopt new third round rules that use a methodology for determining prospective need similar to the methodologies used in the first and second rounds." Characterizing the nature of this mandate as "straight-forward," we expected that "COAH should be able to comply with this mandate within five months without the assistance of a master or an army of outside consultants." Ibid. (Emphasis added). To date, COAH has not done anything to comply with our "straight-forward" mandate.

Fair Share seeks an order from this court appointing a special master with the authority to carry out the central requirement this court ordered on October 8, 2010, as affirmed by the Supreme Court. Alternatively, Fair Share seeks a judicial declaration from this court that COAH can no longer provide administrative protection to municipalities from Mount Laurel litigation, leaving the declaratory relief provided by the Legislature under N.J.S.A. 52:27D-313 as the exclusive means for those municipalities wishing to seek preemptive action. If we were to adopt this alternative form of relief, Fair Share further requests that this court require a municipality filing a petition for substantive certification under N.J.S.A. 52:27D-313 to provide notice to Fair Share and to other public interest entities similarly devoted to protecting the constitutional rights of low and moderate income residents of this State.

On February 26, 2014, COAH filed a motion with the Supreme Court, requesting "an extension of the time until May 1, 2014 to formally propose and publish in the June 2, 2014 New Jersey Register regulations governing the third round methodology." Thus, without specifically addressing the substantive merits or practical feasibility of Fair Share's position, COAH argues that the motion pending before the Supreme Court deprives this court of jurisdiction to enforce its October 8, 2010 mandate.

The Legislature enacted the Fair Housing Act in 1985 to confer responsibility upon COAH for the administration and enforcement of the Mount Laurel doctrine.¹ COAH has the primary responsibility to determine a

¹ S. Burlington County NAACP v. Twp. of Mount Laurel, 92 N.J. 158, (1983) (Mount Laurel II); S. Burlington County NAACP v. Twp. of Mount Laurel, 67 N.J. 151, appeal dismissed and cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975) (Mount Laurel I).

municipality's affordable housing obligations and to develop a mechanism for compliance with those obligations. Hills Dev. Co. v. Twp. of Bernards, 103 N.J. 1, 19-23, 31-40 (1986). In our tripartite system of governance, once a court has decided a dispute and entered a final judgment awarding relief to the aggrieved party, the executive branch is obligated to enforce the court's decree. This fundamental principle of the concept of ordered liberty applies with equal, if not greater, force when an administrative agency, as a party in a civil dispute, is ordered by the court to perform a task that is mandated by a statute that was adopted by the Legislature to fulfill a constitutional obligation. Abbott v. Burke, 206 N.J. 332, 359 (2011).

After carefully considering the record before us, WE HOLD COAH has failed to carry out this court's mandate "to adopt new third round rules that use a methodology for determining prospective need similar to the methodologies used in the first and second rounds," within the timeframe established by this court and endorsed by the Supreme Court. In Re N.J.A.C. 5:96 and 5:97, supra, 416 N.J. Super. at 511. WE FURTHER HOLD COAH has failed to offer any plausible explanation for its failure to carry out this court's order.

WE THEREFORE ORDER COAH to meet as a body on Wednesday, March 12, 2014, at 9:30 a.m., with a sufficient number of members to constitute a quorum rendering it legally capable of conducting an official meeting and taking legally binding action. At this meeting, COAH shall direct its Executive Director, and such other staff it deems appropriate, to prepare for COAH's adoption "third round rules that use a methodology for determining prospective need similar to the methodologies used in the first and second rounds." These third round rules are to be completed and presented to COAH for formal adoption by Wednesday, March 26, 2014. Copies of these proposed new third round rules shall be posted on COAH's website and copies shall be otherwise made available to the public for review at 11:00 a.m. on Friday, March 21, 2014.

WE FURTHER ORDER COAH to meet as a body on Wednesday, March 26, 2014, at 9:30 a.m., with a sufficient number of members to constitute a quorum rendering it legally capable of conducting an official meeting and taking legally binding action. At this meeting, COAH shall review and adopt the third round rules in a manner suitable to comply with the Administrative Procedures Act, including publication in the New Jersey Register.

WE FURTHER ORDER COAH to meet as a body on Wednesday, May 14, 2014, at 9:30 a.m., with a sufficient number of members to constitute a quorum rendering it legally capable of conducting an official meeting and taking legally binding action. At this meeting, COAH shall review and consider all public comments submitted by interested parties in response to the posting of the proposed third round rule in the New Jersey Register. After giving due consideration to these public comments and any proposed

amendments suggested by the Executive Director, COAH shall adopt these rules.

WE FURTHER ORDER COAH to submit to this court and to every party to this litigation bi-weekly reports detailing the actions taken to comply with this order.

WE FURTHER ORDER that in the event COAH fails to carry out any part of this court's order, each member of the COAH Board will be ordered to personally appear before this court, at a date and time designated by this court, to show cause why he or she shall not be declared in contempt of this court's authority subject to monetary sanctions, civil detention, and such other sanctions the court may deem suitable to induce compliance with this order.

WE FURTHER ORDER that until such time that new third round rules have been formally adopted, any municipality seeking to petition the Superior Court for substantive certification under N.J.S.A. 52:27D-313, must serve copies of its pleadings to Fair Share, the local chapter of the National Association for the Advancement of Colored People, and any other organization or not-for-profit entity located within ten (10) miles of the municipality that is dedicated to provide low-income or moderate-income housing to the residents of the region.

WE FURTHER ORDER that pursuant to Rule 2:9-9 this court sua sponte directs Fair Share to submit a certification attesting to the cost of professional services rendered in connection with the prosecution of this motion in aid of litigant's rights. The court thereafter will award Fair Share counsel fees commensurate with the time and professional effort it exerted in the prosecution of this motion in aid of litigant's right.

We conclude with the following explanation concerning our decision to reject Fair Share's application for the appointment of a special master. In In Re N.J.A.C. 5:96 and 5:97, we specifically acknowledged that a number of litigants had requested "that in light of COAH's failure to adopt valid third round rules in a timely manner, this court should divest COAH of the authority to perform this statutory responsibility and adopt third round rules itself with the assistance of a master." 416 N.J. Super. at 510. We declined to adopt this approach for two principal reasons. First, we noted that our colleagues had rejected a similar request for relief made by Fair Share and the New Jersey Builders Association in In re Adoption of N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1, 87-88 (App. Div.), certif. denied, 192 N.J. 71 (2007). Writing for this court in that case, Judge Cuff explained the reasons for denying this relief:

Appointment of a special master by this court is unprecedented relief.

The Legislature has granted COAH considerable authority to adopt policies and to fashion regulations that will provide a realistic opportunity for the construction of affordable housing. The Court has stated repeatedly that it is better for COAH to address the issue than the courts. We also recognize that rule making is a dynamic process. COAH has already amended some of the third round rules, see N.J.A.C. 5:94-2.4(a)(4), and has recently proposed several others. Thus, we conclude that it is appropriate to remand to the agency to commence the process to amend N.J.A.C. 5:94, the third round rules, to conform to the constitutional and statutory mandate. Time, however, is critical. The second round rules expired in 1999. The third round rules apply from 1999-2014, but effectuation of these rules has been compressed to a ten-year period and three years have already elapsed. We, therefore, direct that the rule-making process required by this opinion must be completed within six months.

[Id. at 87-88.]

Second, and perhaps most relevant here, we noted in In Re N.J.A.C. 5:96 and 5:97 that despite COAH's continued reliance on a growth share methodology to calculate and allocate prospective, we had no basis "to conclude that COAH failed to make a good faith effort to adopt this round rules in conformity with our prior opinion." 416 N.J. Super. at 510. (Emphasis added). Unfortunately, the record of inaction by COAH since we wrote those words in 2010 has cast serious doubts about this agency's good faith in complying with this court's order.

Despite these misgivings, we remain reluctant, at this time, to take the extraordinary action of declaring that this government agency is utterly incapable or unwilling to carry out its core statutory mission. We remain hopeful, however, that reasonable minds will prevail, and that the members of the COAH Board will see that this course of intransigence serves only to needlessly undermine the public's confidence in the effectiveness of public institutions. We have invalidated these rules in two prior opinions in the past seven years. In this order, we have laid a clear path for COAH to follow to fulfill its statutory obligation. If these measures prove to be ineffective, we may have no other choice but to declare that event to be COAH's third and final strike.



CHRIS CHRISTIE
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 112
TRENTON, NJ 08625-0112

JOHN J. HOFFMAN
Acting Attorney General

KIM GUADAGNO
Lt. Governor

CHRISTOPHER S. PORRINO
Director

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January 28, 2014

Dr. Robert W. Burchell
Distinguished Professor at the Center for Urban Policy Research
Edward J. Bloustein School of Planning and Public Policy
Rutgers, the State University of New Jersey
33 Livingston Avenue
Civic Square - Suite 400
New Brunswick, New Jersey 08901-1982

Re: Retention as Expert Concerning Affordable Housing
Regulations

Dear Dr. Burchell:

This letter is the Retention Agreement and confirms retention by the State of New Jersey, Department of Law and Public Safety, Division of Law (Division of Law), of Dr. Robert W. Burchell (Consultant) to serve as an expert regarding affordable housing and, in anticipation of and defense of litigation, to assist the Division of Law in the delivery of legal advice concerning the development of revised regulations. In this regard, Consultant has agreed to provide expert consulting services in accordance with the following scope of work:

Consultant shall assist in the development of regulations consistent with the opinion of the New Jersey Supreme Court in In re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable



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Page 2 of 8

Housing, 215 N.J. 578 (2013), and to assist as needed in ongoing litigation related to that opinion. As soon as possible and in no event later than 45 days, Consultant shall complete the development and delivery of draft regulations suitable for publication in the New Jersey Register. In addition to the regulations, Consultant's work may include additional materials and analysis as requested by the Division of Law, including but not limited to the materials specified below, and all such work shall be included within the compensation detailed herein and be performed in a timely manner. The work will be based on Consultant's experience and knowledge as an expert on housing development strategies and past involvement in affordable housing matters. Consultant's work may also include discovery and litigation support, as requested by the Assistant Attorney General.

The Consultant shall keep the Assistant Attorney General assigned to this matter apprised periodically of the status of the work and shall discuss all significant issues with him or her. The Consultant shall timely provide all reports required in the scope of work. In addition, the Consultant shall provide a detailed, periodic report either orally or in writing, as specified by the Assistant Attorney General, about the status of the scope of work on at least a biweekly basis or more frequently if requested.

In providing consultation to the State, the Consultant is expected to perform in a manner designated to provide quality consultation services at the least possible cost. The Consultant shall be diligent and zealous in executing the scope of work.

Research and Deliverables

The research and deliverable schedule is as follows.

Day 1 - 13 January 2014

1. Projected population by county 2014-2024 by age, by county.
2. Projected population in households 2014-2024 by age, by county.
3. Household headship rates - 2014, 2024 by age, by county.
4. Projected households by age by county 2014-2024.
5. Share of households low and moderate income. Households 80% of family income by age, by county.
6. Break by region share of low and moderate income households less than age 65 and more than age 65 by region.

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Page 3 of 8

7. Determine change in nonresidential valuation (above inflation/deflation) 2000-2010 by municipality; sum to region.
8. Begin to determine vacant, developable land in median growth areas by municipality; weight different areas - sum to region.
9. Determine difference in median household income by municipality from the floor income of the region; sum to region.

Day 13 - 27 January 2014

10. Determine Prospective Need by municipality (select communities that do not receive Prospective Need Urban Aid municipalities); sum to region.
11. Estimate filtering by region and municipality; filtering is negative (allocate by % pre-1960 units; % multifamily).
12. Estimate residential conversions at regional level; (20% affordable to low/moderate income); allocate to municipality using share of 2-4 unit structures; residential conversions are negative.
13. Estimate demolitions (20% demolitions affect low/moderate income); demolitions are positive.
14. Estimate Calculated Need by municipality.

Day 20 - 3 February 2014 (1st Draft of Need)

15. Reduce Calculated Need by 20% cap for applicable municipalities; multiply 2014 units by 20%, can be no greater than 20% of total. Use preliminary vacant land estimates.
16. Calculate Present Need from three indices.

Day 34 - 17 February 2014

17. Revised numbers.
18. Final numbers portion of regulations; joined with other regulations developed by State staff.

Day 45 - 26 February 2014

All results due.

Day 111 - 26 April 2014

Assist in redrafting remainder of regulations; begin response to comments.

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Page 4 of 8

Day 171 - 16 June 2014

Finish response to comments on numbers; CUPR portion of draft ready for publication.

Day 171 to Day 365, 13 January 2015

Assist State as necessary in communicating numbers to the public and follow-up tasks related to original data produced or comments provided.

Budget

The Project Budget, as detailed by consultant, is as follows:

Phase	Amount
Phase I (Jan 13, 2014 - Feb. 26, 2014)	\$92,902
Phase II (Feb. 27, 2014 - May 30, 2014)	\$102,706
Phase III (June 1, 2014 to January 31, 2015)	\$99,448
Total	\$295,055

Consultant shall provide reports describing progress and deliverables on a monthly basis to the Assistant Attorney General assigned who executes this Retention Agreement. Each report shall describe the work performed during the previous month.

All billings must be approved by the Assistant Attorney General assigned to this matter prior to payment. Consultant shall immediately notify the Assistant Attorney General if it becomes probable that Consultant's billings will exceed any estimated amounts provided by Consultant. Upon such notification, the Division of Law, in its sole discretion, may terminate this agreement, consent to the overrun, or issue such alternative directions as it deems necessary.

Bills of third party contracts are reimbursable only to the extent consistent with the scope of work and fee schedule and where the third party contract is approved in advance by the Assistant Attorney General assigned to this matter.

The Consultant shall maintain books and records, including retention of computer runs, billing reports, and receipts that verify all disbursements that are billed to the State.

Conflicts of Interest

The Consultant should not serve as an expert for a client if doing so would involve a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the Consultant's work on behalf of the State of New Jersey, Department of Law and

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Page 5 of 8

Public Safety, Division of Law, will be directly adverse to another client; or (2) there is a significant risk that the Consultant's work on behalf of the State of New Jersey, Department of Law and Public Safety, Division of Law, will be materially limited by the Consultant's responsibilities to another client. If you believe that a concurrent conflict of interest may exist, you must notify the State immediately and provide the State with all relevant information so appropriate action can be taken.

In addition, the New Jersey Conflict of Interest Law, N.J.S.A. 52:13D-12 et seq. and Executive Order 189 (Kean), prohibit certain actions by persons or entities which provide goods or services to any State Agency. These prohibitions are applicable to this retention and are set forth in Exhibit A, Additional Requirements for All Office of Attorney General, Division of Law Retention Agreements.

Confidential Relationship

It is the intention of the Division of Law that through this retention there shall be a confidential relationship between the Consultant and the State of New Jersey, Department of Law and Public Safety, Division of Law. The Consultant shall have a confidentiality obligation, to keep confidential any document, electronic or digital information, or oral communication, that was either prepared for litigation, either anticipated or in progress or for settlement of any claim against the State or any part of the State or any employee of the State. Additionally, the Consultant shall regard the relationship itself as confidential, and shall not publicize or otherwise disclose the relationship, including its existence or the contents of this letter, without the express and prior consent of the Assistant Attorney General assigned to this matter. If the Consultant does not want to share a confidential relationship with the State of New Jersey, Department of Law and Public Safety, Division of Law, Consultant should decline this engagement.

All communications between or among the Consultant, the Division of Law, and other State employees or representatives involves in this litigation should be specifically noted in the body and/or subject heading of the correspondence or email as privileged and confidential and thus a record privileged from disclosure under the Open Public Records Act. Additionally, the Assistant Attorney General assigned to this matter shall be included on all such communications.

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Page 6 of 8

Publication Limitation

The Consultant may not publish any of the results of its work under this Retention Agreement without the express written permission of the Division of Law.

Termination

This letter also confirms our right to terminate the retention of Consultant at any time by simply advising Consultant either orally or in writing that Consultant's services are no longer needed. Consultant further agrees that once Consultant receives our notice to terminate, all services that arise from the retention shall be immediately terminated and neither the State nor our office is responsible for the payment for any services provided beyond the date of notice of termination.

Work Papers

The Consultant shall promptly and completely return all work papers to the Division of Law upon termination or completion of this retention.

No Assignment

The Consultant shall not assign this agreement or its interest therein to any other parties without the Division of Law's prior written consent.

Division of Law Contact

The Assistant Attorney General who executes this retention letter is the Assistant Attorney General assigned to this matter, who should receive all invoices, bills, reports and notifications. Upon written direction from the Assistant Attorney General, the Assistant Attorney General assigned to this matter may be changed or additional people may be assigned and Consultant will direct invoices, bills, reports and notifications accordingly.

In the event that Consultant is no longer in a position to undertake all or any part of the scope of work the Consultant must immediately notify the Assistant Attorney General.

New Jersey law contains additional requirements applicable to this retention agreement. Those requirements are set forth in detail in Exhibit A, Additional Requirements for Office of Attorney General, Division of Law Retention Agreements, and are incorporated into this Retention Agreement. Please note that

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Page 7 of 8

several require additional information be submitted on the forms indicated prior to this Retention Agreement being executed.

The terms of this letter supercede any prior agreement(s) with Consultant and any changes to the terms of this agreement shall be in a writing executed by both parties. This agreement embodies the entire agreement between the parties. If any provision is determined to be invalid it shall be considered deleted and shall not invalidate the remaining provisions; provided, however; if such invalidation occurs and substantially affects the terms of this agreement, the Division of Law or Consultant may elect to terminate this agreement.

If the terms and conditions set forth in this letter are acceptable to Consultant, please acknowledge Consultant's acceptance of them by executing the enclosed copy and returning it to me. In addition, please complete the enclosed forms and return all documents as soon as possible to me.

Please note that Consultant cannot be officially retained or be paid for any services rendered until this office has received all of the required information set forth in this Retention Agreement, including Exhibit A; and where necessary, obtained final approval from the State of New Jersey Department of the Treasury. Official retention will be signified by the receipt of a copy of this letter with my additional counter-signature and all issuance of approvals required herein.

Sincerely yours,

JOHN J. HOFFMAN
ATTORNEY GENERAL OF NEW JERSEY

By: _____

Robert Lougy
Assistant Attorney General

Encl. Exhibit A


I hereby acknowledge and accept
the terms set forth herein this
29th day of ~~JANUARY~~ 2014.

By: _____

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Page 8 of 8

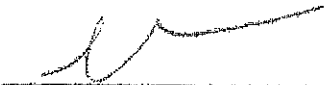
Dr. Robert Burchell
Consultant

By: 

(counter-signature)
Robert Lougy
Assistant Attorney General

Dated: 2/6/14

RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY



Cassandra Burrows, Acting Assistant Director, ORSP
2/4/14

1 STATE OF NEW JERSEY
2 COUNCIL ON AFFORDABLE HOUSING
3 PUBLIC SESSION

4 New Jersey Housing & Mortgage Finance Agency
5 637 South Clinton Avenue
6 Trenton, New Jersey 08650

7 April 30, 2014, 9:50 a.m.

8
9 BEFORE: RICHARD E. CONSTABLE, III, Chairman
10 JOHN L. WINTERSTELLA, Vice Chairman
11 SEAN THOMPSON, Acting Executive Director
12 TIM DOHERTY
13 SUZANNE WATERS
14 ANTHONY L. MARCHETTA
15 THEODORE E. KING, JR.
16 GERALDINE CALLAHAN, Deputy Attorney General
17 PAMELA WEINTRAUB, Secretary

18 APPEARANCES:

19 FAIR SHARE HOUSING CENTER
20 510 Park Boulevard
21 Cherry Hill, NJ 08002
22 BY: KEVIN D. WALSH, ESQ.
23 ADAM M. GORDON, ESQ.

24 TATE & TATE
25 Certified Court Reporters
520 Stokes Road - Suite C-1
Medford, New Jersey 08055
(856) 983-8484 - (800) 636-8283
www.tate-tate.com

Page 34

1 when a resolution or a decision will be
2 made on those trust funds and I can't see
3 how in the past we as a board have met
4 every month to discuss business, why now
5 we're unable to meet as a board to discuss
6 business.
7 Finally, I mean, the rules that
8 we have before us today were presented
9 yesterday to me as a board member. I take
10 offense to that. My obligation as a COAH
11 board member is to do my best to uphold the
12 Fair Housing Act. I can't do that if I've
13 only seen this material yesterday. Now, I
14 don't know how anybody, any reasonable
15 person can assume that this body can take a
16 vote on these rules that we only saw
17 yesterday.
18 There's deficiencies in these
19 rules and questions that I have, too long
20 to be answered in this forum today. We are
21 supposed to make the decisions with regard
22 to the disposition of the Fair Housing Act
23 and we're not able to do that, so this is
24 now affecting the work and the viability of
25 the Fair Housing Act in proposing

Page 35

1 affordable units for our citizens in New
2 Jersey. Certainly, we can decide one way
3 or another what to do with the trust
4 funds.
5 We should be able to do that. We
6 should be able as a body, regardless of
7 positions, be able to rationally talk about
8 issues that affect the Fair Housing Act and
9 let the majority prevail.
10 **MR. CONSTABLE:** This is regarding
11 the matter that's before us right now, so
12 there will be an opportunity to --
13 **MR. DOHERTY:** Very good. So do I
14 have an answer as to --
15 **MR. CONSTABLE:** What's the
16 question?
17 **MR. DOHERTY:** The question is are
18 we only going to meet twice for the balance
19 of this year to conduct this business?
20 **MR. CONSTABLE:** Yes, that's
21 what's proposed.
22 **MR. DOHERTY:** That's what's
23 proposed?
24 **MR. CONSTABLE:** Yes.
25 Mr. Winterstella?

Page 36

1 **MR. WINTERSTELLA** Mr. Chairman,
2 I have kind of sat quietly through the last
3 couple years hoping that there might be a
4 decision to have regular meetings and so
5 forth, but we have not. I think the Courts
6 have acted. I think the legislature has
7 failed to change the rules and I think I
8 agree with him. I think it's time that we
9 have a regular meeting schedule and we do
10 more than just, if you will, rubber stamp
11 these proposals just to get them under
12 way.
13 I think we need to recognize
14 there is an affordable housing problem in
15 this state and that we're one of the
16 agencies that's charged with resolving that
17 problem or at least helping to resolve it
18 and if we don't move with some regular
19 meetings and so forth, you're the only one
20 that can call a meeting and I would
21 respectfully ask you to do that, because I
22 think we have to meet in order to
23 function.
24 We can't just get stuff at the
25 last minute and then be asked to vote on

Page 37

1 it, because -- I'm going to vote for it
2 today, but like him, I got it yesterday. I
3 spent most of yesterday reading it and
4 trying to understand it, unable to
5 really -- we used to do stuff like this
6 through a subcommittee where we can ask
7 some questions and so forth.
8 I think it's time, Commissioner,
9 that we have a regular meeting schedule and
10 we start addressing the problems of this
11 state.
12 **MR. CONSTABLE:** What we have
13 before us, sir, are two meetings that are
14 going to occur over the course of the next
15 five months, one in August and one in
16 October. So we're beginning that process
17 and as the acting director pointed out,
18 there's a lot of work for us to do as a
19 body in order to get the new methodology
20 out. It was an extremely compressed time
21 frame that the Supreme Court mandated that
22 this process happen in.
23 We collectively have done a lot
24 of work and will continue to do a lot of
25 work on this, but that's why we're not also

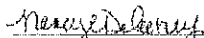
10 (Pages 34 to 37)



Page 86

1 **MR. CONSTABLE:** Any other
2 questions or concerns? If there's no other
3 business, may I have a motion to adjourn?
4 **MR. WINTERSTELLA:** So moved.
5 **MR. MARCHETTA:** Second.
6 **MR. CONSTABLE:** All in favor, say
7 aye. Motion carried.
8 (The proceedings are concluded at
9 11:30 a.m.)
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1 C E R T I F I C A T E
2
3 I, NANCY L. DELANEY, a Certified Court
4 Reporter and Notary Public, do hereby certify
5 that the foregoing is a true and accurate
6 transcript of the stenographic notes of the
7 proceedings taken by me at the time, place and on
8 the date hereinbefore set forth.
9
10 I do further certify that I am neither
11 a relative nor employee, nor attorney, nor
12 counsel to any parties to this action; and that I
13 am neither related to a relative nor employee of
14 any such attorney or counsel, and that I am not
15 financially interested in this action

16 
17 NANCY L. DELANEY, CCR, RMR, CR
18 Certificate No. XI-0001692
19
20
21
22
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25



23 (Pages 86 to 87)

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520 Stokes Road, Suite C-1, Medford, NJ 08055

(800) 636-8283

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STATE OF NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
PUBLIC SESSION

New Jersey Housing & Mortgage Finance Agency
637 South Clinton Avenue
Trenton, New Jersey 08650

October 20, 2014 - 9:40 AM

BEFORE: RICHARD E. CONSTABLE, III, Chairman
JOHN L. WINTERSTELLA, Vice Chairman
SEAN THOMPSON, Acting Executive Director
TIM DOHERTY
SUZANNE WALTERS
ANTHONY L. MARCHETTA (by telephone)
THEODORE E. KING, JR.
GERALDINE CALLAHAN, Deputy Attorney General
DONALD PALOMBI, Deputy Attorney General
PAMELA WEINTRAUB, Secretary

APPEARANCES :

FAIR SHARE HOUSING CENTER
510 Park Boulevard
Cherry Hill, NJ 08002
BY: ADAM M. GORDON, ESQ.

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Page 2

1 **MR. CONSTABLE:** Good morning,
2 everyone. We'll start with the pledge of
3 allegiance.
4 (Pledge of allegiance is
5 recited.)
6 **MR. CONSTABLE:** We'll have the
7 executive director read the Sunshine Law
8 statement.
9 **MR. THOMPSON:** This is to advise
10 the general public and to instruct that it
11 be recorded in the minutes that in
12 compliance with Chapter 231 of the Open
13 Public Meetings Act, the Council on
14 Affordable Housing on April 26, 2014
15 provided to the Secretary of State, the
16 Star Ledger, Courier Post, Asbury Park
17 Press and the Times notice of the time,
18 place and date of the meeting.
19 **MR. CONSTABLE:** What was that?
20 **MR. THOMPSON:** I apologize. I
21 want to restate that. This is to advise
22 the general public and to instruct that it
23 be recorded in the minutes in compliance
24 with Chapter 231 of the public laws of 1975
25 entitled the Open Public Meetings Act that

Page 3

1 the New Jersey Council on affordable
2 Housing hand delivered and emailed to the
3 Office of the Secretary of State and caused
4 to be posted on the bulletin board located
5 outside the Secretary of State's office at
6 the State House, Trenton, New Jersey,
7 mailed to the Newark Star Ledger, Camden
8 Courier Post, Asbury Park Press and the
9 Times notice setting forth the time, date
10 and location of this meeting. Thank you.
11 Regarding the press, members of
12 the press will be permitted to take
13 photographs at today's meeting. We would
14 ask, however, that this be done in a manner
15 which is not disruptive of the meeting or
16 distracting to the council and which does
17 not interfere with the public's right to
18 observe the meeting.
19 Regarding public participation,
20 any members of the public who wish to
21 address the council will be given an
22 opportunity to do so before the council
23 adjourns for the day.
24 **MR. CONSTABLE:** Can we have a
25 role call?

Page 4

1 **MS. WEINTRAUB:** Mr. Timothy
2 Doherty?
3 **MR. DOHERTY:** Here.
4 **MS. WEINTRAUB:** Mr. Theodore
5 King?
6 **MR. KING:** Here.
7 **MS. WEINTRAUB:** Mr. Anthony
8 Marchetta?
9 **MR. MARCHETTA:** Here.
10 **MS. WEINTRAUB:** Mayor Suzanne
11 Walters?
12 **MAYOR WALTERS:** Here.
13 **MS. WEINTRAUB:** Mr. John
14 Winterstella?
15 **MR. WINTERSTELLA:** Here.
16 **MS. WEINTRAUB:** Mr. Richard
17 Constable?
18 **MR. CONSTABLE:** Here. We'll have
19 the executive director's report.
20 **MR. THOMPSON:** Nothing to report
21 at this time.
22 **MR. CONSTABLE:** Approval of the
23 minutes of August 26, there are copies of
24 the minutes in your packet. Are there any
25 questions, comments or concerns?

Page 5

1 **MR. WINTERSTELLA:** Point of
2 order, Mr. Chairman. I don't know if this
3 is in order, but we still have not approved
4 the minutes of the meeting of July 2.
5 According to Roberts Rules of Order, I
6 believe a meeting is not official or
7 complete until the minutes have been voted
8 on and approved, and, therefore, in the
9 resolution we're going to vote on later on,
10 if it's cited as a meeting, I'm not sure if
11 it's in the preamble, so I'm not sure it's
12 appropriate to vote on these minutes at
13 this time since we have not approved the
14 previous minutes.
15 **MR. THOMPSON:** So the July 2
16 wasn't a meeting meeting. It was actually
17 a public hearing for the regulations.
18 **MR. CONSTABLE:** It wasn't a
19 meeting.
20 **MR. WINTERSTELLA:** I thought we
21 discussed some other agenda items at that
22 meeting.
23 **MR. THOMPSON:** No, it was just
24 the rules. Is that correct, Pam?
25 **MS. WEINTRAUB:** That is correct,

	Page 6	Page 8
<p>1 yes. We have an official transcript that 2 was prepared for us. 3 MR. WINTERSTELLA: We don't 4 approve the minutes of a public hearing? 5 MR. THOMPSON: No. 6 MR. WINTERSTELLA: I stand 7 corrected. 8 MR. CONSTABLE: All right. 9 Getting back to the approval of the minutes 10 from August 26, there's a copy in your 11 packet. Any other questions, comments or 12 concerns? All right, hearing none, may I 13 have a motion? 14 MR. WINTERSTELLA: So moved. 15 MR. CONSTABLE: And a second? 16 MAYOR WALTERS: Second. 17 MR. CONSTABLE: All in favor, say 18 aye. Any opposed? Hearing none, the 19 motion carries. We're going to move to 20 public comment on agenda items. At this 21 time, if members of the public wish to be 22 heard by the council, please come forward. 23 When I call your name, please come forward 24 and state your name and affiliation. 25 I just want to remind those of</p>	<p>1 financially, 9 to 1 set-aside is 2 ridiculous. 3 The courts in the past have done 4 4 to 1. Actually, in the early court cases 5 they should you should do a financial 6 element to figure out what it really should 7 be and the reason is that many units in New 8 Jersey, especially the mod units, are being 9 built and sold for pretty much a break even 10 or even a little profit. This is just a 11 giveaway to developers. 12 This is just -- this is about 13 enriching land speculation for developers 14 at the expense of the environment, at the 15 expense of our towns. It's going to be 16 taking over a lot more open space every 17 time there's an inclusionary zoning 18 project. We also are concerned that 19 protections for steep slope and proper 20 planning and smart growth has been thrown 21 out the door. 22 We believe that these rules are 23 part of open space and environmentally 24 sensitive areas will promote sprawl and 25 over development in rural areas, will</p>	
	Page 7	Page 9
<p>1 you that come forward that this is an 2 opportunity to provide comments and not to 3 engage in dialogue. You will have three 4 minutes to make your comments. The first 5 person on the agenda is Jeff Tittel from 6 the Sierra Club. 7 MR. TITTEL: Thank you, Jeff 8 Tittel, director, New Jersey Sierra Club. 9 We're here to comment on the third round 10 rules and to call these affordable housing 11 rules is an oxymoron. They do the 12 opposite. These rules should be withdrawn 13 and you should not adopt them today and you 14 need to go back and rewrite them. First 15 and foremost, our biggest concern is a 16 change in the formula for inclusionary 17 zoning projects. 18 When you lower the number from 20 19 percent to a 10 percent set-aside, our 20 concern is that is the biggest giveaway in 21 land since the Oklahoma land rush in 1889. 22 By doing that, it means that every time 23 someone does an inclusionary project, 24 whether it's -- you know, without a 25 balancing test to look at how it fits</p>	<p>1 promote moving water lines and sewer lines 2 in environmentally sensitive areas to make 3 way for more development and will be used 4 as an excuse to pave over New Jersey's 5 countryside, while at the same time, not 6 requiring areas of the state that are 7 growing to actually meet their affordable 8 housing obligations. 9 Because if you do redevelopment 10 in places like Hoboken and build multi 11 million dollar condos on the waterfront, 12 you don't get an obligation, but the 13 numbers when you look at places like West 14 Milford and up the Highlands or Clinton 15 Township, you end up seeing that they're 16 going to get larger numbers than many of 17 the areas that are growing and that are 18 getting the jobs and the housing and yet, 19 where we're building luxury instead of 20 rural areas where actually not much is 21 being built. 22 We also believe that this is not 23 tied to any kind of growth management 24 system, so we consider these rules really 25 dumb growth and just really a giveaway to</p>	



Page 10

1 development interests. We're really
2 concerned that you should be placing
3 housing where the growth is occurring and
4 these rules don't do it, where the jobs are
5 actually happening, so that people don't
6 have to be commuting long distances.
7 Also, it's what's fair. We've
8 always believed that if you can build a
9 McMansion on a farm field, then you should
10 be able to get affordable housing, but if
11 you're also building luxury condos in
12 Hoboken and Jersey City, you should also
13 have to do affordable housing. If you're
14 building factories and jobs on farm fields
15 in Jamesburg, you should have to do
16 affordable housing.
17 What we see in these rules really
18 is a sell-out to developers, a sell-out to
19 land speculators and we believe that these
20 rules will do more harm to the State of New
21 Jersey. People always ask why does Sierra
22 Club come to comment on rules like this.
23 It's because these rules will determine
24 land use patterns for future generations.
25 Whether we have sustainable water supply,

Page 11

1 whether we still have farming and open
2 spaces and environmentally sensitive lands
3 are all tied in a lot of ways to where
4 affordable housing goes and it should go
5 where the growth and jobs are and shouldn't
6 be targeted at rural and environmentally
7 sensitive areas.
8 And these rules -- and I'm sure
9 there are people who know a lot more than I
10 do about the affordable housing side, I
11 don't believe in reading these rules that
12 they will actually help affordable housing
13 in the state, that they're a detriment to
14 that as well and they undermine the ability
15 for middle income families and working poor
16 and others to be able to get the
17 appropriate affordable housing.
18 So we believe that these rules
19 are just a giveaway to development
20 interests over what's right for the people
21 of New Jersey. Thank you.
22 **MR. CONSTABLE:** The next person
23 that we have is Adam Gordon, Fair Share
24 Housing Center.
25 **MR. GORDON:** Adam Gordon with

Page 12

1 Fair Share Housing Center. The rules that
2 you have before you today are not only
3 unconstitutional, they're just basically
4 irrational. They don't work and nobody who
5 actually was trying to get affordable
6 housing built would design anything like
7 that. COAH was given a simple task by the
8 Court, which was to go back to rules that
9 worked.
10 Instead, it's gone off and veered
11 in a totally different direction and gone
12 way beyond what the Court required. For
13 example, for the one major part of the
14 prior rules that the Court upheld which was
15 the prior round numbers, COAH went back and
16 recalculated for every town in the state.
17 We did an OPRA request to find out how the
18 numbers were calculated.
19 Some went up, some down,
20 sometimes they rely on what they had before
21 and the document has been lost, we were
22 told, so there's no basis whatsoever for
23 the numbers that have been changed. The
24 rules assume that we are stuck in permanent
25 recession. The rate of growth that we've

Page 13

1 been having over the last few years since
2 2008 will be the rate of growth in New
3 Jersey permanently.
4 And that's not a feature in an
5 economy that our state should be embracing,
6 and basically, numbers are artificially
7 reduced in every town because of that.
8 There's really a totally arbitrary series
9 of choices about redevelopment. We agree
10 with what the Sierra Club said about
11 redevelopment being the focus. You have
12 towns like Toms River that have obligations
13 of over 2000, while towns like Princeton,
14 where there is development going on on the
15 ground right now, have an obligation of
16 zero.
17 Particularly, Mayor Walters and
18 Mayor Winterstella, there's an assumption
19 in these rules that barrier islands should
20 have no growth whatsoever, period, ever in
21 the state and that's just not in fact what
22 is happening and not in fact what we
23 believe is the right policy and we think
24 that the assumption that there should be no
25 development ever anywhere in a 100-year

Page 14

1 floodplain which includes most barrier
2 islands, most of Hoboken and Jersey City,
3 is both not the reality and also can cause
4 all kinds of problems for communities like
5 those going forward.
6 There are a myriad of errors.
7 There are many towns in Monmouth County
8 there are mis-designated as actually being
9 in Ocean County. Most of the land
10 developable in Monmouth County is actually
11 shown as being located all in Jackson
12 Township in Ocean County, which is
13 obviously not the case and that's the type
14 of error that, you know, wouldn't survive
15 any kind of scrutiny if this were a rule
16 for licensing dog catchers, let alone for a
17 fair housing.
18 This really hurts people with
19 special needs. I know that's a concern of
20 Mr. Doherty and many other people. This
21 eviscerates the ability to get credit for
22 most housing for people with special needs
23 and also has no requirement for rental
24 housing and the reality is that most people
25 with special needs only really can afford

Page 15

1 to be in rental housing, and so towns
2 really have no requirement or incentive to
3 work with people with special needs.
4 We can all have policy
5 disagreements as mayors, housing advocates,
6 developers, but there's a lot of choices
7 that are being made here that nobody agrees
8 with, that really hurt everybody and I
9 think it's really time to take a step back
10 and make sure that you get these right
11 before we set off on another several years
12 of litigation and fighting over things
13 that, again, aren't really legitimate and
14 policy based, that are just purely
15 irrational problems, fundamental problems
16 with the methodology and things that are
17 just going to end up back with a lot of
18 fighting and no one building homes.
19 That's a drag on our economy, but
20 for lower income people and people in New
21 Jersey as a whole. Thanks.
22 **MR. CONSTABLE:**Lorraine Wearley,
23 unitarian Universalist Legislative
24 Ministry.
25 **MS. WEARLEY:**Good morning. I'm

Page 16

1 Lorraine Wearley and I'm the leader of the
2 economic justice task force of the
3 Unitarian Universalist Legislative Ministry
4 of New Jersey. This is a statewide
5 organization. We've advocated for
6 affordable housing in New Jersey since our
7 task force was formed and I testified at
8 the April hearing, as many of the people in
9 this room did.
10 We believe in the inherent worth
11 and dignity of every human being. Like
12 many faith based organizations and probably
13 like most people in this room, I would
14 venture to say that our Constitution is
15 based on this philosophy. Since so much of
16 a person's future depends on where they
17 live, the jobs they can get to, the safety
18 of their family, the schools their children
19 can attend, the future of their children,
20 it's essential that every community provide
21 affordable housing.
22 The proposed rules are simply not
23 adequate to meet New Jersey's needs for
24 affordable housing. Those needs have gone
25 up with the downturn in the economy, the

Page 17

1 loss of jobs, the loss of homes that were
2 long time residences, Hurricane Sandy,
3 returning veterans. People in New Jersey
4 need more affordable housing, not less.
5 However, I saw many of the same
6 faces here in April, these faces, and if
7 you've not changed the rules based on our
8 comments and you vote to approve them, then
9 there's a broader justice issue going on
10 here.
11 **MR. CONSTABLE:**Thank you.
12 Arnold Cohen?
13 **MR. COHEN:**My name is Arnold
14 Cohen. I'm the senior policy coordinator
15 for the Housing Community Development
16 Network of New Jersey. First, I want to
17 comment on your timeline for approving
18 municipal spending plans. We saw less.
19 Last time you approved 14, this time 16,
20 really urge you to move quickly. These are
21 towns that are sitting on money.
22 Many of our members who are non
23 profits throughout New Jersey have projects
24 ready to move forward. People need these
25 homes. Dollars are sitting and there's no





Page 18

1 reason why they should be waiting on
2 approving the hard work the towns have put
3 in to develop their plans for use in the
4 municipal housing trust fund.
5 Secondly, I wants to speak about
6 what we see as serious problems with the
7 rules before you today. We agree with the
8 previous speakers that it should be 20
9 percent, not 10 percent, that these rules
10 need to be looking at redevelopment. This
11 is where most of the housing is being built
12 in New Jersey. You look at communities
13 where housing is on the ground, being done,
14 it's redevelopment and the affordable
15 housing obligation needs to take that into
16 effect.
17 Ways in which towns have
18 addressed their affordable housing
19 obligation in the past, such as municipal,
20 such as market to affordable are now no
21 longer options for towns. We should be
22 giving towns more tools to address their
23 affordable housing obligation, not less
24 tools and then we need to be addressing
25 what the needs are of people, such as

Page 19

1 people with special needs, people for
2 rental housing and these rules do not
3 obligate that these things happen, so I
4 urge you to relook at the rules.
5 These rules as currently
6 structured hurt our economy and they'll be
7 in place for a long time and we need to get
8 them right. Thank you.
9 **MR. CONSTABLE:**Thank you. Is
10 there anyone else who wishes to speak who
11 did not submit a card? Seeing none.
12 **MR. WINTERSTELL**Mr. Chairman,
13 I'd like to make a motion at this time that
14 we go into executive session for the
15 specific purpose of discussing item number
16 two on our agenda with our attorneys,
17 Deputy Attorney General, so that there are
18 certain legal arguments that the members
19 have indicated to me that they would like
20 to discuss with the Attorney General's
21 Office.
22 **MR. CONSTABLE:**Okay. So there's
23 a resolution to enter executive session in
24 our packet and it outlines the nature of
25 the executive session discussion. You've

Page 20

1 made a motion. Is there anyone that would
2 like to second that?
3 **MR. DOHERTY:**I'll second.
4 **MR. CONSTABLE:**All in favor, say
5 aye. Any opposed, any abstaining? Hearing
6 none, the motion carries. So at this time,
7 we're going to move into executive session.
8 If those that are in the room can wait
9 outside, we'll let you know.
10 (Executive session is conducted.)
11 **MR. CONSTABLE:**We're back on the
12 record. Alice?
13 **MS. D'ARCY:** This is a motion for
14 a waiver from the bedroom distribution
15 requirements and for uniform housing
16 affordability controls. N.J.A.C. 5:97-9.1
17 requires all developments in the Fair Share
18 plans to meet the requirements of UHAC
19 which has a certain percentage of one, two
20 and three-bedrooms.
21 In this case, the development is
22 a 100-unit rental development proposed to
23 consist of 60 two-bedroom and 40
24 one-bedroom. 15 of the one-bedrooms
25 originally were proposed to be the

Page 21

1 affordable units. We received -- the
2 development received approval from the
3 Denville Morris County Planning Board on
4 July 9, 2014. On August 27, the attorney
5 for Denville filed the motion in a letter
6 brief and set out the reasons for the
7 waiver, of the fact that they felt that
8 there were a substantial number of two and
9 three, especially three-bedroom affordable
10 units in Denville.
11 But at this time, there are no
12 non age restricted one-bedroom units.
13 There's a 69-unit age restricted complex.
14 62 of those units are one-bedroom, but
15 again, it's age restricted so young people
16 cannot live there. We had opposition
17 originally from Fair Share Housing Center,
18 but at the end of the week, the developer
19 and township and Fair Share have reached an
20 agreement.
21 The developer has offered to or
22 has agreed to deed restrict -- well, he's
23 still deed restricting 15, but five of
24 those will be two-bedroom and 10 will be
25 one-bedroom. The five two-bedroom

Page 22

1 requirements actually meet UHAC's bedroom
2 distribution requirement for this
3 development. The bulk of affordable units
4 in Denville at this time are three-bedroom
5 units.
6 Of the 68 affordable units at
7 this time, 62 -- 65 are three bedroom. I
8 got my numbers wrong, but it's in your
9 report. Sorry. We feel, the staff
10 recommends that this waiver be granted and
11 that it does provide for a mix of housing
12 options for the population in Denville.
13 The census and American community survey
14 show that the predominant household size is
15 about two persons.
16 There are no affordable units
17 that are one-bedroom that would be in the
18 means of that population. This is near a
19 train station. It's an area needing
20 rehabilitation. It's surrounded by single
21 family homes and we just feel that this is
22 a good compromise on this development.
23 **MR. CONSTABLE:**Thank you. Any
24 questions?
25 **MR. DOHERTY:**I do have a

Page 23

1 question, Alice. Under affordable, are
2 there any barrier free or accessible parts
3 of those?
4 **MS. D'ARCY:** I don't know that,
5 Tim.
6 **MR. DOHERTY:**How about the rest
7 of the complex, even if it's not
8 affordable, there should be --
9 **MS. D'ARCY:** I know the
10 one-bedroom units, somehow they're going to
11 make them all on the first floor. I don't
12 know if now two-bedroom affordables could
13 be accessible, but I'll check in to it.
14 **MR. DOHERTY:**My only comment is
15 because that's what we do and I do know
16 that there's such a need for accessible
17 affordable housing throughout the state, no
18 matter where you go and build it, so I
19 would ask that Denville try to incorporate
20 accessible units in a couple of those.
21 **MS. D'ARCY:** I think they could
22 do it, because there are 60 two-bedrooms
23 and they only need five to be on the first
24 floor. I should also add, and we don't
25 know this for sure yet, but there's been

Page 24

1 some discussion. Denville is in the
2 process of revising its spending plan and
3 they're talking about using some of their
4 affordability assistance monies to make
5 maybe three of these, three of the 15, very
6 low-income.
7 So we don't have anything in
8 writing, but there has been discussion with
9 them about that.
10 **MR. DOHERTY:**Thank you.
11 **MR. CONSTABLE:**Any other
12 questions, comments, concerns?
13 **MR. WINTERSTELLA:**I move we
14 approve.
15 **MR. DOHERTY:**Second.
16 **MR. CONSTABLE:**All in favor, say
17 aye. Any opposed? Any abstain? Hearing
18 none, the motion carries.
19 **MR. WINTERSTELLA:**Mr. Chairman,
20 I'd like to make a motion to table for 60
21 days the item number 2, the adoption of
22 N.J.A.C. 5:99 substantial rules and
23 N.J.A.C. 5:98, procedural rules.
24 **MR. DOHERTY:**I'd like to comment
25 on that proposal and motion. I'd like to

Page 25

1 second that motion. We only in the short
2 period of time have received 3000 comments
3 with regard to these rules. Our staff has
4 worked diligently, I know weekends and
5 nights for several weeks now putting these
6 responses and whatnot together.
7 I also understand that by tabling
8 this motion for 60 days, we'll be in
9 violation of the Supreme Court direction.
10 I would hope and ask the Court as a part of
11 this public record that they generally
12 consider that this board is trying to make
13 a very sincere effort to have plans and
14 regulations, regulations that meet the
15 needs of our citizens of New Jersey and
16 that comply with the Supreme Court rules as
17 put forth and directed by the Supreme
18 Court.
19 We are generally sincere about
20 getting this right and we value everyone
21 who came here today who spoke and had
22 comments and we value those that were able
23 to spend time and money and especially the
24 municipalities to answer these questions
25 and to give your viewpoints and we would

Page 26

1 like to make a sincere effort to consider
2 them and have them as much as we can
3 incorporated into our rules.
4 I know that's not going to happen
5 100 percent, but we at least need to give a
6 fair shake to all the work that those folks
7 have done in commenting on these rules and
8 we hope that by doing this, we can come out
9 with a set of rules that will not only
10 substantially -- sustain a legal challenge,
11 but will finally resolve this issue of
12 affordable housing in the State of New
13 Jersey.
14 So that being said, again, I
15 would second John's motion to table these
16 regulations, the decision on the adoption
17 of these rules for 60 days.
18 **MR. WINTERSTELL**Mr. Chairman,
19 I'd like to comment on my resolution, my
20 motion to table.
21 **MR. CONSTABLE**:Sure.
22 **MR. WINTERSTELLA**I've read
23 probably 2000 and noted 2000 of the 3000
24 comments. The other 1000 were, very
25 honestly, duplicates, not really worth my

Page 27

1 time reading the same thing. I think there
2 was -- many of the comments were very much
3 on point. I think this motion, the
4 resolution that's before us on both the
5 rules and the procedural rules is not
6 sufficient to really move affordable
7 housing in this state and protect the other
8 issues.
9 I don't think -- I think there
10 should be things such as bonuses included
11 again, some recognition of the need for
12 apartments, low-income apartment housing.
13 We just -- this in my opinion is not a
14 resolution that will meet the requirements
15 of the Supreme Court. I feel that in the
16 60 days, I request that we have sufficient
17 meetings to offer amendments to get this
18 more in order and more appropriate for the
19 Supreme Court.
20 Hopefully, as was indicated by
21 Tim, the Supreme Court will allow us 60
22 days. Certainly, we have not had enough
23 time to review the comments and at least I
24 haven't had enough time and discuss them
25 with others, with the staff and also with

Page 28

1 the council, so I think we need this time
2 and hopefully, it will be helpful to us.
3 **MR. CONSTABLE**:Any additional
4 comments?
5 **MAYOR WALTERS**:I feel that we
6 can't violate the Supreme Court. I think
7 we have to go ahead with it. I do agree
8 100 percent that this is not perfect, that
9 there are so many changes that need to be
10 made to it and I would ask the staff to set
11 us task force meetings for us in the next
12 couple months so that we can make
13 substantial changes to it.
14 **MR. CONSTABLE**:Any additional
15 comments? I too believe it's important to
16 adhere to the Court's directive, so there
17 was a motion and a second. Can we have a
18 role call?
19 **MS. WEINTRAUB**:Mr. Timothy
20 Doherty?
21 **MR. DOHERTY**:Now what am I
22 voting on, John's motion?
23 **MS. WEINTRAUB**:Voting on the
24 motion to table.
25 **MR. DOHERTY**:Yes to table.

Page 29

1 **MS. WEINTRAUB**:Mr. Theodore
2 King?
3 **MR. KING**:Yes.
4 **MS. WEINTRAUB**:Mr. Anthony
5 Marchetta?
6 **MR. MARCHETTA**:No.
7 **MS. WEINTRAUB**:Mayor Suzanne
8 Walters?
9 **MAYOR WALTERS**:No.
10 **MS. WEINTRAUB**:Mr. John
11 Winterstella?
12 **MR. WINTERSTELLA**Yes to table.
13 **MS. WEINTRAUB**:Mr. Constable?
14 **MR. CONSTABLE**:No. All right,
15 so it was 3-3. I believe the motion fails.
16 Now, what we have before us as item number
17 2 is the adoption of N.J.A.C. 5:99,
18 substantive rules and N.J.A.C. 5:98,
19 procedural rules. Director Thompson?
20 **MR. THOMPSON**:Before I begin, I
21 just want to mention that as the comments
22 were coming in, I believe they were emailed
23 to all the council members, not in the
24 format that you're referring to now as they
25 appear in the documents that are before

Page 30

1 you, but I believe that you all have the
2 original comments that came in.
3 Having said that, I want to start
4 with the Supreme Court order which was
5 issued March 14, 2014 outlining a schedule
6 for the adoption of revised third round
7 rules. The council adopted the proposed
8 procedural and substantive rules on April
9 30 that was submitted to the Office of
10 Administrative Law on May 1 for that -- for
11 publication in the June 2, New Jersey
12 Register for a 60-day comment period that
13 concluded an August 1.
14 A hearing on the proposed rules
15 was held on July 2. The council received
16 approximately 3000 sets of written comments
17 and statements on the proposed rules. At
18 this time, I would like to share a few of
19 the prominent comments, beginning with
20 comments regarding the inaccuracies,
21 errors, if you will, in the buildable limit
22 capacity calculation.
23 I want to start off by pointing
24 out that in response to the Court
25 requirements that the council adopt a

Page 31

1 methodology similar to what was used in the
2 first and second rounds, Rutgers used a
3 method of identifying developable land that
4 improved on some known flaws of the prior
5 methodology. GIS technologies that were
6 not available in 1993 now exist,
7 specifically a complete statewide mapping
8 of all parcels has been completed.
9 In the vast majority of cases,
10 these parcels can be tied to taxation
11 records to determine whether the parcel is
12 vacant. Additionally, NJ Department of
13 Environmental Protection has amassed a
14 series of GIS layers that can be used to
15 identify environmental constraints. While
16 the updated data and enhanced technology
17 are a significant improvement over land-sat
18 imagery that was available in 1993, no data
19 set or mapping protocol will be perfect.
20 Additionally, the best available
21 data at the time the studies were conducted
22 included a composite of information from
23 2007 through 2012. Consequently, the
24 buildable limit calculations conducted in
25 the revised third round rules will

Page 32

1 inevitably contain some errors and/or
2 reflect additions that have changed
3 subsequent to the dates on which the data
4 were based.
5 To address the concerns raised
6 regarding the potential data errors, as has
7 always been done in the past, the proposed
8 rules provide several options for the
9 buildable limit capacity data to be
10 refuted. Municipalities may request a
11 vacant land adjustment to accommodate
12 additions where less land is actually
13 available than what was identified by
14 Rutgers.
15 In addition, instances where a
16 land owner or potential developer believes
17 that additional vacant land is available
18 over that which was identified by Rutgers,
19 the additional site or sites may become the
20 subject of an objection to a municipal
21 planner. Finally, the procedural rules
22 allow any person to request a waiver from
23 specific provisions of the rules including
24 the determination of the buildable limit
25 capacity at any time.

Page 33

1 Next, I want to move on to a
2 number of comments received regarding the
3 zoning is a preferred mechanism language in
4 the proposed rules. To address these
5 concerns, the responses in the rule
6 adoptions clarify that the determination to
7 make inclusionary zoning the preferred
8 mechanism is due to the scarcity of
9 developable land in New Jersey for
10 residential development and the benefits of
11 mixed income housing.
12 To the extent it is economically
13 feasible, new market rate residential
14 developments should incorporate affordable
15 housing opportunities. Recognizing that
16 this may not always be possible, the rule
17 proposal also incorporates other zoning
18 related mechanisms including 100 percent
19 affordable construction, community
20 residence and redevelopment to address its
21 fair share prospective need.
22 If a municipality demonstrates
23 that it cannot address the fair share
24 prospective need through the permitted
25 mechanisms, they may request a vacant land

Page 34

1 adjustment. In addition to providing the
2 maximum number of affordable units a
3 municipality can provide to the permitted
4 mechanisms, the vacant land adjustment
5 process requires a consideration of
6 providing affordable housing through other
7 delivery mechanisms, including but not
8 limited to gut rehabilitation, accessory
9 apartments, market to affordable and
10 stationary expiring controls.
11 Also, a number of commenters
12 commented that the rule proposal narrowly
13 defines community residence for
14 developmentally disabled and to address
15 this concern, the responses clarify that
16 permanent housing for individuals with
17 special needs consistent with the standards
18 or requirements for community residences
19 for developmentally disabled is allowed to
20 address the fair share prospective need.
21 Lastly, a number of comments were
22 received requesting that the requirement
23 for the economic feasibility study be
24 eliminated, which is addressed with the
25 responses explaining that the specific

Page 35

1 purpose of the economic feasibility study
2 is to establish a realistic opportunity,
3 realistic and documented fiscal
4 relationship, rather, between municipal
5 zoning requiring affordable housing and
6 density increases and/or other compensatory
7 benefits designed to make the achievement
8 of the affordable housing requirements
9 attainable.
10 The economic feasibility studies
11 improve the municipal planning process by
12 insuring that sites zoned for inclusionary
13 development are realistic from a financial
14 perspective. This is necessary because
15 inclusionary development as contemplated by
16 the Mount Laurel doctrine relies on market
17 driven responses to address the need for
18 affordable housing.
19 The economic feasibility study is
20 a tool that municipalities will be able to
21 use to assist their decision making
22 processes to insure that land use decisions
23 fit into the overall planning initiatives
24 being undertaken in the municipal Master
25 Plan using proper planning that is based on

Page 36

1 local conditions rather than a statewide
2 prescription of density and/or set-asides.
3 Financial feasibility handbook will be made
4 available to assist municipalities.
5 In lieu of an economic
6 feasibility study, an executed developer or
7 redeveloper's agreement between the owner
8 or redeveloper of a site or developer of a
9 site and the municipality in court approved
10 settlement agreement owner or developer of
11 a site and municipality or a subdivision
12 site plan approval setting forth mutually
13 agreed to terms for the production of a
14 specified number of affordable units will
15 be acceptable as addressed in the realistic
16 opportunity of a site's inclusionary
17 zoning.
18 I just want to end by saying that
19 the rule adoption also includes a list of
20 agency initiated non substantial changes
21 that do not necessitate further public
22 comment. At this time, any questions?
23 **MR. CONSTABLE:** Are there any
24 questions, comments, concerns? All right.
25 There is a resolution in your packet to

Page 37

1 adopt and publish the proposed regulations,
2 N.J.A.C. 5:98 and N.J.A.C. 5:99. Is there
3 a motion on the resolution?
4 **MR. MARCHETTA:** I'll move it.
5 **MR. CONSTABLE:** And a second?
6 **MAYOR WALTERS:** I'll second.
7 **MR. CONSTABLE:** Role call,
8 please.
9 **MS. WEINTRAUB:** Mr. Timothy
10 Doherty?
11 **MR. DOHERTY:** No.
12 **MS. WEINTRAUB:** Mr. Theodore
13 King?
14 **MR. KING:** No.
15 **MS. WEINTRAUB:** Mr. Anthony
16 Marchetta?
17 **MR. MARCHETTA:** Yes.
18 **MS. WEINTRAUB:** Mayor Walters?
19 **MAYOR WALTERS:** Yes.
20 **MS. WEINTRAUB:** Mr. John
21 Winterstella?
22 **MR. WINTERSTELLA:** No.
23 **MS. WEINTRAUB:** Mr. Constable?
24 **MR. CONSTABLE:** Yes.
25 **MS. WEINTRAUB:** It's 3-3.

Page 38

1 **MR. CONSTABLE:** So it does not
2 pass. Next item on the agenda, the
3 executive director will present
4 recommendations.
5 **MR. THOMPSON:** This morning,
6 there was -- actually Friday, we received
7 comments about Washington Township, so
8 Washington Township Gloucester County is
9 not part of the bulk or the group
10 commitment determinations that are in the
11 resolution. I believe another
12 resolution -- a resolution was drafted
13 specific to Washington Township and the
14 group resolution no longer includes
15 Washington Township.
16 So at this time, I will present
17 the resolution for municipal expenditure
18 and commitment of the municipal affordable
19 housing trust fund in accordance with the
20 2008 amendments to the Fair Housing Act at
21 N.J.S.A. 52:27D-329.2 and 329.3 that
22 require that all development fees and
23 payments in lieu collected by a
24 municipality must be spent or committed for
25 expenditures by the municipality within

Page 39

1 four years from the date of collection and
2 that funds not committed shall be
3 transferred at the end of the four-year
4 period to the New Jersey affordable housing
5 trust fund.
6 I will start with the resolution
7 that has 12 municipalities. Allamuchy
8 Township, Berkeley Heights, Colts Neck
9 Township, Franklin Lakes Borough, Hopatcong
10 Borough, Millville City, Montville
11 Township, Morris Township, Oldsmans
12 Township, Salem County, Ramsey Borough,
13 West Cape May and West Windsor.
14 By way of background, on June 25,
15 2013, letters were sent to each
16 municipality with the municipality -- with
17 the municipal affordable housing trust fund
18 account and in the service list the letter
19 describes the amount of funds intended for
20 transfer to the New Jersey affordable house
21 trust fund and how such amount was
22 calculated. The amount of the funds
23 indicated in the letter was based upon
24 records submitted by the municipality for
25 funds it collected by July 18, 2008 and the

Page 40

1 balance which to have been suspended by
2 July 17, 2012 and for funds collected
3 between July 18, 2012 and March 31, 2009,
4 the balance to have been expended within
5 four years of collection.
6 The letter required each
7 municipality to submit a certification and
8 information by August 2, 2013,
9 demonstrating that it had spent or
10 committed to spend the monies to fund an
11 affordable housing project or projects by
12 way of a legally enforceable agreement with
13 third parties or such other means that
14 showed a firm and binding obligation within
15 four years of the date of collection.
16 At this time, the acting
17 executive director and staff have completed
18 the review of responses, including
19 documentation submitted by or regards to
20 the aforementioned municipalities. The
21 acting executive director and staff have
22 evaluated all information, documentation
23 and responses submitted by each of the
24 aforementioned municipalities based on the
25 standards enunciated in the council's May

Page 41

1 1, 2013 and the Appellate Division's
2 orders, namely that the municipality must
3 demonstrate that it has committed the funds
4 by way of a legally enforceable agreement
5 with a third party or by such other means
6 that demonstrate a firm and binding
7 obligation to spend such funds in any
8 manner consistent with its affordable
9 housing obligation.
10 In addition, we prepared a
11 written recommendation for each
12 municipality called report reviewing
13 proposed expenditures on affordable housing
14 activities and documentation demonstrating
15 compliance with the statutory language,
16 which explains in detail the acting
17 executive director's decisions and the
18 basis for accepting or rejecting the
19 information and response submitted by each
20 of the municipalities and affected parties
21 which was presented to a task force.
22 These reports were issued for an
23 intended comment period. No responses were
24 received by COAH and at this time, I'd ask
25 the council to accept the recommendations

11 (Pages 38 to 41)

Page 42

1 set forth in these reports. So these are
2 the 12.
3 **MR. CONSTABLE:** Are there any
4 questions, comments, concerns?
5 **MR. WINTERSTELLA:** I would move
6 approval, but I have a question.
7 **MR. CONSTABLE:** What's your
8 question?
9 **MR. WINTERSTELLA:** Sean, would
10 you read the list again? I sort of missed
11 why a couple were left off.
12 **MR. THOMPSON:** I have Allamuchy
13 Township, Warren County, Berkeley Heights
14 Township, Union County, Colts Neck
15 Township, Monmouth County, Franklin Lakes
16 Borough, Bergen County. Hopatcong Borough,
17 Sussex County, Millville City, Cumberland
18 County, Montville Township, Morris County,
19 Morris Township, Morris County, Oldmans
20 Township, Salem County, Ramsey Borough,
21 Bergen County, West Cape May Borough, Cape
22 May County and West Windsor Township,
23 Mercer County.
24 I have a couple more, so the next
25 set is going to be for -- let's take the

Page 43

1 vote on this first.
2 **MR. WINTERSTELLA:** I would move
3 approval.
4 **MR. CONSTABLE:** Second?
5 **MR. KING:** Second.
6 **MR. CONSTABLE:** All in favor say
7 aye. Any opposed? Abstain? Hearing none,
8 the motion carries.
9 **MR. THOMPSON:** A report was also
10 issued for a 10-day comment period to
11 Chester Borough, Morris County and
12 Washington Township, Gloucester County and
13 affected parties on the service list.
14 Comments were received from the Fair Share
15 Housing Center. The comments are related
16 solely to the recommendations regarding
17 housing trust funds for both Chester and
18 Washington that were not at risk.
19 That is, that the municipalities
20 did not provide official documentation and
21 demonstrate commitment consistent with the
22 statutory language, the Appellate Division
23 orders and COAH's resolution of certain
24 proposed expenditures. At this time, it's
25 recommended that the council accept the

Page 44

1 recommendations set forth in the reports
2 for these two municipalities, only insofar
3 as they relate to the amounts deemed
4 committed which equal or exceed the total
5 amount required to be committed by March
6 13 -- March 31, 2013.
7 **MR. CONSTABLE:** Any questions,
8 comments, concerns? Is there a motion?
9 **MR. WINTERSTELLA:** I would move
10 we accept the executive director's
11 recommendation.
12 **MR. DOHERTY:** I'll second.
13 **MR. CONSTABLE:** All in favor, say
14 aye. Any abstain, opposed? Hearing none,
15 I'm going to make a motion to go into
16 executive session regarding anticipated
17 litigation.
18 **MR. THOMPSON:** Well, in addition,
19 reports were also issued for a 10-day
20 comment period for Middle Township, Cape
21 May and Mount Laurel Township in Burlington
22 County. With regard to Middle Township,
23 additional information and comments were
24 received during the 10-day comment period.
25 COAH received additional information from

Page 45

1 Middle Township including letters from
2 Conifer, ARC of Cape May and Cape May
3 Habitat for Humanity and comments from the
4 Concerned Citizens of Middle Township
5 Steering Committee that do not address
6 commitment issues.
7 In regards to Mount Laurel, we
8 received comments not within 10 days, it
9 was after, but nonetheless, we received
10 comments from Fair Share Housing Center
11 regarding the recommendations for the rehab
12 program, affordability assistance,
13 administrative expenses, additional time
14 needed to look into the information that
15 was submitted.
16 So at this time, it's recommended
17 that the council accept the recommendations
18 set forth in the reports for Middle
19 Township and Mount Laurel, only insofar as
20 it relates to the amount deemed committed
21 for Middle Township and Mount Laurel
22 respectively.
23 **MAYOR WALTERS:** I'd make that
24 motion.
25 **MR. KING:** Second.

1 **MR. CONSTABLE:** All in favor say
 2 aye. Abstain? Any opposed? Hearing none,
 3 the motion carries. Any more? All right,
 4 now, I'll make the motion to go into
 5 executive session regarding pending
 6 litigation referring to the proposed rules.
 7 **MR. WINTERSTELLA:** I second the
 8 motion.
 9 **MR. CONSTABLE:** All in favor, say
 10 aye. Opposed or abstain? Hearing none,
 11 motion carries. If everyone can leave,
 12 we'd appreciate it.
 13 (Executive session is conducted.)
 14 **MR. CONSTABLE:** We're back out of
 15 executive session. Is there any other
 16 business that anyone on the board would
 17 like to discuss? Okay. Hearing none, is
 18 there a motion to adjourn?
 19 **MR. WINTERSTELLA:** So moved.
 20 **MR. CONSTABLE:** And a second?
 21 **MAYOR WALTERS:** Second.
 22 **MR. CONSTABLE:** All in favor, say
 23 aye. The motion carries. Thank you. We
 24 are adjourned.
 25 (The proceedings are adjourned at

1 **C E R T I F I C A T E**
 2
 3 I, NANCY L. DELANEY, a Certified Court
 4 Reporter and Notary Public, do hereby certify
 5 that the foregoing is a true and accurate
 6 transcript of the stenographic notes of the
 7 testimony taken by me at the time, place and on
 8 the date hereinbefore set forth.
 9
 10 I do further certify that I am neither
 11 a relative nor employee, nor attorney, nor
 12 counsel to any parties to this action; and that I
 13 am neither related to a relative nor employee of
 14 any such attorney or counsel, and that I am not
 15 financially interested in this action.

16 *Nancy L. Delaney*
 17 NANCY L. DELANEY, CCR, RMR.
 18 Certificate No. XI-0001692



1 11:20 a.m.)
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State of New Jersey
COUNCIL ON AFFORDABLE HOUSING

CHRIS CHRISTIE
Governor

101 SOUTH BROAD STREET
PO BOX 813
TRENTON, NJ 08625-0813

RICHARD E CONSTABLE, III
Commissioner

KIM GUADAGNO
Lt. Governor

(609) 292-3000
(609) 633-6056 (FAX)

SEAN THOMPSON
Acting Executive Director

REGULAR MEETING

AGENDA

NJ COUNCIL ON AFFORDABLE HOUSING

9:30 A.M MONDAY, OCTOBER 20, 2014

NJ COUNCIL ON AFFORDABLE HOUSING MEETING TO BE HELD AT:

NJ HOUSING & MORTGAGE FINANCE AGENCY

637 S. CLINTON AVENUE

TRENTON, NJ 08650

PUBLIC SESSION

Formal Action to Be Taken

Public Session – 9:30 a.m.

Pledge of Allegiance

Sunshine Act Statement

Roll Call

Executive Director's Report

*Approval of Minutes: August 26, 2014

Public Comment on Agenda Items

1. *Denville Township, Morris County - Waiver of N.J.A.C. 5:80-26.3(b) Bedroom Distribution
2. *Adoption of N.J.A.C. 5:99 Substantive Rules and N.J.A.C. 5:98 Procedural Rules
3. *Approval of Acting Executive Director's Recommendation Regarding Municipal Compliance with N.J.S.A. 52:27D-329.2 and N.J.S.A. 52:27D-329.3.

Allamuchy Township / Warren County
Berkeley Heights Township / Union County
Chester Borough / Morris County
Colts Neck Township / Monmouth County
Franklin Lakes Borough / Bergen County
Hopatcong Borough / Sussex County
Middle Township / Cape May County







Mount Laurel Township / Burlington Township
City of Millville / Cumberland County
Montville Township / Morris County
Morris Township / Morris County
Oldsmans Township / Salem County
Ramsey Borough / Bergen County
Washington Township / Gloucester County
West Cape May Borough / Cape May County
West Windsor Township / Mercer County

- Other Business

- Adjournment

*COAH Action

Note: If an executive session is necessary, COAH will announce the approximate time after calling the meeting to order. If a party wishes to make a verbatim record or transcribe the public session, the party should notify the Executive Director prior to that session.

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Rule Publication Schedule

2014 New Jersey Register Publication Schedule

Publication Day*	Proposal Deadline (Noon)	Adoption Deadline (Noon)	30-Day/60-Day Comment Periods End
January 6, 2014	December 4 (Wednesday)	December 11 (Wednesday)	February 5/March 7
January 21 (Tuesday)	December 18 (Wednesday)	December 26 (Thursday)	February 20/March 22
February 3	January 2 (Thursday)	January 9 (Thursday)	March 5/April 4
February 18 (Tuesday)	January 16(Thursday)	January 24 (Friday)	March 20/April 19
March 3	January 30(Thursday)	February 6 (Thursday)	April 2/May 2
March 17	February 13 (Thursday)	February 21 (Friday)	April 16/May 16
April 7	March 7 (Friday)	March 14 (Friday)	May 7/June 6
April 21	March 20(Thursday)	March 27 (Thursday)	May 21/June 20
May 5	April 3 (Thursday)	April 10 (Thursday)	June 4/July 4
May 19	April 17 (Thursday)	April 25 (Friday)	June 18/July 18
June 2	May 1 (Thursday)	May 8 (Thursday)	July 2/August 1
June 16	May 15 (Thursday)	May 22 (Thursday)	July 16/August 15
July 7	June 5 (Thursday)	June 12 (Thursday)	August 6/ September 5
July 21	June 19 (Thursday)	June 26 (Thursday)	August 20/ September 19
August 4	July 3 (Thursday)	July 11 (Friday)	September 3/ October 3
August 18	July 18 (Friday)	July 25 (Friday)	September 17/ October 17
September 2 (Tuesday)	August 1 (Friday)	August 8 (Friday)	October 2/ November 1
September 15	August 14 (Thursday)	August 21 (Thursday)	October 15/ November 14
October 6	September 5 (Friday)	September 12 (Friday)	November 5/ December 5
October 20	September 18 (Thursday)	September 25 (Thursday)	November 19/ December 19
November 3	October 2 (Thursday)	October 9 (Thursday)	December 3/ January 2

November 17	October 15 (Wednesday)	October 22 (Wednesday)	December 17/ January 16
December 1	October 29 (Wednesday)	November 6 (Thursday)	December 31/ January 30
December 15	November 12 (Wednesday)	November 19 (Wednesday)	January 14/ February 13
January 5 , 2015	December 3 (Wednesday)	December 10 (Wednesday)	February 4/March 6
January 20 (Tuesday)	December 17 (Wednesday)	December 24 (Thursday)	February 19/ March 21
February 2	December 31 (Wednesday)	January 8 (Thursday)	March 4/April 3
February 17 (Tuesday)	January 15 (Thursday)	January 23 (Friday)	March 19/April 18

2015 New Jersey Register Publication Schedule

Publication Day*	Proposal Deadline (Noon)	Adoption Deadline (Noon)	30-Day/60-Day Comment Periods End
January 5, 2015	December 3 (Wednesday)	December 10 (Wednesday)	February 4/March 6
January 20 (Tuesday)	December 17 (Wednesday)	December 24 (Wednesday)	February 19/March 21
February 2	December 31 (Wednesday)	January 18 (Thursday)	March 4/April 3
February 17 (Tuesday)	January 15(Thursday)	January 23 (Friday)	March 19/April 18
March 2	January 29 (Thursday)	February 5 (Thursday)	April 1/May 1
March 16	February 12 (Thursday)	February 20 (Friday)	April 15/May 15
April 6	March 5 (Thursday)	March 12 (Thursday)	May 6/June 5
April 20	March 19 (Thursday)	March 26 (Thursday)	May 20/June 19
May 4	April 2 (Thursday)	April 10 (Friday)	June 3/July 3
May 18	April 17 (Friday)	April 24 (Friday)	June 17/July 17
June 1	April 30 (Thursday)	May 7 (Thursday)	July 1/July 31
June 15	May 14 (Thursday)	May 21 (Thursday)	July 15/August 14
July 6	June 4 (Thursday)	June 11 (Thursday)	August 5/ September 4
July 20	June 18 (Thursday)	June 25 (Thursday)	August 19/ September 18
August 3	July 2 (Thursday)	July 10 (Friday)	September 2/ October 2
August 17	July 17 (Friday)	July 24 (Friday)	September 16/ October 16
September 8 (Tuesday)	August 7 (Friday)	August 14 (Friday)	October 8/ November 7
September 21	August 20 (Thursday)	August 27 (Thursday)	October 21/ November 20
October 5	September 3 (Thursday)	September 11 (Friday)	November 4/ December 4
October 19	September 17 (Thursday)	September 24 (Thursday)	November 18/ December 18
November 2	October 1 (Thursday)	October 8 (Thursday)	December 2/ January 1
November 16	October 14 (Wednesday)	October 21 (Wednesday)	December 16/ January 15

December 7	November 4 (Wednesday)	November 12 (Thursday)	January 6/ February 5
December 21	November 18 (Wednesday)	November 25 (Wednesday)	January 20/ February 19
January 4 , 2016	December 2 (Wednesday)	December 9 (Wednesday)	February 3/March 4
January 19 (Tuesday)	December 16 (Wednesday)	December 23 (Wednesday)	February 18/ March 19
February 1	December 31 (Thursday)	January 8 (Friday)	March 2/April 1
February 16 (Tuesday)	January 14 (Thursday)	January 22 (Friday)	March 17/April 16

**MONDAY, unless otherwise indicated.*



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Office of Administrative Law

GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

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Directive # 08-12
[Supersedes Directive # 07-09]

To: Assignment Judges
Civil Presiding Judges

From: Glenn A. Grant, J.A.D. 

Subj: Multicounty Litigation Guidelines (Formerly "Mass Tort Guidelines")

Date: August 7, 2012

The Supreme Court as part of its July 19, 2012 Omnibus Rule Amendment Order adopted revisions to Rule 4:38A, to be effective September 4, 2012. Accordingly, as of that date, Rule 4:38A will be captioned "Centralized Management of Multicounty Litigation"; prior thereto the rule was captioned "Centralized Management of Mass Torts".

Rule 4:38A provides that the Court shall adopt procedures for the centralized management of cases covered by the rule, with those procedures to be promulgated by the Administrative Director. This directive promulgates the attached "Multicounty Litigation Guidelines and Criteria for Designation" ("Multicounty Litigation Guidelines"), effective September 4, 2012. Directive #07-09, which promulgated the Revised Mass Tort Guidelines, is therefore superseded as of that same September 4, 2012 date.

The revisions to the court rule and to the guidelines were solely to replace the superseded "Mass Tort" terminology with new "Multicounty Litigation" terminology.

Questions regarding Multicounty Litigation Guidelines promulgated by this directive may be directed to Leslie A. Santora, Esq., Chief, Civil Court Programs, Civil Practice Division, AOC, by phone at 609-292-8471 or by LotusNotes email.

G.A.G.

Attachment (Multicounty Litigation Guidelines)

cc: Chief Justice Stuart Rabner
Hon. Carol E. Higbee
Hon. Brian R. Martinotti
Hon. Jessica R. Mayer
Hon. Vincent LeBlon
Hon. Ann G. McCormick
Mark Neary, Supreme Court Clerk

Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Trial Court Administrators
Gurpreet M. Singh, Special Assistant
Civil Division Managers
Leslie A. Santora, Chief

MULTICOUNTY LITIGATION GUIDELINES AND CRITERIA FOR DESIGNATION

[As Promulgated by Directive # 08-12 Pursuant to Rule 4:38A]

Procedure for Requesting Designation of a Case as Multicounty Litigation for Centralized Management

The Assignment Judge of any vicinage or an attorney involved in a case or cases that may constitute multicounty litigation may apply to the Supreme Court, through the Administrative Director of the Courts, to have the case(s) classified as multicounty litigation, and assigned to a designated judge for centralized management. The Assignment Judge or attorney making such an application must give notice to all parties then involved in the case(s), advising that the application has been made and that a Notice to the Bar will appear in the legal newspapers and in the Multicounty Litigation Information Center on the Judiciary's Internet website providing information on where and within what time period comments on and objections to the application may be made.

Such Notice advising of the application and requesting comments or objections will be sent by the Administrative Director to all Assignment Judges and Civil Presiding Judges, will be published by the Administrative Director in the legal newspapers, and will be posted on the Judiciary's Internet website both in the Notices section and in the Multicounty Litigation Information Center. Once the comment period has closed, the Administrative Director of the Courts will present the application, along with a compilation of any comments and objections received, to the Supreme Court for its review and determination.

If the Supreme Court determines that the case(s) should be classified as multicounty litigation and assigned to a designated judge for centralized management and, in that judge's discretion, trial, an appropriate Order will be entered. The Order will be sent to all Assignment Judges and Civil Presiding Judges, will be published in the legal newspapers, and will be posted in the Multicounty Litigation Information Center on the Judiciary's Internet website.

Criteria to be Applied in Determining Whether Designation as Multicounty Litigation is Warranted

In determining whether designation as multicounty litigation is warranted, the following factors, among others, will be considered:

- whether the case(s) possess(es) the following characteristics:
 - it involves large numbers of parties;

- it involves many claims with common, recurrent issues of law and fact that are associated with a single product, mass disaster, or complex environmental or toxic tort;
 - there is geographical dispersement of parties;
 - there is a high degree of commonality of injury or damages among plaintiffs;
 - there is a value interdependence between different claims, that is, the perceived strength or weakness of the causation and liability aspects of the case(s) are often dependent upon the success or failure of similar lawsuits in other jurisdictions; and
 - there is a degree of remoteness between the court and actual decision-makers in the litigation, that is, even the simplest of decisions may be required to pass through layers of local, regional, national, general and house counsel.
- whether there is a risk that centralization may unreasonably delay the progress, increase the expense, or complicate the processing of any action, or otherwise prejudice a party;
 - whether centralized management is fair and convenient to the parties, witnesses and counsel;
 - whether there is a risk of duplicative and inconsistent rulings, orders or judgments if the cases are not managed in a coordinated fashion;
 - whether coordinated discovery would be advantageous;
 - whether the cases require specialized expertise and case processing as provided by the dedicated multicounty litigation judge and staff;
 - whether centralization would result in the efficient utilization of judicial resources and the facilities and personnel of the court;
 - whether issues of insurance, limits on assets and potential bankruptcy can be best addressed in coordinated proceedings; and
 - whether there are related matters pending in Federal court or in other state courts that require coordination with a single New Jersey judge.

Choice of Site for Centralized Management

Issues of fairness, geographical location of parties and attorneys, and the existing civil and multicounty litigation caseload in the vicinage will be considered in determining to which vicinage a particular multicounty litigation will be assigned for centralized management. This decision will be made by the Supreme Court.

Subsequent Related Actions

The initial order of the Supreme Court denominating a particular category of cases as multicounty litigation and referring those cases to a particular county for centralized management may specify that subsequent related actions are to be transferred from the counties in which they are filed to the designated multicounty litigation county and judge without further application to the Supreme Court.

Severance

The multicounty litigation judge may thereafter review the cases designated as a multicounty litigation and assigned for centralized management, and may sever and return to the original county(ies) of venue any that no longer warrant centralization.

Termination of Centralized Management

When the multicounty litigation judge determines that centralized management is no longer necessary or appropriate under the circumstances, he or she will send a written report to the Administrative Director, with copies to the Assignment Judge, Civil Presiding Judge, Trial Court Administrator, Civil Division Manager of his or her vicinage and all counsel of record in any pending cases. The report shall provide details of matters resolved as well as the particulars concerning any unresolved matters including whether the latter will be returned to their original county(ies) of venue or will continue to be handled until resolution by the multicounty litigation judge. This report will be presented to the Supreme Court for review. Thereafter, a Notice to the Bar advising of the request and requesting comments or objections will be sent to all Assignment Judges and Civil Presiding Judges, will be published by the Administrative Director in the legal newspapers and will be posted on the Judiciary's Internet website both in the Notices section and in the Multicounty Litigation Information Center.

Once the comment period has closed, the Administrative Director of the Courts will present the termination request, along with a compilation of any comments and objections received, to the Supreme Court for its review and determination.

If the Supreme Court determines that the multicounty litigation designation should be terminated, it may terminate the centralized management or determine that continuing the centralized management of any pending and future such cases by the designated multicounty litigation judge is warranted. Following the Supreme Court's determination, an appropriate order will be entered. The order will be sent to all Assignment Judges and Civil Presiding Judges, will be published in the legal newspapers and will be posted on the Judiciary's Internet website both in the Notices section and in the Multicounty Litigation Information Center.

FAIR SHARE HOUSING CENTER
510 Park Boulevard
Cherry Hill, New Jersey 08002
P: 856-665-5444
F: 856-663-8182
Attorneys for Petitioner
Fair Share Housing Center
By: Kevin D. Walsh, Esq. 030511999
Adam M. Gordon, Esq. 033332006
kevinwalsh@FairShareHousing.org

SUPREME COURT OF NEW JERSEY

**IN THE MATTER OF THE ADOPTION
OF N.J.A.C. 5:96 AND 5:97 BY
THE NEW JERSEY COUNCIL ON
AFFORDABLE HOUSING**

Supreme Court Docket
No. 67,126

On petition for certification
to:

SUPERIOR COURT
APPELLATE DIVISION

Docket No. A-5451-07T3

(Consolidated at the Appellate
Division under Lead Docket No.
A-5382-07T3)
CIVIL ACTION

On Appeal from the Council on
Affordable Housing

**CERTIFICATION OF KEVIN D. WALSH
IN SUPPORT OF PETITIONER'S
MOTION TO ENFORCE LITIGANTS'
RIGHTS**

1. I, Kevin D. Walsh, Esquire, am a staff attorney for Fair Share Housing Center. I make this certification in support of Appellant's Motion to Enforce Litigants' Rights.

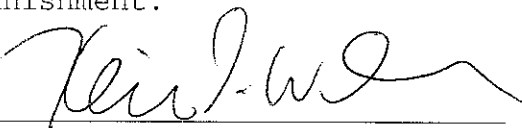
2. Fair Share Housing Center retained David N. Kinsey, Ph.D., FAICP, PP to prepare a report in which he calculated the

Third Round municipal fair share obligations from 1999-2024 for all New Jersey municipalities. That document is attached hereto. His report includes extensive spreadsheets that will be provided electronically to the Court upon request. FSHC provided this report and the related spreadsheets to the Council on Affordable Housing with its comments regarding the proposed Third Round regulations.

3. I am also aware that Art Bernard, the former Executive Director of the Council on Affordable Housing, has calculated Third Round obligations for all New Jersey municipalities and provided those calculations in litigation, including, for instance, through an expert report in M & M at Morris Plains, LLC v. Borough of Morris Plains, Docket No. MRS-L-296-13.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements by me are willfully false, I am subject to punishment.

Dated: 10/30/2014



Kevin D. Walsh, Esq.



NEW JERSEY LOW AND MODERATE INCOME HOUSING
PROSPECTIVE NEED FOR 1999-2024
USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY

JULY 2014

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NEW JERSEY LOW AND MODERATE INCOME HOUSING PROSPECTIVE NEED FOR 1999-2024 USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY

Under New Jersey's Mount Laurel Doctrine on exclusionary zoning and affordable housing,¹ and the state Fair Housing Act enacted in 1985,² all New Jersey municipalities and State agencies with land use authority have a constitutional obligation to create a realistic opportunity for development of their fair share of the regional need for housing affordable to low and moderate income households.³ This housing need, and associated fair share obligations, has three components: Rehabilitation Need, Prior Round obligation (1987-1999) and Prospective Need (post-1999). This document presents the methodology for calculating and allocating regional prospective housing need for 1999-2024 to New Jersey's 565 municipalities, and then calculating the Net Prospective component of each municipality's fair share housing obligation. It also provides the results of these calculations for all municipalities, calculating their Net Prospective Need for 1999-2024 using the Prior Round (1987-1999) methodology.

This prospective need methodology responds directly to the 2010 remedy order by the Appellate Division, affirmed by the New Jersey Supreme Court on September 26, 2013, that directed the New Jersey Council on Affordable Housing ("COAH")

"... to adopt new third round rules that use a methodology for determining prospective need similar to the methodologies used in the first and second rounds.

This determination should be made on the basis of the most up-to-date available

¹ So. Burlington Cty. N.A.A.C.P., et al. v. Mount Laurel Tp., et al., 67 N.J. 151 (1975) (Mount Laurel I), So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp. 92 N.J. 158, 198, 208-209, 214-215 (1983) (Mount Laurel II), and subsequent decisions, including Hills v. Bernards Township, 103 N.J. 1 (1986), Toll Bros. v. West Windsor Township et al., 173 N.J. 502 (2002), and In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 215 N.J. 578 (2013).

² N.J.S.A. 52:27D-301 et seq.

³ The Fair Housing Act defines low and moderate income households as households with gross household incomes, respectively, of 50% or less and between 50%-80% of the regional household median income adjusted for household size. N.J.S.A. 52:27D-304c. and d.

data. The remand shall be completed within five months.”^{4 5 6}

“Prospective Need” is a projection of low and moderate income housing needs for a defined period in the future. COAH first developed, proposed, revised, adopted, and implemented its fair share housing methodology to project prospective need for the First Round (1987-1993) in 1986.⁷ For its Second Round (1993-1999), COAH maintained the basic structure of the methodology, and adopted and implemented the updated methodology, with some minor refinements, in 1994.⁸

Under its First and Second Round methodologies, also referred to, since the early 2000s as the “Prior Round,” COAH determined municipal prospective need in three phases. First, regional prospective need is calculated. Second, each region’s prospective need is allocated to the municipalities within each region. Third, each municipality’s obligation is adjusted based on additional, so-called “secondary” sources of housing demand and supply. The entire process has 19 discrete but inter-related steps. This document defines each of these steps and the “most up-to-date available data” used for each step in this process, as required by the Appellate Division. This Third Round prospective need methodology follows closely and almost mechanically the COAH First and Second Round methodologies. No refinements, simplifications, or revisions have been made, in keeping with the Appellate Division’s Order.⁹

⁴ In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing 416 N.J. Super. 462 (App Div 2010).

⁵ In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 215 N.J. 578 (2013).

⁶ The Supreme Court reaffirmed this remedy and on March 14, 2014 established a new timetable for compliance, requiring COAH to propose and adopt new post-1999 rules, with publication of the adoption notice in the November 17, 2014 edition of the New Jersey Register. In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, Order ___ N.J. ___ March 13, 2014.

⁷ COAH published the methodology regulations and the methodological, “technical” appendix at N.J.A.C. 5:92-2 through -5 and Appendix A, 18 N.J.R. 1527-1548, August 4, 1986+

⁸ COAH published the methodology regulations and methodological appendix at N.J.A.C. 5:93-2 and Appendix A. 26 N.J.R. 2300-2353, June 6, 1994.

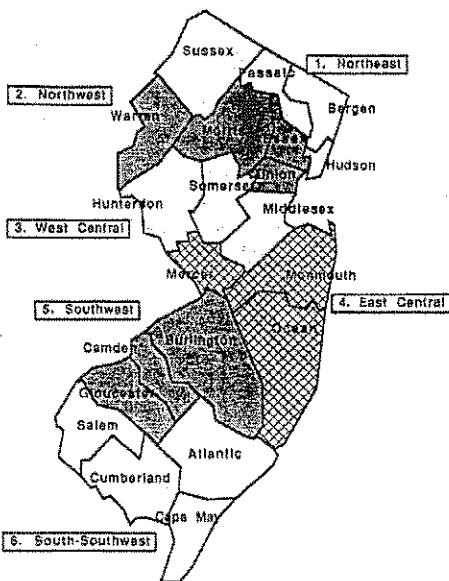
⁹ In the interest of maintaining comparability with the prospective need methodology proposed by COAH in proposed N.J.A.C. 5:99, Appendices A and C, 46 N.J.R. 949-956 and 982-1010, published June 2, 2014, this report does not

No policy judgments have been made, except for the weighting of undeveloped land in the Highlands Region for calculating the land allocation factor (see Step 12), as the Highlands Water Protection and Planning Act was enacted in 2004, a decade after COAH adopted its Second Round methodology.¹⁰

FIRST PHASE: CALCULATING REGIONAL PROSPECTIVE NEED

Step 1: Identify “housing regions” – COAH has completed the first step in its methodology by using journey-to-work data from the Census to determine groupings of two to four counties into “housing regions,” as required by the Fair Housing Act.¹¹ COAH last grouped the state’s counties into six housing regions in 1994, as shown and listed below:¹²

**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
BERGEN	ESSEX	MIDDLESEX	MONMOUTH	CAMDEN	ATLANTIC
PASSAIC	MORRIS	SOMERSET	OCEAN	GLOUCESTER	CAPE MAY
HUDSON	UNION	HUNTERDON	MERCER	BURLINGTON	CUMBERLAND
SUSSEX	WARREN				SALEM

include reallocated present need in its methodology.

¹⁰ L. 2004, c. 120, N.J.S.A. 13:20-1 et seq.

¹¹ N.J.S.A. 52:27D-304b.

¹² N.J.A.C. 5:93 Appendix A.

Source: N.J.A.C. 5:93 Appendix A

COAH reexamined and reaffirmed these housing regions in 2004¹³ and 2008.¹⁴

Step 2: Determine the population projection period – To project the future need for housing, an important starting point is projecting the future population, which requires deciding on a population projection period. COAH's Second Round ended June 30, 1999. The Fair Housing Act, as amended in 2008, requires that present and prospective need to be "computed for a 10-year period."¹⁵ This implies a population projection period extending ten years from the present, i.e., 2014, but beginning in 1999 at the end of the 1987-199 Prior Round last calculated by COAH and not invalidated by the courts, for a projection period from July 1, 1999 to June 30, 2024 (25 years).

Step 3: Project population increase 1999-2024 - The New Jersey Department of Labor and Workforce Development ("NJDOLEWD") regularly prepares, updates, and publishes population projections for the state and its counties. In January 2013, NJDOLEWD most recently projected the state's population by county for 2010-2030 by five-year intervals, as of July 1 for each projection period, using its "preferred" Economic-Demographic Model.¹⁶ NJDOLEWD has also projected populations by age cohorts (five year increments) by county.¹⁷ The projected population as of July 1, 2024 and the projected 1999-2024 population increase may be calculated by interpolation from the published NJDOLEWD projections. Population projections by

¹³ N.J.A.C. 5:94 Appendix A.

¹⁴ N.J.A.C. 5:97 Appendix A.

¹⁵ N.J.S.A. 52:27D-307c.(1). This ten-year period also coincides with the term of a municipality's immunity from litigation once granted substantive certification upon approval of its housing element and fair share plan. The ten-year period starts on the date the municipality filed its housing element and fair share plan with COAH. N.J.S.A. 52:27D-313a.

¹⁶ See "Introduction to Population and Labor Force Projections for New Jersey Counties, no date, and data tables in Excel available on the NJDOLEWD website: http://lwd.dol.state.nj.us/labor/lpa/dmograph/lfproj/lfproj_index.html

¹⁷ The standard age cohorts used by the Census and NJDOLEWD are: under 5 years, 5 to 9 years, 10 to 14 years, 15 to 19 years, 20 to 24 years, 25 to 34 years, 35 to 39 years, 40 to 44 years, 45 to 49 years, 50 to 54 years, 55 to 59 years, 60 to 64 years, 65 to 69 years, 70 to 74 years, 75 to 79 years, 80 to 84 years, and 85 years and older.

county by age cohort are then aggregated into regional population projections for the six housing regions determined by COAH. To provide some statewide context, the 2010 Census reported a total population for New Jersey of 8,791,894, while NJDOLWD projected a total 2025 population for the state of 9,446,800, a projected rate of increase of 0.49% per year.

Step 4: Identify and remove "group quarters" residents from projections of the total population¹⁸

By Census Bureau definition, residents of group quarters, such as group homes, juvenile institutions, prisons, and college dormitories, are not part of a household and do not live in housing units.¹⁹ Therefore, the next step in projecting the future need for housing is to identify the population living in group quarters, both in 1999 and projected for 2024, and then remove the projected additional group home residents from the total projected population by region. The U.S. Census Bureau counts the population living in group quarters by county and age cohort, both in the decennial census²⁰ and in its American Community Survey Public Use Microdata Sample (PUMS) files. To provide some context, 2.12% of New Jersey's 2010 population of 8,791,894 people, i.e., 186,876 people, lived in group quarters.²¹ Projecting the group quarters population in 2024 requires making assumptions on the percentage of the state's population by county by age groups that will be living in group quarters by 2024, based on observed trends and assumptions. The needed data is readily available from the decennial

¹⁸ While the COAH Prior Round methodology removed people living in group quarters from the population projections, COAH nevertheless granted credits against municipal fair share housing obligations for group quarters on the First and Second Rounds, for facilities it called "alternative living arrangements," which included group homes, boarding houses, transitional facilities for the homeless, etc. See N.J.A.C. 5:93-5.8 and the definition of "alternative living arrangements," at N.J.A.C. 5:93-1.3. Granting credits for facilities without projecting a need for those facilities is problematic, but that was the COAH methodology in the Prior Round and it is followed here, in this methodology.

¹⁹ The U.S. Census Bureau definition, for its American Community Survey, is:

"A group quarters is a place where people live or stay, in a group living arrangement that is owned or managed by an entity or organization providing housing and/or services for the residents. This is not a typical household-type living arrangement. These services may include custodial or medical care as well as other types of assistance, and residency is commonly restricted to those receiving these services. People living in group quarters are usually not related to each other. Group quarters include such places as college residence halls, residential treatment centers, skilled nursing facilities, group homes, military barracks, correctional facilities, and workers' dormitories."

https://www.census.gov/acs/www/Downloads/data_documentation/GroupDefinitions/2010GQ_Definitions.pdf
<accessed April 28, 2014>

²⁰ U.S. Census Bureau, 2010 Census, SF-1, Table PC01.

²¹ U.S. Census Bureau, 2010 Census, SF-1, Table P43.

census and the American Community Survey.²² This methodology assumes the percentage of the population living in group quarters remains constant during the projection period.

Step 5: Project headship rates for 1999-2024 - The headship rate is the "probability that a person is the head of a household,"²³ which varies by demographic groups. In general, the headship rate rises with age. The methodology uses the headship rate to project the number of future households, by multiplying the projected population for each age cohort by the cohort's headship rate. By definition, households live in housing units, so projecting headship rates leads to projecting the need for housing for households. In its Second Round methodology, COAH compared 1980 and 1990 headship rates and assumed that headship rates would increase during 1993-1999 at one-half the rate of change observed during 1980-1990. During 1990-2000, however, the statewide headship rate in New Jersey actually declined. The 1990-2000 declining trends in headship rate change by age group by county, or housing region, can readily be used to project headship rates for 2024.²⁴ The data needed to calculate headship rates, i.e., the number of households and the total non-group quarters population, are readily available from the 1990 and 2000 U.S. Census and are used to calculate headship rates (average persons per household) by age group by county.²⁵ This methodology uses the observed 1990-2000 headship rate change to project headship rates for the projection period, as it best approximates the actual headship rate change observed in 2000-2010.

²² U.S. Census Bureau, American Fact Finder website: <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>

²³ Timothy Dunne, "Household Formation and the Great Recession," Federal Reserve Bank of Cleveland, August 23, 2012; <http://www.clevelandfed.org/research/commentary/2012/2012-12.cfm> accessed April 28, 2014>

²⁴ COAH published 1999 headship rates by age group by housing region in 2004, at N.J.A.C. 5:94 Appendix A.

²⁵ http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=DEC&_submenuId=&lang=en&ts=and

http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=DEC&_tabId=DEC2&_submenuId=datasets_1&lang=en&ts=312388489998

Step 6: Project the increase in households 1999-2024 – The projected increase in non-group quarters population during 1999-2024, from Step 4, is multiplied by the headship rates for 2024, from Step 5, and yields the projected increase in households by county during 1999-2024.

Step 7: Determine the projected increase in low and moderate Income households 1999-2024 - COAH determined in 2004, by analyzing 2000 U.S. Census data,²⁶ that 40.3% of New Jersey households qualified, on the basis of income, as low and moderate income households and assumed that the same percentage would apply to projected households.²⁷ This percentage can be easily applied to projected new households by county for 2024, from Step 6, and then aggregated by housing region to calculate the projected additional low and moderate income households, by age cohort, anticipated to be formed during 1999-2024 in each housing region.

Step 8: Pool and reallocate projected growth in low and moderate income households below age 65 - This reallocation, from the COAH Second Round methodology, pools on a statewide basis and then assigns the working age (<65 years) component of projected low and moderate income household growth to regions where jobs previously increased. Projected growth in >65 years households, which COAH presumed to be non-working, is retained its original region. The reallocation factor is based on the proportional regional shares of nonresidential ratable growth. This reallocation factor is calculated and also used later, in the allocation phase of the fair share methodology, explained as Step 11. Step 7 provides the data on projected regional

²⁶ COAH analyzed 2000 U.S. Census 5% PUMS data. Relying on this analysis of 2000 data for the current Prior Round prospective need methodology, despite the availability of data from the 2010 Census, is appropriate as the projection period begins in 1999. Also, this approach is consistent with COAH's Second Round methodology, when COAH analyzed 1990 Census 5% PUMS data to income qualify low and moderate income households, as 1990 was close to the 1993 beginning of the Second Round projection period.

²⁷ N.J.A.C. 5:94 Appendix A and 36 N.J.R. 3798, New Jersey Register, August 16, 2004, "Income Qualification of the Low- and Moderate-Income Population." COAH was not as transparent and did not disclose in either its First Round or its Second Round the percentage of households it deemed qualified as low and moderate income households. In 2008, in its second iteration of Third Round rules, COAH determined, by analyzing 2000 U.S. Census 5% PUMS data, that 37.7% of all households were low and moderate income households. N.J.A.C. 5:97 Appendix A, 40 N.J.R. 2918, New Jersey Register, June 2, 2008. However, COAH in 2008 incorrectly calculated this percentage, as it divided projected low and moderate income households by housing units (both occupied and vacant), which reduced the percentage, as the correct denominator was the number of total households, i.e., occupied housing units.

low and moderate income household growth (projected population multiplied by headship rate) to be pooled, .

Step 9: Determine regional prospective need – By definition, under the COAH fair share methodology the projected increase in regional low and moderate income households, pooled and reallocated by two age groups in Step 8, equals the gross regional prospective need for low and moderate income housing. Step 8 provides the data for this determination. Regional Prospective Need for all five regions and summed for the entire state are presented below:

Regional Prospective Need, 1999-2024		
Region		Housing Units
1	Northeast: Bergen, Hudson, Passaic, Sussex	36,018
2	Northwest: Essex, Morris, Union, Warren	38,941
3	West Central: Hunterdon, Somerset, Middlesex	34,542
4	East Central: Mercer, Monmouth, Ocean	40,028
5	Southwest: Burlington, Camden, Gloucester	33,629
6	Atlantic, Cape May, Cumberland, Salem	17,571
TOTAL		200,729

SECOND PHASE: ALLOCATING MUNICIPAL PROSPECTIVE NEED

In the second phase, under both the First Round and Second Round methodologies, regional prospective need is allocated on a regional basis to each housing region’s municipalities after first exempting certain mostly urban or densely populated municipalities. The methodology uses three allocation factors, described by COAH as measures of “responsibility,” based on the labor force, existing in or attracted to each municipality, that needs

housing, and measures of “capacity,” based on the physical capacity of the municipality’s land and the fiscal capacity of its households to absorb low and moderate income housing based on their household incomes.²⁸ The three factors are: (a) change in equalized nonresidential valuation (ratables) over the previous two decades, as a proxy for changes in the labor force, (b) undeveloped land, and (c) differences in household income. For each allocation factor, the methodology calculates the total regional value of each factor and each municipality’s fraction, or share, of the regional total of the factor. Stated differently, the value of each factor for each municipality is divided by the regional total for each allocation factor. The three resulting numbers, expressed as decimals, are averaged to yield each municipality’s fair share of the regional need. All three factors are weighted equally (averaged) in allocating regional prospective need among each region’s municipalities. The data needed to allocate post-1999 regional prospective need using the Second Round methodology are identified below in the description of each allocation factor.

Step 10 - Exempt selected Urban (Municipal) Aid municipalities from housing need allocations –

The COAH First Round and Second Round methodologies exempted certain Urban (Municipal) Aid municipalities from any allocation of regional prospective if the municipality met at least one of three criteria:

- (a) Housing deficiency (i.e., substandard housing in need of rehabilitation) greater than its region’s average,

- (b) Population density greater than 10,000 persons per square mile of land area (15.6 persons per acre)²⁹, or

²⁸ N.J.A.C. 5:93 Appendix A, “Distribution of Low- and Moderate-Income Housing Need.”

²⁹ COAH’s explanation of its Second Round methodology, N.J.A.C. 5:93 Appendix A, Distribution of Low- and Moderate-Income Housing Need, incorrectly states that 14.1 persons per acre is the equivalent of 10,000 person per

(c) Population density of 6,000 to 10,000 persons per square mile of land area (9.4 persons/acre to 15.6 persons/acre) and less than five percent vacant, non-farm parcels, as measured by the average of:

(i) The number of vacant land parcels as a percentage of the total number of parcels by municipality and

(ii) Vacant land valuation (ratables) as a percentage of total valuations by municipality.

The methodology refers to municipalities that meet at least one of these criteria as “qualifying Urban Aid municipalities.” The data needed to determine which municipalities to exempt are obtained from the U.S. Census Bureau, DCA, and DOLWD. The New Jersey Department of Community Affairs (“DCA”) annually publishes the State’s official list of Municipal (Urban) Aid municipalities.³⁰ This methodology uses the current, State Fiscal Year 2014 list. While the First Round and Second Round methodologies relied on six housing deficiency criteria, COAH in 2004 and 2008 revised the methodology to three criteria, and used 2000 Census data to calculate housing deficiency³¹: (i) overcrowded units built pre 1950, (ii) unit with inadequate plumbing, and (iii) unit with inadequate kitchen.³² NJDOLWD publishes population density by municipality, most recently for 2010 and 2012; the methodology uses 2012 data.³³ DCA

square mile. The correct equivalency is 15.8 persons per acre (1 square mile = 640 acres; 10,000/640 = 15.6).

³⁰ The DCA website posts the SFY2014 list at: <http://www.state.nj.us/dca/divisions/dlgs/resources/stateaidinfo.shtml>

³¹ N.J.A.C. 5:97 Appendix B.

³² A reason for not attempting to update the housing deficiency calculations using 2010 Census or subsequent American Community Survey data is that the Appellate Division in 2008, as affirmed by the Supreme Court in 2013, affirmed COAH’s determination in 2008 of present need (“rehabilitation share”), which is based on data on the three components of housing deficiency.

³³ <http://lwd.dol.state.nj.us/labor/lpa/dmograph/est/mcd/density.xls>

annually publishes data on vacant land value (ratables) by municipality; this methodology uses 2011 data.³⁴

Step 11 – Calculate the equalized nonresidential valuation (ratables) factor – DCA's Division of Local Government Services collects, reports annually, and maintains accessible data on ratables by municipality. Data from 1998-2013 on equalized nonresidential valuation by municipality may be downloaded in Excel format from the DCA website.³⁵ This methodology calculates this allocation factor using 1990 and 2011 municipal data on nonresidential ratables³⁶ to calculate the 1990-2011 changes in non-residential valuations, excluding qualifying Urban Aid municipalities. The change in each municipality's non-residential valuations (ratables) is divided by the regional total of change in non-residential valuations (ratables) to compute each municipality's share of the regional change.

Step 12 – Calculate the undeveloped land factor – Under its Second Round methodology, COAH estimated the area of undeveloped land by municipality with satellite imagery³⁷ and weighted the value of undeveloped land in keeping with the goals of the "planning areas" as delineated in the 1992 State Development and Redevelopment Plan ("SDRP") adopted by the State Planning Commission. For example, undeveloped land in Planning Area 1, the Metropolitan Planning Area, was assigned a weighting of 1.0, while undeveloped land in Planning Area 4, the Rural Planning Area, was assigned a weighting of 0.0. The Second Round methodology weighted undeveloped land in the Pinelands by treating undeveloped land in Pinelands growth areas, i.e., Regional Growth Areas and Pinelands Towns, as mapped by the

³⁴ See the Property Value Classification spreadsheets available in Excel format for 1998-2013 on the DCA website: http://www.nj.gov/dca/divisions/dlgs/resources/property_tax.html

³⁵ See the Property Value Classification spreadsheets available in Excel format for 1998-2013 on the DCA website: http://www.nj.gov/dca/divisions/dlgs/resources/property_tax.html

³⁶ To enable fair comparisons among municipalities and compute regional totals fairly, State-approved equalization ratios are used so that equalized values are used and compared in the methodology.

³⁷ COAH estimated, with the assistance of the Department of Environmental Resources at Cook College at Rutgers, "undeveloped land" based on LANDSAT photoimagery taken March 1991. See N.J.A.C. 5:93 Appendix A. 26 N.J.R. 2346, June 6, 1994.

Pinelands Commission on its Land Capability Map,³⁸ as the equivalent of the SDRP's Planning Area 3 – Fringe Planning Area, weighted 0.5. All seven other Pinelands land capability classification were treated as the equivalent of the SDRP's Planning Area 4 – Rural Planning Area and Planning Area 5 – Environmentally Sensitive Planning Area, weighted 0.0. The Second Round methodology treated undeveloped land in the Meadowlands in its “growth areas” as the equivalent of Planning Areas 1 and 2, weighted at 0.0, and its “protected or open space areas” as the equivalent of Planning Areas 4 and 5, weighted at 0.0.³⁹

This methodology takes the same approach as COAH took in the Second Round and estimates undeveloped land using satellite imagery. This methodology also continues the weightings established in the Second Round methodology in the Pinelands and Meadowlands, and elsewhere in the state under the most recently adopted State Development and Redevelopment Plan, from 1992.

Since the 1994 adoption of COAH's Second Round methodology, the State established the Highlands Water Protection and Planning Council, and defined a 859,358 acre Highlands Region.⁴⁰ While the Highlands Act delineated both a Highlands Preservation Area and a less restrictive Highlands Planning Area, where municipal land use planning conformance is not required, the Highlands Council's adopted 2008 Highlands Regional Master Plan⁴¹ ignored the

³⁸ The Pinelands Commission's Land Capability Map may be accessed at: <http://www.state.nj.us/pinelands/landuse/gis/maps/archD.pdf> . Detailed, large-scale quad maps depicting the Pinelands land classification mapping are available from the NJ Office of Planning Advocacy website, at: <http://www.nj.gov/state/planning/resources-quad.html>

³⁹ Unfortunately, COAH in 1994 did not disclose how it defined spatially Meadowlands “growth areas” and “protected or open space areas” and whether it based the mapping on the Land Use Plan of the Meadowlands Master Plan, since 1994 last revised in 2004 (available at: http://www.njmeadowlands.gov/doc_archive/NJMC%20Doc%20Archive/econgrow_docs/lum_docs/NJMC%20Master%20Plan%20with%20maps.pdf), or on the zones in the Meadowlands Official Zoning Map, since 1994 last revised in 2009 (available at: http://www.njmeadowlands.gov/doc_archive/NJMC%20Doc%20Archive/econgrow_docs/lum_docs/OFFICIAL%20ZONING%20MAP%202009%20PDF.pdf)

⁴⁰ Highlands Water Protection and Planning Act, L. 2004, c. 120, N.J.S.A. 13:20-1 et seq.

⁴¹ <http://www.highlands.state.nj.us/njhighlands/master/index.html>

distinction.⁴² Instead, the Highlands Council then classified and mapped all lands in the Highlands according to seven "land use capability zones" across the entire Highlands Region.⁴³ The Highlands Regional Master Plan promotes "sustainable and economically viable development" and "compatible development and redevelopment," but only in its Existing Community Zone,⁴⁴ which is analogous to the Pinelands Regional Growth Area, in which COAH's Second Round methodology assigned undeveloped land a weighting of 0.5. Consequently, this methodology follows the Pinelands precedent and assigns undeveloped land in the Highlands a weight of 0.5 if in its Existing Community Zone. All other undeveloped land in the Highlands Region is assigned a weighting of 0.0.

In summary, undeveloped land is weighted in this methodology as follows:

Weighting of Undeveloped Land for Undeveloped Land Factor	
Planning Area Type	Weighting Factor
Planning Area 1 - Metropolitan	1.0
Planning Area 2 - Suburban	1.0
Planning Area 3 - Fringe	0.5
Planning Area 4 - Rural	0.0
Planning Area 5 - Environmentally Sensitive	0.0
Pinelands Regional Growth Area	0.5
Pinelands Town	0.5
All Other Pinelands	0.0
Meadowlands "growth areas"	1.0
Meadowlands "protected or open space areas"	0.0
Highlands Existing Community Zone	0.5
All Other Highlands	0.0

⁴² The Highlands Council's regional planning approach was "blind to the line," i.e., the line between the Preservation Area and the Planning Area, according to its oft repeated mantra at the time.

⁴³ For the methodology used by the Highlands Council in this mapping, see Highlands Council, Technical Report: Land Use Capability Zone Map, 2008,

http://www.highlands.state.nj.us/njhighlands/master/tr_land_use_capability_zone_map.pdf <accessed April 29, 2014> The 2008 Highlands Regional Master Plan presents the Land Use Capability Zone Map at pp.114-115. The Map may also be accessed via the Council GIS website: <http://maps.njhighlands.us/hgis/>

⁴⁴ Highlands Regional Master Plan, pp. 190-1.

The “most up-to-date available data” for measuring undeveloped land by municipality by planning area or equivalent for all of the state is the 2007 “land use/land cover” data for all of New Jersey obtained by the New Jersey Department of Environmental Protection (“DEP”), released publicly in 2010,⁴⁵ and analyzed by researchers at Rowan University and Rutgers University in 2010.⁴⁶ Digital maps of the current planning areas or equivalents are available through the State’s Office for Planning Advocacy⁴⁷ and the Highlands Council.⁴⁸ Classifying and calculating the area of undeveloped land by planning area type by municipality is best done using a digital geographical information system (GIS) to overlay digital maps of the planning area boundaries with digital maps of undeveloped land and then measure the total undeveloped land area by municipality by planning area type. Researchers at the Geospatial Research Laboratory at Rowan University performed these overlay analyses and calculations of undeveloped land by planning area by municipality in 2010-2011,⁴⁹ which is the data source for this methodology.^{50 51 52}

⁴⁵ The 2007 imagery (“aerial photos”) may be consulted at the DEP website, at its i-MapNJ DEP website, <http://www.nj.gov/dep/gis/depsplash.htm#>, or its next generation NJ-Geo Web website, <http://www.nj.gov/dep/gis/geoweblaunch.htm>

⁴⁶ John Hasse and Richard Lathrop, *Changing Landscapes in the Garden State: Urban Growth and Open Space Loss in NJ 1986 thru 2007*, 2010, available at: <http://gis.rowan.edu/projects/luc/changinglandscapes2010.pdf>

⁴⁷ The State Planning Commission last adopted a revised *State Development and Redevelopment Plan* in 2001. Its State Plan Policy Map, with amendments adopted from time-to-time by the Commission, should be used in the calculation of undeveloped land by planning area types. The 2001 State Plan Policy Map and other maps and GIS resources are available at: <http://www.nj.gov/state/planning/plan.html>

⁴⁸ http://www.highlands.state.nj.us/njhighlands/actmaps/maps/gis_data.html

⁴⁹ More recent, 2012 statewide aerial imagery is now available from DEP’s NJ-Geo Web website, but were not available when the Rowan researchers conducted their research.

⁵⁰ Rowan-Rutgers first grouped all 5.5 million acres of land and water in New Jersey into six broad categories of land use/land cover: urban (i.e., developed), agriculture, forest, water, wetlands, and barren (a so-called “Level 1” analysis). Rowan-Rutgers then classified the remaining 3.2 million acres of land into two categories: “restricted” from development and “available” for development. Land considered restricted from development consisted of preserved open space, preserved farmland, steep slopes >15%, wetlands buffered to 50 feet, and Category 1 streams buffered to 300 feet. The land areas remaining after this analysis, a total of 991,649 acres, constituted the estimate of open land (i.e., undeveloped) available for development, as of 2007. See Hasse and Lathrop (2010) for a detailed explanation of this analysis and its limitations, particularly pp. 20-21.

⁵¹ This methodology considers undeveloped land in the Meadowlands classified as “available” by Rowan-Rutgers as the “growth areas” treated as the equivalent of Planning Area 1 in COAH’s Second Round methodology, weighted 1.0. This methodology also considers undeveloped land in the Meadowlands classified as “restricted” by Rowan-Rutgers as the “protected or open space areas” treated as the equivalent of Planning Areas 4 and 5 in COAH’s Second Round methodology, weighted 0.0.

⁵² The data are available from Fair Share Housing Center, which commissioned the overlay mapping and calculations

The final step in the process of calculating the undeveloped land factor is to apply the weighting factors and sum the total weighted undeveloped land area by municipality and then by region. Each municipality's share of its region's weighted undeveloped land becomes its undeveloped land factor or coefficient.

Step 13 – Calculate the differences in household income factor – The COAH Second Round methodology defines the aggregate income difference factor as the average of two measures of median household income:

Income Measure No. 1: Municipal share of the regional sum of the differences between median household income and an income floor (\$100 below the lowest average (mean) household income in the region) and

Income Measure No. 2: Municipal share of the regional sum of the differences between median municipal household incomes and an income floor (\$100 below the lowest median household income in the region) weighted by the number of households (occupied housing units) in the municipality⁵³

Up-to-date median and mean household income and number of households data by municipality are readily available from the 2012 five-year American Community Survey conducted by the U.S. Census Bureau.⁵⁴ This data for all municipalities, except for qualifying Urban Aid municipalities, is used in this methodology to calculate municipal shares of differences in regional household incomes, i.e., the income difference factor,,

by Rowan University researchers, and in the Excel workbook that accompanies and is part of this report.

⁵³ N.J.A.C. 5:93 Appendix A; 26 N.J.R. 2346-7, June 6, 1994.

⁵⁴ <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>

Step 14 - Distribute Low and Moderate Income Housing Need by Municipality – Once the three individual allocation factors have been determined, the three factors are averaged to yield the factor for distributing gross regional prospective need among the non-Urban Aid municipalities in each region. Multiplying the regional gross prospective need by a municipality's average allocation factor, or coefficient, yields a municipality's fair share of the regional gross prospective need.

THIRD PHASE: ADJUSTING FOR SECONDARY SOURCES OF DEMAND AND SUPPLY

Once the gross municipal prospective need has been calculated and allocated, the next steps in the methodologies are to calculate the three so-called "secondary sources of housing demand and supply."⁵⁵ Gross municipal prospective housing need is then adjusted, based on these three components of the housing market that, according to the COAH Prior Round methodology, affect the supply and demand for housing affordable to low and moderate income households: filtering, residential conversions, and demolitions.

Step 15 – Estimate filtering affecting low and moderate income households – Filtering is the private housing market process by which some units decline in value and become affordable to low and moderate income households. Filtering reduces low and moderate income housing need according to the COAH First and Second Round methodologies. In 2007, the Appellate Division invalidated COAH's initial Third Round method for calculating filtering, as unsubstantiated by reliable data.⁵⁶ COAH then retained a consultant, Econsult, which analyzed property-level data on 457,910 residential real estate transactions in New Jersey during 1989-2005 to determine which housing units filtered up or down and which affected low and moderate

⁵⁵ N.J.A.C. 5:93 Appendix A, "Secondary Sources of Housing Supply and Demand."

⁵⁶ In re the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing, 390 N.J. Super. 1, 46 (App. Div., 2007).

income households. Using new this new data and Econsult's new methodology,⁵⁷ COAH in 2008 projected the impact of filtering as a secondary source of supply of low and moderate income housing at 23,626 housing units statewide for the period 1999-2018. COAH also projected filtering by housing region and municipality.⁵⁸ This is the best available data on filtering. This methodology extends the COAH projections by extrapolation to 2024, both up and down filtering by municipality, for a net total of net filtering of 59,237 units.

Step 16 – Estimate residential conversions affecting low and moderate income households –

COAH defines “residential conversions” as the creation of a new dwelling unit from an existing structure (residential or non-residential), measured as the change in total housing units, accounting for new construction and demolitions. Residential conversions reduce low and moderate income housing need, according to the COAH First Round and Second Round methodologies.⁵⁹ In its Third Round rules, COAH estimated that 19.5% of converted units were affordable to low and moderate income households and projected the conversion of 10,366 housing units statewide for the period 1999-2018 (531.58974/year for 19.5 years) as a secondary source of supply of low and moderate income housing.⁶⁰ . Using this annual projection rate, which is the best available data on the share of residential conversions that affect low and moderate income households, results in a projection for the full 1999-2024 projection period of 13,224 converted units (531.58974/year x 25 years), based on COAH's published regional projections, pro-rated for 25 years:

⁵⁷ N.J.A.C. 5:97 Appendix F.3. Estimating The Extent To Which Filtering Is A Secondary Source Of Affordable Housing, Econsult Corporation, November 16, 2007.

⁵⁸ COAH's consultant, Econsult, estimated that “47,306 units were expected to filter down to households of lower incomes between 1999 and 2018” with one-half of these units in suburban communities. COAH choose to include only the suburban share of filtering as a secondary source. See N.J.A.C. 5:97 Appendix A and Appendix F.3. Estimating The Extent To Which Filtering Is A Secondary Source Of Affordable Housing, Econsult Corporation, November 16, 2007.

⁵⁹ N.J.A.C. 5:93 Appendix A; 26 N.J.R. 2349, June 6, 1994.

⁶⁰ N.J.A.C. 5:97 Appendix A; 40 N.J.R. 2921, June 2, 2008.

Residential Conversions, 1999-2024		
Region		units
1	Northeast: Bergen, Hudson, Passaic, Sussex	1,491
2	Northwest: Essex, Morris, Union, Warren	1,645
3	West Central: Hunterdon, Somerset, Middlesex	2,285
4	East Central: Mercer, Monmouth, Ocean	4,031
5	Southwest: Burlington, Camden, Gloucester	2,665
6	Atlantic, Cape May, Cumberland, Salem	1,173
TOTAL		13,290

According to COAH's Second Round methodology, conversions are closely related to the percentage of two- and four-family structures in a municipality. This methodology then allocates each municipality's share of the region's residential conversions based on the municipality's share of the region's 2-4 unit structures. The five-year American Community Survey of the Bureau of the Census for 2012 provides the best available data on the number of 2-4 unit structures by municipality, which are used to estimate the municipal share of projected regional residential conversions affordable to low and moderate income households.

Step 17 - Estimate demolitions affecting low and moderate income households – According to the 2008 iteration of COAH's Third Round methodology, 19.5% of demolitions of housing affect low and moderate income households.⁶¹ Demolitions increase prospective need. Annual municipal-level demolitions data from 1999 through 2012 are readily available, as reported to DCA and published on its Construction Reporter website.⁶² This methodology uses actual

⁶¹ N.J.A.C. 5:97 Appendix A, "Secondary Sources of Supply."

⁶² <http://www.state.nj.us/dca/divisions/codes/reporter/>

1999-2011 demolitions data, extended by extrapolation for the full 1999-2024 projection period, projecting a statewide total of 24,434 units affecting low and moderate income households.

Step 18 – Calculate net prospective need by municipality – Under the COAH First and Second Round methodologies, the addition of demolitions (from Step 17) and the subtraction of filtering (from Step 15) and residential conversions (from Step 16) from the gross prospective need for each municipality yields the net prospective need for each municipality. As the best available data now enables a projection of units that filter up, as well as down, both up and down filtering are included in this methodology

Step 19 – Calculate the 20% cap and if applicable, reduce the prospective need – Under the COAH Second Round methodology, a municipality's prospective need may not exceed a cap defined as 20% of the municipality's occupied housing.⁶³ The cap is calculated by multiplying the number of occupied housing units in the municipality in 2012, available from the Census Bureau, 2008-2012 ACS 5-year estimates, by 0.20. If the cap is larger than the net prospective need calculated in Step 18, the cap is not applicable. If the cap is smaller than the net prospective need calculated in Step 18, then the cap becomes the adjusted net prospective need. The data for this step is readily available from the Census.

CONCLUSION

The output from carrying out this sequence of 19 steps is the calculation of regional prospective housing need for 1999-2024, its allocation, by region, to each of the state's 565 municipalities, and calculation of net prospective need at the municipal level. Illustrative municipal allocations from all 21 counties are shown below:

⁶³ N.J.A.C. 5:93-2.16. The Fair Housing Act authorized this cap, but did not prescribe the percentage of existing occupied housing stock to be used to calculate the cap, N.J.S.A. 52:27D-307e.

Illustrative 1999-2024 Municipal Prospective Need Calculated Using the COAH Prior Round Methodology		
Municipality	County	Net Prospective Need, 1999-2024 (housing units)
Absecon	Atlantic	206
Aliendale	Bergen	401
Bass River	Burlington	90
Audubon Borough	Camden	102
Avalon	Cape May	207
Bridgeton	Cumberland	0
Belleville	Essex	0
Clayton	Gloucester	198
Bayonne	Hudson	0
Alexandria	Hunterdon	338
East Windsor	Mercer	773
Carteret	Middlesex	0
Aberdeen	Monmouth	439
Boonton Town	Morris	251
Barneгат Light	Ocean	53
Bloomingtondale	Passaic	419
Alloway	Salem	224
Somerset	Somerset	502
Andover Borough	Sussex	65
Berkeley Heights	Union	630
Alamuchy	Warren	257

Source: Fair Share Housing Center and Kinsey & Hand calculations,
July 2014

An Excel workbook with 26 linked worksheets provides the data, data sources, and calculations used to compute 1999-2024 net prospective need allocations for all 565 New Jersey municipalities using the methodology and data described in this report. It is the appendix to this report's text.

APPENDIX

Excel workbook – see accompanying CD

SUPREME COURT OF NEW JERSEY
M-10 September Term 2014
067126

IN THE MATTER OF THE ADOPTION
OF N.J.A.C. 5:96 AND 5:97 BY
THE NEW JERSEY COUNCIL ON
AFFORDABLE HOUSING

FILED

SEP - 9 2014

O R D E R

Mark Neary
CLERK

It is ORDERED that the Fair Share Housing Center's motion
in aid of litigant's rights is denied.

WITNESS, the Honorable Jaynee LaVecchia, Presiding Justice,
at Trenton, this 3rd day of September, 2014.

The foregoing is a true copy
of the original on file in my office.

Mark Neary

CLERK OF THE SUPREME COURT
OF NEW JERSEY

Mark Neary
CLERK OF THE SUPREME COURT

