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November 30, 2015

Michael DeMiro, Jr., Esq.  
255 Pompton Avenue  
Verona, New Jersey 07044

Re: In re: Township of Verona Compliance with Third Round  
Mount Laurel Affordable Housing Obligation  
Docket No. L-4773-15

Dear Mr. DeMiro:

Enclosed please find the Fair Share Housing Center's brief and accompanying expert reports in all pending Mount Laurel matters in connection with the above referenced matter. .

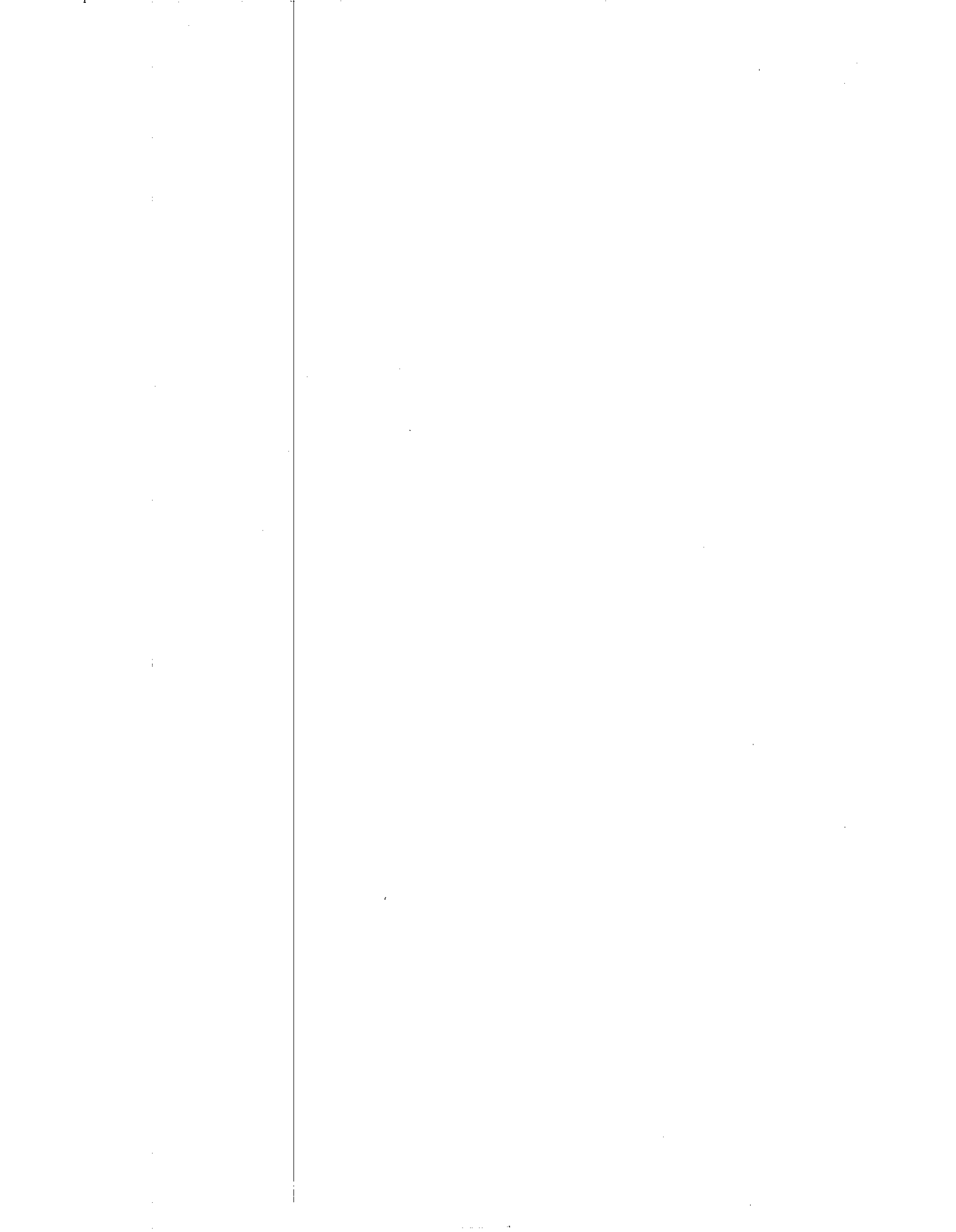
If you have any questions or wish to discuss this matter in greater detail, please do not hesitate to contact me. Thank you for your courtesies and cooperation in this matter.

Very truly yours,

GIBLIN & GANNAIO

  
Michael A. Gannaio

MAG/mg  
Enclosures



November 20, 2015

Hon. Dennis F. Carey III, P.J. Civ.  
Superior Court of New Jersey  
Historic Courthouse  
470 Martin Luther King Blvd., 2<sup>nd</sup> Floor  
Newark, NJ 07102

**Re: In re Essex County Municipalities Seeking Declarations of Compliance with Mount Laurel (see attached list for captions, docket numbers, and names of counsel)**

Dear Judge Carey:

Fair Share Housing Center (FSHC) files this brief and provides the accompanying expert reports in all pending Mount Laurel matters before the court. FSHC relies on one submission for each of these matters listed on the attached list and requests that this letter be included in the record of each proceeding. Please advise if additional copies of this submission should be provided to the court for each of the proceedings.

#### **I. Introduction**

This filing is made for the purpose of advising Your Honor and municipalities that are in the process of preparing fair share plans what positions FSHC intends to take regarding what standards municipalities should follow and what we calculate their fair share obligations to be. This filing includes the following: (1) this brief with appendix; (2) the October 2015 report prepared by David N. Kinsey, Ph D., FAICP, PP, *Third Round (Post-1999) Mount Laurel Fair Share Housing Obligations and Compliance Standards for New Jersey Municipalities* (Kinsey Compliance Report); and (3) the April 16, 2015 report (revised July 2015) prepared by David N. Kinsey, PhD., FAICP, PP, *New Jersey Low and Moderate Income Housing Obligations for 1999-2025 Calculated Using the NJ COAH Prior Round (1987-1999) Methodology* (Kinsey Fair Share Report), which is attached to the October 2015 Kinsey Compliance Report. Included as Exhibit A to the Kinsey Fair Share Report is a CD-ROM disc with Excel Spreadsheets.

This brief addresses compliance standards that should form the basis of fair share plans, including, for example, bonuses, and minimum or maximum percentages that determine how the fair share obligations are applied, the types of bonuses allowed, and the percentages of housing available to certain groups, e.g. families, renters, very low income households. Second, this brief addresses the fair share methodology the court has been directed by the Supreme Court to employ in adjudicating municipal Third Round fair share obligations. We recognize that the court may not adjudicate the issues addressed in this brief and in the accompanying reports until some point after fair share plans are filed. We provide this filing at this point in the hope that providing the positions and expert opinions we intend to rely on now will expedite the proceedings before the court.

## II. Legal Argument

### A. FSHC should be permitted to file this letter and accompanying expert report regarding compliance standards and fair share obligations.

FSHC submits this letter brief as an interested party in the Mount Laurel declaratory judgment proceedings pending before the court. (In the Moorestown proceeding, FSHC is an intervenor.) FSHC does so at this time to advise the court and municipalities of the standards that apply under controlling law. FSHC urges the court to accept this letter for filing in the pending matters in accordance with the Supreme Court's March 2015 decision.

FSHC brought the motion to enforce litigant's rights that led to the shift of all Mount Laurel compliance proceedings from the Council on Affordable Housing (COAH) to trial courts. In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015). In its March 2015 decision, the Supreme Court acknowledged FSHC's interest in the Third Round proceedings now before trial court. Id. at 25. The Court wrote that "[i]f a municipality seeks to obtain an affirmative declaration of constitutional compliance, it will have to do so on notice and opportunity to be heard to FSHC and interested parties" and that trial courts "will be assisted in rendering its preliminary determination on need by the fact that all initial and succeeding applications will be on notice to FSHC and other interested parties." Id. at 29. In a recent decision by the Honorable Douglas Wolfson, J.S.C. involving Monroe Township, Middlesex County, the court held that "it is amply clear that the Court specifically contemplated, and in the case of FSHC, for example, directly encouraged, interested parties to weigh in on the extent and methods by which a given municipality proposed to fulfill its affordable housing obligations." In the Matter of the Adoption of the Monroe Township Housing Element and Fair Share Plan and Implementing Ordinances, Docket No. MID-L-3365-15 (July 9, 2015), Slip op. at 9 (emphasis added).<sup>1</sup> Many Judges in vicinages throughout the state have permitted FSHC to participate in proceedings both in cases where we have formally intervened and in cases where we have not done so.

FSHC therefore respectfully requests that Your Honor accept this letter for the purpose of advising the court and municipalities regarding applicable compliance standards municipalities should follow and regarding our position on fair share calculations. At the appropriate time, if necessary, we will either through objections to fair share plans or in another context request that the court find that the standards and obligations addressed herein are required by law.

### B. Municipalities should generally comply with the Prior Round rules, N.J.A.C. 5:93, with exceptions as appropriate to account for subsequent legal changes such as amendments to the Fair Housing Act of 1985 and subsequent court decisions.

#### 1. N.J.A.C. 5:93 provides the baseline compliance framework.

Following 15 years of delay by the Council on Affordable Housing (COAH), the New Jersey Supreme Court in its decision in In re N.J.A.C. 5:96 & 5:97, supra, 221 N.J. at 61, transferred proceedings for evaluating compliance with the Mount Laurel doctrine to the trial courts, stating that "[t]he FHA's exhaustion-of-administrative-remedies requirement is

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<sup>1</sup> FSHC is unaware of any contrary unpublished opinions. R. 1:36-3. A copy of this decision is attached to this brief, Exh. A.

dissolved . . . and the courts may resume their role as the forum of first resort for evaluating municipal compliance with Mount Laurel obligations.” The Court directed trial courts to adjudicate the fair share obligations of municipalities based on the Prior Round methodology. Id. at 53. It further provided that “municipalities are expected to fulfill” their prior round obligations and that “prior unfulfilled housing obligations should be the starting point for a determination of a municipality’s fair share responsibility.” Ibid. (citing In re Adoption of N.J.A.C. 5:96 & 5:97, 416 N.J. Super. 462, 498-500 (App. Div. 2010)).

Consistent with the Court’s endorsement of the Prior Round methodology, and in view of the ongoing relevance of and reliance upon the rules adopted to implement the Prior Round, N.J.A.C. 5:93, those rules provide the appropriate base for compliance by municipalities in the court-administered Third Round. See Kinsey Compliance Report at ¶21.

The Supreme Court also recognized that there are areas in which more recent legal changes require modification to N.J.A.C. 5:93, since the Prior Round rules were originally adopted in 1994, and have not been updated in recent years to account for statutory amendments and interpretations by COAH of the FHA. Those areas of update include broadly applicable policies such as the requirements for bonuses, which the Supreme Court explicitly approved COAH’s deviations in 2004 and 2008 from the N.J.A.C. 5:93 approach. In re N.J.A.C. 5:96 and 5:97, supra, 221 N.J. at 31-33. Those areas also include policies as to what credits a municipality may seek which in some areas prohibit credits that were previously granted, and in some areas provide credits that were previously unavailable. For example, the Legislature in 2008 eliminated credits for Regional Contribution Agreements previously available under N.J.A.C. 5:93. N.J.S.A. 52:27D-312(g). Conversely, COAH in 2004 and 2008 in its attempts at the Third Round rules added credits for the extension of expiring affordability controls, which the Appellate Division generally upheld, as the Supreme Court noted in its March decision. In re N.J.A.C. 5:96 and 5:97, supra, 221 N.J. at 31.

This brief only addresses broadly applicable policies, and not crediting standards or other municipality-specific factors, which are better addressed in specific matters as part of plan review. FSHC reserves the right to address crediting issues at the appropriate time. This brief thus focuses on the following broadly applicable policies:

- Bonuses
- Family housing, including family rental housing as a component of the rental obligation
- Very low income housing as part of meeting overall low/moderate income split

2. **The Supreme Court’s March 2015 decision upholds the bonus structure in COAH’s Third Round Rules, which provides additional bonuses in some areas while limiting bonuses in other areas, as superseding the bonus structure in N.J.A.C. 5:93.**

While the Supreme Court’s March 2015 decision in most instances instructs trial courts to disregard COAH’s invalidated 2004 and 2008 Third Round rules, it provides an exception for the bonus structure developed by COAH in those rules, since the Appellate Division and Supreme Court generally upheld that structure despite otherwise rejecting the rules. Thus, bonuses are one area in which COAH’s 2004 and 2008 Third Round Rules should be used instead of N.J.A.C. 5:93, as further detailed below.

COAH's second round rules only offered one type of bonus, a bonus for rental housing. N.J.A.C. 5:93-5.15(d). That bonus offered two-for-one credit for family rental units that were constructed or for which "the municipality has provided or received a firm commitment for the construction of rental units." Ibid. In certain circumstances, the bonus also offered a 1.33 for one credit for age-restricted housing units that were constructed or had a firm commitment. Ibid. The bonus could be for up to 25 percent of the municipality's new construction fair share obligation. N.J.A.C. 5:93-5.15(d)(3) (referencing the 25 percent rental obligation in N.J.A.C. 5:93-5.15(a)).

In its 2004 Third Round rules, COAH changed the specific units that could receive bonuses by expanding bonuses available for some units and reducing bonuses available for other units. The 2004 rules provided that, instead of getting bonuses for rental units up to the municipality's rental obligation, rental bonuses would only be provided for units "in excess of the rental obligation." N.J.A.C. 5:94-4.20(d). Furthermore, rental units would only be provided for family rental housing "available to the general public" and not for age-restricted rental housing. Ibid. While COAH restricted the rental bonus, it also provided an additional new bonus credit for very-low-income units serving "households of the general public earning 30 percent or less of median income," provided that any given unit could not receive both types of bonuses. N.J.A.C. 5:94-4.22, 5:94-4.23.

Although the Appellate Division generally struck down the 2004 Third Round Rules, the Appellate Division specifically upheld this revised bonus structure in which more bonus types were available, but bonuses for rental units were more limited:

In the second round rules, COAH awarded a two-for-one bonus credit because the "need for rental units and the subsidies necessary to produce them are so great as to warrant incentives to municipalities to provide plans that respond to the need." 25 N.J.R. 5772 (December 20, 1993), comment and response 112. COAH did not believe it could require municipalities to construct rental housing, and developers would opt to build sales units rather than rental units because of the lower internal subsidies required for sales units. 26 N.J.R. 2307-08 (June 6, 1994), comment and response 55.

The rationale for bonus credits in the third round remains the same. COAH "believes that bonus credits are an appropriate tool to create incentives for types of housing that may not otherwise be provided in the municipality." 36 N.J.R. 5769. On the other hand, the third round rules are less generous in awarding rental bonus credits than the second round rules. First, COAH awards no rental bonus credits for age-restricted rental housing. N.J.A.C. 5:94-4.20(d). Second, a municipality is entitled to a bonus credit only to the extent that it provides for rental housing in excess of the twenty-five percent minimum. Ibid.

The third round rules do not dilute satisfaction of the housing need to the same degree as the first round or second round rules. This court has upheld the first round and second

round rules. Appellants offer no persuasive reason for departing from [existing precedent, particularly in the face of current rules that bestow less generous incentives than in prior rounds.

[In re Adoption of N.J.A.C. 5:94 & 5:95 By N.J. Council On Affordable Hous., 390 N.J. Super. 1, 82-83 (App. Div. 2007).]

Based on the Appellate Division's affirmation of the bonus structure of the 2004 rules, COAH further refined that structure in 2008. COAH maintained the overall limitation of bonuses of 25 percent of prospective need from N.J.A.C. 5:93 and the concept that no unit could receive more than one type of bonus. N.J.A.C. 5:97-3.20. COAH in 2008 also maintained the more limited rental bonus structure from 2004 in which rental bonuses are only available for going beyond the minimum rental obligation, and only for family units. COAH also maintained bonus credits for very low income units, N.J.A.C. 5:97-3.7.<sup>2</sup> COAH then clarified bonus credits available for rental housing for people with special needs by stating that such bonuses could be awarded as a 1.25 for 1 credit based on the bedroom or 2 for 1 credit based on the unit depending on the type of supportive housing. N.J.A.C. 5:97-3.6(a). COAH also added bonus credits for two additional affordable housing activities not found in either N.J.A.C. 5:93 or 5:94: smart growth and redevelopment.<sup>3</sup> N.J.A.C. 5:97-3.18 and -3.19.<sup>4</sup> The Appellate Division affirmed both of these new bonuses, which provide a 1.33 for 1 unit credit, in 2010. In re N.J.A.C. 5:96 & 5:97, 416 N.J. Super. 462, 496-97 (App. Div. 2010).

Thus, in the 2007 and 2010 decisions, the Appellate Division affirmed COAH's Third Round bonus scheme of limiting rental bonuses in exchange for creating additional types of bonuses, namely very low income, redevelopment, and smart growth bonuses that municipalities could claim. The Supreme Court then in its March decision explicitly approved of this approach by the Appellate Division:

[T]he Appellate Division also approved the allowance of bonus credits towards satisfaction of a municipality's affordable housing obligations. For example, in In re Adoption of N.J.A.C. 5:94 & 5:95, supra, the panel. . . approved the allocation of a bonus credit to a municipality "for each unit that is affordable to the very poor, that is, a member of the general public earning thirty percent or less of the median income." Ibid. (citing N.J.A.C. 5:94-4.22). In approving

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<sup>2</sup> Note the Legislature subsequently limited very low income bonus credits to those in excess of the minimum 13 percent very low income housing requirement. "[A] municipality shall not receive bonus credits for the provision of housing units reserved for occupancy by very low income households unless the 13 percent target has been exceeded within that municipality." N.J.S.A. 52:27D-329.1.

<sup>3</sup> COAH also offered a "compliance bonus" in N.J.A.C. 5:97-3.17 to recognize the difference between the 1 in 9 growth share ratio in 2004 and the 1 in 5 ratio in 2008. The Appellate Division invalidated this bonus in 2010. In re N.J.A.C. 5:96 and 5:97, 416 N.J. Super. 462, 497 (App. Div. 2010). While the Supreme Court ultimately stated that it would not express any position on the compliance bonus, In re N.J.A.C. 5:96 and 5:97, 215 N.J. 578, 619 (2013), and left further determinations on that bonus to COAH on remand, such bonus was based on growth share ratios and thus does not comport with a fair share system.

those bonuses, the appellate court acknowledged COAH's discretion in creating a comprehensive scheme and further found that "[t]he [T]hird [R]ound [R]ules d[id] not dilute satisfaction of the housing need to the same degree as the [F]irst [R]ound or [S]econd [R]ound [R]ules," which were both approved. Id. at 82-83, 914 A.2d 348. Again, the Mount Laurel judges may exercise the same level of discretion when evaluating a municipality's plan for Mount Laurel compliance.

[In re N.J.A.C. 5:96 & 5:97, supra, 221 N.J. at 31-32 (emphasis added)].

The Supreme Court then specifically noted the Appellate Division's prior approval of the smart growth and redevelopment bonuses. Id. at 32. Thus, the Supreme Court suggested that trial courts may approve bonuses based on the "same level of discretion" that COAH had to craft a scheme involving a range of bonuses that dilutes the housing need to a degree less than the bonus scheme in the first and second round, including the smart growth and redevelopment bonuses.

Because the Appellate Division and Supreme Court, with a few minor exceptions, upheld COAH's 2008 rules' bonus structure, this court should follow the provisions approved by the courts as conforming to the Supreme Court's most recent directive. Specifically, bonuses for the prospective need obligation should be available for units that are constructed or have a firm commitment for construction as follows:

- A 2 for 1 credit for family rental units in excess of the 25 percent minimum rental obligation, provided that at least half of the rental units used to meet the 25 percent minimum rental obligation are family units. N.J.A.C. 5:97-3.6(a)(1) and (4).
- A 2 for 1 credit by unit or 1.25 for 1 credit by bedroom for supportive and special needs housing units in excess of the 25 percent minimum rental obligation, provided that at least half of the rental units used to meet the 25 percent minimum rental obligation are family units. N.J.A.C. 5:97-3.6(a)(1), (2) and (4).
- A 1.33 for 1 credit for smart growth or redevelopment projects. N.J.A.C. 5:97-3.18 and -3.19.
- A 2 for 1 credit for very low income units in excess of the 13 percent minimum very low income obligation (which obligation is discussed further below). N.J.A.C. 5:97-3.7 as modified by N.J.S.A. 52:27D-329.1.
- Cumulatively bonuses may not exceed 25 percent of the prospective need obligation, and no unit may receive more than one type of bonus. N.J.A.C. 5:97-3.20.

See generally Kinsey Compliance Report at ¶¶36-38.

By relying on these established COAH standards that have been upheld by the Appellate Division and explicitly referred to in the Supreme Court's most recent decision, this court can comply with the Court's direction in that decision to offer bonuses consistent with past precedent.



### 3. The Fair Housing Act and Court Precedent Require a Minimum of 50 Percent Family Housing

Families with children are the primary intended beneficiaries of the Mount Laurel doctrine. See Taxpayers Ass'n of Weymouth v. Township of Weymouth, 80 N.J. 6, 50 (1976) (“[W]e were specifically concerned in Mt. Laurel with the needs of younger families with children”). In In Re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super 1, 76 (App. Div. 2007), the Appellate Division recognized that “[t]he desire to exclude families with children drives exclusionary zoning, a fact recognized when the Court first announced the Mount Laurel doctrine . . . . The cost of primary and secondary education generates a significant burden which can be lowered by limiting housing opportunities for families with children.” The panel found that age-restricting half a municipality’s affordable housing “represents an exclusionary restriction” that “has the potential to significantly reduce the availability of affordable housing for poor families with children, and is therefore exclusionary.” Id. at 79. It is thus important that trial courts adjudicating compliance with the Mount Laurel doctrine pay special attention to the needs of lower-income families.

Even COAH eventually recognized that lower-income families receive priority under Mount Laurel. Following Judge Cuff’s decision, COAH recognized that its prior practice did not provide sufficient opportunity for families with children and thus was inconsistent with Mount Laurel and the FHA. COAH thus took four steps to implement the Court’s decision.

First, COAH adopted a rule that required half of municipality’s fair share obligation to be met with housing open to families. N.J.A.C. 5:97-3.9. COAH interpreted the FHA as requiring this minimum standard, stating that “[t]o encourage ‘a variety and choice of housing’ pursuant to the Fair Housing Act, the new rules include a requirement that 50 percent of the growth share obligation addressed within a municipality must be family housing units.” 40 N.J.R. 238 (Jan. 22, 2008). The agency thus interpreted N.J.S.A. 52:27D-302h, which provides in part that municipalities are required to provide “for a variety and choice of housing including low and moderate cost housing, to meet the needs of people desiring to live there” as requiring half of units provided within a municipality to be available to families. Given that an agency’s interpretation of its enabling legislation is entitled to deference, see, e.g., In re Warren, 132 N.J. 1, 28 (1993), trial courts implementing Mount Laurel should also defer to the requirement that half of all units meeting a fair share obligation be available to families with children. See Kinsey Compliance Report at ¶31.

Second, COAH limited age-restricted housing to 25% of a municipality’s fair share obligation, which is also consistent with Prior Round practice. N.J.A.C. 5:97-3.10(c); N.J.A.C. 5:93-5.14. When municipalities urged an increase, the agency refused, stating that it was prohibited from doing so by Judge Cuff’s decision. 40 N.J.R. 2751. See Kinsey Compliance Report at ¶41.

Third, COAH required that half of a municipality’s rental obligation for Third Round prospective need must be met through rental homes available to families. N.J.A.C. 5:97-3.4(b). COAH has required a minimum of 25% of the prospective need obligation to be met with rental housing. N.J.A.C. 5:93-5.15(a); N.J.A.C. 5:97-3.10(b). See Kinsey Compliance Report at ¶32-33. By recognizing that such obligation must include families, COAH ensured that the needs of families who cannot afford to buy a home are met. These needs have only become more acute since the economic crisis of 2008 and subsequent lack of availability of mortgages to many first time homebuyers.

Fourth, following the 2008 amendments to the FHA requiring that municipalities provide opportunities for families earning 30% or less of median income, known as very low income housing, COAH interpreted the new legislation and its rules, which were adopted to implement the FHA, as requiring that half of the very low income units be available to families. COAH October 30, 2008 Guidance Document at 1-2 (attached to this brief as Exh. B). See Kinsey Compliance Report at ¶34.

In order to comply with Judge Cuff's decision and broader precedent on the inclusion of families in Mount Laurel housing, municipalities should comply with the above four requirements.

**4. The 2008 Fair Housing Act Amendments Require a Minimum of 13 Percent Very Low Income Housing As Part of the 50 Percent of Housing in Each Fair Share Plan Required to Be Affordable to Low Income Households**

In 2008, the Legislature passed A-500, a substantial revision to the Fair Housing Act covering a range of issues. P.L. 2008, c. 46. Many of these issues have a greater impact at the individual municipal compliance level, such as the elimination of Regional Contribution Agreements and standards for development fees and spending plans. One component of A-500 particularly impacts the general standards that are the subject of this brief, N.J.S.A. 52:27D-329.1, which requires 13 percent of municipal fair share to be met with very low income housing.

N.J.S.A. 52:27D-329.1 requires that "at least 13 percent of the housing units made available for occupancy by low-income and moderate income households will be reserved for occupancy by very low income households." COAH in the aforementioned 2008 guidance document stated that "Third Round Housing Element and Fair Share Plans must address the 13 percent very low income requirement." Exhibit A at 1. Thus, 13 percent of each municipality's plan for Third Round prospective need must be comprised of units affordable to very low income households. These units may contribute to the minimum 50 percent of housing units in each plan that are required to be affordable to low income households. N.J.A.C. 5:93-2.20 ("The municipal calculated need obligation shall be divided equally between low- and moderate- income households. . . . [a]n odd number is always split in favor of the low-income unit.").

Thus, in accordance with statutory requirements and COAH regulations, municipalities should provide at least half of the units in the fair share plan for low income households, including at least 13 percent of the units affordable to very-low-income households. As noted above, at least half of this 13 percent must be available to families; the remaining half can serve very-low-income people with special needs and seniors.

**5. Conclusions regarding Compliance Standards**

For the aforementioned reasons, municipalities that seek to comply with Mount Laurel should generally follow N.J.A.C. 5:93. Due to the legal changes mentioned above, there are three general areas in which the court should adopt subsequent practices by COAH that responded to and/or were approved by the Appellate Division, Supreme Court, or Legislature as described above: changes to the bonus structure in COAH's Third Round rules, requirements to ensure families are included in fair share plans, and requirements to ensure very-low-income people are included as part of serving low income people more generally in fair share plans.

**B. The Kinsey Report complies with the New Jersey Supreme Court's directive to employ the Prior Round methodology in order to calculate and allocate Third Round fair share obligations.**

**1. The Supreme Court Required Calculations of Present and Prospective Need Using the Prior Round Methodology**

In the enclosed April 16, 2015 (revised July 2015) Kinsey Fair Share Report, FSHC has calculated fair share obligations consistent with the Supreme Court's decision. The Supreme Court provided specific direction to trial courts, which Dr. Kinsey's report follows by replicating the Prior Round methodology for present and prospective need step by step. As such, this Court should calculate fair share obligations using Dr. Kinsey's report.

As the Court noted, there are three components to the calculation of fair share need: present need (i.e. existing dilapidated homes that are in need of rehabilitation), prospective need (i.e. new homes needed to meet the needs resulting from the increase in population of low- and moderate-income households), and prior housing obligations that remain unfulfilled. In re N.J.A.C. 5:96 and 5:97, supra, 221 N.J. 1, 30 (2015). The Court provided specific guidance on each of these components.

As to both present need and prospective need, the Court stated that "previous methodologies employed in the First and Second Round Rules should be used to establish present and prospective statewide and regional affordable housing need. The parties should demonstrate to the court computations of housing need and municipal obligations based on those methodologies." Ibid. (citation omitted). As to the prior round, the Court stated a town's housing obligations that remain unfulfilled "should be the starting point for a determination of a municipality's fair share responsibility." Id. at 30."

For present need, the Court affirmed the general approach used in the Prior Round of looking to the most recent Census data for evidence of housing deterioration. However, the Court noted that because the Census has changed which data it collects about deterioration, courts should rely on the more limited set of indicators now available to calculate present need in the same manner as COAH did in its 2004 and 2008 rules. The Court stated that these currently available indicators of deterioration "remain legitimate considerations for the Mount Laurel judges when evaluating the constitutionality and reasonableness of the plans they are called upon to review." Id. at 33.

For prospective need, the Court held that "previous methodologies employed in the First and Second Round Rules should be used to establish . . . prospective statewide and regional affordable housing need. The parties should demonstrate to the court computations of housing need and municipal obligations based on those methodologies." Id. at 30. The Court did not note or sanction any deviations from those methodologies, thus holding that parties should proceed by following those methodologies with currently relevant data.

Finally, the Court stated that "our decision today does not eradicate the prior round obligations; municipalities are expected to fulfill those obligations. As such, prior unfulfilled housing obligations should be the starting point for a determination of a municipality's fair share responsibility. Cf. In re Adoption of N.J.A.C. 5:96 & 5:97, supra, 416 N.J. Super. at 498-500 (approving, as starting point, imposition of 'the same prior round obligations [COAH] had established as the second round obligations in 1993')." Id. at 30. The prior round obligations that were required are easily ascertainable as originally adopted in the

Second Round and readopted by COAH in 2008 as part of the rules under review in the decision cited by the Supreme Court. N.J.A.C. 5:97 App. C. As such, as to prior round obligations, the determination is effectively already made since the Supreme Court's decision refers to an already-established number.

In sum, the Court required a determination of three components of municipal fair share based on the following standards. For present need, municipalities and courts should follow the methodology used in the Prior Round, using updated Census categories for determining housing deterioration. For prospective need, courts should follow the methodology used in the Prior Round. And finally, municipalities need to meet any unfulfilled prior round obligations, with the starting point for such obligations the original prior obligations adopted by COAH in 1993 and reaffirmed in the 2008 rules. As detailed further below, the Kinsey Fair Share Report follows the Court's requirements and thus provides an accurate calculation of fair share in these matters.

**2. Dr. Kinsey correctly applied the Supreme Court's direction to calculating present need.**

As to present need, Dr. Kinsey followed the Supreme Court's direction by following the prior round methodology as closely as possible while incorporating the two specific changes previously approved by the Appellate Division and specifically referenced by the Supreme Court. Dr. Kinsey used the three data points from Census data as of 2010 that the Court stated should be used for calculating dilapidated housing in a municipality: "(a) overcrowding in housing built before 1960, (b) housing lacking complete plumbing facilities, and (c) housing lacking complete kitchen facilities," and then removed homes with more than one of these attributes to avoid double counting, as COAH has done in the past. Kinsey Fair Share Report at 6. Dr. Kinsey then, following COAH's prior round methodology, determined the share of households occupying dilapidated housing that were low- and moderate-income. Id. at 6-7.<sup>5</sup> Based on this calculation, Dr. Kinsey determined the present need for each municipality as of 2010. Dr. Kinsey did not update these data to 2015 because to do so would mean that municipalities would not receive credit for units already rehabilitated since 2010, and Census data are not available as of yet for 2015 as to deteriorated units.

**3. Dr. Kinsey correctly applied the Supreme Court's direction as to unmet prior round need.**

As noted above, the Court stated that "our decision today does not eradicate the prior round obligations; municipalities are expected to fulfill those obligations. As such, prior unfulfilled housing obligations should be the starting point for a determination of a municipality's fair share responsibility. Id. at 30. As such, the prior round obligations that were required are easily ascertainable as originally adopted in the Second Round and readopted by COAH in 2008 as part of the rules under review in the decision cited by the Supreme Court. N.J.A.C. 5:97 App. C. Dr. Kinsey used these prior round numbers already adopted by COAH and affirmed by the Court. To the degree that municipalities have already fulfilled their prior round obligations, they will have no additional need. To the degree that

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<sup>5</sup> The Court also noted that in the First and Second Round Rules, COAH reallocated part of present need in urban areas to suburban municipalities. Id. at 30 n.4. However, COAH's previously invalidated Third Round rules did not include such a reallocation, and the Appellate Division affirmed that portion of the rules. Id. at 30-31. As such, the Court stated that present need does not need to be reallocated, but rather remains in the municipality where the dilapidated housing occurs. Id. at 31. Dr. Kinsey's expert report follows the Court's directive in its calculation of present need.

those obligations are, in the Court's words, "unfulfilled," they will have to provide for them. A determination of which credits are available towards filling those obligations and whether each municipality has any unfulfilled obligation can and should be done at the municipal compliance level on a town by town basis.

**4. Dr. Kinsey correctly applied the Supreme Court's direction as to the first phase of prospective need: determination of regional prospective need.**

As to prospective need, Dr. Kinsey followed the Supreme Court's requirement to follow the Prior Round methodology already adopted by COAH and previously upheld by courts as closely as possible using the most up to date available data. N.J.A.C. 5:93 Appendix A identifies the process by which COAH calculated the fair share determinations for the First and Second Rounds in 1994.<sup>6</sup> That First and Second Round process followed three phases: 1) the experts' determination of Regional Prospective Need ("First Phase"); 2) the experts' allocation of municipal prospective need ("Second Phase"); and 3) the experts' adjustments for secondary sources of demand and supply ("Third Phase"). This brief now turns to how Dr. Kinsey correctly replicated each of the three phases with the most up to date available data.

Calculating Regional Prospective Need, the First Phase, has ten steps, which Dr. Kinsey used to replicate the methodology in N.J.A.C. 5:93 Appendix A. The below description shows how Dr. Kinsey replicated the COAH process in these steps using the most up-to-date available data.

Step 1: Identify housing regions

The first step of the Prior Round methodology involves identifying housing regions. Dr. Kinsey's reports take the housing regions directly from the COAH Prior Round Appendix A grouping of housing regions. 26 N.J.R. 2343. The map Kinsey used is identical to COAH's map, and the regions are identical. Compare 26 N.J.R. 2344 to Kinsey Fair Share Report at 11 (map and regions in Kinsey Report copied from COAH Appendix).

Step 2: Determine the population projection period

The next step determines the years in which housing need must be projected. This is done by determining when COAH's prior round ended, which was 1999. This is the "Base Year" for the Third Round calculations, much as 1993, which was the year the First Round ended, was the "Base Year" for the Second Round calculations. The "Projection Year" in 1993 was then six years from the year of projection, 1999. The Fair Housing Act, as amended in 2001, requires that the prospective need be calculated 10 years into the future, instead of the previous six years. P.L. 2001, c. 435. Thus, Dr. Kinsey uses a projection period from the current year, 2015, up through 10 years, which is 2025. Kinsey Fair Share Report at 12. 2025 is the "Projection Year." Thus, the population projection period is from the Base Year of 1999 through the Projection Year of 2025.

Step 3: Project regional population 2025

<sup>6</sup> While COAH originally calculated First Round obligations in 1986, it updated and revised those obligations as part of adoption of its Second Round rules in 1994. N.J.A.C. 5:93 Appendix A. Thus Appendix A to N.J.A.C. 5:93 provides the most updated methodology from COAH for both the First and Second Round, and reflects changes between 1986 and 1994 based on flaws discovered with the initial 1986 effort.

Step 3 determines how much the population will grow between the Base Year and the Projection Year. To make this projection, Kinsey used the same process as COAH used for the Prior Round. Both Kinsey and COAH utilized official New Jersey Department of Labor and Workforce Development (NJDOLWD) population projections by age cohort. COAH found Base Year population data by using existing data from 1990 and 1995 and interpolating (using an averaging process to estimate the value) for 1993:

A 1993 base is established by bounding it at one end by the age cohort distributions of the 1990 U.S. Census for New Jersey. The other end is bounded by the distribution of the projected population for 1995 by age cohort under CUPR's use of the two averaged NJDOL projections for 1995. Three-fifths of the distance from 1990 to 1995 is used to establish the 1993 age cohort distribution.

[N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2347.]

Then COAH projected the population for 1999 by using existing population projections for 1995 and 2000 and interpolating for the Projection Year 1999. *Ibid.* Kinsey similarly interpolated for the Projection Year of 2025, by using published NJDOLWD projections for 2022 and 2027. Kinsey Fair Share Report at 12. Thus, Kinsey replicated the COAH process of using official state projections from NJDOLWD to determine population growth.

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

The Prior Round COAH process removed from the population projections individuals living in group homes. COAH Appendix A, 26 N.J.R. 2343 (initially eliminating "all individuals living in institutions, group quarters, or as boarders/lodgers from potential low- and moderate-income housing demand"). Thus, Kinsey removes individuals living in group quarters as well. Kinsey Fair Share Report at 13-14 (identifying the population living in group quarters by age cohort and county and "remov[ing] from the general population in order to calculate headship rates in Step 5"). Though Dr. Kinsey notes that this step appears to undercount the affordable housing need because COAH grants credit for "group quarters" such as group homes, Kinsey Fair Share Report at 13 n. 37, he still follows this step consistent with the Supreme Court's direction to replicate the Prior Round methodology.

Step 5: Calculate 2000 and 2013 headship rates and project 2025 headship rates

Step 5 converts projected population growth into projected household growth, by determining how many people there are per household by county and by age cohort. In doing so, Kinsey replicates the same process in N.J.A.C. 5:93 Appendix A. 26 N.J.R. 2347 (multiplying population projections by headship rates in each age cohort to determine distributions of total households); See Kinsey Fair Share Report at 14-15 ("multiplying the projected population for each age cohort by the cohort's headship rate" to "project the number of future households"). In doing so, Kinsey, as COAH did in 1993, has to estimate how headship rates will change over years in the future. 26 N.J.R. 2347 (noting headship rates "are extended into the future" to determine household levels in Projection Year). For example, ten years from now, certain age groups may tend to live alone more or less than

before; or families may be more or less likely to reside in extended families, which could change the size of households.

Kinsey used the most up-to-date data and projections to calculate headship rates. A 2014 Harvard University Joint Center for Housing Studies report projected that through the year 2035, headship rates will remain constant. The report noted two contradictory trends likely to cancel each other out and keep headship rates the same: favorable economic conditions that “would increase the amount of household growth” are in predicted over the next years (through 2035) in conjunction with other factors that would “weigh[] down economic opportunities [and] could result in lower household formation rates.” Kinsey Fair Share Report at 17 (citing Daniel McCue, Baseline Household Projections for the Next Decade and Beyond, W14-1, Joint Center for Housing Studies, Harvard University, State of the Nation’s Housing Report 2-3 (Mar. 2014)). As such, Kinsey, consistent with the Harvard University State of the Nation’s Housing Report, projects that headship rates will remain at fairly low levels seen in recent years due to the recession (which in turn decreases fair share obligations below what they would be if headship rates were to increase).

#### Steps 6-8 Estimate 1999 and 2025 Low and Moderate Income Households by Region

Next, both the Prior Round Rules and Kinsey determine what share of household growth between the Base Year and Projection Year will be comprised of low- and moderate-income households. Both COAH and Kinsey use the same Census household income information for this step. They each take the income characteristics of all households in the prior known Census year and apply those characteristics (what percentage are low- and moderate-income) to the age cohorts in the Base Year. COAH Appendix A, 26 N.J.R. 2347 (“Total households for each period are converted to low- and moderate-income households by carrying forward the income characteristics of all households in 1990 to 1993 and 1999 by age cohort.”); Kinsey Fair Share Report at 18-19, n.46 (“establish[ing] a base of the number of low and moderate income households by age cohort by region in 1999” by using 2000 Census data on income characteristics and then “apply[ing] this percentage to estimated 1999 households by region”).

Both COAH and Kinsey then perform the same analysis for the Projection Year. COAH Appendix A, 26 N.J.R. 2347 (“Total households for each period are converted to low- and moderate-income households by carrying forward the income characteristics of all households in 1990 to 1993 and 1999 by age cohort.”); Kinsey Fair Share Report at 19 (“The proportion of projected low and moderate income households that are low and moderate income, by age cohort by county and region, is determined in the same manner as calculated in Step 6 for low and moderate income households in 1999, using the most recent available data used for the headship calculation above, namely 2013 ACS One Year data.”).

By calculating low and moderate income households for both the Base Year and Projection Year, both COAH and Kinsey then can figure out the increase in low and moderate income households between the Base Year and the Projection Year. N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2347 (“Low- and moderate-income households for 1993 are subtracted from low- and moderate-income households in 1999 to obtain the change in low- and moderate-income households from 1993 to 1999. This is done for eight age cohorts specific to each of 21 counties.”); Kinsey Fair Share Report at 20 (“The projected increase in low and moderate income households 1999-2025 is the difference between the projected 2025 low and moderate income households from Step 7 and the estimated 1999 low and moderate income households from Step 6, by age cohort by county and region[.]”).

Step 9-10: Pool and reallocate projected regional growth in low and moderate income households below age 65

COAH, in its final step in its Prior Round calculation of regional prospective need, reallocated the growth in the number of low- and moderate-income households among the regions. This step is done by estimating which regions of the state would experience labor growth, in order to "house low- and moderate-income families of working age in locations where jobs grew." N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2347, and reallocating prospective need for the age cohorts younger than age 65 based on the share of job growth in each region. Kinsey followed the same process, reallocating the housing need for these age cohorts based on job growth. Kinsey Fair Share Report at 16-17.

This step then leads to an initial regional calculation of prospective need, prior to allocation to municipalities, secondary sources, or application of any caps. N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2348; Kinsey Fair Share Report at 22.

Thus, the first ten steps of Dr. Kinsey's report faithfully replicate the COAH Prior Round methodology in calculating regional prospective need and should be relied on by municipalities and courts.

**5. Dr. Kinsey correctly applied the Supreme Court's direction as to the second phase of prospective need: allocation of regional prospective need to the municipal level.**

The first phase of prospective need produces a number for each region representing the number of low- and moderate-income households that each region would need to accommodate. The next phase involves allocating that regional need to the municipal level. First, COAH determined which urban aid municipalities would be exempt from receiving prospective need. Then, for the remaining municipalities, COAH allocated need based on three factors: non-residential ratable growth, vacant land, and existing household incomes. N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2346 ("Low- and moderate-income housing need is distributed to each community using three of the four economic and land-use factors[]"). Again, Dr. Kinsey's report faithfully replicates COAH's Prior Round methodology with the most up-to-date available data, and thus complies with the Supreme Court's directive.

Step 11: Exempt Qualifying Urban Aid Municipalities from housing need allocations

The COAH Prior Round process exempted towns that qualify as "Urban Aid municipalities" from the distribution of regional need. COAH explained:

[P]rospective need shall be distributed to municipalities unless the municipality received state aid pursuant to [N.J.S.A. 52:27D-178] and exhibits at least one of the following . . . :

1. Level of existing low- and moderate-income housing deficiency, according to the six housing deficiency criteria, that exceeds the average regional low- and moderate-income housing deficiency for the region in which the Urban Aid municipality is located;
2. Population density of greater than 10,000 persons per square mile, or 14.1 per acre;



3. Population density of 6,000 to 10,000 persons per square mile or 9.4 to 14.1 per acre *plus* less than 5 percent of vacant, non-farm, municipal land as measured by the average of the percentage of vacant land valuation and vacant land parcels of all local land valuation/parcels[.]

[N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2347.]

Kinsey used the same factors to determine whether a town was a qualifying Urban Aid municipality, based on the most up to date available data, including the State's official list of Municipal Urban Aid municipalities from State Fiscal Year 2015, 2008-2012 ACS data on deficient housing and occupied housing data, and DCA 2010 data for both population density and vacant land value. Kinsey Fair Share Report at 23-24 (town must meet, in addition to statutory criteria in N.J.S.A. 52:27D-178, the same three factors as (1) – (3) in COAH's list).<sup>7</sup>

#### Step 12: First Allocation Factor – Ratable Growth

The first of the factors COAH used to determine the distribution of regional need on municipalities is the "change in equalized nonresidential valuation" over a span of recent years (COAH used 1980-1990, the most recent dates that data was available to make the computation). N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2346. Nonresidential property valuation is used as a factor to estimate employment growth. "Real property valuation (absent business personal property) . . . has been found to be an excellent surrogate for the intensity of use or number of employees in the structure." N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2346. Kinsey determines this factor based on the same DCA data for the years 1990 – 2014, starting with the year that COAH left off and continuing through the most recent available data. Kinsey Fair Share Report at 24-25.

#### Step 13: Second Allocation Factor – Undeveloped Land

The next factor is the "undeveloped land factor," which is "[u]ndeveloped land in the community that can accommodate development." N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2346. COAH in Prior Round methodology first used satellite imagery to estimate undeveloped acreage in the regions. Then each area is then weighted "[t]o be sensitive to the State Planning Commission's goals for [different areas]." *Ibid.* COAH gave differing weights to different "Planning Area" labels given by the State Planning Commission and then determined, on a relative basis, how to weigh other areas depending on policy goals (whether the area is to be developed or not).

Kinsey used the same method of gathering DEP satellite imagery and then weighting them based on COAH's classifications. Kinsey Fair Share Report at 25-26. Consistent with the COAH definition of undeveloped land as "undeveloped land in the community that can accommodate development," N.J.A.C. 5:93 Appendix A, Kinsey eliminated all environmentally restricted lands from the DEP satellite imagery, based on a Rowan University overlay of official state GIS layers onto the DEP imagery. Kinsey Fair Share Report at 32.

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<sup>7</sup> For low and moderate income housing deficiency, Kinsey uses the same three factors approved by the Supreme Court as to present need, since the Census no longer measures the six factors used by COAH previously, as discussed in more detail in the present need section above. Kinsey Fair Share Report at 24.

Kinsey also had to address one of the few legal changes since 1993 directly impacting the methodology. In 2004, the state created a policy of protection for the state's Highlands Region. Highlands Water Protection and Planning Act, L. 2004, c. 120, N.J.S.A. 13:20-1 et seq. It defined a 859,358 acre Highlands Region, which it divided into a "Highlands Preservation Area" and a "Highlands Planning Area." N.J.S.A. 13:20-10.b and 10.c. Based on the goals the legislature established in the 2004 Act for the preservation of each of the Highlands Region, and also in conjunction with the policies expressed in an executive plan created by the Highlands Planning Council related to these areas ("Highlands Regional Master Plan"), Kinsey weighted areas in the Highlands Region as COAH had weighted similar areas the Second Round methodology. As to the Highlands Preservation Area, which the state gave very high degree of preservation protection policy, Kinsey weighted vacant land in that area as 0. Kinsey Fair Share Report at 27-28. And as to the Highlands Planning Area, which the state deemed less protective and could accommodate some development, Kinsey, through analogy to a zone COAH weighted in the Second Round methodology, gave it full weight of 1.0 counts for undeveloped acres in the state sewer service area (or in Highlands conforming municipalities the existing community zone), with all other land outside the sewer service area/existing community zone also given a weight of 0. Kinsey Fair Share Report at 29. Kinsey identifies each of his weighting classifications on page 31 of the Kinsey Fair Share Report. His list includes all the regions with the same weightings that COAH used in the Second Round methodology, adding the Highlands Regions just discussed. Once a municipality has a sum for undeveloped land capacity (using the weighting classifications), "[e]ach municipality's share of its region's weighted undeveloped land becomes its undeveloped land factor or coefficient." Kinsey Fair Share Report at 32.

#### Step 14: Third Allocation Factor – Household Income Difference

The third factor COAH used in its Prior Round methodology and Kinsey used as well is the "Aggregate Income Difference," which is an average of two measures:

1. Municipal share of the regional sum of the differences between median [Base Year] municipal household incomes and an income floor (\$100 below the lowest average household income in the region) and
  2. Municipal share of the regional sum of the differences between median [Base Year] municipal household incomes and an income floor (\$100 below the lowest [Base Year] median household income in the region) weighted by the number of the households in the municipality.
- [N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2346;  
Kinsey Fair Share Report at 33 (copying the same factors).]

Kinsey used the most up-to-date data on median household income and number of households by municipality, from the U.S. Census 2009-2013 five-year American Community Survey to calculate this income difference factor. Kinsey Fair Share Report at 33.

#### Steps 15-16: Allocate Regional Need

Based on averaging the three allocation factors just described, COAH then allocated regional prospective need to all municipalities in the housing region except for the qualifying urban aid municipalities described above. N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2346 ("all

factors... are equally weighted"); Kinsey Fair Share Report at 33-34. The average allocation factor is multiplied by the region's gross prospective need to yield the municipality's fair share of the regional gross prospective need, just as in COAH's Prior Round rules. Ibid.

Thus, steps 11-16 of Dr. Kinsey's report faithfully replicate the COAH Prior Round methodology in allocating regional prospective need to the municipal level.

**6. Dr. Kinsey correctly applied the Supreme Court's direction as to the third phase of prospective need: adjusting municipal fair share by secondary sources and applicable caps.**

The Third Phase in Kinsey and COAH's process is to account for any changes in either housing availability or need (changes in the supply or demand of housing) that are not based on population growth. "Secondary sources of housing supply and demand reflect the adjustments of the housing market to the unevenness [sic] and spontaneity of primary supply and demand." N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2348. Kinsey uses the same three factors of secondary sources for prospective need as COAH did in the Prior Round: filtering, residential conversions and demolitions. Id.; Kinsey Fair Share Report at 34-35. The Third Phase describes the application of those factors as well as the application of two caps on municipal obligations, which are the final steps in the Prior Round methodology, as replicated by Dr. Kinsey, which may limit a town's obligations.

Step 17: Estimate and project filtering affecting low and moderate income households

The first secondary source COAH and Kinsey both estimate and project is filtering, which COAH asserts reduces future housing need because it adds housing supply to the market and lowers the cost of housing. Filtering happens when relatively higher cost housing is added to the market ("added by private developers to the upper and middle price categories of the stock"), and households with greater housing capacity move into that housing, thus freeing up lower cost housing and causing price adjustments that increase the availability of low- to moderate-income housing. COAH Appendix A at 26 N.J.R. 2348; Kinsey Fair Share Report at 34-35.

In 2007, the Appellate Division invalidated COAH's Prior Round method of calculating filtering, which ruling we must take as authoritative here, according to the Supreme Court's decision. In re N.J.A.C. 5:96 and 5:97, supra, 221 N.J. at 33 (instructing trial courts to be guided by prior Appellate Division decisions). COAH attempted, in its first iteration of Third Round rules, to calculate filtering in the same method as it had in the Second Round but without using "the most recent and reliable data available," which the Appellate Division rejected. In re the Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1, 46 (App. Div., 2007). After that ruling, COAH retained a new consultant and new data to project filtering for the period 1999-2018. N.J.A.C. 5:97 Appendix F.3; see also Kinsey Fair Share Report at 34-35, n. 83, n. 84. That filtering report, which COAH commissioned for its second iteration of Third Round rules in 2008, is the "most up-to-date available data" on filtering, which Kinsey used for his projections. Kinsey Fair Share Report at 35. Kinsey then "extend[ed] the 2008 COAH filtering projections by extrapolation to 2025" by taking the filtering calculated from 1999-2018 by COAH in 2008 and extending it out proportionally for the additional seven year time period, thus further reducing fair share obligations. Id.

Step 18: Estimate and project residential conversions affecting low and moderate income households

Kinsey projected the effect of the second secondary source used by COAH in its Prior Round methodology, residential conversions on the supply of housing, in the same way as COAH did. "Conversion is the creation of dwelling units from already existing structures." N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2349; see also Kinsey Fair Share Report at 35 (quoting COAH). As Kinsey illustrates, "For example, an industrial loft building is converted to housing units, or a two-unit structure is converted to a single family dwelling unit." Ibid.

Calculating residential conversions is done through an inferential process. As COAH stated, it expects that the amount of housing at the end of a period which exceeds the amount of housing increase that can be attributed through other evidence (the number of building permits granted over that period after accounting for (subtracting) the number of demolitions) can be accounted for by conversion. N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2349; see also Kinsey Fair Share Report at 36 (describing and following COAH's process). Thus, for each region, the above numbers are calculated: (a) the increase in housing over a recent time period (COAH used 1980 to 1990 for the Second Round and Kinsey used 2000-2012); (b) the number of new building permits over that period; and (c) the number of demolitions over that period. Id. And they both use the following formula to compute conversions: conversions = (a) change in occupied housing units - (b) building permits + (c) demolitions. Kinsey Fair Share Report at 36; N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2349 (because "The housing stock is always characterized by having more units measured as present at the end state versus the beginning than can be accounted for by building permits minus demolitions).

After determining the conversions per region, COAH and Kinsey distribute a region's number among its municipalities based on a surrogate indicator, which COAH decided to be the municipality's share of the region's 2-4 unit structures. N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2349 ("Residential conversion is closely related and distributed to municipalities on the basis of their percentage of two- to four-family structures."); Kinsey Fair Share Report at 36. To determine what share of that number are conversions available to low- and moderate-income households, COAH found that "Residential conversions to low- and moderate-income housing in normal markets are often on a par with demolitions for the low- and moderate income sector." N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2349). Thus, Kinsey calculated each municipality's share of low- to moderate-income conversions based on the Prior Round methodology's "stated method for calculating the low and moderate income share of demolitions." Kinsey Fair Share Report at 37. Thus, Kinsey replicates the same method used by COAH to calculate and distribute conversions, using the most up-to-date available data.

#### Step 19: Estimate and project demolitions affecting low and moderate income households

The final secondary source in COAH's Prior Round prospective need methodology is demolitions. "As housing ages or falls prey to accident, natural disasters, or publicly/privately initiated changes in land use, it may become obsolete and be removed from the stock." N.J.A.C. 5:93 Appendix A, 26 N.J.R. 2348. Kinsey replicates how the Prior Round rules factor in the number of demolitions, data of which is reported in New Jersey by DCA. Just as COAH used actual demolitions data for recent years and then extrapolated to the full projection period, Kinsey uses actual demolitions data from 1999-2012 and then extrapolates for the full 1999-2025 projection period. Kinsey Fair Share Report at 37. Then, "[t]o calculate the low and moderate income share of these demolitions, [Kinsey's methodology] follows strictly the Prior Round methodology." Kinsey Fair Share Report at 38. Kinsey thus replicates what COAH did in the Prior Round:

Demolitions are adjusted for each municipality to the share of all demolitions that affect the low- and moderate-income housing sector by 120 percent of the subregional share of low- and moderate-income housing. This percentage share of all demolitions that affects low- and moderate-income families is capped at 95 percent.

[COAH Appendix A, 26 N.J.R. 2348-2349;  
Kinsey Fair Share Report at 38.]

Thus, Kinsey faithfully replicates COAH's Prior Round methodology for calculating demolitions using updated data.

Steps 20-23: Calculate Net Prospective Need and Apply 20 Percent and 1000 Unit Caps

After the three factors above are calculated for each municipality, Kinsey applies them to the municipal gross prospective need developed in the Second Phase above in the same manner as COAH did in the Prior Round. Because demolitions add to housing need (or demand), they are added to a municipality's number; because residential conversions add to supply, they are subtracted from a municipality's number; and because filtering may be either net positive or negative (depending on whether it created more supply or less), either add or subtract filtering accordingly. COAH Appendix A, 26 N.J.R. 2348-2349 (demolitions as a "source of housing demand"; residential conversions as a "source of housing supply"; filtering may contribute to more ("filtering up") or less ("filtering down") supply of housing for low- to moderate-income households); Kinsey Fair Share Report at 38.

This municipal fair share is then subject to two caps. The 1,000 unit cap is addressed by section 307 of the FHA. It requires COAH to "[a]dopt criteria and guidelines for . . . Municipal determination of its present and prospective fair share of the housing need in a given region which shall be computed for a 10-year period." N.J.S.A. 52:27D-307(c). Only after initially making that determination is COAH directed to "place a limit. . . upon the aggregate number of units which may be allocated to a municipality as its fair share" based on the 1000 unit cap. N.J.S.A. 52:27D-307(e). The law thus requires, and COAH's practice has always been, a determination of the full prospective need, and applicable pre-cap credits, prior to determining how the cap applies. Indeed, as recently as 2013, the Supreme Court specifically stated the FHA requires doing such an initial allocation prior to applying any caps. In re N.J.A.C. 5:96 and 5:97, 215 N.J. 578, 613 (2013). The 1000-unit cap statute presumes the cap applies to a 10-year period. Adjustments are thus needed to account for the 26-year need period caused by COAH's delays.

Also, under the Prior Round methodology, COAH instituted a 20 percent cap on the amount of fair housing activity a municipality would be required to perform so as "not to overwhelm local communities." COAH Appendix A, 26 N.J.R. 2350. The cap for each town is 20% of its occupied housing stock (it's "capacity" for housing activity). Dr. Kinsey uses updated Census data to calculate the town's occupied housing stock, and then caps the municipal obligation as no more than 20 percent of that number, consistent with COAH's Prior Round approach. Kinsey Fair Share Report at 38-39 ("a municipality's prospective need may not exceed a cap defined as 20% of the municipality's occupied housing").

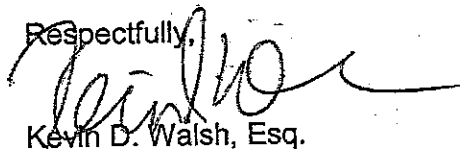
Thus, steps 17-23 of Dr. Kinsey's report faithfully replicate the COAH Prior Round methodology in adjusting municipal prospective need through secondary sources and caps.

#### IV. Conclusion

Through this filing, we seek to advise municipalities and the court regarding the positions we intend to take involving (1) general standards as to bonuses, family housing, and very low income housing as described above and (2) the Supreme Court's directive to use the most up to date available data to replicate COAH's methodology for the present need, unsatisfied prior round need, and prospective need components of each municipality's fair share obligation. At the appropriate time, either through a consolidated proceeding or in individual cases through objections to proposed fair share plans, we may formally appear to raise issues addressed in here. We hope that the positions we take in here will reduce the need for adversarial proceedings and enable municipalities to comply with the Mount Laurel doctrine in the most expeditious way possible.

Thank you for your attention to this matter.

Respectfully,



Kevin D. Walsh, Esq.

Counsel for Fair Share Housing Center

#### Appendix:

Exhibit A: Decision in In the Matter of the Adoption of the Monroe Township Housing Element and Fair Share Plan and Implementing Ordinances, Docket No. MID-L-3365-15 (July 9, 2015)

Exhibit B: Council on Affordable Housing October 30, 2008 Guidance Document

#### Enclosure:

October 2015 report prepared by David N. Kinsey, Ph D., FAICP, PP, *Third Round (Post-1999) Mount Laurel Fair Share Housing Obligations and Compliance Standards for New Jersey Municipalities* (Kinsey Compliance Report) and the April 16, 2015 report (revised July 2015) prepared by David N. Kinsey, PhD., FAICP, PP, *New Jersey Low and Moderate Income Housing Obligations for 1999-2025 Calculated Using the NJ COAH Prior Round (1987-1999) Methodology* (Kinsey Fair Share Report), is included here as an exhibit to the Kinsey Compliance Report

c: Service Lists attached

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – CIVIL PART (MT. LAUREL)

DOCKET NO: MID-L-3365-15

CIVIL ACTION

OPINION

Decided July 9, 2015

*In the Matter of the Adoption of the Monroe  
Township Housing Element and Fair Share  
Plan and Implementing Ordinances*

Not for Publication Without  
the Approval of the  
Committee on Opinions

Jerome J. Convery, Esq. and Marguerite M. Schaffer, Esq. (*Shain, Schaffer & Rafanello, P.C.*) appeared on behalf of the Township of Monroe

Thomas F. Carroll, III, Esq. and Stephen Eisdorfer, Esq. (*Hill Wallack, LLP*) appeared on behalf of proposed intervener, Monroe 33 Developers, LLC

Kevin D. Walsh, Esq., appeared on behalf of proposed intervener Fair Share Housing Center

WOLFSON, J.S.C.

I. Jurisdictional Posture

Following the March 10, 2015 decision of the Supreme Court of New Jersey in In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), hereinafter referred to as Mount Laurel IV, the adjudication of a municipality's compliance with its constitutional obligation to create a realistic opportunity for producing a fair share of

*Exhibit "A"*

affordable housing was removed from the Council on Affordable Housing (“COAH”) and returned to the judiciary. The Supreme Court instructed the designated Mount Laurel judges within the State to adjudicate the issue of whether a given municipality’s housing plan satisfies its Mount Laurel obligations and provided detailed guidelines regarding the manner in which the judges should do so. The within matter comes before me by virtue of that grant of jurisdiction.

## II. Statement of the Case

The Township of Monroe filed this declaratory judgment action pursuant to the authorization provided by Mt. Laurel IV, *supra*, 221 N.J. 1, seeking a judicial declaration that its housing plan is presumptively valid, and, while the declaratory matter relating to its constitutional compliance proceeds to adjudication, a five-month period of temporary immunity from exclusionary zoning lawsuits. Monroe 33 Developers, LLC (“Monroe 33”) sought to intervene as a defendant and for leave to file a counterclaim, which included a demand for site-specific relief – a builder’s remedy. Fair Share Housing Center (“FSHC”) also sought to intervene as a defendant and for leave to file a counterclaim challenging the constitutionality of Monroe’s affordable housing plan.

For the reasons set forth below, the Township of Monroe’s motion for a five-month period of immunity is **GRANTED**; the cross-motions of Monroe 33 Developers, LLC and Fair Share Housing Center to intervene as defendants are **GRANTED**; the cross-motion of Monroe 33 Developers, LLC to file a counterclaim seeking site-specific relief is **DENIED** without prejudice; and the cross-motion of FSHC to file a counterclaim challenging Monroe’s proposed compliance plan is **GRANTED**.



### III. Procedural History

Throughout its opinion in Mt. Laurel IV, *supra*, 221 N.J. 1, the Supreme Court addressed COAH's failure to adopt revised constitutional rules ("Third Round Rules") regarding municipal housing obligations under the Fair Housing Act, N.J.S.A. 52:27D-301 to -392 (the "FHA"). As a result of COAH's failure to comply with prior Orders of the Supreme Court, a new procedure was established whereby the issues relating to compliance with a municipality's constitutional obligation to create a realistic opportunity for producing a fair share of affordable housing would be returned to the courts.<sup>1</sup>

Recognizing that some municipalities had embraced the COAH process in good faith, but were stymied by that agency's inability to function, the Supreme Court set forth procedures by which municipalities that had either received substantive certification from COAH or had filed resolutions of participation prior to the judicial invalidation of COAH's the third-round methodology, could seek a judicial declaration that its housing plan satisfied its constitutional obligations. The process outlined by the Court affords such towns a reasonable opportunity to demonstrate constitutional compliance to a court's satisfaction (including time to take curative action if the municipality's plan requires further supplementation), without the specter of a

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<sup>1</sup> See Mt. Laurel IV, *supra*, 221 N.J. at 6 ("Our order effectively dissolves, until further order, the FHA's exhaustion-of-administrative-remedies requirement. Further, as directed, the order allows resort to the courts, in the first instance, to resolve municipalities' constitutional obligations under Mount Laurel"); see also Southern Burlington County NAACP v. Twp. Of Mount Laurel, 67 N.J. 151 (1975) (hereinafter referred to as Mt. Laurel I); and see Southern Burlington County NAACP v. Twp. Of Mount Laurel, 92 N.J. 158 (1983) (hereinafter referred to as Mt. Laurel II).

builder's remedy action hanging over them like a "sword of Damocles."<sup>2</sup> Importantly, the Supreme Court authorized the courts to grant a period of temporary immunity for up to five months, "preventing any exclusionary zoning actions from proceeding,"<sup>3</sup> to those municipalities that promptly sought such declaratory relief.<sup>4</sup>

Accordingly, I am tasked with determining first, whether Monroe has demonstrated an entitlement to a period of immunity, and second, whether the procedures and protocols crafted by the Supreme Court authorize the relief sought by the proposed interveners.

#### **IV. The Township of Monroe's Request for Temporary Immunity**

The Township of Monroe enjoys "participating" status and has now affirmatively sought judicial approval of its affordable housing plan through the filing of its declaratory judgment action. Thus, it "should receive like treatment to that which was afforded by the FHA to towns that had their exclusionary zoning cases transferred to COAH when the Act was passed." Mt.

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<sup>2</sup> See e.g., Mt. Laurel IV, *supra*, 221 N.J. at 3 ("In the event of a municipality's inability or failure to adopt a compliant plan to a court's satisfaction, the court may consider the range of remedies available to cure the violation, consistent with the steps outlined herein and in our accompanying order."); *id.* at 24 ("[A]s part of the court's review, we also authorize... a court to provide a town whose plan is under review immunity from subsequently filed challenges during the court's review proceedings, even if supplementation of the plan is required during the proceedings.").

<sup>3</sup> *Id.* at 23-24.

<sup>4</sup> See *id.* at 5-6. ("We will establish a transitional process and not immediately allow exclusionary zoning actions to proceed in recognition of the various states of municipal preparation that exist as a result of the long period of uncertainty attributable to COAH'S failure to promulgate Third Round Rules. During the first thirty days following the effective date of our implementing order, the only actions that will be entertained by the courts will be declaratory judgment actions filed by any town that either (1) had achieved substantive certification from COAH under prior iterations of Third Round Rules before they were invalidated, or (2) had "participating" status before COAH.").

Laurel IV, *supra*, 221 N.J. at 27, *citing* N.J.S.A. 52:27D-316.<sup>5</sup> These towns received “insulating protection” by virtue of their submission to COAH’s jurisdiction, “provided that they prepared and filed a housing element and fair share plan within five months.” N.J.S.A. 52:27D-316. So too here, as a “participating” town, Monroe similarly has “no more than five months in which to submit their supplemental housing element and affordable housing plan. During that period, the court may provide initial immunity preventing any exclusionary zoning actions from proceeding.” Mt. Laurel IV, *supra*, 221 N.J. at 27-28.

Since Monroe had actually devised a housing element and took action toward adopting ordinances in furtherance of its plan, it has earned a more “favorable” or “generous” review of its request for immunity.<sup>6</sup> Even where granted, however, immunity “should not continue for an undefined period of time; rather, the trial court’s orders in furtherance of establishing municipal affordable housing obligations and compliance should include a brief, finite period of continued immunity, allowing a reasonable time as determined by the court for the municipality to achieve compliance.” Id. at 28. Only where that goal cannot be accomplished, with good faith effort and reasonable speed, and the town is “*determined to be constitutionally noncompliant*” may

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<sup>5</sup> While the Court cautioned that the judicial role “is not to become a replacement agency for COAH,” the process developed in Mt. Laurel IV “seeks to track” the processes provided for in the FHA “as closely as possible,” so as to create “a system of coordinated administrative and court actions.” Id. at 6, 29.

<sup>6</sup> For those municipalities that made good faith attempts to implement their affordable housing obligations by, for example, devising a housing element and taking action toward adopting ordinances in furtherance of its plan, the Supreme Court “expect[s] a reviewing court to view more favorably such actions than that of a town that merely submitted a resolution of participation and took few or perhaps no further steps toward preparation of a formal plan demonstrating its constitutional compliance.” Id. at 28.

exclusionary zoning actions seeking a builder's remedy proceed against "certified" or "participating" towns.<sup>7</sup>

Based upon my preliminary review of the Township's submissions, detailed below, I am satisfied that Monroe has made a good faith attempt to satisfy its affordable housing obligations, and hence, deserves immunity from exclusionary zoning actions, on the condition that it prepares and files its housing element and fair share plan within five months (as would have been required if it were subject to COAH's jurisdiction).<sup>8</sup>

In or around December 2008, Monroe adopted its Third Round Housing Element and Fair Share Plan, as well as its Third Round Housing Trust Fund Spending Plan. Promptly thereafter, the Township petitioned COAH for substantive certification by submitting: (1) a document regarding the status of inclusionary development Stratford Monroe with its proposed two-hundred and five (205) affordable units; (2) a document regarding the status of inclusionary development Monroe Manor with its proposed one-hundred and twenty-seven (127) affordable units; and (3) a document encompassing a general description of the Township's Rehabilitation Program, which included sixty-one (61) units proposed for rehabilitation.

During early 2009, Monroe created the Planned Residential Development Affordable Housing District ("PRDAH"). Said district requires that 23.03% of the dwelling units be designated and set aside for low- and moderate-income households. According to the Board Planner for the Monroe Township affordable Housing Board ("the Planner"), the PRDAH zone

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<sup>7</sup> Id. at 33 (emphasis added); see also id. at 29 ("Only after a court has had the opportunity to fully address constitutional compliance and has found constitutional compliance wanting shall it permit exclusionary zoning actions and any builder's remedy to proceed.").

<sup>8</sup> See N.J.S.A. 52:27D-316(a) ("If the municipality fails to file a housing element and fair share plan with the council within five months from the date of transfer [to COAH], or promulgation of criteria and guidelines by the council pursuant to section 7 of this act, whichever occurs later, jurisdiction shall revert to the court.").

should produce two-hundred and ninety-three (293) age-restricted affordable housing units and one-hundred and eight (108) family rental affordable housing units.

During 2011, the Monroe Township Planning Board denied a developer's application to construct a previously-approved plan to all non-age restricted units. Through a reconsideration by the parties, said developer dedicated part of its site to the municipality for a municipally sponsored 100% affordable housing complex which is expected to yield one-hundred and fifty (150) family rental units. Later in 2011, the Monroe Township Zoning Board approved an application which required the construction of twenty-six (26) affordable family rental units at the Monroe Chase site, ten (10) of which have already been constructed.

In May 2012, the Township amended its Third-Round Housing Element and Fair Share plan to include a municipally sponsored affordable housing project and, in addition, designated two new overlay zones – actions intended to produce additional affordable housing. The Township Council also passed a Resolution endorsing the recommendation of its Affordable Housing Board reserving and dedicating funds for affordable housing purposes, and thereafter adopted an ordinance authorizing the creation of an Affordable Housing Irrevocable Trust.

In February 2014, a developer was granted a use variance for construction of residential units on State Highway 33. The approval required construction of forty-seven (47) affordable family rental units in the VC-2 Village Center Overlay Zone. In July 2014, as a result of other, unrelated litigation, the Township also rezoned two sites – one along Route 33, which, when developed, will yield one-hundred and thirty-one (131) affordable age-restricted rental units; and another known as “the Villages,” which, when developed, will generate an additional sixty-six (66) affordable age-restricted rental units.

In September 2014, Monroe amended the Affordable Housing Mixed Use Development/Highway Development overlay zone (hereinafter "AHMUD/HD overlay zone"), which, according to the Planner, should produce two-hundred and ninety-five (295) affordable housing units under a 100% municipally sponsored development. Monroe also amended the VC-1 and VC-2 Village Center overlay zones to create mixed-use environments which, according to the Planner should produce an additional one-hundred (100) affordable housing units and twelve (12) family rental affordable housing units, respectively, under the set-aside provisions of those zones.

As the Supreme Court recognized: "...not all towns that had only 'participating' status may have well-developed plans to submit to the court initially. A town in such circumstances poses a difficult challenge for a reviewing court, particularly when determining whether to provide some initial period of immunity while the town's compliance with affordable housing obligations is addressed." Undoubtedly, Monroe (a "participating" municipality) has provided *prima facie* documentation of its good faith efforts to comply with its fair share obligation. Accordingly, the Township's motion seeking a five-month period of temporary immunity from exclusionary zoning suits is granted.<sup>9</sup>

V. Proposed Interveners' Motions to File Answers and Counterclaims

a. The Right of Interested Parties to Participate in the Adjudication of Constitutional Compliance

Both substance and procedure permit, and perhaps, demand that "interested parties" be permitted to "participate" in any assessment of a municipality's purported compliance with its affordable housing obligation. First, absent intervention, a municipality's declaratory judgment

<sup>9</sup> See Mt. Laurel IV, *supra*, 221 N.J. at 27-28; see also N.J.S.A. 52:27D-316(a).

action would be, essentially, unopposed. While the appointment of a Special Master is, ideally, both a welcome and necessary protocol, a blanket rule prohibiting any interested party from intervening, fundamentally silences potentially useful and critical voices which may have legitimate insights or analyses relevant to the constitutionality of the town's proposed plan. Second, while I am mindful of the Supreme Court's clear mandate to adjudicate such actions as quickly as prudence and justice will allow, it is amply clear that the Court specifically contemplated, and in the case of FSHC, for example, directly encouraged, interested parties to weigh in on the extent and methods by which a given municipality proposed to fulfill its affordable housing obligations.

The Supreme Court was unequivocal in its mandate that all declaratory judgment cases are to be brought on notice to interested parties and with an opportunity for them to be heard. Id. at 35: I can discern no legitimate basis, therefore, to deny any interested party the opportunity to intervene as a defendant, albeit limited to the question of whether the particular town has complied with its constitutional housing obligations. Accordingly, Monroe 33 and FSHC's motions to intervene as defendants and to file Answers are both granted.

**b. Counterclaims Seeking Site-Specific Relief – i.e., Builder's Remedy Actions – are Barred as Against "Certified" or "Participating" Municipalities**

Despite the Supreme Court's clear directive affording interested parties an "opportunity to be heard," I am equally confident that this right does not extend so far as to authorize them to contest the municipality's site selections and/or methods of compliance by suggesting or claiming that other sites (owned or controlled by them) are superior to, or perhaps, better suited for an inclusionary development. While such parties' "participation" may, of course, include proofs related to whether the proposed affordable housing plan passes constitutional muster, so

long as the plan does so, the municipality's choices (including site selection and the manner and methods by which it chooses to satisfy its affordable housing obligations) remains, as it was under the FHA and COAH's oversight<sup>10</sup>, paramount. Accordingly, claims that a "better" and/or "more suitable" site is, or may be available will not be entertained in any declaratory judgment action brought by a certified or participating municipality. Simply stated, to hold otherwise would be to permit an interested party to do indirectly that, which the Supreme Court has specifically prohibited from being done directly.

#### i. Monroe 33's Counterclaim

At its core, Monroe 33's counterclaim seeks site-specific relief – i.e., a builder's remedy, relief that goes beyond the limited participation envisioned the Supreme Court. In discussing whether and when exclusionary zoning actions and builder's remedies would actually be permitted (or, if permitted, "stayed"), the Court used various limiting phrases such as "may be brought"<sup>11</sup> and "may proceed."<sup>12</sup> Irrespective of its choice of language, the Supreme Court's overarching intent was clearly to foreclose such litigation until such time as constitutional compliance has been judicially addressed and found "wanting." Mt. Laurel IV, *supra*, 221 N.J. at 29. Then, and only after the court has concluded that a municipality is "determined to be noncompliant" (by refusing to supplement or amend its plan to remedy any perceived

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<sup>10</sup> See generally N.J.S.A. 52:27D-309-311; see also Hills Dev. Co. v. Bernards Tp., 103 N.J. 1, 22 (1986) (hereinafter referred to as Mt. Laurel III) (Under the FHA, municipalities retain the right "to exercise their zoning powers independently and voluntarily" along with the means to determine what combination of ordinances and other measures will achieve their fair share of affordable housing).

<sup>11</sup> See e.g., Mt Laurel IV, *supra*, 221 N.J. at 28.

<sup>12</sup> See e.g., id. at 26, 27 and 35.



deficiencies) would exclusionary zoning actions be warranted.<sup>13</sup> Limiting participation of interested parties in such a fashion comports with the specified protocols mandated by the Supreme Court that: (1) interested parties must be given notice and an opportunity to be heard *on the issue of constitutional compliance*; and (2) exclusionary zoning suits are not authorized unless the court fully addressed the issue of constitutional compliance, and has determined the town's affordable housing plan to be deficient.<sup>14</sup>

Barring interested parties from pursuing builder's remedies, either via an independent action, or as here, by way of a counterclaim, results in no discernible prejudicial impact.<sup>15</sup> Indeed, site-specific relief is wholly irrelevant to the larger, and preliminary, question of constitutional compliance. Builders choosing to participate as defendants<sup>16</sup> in constitutional compliance actions pending before the trial courts may do so in much the same manner as they

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<sup>13</sup> *Id.* at 33; *see also* n. 6, *supra*.

<sup>14</sup> *See id.* at 33-34 (stating that if the court is unable to secure "prompt voluntary compliance from municipalities... with good faith effort and reasonable speed, and the town is determined to be constitutionally noncompliant, *then* the court may authorize exclusionary zoning actions seeking a builder's remedy to *proceed*." (emphasis added)).

<sup>15</sup> As recognized nearly thirty years ago in *Mt. Laurel III*:

If there is any class of litigant that knows the uncertainties of litigation, it is the builders. They, more than any other group, have walked the rough, uneven, unpredictable path through planning boards, boards of adjustments, permits, approvals, conditions, lawsuits, appeals, affirmances, reversals, and in between all of these, changes in both statutory and decisional law that can turn a case upside down. No builder with the slightest amount of experience could have relied on the remedies provided in *Mt. Laurel II*, in the sense of justifiably believing that they would not be changed, or that any change would not apply to the builders.

*Id.*, *supra*, 103 N.J. at 55.

<sup>16</sup> Irrespective of whether a "certified" or "participating" municipality chooses to file a declaratory judgment action or waits to be sued, "*the trial court may grant temporary periods of immunity prohibiting exclusionary zoning actions from proceeding[.]*" *Mt. Laurel IV*, *supra*, 221 N.J. at 35.

would have, had COAH not ceased to function; a parallel process that neither affords builders any greater rights, nor deprives them of any that they would have had, including the rights to participate in the processes authorized under both Mount Laurel II and the FHA – conciliation, mediation, with the use and assistance of special masters.<sup>17</sup> Certainly, the Court’s dissolution of the FHA’s exhaustion-of-administrative-remedies requirement and its resurrection of the judiciary’s role as the forum of first resort to evaluate municipal compliance was not intended to signal a return to Mount Laurel II and its “reward-based” system for vindicating the constitutional rights of the poor.<sup>18</sup> In point of fact, the Court’s newly established framework fundamentally alters that “reward-based” approach. In so doing, it rendered obsolete the “first to file” priority scheme adopted in J.W. Field Co., Inc., v. Franklin Tp., 204 N.J. Super. 445 (Law Div. 1985), since the ultimate location and satisfaction of a certified or participating municipality’s affordable housing obligation ought be based upon a more interactive process,

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<sup>17</sup> As noted by the Supreme Court in Mt. Laurel II, *supra*, 92 N.J. at 283, special masters were intended to be “liberally used” to provide expertise and to assist the parties as “a negotiator, a mediator, and a catalyst.” See also N.J.S.A. 52:27D-315 (mediation and review process by council).

<sup>18</sup> The procedures articulated herein are not intended to prevent builders or other interested parties from bringing exclusionary zoning actions against any municipality that was neither certified nor participating. Indeed, the approximate 200 towns that never subjected themselves to COAH’s jurisdiction remain “open to civil actions in the courts... [and] will continue to be subject to exclusionary zoning actions as they have been since inception of Mount Laurel...” Mt. Laurel IV, *supra*, 221 N.J. at 23.

guided by the equities<sup>19</sup> of the particular participants and principles of sound planning,<sup>20</sup> rather than on a race to the courthouse.<sup>21</sup>

Indeed, even under Mount Laurel II, no builder's remedy would be awarded unless the plaintiff's proposed site was "*located and designed in accordance with sound zoning and planning concepts, including its environmental impact.*"<sup>22</sup> As originally intended, builder remedies were authorized to incentivize builders to vindicate this constitutional imperative largely because the Court's landmark decision in Mount Laurel I was widely ignored and failed to achieve the desired goal of producing balanced communities and affordable housing, but also

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<sup>19</sup> As opposed to the "date of filing," such equitable considerations could include, for example, an assessment of "whether any project was clearly more likely to result in actual construction than other projects and whether any project was clearly more suitable from a planning viewpoint than other projects." See J.W. Field Co., Inc., *supra*, 204 N.J. Super. at 460.

<sup>20</sup> The Court has consistently demonstrated its sensitivity to and the importance of sound planning and environmental conditions over builder preference. See, e.g., Mount Laurel II, *supra*, 92 N.J. at 211 (The obligation to encourage lower income housing, therefore will depend on "natural long-range land use planning" rather than upon "sheer economic forces."); and see *id.* at 238 ("the Constitution of the State of New Jersey does not require bad planning.").

<sup>21</sup> While the priority system articulated in J.W. Field Co., Inc., *supra*, 204 N.J. Super. 445, has never been specifically embraced by any appellate authority, it has, for all intents and purposes, become embedded and generally followed in Mount Laurel jurisprudence for more than thirty years. It seems reasonable to conclude that it remains a viable protocol for determining priorities among multiple plaintiffs in litigation against towns that were neither "certified" nor enjoyed "participating status" before COAH. Nonetheless, with regard to the certified and participating municipalities now before the courts, the Court encouraged "present day courts" to employ "flexibility in controlling and prioritizing litigation." Mt. Laurel IV, *supra*, 221 N.J. at 26.

<sup>22</sup> Mount Laurel II, *supra*, 92 N.J. at 218 (emphasis added); see also *id.* at 279 (a builder's remedy award is only appropriate where a builder demonstrates that "the construction can be implemented without substantial negative environmental or planning impact.").

because, after eight years, the decision had produced only “papers, process, witnesses, trials and appeals.”<sup>23</sup>

By way of contrast, the Supreme Court’s current framework expressly *prohibits* exclusionary zoning litigation until *after* the compliance phase of the declaratory judgment action has concluded.<sup>24</sup> As such, a builder/plaintiff may be hard pressed to assert convincingly that its actions were the catalyst or procuring cause in vindicating the constitutional rights of low and moderate income persons. This is especially so in the context of a municipally initiated declaratory judgment action, or one defended by a town that was “certified” or enjoyed “participating status” but opted to “wait until sued” before seeking a judicial blessing of its affordable housing plan.<sup>25</sup>

This is not to say that participation by builders or other interested parties in the constitutional compliance action is unwelcome or unnecessary. In fact, the opposite is true. Involvement of, and input from such parties may be among the most beneficial sources of practical and economic information in helping to achieve expedient municipal compliance. By

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<sup>23</sup> Mount Laurel II, *supra*, 92 N.J. at 199; see also Orgo Farms & Greenhouses, Inc. v. Colts Neck, 192 N.J. Super. 599, 601 (Law. Div. 1983) (wherein Judge Serpentelli, one of the three original Mount Laurel judges, recognized that “unless a strong judicial hand was applied, Mount Laurel I would not result in the housing which had been expected.”). Consequently, the builder’s remedy was designed “to assure a builder who shouldered the burden of Mount Laurel litigation that the end result of a successful litigation would be some specific relief in terms of a right to proceed with construction of a specific project.” Orgo Farms, *supra*, 192 N.J. Super. at 602. At present, the framework crafted in Mt. Laurel IV, *supra*, 221 N.J. 1, has replaced, at least temporarily, the builder’s remedy as the “strong judicial hand.”

<sup>24</sup> Mt. Laurel IV, *supra*, 221 N.J. at 35-36.

<sup>25</sup> See Mt. Laurel IV, *supra*, 221 N.J. at 28 (stating that both “certified” and “participating” towns have the option either to proceed with their own declaratory judgment actions during the thirty-day period post the effective date of the Order, or to wait until their affordable housing plan is challenged for constitutional compliance).

engaging in mediation, negotiation, conciliation, and, with the assistance and planning expertise of special masters, there exists a unique opportunity for municipal officials, on the one hand, and ready, willing and able builders, on the other, to craft mutually workable plans for the construction of affordable housing.<sup>26</sup> In addition to the practical benefits that such a streamlined approach provides all participants, such a cooperative resolution of these competing interveners may very well diminish the likelihood of future litigation.

## ii. FSHC's Counterclaim

As distinct from Monroe 33's pleading, FSHC's counterclaim does not seek site-specific relief. Instead, its two-count counterclaim alleges: (1) that the Township's Housing Plan Element and Fair Share Plan is unconstitutional – i.e., a violation of its Mount Laurel obligation; and (2) that the Township has violated the New Jersey Civil Rights Act, N.J.S.A. 10:6-2, by failing to comply with the Mount Laurel doctrine and other sources of law. Since both of these claims fit squarely within the scope of issues authorized by the Supreme Court in Mount Laurel IV – challenges to compliance – FSHC's motion for leave to file its counterclaims is hereby granted.

## VI. Conclusion

The Supreme Court's newly crafted framework for ensuring municipal compliance with Mount Laurel obligations, unlike the "reward" based process envisioned in Mount Laurel II, is

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<sup>26</sup> Compare, Mount Laurel II, *supra*, 92 N.J. at 284 (acknowledging the need for the special master to "work closely" with all those connected to the litigation, including "interested developers.").

not dependent upon site-specific remedies to achieve constitutional compliance.<sup>27</sup> Instead, as envisioned by the Supreme Court, “certified” and “participating” towns will likely subject themselves to a judicial evaluation of their constitutional compliance either by initiating declaratory judgment actions, or defending them – circumstances which, for all practical purposes, preclude, at least during the compliance phase of litigation, any party from being a “successful” plaintiff as required by Mount Laurel II.<sup>28</sup> Accordingly, all declaratory judgment actions involving “certified” or “participating” municipalities shall be subject to the procedures and protocols set out below:

1. Interested parties shall be permitted to intervene, but only for the limited purpose of participating (through mediation, negotiation, conciliation, etc.) in the court’s adjudication of the subject municipality’s constitutional compliance with its affordable housing obligation;
2. Interested parties shall not be permitted to file exclusionary zoning/builder’s remedy actions, via counterclaims or through independently filed separate actions, until such time as the court has rendered an assessment of the town’s affordable housing plan and has decided that the municipality is constitutionally noncompliant, and is determined to remain so by refusing to timely supplement its plan to correct its perceived deficiencies; and

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<sup>27</sup> To be clear, this conclusion pertains only to “certified” or “participating” towns (whether they filed declaratory judgment actions or whether they chose to “wait to be sued”), and not to those towns that were neither “certified” nor “participating.” Nothing in this opinion is meant to diminish the rights of parties seeking builder’s remedies through the filing of exclusionary zoning actions in the latter category of town. The builder’s remedy schemes laid out by both Mt. Laurel II and J.W. Field Co., Inc. seem perfectly viable *in those towns that made no effort to satisfy their fair share obligations*, as the need to incentivize builders to bring constitutional compliance and/or exclusionary zoning litigation in such towns remains of paramount importance. See Mt. Laurel IV, *supra*, 221 N.J. at 23.

<sup>28</sup> See Mt. Laurel II, *supra*, 92 N.J. at 279.

3. If, after having received a full and fair opportunity to comply with its constitutional obligations, the court concludes that a municipality is "determined to be noncompliant," builders and any other interested parties may then initiate and prosecute exclusionary zoning actions against the town, through which any builder's remedies to be awarded would be guided by equitable considerations and principles of sound planning, and not upon who filed first.

Adherence to these protocols will help focus the litigation and assist in fostering a prompt, efficient, and fair resolution of the constitutional compliance issues, without unnecessary distractions or impediments from builder/developers or other interested parties.

It is so ordered.



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JOSEPH V. DORIA JR.  
*Commissioner*  
LUCY VANDENBERG  
*Executive Director*

JON S. CORZINE  
*Governor*

October 30, 2008

Re: Affordable Housing Reform Statute, P.L.2008, c.46 – Guidance Document

Dear Mayor:

On July 24, 2008, COAH sent you correspondence summarizing the major provisions of P.L.2008, c.46, which was signed by Governor Corzine on July 17, 2008, and makes significant changes to the provision of affordable housing in New Jersey, including amendments to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. As noted in that correspondence, P.L. 2008, c.46, provides a comprehensive reform of New Jersey housing law by establishing a Statewide non-residential development fee, eliminating Regional Contribution Agreements, promoting the creation of very low-income housing, creating incentives for inclusionary development, providing new authority for regional planning entities to work with municipalities to create affordable housing and requiring a 20 percent affordable housing set-aside for state-funded initiatives and residential development within the jurisdiction of regional planning entities.

Subsequently, on September 12, 2008, COAH sent you correspondence regarding the Statewide Non-Residential Development Fee Act, including guidance on the imposition, collection, and use of development fees. Model documents are available on COAH's website at <http://www.nj.gov/dca/coah/round3resources.shtml>.

We are now writing to provide you with further guidance on the implementation on P.L.2008, c.46, as it relates to fair share plans being submitted to meet COAH's December 31, 2008 deadline. COAH is in the process of preparing amendments to its regulations to comply with the new statute. Guidance is offered in the following areas:

**Very low income housing:**

P.L.2008, c.46, creates a requirement that at least 13 percent of affordable housing units be reserved for occupancy by very low income households, defined as households with a gross household income equal to 30 percent or less of area median income for households of the same size within the housing region.

Third Round Housing Elements and Fair Share Plans must address the 13% very low-income requirement of the growth share obligation. Pursuant to N.J.A.C. 5:97-3.3, at least 50% of the units addressing a municipality's fair share obligation must be affordable to low-income households. The 13% of the total obligation that must be deed restricted for occupancy by very low income households under the statute may be a part of this 50% low-income requirement.

Exhibit "B"



In keeping with COAH's current rules at N.J.A.C. 5:97-3.9 requiring that 50 percent of the growth share obligation be addressed with family housing, and the new statutory requirement for 13% very low income housing, your plan will need to provide at least 50 percent of the very-low income housing requirement through family housing. The balance could be met with age-restricted units or supportive and special needs housing.

Examples of ways your municipality can address the very-low income requirement include: project-based Section 8 vouchers for rental units where the units are deed restricted for occupancy by very-low income households; providing additional incentives or a direct subsidy to subsidize the creation of affordable rental housing priced and reserved for very-low income households in a zoning ordinance or specified in a developer's or redeveloper's agreement; buying down the cost of a unit to very-low income households through a market-to-affordable program; a municipally sponsored 100 percent affordable project where a portion of the units are priced to be affordable to very-low income households; supportive and special needs housing reserved for very-low income households; and accessory apartments that are priced and reserved for very-low income households. In addition, any funds from the municipal affordable housing trust fund that are used to subsidize a unit to make it a very-low income unit would also qualify as addressing the municipality's very-low income affordability assistance requirement in N.J.A.C. 5:97-8.8(a).

N.J.A.C. 5:97-3.7(a), which permitted bonuses for all very low income units meeting the criteria of this section, is no longer effective given the enactment of P.L.2008, c.46. In keeping with P.L.2008, c. 46, and COAH's current regulations at N.J.A.C. 5:97-3.7(b), municipalities may now only receive a bonus for each very-low income family affordable unit addressing the growth share obligation that is built after June 6, 1999 in excess of the very-low income requirement. Very low-income bonuses are provided for family units created under the provisions of N.J.A.C. 5:97-6.4, 6.5, 6.6, 6.7, 6.9, 6.13 or 6.15.

The requirement to address the very-low income requirement will be monitored biennially by COAH at the municipal Plan Evaluations pursuant to N.J.A.C. 5:96-10.1.

#### **Regional planning entities:**

P.L.2008, c.46, requires that developments within the jurisdiction of any regional planning entity, including but not limited to the New Jersey Meadowlands Commission, the Pinelands Commission, the Fort Monmouth Economic Revitalization Planning Authority, and the Highlands Water Protection and Planning Council, shall be required to reserve at least 20 percent of the residential units constructed for affordable housing to the extent economically feasible.

In determining economic feasibility, as required by the statute, the Council will be considering the presumptive densities and set-asides in COAH's rules pursuant to N.J.A.C. 5:97-6.4(b)2 (for-sale housing) and N.J.A.C. 5:97-6.4(b)6 (rental housing). A site zoned for inclusionary development would be presumed to be economically feasible if it meets these minimum densities and maximum set-asides. The Council will work cooperatively with each of the regional planning entities to tailor these presumptive densities and set-asides, as necessary, to ensure consistency with each entity's regional master plan while preserving a realistic opportunity for the 20 percent affordable housing set-aside to be created.

The requirement to include 20 percent affordable housing in residential developments within the jurisdiction of regional planning entities will be monitored biennially by COAH at the municipal Plan Evaluations pursuant to N.J.A.C. 5:96-10.1.

In addition, pursuant to P.L.2008, c.46, a new program to foster regional planning entities has been created, through which the regional planning entities listed above, as well as Atlantic County, shall identify and coordinate affordable housing opportunities in partnership with municipalities. The regional planning program allows for up to 50 percent of the municipality's affordable housing obligation to be provided outside the municipality but within that region. Affordable units under this regional planning process may not be provided in urban aid municipalities or in Abbott districts. The New Jersey Sports and Exposition Authority in the Meadowlands District is exempt from this 50 percent limitation.

To address this provision of the statute, municipalities may use the Affordable Housing Partnership Program (to be renamed Regional Partnership Program) provided in COAH's rules at N.J.A.C. 5:97-6.13 up to the 50 percent limitation.

In addition, some of the regional planning entities, such as the New Jersey Meadowlands Commission, have issued guidance and/or are soliciting input from experts, to help identify suitable affordable housing sites and programs within the context of their respective regional master plans. COAH has entered or will be entering into Memoranda of Understanding with the affected regional planning entities to further the implementation of P.L.2008, c. 46.

**State-funded planning initiatives:**

Pursuant to P.L.2008, c.46, projects consisting of newly constructed residential units financed in whole or in part with State funds, including transit villages, units constructed on State-owned property, and urban transit hubs, are required to provide at least a 20 percent set aside of units for low and moderate income households, unless the municipality has received substantive certification from the Council or a judgment of compliance or repose from the court, and the set-aside is not required under the approved affordable housing plan.

Such state-funded planning initiatives must be identified at the time of petition or in accordance with the municipality's implementation schedule and proposed zoning ordinances or redevelopment plans, as applicable, must include a minimum 20 percent set-aside for affordable housing.

The requirement to include 20 percent affordable housing in residential developments financed in whole or in part with State funds will be monitored biennially by COAH at the municipal Plan Evaluations pursuant to N.J.A.C. 5:96-10.1.

**Non-residential to residential zone change:**

Pursuant to P.L.2008, c.46, if a municipality changes the zoning of a site from non-residential to residential within 24 months of an application for residential development, the Council shall require a percentage, to be determined by the Council based on economic feasibility, be reserved for occupancy by low and moderate income households.

Municipalities must document at the time of petition sites that are proposed to be rezoned from nonresidential to residential uses as follows: all sites that were rezoned from nonresidential to residential uses since July 17, 2006 where a developer has made an application for development after July 17, 2008. This would include both applications to the municipal planning board and to the municipal zoning board. Such sites shall include affordable housing as a percentage of the units constructed on-site based on economic feasibility.

In determining economic feasibility, as required by the statute, the Council will be considering the presumptive densities and set-asides in COAH's rules pursuant to N.J.A.C. 5:97-6.4(b)2 (for-sale housing) and N.J.A.C. 5:97-6.4(b)6 (rental housing). A site zoned for inclusionary development would be presumed to be economically feasible if it meets these minimum densities and maximum set-asides.

The requirement to address include affordable housing on sites rezoned from non-residential to residential will be monitored biennially by COAH at the municipal Plan Evaluations pursuant to N.J.A.C. 5:96-10.1.

**Incentives for inclusionary development:**

As noted above, P.L.2008, c.46 imposes a new inclusionary development requirement for several regions of the State (Highlands, Meadowlands, Pinelands, and Fort Monmouth), as well as for a variety of new development types (non-residential to residential rezonings and State-funded planning initiatives). Further, under P.L.2008, c.46, municipalities choosing to meet their affordable housing obligation through inclusionary zoning must now provide specific incentives to developers in the form of increased densities and reduced costs. A municipality and a developer may apply to the Council for reduced affordable housing set-asides or increased densities to ensure the economic feasibility of an inclusionary development.

In order to provide increased incentives to both developers and municipalities to create affordable housing through inclusionary development and ensure the economic feasibility of the inclusionary developments now required by the statute, COAH will permit any additional market-rate units that result from a rezoning to permit increased density to accommodate affordable housing to be exempted from the actual growth share obligation. In such circumstances, provided the affordable set-aside complies with COAH's standards, the increased density provided in an inclusionary zone would not generate a growth share obligation. Only the base density before the rezoning would generate a growth share obligation.

Example: A site in Planning Area 2 that does not include affordable housing permits four dwelling units per acre. The municipality rezones the site using COAH's presumptive density of six dwelling units per acre for Planning Area 2, an increase of two dwelling units per acre. The four dwelling units per acre would generate a growth share obligation, but the additional two dwelling units per acre would not.

This correspondence is intended to provide you with guidance on implementing the newly adopted Fair Housing Act amendments and other statutory changes. COAH will also be taking the necessary steps to conform the COAH regulations to the new statutory requirements. Please be sure to check COAH's website at [www.nj.gov/dca/coah/legislation.shtml](http://www.nj.gov/dca/coah/legislation.shtml) for additional updates.

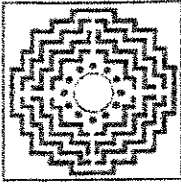
We look forward to working with you over the coming weeks as you prepare to meet COAH's December 31, 2008 deadline for third round plan submission.

Sincerely,



Lucy Vandenberg  
Executive Director





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Third Round (Post-1999) Mount Laurel Fair Share Housing Obligations  
and Compliance Standards for New Jersey Municipalities

October 2015

Prepared for:

Fair Share Housing Center

Prepared by:

David N. Kinsey, PhD, FAICP, PP

## INTRODUCTION

1. In this expert report I calculate the Third Round (post-1999) Mount Laurel constitutional housing obligations of all municipalities in New Jersey, in accordance with the March 10, 2015 decision of the New Jersey Supreme Court in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing 221 N.J. 1 (2015) (“In re N.J.A.C. 5:96 & 5:97” or “Mount Laurel IV”) and recommend compliance standards for reviewing whether the forthcoming housing elements and fair share plans of these municipalities satisfy their constitutional housing obligations.

2. I am a licensed Professional Planner in New Jersey, a Fellow of the American Institute of Certified Planners (FAICP), and a partner in the planning consulting firm of Kinsey & Hand of Princeton, New Jersey. My practice concentrates on affordable housing planning and has included 14 assignments as a Court-appointed Special Master in Mount Laurel exclusionary zoning litigation since 1985. I have prepared municipal housing elements and fair share plans and plan amendments certified by the New Jersey Council on Affordable Housing (“COAH”), and have advised municipalities throughout the process of obtaining COAH substantive certification. I have also advised public interest and builder plaintiffs and interveners in Mount Laurel litigation and objectors in proceedings before COAH, the Appellate Division of Superior Court, and the New Jersey Supreme Court. I have been active in Mount Laurel litigation and implementation since the 1970s, beginning with my service as Director of the Division of Coastal Resources in the New Jersey Department of Environmental Protection. I am fully familiar with COAH rules, policy, proposals, and practice on affordable housing since 1985, as well as with the decisions of the Appellate Division of Superior Court in 2007 and 2010 and the New Jersey Supreme Court in 2014 and 2015 on COAH’s three iterations of post-1999 Third Round Rules. I

have taught graduate courses in affordable housing, land use policy and planning in the United States, planning theory and process, and related topics at Princeton University since 1998. I have also taught graduate courses in urban planning at Rutgers University and in environmental planning at the University of Pennsylvania. I am a co-author of Climbing Mount Laurel: The Struggle for Affordable Housing and Social Mobility in an American Suburb, published by the Princeton University Press in 2013, which was awarded the Paul Davidoff Award by the Association of Collegiate Schools of Planning in 2013. I have a A.B. in Government-Architecture from Dartmouth College and a Master of Public Affairs and Urban Planning and Ph.D. in Public and International Affairs from Princeton University.

3. Fair Share Housing Center retained me for planning advice on fair share housing obligations, including compliance standards.

4. To prepare this report, I have reviewed: (a) some of the Complaints for Declaratory Judgment filed by July 7, 2015, (b) SUMMARY OF MIDDLESEX COUNTY PLANNERS' MEETINGS (identification of fair share housing obligation and compliance issues), prepared by Elizabeth C. McKenzie, AICP, PP and Christine Nazzaro-Cofone, AICP, PP, Special Masters to Hon. Douglas K. Wolfson, J.S.C., September 16, 2015, (c) Memorandum re: Housing Compliance Issues from Philip B. Caton, PP, FAICP and John D. Maczuga, PP, AICP (Special Masters) to Hon. Mark A. Troncone, J.S.C. and Hon. Marlene Lynch Ford, A.J.S.C., October 2, 2015, (d) COAH rules and rule-making since 1986, and (e) Mount Laurel decisions of the Appellate Division and Supreme Court.

#### **MOUNT LAUREL DOCTRINE AND CONSTITUTIONAL HOUSING OBLIGATIONS**

5. Some background information on the Mount Laurel doctrine is necessary before calculating municipal constitutional housing obligations. Under the Mount Laurel doctrine, first articulated in 1975 and then focused, reaffirmed, and strengthened in 1983, and reaffirmed in

2002, 2013, and 2015, under the State Constitution every municipality in New Jersey, as well as State agencies with regional land use authority, must affirmatively provide a realistic opportunity for construction of its fair share of the regional need for low and moderate income housing.<sup>1 2</sup>

6. Enactment of the state Fair Housing Act in 1985, and its creation of COAH, led to the specification of the constitutional housing obligation for every municipality in New Jersey, through rule making, calculations, and publications by COAH in three rounds or cycles: (a) the First Round ran from 1987 to 1993, (b) the Second Round ran from 1993 to 1999, and was cumulative back to 1987, and (c) the Third Round began in 1999, but COAH, prior to its being declared “moribund” by the New Jersey Supreme Court, never adopted a valid fair share housing methodology.<sup>3</sup> Since 2004, COAH rules have referred to the combined, cumulative First and Second Rounds as the “Prior Round.”<sup>4</sup> In response to COAH’s inaction, in its March 10, 2015 decision the New Jersey Supreme Court returned the calculation of fair share housing obligations and determinations of constitutional compliance to the trial courts, in In re N.J.A.C. 5:96 & 5:97.

### CALCULATING FAIR SHARE HOUSING OBLIGATIONS

7. Under Mount Laurel II and the Fair Housing Act, low and moderate income housing need (both present need and prospective need) and associated fair share obligations

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<sup>1</sup> So. Burlington Cnty. N.A.A.C.P. v. Mount Laurel Tp. 92, N.J. 158 (1983) (Mount Laurel II), Toll Bros. v. West Windsor Township et al., 173 N.J. 502 (2002), In re Adoption of N.J.A.C. 5:96 & 5:97, 215 N.J. 578 (2013), and In re Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. 1 (2015).

<sup>2</sup> In this report I use the terms “affordable housing,” “low and moderate income housing,” and “lower income housing” synonymously and interchangeably to mean housing restricted to households with annual incomes less than 80% of the regional median income, as established annually by the New Jersey Council on Affordable Housing (“COAH”) and priced or rented such that the households spend less than 30% of income for housing costs. The Fair Housing Act defines “low income housing” and “moderate income housing” at N.J.S.A. 52:27D-304c. and d.

<sup>3</sup> COAH’s most recent attempt at Third Round rule making was Proposed N.J.A.C. 5:99, 46 N.J.R. 924, June 2, 2014.

<sup>4</sup> While the COAH rules that coined the term “prior round” were invalidated in 2007 and 2010, with new rules proposed on June 2, 2014, 46 N.J.R. 924, the term is nevertheless generally accepted and understood to mean the rules, and fair share calculations and allocations, for the period 1987-1999.



now have three components: (a) Present Need,<sup>5</sup> (b) Prior Round obligation (1987-1999),<sup>6</sup> and (c) Prospective Need (post-1999).<sup>7</sup>

8. On March 10, 2015, the New Jersey Supreme Court, in In re N.J.A.C. 5:96 & 5:97, ruled on the correct method for calculating Third Round, post-1999 constitutional housing obligations:

“... as we said in In re Adoption of N.J.A.C. 5:96 & 5:97, supra, previous methodologies employed in the First and Second Round Rules should be used to establish present and prospective statewide and regional affordable housing need. 215 N.J. at 620. The parties should demonstrate to the court computations of housing need and municipal obligations based on those methodologies.” (Id. at 7)

9. The Supreme Court had previously affirmed, in 2013, the 2010 remedy order by the Appellate Division that had ordered COAH to determine “prospective need” for the Third Round (post-1999) using a fair share housing methodology based on the methodology used by COAH in its First Round (1987-1993) and Second Round (1993-1999) and “the most up-to-date available data.”<sup>8</sup>

10. In collaboration with Fair Share Housing Center, I have calculated the statewide,

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<sup>5</sup> COAH coined the term “Rehabilitation Share” in 2004, at N.J.A.C. 5:94-1.4 and Appendix A, to mean the number of substandard housing units occupied by low and moderate income households and in need of rehabilitation in a municipality. The “present need” referenced in the Supreme Court’s March 2015 decision is understood to mean the same as the “Rehabilitation Share” defined by COAH.

<sup>6</sup> The Prior Round obligation was initially the cumulative prospective need for 1987-1999, as defined and calculated by COAH in 1994 in its Second Round Rules, N.J.A.C. 5:93 Appendix A.

<sup>7</sup> In 1994, in the first Mount Laurel case to be fully tried since Mount Laurel II, decided the year before, Judge Serpentelli established and explained a method of fair share housing allocation and applied it to a municipality. AMG Realty Company v. Township of Warren, 207 N.J. Super. 388 (1984). AMG begins by explaining how the methodology was developed, including the role of planners for various parties, including Court-appointed masters and experts, in reaching a consensus methodology. Enactment of the Fair Housing Act in 1985 codified major components of the methodology. N.J.S.A. 52:27D-301 et seq. COAH First Round Rules detailed the methodology in 1986, N.J.A.C. 5:92 and its Appendix A. COAH Second Round Rules refined the methodology in 1994, N.J.A.C. 5:93 and its Appendix A.

<sup>8</sup> 416 N.J. Super. 462 (App Div 2010).

regional, and municipal present and prospective need for the Third Round for 1999-2025 for all New Jersey housing regions and municipalities, using the Prior Round fair share methodology and the “the most up-to-date available data,” as directed by the Supreme Court. Exhibit A to this certification is my report, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, dated April 16, 2015, revised July 2015 (“2015 Report”), that I prepared for, and in collaboration with, Fair Share Housing Center of Cherry Hill, NJ. Its Appendix is an Excel workbook with 37 linked worksheets that provide the data, data sources, and calculations used to calculate 2010 present need (i.e., Rehabilitation Share) and 1999-2025 gross prospective need for all six housing regions, and then allocate gross regional prospective need to, and calculate net prospective need for, all 565 New Jersey municipalities using the Prior Round methodology and data described in my 2015 Report, in accordance with the Supreme Court’s ruling.<sup>9</sup> The 2015 Report and its Appendix also present the Prior Round Obligations, as calculated by COAH in 1994 and published in 2008, as directed by the Supreme Court.

#### **FAIR SHARE HOUSING OBLIGATION: PRESENT NEED**

11. To determine the Present Need, “the most up-to-date available data” is that used by COAH in 2014 to calculate “Rehabilitation Share” as of 2014. However, the methodology proposed by COAH in 2014 did not follow the Prior Round methodology, as it purported to extrapolate and project municipal 2014 Rehabilitation Share extended from calculations using 2010 data. My 2015 Report and its Appendix A explain and provide the correct calculation as of 2010, as directed by the Supreme Court. Using this methodology, I have calculated the Present

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<sup>9</sup> Fair Share Housing Center submitted an earlier, July 2014 version of this report, with an earlier version of the Excel workbook appendix, to COAH on August 1, 2014 as part of its comments on COAH’s third iteration of proposed Third Round Rules. Fair Share Housing Center also submitted the 2014 Report, with Appendix, to the New Jersey Supreme Court on October 31, 2014 in support of its Motion to Enforce Litigant’s Rights in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing (Supreme Court Docket No. 67,126).

Need for each of the municipalities in New Jersey, based on the 2010 Census, 2007-2011 American Community Survey, and 2008-2012 American Community Survey data, which are summarized in Exhibit B (Municipal Summary, Fair Share Housing Obligations, 2015 (revised July 2015)).

#### **FAIR SHARE HOUSING OBLIGATION: PRIOR ROUND OBLIGATION**

12. In 1986, COAH calculated prospective need for 1987-1993 (First Round).<sup>10</sup> In 1993-1994, COAH calculated cumulative prospective need for 1987-1999 (Second Round).<sup>11 12</sup> In its second iteration of Third Round Rules, in 2008, COAH published the Prior Round obligations by municipality for 1987-1999 as calculated in 1993-1994.<sup>13</sup> In its March 2015 decision, the Supreme Court ruled that municipalities still had an obligation to satisfy their Prior Round obligations (“...our decision today does not eradicate the prior round obligations...” ) as calculated in the Second Round.<sup>14</sup> Consequently, the Prior Round obligation of all municipalities in New Jersey, as calculated in 1993-1994 by COAH and published by COAH in 2008 is, as required by the Supreme Court, the Prior Round obligation component of the fair share housing obligation of these municipalities, which are reproduced in Exhibit B (Municipal Summary, Fair Share Housing Obligations, 2015 (revised July 2015)).

#### **FAIR SHARE HOUSING OBLIGATION: THIRD ROUND PROSPECTIVE NEED, 1999-2025**

13. Under the Prior Round fair share methodology, which the Supreme Court mandated be used to calculate post-1999 prospective need, municipal prospective need is determined in a three phase process with a total of 23 discrete but inter-related steps. In the

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<sup>10</sup> N.J.A.C. 5:92 Appendix A presents the methodology for this calculation.

<sup>11</sup> N.J.A.C. 5:93 Appendix A presents the methodology for this calculation.

<sup>12</sup> COAH proposed the Second Round rules in March 1993 (25 N.J.R. 1118, March 15, 1993), released a summary of municipal fair share numbers in November 1993, but then repropoed the rules in December 1993 (25 N.J.R. 5763, December 20, 1993), and adopted the Second Round Rules effective June 1994 (26 N.J.R. 2300, June 6, 1994).

<sup>13</sup> N.J.A.C. 5:97 Appendix C.

<sup>14</sup> In re N.J.A.C. 5:96 & 5:97, 221 N.J. at 17 (2015).

first phase, the need for housing affordable by low and moderate income households anticipated to be formed in the future in each housing region is determined. In the second phase, regional prospective need is allocated on a regional basis to the region's municipalities. In the third phase, gross municipal prospective need is adjusted and net municipal prospective need is calculated. My 2015 Report defines and explains each of the 23 steps in these three phases and describes, outlined below, the "the most up-to-date available data" I used to calculate and allocate prospective need:

### **FIRST PHASE: CALCULATING REGIONAL PROSPECTIVE NEED**

- Step 1 - Identify "housing regions"
- Step 2 - Determine the population projection period
- Step 3: - Project regional population 2025
- Step 4 - Identify and remove "group quarters" residents from projections of the total population
- Step 5 - Calculate 2000 and 2013 headship rates and project 2025 headship rates
- Step 6 - Estimate 1999 low and moderate income households by region
- Step 7 - Project 2025 low and moderate income households by region
- Step 8 - Project the regional increase in low and moderate income households 1999-2025

Step 9 - Pool and reallocate projected regional growth in low and moderate income households below age 65

Step 10 - Determine regional prospective need (units)

### **SECOND PHASE: ALLOCATING MUNICIPAL PROSPECTIVE NEED**

Step 11 - Exempt Qualifying Urban (Municipal) Aid municipalities from housing need allocations

Step 12 - Calculate the equalized nonresidential valuation (ratables) factor

Step 13 – Calculate the undeveloped land factor

Step 14 – Calculate the differences in household income factor

Step 15: Calculate the average allocation factor to distribute low and moderate income housing need by municipality

Step 16: Calculate gross municipal prospective need by municipality (units)

### **THIRD PHASE: ADJUSTING FOR SECONDARY SOURCES OF DEMAND AND SUPPLY**

Step 17 – Estimate and project filtering affecting low and moderate income households (units) –

Step 18 – Estimate and project residential conversions affecting low and moderate income households (units)

Step 19 - Estimate and project demolitions affecting low and moderate income households (units)

Step 20 – Calculate prospective need by municipality

Step 21 – Calculate the 20% cap and, if applicable, reduce the prospective need

Step 22 – Calculate prospective need obligation (net) by municipality (units)

Step 23 - Calculate the 1,000 unit cap and, if applicable, reduce the prospective need obligation to 1,000 units <sup>15 16</sup>

14. By following the 23 steps outlined above, I have calculated the Prospective Need obligation of all municipalities in New Jersey, based on the methodology, data, and calculations in my 2015 Report and its Appendix (see Exhibit A). These municipal obligations are summarized in Exhibit B (Municipal Summary, Fair Share Housing Obligations, 2015 (revised July 2015)).

#### **TOTAL FAIR SHARE HOUSING OBLIGATION, 1999-2025**

15. In summary, in my opinion, for the reasons detailed above, the total gross fair share housing obligations of all municipalities in New Jersey for 1999-2025 is the sum of their Present Need, Prior Round, and Prospective Need obligations, as summarized in Exhibit B (Municipal Summary, Fair Share Housing Obligations, 2015 (revised July 2015)).

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<sup>15</sup> See Paragraph 46 of this Report on the 1,000 unit cap.

<sup>16</sup> Municipal entitlement to the 1,000 unit cap is subject to verification of credits and determination by the Court on the applicability of the 1,000 unit cap.

## COMPLIANCE STANDARDS FOR MUNICIPAL HOUSING PLANS

16. New, amended, revised, or updated municipal housing elements and fair share plans prepared and adopted in 2015 in response to Mount Laurel IV should comply with well-established law and rules. These compliance standards should be used both to guide municipal housing planning and evaluate municipal claims to credits, bonuses, and satisfaction of their constitutional fair share housing obligations. By “compliance standards,” I mean the full range of policies, requirements, incentives, and options that influence and govern municipal choices in complying with Mount Laurel as articulated in a municipal housing element and fair share plan.

17. In the absence of a functioning COAH, there is no single valid set of post-1999, Third Round rules, but four sources of law and rules provide a sound basis of defining appropriate compliance standards.

18. First, Mount Laurel II itself and subsequent Supreme Court decisions that constitute the Mount Laurel doctrine define several fundamental compliance standards. Most importantly, municipal compliance must be determined on an objective basis:

“Satisfaction of the Mount Laurel obligation shall be determined on an objective basis: if the municipality has *in fact* provided a realistic opportunity for the construction of its fair share of low and moderate income housing, it has met the Mount Laurel obligation to satisfy the constitutional requirement; if it has not, then it has failed to satisfy it.” (emphasis in original)<sup>17</sup>

The Supreme Court also defined clearly the key standard of “realistic opportunity”:

“...whether the opportunity is realistic will depend on whether there is in fact a

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<sup>17</sup> 92 N.J. 158, 220-221 (1983).

likelihood-to the extent economic conditions allow-that the lower income housing will actually be constructed.”<sup>18</sup>

19. Second, the Fair Housing Act,<sup>19</sup> including its 2008 and other amendments,<sup>20</sup> provides important statutory compliance requirements and options, such as set-aside standards for inclusionary developments, housing reserved for very low income households, physical accessibility standards, and preferences for veterans in rental affordable housing, in addition to repealing the option of regional contribution agreements.

20. Third, as the Supreme Court has twice directed, in 2013 and 2015, that COAH's First and Second Round fair share methodologies be used to calculate housing need and municipal fair share obligations, it is reasonable to use COAH's Prior Round rules as the starting point for post-Mount Laurel IV compliance standards. As COAH's Second Round rules superseded its First Round rules, and the Second Round rules have been updated for more recent legal changes while the First Round rules were not, it is appropriate to rely on the Second Round rules as the starting point for post-1999 compliance standards.<sup>21</sup> COAH initially adopted its First Round rules, N.J.A.C. 5:92, in 1986 and its Second Round rules in 1994. COAH continued to amend the Second Round rules through the early 2000s, based on its experience and as new compliance issues arose, such as adoption of rules on assisted living residences as a compliance mechanism in 2002.<sup>22</sup>

21. Fourth, certain adopted Third Round rules that have not been specifically

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<sup>18</sup> 92 N.J. 158, 221-222 (1983).

<sup>19</sup> N.J.S.A. 52:27D-301 et seq.

<sup>20</sup> P.L.2008, c.46 (A-500).

<sup>21</sup> N.J.A.C. 5:93.

<sup>22</sup> N.J.A.C. 5:93-5.16, 34 N.J.R. 1663(a).



invalidated also establish important, applicable standards, as well as incentives.<sup>23</sup> In Mount Laurel IV, the Supreme Court specifically noted “many aspects to the two earlier versions of Third Round Rules were found valid by the appellate courts.”<sup>24</sup> For example, in identifying “certain principles that the [trial] courts can and should follow [in assessing a municipality’s plan]”, the Supreme Court specifically noted the Appellate Division had found that the “Smart Growth” and “Redevelopment” bonuses offered by COAH’s second iteration of Third Round Rules,<sup>25</sup> “...were ‘reasonably designed to further important state policies’ and, therefore, were valid.”<sup>26 27</sup>

22. COAH’s most recently adopted rules not specifically invalidated by the courts define important State affordable housing policies on family housing, rental housing, and supportive and special needs housing, which reflect experience since the Second Round Rules were first adopted in 1994, more than two decades ago, and litigation decided in 2007 on the first iteration of the COAH Third Round Rules.<sup>28</sup> Consequently, it is logical and reasonable to rely generally on COAH Second Round standards, unless updated by Fair Housing Act amendments and Third Round standards not specifically invalidated by the Appellate Division or the Supreme Court.

### **THE THREE COMPONENTS OF THE FAIR SHARE HOUSING OBLIGATION**

23. Compliance Standards for Present Need Obligations: N.J.A.C. 5:93-5.2, as updated by N.J.A.C. 5:97-6.2, particularly as to rehabilitation standards, minimum municipal investment, rehabilitation of rental units, term of affordability controls, required documentation

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<sup>23</sup> N.J.A.C. 5:94 and N.J.A.C. 5:97

<sup>24</sup> In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 54-55 (2015).

<sup>25</sup> N.J.A.C. 5:97-3.18 and -3.19.

<sup>26</sup> In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 55-58 (2015).

<sup>27</sup> However, in 2013 the Supreme Court had expressed no opinion on the validity of the “compliance” bonus offered by COAH rules, which the Appellate Division had invalidated. In re N.J.A.C. 5:96 & 5:97, 215 N.J. 578, 620 (2013).

<sup>28</sup> In re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1 (App.Div.2007).

for the municipal rehabilitation program, and program administration.

24. Compliance Standards for Prior Round Obligations: N.J.A.C. 5:93. The Prior Round and Third Round fair share obligations are not cumulative, i.e., do not stretch from 1987-2025. Both COAH and the Supreme Court have treated the Prior Round obligations, which are cumulative for 1987-1999, and the Third Round post-1999 obligations as separate and distinct. As fair share obligations are calculated separately for 1987-1999 and 1999-2025, municipal plans should not be consolidated into a cumulative 1987-2025 plan as the fair share obligations are not cumulative and different compliance standards are applicable. Consequently, the standards for reviewing the Prior Round component of a municipal housing plan, satisfying the 1987-1999 housing need, should be limited to the standards, including incentives, embodied in N.J.A.C. 5:93, as last revised in 2002.

25. Compliance Standards for Third Round, post-1999 Prospective Need Obligations: N.J.A.C. 5:93, as updated or revised by not specifically invalidated provisions of N.J.A.C. 5:97, the Fair Housing Act, or appellate decisions, as specified below.

### **COMPLIANCE MECHANISMS**

26. Compliance Mechanisms: N.J.A.C. 5:93-5.3 through -5.6, as updated by new and revised standards at N.J.A.C. 5:97-6.6 (redevelopment), - 6.7 (municipally sponsored and 100 percent affordable developments), -6.8 (accessory apartments), -6.9 (market to affordable program), -6.10 (supportive and special needs housing, as discussed further below), -6.11 (assisted living residence), and -6.14 (extension of expiring controls).

27. Zoning for Inclusionary Development and Set-asides: N.J.A.C. 5:93-5.6 as to densities and set-asides, as supplemented by 2008 Fair Housing Act amendments that

established a minimum 20% set-aside, “to the extent this is economically feasible,” in the Meadowlands, Pinelands, Fort Monmouth, Highlands, and new residential units financed in whole or in part with State funds, e.g., transit villages, State-owned property, and urban transit hubs, N.J.S.A. 52:27D-329.9. The density and set-aside standards adopted by COAH in 2008 are not appropriate, as the Appellate Division invalidated them in 2010. While the minimum presumptive densities adopted by COAH in 1994 may have been appropriate when most inclusionary development was on greenfields, higher densities are more appropriate as redevelopment has become much more significant in New Jersey, more land has been preserved, and higher density, multi-family development accounts for a substantial share of residential development, i.e., 38% of units completed in 2014 and 58% of building permits issued in 2014.<sup>29</sup>

28. Supportive and special needs housing: N.J.A.C. 5:97-6.10. COAH Second Round rules authorized certain types of “alternative living arrangements” as compliance mechanisms, N.J.A.C. 5:93-5.8 (transitional facilities for the homeless, boarding homes, licensed residential health care facilities, licensed group homes for people with developmental disabilities or mental illness, and “congregate living arrangements”). COAH’s Third Round rules replaced the term and transitioned to the more up-to-date concept and terminology of “supportive and special needs housing.”<sup>30</sup> COAH Third Round rules eliminated boarding homes

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<sup>29</sup> New Jersey Department of Community Affairs, Construction Reporter website, <http://www.state.nj.us/dca/divisions/codes/reporter/>

<sup>30</sup> Supportive and special needs housing, formerly called “alternative arrangements” by COAH, are examples of “other noninstitutional group quarters,” as defined by the U.S. Census Bureau. Under the Prior Round fair share methodology, persons who live in such group quarters are excluded from the projection of low and moderate income housing need. Despite not being included in its calculations of Prospective Need, COAH has granted credits for almost 9,000 units (bedrooms) in group quarters, amounting to 12% of the total affordable units built and counted by COAH 1980-2014 (see Exhibit C). As noted in my report NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, dated April 16, 2015, revised July 2015, consideration could be given to changing the fair share methodology to include a component of need for people and households who live in and need affordable “other noninstitutional group quarters,” such as group homes for the developmentally disabled and transitional housing for the homeless.

in 2004<sup>31</sup> and omitted transitional housing for the homeless in 2008<sup>32</sup> as eligible compliance mechanisms. COAH's 2008 Third Round rules also importantly added the concept of permanent supportive housing as a compliance mechanism and made an important distinction in the crediting standards between permanent supportive housing (housing unit is unit of credit) and other types of supportive and special needs housing (bedroom is the unit of credit).<sup>33</sup>

29. Extension of expiring controls: N.J.A.C. 5:97--6.14. Municipalities should receive credits for extensions of expiring affordability controls, whether 20 years, 30 years, 99 years, perpetual, or some other period, only when the municipality acts affirmatively to extend controls that would otherwise expire. Consistent with COAH's rules, these credits may only be granted for units created since 1980 that received prior cycle or Prior Round credit, since units created before 1980 are not counted as part of the need. No rental bonus should be granted for units with extended controls, as the bonus is intended to be an incentive for rental construction not an ex post facto reward for past actions. Also, such a bonus would dilute the constitutional obligation. Finally, extensions of expiring controls are subject to caps – e.g. the extension of expiring controls on an age-restricted unit is part of the 25 percent cap on age-restricted units described further below.

#### **MINIMUM REQUIREMENTS BY HOUSING AND HOUSEHOLD TYPE**

30. Low and moderate income split: A minimum of 50% of the housing provided to satisfy the Prospective Need shall be affordable to low income households, N.J.A.C. 5:93-2.20.

31. Minimum family housing: 50% of Prospective Need, N.J.A.C. 5:97-3.9, to encourage a “variety and choice of housing” under the Fair Housing Act, N.J.S.A. 52:27D-302h.

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<sup>31</sup> N.J.A.C. 5:94-4.8.

<sup>32</sup> N.J.A.C. 5:97-6.10(a).

<sup>33</sup> N.J.A.C. 5:97-3.6(a).

and -329.9c.(1), as noted by COAH in 2008.<sup>34</sup> About two-thirds of New Jersey's low and moderate income households in 2013 were headed by a person under age 65.<sup>35</sup>

32. Rental housing: Minimum 25% of Prospective Need, N.J.A.C. 5:97-3.10(b)3, similar to N.J.A.C. 5:93-5.15. Affordable rental housing is particularly important to low and moderate income households. While only 34% of all New Jersey households are renters, 55% of New Jersey's low and moderate income households are renters (see Exhibit D).

33. Family rental housing: 50% of rental obligation, N.J.A.C. 5:97-3.4(b).

34. Very low income housing (<30% of area median household income): minimum 13% of Prospective Need, as required by 2008 amendments to the Fair Housing Act, N.J.S.A. 52:27D-329.1.

35. Very low income family housing: minimum 6.5% of Prospective Need, i.e., 50% of required very low income housing, as required by COAH in 2008.<sup>36</sup>

### INCENTIVES AND BONUSES

36. Bonus Cap: maximum 25% of Prospective Need and maximum of one type of bonus for each housing unit, N.J.A.C. 5:97-3.20. COAH's Second Round rules offered only one type of bonus credit as an incentive for municipalities to encourage or accept certain types of affordable housing activity, a bonus for rental housing that also applied to assisted living residences and group homes, which it capped at essentially 25% of Prospective Need.<sup>37</sup> In

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<sup>34</sup> 40 N.J.R. 238 (January 22, 2008).

<sup>35</sup> FSHC R3 Model July 2015, tabulation by David N. Kinsey, PhD, FAICP, PP, September 24, 2015.

<sup>36</sup> Letter to Mayors from Lucy Vandenberg, Executive Director, COAH, Affordable Housing Reform Statute, P.L. 2008, c.46 – Guidance Document, October 30, 2008, pp. 1-2.

<sup>37</sup> For the precise formula, see N.J.A.C. 5:93-5.5(d). COAH Second Round rules required municipalities to provide essentially 25% of Prospective Need as rental units and then capped rental bonuses at the same level as this rental obligation. N.J.A.C. 5:93-5.5(d)3.

COAH's two iterations of adopted Third Round rules, COAH offered bonus credits for additional affordable housing activities: (a) very low income units,<sup>38</sup> (b) smart growth,<sup>39</sup> and (c) redevelopment.<sup>40 41</sup> Consequently, as the courts have validated more than one type of bonus, it is reasonable to continue the two-part bonus cap (maximum 25% of Prospective Need and one type of bonus for each housing unit); otherwise, an impermissible dilution of the constitutional obligation could occur.

37. Rental bonus: maximum 25% of Prospective Need, only for rental units in excess of the rental obligation, at the rate of one (1) bonus credit per unit rental family or permanent supportive housing unit and 0.25 bonus credit for each bedroom in supportive and special needs housing, N.J.A.C. 5:97-3.6(a).<sup>42</sup>

38. Smart Growth bonus: 0.33 bonus credit per post-1999 unit in a transit oriented development ("TOD") in Planning Area 1 (Metropolitan Planning Area) or Planning Area 2 (Suburban Planning Area), or designated Center under the State Development and Redevelopment Plan and its State Plan Policy Map, as amended by the State Planning Commission, N.J.A.C. 5:97-3.18.

39. Compliance bonus: Municipalities should not receive one bonus credit for against their Third Round Prospective Need obligations for units approved between 2004 and 2008, as the Appellate Division in 2010 invalidated the COAH rule that offered that bonus, N.J.A.C. 5:97-

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<sup>38</sup> N.J.A.C. 5:94-4.22 and N.J.A.C. 5:97-3.7.

<sup>39</sup> N.J.A.C. 5:97-3.18.

<sup>40</sup> N.J.A.C. 5:97-3.19.

<sup>41</sup> COAH also offered a "compliance bonus" in N.J.A.C. 5:97-3.17, but it was invalidated by the Appellate Division in 2010.

<sup>42</sup> While COAH granted rental bonuses for bedrooms in "alternative living arrangements" on a one (1) bonus credit per bedroom basis in the Prior Round, in 2008 COAH adopted a revised, reduced bonus credit per bedroom for special needs and supportive housing that reduced the dilution of the constitutional housing obligation caused by granting credits and bonuses for units not included in the projection of housing need, while still providing municipalities with incentive to welcome supportive and special needs housing.

3.17. Also, that bonus was offered as part of COAH's now twice-invalidated growth share approach and is no longer relevant as the stated purpose of the bonus was to compensate for the change in growth share ratios; there are no growth share ratios in the methodology presented here since the Supreme Court invalidated growth share. The COAH Second Round rule on reductions for substantial compliance, N.J.A.C. 5:93-3.6, applies only as to the Prior Round obligation.

### **OPPORTUNITIES AND REQUIREMENTS FOR PARTICULAR HOUSING TYPES**

40. Accessible and adaptable affordable units: N.J.A.C. 5:97-3.14, implementing 2005 amendments to the Fair Housing Act, N.J.S.A. 52:27D-311, L.2005, c.350.

41. Age-Restricted Units Cap: maximum 25% of Prospective Need, N.J.A.C. 5:97-3.10(c)2., similar to N.J.A.C. 5:93-5.14(a). About one-third of New Jersey's low and moderate income households in 2013 were headed by a person age 65+ in 2013.<sup>43 44</sup>

42. Veterans Preference: N.J.S.A. 52:27D-311, as amended in 2013, the Fair Housing Act permits a municipality to enter into an agreement with an affordable housing

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<sup>43</sup> FSHC R3 Model July 2015, tabulation by David N. Kinsey, PhD, FAICP, PP, September 24, 2015.

<sup>44</sup> While the FSHC R3 Model July 2015 projects an affordable housing "need" of 204,909 units for households age 65+ by 2025, this should not be understood to mean a need for 204,909 new affordable housing units restricted to seniors, i.e., 72% of the total need projected in the Model. Nor does this projection support an increase beyond COAH's long-standing 25% cap on age-restricted units as the Appellate Division understood in 2007 in invalidating COAH's attempt to increase the age-restricted cap to 50% based on similar facts. Rather, the correct interpretation is simply that the absolute number of low and moderate income senior households in New Jersey is projected to increase dramatically during 1999-2025 as Baby Boomers age. The FSHC R3 Model July 2015 most assuredly does not project that 204,909 new households will be formed by low and moderate income seniors who will need affordable housing by 2025. Most seniors prefer to and are anticipated to "age in place." US HUD, "Aging in Place: Facilitating Choice and Independence," Evidence Matters, Fall 2013, citing a 2010 AARP survey that found that 88% of seniors preferred to stay in their homes as long as possible.

<http://www.huduser.gov/portal/periodicals/em/fall13/highlight1.html> <accessed September 23, 2015> The FSHC R3 Model July 2015 projects a total of 284,974 new low and moderate income households will be formed in New Jersey during 1999-2025 in all age groups. This household formation will be mostly from pre-existing households already in New Jersey and from in-migration from other states and countries. In practicality, many of the low- and moderate-income households that are seniors are existing households who will, by staying in their existing homes, not free up housing for newly forming younger low- and moderate-income households – i.e. even though there is a smaller net increase in younger households, practically all younger low- and moderate-income households will actually be searching for housing. The FSHC R3 Model July 2015, consistent with the Prior Round methodology, does not project specifically the number of net households new to New Jersey by age group that will be formed.

developer or owner to provide an initial preference for low and moderate income veterans who served in time of war or other emergency for up to 50% of the affordable units in a particular project.

## **GENERAL REQUIREMENTS AND AFFORDABLE HOUSING PLANNING PROCEDURES**

43. Housing affordability controls, including affordability averages, bedroom distribution, control periods, etc.: N.J.A.C. 5:80-26, adopted by the New Jersey Housing and Mortgage Finance Agency and applicable to its programs as well as those of COAH and the New Jersey Department of Community Affairs, known informally as “UHAC.”

44. Vacant Land adjustment, realistic development potential (“RDP”) and unmet need: N.J.A.C. 5:93-4, updated as to unmet need, at N.J.A.C. 5:97-5.3, which identifies mechanisms to address unmet need, including overlay inclusionary zoning. The RDP should increase over time, not to the extent unmet need is met, but if in fact new realistic development opportunities arise in a municipality, e.g., through use variances and redevelopment (public or private). The rental obligation, age-restricted cap, and all other applicable minimum requirements and caps should change in tandem with increases in RDP.

45. 20% cap: N.J.A.C. 5:93-2.16. The base year for calculating a municipality's occupied housing stock for the purposes of the 20% cap should be 2012, as “the most up-to-date” necessary data is available for that year, which also avoids skewing the calculation by avoiding the post-Sandy spike in demolitions.

46. 1,000 unit cap:<sup>45</sup> N.J.S.A. 52:27D-307(e) and N.J.A.C. 5:97-5.8. Calculation of

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<sup>45</sup> The Fair Housing Act established a 1,000-unit cap on the fair share to be addressed in the ten year period following a determination of Mount Laurel compliance (“grant of substantive certification”), N.J.S.A. 52:27D-307(e), L.1993, c.31, and authorized COAH to adopt criteria for determining eligibility for this limit. In 1999, COAH



eligibility for the so-called “1,000 unit cap” to a municipality’s Prospective Need obligation is both a fair share methodology issue and a compliance standards issue, because an analysis of a municipality’s entitlement to credits for past affordable housing activity is an essential step in determining its applicability. This cap may also be larger than 1,000 units due to the delays in Third Round implementation since 1999, depending on the adjudication of this legal issue.<sup>46</sup> Determination of eligibility for this cap is a four-step process. First, determine if the municipality had “issued more than 5,000 certificates of occupancy (“CO”) for residential units in the 10-year period preceding the petition for substantive certification”<sup>47</sup> (comparable to filing a post-Mount Laurel IV declaratory judgment action). Second, if not, i.e., if the municipality had issued less than 5,000 COs, then the municipality is potentially eligible for this cap; verify and subtract “all credits and associated bonuses” in excess of the municipality’s Prior Round obligation from the (gross, post secondary sources and 20% cap, if applicable) Prospective Need obligation. Third, if the remaining Net Prospective Need is more than 1,000 units, it is capped at 1,000 units.<sup>48</sup> Fourth, if the remaining Net Prospective Need is less than 1,000 units, it is the municipality’s Net Prospective Need obligation for the Third Round.

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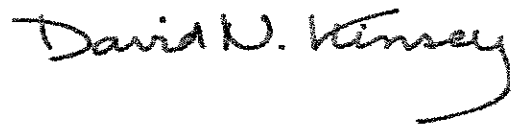
interpreted the 1,000 unit cap as being applied to a municipality’s “calculated need,” a term used in COAH’s Second Round rules and defined at N.J.A.C. 5:93-1.3. In a 2002 decision, the Appellate Division affirmed this COAH interpretation, i.e., that eligibility for the 1,000-unit cap was determined by subtracting credits from the gross need (then called the “pre-credited need”) to determine the “calculated need”, In re Application of Tp. of Jackson, 350 N.J. Super. 369 (App. Div. 2002).

<sup>46</sup> The clear legislative and COAH intent of the 1,000 unit cap was to assure prospectively that no municipality would face the future possibility of more than 5,000 new housing units being constructed through inclusionary development (i.e., to yield 1,000 affordable units based on a standard 20% set-aside) during the 10-year compliance period to satisfy its prospective need obligation, which was calculated on a 10-year basis. However, as a result of delays in implementing the Mount Laurel doctrine in the Third Round with constitutionally valid COAH rules, the Third Round now extends retroactively back to 1999, i.e., the end of the Prior Round, and prospectively to 2025, a 26 year period. Consequently, an issue is whether the 1,000-unit cap for a 10-year housing need projection period should be interpreted to mean a different cap or a differently calculated cap for a 26-year housing need period. In an unpublished opinion decided October 5, 2015, in In re Monroe, Docket No. MID-3365-15 and consolidated cases, Hon. Douglas K. Wolfson, J.S.C. ruled that the 1999-2025 housing need should be divided into two segments, for 1999-2015 and 2015-2025 and that the relevant caps, 1,600 units and 1,000 units respectively should be calculated in sequence, separately, applying excess Prior Round credits, if any, to the prospective need allocated for the respective period in that sequence to determine whether a municipality’s obligations should be capped at 1,600 units for 1999-2015 and at 1,000 units for 2015-2025.

<sup>47</sup> N.J.A.C. 5:97-5.8(a).

<sup>48</sup> N.J.A.C. 5:97-5.8.

Respectfully submitted,

A handwritten signature in black ink that reads "David N. Kinsey". The signature is written in a cursive style with a long, sweeping underline.

David N. Kinsey

October 26, 2015

## EXHIBITS

- A David N. Kinsey, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, dated April 16, 2015, revised July 2015
- B Summary, Fair Share Housing Obligations, 2015 (revised July 2015)
- C Total New Supportive and Special Needs Housing Built in New Jersey and Counted by COAH, 1980-2014
- D New Jersey Households by Housing Tenure, 2008-2012

EXHIBIT A

NEW JERSEY LOW AND MODERATE INCOME  
HOUSING OBLIGATIONS FOR 1999-2025  
CALCULATED USING THE  
NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY

April 16, 2015, revised July 2015



Prepared for and in collaboration with:

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A handwritten signature in black ink that reads "David N. Kinsey". The signature is written in a cursive style with a long, sweeping underline.

Revisions: Title page, pages 2-3, Footnote 4, and pages 39-41

NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS  
FOR 1999-2025 CALCULATED USING THE NJ COAH  
PRIOR ROUND (1987-1999) METHODOLOGY

INTRODUCTION

Under New Jersey's Mount Laurel Doctrine on exclusionary zoning and affordable housing,<sup>1</sup> and the state Fair Housing Act enacted in 1985,<sup>2</sup> 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.<sup>3</sup> On March 10, 2015, the New Jersey Supreme Court, in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) ("In re N.J.A.C. 5:96 & 5:97"), ruled unanimously on the correct method for calculation of Third Round, post-1999 constitutional housing obligations:

"... as we said in In re Adoption of N.J.A.C. 5:96 & 5:97, supra, previous methodologies employed in the First and Second Round Rules should be used to establish present and prospective statewide and regional affordable housing need. 215 N.J. at 620. The parties should demonstrate to the court computations of housing need and municipal obligations based on those methodologies." (221 N.J. 7)

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<sup>1</sup> 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 (1983) (Mount Laurel II), and subsequent decisions, including Hillis 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).

<sup>2</sup> N.J.S.A. 52:27D-301 et seq.

<sup>3</sup> 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. "Affordable" means that the cost of housing (gross rents including utilities or mortgage payment, insurances, property taxes, and homeowner fees) is less than 30% of gross monthly income adjusted for household size for rental housing and 28% of gross monthly income for ownership units. N.J.A.C. 5:80-26.6 and -26.12. The terms "affordable housing" and "low and moderate income housing" are used synonymously in this report.

This report presents the methodology for calculating regional housing needs and municipal housing obligations in accordance with the Supreme Court's decision. An accompanying Appendix A presents the data, calculations, and allocations for the state's housing regions and all 565 municipalities in a multi-tab Excel workbook-based model, using this methodology.<sup>4</sup>

The Supreme Court had previously affirmed, in 2013, the 2010 remedy order by the Appellate Division that had ordered the New Jersey Council on Affordable Housing ("COAH") to determine "prospective need" for the Third Round (post-1999) using a fair share housing methodology based on the methodology used by COAH in its First Round (1987-1993) and Second Round (1993-1999) and "the most up-to-date available data."<sup>5</sup> The First Round and the Second Round are collectively referred to as the "Prior Round."

Under Mount Laurel and the Fair Housing Act, low and moderate income housing need (both present need and prospective need) and associated fair share obligations now have three components: (a) Present Need, (b) Prior Round obligation (1987-1999),<sup>6</sup> and (c) Prospective Need (post-1999).<sup>7</sup> This report presents the methodology for calculating all three components and allocating regional prospective housing needs to municipalities, and then calculating the Net Prospective Need component of each municipality's fair share housing obligation. It also provides the results of these calculations for all municipalities in Appendix A, calculating their

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<sup>4</sup> Fair Share Housing Center submitted an earlier, July 2014 version of this report, and its Appendix A Excel workbook, to COAH in August 2014 and to the Supreme Court in October 2014 with its Motion to Enforce Litigant's Rights. In April 2015, Fair Share Housing Center released a revised version of the report and a substantially revised Appendix A Excel workbook.

<sup>5</sup> 416 N.J. Super. 462 (App. Div. 2010) and 215 N.J. 578 (2013).

<sup>6</sup> The Prior Round obligation was initially the cumulative prospective need for 1987-1999, as defined and calculated by COAH in 1994 in its Second Round Rules, N.J.A.C. 5:93 Appendix A

<sup>7</sup> In 1994, in the first Mount Laurel case to be fully tried since Mount Laurel II, decided the year before, Judge Serpentelli established and explained a method of fair share housing allocation and applied it to a municipality. AMG Realty Company v. Township of Warren, 207 N.J. Super. 388 (1984). AMG begins by explaining how the methodology was developed, including the role of planners for various parties, including Court-appointed masters and experts, in reaching a consensus methodology. Enactment of the Fair Housing Act in 1985 codified major components of the methodology. N.J.S.A. 52:27D-301 et seq. COAH First Round Rules detailed the methodology in 1986. N.J.A.C. 5:92. COAH Second Round Rules refined the methodology in 1994. N.J.A.C. 5:93.

Present Need, Prior Round obligation, and Net Prospective Need for 1999-2025 using the Prior Round (1987-1999) methodology.

Several principles have guided the preparation of this methodology and its model:

- Calculation of present need at the municipal level
- Regional projection of prospective housing need
- Allocation of gross regional housing need to municipalities
- Calculation of net prospective need at the municipal level
- “the most up-to-date available data”
- Transparency in the fair share methodology model
- Consistency in time periods for start dates and projection dates in the model
- Consistency in data sets in the model’s components

The context of this methodology’s housing need calculations and allocations is important to establish upfront. New Jersey currently has a total of about 3.18 million households, of which 43%, i.e., 1,375,890 households, have incomes below 80% of median household income and are considered low and moderate income households under Mount Laurel and the Fair Housing Act. The current median household income in New Jersey is \$70,165, which means that on a statewide basis households with annual incomes less than \$56,132 are considered low and moderate income, with appropriate adjustments for household size (households with more people have a higher median income, households with fewer people have a lower median income).<sup>8</sup> One standard approach to calculating housing need is to determine the share of household income devoted to housing costs, whether a mortgage, taxes, etc. for homeowners,

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<sup>8</sup> Household income 2013, U.S. Census Bureau, American Community Survey, Table R1901 retrieved April 14, 2015, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_13\\_1YR\\_R1901.US01PRF&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_1YR_R1901.US01PRF&prodType=table)



or rent and utilities for renters. Households that spend more than 30% of their income on housing costs are considered to be “cost-burdened” and their housing is not considered “affordable.” Consequently, these households have less disposable income to spend on food, transportation, health care, clothing, and other essential of daily life. By this metric, 72% of New Jersey’s low and moderate income households need affordable housing, i.e., 875,310 New Jersey low and moderate income households are cost-burdened and part of the broader context of housing need.<sup>9</sup> However, COAH excluded cost-burdened households and their affordable housing needs from municipal housing obligations under the Fair Housing Act, a determination upheld by the Supreme Court.<sup>10</sup> Consequently, and consistent with the Supreme Court’s decision, the housing needs of cost-burdened households are not included in the fair share housing methodology presented in this report.

#### PRESENT NEED

The Supreme Court directed that the Prior Round methodology be used to calculate municipal present need. As defined by COAH in its Second Round Rules in 1994, “Present need” means “the sum of indigenous need and reallocated present need ... .”<sup>11</sup> However, the Supreme Court also upheld COAH’s decisions, in its three iterations of Third Round rule-making, to no longer include “reallocated present need” in the fair share methodology.<sup>12</sup> The Prior Round methodology defined “indigenous need” as “deficient housing units occupied by low and moderate income households within a municipality ... .”<sup>13</sup> In effect, such housing is in need of rehabilitation to comply with applicable housing code standards. The Prior Round methodology calculated the number of low and moderate income families living in “deficient housing” at a

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<sup>9</sup> U.S. Census Bureau, American Community Survey 2007-2001, HUD CHA User Inquiry Tool, retrieved September 26, 2014, <http://www.huduser.org/portal/datasets/cp.html>

<sup>10</sup> In re N.J.A.C. 5:96 & 5:97, slip opinion, p. 45.

<sup>11</sup> N.J.A.C. 5:93-1.3.

<sup>12</sup> In re Adoption of N.J.A.C. 5:96 & 5:97, slip opinion, pp. 42-43.

<sup>13</sup> N.J.A.C. 5:93-1.3.

subregional level, due to constraints on the availability of data at the municipal level, and then allocated indigenous need to municipalities.<sup>14</sup>

Data is now available at the municipal level from the U.S. Census Bureau in its decennial census and its American Community Survey of samples of the population (including the 5% Public Use Microdata Sample, known as PUMS), permitting a refinement and improvement in the precision and fairness of calculating present need. While COAH used the term “Rehabilitation Share” in all three iterations of its Third Round Rules, this report uses the term “Present Need,” as directed by the Supreme Court, to mean the number of deficient housing units occupied by low and moderate income households within a municipality.”<sup>15</sup> Present Need is a component of a municipality’s fair share housing obligations, which may be addressed under COAH Second Round rules by either a local housing rehabilitation program or by creating new units of affordable housing.<sup>16</sup>

Present Need is calculated in a two-step process, similar to the process COAH has used to determine the Rehabilitation Share in a two-step process, most recently in 2014.<sup>17</sup>

First, COAH identified total deficient housing by municipality by using three surrogates or indicators: (a) overcrowding in housing built before 1960, (b) housing lacking complete plumbing facilities, and (c) housing lacking complete kitchen facilities. In its March 2015 decision, the Supreme Court ruled that use of these three surrogates was acceptable.<sup>18</sup> COAH also found through PUMS data in 2014 that about 14.86% of deteriorated units had multiple deficiencies and made an adjustment to avoid double counting.

Second, COAH determined the degree to which overcrowded and deteriorated housing would be occupied by low or moderate income households in each county, using 2007-2011

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<sup>14</sup> N.J.A.C. 5:93 Appendix A.

<sup>15</sup> N.J.A.C. 5:94-1.4, N.J.A.C. 5:97-1.4, and proposed N.J.A.C. 5:99-1.2, 46 N.J.R. 930.

<sup>16</sup> N.J.A.C. 5:93-5.1.

<sup>17</sup> Proposed N.J.A.C. 5:99, Appendix B, 46 N.J.R. 957-981, June 2, 2014.

<sup>18</sup> In re Adoption of N.J.A.C. 5:96 & 5:97, slip opinion, pp. 45-46.

American Community Survey data, finding a range from 48.6% in Sussex County to 85% in Hunterdon County, with about a 65.3% statewide average. COAH then applied those county percentages to the non-double-counted deficient housing in each municipality to compute the Rehabilitation Share for each municipality.

COAH used the “the most up-to-date available data” from the U.S. Bureau of the Census for these 2014 analyses, namely the 2010 Census, the 2008-2012 American Community Survey 5-year estimates, and the 2007-2011 American Community Survey Public Use Microdata Sample (PUMS). In a departure from the Prior Round methodology, COAH in 2014 extrapolated the observed data from 2010 on housing deficiency and extended anticipated deterioration to 2014, without a stated reason for the deviation.

This methodology remains faithful to the Prior Round methodology, which used the most recent decennial census year as the point in time to calculate Present Need, and uses COAH’s calculated Rehabilitation Share data for each municipality as of 2010, without extrapolation beyond 2010, as “the most up-to-date available data.” This report recommends that the 2010-based analysis, using 2010 PUMS data from the U.S. Bureau of Census, be considered the Present Need component of the municipal fair share housing obligation. Municipal Present Need obligations are presented in the Excel workbook in Appendix A.

#### PRIOR ROUND OBLIGATION

In 1986 COAH calculated prospective need for 1987-1993 (First Round)<sup>19</sup> and in 1993-1994 COAH calculated cumulative prospective need for 1987-1999 (Second Round).<sup>20 21</sup> In its second iteration of Third Round Rules, in 2008, COAH published the Prior Round obligations by

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<sup>19</sup> N.J.A.C. 5:92 Appendix A presents the methodology for this calculation.

<sup>20</sup> N.J.A.C. 5:93 Appendix A presents the methodology for this calculation.

<sup>21</sup> COAH proposed the Second Round rules in March 1993 (25 N.J.R. 1118, March 15, 1993), released a summary of municipal fair share numbers in November 1993, but then repropounded the rules in December 1993 (25 N.J.R. 5763, December 20, 1993), and adopted the Second Round Rules effective June 1994 (26 N.J.R. 2300, June 6, 1994).

municipality for 1987-1999 as calculated in 1993-1994.<sup>22</sup> In its March 2015 decision, the Supreme Court ruled that municipalities still had an obligation to satisfy their Prior Round obligations (“...our decision today does not eradicate the prior round obligations...”) as calculated in the Second Round.<sup>23</sup>

Consequently, the municipal Prior Round obligation, as calculated in 1993-1994 and published by COAH in 2008, is the Prior Round obligation component of the municipal fair share housing obligation. COAH's original gross Prior Round obligation numbers by municipality are reproduced and presented in the Excel workbook in Appendix A. In many cases, municipalities have already satisfied some or all of their Prior Round obligations, which can be evaluated on a case-by-case basis in individual municipal proceedings.

#### PROSPECTIVE NEED

“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.<sup>24</sup> 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.<sup>25</sup>

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

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<sup>22</sup> N.J.A.C. 5:97 Appendix C.

<sup>23</sup> In re Adoption of N.J.A.C. 5:96 & 5:97, slip opinion, p. 42.

<sup>24</sup> COAH published the First Round 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.

<sup>25</sup> COAH published the Second Round 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.

the municipalities within each region. Third, each municipality's allocated obligation is adjusted based on additional, so-called "secondary" sources of housing demand and supply. The entire process has 23 discrete but inter-related steps. This report 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 and Supreme Court. For data that spans the Third Round period of 1999-2025, the starting point for the data is 1999, the beginning of the Third Round. The "most up-to-date available data" is used as well, whether available from the 2010 Census or from 2011, 2012, 2013, 2014, or 2015 sources.

This Third Round prospective need methodology follows closely and almost mechanically the COAH First and Second Round methodologies, in keeping with the Appellate Division's 2010 Order, as affirmed by the Supreme Court in 2013 and 2015.<sup>26</sup> Four deviations from the Prior Round methodology, as follows, have been made to comply with rulings of the Appellate Division and the Supreme Court and account for legal changes that affect the methodology.

First, "reallocated present need" is not included in this Third Round methodology.<sup>27</sup>

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<sup>26</sup> One policy judgment and methodology change could be considered in light of COAH rules in effect since the First Round on the types of facilities eligible for credits against municipal fair share housing obligations. The Prior Round methodology excludes persons who live in "group quarters" from its projections of housing need, yet 14% (about 9,000 units/beds) of the approximately 65,000 affordable units built in New Jersey since 1980 and counted by COAH (and likely mostly credited by COAH) have been for "alternative living arrangements," "supportive and special needs housing," and "assisted living residences," as defined by COAH at N.J.A.C. 5:93-1.3 and N.J.A.C. 5:7-1.4. These facilities are all types of "other noninstitutional group quarters" as defined and counted by the Census. Only 0.33% of the New Jersey population lived in such "other noninstitutional group quarters" in 2010. This population represents only 2.51% of New Jersey low and moderate income persons, yet it accounts for 14% of affordable units built and counted by COAH. Greater congruence between assessed affordable housing need and approved housing/general quarters types to address that need is a policy judgment and methodology change that could be considered. Indeed, COAH proposed to add a measure of group quarters demand to its low and moderate income housing need projections in all three iterations of its Third Round rules, in 2004, 2008, and 2014. Inclusion of a measure of group quarters demand, based on projected growth in "other noninstitutional group quarters" would add about 2,400 units to 1999-2025 statewide prospective need.

<sup>27</sup> In re N.J.A.C. 5:96 & 5:97, slip opinion, p. 42-43.

Second, the Highlands Water Protection and Planning Act was enacted in 2004, a decade after COAH adopted its Second Round methodology, so different weightings have been added for different categories of undeveloped "available" land in the Highlands Region when calculating the land allocation factor.

Third, the second State Development and Redevelopment Plan, adopted in 2001 by the State Planning Commission, designated numerous "centers" in all "planning areas" throughout the state, so weighting of undeveloped "available" land has been added for "centers" designated by the State Planning Commission when calculating the land allocation factor.

Fourth, the Prior Round methodology for calculating filtering is not used, as the Appellate Division in 2007 rejected COAH's use in 2004 of data for this purpose from the US. Census Bureau's American Housing Survey 1989-1999.<sup>28</sup>

In all other aspects except the above four responses to legal changes, this methodology tracks the Prior Round methodology, with the most up to date available data, as closely as possible.

### **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 and American Community Survey to determine groupings of two to four counties into "housing regions," as required by the Fair Housing Act.<sup>29</sup>

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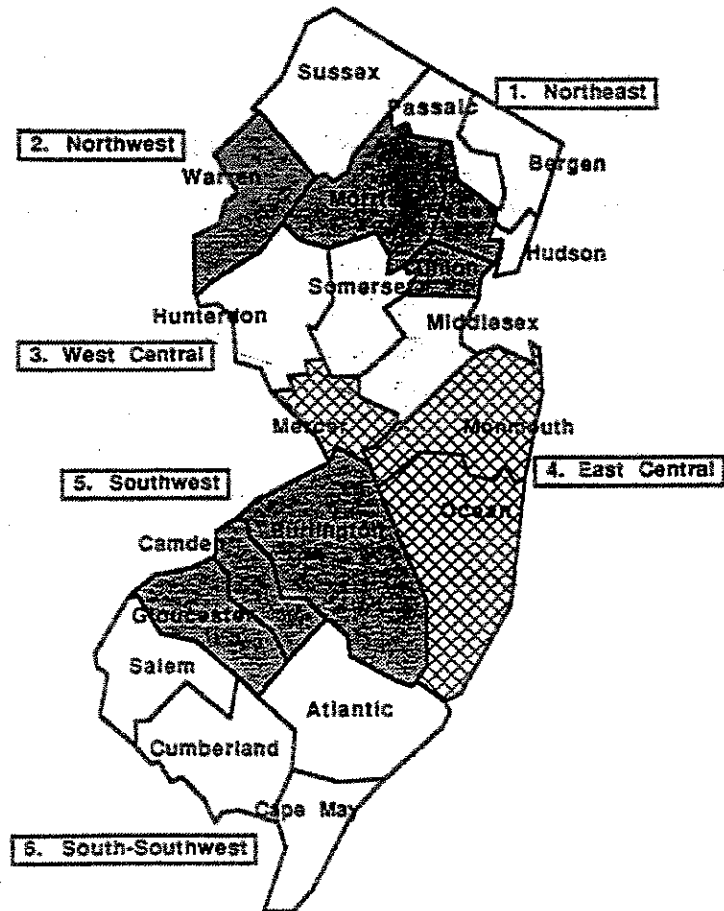
<sup>28</sup> In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing. In Re Substantive and Procedural Rules of the New Jersey Council on Affordable Housing for the Period Beginning December 20, 2004 (N.J.A.C. 5:94-1 et. seq. and N.J.A.C. 5:95-1 et. seq.), 390 N.J. Super. 1, 46 (App Div 2007).

<sup>29</sup> N.J.S.A. 52:27D-304b.

COAH last grouped the state's counties into six housing regions in 1994, as shown and listed below:<sup>30</sup>

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

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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

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

<sup>30</sup> N.J.A.C. 5:93 Appendix A.

COAH reexamined and reaffirmed these six housing regions in 2004,<sup>31</sup> 2008, and 2014.<sup>32</sup>

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 2001,<sup>33</sup> requires that present and prospective need be "computed for a 10-year period."<sup>34</sup> This implies a population projection period extending ten years from the present, i.e., 2015, but beginning in 1999 at the end of the 1987-1999 Prior Round last calculated by COAH and not invalidated by the courts, for a projection period from July 1, 1999 to June 30, 2025 (26 years).

Step 3: Project regional population 2025 - The New Jersey Department of Labor and Workforce Development ("NJDOLEWD") regularly prepares, updates, and publishes online population projections for the state and its counties. In August 2014, NJDOLEWD most recently projected the state's population by county for 2012-2032 by five-year intervals, as of July 1 for each projection period, using its "preferred" Economic-Demographic Model.<sup>35</sup> NJDOLEWD has also projected populations by age cohorts (five year increments) by county.<sup>36</sup> The projected population by age cohort and by county as of July 1, 2025 may be calculated by interpolation from the published NJDOLEWD projections for 2022 and 2027. Population projections by county

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<sup>31</sup> N.J.A.C. 5:94 Appendix A.

<sup>32</sup> Proposed N.J.A.C. 5:99 Appendix A, 46 N.J.R. 949, June 2, 2014.

<sup>33</sup> P.L. 2001, c. 435.

<sup>34</sup> 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" by COAH 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.

<sup>35</sup> See "Methodology – The Projection Model," no date, and "Introduction to Population and Labor Force Projections for New Jersey Counties, no date, and data tables in Excel available on the NJDOLEWD website, at [http://lwd.dol.state.nj.us/labor/lpa/dmograph/lfproj/lfproj\\_index.html](http://lwd.dol.state.nj.us/labor/lpa/dmograph/lfproj/lfproj_index.html), accessed March 18, 2015.

<sup>36</sup> The standard age cohorts used by the Census Bureau (before 2000) and by 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. For 2000 and 2010, the Census Bureau combined some age cohorts in its presentation of data for the 100% sample, i.e., SF-1.



by age cohort are then aggregated into regional population projections for the six housing regions determined by COAH:

New Jersey Projected Population 2025	
Housing Region	Persons
1	2,409,480
2	2,037,920
3	1,378,500
4	1,650,840
5	1,298,660
6	601,640
New Jersey	9,377,040

To provide some statewide context, the 2010 Census reported a total population for New Jersey of 8,791,894 persons, while NJDOLWD projected a total 2025 population for the state of 9,377,080 persons, an increase of 585,186 persons, for a projected rate of increase of 0.44% per year.

Step 4: Identify and remove “group quarters” residents from projections of the total population<sup>37</sup>

By Census Bureau definition, residents of group quarters, such as group homes, juvenile institutions, prisons, assisted living residences, and college dormitories, are not part of a “household” and do not live in “housing units.”<sup>38</sup> Therefore, the next step in projecting the future

<sup>37</sup> 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 in the First and Second Rounds, for facilities it called “alternative living arrangements,” which included group homes, boarding houses, transitional facilities for the homeless, etc., as well as for assisted living residences. See N.J.A.C. 5:93-5.8 and N.J.A.C. 5:93-5.16 and the definitions of “alternative living arrangements” and assisted living residences at N.J.A.C. 5:93-1.3. About 14% of the 65,000± affordable units counted by COAH as built since 1980, and mostly credited, have been group quarters. Granting credits for group quarters 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.

<sup>38</sup> The U.S. Census Bureau definition of “group quarters,” 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

need for low and moderate income housing is to identify the population living in group quarters, both in 2000 and 2010 by age cohort by county. Census 100% sample (SF-1) data provides this data by county and age cohort. Even more recent data by county are available from the 2013 American Community Survey, which, combined with the Census SF-1 data on age cohorts by county, provide the most up to date data on group quarters available. It is important to base household projections solely on projections of people who do not live in group quarters, as such persons do not constitute “households” as defined by the U.S. Census Bureau, which is why the group quarters population is first identified and removed from the general population in order to calculate headship rates in Step 5. To provide some context, 2.12% of New Jersey’s 2013 population of 8,899,339 people, i.e., 188,884 people, lived in group quarters.<sup>39</sup>

Step 5: Calculate 2000 and 2013 headship rates and project 2025 headship rates – The headship rate is the “probability that a person is the head of a household,”<sup>40</sup> which varies by demographic groups. In general, the headship rate rises with age, as shown below:

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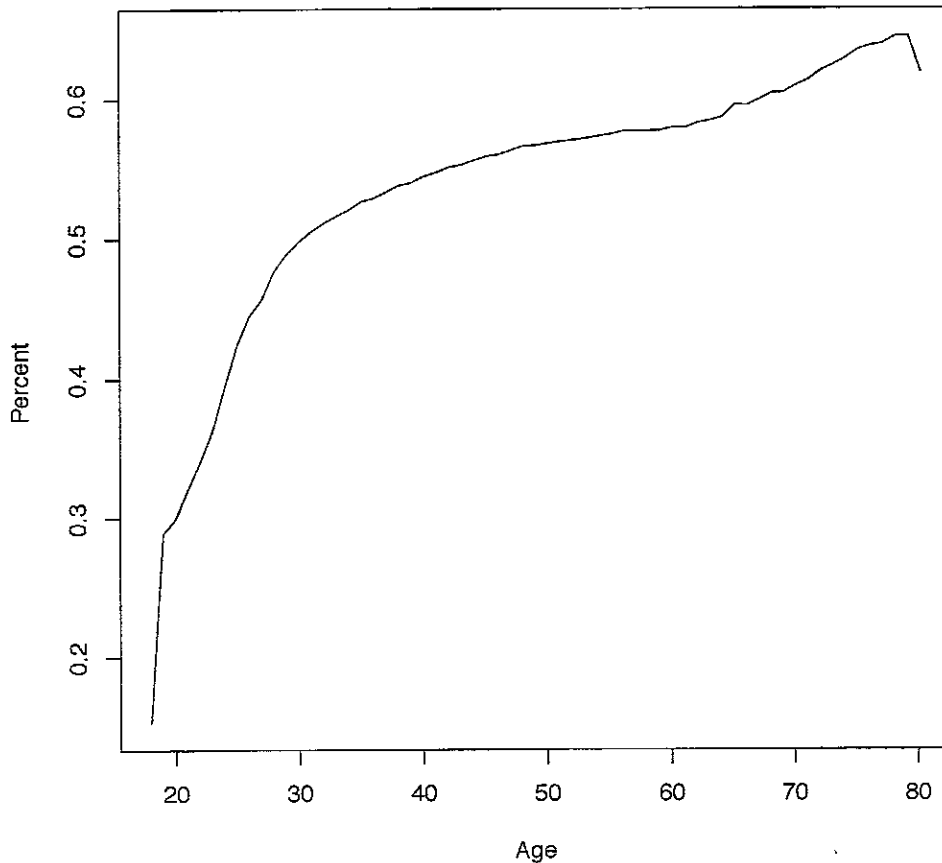
arrangement. These services may include custodial or medical care as well as other types of assistance, and residency is commonly restricted to those receiving these services. People living in group quarters are usually not related to each other. Group quarters include such places as college residence 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](https://www.census.gov/acs/www/Downloads/data_documentation/GroupDefinitions/2010GQ_Definitions.pdf)  
<accessed April 28, 2014>

<sup>39</sup> U.S. Census Bureau, 2013 American Community Survey, Table B26001.

<sup>40</sup> 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>

### Headship Rate by Age, 2000 Census

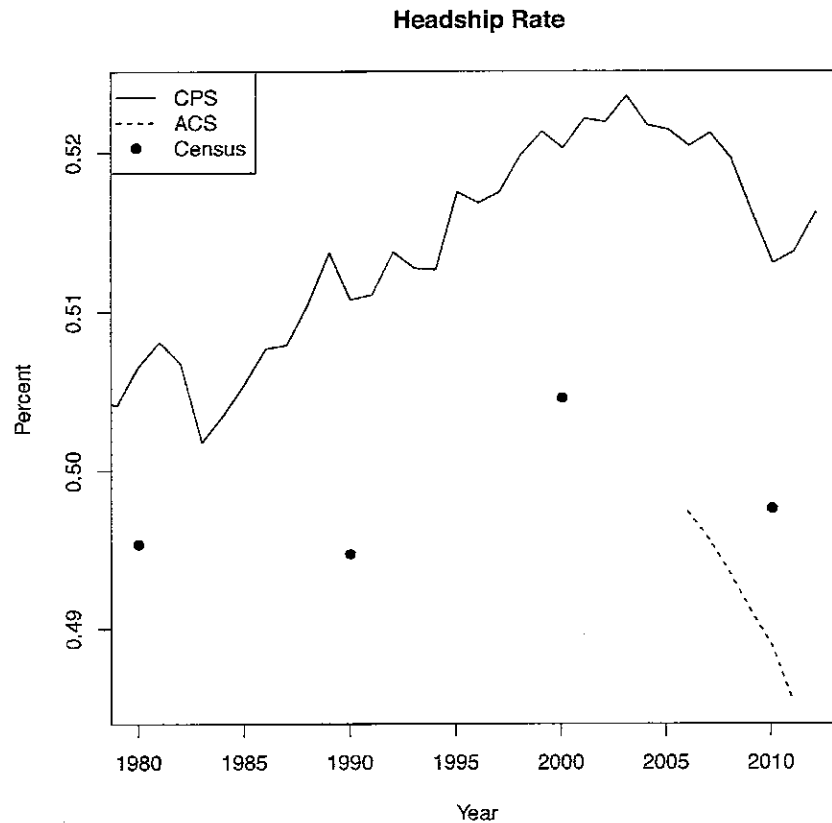


Source: Andrew Paciorek, "The Long and Short of Household Formation," Federal Reserve Board, 2013-26, p. 27, <accessed March 27, 2015>  
<http://www.federalreserve.gov/pubs/feds/2013/201326/201326pap.pdf>

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; projecting headship rates leads to projecting the need for housing for households. Projecting future headship rates is one of the most critical assumptions in the methodology.

In its 1994 Second Round methodology, COAH compared actual 1980 and 1990 headship rates and assumed that headship rates would change 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, for example, actually declined. The national rate increased from 1990-2000 and then decreased during 2000-2010, as shown below:



.Source: Andrew Paciorek, "The Long and Short of Household Formation," Federal Reserve Board, 2013-26, p. 26, <accessed March 27, 2015>  
<http://www.federalreserve.gov/pubs/feds/2013/201326/201326pap.pdf>

Andrew Paciorek, a staff economist at the Federal Reserve Board, in 2013 projected that the headship rate should increase in the future "as the labor market slowly recovers," but he "deliberately avoided trying to estimate total future households" using projected headship rates.<sup>41</sup>

<sup>41</sup> Andrew Paciorek, "The Long and Short of Household Formation," Federal Reserve Board, 2013-26, pp. 21-22,

The Joint Center for Housing Studies (JCHS) at Harvard University, in its current State of the Nation's Housing Report (2014) notes that "while headship rates across income groups have been relatively constant over the past 10 years [i.e., 2004-2014], growth in each [age] group has not"<sup>42</sup> and that "difficult economic and housing market conditions ... reduced headship rates among the native born" as well as foreign born.<sup>43</sup> In its current (2014) household projections through 2035, JCHS held headship rates constant, noting

"...favorable economic conditions could increase headship rates above levels assumed in the projection, which would increase the amount of household growth that occurs as a result of future projected population growth, while on the other hand a variety of factors weighing down economic opportunities could result in lower household formation rates. But changes in headship rates would have a modest effect on the household projections relative to those produced by changes in the level of net foreign immigration, which remains the greatest source of sensitivity in the projections."<sup>44</sup>

Consequently, this methodology also takes a conservative approach to headship rates, adopting the actual headship rates observed from the 2000 Census through the current, most recent available headship rate, from the 2013 American Community Survey one-year data, and constant, flat headship rates from the present through 2025, consistent with the JCHS projection.

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<accessed March 27, 2015> <http://www.federalreserve.gov/pubs/feds/2013/201326/201326pap.pdf>

<sup>42</sup> Joint Center for Housing Studies, Harvard University, State of the Nation's Housing Report, 2014, p. 12, <accessed March 28, 2015> [http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14\\_txt\\_bw-ch3.pdf](http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14_txt_bw-ch3.pdf)

<sup>43</sup> Joint Center for Housing Studies, Harvard University, State of the Nation's Housing Report, 2014, p. 13, <accessed March 28, 2015> [http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14\\_txt\\_bw-ch3.pdf](http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14_txt_bw-ch3.pdf)

<sup>44</sup> Daniel McCue, "Baseline Household Projections for the Next Decade and Beyond," W14-1, Joint Center for Housing Studies, Harvard University, March 2014, pp. 2-3, <accessed March 18, 2015> [http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/w14-1\\_mccue\\_0.pdf](http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/w14-1_mccue_0.pdf)

Step 6: Estimate 1999 low and moderate income households by region — To project the growth in low and moderate income households by 2025, this methodology first establishes a base of the number of low and moderate income households by age cohort by region in 1999, the beginning of the projection period, using 2000 Census data on headship rates and group quarters.

COAH determined the number of households that were low and moderate income in the First and Second Round “for eight age cohorts specific to each of 21 counties.” That allowed the Prior Round methodology to reflect that “to the degree that age cohorts are differently composed and growing differently, the low- and moderate-income population will also change as it ages into the future.”<sup>45</sup> COAH used U.S. Census 5% Public Use Microdata Sample (PUMS) data to determine the share of low and moderate income households for each age cohort for each county. This methodology replicates that same methodology, using the most recent data.<sup>46</sup>

From replicating the Prior Round analysis using 2000 U.S. Census 5% PUMS data and COAH's 2000 income limits, 41.2% of New Jersey households qualified, on the basis of income, as low and moderate income households.<sup>47</sup> This analysis then applies this percentage to estimated

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<sup>45</sup> 18 N.J.R. 1543; 26 N.J.R. 2347.

<sup>46</sup> Due to changes in Census categories since 2000 the age cohorts available are very slightly different from what was available in 1986 and 1994: instead of having 25-29 year olds separated out from 30-34 year olds, the two categories are combined, and also the Census now splits out the 75+ age group into 75-84 year olds and 85+ year olds

<sup>47</sup> COAH had found in an earlier iteration of the Third Round rules a slightly lower overall number, 40.3%. 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 did not disclose the data it used to reach this number, and in replicating the analysis used in the First and Second Round the correct number is 41.2%. Note also that in 2008, in its second iteration of Third Round rules, COAH-Econsult 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-Econsult 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. In 2014, in its third iteration of Third Round Rules, COAH-Rutgers analyzed 2007-2011 American Community Survey data and predicted that 40.622% of projected 2024 households would have low or moderate incomes. Proposed N.J.A.C. 5:99 Appendix C, 46 N.J.R. 982, June 2, 2014. However, COAH again did not disclose the data used for this analysis or replicate the Prior Round methodology in doing so, and the data source used is now several years out of date as there is now 2013 American Community Survey data available.

1999 households by age cohort by county and region to determine estimated 1999 low and moderate income households by region, summarized below:

1999 Estimated Low and Moderate Income Households	
Region	Total
1	334,409
2	296,815
3	170,101
4	215,461
5	151,503
6	84,269
New Jersey	1,252,558

Step 7: Project 2025 low and moderate income households by region – The projected 2025 population from Step 3 is the starting point for projecting low and moderate income households in 2025. The 2025 households are projected by first removing the projected group quarters population and then multiplying the non-group quarters population by the headship rates for 2025 projected in Step 5. The proportion of projected low and moderate income households that are low and moderate income, by age cohort by county and region, is determined in the same manner as calculated in Step 6 for low and moderate income households in 1999, using the same most recent available data used for the headship calculation above, namely 2013 ACS One Year data. All 2013 PUMS records are sorted by the low and moderate income limits for 2013, showing that 43.3 percent of New Jersey households are low and moderate income.<sup>48</sup> The 2025 low and moderate income household projections are summarized below by region:

<sup>48</sup> COAH in 2013 adopted a hold harmless policy to keep its income limits the same as they were in 2012, because median incomes declined from 2012 to 2013 – so in many cases “moderate” income levels were actually over 80 percent of median income. This analysis uses the lower income limits that would have been adopted by COAH if the hold harmless policy had not been in place, i.e., 80% of the HUD median income for each region. By using these lower numbers, the resulting prospective need is lower than it would be otherwise. However, using the lower income limits is most consistent with the Prior Round methodology, which used 80 percent of median income for the current year. See 26 N.J.R. 2345.

Projected Low and Moderate Income Households, 2025	
Region	Total
1	390,913
2	342,860
3	217,706
4	284,125
5	196,330
6	104,951
Total	1,536,885

Step 8: Project the regional increase in low and moderate income households 1999-2025 – The projected increase in low and moderate income households 1999-2025 is the difference between the projected 2025 low and moderate income households from Step 7 and the estimated 1999 low and moderate income households from Step 6, by age cohort by county and by region, summarized below by region:

Total Projected Increase in Low and Moderate Income Households, 1999-2025	
Region	Units
1	56,505
2	46,044
3	47,605
4	68,664
5	44,827
6	20,682
TOTAL	284,327

Step 9: Pool and reallocate projected regional growth in low and moderate income households below age 65 - This reallocation, a provision of 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. The



projected increase 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, as a proxy for changes in the labor force. This reallocation factor is calculated and also used later, in the allocation phase of the fair share methodology, explained as Step 12. Step 8 provides the data on projected regional low and moderate income household increases by region to be pooled and reallocated. The results of this reallocation by region and the two segments of the population, <65 years and 65+, are shown below:

<b>Projected Growth in Low and Moderate Income Households by Region, 1999-2025</b>			
Region	Under 65	65+	Total
1	13,939	42,099	56,038
2	4,094	42,655	46,749
3	10,204	36,950	47,155
4	30,805	38,379	69,183
5	14,201	31,166	45,367
6	6,823	13,660	20,482
Total	80,065	204,909	284,974

Step 10: Determine regional prospective need (units) – By definition, under the COAH Prior Round fair share housing methodology, the projected increase in regional low and moderate income households, pooled and reallocated by two age groups in Step 9 equals the gross regional prospective need for low and moderate income housing. Step 9 provides the data for this determination. Regional Prospective Need for all six regions and summed for the entire state are presented below:

Regional Prospective Need, 1999-2025		
Region		Housing Units
1	Northeast: Bergen, Hudson, Passaic, Sussex	58,138
2	Northwest: Essex, Morris, Union, Warren	56,979
3	West Central: Hunterdon, Somerset, Middlesex	52,147
4	East Central: Mercer, Monmouth, Ocean	55,982
5	Southwest: Burlington, Camden, Gloucester	40,593
6	Atlantic, Cape May, Cumberland, Salem	21,135
TOTAL		284,974

## 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.<sup>49</sup> 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

<sup>49</sup> N.J.A.C. 5:93 Appendix A, "Distribution of Low- and Moderate-Income Housing Need."

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 1999-2025 regional prospective need using the Second Round methodology are identified below in the description of each allocation factor.

Step 11 - Exempt Qualifying Urban (Municipal) Aid municipalities from housing need allocations

The COAH First Round and Second Round methodologies exempted certain Urban (Municipal) Aid municipalities, as determined each year by the New Jersey Department of Community Affairs ("DCA") using statutory criteria,<sup>50</sup> from any allocation of regional prospective need 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)<sup>51</sup>, or

(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

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<sup>50</sup> N.J.S.A. 52:27D-178.

<sup>51</sup> 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 persons per square mile. The correct equivalency is 15.625 persons per acre (1 square mile = 640 acres; 10,000/640 = 15.625).

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

The COAH Prior Round 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 NJDOLWD. DCA annually publishes the State’s official list of Municipal (Urban) Aid municipalities.<sup>52</sup> This methodology uses the current, State Fiscal Year 2015 (SFY2015) list. While the First Round and Second Round methodologies relied on six housing deficiency criteria, COAH in 2004, 2008, and 2014 revised the methodology to use only three criteria, and in 2014 used 2008-2012 ACS data to calculate housing deficiency based on: (i) overcrowded units built pre 1960, (ii) units with inadequate plumbing facilities, and (iii) units with inadequate kitchen facilities.<sup>53</sup> This methodology calculates low and moderate income deficient housing using 2008-2012 ACS data, and uses 2008-2012 ACS occupied housing data to calculate the municipal and regional shares of deficient housing (see also the calculation of PRESENT NEED above in this report). NJDOLWD publishes population density by municipality annually.<sup>54</sup> DCA annually publishes data on vacant land value (ratables) by municipality. This methodology uses 2010 data for both the population density and vacant land value data to be consistent with the ACS data used for present need.<sup>55</sup>

Step 12 – Calculate the equalized nonresidential valuation (ratables) factor – DCA’s Division of Local Government Services collects, reports annually, and maintains accessible data on

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<sup>52</sup> DCA determines and post on its website annually the current list of urban aid municipalities, pursuant to P.L. 1978 c.14 (N.J.S.A. 52:27D-178 et seq.), at: <http://www.state.nj.us/dca/divisions/dlgs/resources/stateaidinfo.shtml>

<sup>53</sup> Proposed N.J.A.C. 5:99 Appendix B, 46 N.J.R. 957-981, June 2, 2014.

<sup>54</sup> <http://lwd.doi.state.nj.us/labor/lpa/dmograph/est/mcd/density.xls>

<sup>55</sup> See the Property Value Classification spreadsheets available in Excel format for 1999-2014 on the DCA website: [http://www.nj.gov/dca/divisions/dlgs/resources/property\\_tax.html](http://www.nj.gov/dca/divisions/dlgs/resources/property_tax.html)

ratables by municipality. Data from equalized nonresidential valuation by municipality may be downloaded in Excel format from the DCA website, with older versions available from the State Library through the DCA publications that predate DCA's website.<sup>56</sup> This methodology calculates this allocation factor using 1990 and 2014 municipal data on nonresidential ratables<sup>57</sup> to calculate the 1990-2014 changes in nonresidential valuations, excluding qualifying Urban Aid municipalities. The starting point is 1990 as that is the ending point used by COAH in its Second Round methodology.<sup>58</sup> The change in each municipality's nonresidential valuations (ratables) is divided by the regional total of change in nonresidential valuations (ratables) to compute each municipality's share of the regional change.

Step 13 – Calculate the undeveloped land factor – Under its Second Round methodology, COAH estimated the area of undeveloped land by municipality with satellite imagery<sup>59</sup> 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 Pinelands Commission on its Land Capability Map,<sup>60</sup> as the equivalent of the SDRP's Planning

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<sup>56</sup> See the Property Value Classification spreadsheets available in Excel format for 1998-2014 on the DCA website: [http://www.nj.gov/dca/divisions/dlgs/resources/property\\_tax.html](http://www.nj.gov/dca/divisions/dlgs/resources/property_tax.html); for the 1990 data see Fifty-Third Annual Report of the Division of Local Government Services, 1990,

<https://dSPACE.njstatelib.org/xmlui/bitstream/handle/10929/26868/1990.pdf?sequence=1&isAllowed=y>

<sup>57</sup> 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.

<sup>58</sup> N.J.A.C. 5:93 Appendix A "Distribution of Low- and -Moderate Income Housing Need"

<sup>59</sup> 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.

<sup>60</sup> 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

Area 3 – Fringe Planning Area, weighted 0.5. All seven other Pinelands land capability classifications 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 1.0, and its “protected or open space areas” as the equivalent of Planning Areas 4 and 5, weighted at 0.0.<sup>61</sup>

This methodology takes the same approach as COAH took in the Second Round and estimates undeveloped land using satellite imagery and other data from the New Jersey Department of Environmental Protection (“DEP”). As the second State Development and Redevelopment Plan, adopted in 2001, and subsequent State Plan Policy amendments, designated “centers” where growth is encouraged, this methodology assigns a weighting of 1.0 to undeveloped land in centers in Planning Areas 1 and 2 and a weighting of 0.5 to centers in Planning Areas 3, 4, and 5. This methodology also continues the weightings established in the Second Round methodology in the Pinelands and elsewhere in the state under the most recently adopted, 2001 State Development and Redevelopment Plan. For the Meadowlands, this methodology weights undeveloped land at 1.0 whether in a center or not.

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

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Pinelands land classification mapping are available from the NJ Office of Planning Advocacy website, at <http://www.nj.gov/state/planning/resources-quad.html>.

<sup>61</sup> 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, 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](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](http://www.njmeadowlands.gov/doc_archive/NJMC%20Doc%20Archive/econgrow_docs/lum_docs/OFFICIAL%20ZONING%20MAP%202009%20PDF.pdf))

Region.<sup>62</sup> 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 Plan<sup>63</sup> ignored the distinction.<sup>64</sup> 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.<sup>65</sup>

However, the Legislature's distinction between the Highlands Preservation Area and the Highlands Planning Area is significant, as the Legislature established strict, protective goals for the Highlands Regional Master Plan for the Highlands Preservation Area:

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<sup>62</sup> Highlands Water Protection and Planning Act, L. 2004, c. 120, N.J.S.A. 13:20-1 et seq.

<sup>63</sup> <http://www.highlands.state.nj.us/njhighlands/master/index.htm>

<sup>64</sup> The Highlands Council's regional planning approach was "blind to the line," i.e., the line between its Preservation Area and the Planning Area, according to its oft repeated mantra at the time.

<sup>65</sup> 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](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 Highlands Council GIS website: <http://maps.njhighlands.us/hgis/>

b. The goals of the regional master plan with respect to the preservation area shall be to:

(1) protect, restore, and enhance the quality and quantity of surface and ground waters therein;

(2) preserve extensive and, to the maximum extent possible, contiguous areas of land in its natural state, thereby ensuring the continuation of a Highlands environment which contains the unique and significant natural, scenic, and other resources representative of the Highlands Region:

(3) protect the natural, scenic, and other resources of the Highlands Region, including but not limited to contiguous forests, wetlands, vegetated stream corridors, steep slopes, and critical habitat for fauna and flora;

(4) preserve farmland and historic sites and other historic resources;

(5) preserve outdoor recreation opportunities, including hunting and fishing, on publicly owned land;

(6) promote conservation of water resources;

(7) promote brownfield remediation and redevelopment;

(8) promote compatible agricultural, horticultural, recreational, and cultural uses and opportunities within the framework of protecting the Highlands environment; and

(9) prohibit or limit to the maximum extent possible construction or development which is incompatible with preservation of this unique area.

Source: N.J.S.A. 13:20-10.b.

Consequently, this methodology assigns a weighting of 0.0 to all undeveloped lands in the Highlands Preservation Area.

The statutory goals for the Highlands Regional Master Plan in the Highlands Planning Area are less protective and accommodate some development. These goals include:



(9) encourage, consistent with the State Development and Redevelopment Plan and smart growth strategies and principles, appropriate patterns of compatible residential, commercial, and industrial development, redevelopment, and economic growth, in or adjacent to areas already utilized for such purposes, and discourage piecemeal, scattered, and inappropriate development, in order to accommodate local and regional growth and economic development in an orderly way while protecting the Highlands environment from the individual and cumulative adverse impacts thereof; and

Source: N.J.S.A. 13:20-10.c.

The Highlands Regional Master Plan by its own terms promotes “sustainable and economically viable development” and “compatible development and redevelopment,” but only in its Existing Community Zone,<sup>66</sup> which is somewhat analogous to the State Plan’s Planning Areas 1 and 2, in which COAH’s Second Round methodology assigned undeveloped land a weighting of 1.0.

Conformance with the Highlands Regional Master Plan by municipalities is optional within the Highlands Planning Area. Consequently, to be fair, undeveloped land in municipalities that have opted into the Highlands Plan should be treated differently, in terms of the allocation of fair share housing obligations, than municipalities that have not opted to conform voluntarily to the Highlands Regional Master Plan. This methodology uses the Legislature’s criteria adopted in 2012 to determine if a Highlands Planning Area municipality is taking the necessary steps to opt into the Highlands Regional Master Plan.

In enacting New Jersey’s 2012 Permit Extension Act, the Legislature extended permits and approvals if a Highlands Planning Area municipality had adopted, by May 1, 2012, in

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<sup>66</sup> Highlands Regional Master Plan, pp. 190-1.

conformance with the Highlands conformance process, a Highlands master plan element, a Highlands land use ordinance, or an environmental resource inventory.<sup>67 68</sup>

If a Highlands Planning Area municipality has opted into the Highlands Regional Master Plan by adopting one of the planning documents specified in the Permit Extension Act by May 1, 2012, this methodology assigns its undeveloped land within the Existing Community Zone a weighting of 1.0. All other undeveloped land in the Highlands Planning Area of municipalities that have opted in is weighted 0.0. Seven municipalities in the Highlands Planning Area met the opt in criteria: Alpha, Byram, Hackettstown, High Bridge, Lopatcong, Phillipsburg, and Tewksbury.

If a Highlands Planning Area municipality has not opted into the Highlands Regional Master Plan by May 1, 2012, then this methodology assigns a weighting of 1.0 to undeveloped land in State-designated sewer service areas in the municipality, as such areas may already have in place or have the potential to have the infrastructure typically necessary to support multifamily housing development. All other undeveloped land, i.e., outside of the State-approved sewer service area, within the Highlands Planning Area of such a municipality is weighted 0.0.

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

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<sup>67</sup> P.L. 2012, c. 48; N.J.S.A. 40:55D-136.4.b.(8).

<sup>68</sup> Municipalities that fit into the Permit Extension Act's criteria can be found on the plan conformance tracking sheet available on the Highlands Council's website, retrieved April 13, 2015, [http://www.highlands.state.nj.us/njhighlands/planconformance/implementation\\_tracking\\_sheet.pdf](http://www.highlands.state.nj.us/njhighlands/planconformance/implementation_tracking_sheet.pdf)

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
Centers in Planning Areas 1 and 2	1.0
Centers in Planning Areas 3, 4, and 5	0.5
Pinelands Regional Growth Area	0.5
Pinelands Town	0.5
All Other Pinelands	0.0
Meadowlands	1.0
Meadowlands Center	1.0
Highlands Preservation Area	0.0
Highlands Planning Area Existing Community Zone - Opted In Municipality by May 2012	1.0
Highlands Planning Area - State-Designated Sewer Service Area - Municipality Not Opted in by May 2012	1.0
All Other Highlands Planning Area	0.0

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 DEP, released publicly in 2010,<sup>69</sup> and analyzed by researchers at Rowan University and Rutgers University in 2010.<sup>70</sup> Rowan-Rutgers classified undeveloped land as either “available” or “restricted.”<sup>71</sup> This methodology includes only the 0.9 million acres

<sup>69</sup> The 2007 imagery (“aerial photos”) may be consulted at the DEP website, <accessed March 27, 2015> [https://njgin.state.nj.us/NJ\\_NJGINExplorer/IW.jsp?DLayer=NJ%202012%20High%20Resolution%20Orthophotograph](https://njgin.state.nj.us/NJ_NJGINExplorer/IW.jsp?DLayer=NJ%202012%20High%20Resolution%20Orthophotograph)

<sup>70</sup> 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>

<sup>71</sup> 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, about 2.3 million acres. Land considered restricted from development consisted of preserved open space, preserved farmland, steep slopes >15%, streams, water and wetlands buffered to 50 feet, Category 1 streams buffered to 300 feet, and already developed lands. The land areas remaining after this

of “available” undeveloped land in calculating the undeveloped land factor, in keeping with the Prior Round methodology, which defined “undeveloped land” as “Undeveloped land in the community that can accommodate development.”<sup>72</sup> Digital maps of the current planning areas or equivalents are available through the State’s Office for Planning Advocacy<sup>73</sup> and the Highlands Council.<sup>74</sup> 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,<sup>75</sup> which is the data source for this methodology.<sup>76 77</sup>

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.

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analysis, a total of about 1 million acres (999,649 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. Adjustments in implementing fair share housing obligations based on land constraints may be considered in the compliance phase of municipal housing planning, in keeping with COAH Second Round Rules and practice.

<sup>72</sup> N.J.A.C. 5:93 Appendix A.

<sup>73</sup> 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>

<sup>74</sup> [http://www.highlands.state.nj.us/njhighlands/actmaps/maps/gis\\_data.html](http://www.highlands.state.nj.us/njhighlands/actmaps/maps/gis_data.html)

<sup>75</sup> More recent, 2012 high resolution statewide orthophotography aerial imagery is now available from DEP’s website, but were not available when the Rowan researchers conducted their research and calculations; <accessed March 27, 2015>

[https://njgin.state.nj.us/NJ\\_NJGINExplorer/IW.jsp?DLayer=NJ%202012%20High%20Resolution%20Orthophotograph](https://njgin.state.nj.us/NJ_NJGINExplorer/IW.jsp?DLayer=NJ%202012%20High%20Resolution%20Orthophotograph)

<sup>76</sup> This methodology considers undeveloped land in the Meadowlands classified as “restricted” or “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.

<sup>77</sup> The data are available from Fair Share Housing Center, which commissioned the overlay mapping and calculations by Rowan University researchers, and in the Excel workbook that accompanies and is Appendix A to this report.

Step 14 – 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 median<sup>78</sup> 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 municipality<sup>79</sup>

Up-to-date median household income and number of households data by municipality are readily available from the 2009-2013 five-year American Community Survey conducted by the U.S. Census Bureau.<sup>80</sup> 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.

Step 15: Calculate the average allocation factor to 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-Qualifying Urban Aid municipalities in each region.

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<sup>78</sup> The published text of the COAH Second Round methodology calls for calculating Income Measure No. 1 using an income floor that is \$100 below the lowest mean or average household income in the region. Use of “mean” was probably a typographical error, as Footnote 19 to the COAH Second Round Rules, N.J.A.C. Appendix A Methodology, explains, “This is to ensure that all pool numbers on this variable are positive.” Use of the “average” or “mean” would produce a negative number for at least one municipality.

<sup>79</sup> N.J.A.C. 5:93 Appendix A; 26 N.J.R. 2346-7, June 6, 1994.

<sup>80</sup> <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>

Step 16: Calculate gross municipal prospective need by municipality (units) - 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, i.e., needed new low and moderate income housing units.

### **THIRD PHASE: ADJUSTING FOR SECONDARY SOURCES OF DEMAND AND SUPPLY**

Once the gross municipal prospective need has been calculated and allocated to municipalities, the next steps in the methodologies are to calculate the three so-called "secondary sources of housing demand and supply."<sup>81</sup> 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 17 – Estimate and project filtering affecting low and moderate income households (units) –

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, which essentially followed the Second Round methodology, as unsubstantiated by reliable data.<sup>82</sup> For its second iteration of Third Round Rules, COAH retained a different 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 income households. Using these new data and

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<sup>81</sup> N.J.A.C. 5:93 Appendix A, "Secondary Sources of Housing Supply and Demand."

<sup>82</sup> 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).

Econsult's new methodology,<sup>83</sup> 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.<sup>84</sup> This is "the most up-to-date available data" on filtering, albeit a decade or more old. This methodology extends the 2008 COAH filtering projections by extrapolation to 2025. As "the most up-to-date 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, for a total of net filtering of 66,653 units.

Step 18 – Estimate and project residential conversions affecting low and moderate income households (units) – 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. For example, an industrial loft building is converted to housing units, or a two-unit structure is converted to a single family dwelling unit. Residential conversions reduce low and moderate income housing need, according to the COAH First Round and Second Round methodologies.<sup>85</sup>

This methodology first calculates the change (increase) between 2000 and 2012 in total housing units, first by county and then by region, using 2000 Census data and 2012 ACS One Year data. Next, the total new housing units authorized for construction by municipality and region, i.e., building permits, are calculated for 2000-2012, using building permits issued from DCA. Third, the number of housing units demolished 2000-2012 by municipality is obtained from DCA. The end point of December 31, 2012 is adopted to avoid the post-Super Storm Sandy spike in

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<sup>83</sup> 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.

<sup>84</sup> 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 chose 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.

<sup>85</sup> N.J.A.C. 5:93 Appendix A.

demolitions that occurred in 2013-2014 in storm-damaged communities that would unfairly skew projections of demolitions through 2025. Next, the total number of conversions 2000-2012 is calculated by region by calculating the net change in housing units 2000-2012 minus the net of housing units constructed and demolished over the same period, i.e., conversions = change in occupied housing units – building permits + demolitions. Total conversions are then prorated for the 1999-2025 projection period, by region:

Residential Conversions 1999-2025		
Region		Housing Units
1	Northeast: Bergen, Hudson, Passaic, Sussex	9,537
2	Northwest: Essex, Morris, Union, Warren	(3,772)
3	West Central: Hunterdon, Somerset, Middlesex	5,071
4	East Central: Mercer, Monmouth, Ocean	9,169
5	Southwest: Burlington, Camden, Gloucester	(7,203)
6	Atlantic, Cape May, Cumberland, Salem	(1,744)
TOTAL		11,058

In its Second Round methodology, COAH calculated and projected total conversions by region and then allocated each region's low and moderate conversions to its municipalities. According to COAH's Second Round methodology, conversions are closely related to the percentage of 2-4 unit structures in a municipality; COAH described this structure type to be conducive to conversions to create an additional unit(s). Municipal data on the number of 2-4 unit structures are obtained for 2010 from the 2008-2012 American Community Survey. 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 in 2010. The five-year American Community Survey of the Census Bureau for 2008-2012 provides the "best available up-to-date



data” on the number of 2-4 unit structures by municipality, consistent with other data sets used to calculate conversions.

Both COAH’s First and Second Round methodologies are silent on how the low and moderate income share of conversions is calculated, except for indicating that “Residential conversions to low- and moderate-income housing in normal markets are often on a par with demolitions for this income sector.”<sup>86</sup> <sup>87</sup> The Second Round methodology’s stated method for calculating the low and moderate income share of demolitions is, therefore, used in this methodology to calculate the low and moderate income share of conversions as well. The method is to calculate the share of low and moderate income households in each county (see Steps 6 and 7), then take 120% of each county’s low and moderate income households share, capped at 95% of conversions. This low and moderate income share for each county is used to calculate the low and moderate income share of the projected conversions allocated to each county’s municipalities.

Step 19 - Estimate and project demolitions affecting low and moderate income households (units) – Under the COAH Prior Round methodology, demolitions increase prospective need. Annual municipal-level demolitions data from 1999 through 2012 are readily available, as reported to DCA and published on its New Jersey Construction Reporter website.<sup>88</sup> The end point of December 31, 2012 is adopted in this methodology to avoid the post-Super Storm

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<sup>86</sup> N.J.A.C. 5:92 Appendix B “Residential Conversion”

<sup>87</sup> In its second iteration of Third Round rules, COAH in 2008 estimated that 19.5% of converted units were affordable to low and moderate income households, N.J.A.C. 5:97 Appendix A. and Footnote 4. COAH’s consultant for the second iteration of the Third Round, Econsult, based this 19.5% estimate on a cascade of assumptions estimating that a household earning \$51,276 (the state median in 2000) could afford a \$109,547 home, and that 19.5% of owner-occupied units in New Jersey in 2000 were valued below \$109,547. The relationship of this assumed homebuyer to converted rental units and demolished units is not explained. COAH’s first iteration of the Third Round Rules had assumed that 40% of converted units were low and moderate income housing units, N.J.A.C. 5:94 Appendix A. COAH’s consultant for the third iteration of the Third Round, Rutgers, relied on the Econsult estimate of 19.5% of converted units being affordable to low and moderate income households, proposed N.J.A.C. 5:99 Appendix A, 46 N.J.R. 986.

<sup>88</sup> <http://www.state.nj.us/dca/divisions/codes/reporter/> accessed March 19, 2015. The 1999 data are no longer posted on the website.

Sandy spike in demolitions that occurred in 2013-2014 in storm-damaged communities that would unfairly skew projections of demolitions through 2025. This methodology uses actual 1999-2012 demolitions data, extended by extrapolation for the full 1999-2025 projection period, projecting a statewide total of 118,834 demolished housing units.

To calculate the low and moderate income share of these demolitions, this methodology follows strictly the Prior Round methodology.<sup>89</sup> As with conversions in Step 18, the method is to calculate the share of low and moderate income households in each county (see Steps 6 and 7), then take 120% of each county's low and moderate income households share, capped at 95% of conversions. This low and moderate income share for each county is used to calculate the low and moderate income share of the projected 1999-2025 demolitions in each municipality, which totals 54,621 demolitions affecting low and moderate income households.<sup>90</sup>

Step 20 – Calculate prospective need by municipality – Under the COAH First and Second Round methodologies, the calculated prospective need for each municipality is the sum of its allocated share of gross perspective need, plus demolitions (from Step 19), minus its share of residential conversions (from Step 18), and minus or plus filtered units, whether its net filtered units were down or up (from Step 17). After adjusting for secondary sources, the statewide calculated prospective need for 1999-2025 is 292,021 units.

Step 21 – 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.<sup>91</sup> The cap is calculated by multiplying

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<sup>89</sup> According to the 2008 and 2014 iterations of COAH's Third Round methodology, 19.5% of demolitions and conversions of housing affect low and moderate income households. This methodology does not follow that deviation from the Prior Round methodology, as explained above in Step 18.

<sup>90</sup> Unlike conversions, the Prior Round methodology did not pool regionally and then allocate demolitions to municipalities.

<sup>91</sup> N.J.A.C. 5:93-2.16. The Fair Housing Act authorized this cap, but did not prescribe the percentage of existing

the number of occupied housing units in the municipality in 2012 by 0.20. If the cap is larger than the net prospective need calculated in Step 20, the cap is not applicable. If the cap is smaller than the net prospective need calculated in Step 20, then the cap becomes the adjusted net prospective need. The data for this step is readily available from NJDOLWD building permits data and DCA demolitions data, both for July 2010-December 2012, and 2008-2012 American Community Survey for occupied housing units.

Step 22 – Calculate prospective need obligation (net) by municipality (units) – The penultimate step in the methodology is to calculate the municipal prospective need (net) for 1999-2025, which is the same as the calculated prospective need, unless the 20% cap is applicable, in which case that cap becomes the net prospective need.

Step 23 - Calculate the 1,000 unit cap and, if applicable, reduce the prospective need obligation to 1,000 units – The Fair Housing Act, as amended in 1993, authorizes a cap on a municipality's prospective need at 1,000 units for the ten year period of "substantive certification."<sup>92</sup> In accordance with the statute and COAH rules and practice, the cap is calculated after verifying and subtracting from the prospective need obligation any credits (units and bonuses) to which the municipality is entitled for previous affordable housing activity.<sup>93</sup>

Assuming all eligible credits are verified, the statewide prospective need obligation for 1999-2025, after the 20% and 1,000 unit caps, is 201,643 units.

## CONCLUSION

The output from carrying out this sequence of 23 steps is the calculation of regional prospective housing need for 1999-2025 and its allocation, by region, to each of the state's 565

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occupied housing stock to be used to calculate the cap, N.J.S.A. 52:27D-307e.

<sup>92</sup> N.J.S.A. 52:27D-307(e); L.1993, c.31.

<sup>93</sup> N.J.A.C. 5:93-14.1, N.J.A.C. 5:94-3.1(a)3., and N.J.A.C. 5:97-5.8.

municipalities, and calculation of net prospective need at the municipal level. The total net prospective need of 201,643 units amounts to 7,756 units per year over the now 26-year Third Round projection period, compared with the 6,779 unit annual average of the net capped (20% and 1,000 unit caps) prospective need calculated by COAH for the Prior Round, 1987-1999, using this same Prior Round methodology.<sup>94</sup>

An Excel workbook with 37 linked worksheets provides the data, data sources, and calculations used to compute 1999-2025 net Prospective Need allocations, 2010 Present Need, and 1987-1999 Prior Round Obligations for all 565 New Jersey municipalities using the methodology and data described in this report. It is Appendix A to this report. Its first tab, "Cover and Contents," identifies the contents of its 37 tabs and notes corrections and additional information added since release of the model in April 2015.

<sup>94</sup> COAH calculated a net uncapped prospective need of 10,849 units per year for 1987-1993 (First Round) and 6,465 units per year for 1987-1999 (Second Round); N.J.A.C. 5:92 Appendix A and N.J.A.C. 5:93 Appendix A. For a calculation of the net capped Prior Round prospective need, see below:

Prior Round Municipalities with Net Prospective Need >1,000 Units			
Municipalities with Prospective Need > 1,000 Units	Net Prospective Need, 1987-1999	Excess Above 1,000 Unit Cap	Capped Prospective Need 1987-1999
Wayne	1,158	158	1,000
Freehold	1,036	36	1,000
Marlboro	1,019	19	1,000
Middletown	1,581	581	1,000
Wall	1,073	73	1,000
Toms River	2,233	1,233	1,000
Jackson	1,247	247	1,000
Cherry Hill	1,829	829	1,000
Atlantic City	2,458	1,458	1,000
<b>Total</b>	<b>13,614</b>	<b>4,614</b>	<b>9,000</b>
Total Prior Round Obligation (uncapped)			85,964
Excess Greater Than 1,000 Cap			4,614
Total Prior Round Obligation Capped			81,350
Projection Period (years)			12
Average Annual Capped Prospective Need			6,779
Source: N.J.A.C. 5:97 Appendix C, N.J.A.C. 5:93-14.1			

Both the Prior Round (1987-1999) and Third Round (1999-2025) net capped prospective need numbers are not based on verified credits, which may affect the application of the 1,000 unit cap in a particular municipality.

APPENDIX A

Excel workbook, file name: FSHC R3 Model July 2015

EXHIBIT B

**Municipal Summary, Fair Share Housing Obligations, 2015 (revised July 2015)**

Muni Code	Municipality	County	Region	Present Need, 2010 (units)	Prior Round Obligation, 1987-1999 (units)	Third Round Net Prospective Need, 1999-2025 (units, after 20% and 1,000 unit caps*)
0201	Allendale Borough	Bergen	1	6	137	406
0202	Alpine Borough	Bergen	1	2	214	138
0203	Bergenfield Borough	Bergen	1	121	87	337
0204	Bogota Borough	Bergen	1	32	13	87
0205	Carlstadt Borough	Bergen	1	24	228	438
0206	Cliffside Park Borough	Bergen	1	117	28	0
0207	Closter Borough	Bergen	1	6	110	565
0208	Cresskill Borough	Bergen	1	37	70	504
0209	Demarest Borough	Bergen	1	7	66	337
0210	Dumont Borough	Bergen	1	27	34	251
0212	East Rutherford Borough	Bergen	1	130	90	857
0213	Edgewater Borough	Bergen	1	0	28	1000
0211	Elmwood Park Borough	Bergen	1	92	54	0
0214	Emerson Borough	Bergen	1	51	74	444
0215	Englewood City	Bergen	1	190	152	1000
0216	Englewood Cliffs Borough	Bergen	1	4	219	372
0217	Fair Lawn Borough	Bergen	1	79	152	594
0218	Fairview Borough	Bergen	1	207	20	0
0219	Fort Lee Borough	Bergen	1	256	180	414
0220	Franklin Lakes Borough	Bergen	1	19	358	688
0221	Garfield City	Bergen	1	257	0	0
0222	Glen Rock Borough	Bergen	1	4	118	667
0223	Hackensack City	Bergen	1	420	201	0
0224	Harrington Park Borough	Bergen	1	0	56	301
0225	Hasbrouck Heights Borough	Bergen	1	18	58	289
0226	Haworth Borough	Bergen	1	0	64	227
0227	Hillsdale Borough	Bergen	1	11	111	584
0228	Ho-Ho-Kus Borough	Bergen	1	7	83	279
0229	Leonia Borough	Bergen	1	76	30	269
0230	Little Ferry Borough	Bergen	1	124	28	0
0231	Lodi Borough	Bergen	1	159	0	0
0232	Lyndhurst Township	Bergen	1	194	100	1000
0233	Mahwah Township	Bergen	1	84	350	1000
0234	Maywood Borough	Bergen	1	45	36	305
0235	Midland Park Borough	Bergen	1	26	54	100
0236	Montvale Borough	Bergen	1	0	255	527
0237	Moonachie Borough	Bergen	1	21	95	225
0238	New Milford Borough	Bergen	1	81	23	151
0239	North Arlington Borough	Bergen	1	141	4	531
0240	Northvale Borough	Bergen	1	7	86	224
0241	Norwood Borough	Bergen	1	0	118	368
0242	Oakland Borough	Bergen	1	20	220	849
0243	Old Tappan Borough	Bergen	1	8	98	362
0244	Oradell Borough	Bergen	1	37	89	356
0245	Palisades Park Borough	Bergen	1	164	0	566
0246	Paramus Borough	Bergen	1	177	698	1000
0247	Park Ridge Borough	Bergen	1	89	112	466
0248	Ramsey Borough	Bergen	1	72	189	1000
0249	Ridgefield Borough	Bergen	1	133	47	527
0250	Ridgefield Park Village	Bergen	1	114	25	217
0251	Ridgewood Village	Bergen	1	11	229	900

**Municipal Summary, Fair Share Housing Obligations, 2015 (revised July 2015)**

Muni Code	Municipality	County	Region	Present Need, 2010 (units)	Prior Round Obligation, 1987-1999 (units)	Third Round Net Prospective Need, 1999-2025 (units, after 20% and 1,000 unit caps*)
0252	River Edge Borough	Bergen	1	33	73	229
0253	River Vale Township	Bergen	1	32	121	405
0254	Rochelle Park Township	Bergen	1	0	64	200
0255	Rockleigh Borough	Bergen	1	0	84	13
0256	Rutherford Borough	Bergen	1	114	95	413
0257	Saddle Brook Township	Bergen	1	65	127	359
0258	Saddle River Borough	Bergen	1	42	162	215
0259	South Hackensack Township	Bergen	1	45	50	185
0260	Teaneck Township	Bergen	1	55	192	727
0261	Tenafly Borough	Bergen	1	41	159	452
0262	Teterboro Borough	Bergen	1	0	106	5
0263	Upper Saddle River Borough	Bergen	1	0	206	510
0264	Waldwick Borough	Bergen	1	41	81	345
0265	Wallington Borough	Bergen	1	84	5	31
0266	Washington Township	Bergen	1	0	85	433
0267	Westwood Borough	Bergen	1	30	87	389
0268	Woodcliff Lake Borough	Bergen	1	18	170	407
0269	Wood-Ridge Borough	Bergen	1	0	38	238
0270	Wyckoff Township	Bergen	1	26	221	1000
0901	Bayonne City	Hudson	1	632	0	0
0902	East Newark Borough	Hudson	1	31	2	0
0903	Guttenberg Town	Hudson	1	36	23	47
0904	Harrison Town	Hudson	1	139	30	217
0905	Hoboken City	Hudson	1	217	0	0
0906	Jersey City City	Hudson	1	3370	0	0
0907	Kearny Town	Hudson	1	238	211	901
0908	North Bergen Township	Hudson	1	603	0	0
0909	Secaucus Town	Hudson	1	64	590	1000
0910	Union City City	Hudson	1	1442	0	0
0911	Weehawken Township	Hudson	1	211	3	0
0912	West New York Town	Hudson	1	833	0	0
1601	Bloomingtondale Borough	Passaic	1	65	168	508
1602	Clifton City	Passaic	1	2346	379	0
1603	Haledon Borough	Passaic	1	52	5	124
1604	Hawthorne Borough	Passaic	1	28	58	266
1605	Little Falls Township	Passaic	1	85	101	704
1606	North Haledon Borough	Passaic	1	10	92	483
1607	Passaic City	Passaic	1	4625	0	0
1608	Paterson City	Passaic	1	3255	0	0
1609	Pompton Lakes Borough	Passaic	1	50	102	419
1610	Prospect Park Borough	Passaic	1	9	0	0
1611	Ringwood Borough	Passaic	1	41	51	285
1612	Totowa Borough	Passaic	1	174	247	606
1613	Wanaque Borough	Passaic	1	124	332	209
1614	Wayne Township	Passaic	1	201	1158	1000
1615	West Milford Township	Passaic	1	107	98	408
1616	West Paterson Borough	Passaic	1	212	146	578
1901	Andover Borough	Sussex	1	6	7	65
1902	Andover Township	Sussex	1	9	55	203
1903	Branchville Borough	Sussex	1	0	13	58
1904	Byram Township	Sussex	1	10	33	286



**Municipal Summary, Fair Share Housing Obligations, 2015 (revised July 2015)**

Muni Code	Municipality	County	Region	Present Need, 2010 (units)	Prior Round Obligation, 1987-1999 (units)	Third Round Net Prospective Need, 1999-2025 (units, after 20% and 1,000 unit caps*)
1905	Frankford Township	Sussex	1	16	36	192
1906	Franklin Borough	Sussex	1	15	9	387
1907	Fredon Township	Sussex	1	14	29	154
1908	Green Township	Sussex	1	0	20	114
1909	Hamburg Borough	Sussex	1	5	14	139
1910	Hampton Township	Sussex	1	4	44	167
1911	Hardyston Township	Sussex	1	17	18	672
1912	Hopatcong Borough	Sussex	1	21	93	727
1913	Lafayette Township	Sussex	1	0	27	128
1914	Montague Township	Sussex	1	0	9	31
1915	Newton Town	Sussex	1	72	24	83
1916	Ogdensburg Borough	Sussex	1	3	13	65
1917	Sandyston Township	Sussex	1	2	13	66
1918	Sparta Township	Sussex	1	29	76	815
1919	Starhope Borough	Sussex	1	4	15	301
1920	Stillwater Township	Sussex	1	0	15	71
1921	Sussex Borough	Sussex	1	12	0	0
1922	Vernon Township	Sussex	1	57	60	959
1923	Walpack Township	Sussex	1	0	0	0
1924	Wantage Township	Sussex	1	31	35	181
0701	Belleville Township	Essex	2	768	0	0
0702	Bloomfield Township	Essex	2	547	0	0
0703	Caldwell Township	Essex	2	11	0	144
0704	Cedar Grove Township	Essex	2	0	70	707
0717	City of Orange Township	Essex	2	845	0	0
0705	East Orange City	Essex	2	546	0	0
0706	Essex Fells Township	Essex	2	0	40	145
0707	Fairfield Township	Essex	2	53	318	518
0708	Glen Ridge Borough	Essex	2	19	28	447
0709	Irvington Township	Essex	2	736	0	0
0710	Livingston Township	Essex	2	20	375	1000
0711	Maplewood Township	Essex	2	90	51	590
0712	Millburn Township	Essex	2	111	261	1000
0713	Montclair Township	Essex	2	146	0	1000
0714	Newark City	Essex	2	3277	0	0
0715	North Caldwell Borough	Essex	2	18	63	446
0716	Nutley Township	Essex	2	256	29	555
0718	Roseland Borough	Essex	2	0	182	492
0719	South Orange Village	Essex	2	0	63	173
0720	Verona Township	Essex	2	0	24	377
0721	West Caldwell Township	Essex	2	0	200	701
0722	West Orange Township	Essex	2	354	226	1000
1401	Boonton Town	Morris	2	21	11	440
1402	Boonton Township	Morris	2	8	20	267
1403	Butler Borough	Morris	2	28	16	237
1404	Chatham Borough	Morris	2	0	77	481
1405	Chatham Township	Morris	2	43	83	727
1406	Chester Borough	Morris	2	10	16	131
1407	Chester Township	Morris	2	27	32	343
1408	Denville Township	Morris	2	36	325	1000
1409	Dover Town	Morris	2	246	6	322

**Municipal Summary, Fair Share Housing Obligations, 2015 (revised July 2015)**

Muni Code	Municipality	County	Region	Present Need, 2010 (units)	Prior Round Obligation, 1987-1999 (units)	Third Round Net Prospective Need, 1999-2025 (units, after 20% and 1,000 unit caps*)
1410	East Hanover Township	Morris	2	31	262	770
1411	Florham Park Borough	Morris	2	107	326	825
1412	Hanover Township	Morris	2	24	356	1000
1413	Harding Township	Morris	2	0	83	290
1414	Jefferson Township	Morris	2	37	69	267
1415	Kinnelon Borough	Morris	2	0	73	300
1416	Lincoln Park Borough	Morris	2	15	74	396
1430	Long Hill Township	Morris	2	0	62	470
1417	Madison Borough	Morris	2	31	86	1000
1418	Mendham Borough	Morris	2	8	25	326
1419	Mendham Township	Morris	2	19	41	372
1420	Mine Hill Township	Morris	2	0	61	175
1421	Montville Township	Morris	2	11	261	1000
1423	Morris Plains Borough	Morris	2	17	144	441
1422	Morris Township	Morris	2	0	293	793
1424	Morristown Town	Morris	2	188	138	351
1426	Mount Arlington Borough	Morris	2	10	17	221
1427	Mount Olive Township	Morris	2	131	45	1000
1425	Mountain Lakes Borough	Morris	2	0	80	265
1428	Netcong Borough	Morris	2	19	0	29
1429	Parsippany-Troy Hills Township	Morris	2	261	664	1000
1431	Pequannock Township	Morris	2	32	134	420
1432	Randolph Township	Morris	2	25	261	1000
1433	Riverdale Borough	Morris	2	0	58	352
1434	Rockaway Borough	Morris	2	0	43	228
1435	Rockaway Township	Morris	2	80	370	1000
1436	Roxbury Township	Morris	2	76	255	1000
1437	Victory Gardens Borough	Morris	2	2	0	0
1438	Washington Township	Morris	2	20	66	577
1439	Wharton Borough	Morris	2	76	42	307
2001	Berkeley Heights Township	Union	2	21	183	858
2002	Clark Township	Union	2	53	92	243
2003	Cranford Township	Union	2	45	148	805
2004	Elizabeth City	Union	2	4256	0	0
2005	Fanwood Borough	Union	2	24	45	311
2006	Garwood Borough	Union	2	40	19	200
2007	Hillside Township	Union	2	125	0	0
2008	Kenilworth Borough	Union	2	0	83	551
2009	Linden City	Union	2	349	209	217
2010	Mountainside Borough	Union	2	86	123	408
2011	New Providence Borough	Union	2	74	135	451
2012	Plainfield City	Union	2	847	0	0
2013	Rahway City	Union	2	195	70	0
2014	Roselle Borough	Union	2	264	0	0
2015	Roselle Park Borough	Union	2	46	0	0
2016	Scotch Plains Township	Union	2	125	182	893
2017	Springfield Township	Union	2	15	135	585
2018	Summit City	Union	2	69	171	1000
2019	Union Township	Union	2	339	233	1000
2020	Westfield Town	Union	2	48	139	1000
2021	Winfield Township	Union	2	18	0	17

**Municipal Summary, Fair Share Housing Obligations, 2015 (revised July 2015)**

Muni Code	Municipality	County	Region	Present Need, 2010 (units)	Prior Round Obligation, 1987-1999 (units)	Third Round Net Prospective Need, 1999-2025 (units, after 20% and 1,000 unit caps*)
2101	Allamuchy Township	Warren	2	30	13	231
2102	Alpha Borough	Warren	2	0	13	0
2103	Belvidere Town	Warren	2	12	0	190
2104	Blairstown Township	Warren	2	0	12	140
2105	Franklin Township	Warren	2	0	11	230
2106	Frelinghuysen Township	Warren	2	0	6	161
2107	Greenwich Township	Warren	2	0	41	366
2108	Hackettstown Town	Warren	2	68	62	261
2109	Hardwick Township	Warren	2	1	6	107
2110	Harmony Township	Warren	2	0	47	201
2111	Hope Township	Warren	2	3	8	103
2112	Independence Township	Warren	2	0	10	165
2113	Knowlton Township	Warren	2	11	14	68
2114	Liberty Township	Warren	2	0	7	155
2115	Lopatcong Township	Warren	2	0	56	347
2116	Mansfield Township	Warren	2	15	3	488
2117	Oxford Township	Warren	2	16	2	203
2119	Phillipsburg Town	Warren	2	161	0	0
2120	Pohatcong Township	Warren	2	7	47	256
2121	Washington Borough	Warren	2	2	0	243
2122	Washington Township	Warren	2	0	48	503
2123	White Township	Warren	2	40	16	446
1001	Alexandria Township	Hunterdon	3	99	22	340
1002	Bethlehem Township	Hunterdon	3	6	42	258
1003	Bloomsbury Borough	Hunterdon	3	2	17	57
1004	Califon Borough	Hunterdon	3	0	21	86
1005	Clinton Town	Hunterdon	3	10	51	196
1006	Clinton Township	Hunterdon	3	27	335	913
1007	Delaware Township	Hunterdon	3	60	23	250
1008	East Amwell Township	Hunterdon	3	0	40	296
1009	Flemington Borough	Hunterdon	3	57	38	74
1010	Franklin Township	Hunterdon	3	0	36	134
1011	Frenchtown Borough	Hunterdon	3	4	2	76
1012	Glen Gardner Borough	Hunterdon	3	3	7	72
1013	Hampton Borough	Hunterdon	3	12	2	58
1014	High Bridge Borough	Hunterdon	3	29	27	163
1015	Holland Township	Hunterdon	3	64	17	233
1016	Kingwood Township	Hunterdon	3	0	19	189
1017	Lambertville City	Hunterdon	3	57	0	172
1018	Lebanon Borough	Hunterdon	3	0	34	182
1019	Lebanon Township	Hunterdon	3	0	28	317
1020	Milford Borough	Hunterdon	3	0	5	100
1021	Raritan Township	Hunterdon	3	20	360	1000
1022	Readington Township	Hunterdon	3	101	394	1000
1023	Stockton Borough	Hunterdon	3	0	6	41
1024	Tewksbury Township	Hunterdon	3	0	119	440
1025	Union Township	Hunterdon	3	0	78	356
1026	West Amwell Township	Hunterdon	3	0	16	203
1201	Carteret Borough	Middlesex	3	176	0	0
1202	Cranbury Township	Middlesex	3	10	217	260
1203	Dunellen Borough	Middlesex	3	12	0	118

**Municipal Summary, Fair Share Housing Obligations, 2015 (revised July 2015)**

Muni Code	Municipality	County	Region	Present Need, 2010 (units)	Prior Round Obligation, 1987-1999 (units)	Third Round Net Prospective Need, 1999-2025 (units, after 20% and 1,000 unit caps*)
1204	East Brunswick Township	Middlesex	3	75	648	1000
1205	Edison Township	Middlesex	3	421	965	1000
1206	Helmetta Borough	Middlesex	3	6	26	119
1207	Highland Park Borough	Middlesex	3	55	0	359
1208	Jamesburg Borough	Middlesex	3	18	8	58
1210	Metuchen Borough	Middlesex	3	40	99	582
1211	Middlesex Borough	Middlesex	3	64	105	311
1212	Milltown Borough	Middlesex	3	30	64	220
1213	Monroe Township	Middlesex	3	104	554	1000
1214	New Brunswick City	Middlesex	3	1322	0	0
1215	North Brunswick Township	Middlesex	3	197	395	1000
1209	Old Bridge Township	Middlesex	3	127	439	1000
1216	Perth Amboy City	Middlesex	3	731	0	0
1217	Piscataway Township	Middlesex	3	314	736	1000
1218	Plainsboro Township	Middlesex	3	0	205	1000
1219	Sayreville Borough	Middlesex	3	67	261	1000
1220	South Amboy City	Middlesex	3	41	0	219
1221	South Brunswick Township	Middlesex	3	117	841	1000
1222	South Plainfield Borough	Middlesex	3	48	379	896
1223	South River Borough	Middlesex	3	96	0	171
1224	Spotswood Borough	Middlesex	3	0	48	178
1225	Woodbridge Township	Middlesex	3	381	955	1000
1801	Bedminster Township	Somerset	3	0	154	557
1802	Bernards Township	Somerset	3	36	508	1000
1803	Bernardsville Borough	Somerset	3	0	127	470
1804	Bound Brook Borough	Somerset	3	96	0	0
1805	Branchburg Township	Somerset	3	7	302	1000
1806	Bridgewater Township	Somerset	3	229	713	1000
1807	Far Hills Borough	Somerset	3	3	38	73
1808	Franklin Township	Somerset	3	171	766	1000
1809	Green Brook Township	Somerset	3	9	151	454
1810	Hillsborough Township	Somerset	3	50	461	1000
1811	Manville Borough	Somerset	3	161	0	82
1812	Millstone Borough	Somerset	3	0	21	32
1813	Montgomery Township	Somerset	3	71	307	1000
1814	North Plainfield Borough	Somerset	3	368	0	137
1815	Peapack-Gladstone Borough	Somerset	3	0	82	188
1816	Raritan Borough	Somerset	3	39	82	466
1817	Rocky Hill Borough	Somerset	3	2	25	46
1818	Somerville Borough	Somerset	3	127	153	306
1819	South Bound Brook Borough	Somerset	3	79	0	58
1820	Warren Township	Somerset	3	68	543	993
1821	Watchung Borough	Somerset	3	16	206	440
1101	East Windsor Township	Mercer	4	62	367	964
1102	Ewing Township	Mercer	4	140	481	487
1103	Hamilton Township	Mercer	4	310	706	745
1104	Hightstown Borough	Mercer	4	38	45	142
1105	Hopewell Borough	Mercer	4	2	29	155
1106	Hopewell Township	Mercer	4	0	520	1000
1107	Lawrence Township	Mercer	4	96	891	1000
1108	Pennington Borough	Mercer	4	50	52	203

**Municipal Summary, Fair Share Housing Obligations, 2015 (revised July 2015)**

Muni Code	Municipality	County	Region	Present Need, 2010 (units)	Prior Round Obligation, 1987-1999 (units)	Third Round Net Prospective Need, 1999-2025 (units, after 20% and 1,000 unit caps*)
1114	Princeton	Mercer	4	149	641	1000
1111	Trenton City	Mercer	4	1015	0	0
1112	Robbinsville Township	Mercer	4	20	293	1000
1113	West Windsor Township	Mercer	4	158	899	1000
1330	Aberdeen Township	Monmouth	4	63	270	611
1301	Allenhurst Borough	Monmouth	4	4	50	46
1302	Allentown Borough	Monmouth	4	10	28	138
1303	Asbury Park City	Monmouth	4	300	0	0
1304	Atlantic Highlands Borough	Monmouth	4	61	86	209
1305	Avon-by-the-Sea Borough	Monmouth	4	9	20	173
1306	Belmar Borough	Monmouth	4	31	59	247
1307	Bradley Beach Borough	Monmouth	4	41	20	110
1308	Brielle Borough	Monmouth	4	30	159	369
1309	Colts Neck Township	Monmouth	4	5	218	549
1310	Deal Borough	Monmouth	4	0	54	76
1311	Eatontown Borough	Monmouth	4	71	504	834
1312	Englishtown Borough	Monmouth	4	36	65	139
1313	Fair Haven Borough	Monmouth	4	0	135	391
1314	Farmingdale Borough	Monmouth	4	3	19	48
1315	Freehold Borough	Monmouth	4	219	188	210
1316	Freehold Township	Monmouth	4	100	1036	1000
1339	Hazlet Township	Monmouth	4	20	407	713
1317	Highlands Borough	Monmouth	4	41	20	133
1318	Holmdel Township	Monmouth	4	38	768	575
1319	Howell Township	Monmouth	4	112	955	1000
1320	Interlaken Borough	Monmouth	4	2	40	74
1321	Keansburg Borough	Monmouth	4	91	0	117
1322	Keyport Borough	Monmouth	4	30	1	172
1323	Little Silver Borough	Monmouth	4	7	197	401
1324	Loch Arbour Village	Monmouth	4	0	31	19
1325	Long Branch City	Monmouth	4	493	0	0
1326	Manalapan Township	Monmouth	4	124	706	1000
1327	Manasquan Borough	Monmouth	4	10	149	449
1328	Marlboro Township	Monmouth	4	113	1019	1000
1329	Matawan Borough	Monmouth	4	65	141	282
1331	Middletown Township	Monmouth	4	161	1561	1000
1332	Millstone Township	Monmouth	4	27	81	447
1333	Monmouth Beach Borough	Monmouth	4	0	70	185
1335	Neptune City Borough	Monmouth	4	0	33	158
1334	Neptune Township	Monmouth	4	123	0	202
1337	Ocean Township	Monmouth	4	100	873	773
1338	Oceanport Borough	Monmouth	4	0	149	260
1340	Red Bank Borough	Monmouth	4	102	427	528
1341	Roosevelt Borough	Monmouth	4	3	29	57
1342	Rumson Borough	Monmouth	4	11	268	485
1343	Sea Bright Borough	Monmouth	4	8	37	151
1344	Sea Girt Borough	Monmouth	4	0	115	159
1345	Shrewsbury Borough	Monmouth	4	17	277	293
1346	Shrewsbury Township	Monmouth	4	25	12	64
1347	South Belmar Borough	Monmouth	4	8	30	109
1348	Spring Lake Borough	Monmouth	4	16	132	251

**Municipal Summary, Fair Share Housing Obligations, 2015 (revised July 2015)**

Muni Code	Municipality	County	Region	Present Need, 2010 (units)	Prior Round Obligation, 1987-1999 (units)	Third Round Net Prospective Need, 1999-2025 (units, after 20% and 1,000 unit caps*)
1349	Spring Lake Heights Borough	Monmouth	4	11	76	243
1336	Tinton Falls Borough	Monmouth	4	113	622	1000
1350	Union Beach Borough	Monmouth	4	70	83	194
1351	Upper Freehold Township	Monmouth	4	52	43	334
1352	Wall Township	Monmouth	4	142	1073	1000
1353	West Long Branch Borough	Monmouth	4	0	219	159
1501	Barnegat Light Borough	Ocean	4	6	84	56
1533	Barnegat Township	Ocean	4	0	329	932
1502	Bay Head Borough	Ocean	4	6	65	97
1503	Beach Haven Borough	Ocean	4	0	70	122
1504	Beachwood Borough	Ocean	4	33	123	269
1505	Berkeley Township	Ocean	4	94	610	0
1506	Brick Township	Ocean	4	189	930	1000
1507	Toms River Township	Ocean	4	243	2233	1000
1508	Eagleswood Township	Ocean	4	0	36	79
1509	Harvey Cedars Borough	Ocean	4	7	37	56
1510	Island Heights Borough	Ocean	4	2	31	125
1511	Jackson Township	Ocean	4	105	1247	1000
1512	Lacey Township	Ocean	4	54	580	969
1513	Lakehurst Borough	Ocean	4	16	66	72
1514	Lakewood Township	Ocean	4	534	0	0
1515	Lavallette Borough	Ocean	4	0	82	221
1516	Little Egg Harbor Township	Ocean	4	124	194	1000
1517	Long Beach Township	Ocean	4	23	41	326
1518	Manchester Township	Ocean	4	120	370	1000
1519	Mantoloking Borough	Ocean	4	0	59	46
1521	Ocean Gate Borough	Ocean	4	10	12	59
1520	Ocean Township	Ocean	4	9	236	460
1522	Pine Beach Borough	Ocean	4	0	41	129
1523	Plumsted Township	Ocean	4	21	47	247
1525	Point Pleasant Beach Borough	Ocean	4	55	167	411
1524	Point Pleasant Borough	Ocean	4	26	343	736
1526	Seaside Heights Borough	Ocean	4	95	0	154
1527	Seaside Park Borough	Ocean	4	3	52	148
1528	Ship Bottom Borough	Ocean	4	0	71	113
1529	South Toms River Borough	Ocean	4	47	51	57
1530	Stafford Township	Ocean	4	94	555	1000
1531	Surf City Borough	Ocean	4	0	49	174
1532	Tuckerton Borough	Ocean	4	81	69	149
0301	Bass River Township	Burlington	5	4	15	56
0302	Beverly City	Burlington	5	3	18	35
0303	Bordentown City	Burlington	5	25	33	148
0304	Bordentown Township	Burlington	5	5	211	736
0305	Burlington City	Burlington	5	36	89	184
0306	Burlington Township	Burlington	5	74	445	1000
0307	Chesterfield Township	Burlington	5	19	55	262
0308	Cinnaminson Township	Burlington	5	10	331	159
0309	Delanco Township	Burlington	5	23	61	187
0310	Delran Township	Burlington	5	71	208	541
0311	Eastampton Township	Burlington	5	0	49	181
0312	Edgewater Park Township	Burlington	5	49	30	200

**Municipal Summary, Fair Share Housing Obligations, 2015 (revised July 2015)**

Muni Code	Municipality	County	Region	Present Need, 2010 (units)	Prior Round Obligation, 1987-1999 (units)	Third Round Net Prospective Need, 1999-2025 (units, after 20% and 1,000 unit caps*)
0313	Evesham Township	Burlington	5	89	534	1000
0314	Fieldsboro Borough	Burlington	5	0	19	35
0315	Florence Township	Burlington	5	96	114	540
0316	Hainesport Township	Burlington	5	0	150	370
0317	Lumberton Township	Burlington	5	13	152	397
0318	Mansfield Township	Burlington	5	0	114	600
0319	Maple Shade Borough	Burlington	5	10	0	467
0321	Medford Lakes Borough	Burlington	5	0	60	188
0320	Medford Township	Burlington	5	25	418	805
0322	Moorestown Township	Burlington	5	40	621	1000
0323	Mount Holly Township	Burlington	5	77	0	0
0324	Mount Laurel Township	Burlington	5	86	815	1000
0325	New Hanover Township	Burlington	5	0	4	120
0326	North Hanover Township	Burlington	5	0	1	192
0327	Palmyra Borough	Burlington	5	4	39	165
0328	Pemberton Borough	Burlington	5	0	9	72
0329	Pemberton Township	Burlington	5	10	0	0
0330	Riverside Township	Burlington	5	23	6	75
0331	Riverton Borough	Burlington	5	0	15	152
0332	Shamong Township	Burlington	5	23	84	259
0333	Southampton Township	Burlington	5	30	85	0
0334	Springfield Township	Burlington	5	0	54	118
0335	Tabernacle Township	Burlington	5	0	106	311
0336	Washington Township	Burlington	5	0	11	60
0337	Westampton Township	Burlington	5	32	221	613
0338	Willingboro Township	Burlington	5	78	268	232
0339	Woodland Township	Burlington	5	2	19	98
0340	Wrightstown Borough	Burlington	5	3	10	9
0401	Audubon Borough	Camden	5	37	0	222
0402	Audubon Park Borough	Camden	5	3	4	12
0403	Barrington Borough	Camden	5	7	8	257
0404	Bellmawr Borough	Camden	5	36	107	0
0405	Berlin Borough	Camden	5	40	154	328
0406	Berlin Township	Camden	5	14	109	392
0407	Brooklawn Borough	Camden	5	9	23	0
0408	Camden City	Camden	5	772	0	0
0409	Cherry Hill Township	Camden	5	367	1829	1000
0410	Chesilhurst Borough	Camden	5	0	28	115
0411	Clementon Borough	Camden	5	72	19	0
0412	Collingswood Borough	Camden	5	106	0	271
0413	Gibbsboro Borough	Camden	5	14	112	159
0414	Gloucester City City	Camden	5	67	0	0
0415	Gloucester Township	Camden	5	146	359	1000
0418	Haddon Heights Borough	Camden	5	0	23	246
0416	Haddon Township	Camden	5	34	35	304
0417	Haddonfield Borough	Camden	5	10	192	501
0419	Hi-nella Borough	Camden	5	16	0	9
0420	Laurel Springs Borough	Camden	5	3	17	125
0421	Lawnside Borough	Camden	5	2	33	67
0422	Lindenwold Borough	Camden	5	113	0	0
0423	Magnolia Borough	Camden	5	0	22	23

**Municipal Summary, Fair Share Housing Obligations, 2015 (revised July 2015)**

Muni Code	Municipality	County	Region	Present Need, 2010 (units)	Prior Round Obligation, 1987-1999 (units)	Third Round Net Prospective Need, 1999-2025 (units, after 20% and 1,000 unit caps*)
0424	Merchantville Borough	Camden	5	7	0	71
0425	Mount Ephraim Borough	Camden	5	2	33	118
0426	Oaklyn Borough	Camden	5	13	1	88
0427	Pennsauken Township	Camden	5	200	0	0
0428	Pine Hill Borough	Camden	5	19	22	0
0429	Pine Valley Borough	Camden	5	0	47	1
0430	Runnemede Borough	Camden	5	15	40	0
0431	Somerdales Borough	Camden	5	3	95	0
0432	Stratford Borough	Camden	5	24	70	130
0433	Tavistock Borough	Camden	5	0	80	1
0434	Voorhees Township	Camden	5	247	456	218
0435	Waterford Township	Camden	5	0	102	292
0436	Winslow Township	Camden	5	63	377	1000
0437	Woodlynne Borough	Camden	5	8	0	18
0801	Clayton Borough	Gloucester	5	44	94	249
0802	Deptford Township	Gloucester	5	92	522	1000
0803	East Greenwich Township	Gloucester	5	60	252	672
0804	Elk Township	Gloucester	5	7	127	296
0805	Franklin Township	Gloucester	5	87	166	1000
0806	Glassboro Borough	Gloucester	5	18	0	440
0807	Greenwich Township	Gloucester	5	0	308	284
0808	Harrison Township	Gloucester	5	0	198	780
0809	Logan Township	Gloucester	5	19	455	443
0810	Mantua Township	Gloucester	5	44	292	962
0811	Monroe Township	Gloucester	5	62	439	976
0812	National Park Borough	Gloucester	5	8	28	34
0813	Newfield Borough	Gloucester	5	5	14	50
0814	Paulsboro Borough	Gloucester	5	43	0	65
0815	Pitman Borough	Gloucester	5	40	40	184
0816	South Harrison Township	Gloucester	5	0	31	194
0817	Swedesboro Borough	Gloucester	5	15	23	131
0818	Washington Township	Gloucester	5	141	507	1000
0819	Wenonah Borough	Gloucester	5	0	30	155
0820	West Deptford Township	Gloucester	5	34	368	1000
0821	Westville Borough	Gloucester	5	36	27	0
0822	Woodbury City	Gloucester	5	36	0	240
0823	Woodbury Heights Borough	Gloucester	5	0	55	177
0824	Woolwich Township	Gloucester	5	0	209	713
0101	Absecon City	Atlantic	6	61	144	239
0102	Atlantic City City	Atlantic	6	525	2458	1000
0103	Brigantine City	Atlantic	6	48	124	560
0104	Buena Borough	Atlantic	6	9	41	86
0105	Buena Vista Township	Atlantic	6	73	19	0
0106	Corbin City	Atlantic	6	2	13	47
0107	Egg Harbor City	Atlantic	6	27	42	0
0108	Egg Harbor Township	Atlantic	6	186	763	1000
0109	Estell Manor City	Atlantic	6	0	21	88
0110	Folsom Borough	Atlantic	6	5	20	70
0111	Galloway Township	Atlantic	6	94	328	1000
0112	Hamilton Township	Atlantic	6	120	349	0
0113	Hammonton Township	Atlantic	6	184	257	285



**Municipal Summary, Fair Share Housing Obligations, 2015 (revised July 2015)**

Muni Code	Municipality	County	Region	Present Need, 2010 (units)	Prior Round Obligation, 1987-1999 (units)	Third Round Net Prospective Need, 1999-2025 (units, after 20% and 1,000 unit caps*)
0114	Linwood City	Atlantic	6	46	140	308
0115	Longport Borough	Atlantic	6	0	59	111
0116	Margate City	Atlantic	6	17	96	645
0117	Mullica Township	Atlantic	6	0	40	164
0118	Northfield City	Atlantic	6	4	190	338
0119	Pleasantville City	Atlantic	6	201	0	0
0120	Port Republic City	Atlantic	6	0	19	73
0121	Somers Point City	Atlantic	6	6	103	294
0122	Ventnor City	Atlantic	6	69	27	58
0123	Weymouth Township	Atlantic	6	7	15	57
0501	Avalon Borough	Cape May	6	0	234	225
0502	Cape May City	Cape May	6	9	58	354
0503	Cape May Point Borough	Cape May	6	0	34	22
0504	Dennis Township	Cape May	6	48	220	333
0505	Lower Township	Cape May	6	71	324	143
0506	Middle Township	Cape May	6	86	454	422
0507	North Wildwood City	Cape May	6	37	80	425
0508	Ocean City City	Cape May	6	76	411	1000
0509	Sea Isle City	Cape May	6	2	109	241
0510	Stone Harbor Borough	Cape May	6	2	141	101
0511	Upper Township	Cape May	6	20	317	553
0512	West Cape May Borough	Cape May	6	2	7	64
0513	West Wildwood Borough	Cape May	6	3	33	58
0514	Wildwood City	Cape May	6	79	113	521
0515	Wildwood Crest Borough	Cape May	6	0	42	346
0516	Woodbine Borough	Cape May	6	3	88	158
0601	Bridgeton City	Cumberland	6	300	0	0
0602	Commercial Township	Cumberland	6	0	45	0
0603	Deerfield Township	Cumberland	6	0	41	141
0604	Downe Township	Cumberland	6	5	10	0
0605	Fairfield Township	Cumberland	6	12	79	362
0606	Greenwich Township	Cumberland	6	12	13	78
0607	Hopewell Township	Cumberland	6	0	114	344
0608	Lawrence Township	Cumberland	6	33	10	0
0609	Maurice River Township	Cumberland	6	0	22	164
0610	Millville City	Cumberland	6	141	0	1000
0611	Shiloh Borough	Cumberland	6	1	7	46
0612	Stow Creek Township	Cumberland	6	0	14	76
0613	Upper Deerfield Township	Cumberland	6	7	242	589
0614	Vineland City	Cumberland	6	319	0	0
1701	Alloway Township	Salem	6	4	17	138
1713	Carneys Point Township	Salem	6	61	184	420
1702	Elmer Borough	Salem	6	0	12	73
1703	Elsinboro Township	Salem	6	13	26	88
1704	Lower Alloways Creek Township	Salem	6	4	26	81
1705	Mannington Township	Salem	6	3	19	100
1706	Oldmans Township	Salem	6	3	183	158
1707	Penns Grove Borough	Salem	6	76	4	0
1708	Pennsville Township	Salem	6	56	228	551
1709	Pilesgrove Township	Salem	6	37	35	214
1710	Pittsgrove Township	Salem	6	0	58	14

**Municipal Summary, Fair Share Housing Obligations, 2015 (revised July 2015)**

Muni Code	Municipality	County	Region	Present Need, 2010 (units)	Prior Round Obligation, 1987-1999 (units)	Third Round Net Prospective Need, 1999-2025 (units, after 20% and 1,000 unit caps*)
1711	Quinton Township	Salem	6	7	15	72
1712	Salem City	Salem	6	33	0	0
1714	Upper Pittsgrove Township	Salem	6	9	27	131
1715	Woodstown Borough	Salem	6	0	8	85
<b>TOTALS</b>				<b>62,057</b>	<b>85,875</b>	<b>201,643</b>

**NOTE:**

\*1,000 unit cap subject to statute, N.J.S.A. 52:27D-307(e), and analysis of existing credits

**SOURCE:**

For the data, calculations, and allocations that are the sources of this summary, see the multi-tab Excel-based model:

**NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025  
CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, JULY 2015**

Date: 7/15/15

**Prepared by:**

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EXHIBIT C

TOTAL NEW SUPPORTIVE AND SPECIAL NEEDS UNITS BUILT IN NEW JERSEY AND COUNTED BY NJ COAH, 1980-2014		
	units*	% of Total Units Built
Boarding Homes (A through E)	603	8%
Congregate Living Arrangements	116	1%
Group Homes	4,432	56%
Other	131	2%
Permanent Supportive Housing (units)	516	7%
Residential Health Care Facility	992	13%
Supportive Shared Living Housing (bedrooms)	466	6%
Transitional /facility for Homeless	592	8%
<b>Total**</b>	<b>7,848</b>	<b>100%</b>

Source: Data recorded by municipalities in an electronic tracking and monitoring system and reported to NJ DCA, by email from NJ DCA, Local Planning Services (Keith Henderson, AICP, PP), February 27, 2015

Notes:  
 \*93.4% of the supportive and special needs housing "units" are bedrooms, counted as a "unit" under COAH rules  
 \*\*Data as of January 9, 2015  
 Prepared by David N. Kinsey, FAICP, NJPP, Kinsey & Hand Planning, Princeton, NJ 08540, March 4, 2015

EXHIBIT D

New Jersey Households by Housing Tenure, 2008-2012			
	Owner	Renter	Total
Total Households	2,108,165	1,078,710	3,186,875
% of Total Households	66%	34%	
Total Low and Moderate Income Households (<80% HAMFI*)	540,455	660,475	1,200,930
% of Total Low and Moderate Income Households	45%	55%	

Note: median income is HUD Adjusted Median Family Income

Source of data:  
 2008-2012 ACS, HUD CHAS data, [http://www.huduser.gov/portal/datasets/cp/CHAS/data\\_querytool\\_chas.html](http://www.huduser.gov/portal/datasets/cp/CHAS/data_querytool_chas.html), <accessed September 21, 2015>  
 Prepared by: David N. Kinsey, PhD, FAICP, PP, October 2, 2015

