CHAPTER 93

SUBSTANTIVE RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD BEGINNING JUNE 6, 1994

Authority

N.J.S.A. 52:27D–301 et seq., specifically 52:27D–307.

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R.1994 d.290, effective June 6, 1994.
See: 25 N.J.R. 5763(a), 26 N.J.R. 2300(a).

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Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period beginning June 6, 1994, expires on June 6, 1999.

Law Review and Journal Commentaries

Ruling Could Trigger New *Mount Laurel* Skirmishes. Ann Snider, 146 N.J.L.J. No. 6, 477 (1996).

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SUBCHAPTER 1. GENERAL PROVISIONS

5:93–1.1 Short title; purpose; scope

(a) The provisions of this chapter shall be known as the "Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994."

(b) The purpose of this chapter will be the provision of criteria to be used by municipalities in addressing their constitutional obligation to provide a fair share of affordable housing for moderate and low income households.

(c) All municipalities within the jurisdiction of the Council are subject to evaluation, in accordance with the provisions of this chapter, for the period beginning on June 6, 1994.

5:93–1.2 Severability clause

If any part of this chapter shall be held invalid, the holding shall not affect the validity of remaining parts of these rules. If a part of these rules is held invalid in one or more of their applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

5:93–1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Accessory apartment" means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters, and a private entrance, which is created within an existing home, or through the conversion of an existing attached accessory structure on the same site, or by an addition to an existing home or accessory building.

"Act" means the Fair Housing Act of 1985, P.L. 1985, c.222 (N.J.S.A. 52:27D–301 et seq.).

"Active recreation" means leisure time activities usually of a more formal nature and performed with others, often requiring equipment and taking place at prescribed places, sites or fields. Active recreation sites include swimming areas; playgrounds; tot lots; play fields; and tennis and other court game facilities. Active recreation shall not include areas designated for bike riding, hiking, walking and picnicking.

"Adjustment" means a modification and/or deferral of the municipal low and moderate income housing obligation, pursuant to N.J.S.A. 52:27D–307(c)(2) and N.J.A.C. 5:93–4.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c.530 (N.J.S.A. 55:14K–1 et seq.).

"Affordable" means a sales price or rent within the means of a low or moderate income household as defined in N.J.A.C. 5:93–7.4.

"Alternative living arrangement" means a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangement includes, but is not limited to: transitional facilities for the homeless, Class A, B, C, D, and E boarding homes as regulated by the New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

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

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

"Calculated need" means the low and moderate income housing obligation resulting from the procedures in N.J.A.C. 5:93–2. It is the result of subtracting adjustments, reductions, credits, bonuses, prior cycle credits and the 20 percent cap from the precredited need. To the extent that the Council has knowledge of prior cycle credits and eligible reductions, these credits and reductions have been applied to the municipal housing obligation.

"Census subregion" means a geographic subdivision of the State as determined by the United States Bureau of the Census.

"Center" means a compact form of development with a core or node (focus of residential, commercial and service development) and a community development area that ranges in scale from an urban center to a regional center, town, village, and hamlet. This definition is in accord with and derived from the State Development and Redevelopment Plan.

"Certified household" means a household determined to be income eligible for a low or a moderate income housing unit by a municipal authority after the authority has verified the household's gross annual income, credit history and compared the household's family size to the occupancy requirements delineated in N.J.A.C. 5:93–9.1(b)14.

"Community capacity" means an estimate based on 20 percent of a municipality's existing 1993 housing stock, pursuant to N.J.A.C. 5:93–2.17.

"Conversion" means the conversion of existing commercial, industrial or residential structures for low and moderate income housing purposes.

"Council" means the New Jersey Council on Affordable Housing established under the Act and which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in the State.

"DCA" means the New Jersey Department of Community Affairs.

"DEP" means the New Jersey Department of Environmental Protection.

"Developable site" means a site that has access to appropriate water and sewer infrastructure, and has received water consistency approvals from the DEP or its designated agent authorized by law to issue such approvals.

"Development fees" means money paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in N.J.A.C. 5:93–8.

"DOT" means the New Jersey Department of Transportation.

"Durational adjustment" means a deferral of the municipal low and moderate income housing obligation based on the lack of infrastructure pursuant to N.J.S.A. 52:27D–307(c)(2) and N.J.A.C. 5:93–4.

"Elder cottage housing opportunities (ECHO) units" means modular, self-contained units erected on sites containing an existing dwelling. ECHO units are restricted to senior citizens and/or the disabled and are moved to another site when the unit is vacated.

"Environ" means that area of a municipality outside the development boundaries of a center. This definition is in accord with and derived from the State Development and Redevelopment Plan.

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

"Exempt sales" means and shall include the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary; and the transfer of ownership by court order.

"Fair market value" means the unrestricted price of a low or moderate income housing unit if sold at a current real estate market rate.

"Fair Share Plan" means that plan or proposal, which is in a form that may readily be converted into an ordinance, by which a municipality proposed to satisfy its obligation to create a realistic opportunity to meet its fair share of low and moderate income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low and moderate income housing, as provided in sections 9 and 14 of the Act, addresses the development regulations necessary to implement the housing element, and addresses the requirements of N.J.A.C. 5:93–7 through 11.

"Gross density" means the total number of dwelling units existing or permitted on a housing site divided by the total area of the tract. The result is expressed as dwelling units per acre.

"Gut rehabilitation" means the rehabilitation of vacant residential units or buildings where the cost exceeds 50 percent of the physical value of the unit or structure as determined in accordance with per square foot construction cost guides such as those published by W.S. Means and Company, and F.W. Dodge Company, or where the electrical, plumbing and heating systems of the unit or structure have been totally replaced.

"Head of household" means a person under whose name a housing unit is owned or rented.

"Household" means the person or persons occupying a housing unit.

"Housing element" means that portion of a municipality's master plan consisting of reports, statements, proposals, maps, diagrams and text designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low and moderate income housing and which contains at least those items identified in section 10 of the Act.

"Housing market area" means the geographic region from which it is likely that buyers or renters would be drawn for inclusionary development. The housing market area is the "housing region" as determined by the Council, in which an inclusionary development is located.

"Housing Region" means a geographic area, determined by the Council, of no less than two nor more than four contiguous, whole counties, which exhibit significant social, economic and income similarities and which constitute, to the greatest extent practicable, the Primary Metropolitan Statistical Areas (PMSA) as last defined by the United States Census Bureau.

"Inclusionary component" means the result of subtracting the rehabilitation component, credits (granted pursuant to N.J.A.C. 5:93–3), the impact of the 20 percent cap (pursuant to N.J.A.C. 5:93–2.16) and the impact of the 1,000 unit limitation (pursuant to N.J.A.C. 5:93–14) from the precredited need, provided the result shall not be less than zero. For a municipality that receives a vacant land adjustment pursuant to N.J.A.C. 5:93–4, the inclusionary component shall be initially synonymous with the realistic development potential.

"Inclusionary development" means a development containing low and moderate income units. This term includes, but is not necessarily limited to, new construction, the conversion of a non-residential structure to a residential structure and the creation of new low and moderate income units through the gut rehabilitation of a vacant residential structure.

"Indigenous need" means deficient housing units occupied by low and moderate income households within a municipality and is a component of present need. Municipal indigenous need, as a percentage of the total 1993 occupied housing stock, shall not exceed the percentage derived from dividing the deficient housing units occupied by low and moderate income households by the total 1993 occupied housing stock for the housing region in which the municipality is located.

"Initial occupancy" means the period beginning with the date on which the developer is granted permission by the local government to begin occupancy and ending on the date 95 percent occupancy is attained.

"Inventory" means that calculation undertaken by a municipality in accordance with the Fair Housing Act, N.J.S.A. 52:27D–329, in developing its housing element which accounts for its housing stock by age, condition, purchase or rental value, occupancy characteristics and type, including the number of units affordable to low and moderate income households in substandard housing capable of being rehabilitated, as provided for in section 10a of the Act.

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

"Landsat" means a satellite that maps land cover by interpreting spectral information reflected from the earth's surface.

"Low income housing" means housing affordable according to Federal Department of Housing and Urban Development or the standards included in this chapter for home ownership and rental costs, occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located, and which is subject to affordability controls promulgated by the Council.

"Low income tax credit" means an income tax credit granted for investing in a Federal program designed to produce low and moderate income rental units.

"Market rate units" means housing within an inclusionary development, not restricted to low and moderate income households, that may sell at any price determined by a willing seller and a willing buyer.

"Median aggregate household income above the floor" means the result of multiplying the number of households in the municipality as of 1990 by the 1989 municipal median household income above the floor.

"Median household income above the floor" means the result of subtracting the regional household floor income from the 1989 median municipal household income.

"Minority" means an individual who is a member of one of the following racial or ethnic groups:

1. Black: An individual having origins in any of the black racial groups of Africa, but not of Hispanic origin;

2. American Indian or Alaskan Native: An individual having origins in any of the original people of North America, and who maintains cultural identification through tribal affiliation or community recognition;

3. Hispanic: An individual of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race; or

4. Asian or Pacific Islander: An individual having origin in any of the original peoples of the Far East, southeast Asia, and the Indian subcontinent or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands and Samoa.

"Moderate income housing" means housing affordable according to Federal Department of Housing and Urban Development or the standards in this chapter for home ownership and rental costs, occupied or reserved for occupancy by households with a gross household income in excess of 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located, and which is subject to the Council affordability controls in this chapter.

"Multifamily unit" means a structure containing five or more dwelling units.

"Municipal estimated land capacity" means an estimate based on Landsat data, tax data and assumptions pertaining to density and set-asides used in developing the undeveloped land cap pursuant to N.J.A.C. 5:93–2.16 and assumptions pertaining to density and set-asides.

"Municipal need for new construction" means a calculation used to determine the 20 percent cap pursuant to N.J.A.C. 5:93–2.16.

"Municipal present need" means the sum of indigenous need and the municipal share of reallocated present need.

"Net density" means the total number of dwelling units within a designated portion of a tract divided by the total land area of the designated portion of the tract, including the open-space, roadways, parking areas and common facilities devoted exclusively to that portion of the tract. The result is expressed as dwelling units per acre.

"Non-conforming use" means a use or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

"Open-space" means any parcel or area of water or land essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space; provided that such areas may be improved with only those buildings, structures, streets and offstreet parking and other improvements that are designed to be incidental to the natural openness of the land.

"Overlay zone" means a zoned area of a municipality in which low and moderate income housing may be built as a matter of right in addition to another use. In approving such a zone, the Council may allow the existing use to continue and expand as a conforming use, but provide that when the prior use on the site is changed, the site shall produce low and moderate income housing or a development fee.

"Petition for Substantive Certification" means that petition which a municipality files, or is deemed to have filed, which engages the Council's mediation and review process.

"Planning area" means an area defined by a set of common criteria which focus on the degree and type of development or natural resources. Planning areas serve as organizing mechanisms for growth and development planning throughout the State. This definition is in accord with and derived from the State Development and Redevelopment Plan.

"Pre-credited need" means the municipal low and moderate income housing obligation resulting from subtracting filtering, residential conversion and spontaneous rehabilitation from the sum of indigenous need, reallocated present need, prior cycle prospective, prospective need and demolitions.

"Present need" means the sum of indigenous need and reallocated present need as determined by N.J.A.C. 5:93–2.5.

"Price differential" means the difference between the controlled unit sale price and the fair market value as determined at the date of a proposed contract of sale, after reasonable real estate broker fees have been paid.

"Priority" means a system of selecting applicants.

"Prior cycle credits" means credits granted by the Council for low and moderate income units constructed after April 1, 1980 as part of granting substantive certification for the 1987–1993 housing obligation. Prior cycle credits may be requested for eligible units, except for rehabilitated units, constructed between April 1, 1980 and December 15, 1986 in petitioning to address the 1987–1999 obligation.

"Prior cycle fair share" means the responsibility for low and moderate income housing established by the Council when the Council granted substantive certification for the 1987–1993 housing obligation.

"Prior cycle prospective need" means that portion of the 1987–1993 prospective need included in the 1987–1999 low and moderate income housing need calculations.

"Prospective need" means a projection of low and moderate housing needs based on development and growth which is reasonably likely to occur in a region or a municipality. See N.J.S.A 52:27D–304(j).

"Qualified non-profit" means an organization granted non-profit status in accordance with section 501(c)(3) of the Internal Revenue Service code.

"RCA recipient certification" means the determination of the Council that a receiving municipality in an RCA has met the criteria in N.J.A.C. 5:91–11.4 in at least one of four housing categories established in N.J.A.C. 5:91–11.4(b).

"Realistic development potential" (RDP) means the municipal obligation as calculated pursuant to N.J.A.C. 5:93–4.2 (f).

"Reallocated present need" means that portion of a housing region's present need that is redistributed throughout the housing region.

"Receiving municipality" means, for purposes of an RCA, a municipality which agrees to assume a portion of another municipality's fair share obligation.

"Reduction" means a one for one deduction of precredited need based on a fair share plan to construct low and moderate income units, transfer low and moderate income units via a regional contribution agreement and/or zone for low and moderate income housing that implements a housing element that has been certified by the Council or the Superior Court. A reduction also includes bonus rental credits.

"Regional aggregate weighted median household income above the floor" means the result of adding the median aggregate household income above the floor for municipalities in the housing region.

"Regional contribution agreement" (RCA) means the transfer pursuant to N.J.S.A. 52:27D–312 of up to 50 percent of a municipality's fair share obligation to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter.

"Regional household floor income" means 100 dollars less than the lowest municipal median household income in the housing region.

"Regional median household income above the floor" means the result of adding the median household income above the floor for each municipality in the housing region.

"Rehabilitated unit" means a previously deficient housing unit which has undergone significant renovation to meet municipal or other applicable housing code standards as further described in N.J.A.C. 5:93–5.2(b).

"Rehabilitation component" means the result of subtracting spontaneous rehabilitation from indigenous need. For a municipality where filtering and conversions exceed reallocated present, prior cycle prospective need, prospective need and demolitions, the rehabilitation component equals calculated need.

"Repayment clause" means the obligation of a seller exercising a repayment option to pay 95 percent of the price differential to a municipality at closing for use in the municipal housing plan.

"Repayment option" means the option of a seller of a low or moderate income unit to sell a unit pursuant to N.J.A.C. 5:93–12.7 at fair market value subject to compliance with the terms of a repayment clause.

"Resolution of Participation" means a resolution adopted by a municipality in which the municipality chooses to prepare a fair share plan and housing element in accordance with the Act.

"Section 8 income limits" means a schedule of income limits that define 50 percent and 80 percent of median income by household size. When used herein, Section 8 income limits shall refer to the "uncapped" schedule as published by the Council, in accordance with its rules.

"Sending municipality" means, for purposes of an RCA, a municipality which transfers a portion of its fair share obligation to another willing municipality.

"Set-aside" means the percentage of housing units devoted to low and moderate income households within an inclusionary development.

"State Development and Redevelopment Plan (SDRP)" means the State plan for development promulgated by the State Planning Commission pursuant to P.L. 1985, c.398 (N.J.S.A. 52:18A–196 et seq.).

"Substandard housing unit" means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes a roof, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems) and/or a load bearing structural system.

"Substantial compliance" means a municipality has actually constructed or issued building permits for at least 70 percent of the new units that were part of the municipal 1987–1993 housing obligation.

"Substantive certification" means a determination by the Council approving a municipality's housing element and fair share plan in accordance with the provisions of the Act and the rules and criteria as set forth in this chapter. A grant of substantive certification shall be valid for a period of six years in accordance with the terms and conditions contained therein, in accordance with N.J.S.A. 52:27D–322.

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

"Surrogate" means a census indicator of deficient housing used in the calculation of present need as defined in N.J.A.C. 5:93–2.

"Survey" means that independent determination of need undertaken by a municipality in preparing its housing element, which is developed and produced in a manner and in such form as is required by this chapter.

"Target group" means identifiable organizations that may aid in attracting low and moderate income households to inclusionary developments. Examples of target groups include: public housing authorities, non-profit organizations, departments of aging, Section 8 programs, religious organizations, urban community action groups and personnel departments of local employers.

"Total need" means the sum of present and prospective need.

"Utility allowance" means those expenses that are in addition to the base rent, such as heat, electricity and cooking fuel that are included in the 30 percent utility allowance as outlined in the lease.

"Vacant land" means undeveloped and unused land area.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).
Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
Amended "Calculated need", "Developable site", "Gut rehabilitation", "Realistic development potential", "Receiving municipality", and "Sending municipality"; deleted "Authority" and "Senior citizen"; inserted "Elder cottage housing opportunities (ECHO) units", "RCA recipient certification", and "Regional contribution agreement".

SUBCHAPTER 2. MUNICIPAL DETERMINATION OF PRESENT AND PROSPECTIVE NEED

5:93–2.1 General provisions

(a) Municipal present need and prospective need shall be calculated by summing municipal indigenous need and the municipal share of the appropriate housing region's reallocated present need and prospective need. The resulting total shall be modified by: prior-cycle prospective need; secondary sources of supply and demand; reduction for 1987–1993 housing activities; prior-cycle credits; and the 20–percent cap (see Appendix A, incorporated herein by reference). The end product of this process is the determination of municipal calculated need. This is the figure municipalities shall address in their housing elements. An example for a hypothetical municipality in the Southwest Region (Region 5)—Johnsonville—is provided to illustrate each of the individual calculations. The following flow diagram summarizes the sequence of calculations en route to the determination of calculated need.

FLOW DIAGRAM FOR THE CALCULATION OF LOW– AND MODERATE–INCOME HOUSING NEED

Using the Johnsonville Example

INDIGENOUS NEED 33	+	REALLOCATED PRESENT NEED 95	=	PRESENT NEED 128			
PRESENT NEED 128	+	PROSPECTIVE NEED 568	=	TOTAL NEED 695			
TOTAL NEED 695	+	PRIOR–CYCLE PROSPECTIVE NEED 248	+	DEMOLITIONS 9			
(–) FILTERING 89	(–)	RESIDENTIAL CONVERSION 16	(–)	SPONTANEOUS REHABILITATION 8	=	PRE–CREDITED NEED 839	
(–) REDUCTION 439	(–)	PRIOR–CYCLE CREDITS 101	(–)	20% CAP 0	=	CALCULATED NEED * 299	

* Prior-cycle vacant land adjustment communities are indicated by "VL" even though their number is calculated. This indicates that although there is not much vacant land left in these communities, the affordable housing number may be met in other ways and is retained as part of overall Calculated Need.

(b) Exhibit 1 in the Technical Appendix A provides municipal-specific base data that may be employed to determine municipal Present and Prospective Need. Data for a hypothetical municipality, "Johnsonville," precedes the municipal base data for illustrative purposes in both Exhibits 1 and 3. Exhibit 2 in Appendix A duplicates the base data for each housing region that is presented in Columns A through L herein. Exhibit 3 is included for the convenience of the user of this guide. It provides a variety of data for each community, often from the 1990 Census, which would otherwise have to be researched in the process of undertaking this calculation.

(c) Selected municipalities receiving State aid (urban aid cities) pursuant to P.L. 1978, c.14 (N.J.S.A. 52:270–178 et seq.) as refined by the criteria in N.J.A.C. 5:93–2.3(b) shall calculate municipal calculated need as per the procedures delineated in N.J.A.C. 5:93–2.17.

5:93–2.2 Indigenous need—1993

(a) Indigenous need in a municipality is actual or capped deficient housing occupied by low- and moderate-income households as further defined in N.J.A.C. 5:93–1.3. Municipal indigenous need shall be determined from the total of deficient housing units occupied by low- and moderate-income households for the U.S. Census subregion in which the municipality is located. The data, derived from a multiple-index approach, are not available at the municipal level. To determine the municipal share of need from the U.S. Census subregion total, it is necessary to employ a single-index approach using surrogates of deficient housing available at both the municipal and U.S. Census subregion level. To calculate municipal indigenous need:

1. Locate the appropriate municipality in Exhibit 1 in Appendix A. Example: Johnsonville in Region 5 (Southwest).

2. Divide Column 2 (municipal single-index need) by Column 3 (subregional single-index need). The resulting percentage yields the municipal share of the U.S. Census subregion's total of deficient housing units occupied by low- and moderate-income households.

Example:

$$\frac{\text{Johnsonville single index need (Column 2)}}{\text{Subregional single index need (Column 3)}} = 410 \div 4544 = .090$$

(Municipal Share of Regional Need)

3. Multiply the result of the quotient obtained in (a)2 above by the number in Column 1 (subregional multiple index need).

Example:

Subregional Multiple Index Need (Column 1)		Municipal Share of Regional Need		
364	×	.090	=	33

This is the count of estimated low- and moderate-income deficient units in a municipality.

4. Column A from Appendix A, Exhibit 2, reproduced below displays the percentage for each housing region that is obtained by dividing the actual deficient housing units occupied by low- and moderate-income households in the region by the estimated total of 1993 occupied housing units in the region.

TABLE 1
(COLUMN A, FROM APPENDIX A, EXHIBIT 2)
1993 REGIONAL AVERAGE PERCENT DEFICIENT HOUSING

Region	Percent Deficient
1. Northeast	.0290
2. Northwest	.0250
3. West Central	.0180
4. East Central	.0120

Region	Percent Deficient
5. Southwest	.0150
6. South–Southwest	.0220

Multiply this percentage by the municipal projection of 1993 occupied housing stock in Exhibit 1, Column 4.

Example:

Johnsonville Total 1993 * Occupied Housing Estimate (Column 4)		Region 5 Percentage of Low– and Moderate–Income Deficiency (Column A)		
12,695	×	.015	=	190

* Estimate as of July 1, 1993

5. Municipal Indigenous Need shall be the smaller number resulting from the calculations in (a)3 and 4 above.

Example: Johnsonville's Indigenous Need = 33.

6. If the calculation in (a)3 above is larger than (a)4 above, the difference between the two shall be distributed throughout the housing region as Reallocated Present Need as per N.J.A.C. 5:93–2.3 and 5:93–2.4. The results of this calculation are displayed for each housing region in Column B.

(b) Municipal indigenous need may also be determined through a survey of the municipality's housing stock as indicated in Appendix C incorporated herein by reference, when such survey is deemed adequate and accepted by the Council for identifying deficient housing units occupied by low- or moderate-income households.

Example: If the municipal housing element and fair share plan that received substantive certification designated 100 units to be constructed in the municipality and another 75 units to be transferred to a receiving municipality via an RCA, the reduction shall be based on the percentage of the 100 units that were to be constructed within the municipality that received substantive certification.

(b) The reduction in (a) above shall only be applied to the inclusionary component of the 1987–1999 calculated need, as determined by the Council. This reduction shall be applied to the remaining inclusionary component after the Council has accepted all other reductions and credits (including any rental bonus).

Example: A municipality has a 1987–1999 precredited need of 200. It had a 1987–1993 inclusionary component of 100. All 100 new units were actually constructed or received building permits within the municipality. The reduction for substantial compliance is 20 percent. The remaining calculated need is 100. However, the rehabilitation component is 20, leaving an inclusionary component of 80. The 20 percent reduction is applied to the 80 remaining new units, leaving an inclusionary component of 64.

New Rule, R.1994 d.563, effective November 7, 1994.
See: 26 N.J.R. 2514(a), 26 N.J.R. 4349(b).
Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).
Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
Substituted "RCA" for "regional contract agreement".

SUBCHAPTER 4. MUNICIPAL ADJUSTMENTS

5:93–4.1 Purpose and background

(a) Subchapters 2 and 3 delineate the criteria for determining the municipal housing obligation. However, there may be instances where a municipality can exhaust an entire resource (land, water or sewer) and still not be able to provide a realistic opportunity for addressing the need for low and moderate income housing as determined by the Council. This subchapter outlines standards and procedures for municipalities to demonstrate that the municipal response to its housing obligation is limited by the lack of land, water or sewer. The procedures in this subchapter shall not be used to reduce or defer the rehabilitation component.

(b) Where a municipality attempts to demonstrate that it does not have the capacity to address the housing obligation calculated by the Council, the municipality shall identify sites that are realistic for inclusionary development in order to calculate the realistic development potential (RDP) of the community, in accordance with N.J.A.C. 5:93–4.2. Where the RDP is less than the, precredited need minus the rehabilitation component the municipality shall provide a response toward the obligation not addressed by the RDP. Examples of such a requirement include, but are not necessarily limited to, a redevelopment ordinance, an ordinance permitting apartments in developed areas of the municipality and a mandatory development fee ordinance.

(c) With the concept of RDP, the Council is recognizing that some sites are more realistic and/or appropriate than others for the location of inclusionary development. For example, some sites may lack infrastructure or be surrounded by incompatible land uses. However, these sites and others have the potential to develop or redevelop over time and, as such development takes place, the Council has determined that such sites shall contribute toward the housing obligation.

(d) A municipality seeking an adjustment due to available land capacity shall base the number of units that may be age restricted and the number of units that may be transferred via an RCA on the calculated need which is the RDP plus the rehabilitation component. If both an RCA and senior units are proposed, then the formula is based on the RDP and does not include the rehabilitation component. The RDP shall equal the calculation pursuant to N.J.A.C. 5:93–4.2 (f). If additional low and moderate income housing opportunities develop pursuant to N.J.A.C. 5:93–4.2(h) (describing the municipal response in addition to the RDP), the municipality may seek a plan amendment, pursuant to N.J.A.C. 5:91–13 to age restrict or transfer more units, based on a demonstrated increased RDP.

Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).

5:93–4.2 Lack of land

(a) Municipalities that request an adjustment due to available land capacity shall submit an existing land use map at an appropriate scale to display the land uses of each parcel within the municipality. Such a map shall display the following land uses: single family, two-to-four family, other multi-family, commercial, industrial, agricultural, parkland, other public uses, semipublic uses and vacant land.

(b) Municipalities that request an adjustment due to available land capacity shall submit an inventory of vacant parcels by lot and block that includes the acreage and owner of each lot.

(c) Municipalities shall exclude from the vacant land inventory:

1. Any land that is owned by a local government entity that, as of January 1, 1997, has adopted, prior to the filing of a petition for substantive certification, a resolution authorizing the execution of an agreement that such land shall be utilized for a public purpose other than housing; and

2. Any vacant contiguous parcels of land in private ownership of a size which would accommodate less than five dwelling units as per the COAH standard in (f) below;

i. In preparing a housing plan, a municipality may designate land in (c)2 above for affordable housing infill purposes, but is not required to do so.

(d) The Council shall review the existing land use map and inventory to determine which sites are most likely to develop for low and moderate income housing. All vacant sites shall initially be presumed to fall into this category. In addition, the Council may determine that other sites, that are devoted to a specific use which involves relatively low-density development would create an opportunity for affordable housing if inclusionary zoning was in place. Such sites include, but are not limited to: golf courses not owned by its members; farms in SDRP planning areas one, two and three; driving ranges; nurseries; and nonconforming uses. The Council may request a letter from the owner of sites that are not vacant indicating the site's availability for inclusionary development.

(e) Municipalities may present documentation that the Council shall use to eliminate a site or part of a site from the inventory of sites described in (d) above. Partial elimination of a site shall not necessarily eliminate an entire site as unsuitable. Municipalities may seek to eliminate sites from the inventory described in (d) using the criteria set forth below. Municipalities shall submit transparent overlays drawn to the same scale as the existing land use map depicting those sites which the municipality maintains are inappropriate for development.

1. Agricultural lands shall be excluded when the development rights to these lands have been purchased or restricted by covenant.

2. Environmentally sensitive lands shall be excluded as follows:

i. Within the areas of the State regulated by the Pinelands Commission, Division of Coastal Resources of the DEP and the Hackensack Meadowlands Development Commission of DCA, the Council shall adhere to the policies delineated in The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50; the Coastal Permit Program Rules, N.J.A.C. 7:7–1; Coastal Resource and Development Rules, N.J.A.C. 7:7E–1; and the Zoning Regulations of the Hackensack Meadowlands District, N.J.A.C. 19:4.

ii. In areas of the State not regulated by the Pinelands Commission, the Division of Coastal Resources and the Hackensack Meadowlands Development Commission, municipalities may exclude as potential sites for low and moderate income housing: inland wetlands as delineated on the New Jersey Freshwater Wetlands Maps, or when unavailable, the U.S. Fish and Wildlife Service National Wetlands Inventory; or as delineated on-site by the U.S. Army Corps of Engineers or DEP, whichever agency has jurisdiction; when on-site delineation is required by the Council; flood hazard areas as defined in N.J.A.C. 7:13; and sites with slopes in excess of 15 percent, as determined from the U.S.G.S. Topographic Quadrangles, which render a site unsuitable for low and moderate income housing. In cases where part of a site is unsuitable for low and moderate income housing because of flood hazard areas or inland wetlands, the Council shall not permit low and moderate income housing to be constructed on that unsuitable part of the site; provided however, that this rule shall not prohibit construction of low and moderate income housing on the remainder of the site. In the case of slopes in excess of 15 percent, a municipality may regulate inclusionary development through a steep slope ordinance, provided the ordinance also regulates non-inclusionary developments in a consistent manner. The Council reserves the right to exclude sites in whole or in part when excessive slopes threaten the viability of an inclusionary development.

iii. Where the Legislature adopts legislation that requires the mapping of other natural resources and provides a mechanism for their regulation, the Council shall include such resources in its criteria and guidelines for municipal adjustment.

3. Historic and architecturally important sites may be included as follows:

i. Municipalities may apply to exempt a buffer area to protect sites listed on the State Register of Historic Places. The Council shall forward such request to the Office of New Jersey Heritage for a recommendation pertaining to the appropriateness and size of a buffer.

ii. Upon receipt of the Office of New Jersey Heritage's recommendation, the Council shall determine if any part of a site should be eliminated from the inventory described in (d) above.

iii. Within historic districts, a municipality may regulate low and moderate income housing to the same extent it regulates all other development.

4. Active recreational lands may be excluded as follows:

i. Municipalities may reserve three percent of their total developed and developable acreage for active municipal recreation and exclude this acreage from consideration as potential sites for low and moderate income housing. However, all sites designated for active recreation must be designated for recreational purposes in the municipal master plan. In determining developable acreage, municipalities shall calculate their total vacant and undeveloped lands and deduct from that total number the lands excluded by the Council's rules regarding historic and architecturally important sites, agricultural lands and environmentally sensitive lands. Municipalities shall also exclude from this calculation of total vacant and undeveloped lands, those owned by nonprofit organizations, counties and the State or Federal government when such lands are precluded from development at the time of substantive certification. Municipalities shall submit appropriate documentation demonstrating that such active recreational lands are precluded from development. Existing active municipal recreation areas shall be subtracted from the three percent calculation of total developed and developable acreage to determine additional land that may be reserved for active municipal recreation.

ii. Sites designated for active recreation must be purchased and limited to active recreational purposes within one year of substantive certification. Sites that are not purchased and limited to active recreational purposes shall, if determined necessary by the Council, be zoned to permit inclusionary development.

5. Conservation, parklands and open space lands may be excluded as follows:

i. Any land designated on a master plan of a municipality as being dedicated or which is dedicated by easement or otherwise for purposes of conservation, parklands or open space and which is owned, leased, licensed or in any other manner operated by a county, municipality or tax-exempt, nonprofit organization including a local board of education or by more than one municipality, by joint agreement pursuant to P.L. 1964, c.185 (N.J.S.A. 40:61–35.1 et seq.), for so long as the entity maintains such ownership, lease, license or operational control of such land.

ii. If less than three percent of the municipality's total land area is designated for conservation, parklands or open space, the municipality may reserve up to three percent of its total land area for such purposes. However, the acquisition of such sites must be initiated by the municipality within one year of substantive certification. Sites that are not purchased and limited to conservation, parklands or open space within that timeframe shall, if determined necessary by the Council, be zoned to permit inclusionary development.

iii. If sites designated for conservation, parklands or open space no longer serve those purposes and subsequently become available for residential or nonresidential development, these sites shall have an affordable housing obligation, if determined necessary by the Council.

6. Individual sites that the Council determines are not suitable for low and moderate income housing may also be eliminated from the inventory described in (d) above.

(f) The Council shall consider sites, or parts thereof, not, specifically eliminated from the inventory described in (d) above, for inclusionary development. The Council shall consider the character of the area surrounding each site and the need to provide housing for low and moderate income households in establishing densities and set-asides for each site, or part thereof, remaining in the inventory. The minimum presumptive density shall be six units per acre and the maximum presumptive set-aside shall be 20 percent. The density and set-aside of each site shall be summed to determine the RDP of each municipality. Example: Low-mod Borough has three suitable sites. The sites are 10 acres, five acres and one acre. The larger sites may accommodate eight units/acre. The one acre site may accommodate six units/acre. All sites are assigned a 20 percent set-aside. The RDP equals 25 low and moderate income units.

10 acres x 8 units/acre x .2 =	16
5 acres x 8 units/acre x .2 =	8
1 acre x 6 units/acre x .2 +	1
	25

A municipality that received an adjustment due to lack of vacant land in addressing its 1987–1993 need obligation shall be presumed to have addressed its RDP, provided the municipality continues to implement the terms of its previous substantive certification.

(g) The municipality may address its RDP through any activity approved by the Council, pursuant to N.J.A.C. 5:93–5. The municipality need not incorporate into its housing element and fair share plan all sites used to calculate the RDP if the municipality can devise an acceptable means of addressing its RDP. The RDP shall not vary with the strategy and implementation techniques employed by the municipality.

(h) If the RDP described in (f) above is less than the precredited need minus the rehabilitation component, the Council shall review the existing municipal land use map for areas that may develop or redevelop. Examples of such areas include, but are not limited to: a private club owned by its members; publicly owned land; downtown mixed use areas; high density residential areas surrounding the downtown; areas with a large aging housing stock appropriate for accessory apartments; and properties that may be subdivided and support additional development. After such an analysis, the Council may require at least any combination of the following in an effort to address the housing obligation:

1. Zoning amendments that permit apartments or accessory apartments;

2. Overlay zoning requiring inclusionary development or the imposition of a development fee consistent with N.J.A.C. 5:93–8; in approving an overlay zone, the Council may allow the existing use to continue and expand as a conforming use, but provide that where the prior use on the site is changed, the site shall produce low and moderate income housing or a development fee; or

3. Zoning amendments that impose a development fee consistent with N.J.A.C. 5:93–8.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).
Amended by R.1996 d.238, effective May 20, 1996.
See: 28 N.J.R. 221(a), 28 N.J.R. 2595(a).
In (d)4 specified "active" recreational lands and in (d)5 provided for exclusion of conservation, parklands and open space lands.
Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
Inserted (c) and renumbered (c) through (g) as (d) through (h).

5:93–4.3 Lack of water and sewer

(a) When a community has sufficient land, but insufficient water and/or sewer to support inclusionary development, the Council shall review each possible site for inclusionary development to determine if it is realistic for the site to receive the required water and/or sewer during the period of substantive certification. The Council shall require sufficient information to determine the site's prospects of receiving infrastructure, and the site's prospects of inclusion in an areawide water quality management plan amendment, developed in accordance with the rules of the DEP. If the site had been zoned for inclusionary development, the Council shall consider how long the site had been zoned and if the developer had filed a development application.

(b) If the Council determines that a site may receive water and/or sewer during the period of substantive certification, it shall require the site to be zoned for inclusionary development, or, if the site had already been zoned for inclusionary development, it shall require the continuation of that zoning. If the Council determines that a site may not receive water and/or sewer during the period of substantive certification, the Council shall not require inclusionary zoning, but may require overlay zoning requiring inclusionary development (if water and sewer become available) and/or the imposition of a development fee consistent with N.J.A.C. 5:93–8.

(c) The lack of adequate capacity, in and of itself, shall constitute a durational adjustment of the municipal housing obligation. The requirement to address the municipal housing obligation shall be deferred until adequate water and/or sewer are made available. In order to provide water and/or sewer on sites the Council determines are realistic for inclusionary development, municipalities shall adhere to the following:

1. Notwithstanding the lack of adequate water and/or sewer at the time a municipality petitions for substantive certification, the municipality shall reserve and set aside new water and/or sewer capacity, when it becomes available, for low and moderate income housing, on a priority basis;

2. Municipal officials shall endorse all applications to the DEP or its agent to provide water and/or sewer capacity. Such endorsements shall be simultaneously submitted to the Council.

3. Where the DEP or its designated agent approves a proposal to provide infrastructure to a site for the development of low and moderate income housing identified in the housing element, the municipality shall permit such development; and

4. Where a municipality has designated sites for low and moderate income housing that lack adequate water and/or sewer and where the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in the housing element, the municipality shall amend its housing element and fair share housing ordinance to permit development of such site for low and moderate income housing. The amended housing element and fair share housing ordinance shall be submitted to the Council within 90 days of the site's approval by the DEP or its agent. The Council may waive these requirements when it determines that the municipality has a plan that will provide water and/or sewer to sufficient sites to address the municipal housing obligation within the substantive certification period.

(d) Municipalities may demonstrate that the cost of providing water and/or sewer to realistic sites identified in (a) and (b) is prohibitive by completing "The Costs of Providing Infrastructure" application provided by the Council (see Appendix D, incorporated herein by references) and submit it to the Council for its review. The Council shall forward "The Costs of Providing Infrastructure" application to the DCA Division of Local Government Services for review. The Council shall consider the report of the Division of Local Government Services in determining whether to permit an adjustment due to prohibitive costs associated with providing water and/or sewer to inclusionary sites. Where the Council determines the cost associated with providing water and/or sewer to inclusionary sites is prohibitive, it shall limit the municipality's fiscal responsibility of providing water and/or sewer. However, notwithstanding any limits placed on the municipality's fiscal responsibility to provide water and/or sewer, the Council may require the municipality to designate and zone appropriate sites to accommodate the municipal housing obligation or to adopt other approaches consistent with N.J.A.C. 5:93–4.2(h). The municipality shall also adhere to the requirements outlined in (c)1 to 4 above.

Amended by R.1995 d.491, effective September 5, 1995.

See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).
Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
Amended N.J.A.C. reference.

5:93–4.4 Application for grants

A municipality that has demonstrated that land, water and/or sewer limits its ability to address the municipal rehabilitation component may be required to address its rehabilitation component by submitting an application for Federal and/or State housing programs. Such a municipality shall be required to apply for a county, State and/or Federal grant if the Council determines that the success of such a grant application is realistic and necessary to address the rehabilitation component.

5:93–4.5 Waivers

(a) The Council shall entertain waiver requests by motion, in accordance with N.J.A.C. 5:91–12, from municipalities seeking relief from the following requirements:

1. The use of an entire resource (land, water, sewer) in addressing the municipal housing obligation; and

2. The requirement to impose development fees on all development within the municipality.

(b) The criteria for evaluating such a waiver request shall include one or more of the following:

1. Past inclusionary practices, measured by the following criteria: jobs to housing ratio; municipal median income as compared to regional median income; and the percentage of low and moderate income households in the municipality as compared to the percentage in the housing region;

2. A demonstration of hardship. To demonstrate hardship related to the imposition of development fees, the municipality shall, at a minimum, document that the imposition of development fees would retard necessary economic development within the municipality. To demonstrate hardship related to utilizing all available land, water and sewer capacity, the municipality shall (where applicable), at a minimum, document prospects for obtaining additional capacity and the public good realized by allowing competing land uses a reservation of the limited capacity; or

3. A demonstration that the municipality has actively pursued its municipal housing obligation by petitioning for certification prior to litigation.

SUBCHAPTER 5. PREPARING A HOUSING ELEMENT

5:93–5.1 Overview of a housing element

(a) Once a municipality has subtracted its credits (pursuant to N.J.A.C. 5:93–3) from its calculated need, and/or received an adjustment pursuant to N.J.A.C. 5:93–4, it shall develop a plan to address the municipal housing obligation. In addressing the need, a municipality may address its rehabilitation component through a rehabilitation program, ECHO housing or by creating new units. The remaining portion of the municipal housing obligation may be addressed through a combination of techniques, including, but not necessarily limited to: municipally sponsored construction; inclusionary zoning; RCAs; alternative living arrangements; the creation of accessory apartments; the purchase of housing units that have never been occupied; the purchase of housing units that have been previously owned; and the purchase of housing units that have been vacant for at least 18 months. (The Council has determined that if a housing unit has been vacant for 18 months or more, it is reasonable to conclude that such a unit is not "filtering down" to low and moderate income households and that encouraging the purchase of the unit for low and moderate income households may prevent the unit from deterioration or vandalism.) This subchapter shall discuss the standards and, in some cases, limitations, of each implementation technique. It shall outline standards for senior citizen housing and rental housing. This subchapter shall also discuss the status of sites included in the housing element that addressed the 1987–1993 municipal housing obligation.

(b) A municipality's housing element shall be designed to achieve the goal of providing affordable housing to meet present and prospective housing needs, with particular attention to low and moderate income housing. The housing element shall include the municipality's strategy for addressing its present and prospective housing needs and shall contain the following:

1. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated;

2. A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for the six years subsequent to the adoption of the housing element, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;

3. An analysis of the municipality's demographic characteristics, including, but not limited to, household size, income level and age;

4. An analysis of the existing and probable future employment characteristics of the municipality;

5. A determination of the municipality's present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing;

6. A consideration of the lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing;

7. A map of all sites designated by the municipality for the production of low and moderate income housing and a listing of each site that includes its owner, acreage, lot and block;

8. The location and capacities of existing and proposed water and sewer lines and facilities relevant to the designated sites;

9. Copies of necessary applications for sewer service and water quality management plans submitted pursuant to Sections 201 and 208 of the Federal Clean Water Act, 33 U.S.C. § 1251, et seq.;

10. A copy of the most recently adopted municipal master plan and, where required, the immediately preceding, adopted master plan;

11. For each designated site, a copy of the New Jersey Freshwater Wetlands maps where available. When such maps are not available, municipalities shall provide appropriate copies of the National Wetlands Inventory maps provided by the U.S. Fish and Wildlife Service;

12. A copy of appropriate United States Geological Survey Topographic Quadrangles for designated sites; and

13. Any other documentation pertaining to the review of the municipal housing element as may be required by the Council.

(c) If a municipality intends to collect development fees, it shall prepare a plan to spend development fees that includes the following:

1. A projection of revenues anticipated from imposing fees on development, based on historic development activity;

2. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;

3. A description of the anticipated use of all development fees;

4. A schedule for the creation or rehabilitation of housing units;

5. If the municipality envisions being responsible for public sector or non-profit construction of housing, a pro-forma statement of the anticipated costs and revenues associated with the development; and

6. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan.

(d) By resolution, the governing body shall forward the spending plan for review and approval by the Council.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).
Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
Deleted (b)6 and renumbered (b)7 through 14 as (b)6 through 13; inserted (d).

5:93–5.2 Rehabilitation

(a) Each municipality shall be provided with the Council's estimate for substandard units occupied by low and moderate income households. This estimate shall be the municipality's indigenous need, unless the municipality or an objector performs the Council's Structural Conditions Survey (see Appendix C), incorporated herein by reference). Where the municipality or objector performs the Structural Conditions Survey, the Council shall review the results of the data collected and shall modify the indigenous need if it determines a modification is warranted.

(b) The purpose of a rehabilitation program is to rehabilitate substandard housing units occupied by low and moderate income households. A substandard housing unit is defined as a unit with health and safety code violations that require the repair or replacement of a major system. A major system shall include a roof, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems) and/or a load bearing structural system. Upon rehabilitation, housing deficiencies shall be corrected and the house shall be brought up to code standard. The standard for evaluating rehabilitation activity shall be the local property maintenance code, or, if none is available, the BOCA Property Maintenance Code, in effect at the time of evaluation. The rehabilitation activity shall not include luxury improvements, the purchase of appliances (with the exception of stoves) or improvements that are strictly cosmetic. A rehabilitated unit is considered complete at the date of final inspection.

(c) A municipality that chooses to rehabilitate units shall designate an experienced entity to administer the rehabilitation program. The municipality may designate an employee to administer the program or may enter into an agreement for a governmental agency or private consultant to administer all or some of the program.

(d) The municipality shall prepare a marketing plan for its rehabilitation program, subject to the Council's approval. The rehabilitation program shall be marketed through a combination of some, though not necessarily all, of the following: brochures; posters in prominent locations; cable television and radio announcements; notices included in utility bills; notices in municipal tax bills; notices included in municipal publications; and informational meetings with welfare organizations, urban action community groups, personnel departments of local employers, social workers, civic and religious leaders, senior citizen groups and fraternal organizations.

(e) A municipality that chooses to administer a rehabilitation program shall maintain files on each program applicant. The files may be used in responding to monitoring requests and to protect the municipality against charges of irregularity. The files shall include:

1. The name of each applicant;

2. If the applicant is not approved, the reasons for the disapproval; and

3. If the applicant is approved:

i. Proof of income eligibility (Federal tax return);

ii. The initial inspection by the building inspector;

iii. Bids by contractors;

iv. The final contract to do the work;

v. Progress reports;

vi. A copy of the final inspection; and

vii. The lien on the property.

(f) Rental units may not be excluded from a municipal rehabilitation program.

(g) The Council shall require six year controls on affordability on owner-occupied units and 10 year controls on affordability on rental units. The controls on affordability may be in the form of a lien filed with the appropriate property's deed. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:93–9.15.

(h) A municipality that chooses to rehabilitate its rehabilitation component shall be responsible for funding its program. This requirement includes administrative and actual rehabilitation activities. A municipality shall provide $2,000 per unit of its rehabilitation component towards administration and $8,000 per unit for rehabilitation activity to total $10,000 per unit of its rehabilitation component. Given this requirement:

1. Municipalities shall provide sufficient dollars to fund one-third of the municipal rehabilitation component within one year of substantive certification. In each subsequent year of the substantive certification period, the municipality shall provide sufficient dollars to fund one-sixth of the municipal rehabilitation component.

2. Municipalities may rehabilitate substandard units that require less than $8,000 of work, provided they also rehabilitate substandard units that require more than $8,000 of work. Municipal rehabilitation activity shall average at least $8,000 per unit for each two year period of substantive certification.

3. The Council may waive part or all of the funding required for administration if there is an agreement with an agency to administer the program at reduced cost.

4. Municipalities that seek a waiver from the $8,000 rehabilitation standard may do so by presenting case studies documenting local housing conditions.

(i) Financing of rehabilitation programs shall be structured to encourage rehabilitation and continued occupancy. Low interest rates and forgivable loans are encouraged. Leveraging of private financing is also encouraged if the result is low interest loans that encourage rehabilitation. If a housing unit is sold prior to the end of the controls on affordability, at least part of the loan shall be recaptured and used to rehabilitate another housing unit.

(j) If the municipality structures a loan program to recapture money, recaptured money shall be used for another low and moderate income housing purpose or to repay a municipal bond issued to finance a low and moderate income housing activity.

(k) The municipality shall submit a rehabilitation manual that complies with COAH's rules and summarizes the administration of the rehabilitation program. The manual shall include a copy of the lien to be used and shall describe:

1. The rehabilitation program's staff and their responsibilities;

2. Procedures for program marketing;

3. Eligible repairs and improvements;

4. The amount of money available for rehabilitation;

5. Financing terms;

6. Income qualification criteria;

7. Procedures for application intake;

8. Procedures for review and approval of work (such procedures should require interim inspection of work); and

9. The length of affordability controls.

(*l*) Municipalities that administer rehabilitation programs shall complete annual monitoring reports required by the Council (see N.J.A.C. 5:93–12). After reviewing the progress of rehabilitation activity, the Council may require technical assistance meetings to identify implementation techniques designed to increase rehabilitation activity. Failure to submit monitoring reports or respond to direction designed to increase rehabilitation activity may result in further Council action.

(m) A municipality receiving State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D–178 et seq.) may seek a waiver from addressing its entire rehabilitation component in one six year period of substantive certification. A municipality seeking such a waiver shall demonstrate that it cannot rehabilitate the entire rehabilitation component in six years and/or that an extraordinary hardship exists, related to addressing the entire rehabilitation component in six years.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).
Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
Substituted reference to "Appendix C" for "Appendix D"; inserted last sentence in (b).

5:93–5.3 New construction; site criteria and general requirements

(a) Municipalities may create new low and moderate income units within their borders by sponsoring their construction, with or without a non-profit corporation, or by zoning sites for inclusionary development.

(b) Municipalities shall designate sites that are available, suitable, developable and approvable, as defined in N.J.A.C. 5:93–1. In reviewing sites, the Council shall give priority to sites where infrastructure is available. All sites designated for low and moderate income housing shall receive approval for consistency review, as set forth in Section 208 of the Clean Water Act, 33 U.S.C. § 1251 et seq. prior to substantive certification. Where a site is denied consistency review, the municipality shall apply for an amendment to its Section 208 plan to incorporate the denied site.

(c) For each site designated for new construction of low and moderate income units, the municipality shall provide the following minimum documentation:

1. A general description of each site to be used for inclusionary development, including, but not limited to, the following: acreage, current zoning, surrounding land uses, and street access. Maps shall be submitted showing the location of all sites;

2. A description of any environmental constraints, including steep slopes, wetlands and flood plain areas. The municipality shall include calculations of the amount of acreage that is environmentally constrained and any remaining buildable acreage. Documentation shall include the appropriate wetland and flood plain maps required pursuant to N.J.A.C. 5:93–5.1;

3. Information shall be submitted regarding location, size and capacity of lines and facilities within the service area, as well as the status of the 201/208 plans. Documentation shall include maps showing the location of the sewer and water facilities; and

4. For each site, the total number of housing units; the gross and net density of the proposed development; the total number of low and moderate income units; and the number of low and moderate income units that will be for sale and for rent.

(d) Municipalities shall structure plans for new construction, conversion and gut rehabilitation (including new construction, conversion and gut rehabilitation that is part of an RCA) that conform to the Council's rules pertaining to bedroom mix, age restriction, price stratification, rental housing, controls on affordability and affirmative marketing.

(e) Unless otherwise permitted, the Council shall not provide credit for housing that is restricted in occupancy to any specific group.

Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).

5:93–5.4 New construction; conformance with the State Development and Redevelopment Plan (SDRP)

(a) In Planning Areas 1 and 2, as designated in the SDRP, the Council shall encourage inclusionary development within centers. However, municipalities may locate inclusionary developments within the environs as defined in the SDRP.

(b) In Planning Area 3, the Council shall encourage inclusionary development within centers. Where a municipality proposes an inclusionary site within Planning Area 3 outside of a center, the Council may permit such a site if infrastructure is available or can be easily extended from Planning Area 2.

(c) In Planning Areas 4 or 5, as designated in the SDRP, the Council shall require inclusionary development to be located in centers. Where the Council determines that a municipality has not created a realistic opportunity within the development boundaries of a center to accommodate that portion of the municipal inclusionary component that the municipality proposes to address within the municipality, the Council shall require the municipality to identify an expanded center(s) or a new center(s) and submit the expanded or new center(s) to the State Planning Commission for designation.

(d) In municipalities that are divided by more than one Planning Area, the following principles shall apply:

1. The Council shall encourage and may require the use of sites in Planning Areas 1 and 2 prior to approving inclusionary sites in Planning Areas 3, 4 and 5 that lack sufficient infrastructure;

2. The Council shall encourage and may require the use of sites within Planning Area 3 prior to approving inclusionary sites in Planning Areas 4 and 5 that would require the expansion of existing infrastructure; and

3. The Council shall encourage and may require the use of sites to which existing infrastructure can easily be extended prior to approving inclusionary sites that require the creation of new infrastructure in an area not presently serviced by infrastructure.

5:93–5.5 Municipally sponsored construction and gut rehabilitation

(a) A municipality may elect to provide low and moderate income units through a municipally sponsored construction program. A municipally sponsored construction program shall address four major areas of concern. It shall document that there is municipal control of the site(s); an administrative mechanism to construct the proposed housing; a funding plan and evidence of adequate funding capacity; and timetables for construction of the units. More specifically, the following minimum documentation shall be submitted.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).
Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
Inserted (f).

5:93–6.3 Credits

No receiving municipality shall receive credit towards its fair share obligation for units provided pursuant to an RCA, where credit for such units has been awarded to a sending municipality.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).

5:93–6.4 RCA recipient certification

A receiving municipality in an RCA may file an application with the Agency and with the county planning board or agency of the county in which the receiving municipality is located for RCA recipient certification. If the Agency and the county planning board or other agency determine that the receiving municipality has met the criteria delineated in N.J.A.C. 5:91–11.4, then the Agency and the county planning board or other agency shall recommend that the Council grant RCA recipient certification in at least one of four housing categories in N.J.A.C. 5:91–11.4(b).

New Rule, R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 29 N.J.R. 194(b).
Former N.J.A.C. 5:93–6.4 recodified to N.J.A.C. 5:93–6.5.

5:93–6.5 Amount and duration of contributions

(a) In negotiating RCAs, cosmetic improvements may be included in determining the negotiated price of rehabilitating a housing unit. However, to be eligible for rehabilitation, a housing unit shall be substandard as defined in N.J.A.C. 5:93–1.3. Upon rehabilitation, housing deficiencies shall be corrected and the unit shall be brought up to code standard. The standard for evaluating rehabilitation activity shall be the local property maintenance code, or if none is available, the BOCA Property Maintenance Code, in effect at the time of evaluation (available from Building Officials and Code Administrators, Inc., 4051 West Flossmoor Road, County Club Hills, Illinois 60478–5795).

(b) A sending municipality shall transfer at least $20,000 to a receiving municipality for each unit transferred as part of an RCA. This threshold has been established after consideration of:

1. The housing stock in New Jersey's urban municipalities;

2. The average cost of an RCA since 1986;

3. The maximum subsidies available under the Neighborhood Preservation Balanced Housing Program established pursuant to N.J.S.A. 52:27D–320; and

4. The average internal subsidization required for a developer to provide each low and moderate income unit within an inclusionary development.

(c) The receiving municipality may spend less than $20,000 per unit in implementing the RCA, provided the remaining funds are used for an activity approved by the Council for addressing the low and moderate income obligation. Eligible activities shall include, but are not necessarily limited to, those activities outlined in N.J.A.C. 5:93–5.1.

(d) An RCA may be entered into at any time during the sending municipality's period of substantive certification but shall not exceed six years.

(e) All RCAs that include a scattered site rehabilitation program shall be structured so that the final transfer payment occurs within five years of the approval of the RCA. All rehabilitation activity shall occur within the sending community's period of substantive certification. Rehabilitation schedules shall be structured for completion within five years of the approval of an RCA. Rehabilitation schedules shall be subject to Council approval and shall not be structured to require a disproportionate share of rehabilitation during the latter portion of the five year period.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).
Recodified from N.J.A.C. 5:93–6.4 and amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
Former N.J.A.C. 5:93–6.5 recodified to N.J.A.C. 5:93–6.6.

5:93–6.6 Monitoring and enforcement

(a) All RCAs shall require receiving municipalities to file monitoring reports with the Council and with the Agency setting forth the progress in implementing the project to be produced under an RCA. This report shall be in such form as the Council and the Agency may from time to time require.

(b) The Council shall take such actions as may be necessary to enforce an RCA with respect to the timely implementation of a project by the receiving municipality. In implementing its enforcement responsibilities, the Council may:

1. Initiate or join a lawsuit to enforce an RCA;

2. Bar a delinquent receiving municipality from entering into further RCAs for a specified period of time;

3. Recommend that the Agency and DCA withhold further assistance available under the Act; and/or

4. Take such other actions as the Council may determine necessary, including ordering a sending municipality, for good cause, to temporarily or permanently cease payment to a receiving municipality.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).
Recodified from N.J.A.C. 5:93–6.5 and amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
Substituted "monitoring" for "annual" in (a).

SUBCHAPTER 7. INCLUSIONARY DEVELOPMENTS

5:93–7.1 Purpose and scope

The purpose of this chapter is to provide standards that pertain to the creation of low and moderate income housing units. The rules that follow shall pertain to all inclusionary developments, including those created as part of an RCA. This subchapter provides standards on: the distribution of low and moderate income units; bedroom distribution; and establishing the rents and prices of low and moderate income units.

Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).

5:93–7.2 Distribution of low and moderate income units

(a) With the exception of inclusionary developments constructed pursuant to the four percent low-income tax credit regulations pursuant to the Internal Revenue Code Section 42h, at least half of all affordable units within each inclusionary development shall be affordable to low income households.

(b) With the exception of inclusionary developments constructed pursuant to the four percent low income tax credit regulations pursuant to the Internal Revenue Code Section 42h, at least half of all affordable rental units shall be affordable to low income households.

(c) With the exception of inclusionary developments constructed pursuant to the four percent low income tax credit regulations pursuant to the Internal Revenue Code Section 42h, at least one-third of all affordable units in each bedroom distribution (pursuant to N.J.A.C. 5:93–7.3) shall be affordable to low income households.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).
Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).

5:93–7.3 Bedroom distribution

(a) Inclusionary developments that are not age restricted shall be structured in conjunction with realistic market demands so that:

1. The combination of efficiency and one bedroom units is at least ten percent and no greater than 20 percent of the total low and moderate income units;

2. At least 30 percent of all low and moderate income units are two bedroom units; and

3. At least 20 percent of all low and moderate income units are three bedroom units.

(b) Age restricted low and moderate income units may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of age restricted low and moderate income units within the inclusionary development. The standard can be met by creating all one bedroom units or by creating a two bedroom unit for each efficiency unit. Applications to waive this standard shall be made in accordance with N.J.A.C. 5:93–15.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).
Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
Substituted "Age restricted low" for "low" and "restricted to senior citizens".

5:93–7.4 Establishing rents and prices of units

(a) The following criteria, in conjunction with realistic market information, shall be used in determining maximum rents and sale prices:

1. Efficiency units shall be affordable to one person households;

2. One bedroom units shall be affordable to 1.5 person households;

3. Two bedroom units shall be affordable to three person households; and

4. Three bedroom units shall be affordable to 4.5 person households.

(b) Median income by household size shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the households within the county. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households in each housing region. This quotient represents the regional weighted average of median income for a household of four. This regional weighted average is adjusted by household size based on multipliers used by HUD to adjust median income by household size. The maximum average rent and price of low and moderate income units within each inclusionary development shall be affordable to households earning 57.5 percent of median income. The municipal ordinance shall require moderate income sales units to be available for at least three different prices and low income sales units to be available for at least two different prices.

(c) In averaging 57.5 percent under (b) above, developers and/or municipal sponsors of rental units may establish one rent for a low income unit and one rent for a moderate income unit for each bedroom distribution.

(d) Municipal ordinances regulating owner occupied and rental units shall require that low and moderate income units utilize the same heating source as market units within the inclusionary development.

(b) No municipality in this category may spend development fees unless the Council has approved a plan for spending such fees and granted substantive certification. Municipalities shall submit these plans when they petition for substantive certification. Municipalities that have petitioned for substantive certification prior to the effective date of this rule shall submit plans for spending development fees prior to receiving substantive certification.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).
Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).

5:93–8.8 Development fee ordinance review

(a) The Council shall not review a development fee ordinance unless the municipality has submitted:

1. A copy of an adopted housing element that complies with the Municipal Land Use Law, N.J.S.A. 40:55D et seq.;

2. A copy of the proposed ordinance designed to collect development fees;

3. A description of any changes to the municipal zoning ordinance during the previous two years;

4. A request in the form of a resolution by the governing body for the Council to review the development fee ordinance;

5. A copy of the compliance plan, implementation ordinances information regarding the period of time encompassed by the judgment of repose and a request for review by the court if the municipality has received a court ordered judgment of repose. The court shall indicate if the Council is to monitor the development fees;

6. A description of the types of developments that will be subject to fees;

7. A description of the amount and nature of the fees imposed;

8. A statement regarding the use of density bonuses or other devices to counterbalance development fees; and

9. If development fees have been collected prior to December 13, 1990 and the municipality wishes to retain some or all of these fees, the following information must be submitted to the Council within 90 days of the effective date of this rule:

i. A copy of the ordinance pursuant to which the fees were collected; and the proposed ordinance, if any, designed to reimpose some or all of these fees;

ii. A request in the form of a resolution by the governing body for the Council to review the development fee ordinance used to collect the fees;

iii. The name of each developer that paid a development fee;

iv. The amount paid by each developer and the formula for the amount collected;

v. The equalized assessed value of each development at the time of collection;

vi. An accounting of all money collected and identification of the municipal account that houses all development fees;

vii. If any money collected through a development fee ordinance has been spent, an accounting of the expenditure; and

viii. Any other information the Council may require.

(b) Municipalities that collected fees prior to December 13, 1990, shall be able to retain such revenues or reimpose such fees to the extent that the fees collected by the municipality do not exceed the amount permitted by this chapter. Municipalities interested in retaining development fees collected prior to December 13, 1990 shall also conform to the procedures outlined in N.J.A.C. 5:91–15, Procedures for retaining development fees.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).

5:93–8.9 Content of plans to spend development fees

Plans to spend development fees shall consist of the information required in N.J.A.C. 5:93–5.1(c). By resolution, the governing body shall forward the spending plan for review and approval by the Council.

Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).

5:93–8.10 Development fees; residential

(a) Residential development fees shall be a maximum of one-half of one percent of the equalized assessed value for residential development, provided no increased density is permitted.

(b) In zones that permit increased residential development, the municipality may impose a development fee of up to six percent of the equalized assessed value for each additional unit that may be realized.

Example: if a rezoning allowed two extra units to be constructed, the fees could equal one-half of one percent of equalized assessed value on the first unit and six percent of equalized assessed value on the two incremental units.

(c) Municipalities may allow developers of sites zoned for inclusionary development to pay a fee in lieu of building low and moderate income units, provided the Council determines the municipal housing element and fair share plan provides a realistic opportunity for addressing the municipal fair share obligation. The fee may equal the cost of subsidizing the low and moderate income units that are replaced

by the development fee. For example, an inclusionary development may include a 20 percent set-aside, no set-aside and a fee that is the equivalent of a 20 percent set-aside or a combination of a fee and set-aside that is the equivalent of a 20 percent set-aside.

(d) Municipalities may collect fees exceeding those permitted in this section, provided they enter into agreements with developers that offer a financial incentive for paying higher fees. The financial incentive may be in the form of a tax abatement. No agreement may provide for a voluntary developer fee without also providing for a comparable offsetting incentive. All agreements are subject to Council approval.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).

Case Notes

In settlement of *Mount Laurel* litigation, developer's agreement to pay municipality $800,000 into municipalities *Mount Laurel* trust fund after extensive negotiations under supervision of court-appointed master was not unlawful. East/West Venture v. Borough of Fort Lee, 286 N.J.Super. 311, 669 A.2d 260 (A.D.1996).

5:93–8.11 Development fees; non-residential

(a) Non-residential development fees shall be a maximum of one percent of the equalized assessed value for non-residential development.

(b) Municipalities may collect fees exceeding those permitted in this section provided they enter into agreements with developers that offer a financial incentive for paying higher fees. Such agreements may include, but are not limited to, a tax abatement, increased commercial/industrial square footage, increased commercial/industrial lot coverage and/or increased commercial/industrial impervious coverage in return for an increased fee. The fee negotiated must bear a reasonable relationship to the additional commercial/industrial consideration to be received. All agreements are subject to Council approval.

5:93–8.12 Eligible exactions, ineligible exactions and exemptions

(a) Except as provided for in N.J.A.C. 5:93–8.10, inclusionary developments shall be exempt from development fees. All other forms of new construction may be subject to development fees.

(b) Development fees may be imposed and collected when an existing structure is expanded or undergoes a more intense use. The development fee that may be imposed and collected shall be calculated on the increase in the equalized assessed value of the improved structure.

(c) Municipalities shall not reduce densities from pre-existing levels and then require developers to pay development fees in exchange for an increased density.

(d) Developments that have received preliminary or final approval prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a major change in the approval. Municipalities that collected development fees prior to December 13, 1990 may not retain any fees imposed subsequent to granting preliminary or final development approval, unless the developer seeks a major change in the approval.

(e) Municipalities may exempt specific types of development from fees or may impose lower fees for specific types of development, provided each classification of development is addressed consistently. For example, all retail development may be exempt from fees.

(f) Municipalities may exempt specific areas of the municipality from the imposition of fees or reduce fees in order to promote development in specific areas of the municipality.

Amended by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).

Case Notes

Development fees ordinance not enforced in arbitrary manner against developers who agreed as condition of use variance to either construct affordable housing or pay development fee under subsequently enacted ordinance. Southport Development Group, Inc. v. Township of Wall, 295 N.J.Super. 421, 685 A.2d 84 (L.1996).

5:93–8.13 Collection of fees

Municipalities may collect up to 50 percent of the fee on any specific development at the time of issuance of the building permit. The remaining portion may be collected at the issuance of the certificate of occupancy.

5:93–8.14 Contested fees

Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by the municipality. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.

New Rule, R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).

5:93–8.15 Housing trust fund

All development fees shall be deposited in a separate interest bearing housing trust fund. In establishing the housing trust fund, the municipality shall provide whatever express written authorization that may be required by the bank to permit the Council to direct the disbursement of development fees pursuant to N.J.A.C. 5:93–8.18 and 8.19. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activity approved by COAH.

Recodified from N.J.A.C. 5:93–8.14 by R.1995 d.491, effective September 5, 1995.
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).