

**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.

“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.

“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.).

“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.

“Areawide plan” or “areawide Water Quality Management (WQM) plan” means any water quality management plan adopted pursuant to Sections 208 and 303 of the Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq., and

Section 5 of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

“Assisted living residence” means a housing development which is a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed. Apartment units offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

“Assisted living services” means a coordinated array of supportive personal and health services, available 24 hours per day. Assisted living promotes resident self-direction and participation in decisions that emphasize independence, individuality, privacy, dignity and homelike surroundings.

“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 is consistent with the applicable areawide water quality management plan (including the wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by DEP.

“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 pre-credited 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.

“Medicaid waiver” means a term used to designate a form of insurance payment for certain assisted living care, health and medical services paid through the Enhanced Community Options (ECO) waiver program which is a home and community based services waiver for the elderly and disabled. The ECO waiver is the result of a 1915(c) waiver in response to the Omnibus Budget Reconciliation Act (OBRA) of 1981, Section 2176, Public Law 97-35 which encouraged the development of community-based services rather than institutional programs. The New Jersey Department of Health and Senior Services must license Medicaid providers of assisted living services. In addition, the New Jersey Department of Health and Senior Services allocates Medicaid waivers to specific licensed assisted living residences.

“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.

“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.

“Priority” means a system of selecting applicants.

“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 weatherization, 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.

“Water quality management plans” or “WQM plans” means the plans prepared pursuant to Sections 208 and 303 of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., including the Statewide, areawide and county WQM plans.

“Weatherization” means building insulation (for attic, exterior walls, crawl space), replacement storm windows, replacement storm doors, replacement windows and replacement doors and is considered a major system for rehabilitation.

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”.

Amended by R.1999 d.107, effective April 5, 1999.

See: 30 N.J.R. 3719(a), 31 N.J.R. 868(a).

Inserted “Areawide plan”; rewrote “Developable site”; in “Standard housing unit”, inserted “weatherization” in the second sentence; and added “Water quality management” or “WQM plans” and “Weatherization”.

Amended by R.2002 d.136, effective May 6, 2002.

See: 33 N.J.R. 3601(a), 34 N.J.R. 1663(a).

Inserted “Assisted living residence”, “Assisted living services”, and “Medicaid waiver”.

#### Case Notes

Developer that paid fee into township’s affordable housing fund in lieu of constructing required percentage of low-income housing units in proposed development could not compel adjoining municipality to allow access to its sewer system for proposed development; proposed development did not qualify as Fair Housing Act (FHA) “inclusionary development,” and only the actual builders of low-income housing had right to elimination of undue cost generating expenses. *Bi-County v. Borough of High Bridge*, 775 A.2d 182 (2001).

Development of single family houses sold at market rates is not a development in which a substantial percentage of the housing units are provided for or contain low and moderate income units, as required to receive benefits as an “inclusionary development” under Fair Housing Act (FHA). *Bi-County v. Borough of High Bridge*, 775 A.2d 182 (2001).

Amended regulations permitting State Council on Affordable Housing (COAH) to grant certification of municipal fair share plans relying on inclusionary development sites lacking access to sewer infrastructure approved by the Department of Environmental Protection (DEP), which regulations had a built-in safeguard requiring review of situation if Department did not approve sewer infrastructure within two years, were reasonable and bore a reasonable relationship to goal of providing low and moderate income housing, and thus, amended regulations were facially constitutional. *In re Adoption of Amendments to N.J.A.C., 772 A.2d 9* (2001). *In re Adoption of Amendments to N.J.A.C., 772 A.2d 9* (2001).

Amended regulations permitting the State Council on Affordable Housing (COAH) to grant certification of municipal fair share plans relying on inclusionary development sites lacking access to sewer infrastructure approved by Department of Environmental Protection (DEP) did not weaken Council’s reliance on State Development and Redevelopment Plan (SDRP) or its efforts at consistency with Plan’s goals; it merely gave municipalities some flexibility in applying for DEP sewer approval at the same time they submitted their housing element to COAH for certification, and if DEP denied approval, municipality would still have to find an alternative way to satisfy its fair share obligation. *In re Adoption of Amendments to N.J.A.C., 772 A.2d 9* (2001).

Amended regulations permitting the State Council on Affordable Housing (COAH) to grant certification of municipal fair share plans relying on inclusionary development sites lacking access to sewer infrastructure approved by Department of Environmental Protection (DEP), which regulations had a built-in safeguard requiring review of situation if Department did not approve sewer infrastructure within two years, were not unconstitutionally vague. *In re Adoption of Amendments to N.J.A.C., 772 A.2d 9* (2001).

Objectors’ contention that widespread delays in construction of affordable housing would result from amended regulations permitting the State Council on Affordable Housing (COAH) to grant certification of municipal fair share plans relying on inclusionary development sites lacking sewer access approved by Department of Environmental Protection (DEP) was speculation which was not enough to overcome presumption of constitutionality in legislative determinations. *In re Adoption of Amendments to N.J.A.C., 772 A.2d 9* (2001).

Where facts were not at issue, and there was a constitutional challenge to amendments to regulations promulgated by the State Council on Affordable Housing (COAH) to ensure that municipalities met obligation to provide a fair share of their regions’s need for low and moderate income housing, Superior Court, Appellate Division was required to focus its analysis on whether amended regulations bore a reasonable relationship to legislative goal of providing low and moderate income housing. *In re Adoption of Amendments to N.J.A.C., 772 A.2d 9* (2001).

## 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

Region	Percent Deficient
3. West Central	.0180
4. East Central	.0120
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:

<b>Johnsonville Total 1993%</b>		<b>Region 5 Percentage of Low- and</b>	
<small>%*</small>		<b>Moderate-Income Deficiency</b>	
<b>Occupied Housing Estimate</b>		<b>(Column A)</b>	
<b>(Column 4)</b>			
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.

5. Divide 1993 municipal median household income above the floor (unweighted) by the 1993 summed regional median household income above the floor (unweighted) for the housing region in which the municipality is located (see Table F, Column 4) to obtain the municipal share of regional household income above the floor (unweighted).

Example:

Johnsonville's 1993 Household Income (Unweighted) (above the floor) (Step 2 above)	÷	1993 Aggregate Household Income (Unweighted) (above the floor) (Region 5) (Column L)	=	Johnsonville's Share of 1993 Aggregate Household Income (Unweighted) (above the floor)
\$36,912		\$2,557,328		.01443

6. Multiply the weighted share of regional income times two and add it to the unweighted share. Divide this sum by three. Multiply the result by the spontaneous rehabilitation projections for the housing region in which the municipality is located (see Table F, Column 1). This yields the reduction to municipal total need (plus prior-cycle prospective need) due to spontaneous rehabilitation unless the result exceeds the indigenous need. In cases where the result exceeds the indigenous need, the reduction due to spontaneous rehabilitation shall equal the indigenous need. Example:

Johnsonville's Weighted Share of 1993 Aggregate Household Income × 2 (Step 4 above)	+	Johnsonville's Unweighted Share of 1993 Aggregate Household Income (Step 5 above)	÷	3	×	1993-1999 Region 5 Spontaneous Rehabilitation Estimate (Column I)
[(.04630 + .04630		.01443)				236 = 8

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

**5:93-2.13 Pre-credited need: 1987-1999**

Pre-credited need is total need and prior-cycle prospective need modified by secondary sources of demand and supply.

Total Need	+	Prior-Cycle Prospective Need	+	Demolitions	-	Filtering
695		248		9		89
		Residential Conversions	-	Spontaneous Rehabilitation	=	Pre-Credited Need
		16		8		839

**5:93-2.14 Reduction**

(a) The Council shall allow a one-for-one reduction of cumulative 1987 to 1999 need for affordable housing activities undertaken from 1987 to 1993 as part of a COAH certified or court settlement plan. It is a reduction for units zoned for or transferred, whether or not the units have been constructed, pursuant to N.J.A.C. 5:93-3. The reduction also includes rental bonus credits.

(b) Information for the reduction is derived from the Council, court, and other records of affordable housing activity. This information is specific to individual municipi-

palities and is contained in Appendix A, Exhibit 3, Column 7. Municipal need at this point is pre-credited need minus the reduction. A municipality cannot take a reduction that will bring municipal need number below zero.

Pre-Credited Need	-	Reduction (Exhibit 3—Column 7)	=	Municipal Need After Reduction
839		439		400

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

**5:93-2.15 Prior-cycle credits**

A one-for-one credit shall be granted for low- and moderate-income housing constructed between April 1, 1980 and December 15, 1986 that conforms to the criteria in N.J.A.C. 5:93-3.1 and 3.2. Municipal need at this point is precredited need after the reduction, minus prior-cycle credits. Prior-cycle credits cannot reduce a municipal need number below zero.

Municipal Need After Reduction	(-)	Pre-1987 Credits (Exhibit 3-Col. 8)	=	Municipal Need After Pre-1987 Credits
400	-	101	=	299

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

**5:93-2.16 Twenty-percent (20%) cap**

(a) A cap of 20 percent of the estimated 1993 occupied housing stock (community capacity) cannot be exceeded by a municipality's need for new construction. The need for new construction is the precredited need minus the reductions, prior-cycle credits, and the rehabilitation components. This is based on the premise that if the affordable housing was provided as a 20-percent set-aside of inclusionary housing, and if the planned affordable housing was more than 20 percent of existing units, then the new affordable housing and accompanying market units would exceed the number of existing housing units in the community.

(b) Community capacity is determined by multiplying the estimated 1993 occupied housing in the municipality (Appendix A, Exhibit 1, Column 4) by 0.20 and comparing this to the municipal need for new construction.

1. If the community capacity is larger than municipal need for new construction, the 20-percent cap is zero. This is the case for the present example.

2. If community capacity is smaller than municipal need for new construction, the difference between community capacity and the municipal need for new construction is subtracted from the latter to yield the 20-percent cap. The 20-percent cap is the difference between community capacity and the municipal need for new construction. Municipal need at this point equals pre-credited need minus the reduction, minus prior-cycle credits, minus the 20-percent cap.

Johnsonville's 1993 Occupied Housing Estimate 12,695 units	×	Twenty Percent (20%) 0.20	=	Community Capacity 2,539 units
Municipal Need for New Construction 274		Community Capacity 2,539	=	Twenty Percent (20%) Cap 0
Municipal Need After Prior-Cycle Credit 299	-	Twenty Percent (20% Cap) 0	=	Municipal Need After 20- Percent Cap 299

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

**5:93-2.17 Calculated need: 1987-1999**

Municipal calculated need is the sum of total need, prior-cycle prospective need, and demolitions; minus filtering, conversion, and spontaneous rehabilitation, yielding, pre-credited need; minus the reduction, prior-cycle credits, and 20-percent cap (see Appendix A).

	Total Need	plus	Prior-cycle Prospective Need	plus	Demolitions	
minus	695 Filtering	+	248 Residential Conversion	+	9 Spontaneous Rehabilitation	Pre-Credited Need 839
—	89	—	16	—	8	=
minus	Reduction	—	Prior-Cycle Credits	—	20% Cap	Calculated Need
—	439	—	101	—	0	= 299

**5:93-2.18 Vacant land adjustment communities; prior cycle**

Municipalities that received an adjustment from the courts or the Council due to undeveloped land in the first affordable housing cycle have received a calculated need number. However, the Council has developed a streamlined process for these communities to receive substantive certification. The calculated need is retained in the system as a goal for future affordable housing efforts as development and redevelopment occur in the community.

**5:93-2.19 Calculation of indigenous need: selected urban aid cities**

(a) Selected municipalities receiving state aid (urban aid cities) pursuant to P.L. 1978, c.14 (N.J.S.A. 52:270-178 et seq.) that are exempt from the distribution of reallocated present need and prospective need as described in N.J.A.C. 5:93-2.3 (see Appendix A), Attachment shall determine their indigenous need as indicated below:

1. Follow the procedures delineated in N.J.A.C. 5:93-2.2(a)1 to 3. These calculations yield the count of actual low- and moderate-income deficient units in the selected urban aid city. This estimate of low- and moderate-income deficient units may also be determined through a survey of the municipality's housing stock when such survey is deemed adequate and accepted by the Council for identifying deficient housing units occupied by low- or moderate-income households.

2. Modify the number calculated in (a)1 above as instructed in N.J.A.C. 5:93-2.9, 2.10, 2.11, and 2.12 (demolitions, filtering, residential conversions and spontaneous rehabilitation.)

3. Perform the calculation required in N.J.A.C. 5:93-2.2(a)4.

4. Municipal Indigenous Need (for Urban Aid Cities) shall be the smaller number resulting from the calculations in (a)2 and 3 above.

5. If the calculation in (a)2 above is larger than the calculation in (a)3 above, the difference between the two shall be distributed throughout the housing region as reallocated present need (see Appendix A).

6. No additional calculations need be made by these cities at this point.

**5:93-2.20 Low- and moderate-income split**

The municipal calculated need obligation shall be divided equally between low- and moderate-income households.

Example:

Johnsonville's total obligation of 299 units would include 150 low-income and 149 moderate-income units.

(An odd number is always split in favor of the low-income unit.)

**SUBCHAPTER 3. CREDITS/REDUCTIONS**

**5:93-3.1 General**

(a) The Fair Housing Act provides that the Council determine municipal fair share, after crediting on a one for one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households. Given the approach the Council has developed for determining calculated need, the Council has determined that it is appropriate to allow credits for units constructed after April 1, 1980. Since it was not until December 15, 1986 that the Council established criteria for an eligible low and moderate income unit, the crediting criteria for housing units created between April 1, 1980 (the date of the census) and December 15, 1986 shall be different than the period subsequent to December 15, 1986.