

(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).

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

(a) Municipalities may create new low and moderate income units within its 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 a regional contribution agreement) 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.

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.

1. The municipality shall demonstrate that it has control or has the ability to control the site(s). Control may be in the form of outright ownership or an option on the property;

2. An administrative mechanism shall be submitted for the development indicating who will income qualify applicants and administer the units once they are occupied. The municipality may contract with an outside agency to provide these functions, provided a written agreement between the administrative agency and the municipality is submitted to the Council.

3. The municipality shall submit detailed information demonstrating that it has adequate funding capabilities. The documentation shall include:

- i. A pro forma statement for the project; and
- ii. Evidence that the municipality has adequate and stable funding. If State or Federal funds will be used, the municipality shall provide documentation indicating the funding available to the municipality and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved. As outside funds become available, the municipality may reduce its reliance on municipal resources; and

4. A construction schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The construction schedule shall provide for construction to begin within two years of substantive certification. The municipality shall indicate the entity responsible for monitoring the construction and overall development activity.

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

5:93-5.6 Zoning for inclusionary development

(a) Municipalities that choose to provide zoning for inclusionary development shall select sites that conform to the criteria in N.J.A.C. 5:93-5.3 and shall submit the information required in N.J.A.C. 5:93-5.3.

(b) The Council's review of municipal plans to zone for inclusionary development shall include, but not necessarily be limited to: the existing densities surrounding the proposed inclusionary site; the need for a density bonus in order to produce low and moderate income housing; whether the site is approvable, available, developable and suitable pursuant to N.J.A.C. 5:93-1.3; the site's conformance with the State Development and Redevelopment Plan pursuant to N.J.A.C. 5:93-5.4; the existence of steep slopes, wetlands and floodplain areas on the site; the present ability of a developer to construct low and moderate income housing at a specific density; the length of time an inclusionary site has been zoned at a specific density and set-aside without being developed; and the number of inclusionary sites that have developed within the municipality at specific densities and set-asides.

1. When a municipality is receiving an adjustment pursuant to N.J.A.C. 5:93-4.2, the municipality shall be required to zone inclusionary sites at a minimum gross density of six (6) units per acre with a 20 percent set-aside.

2. In all other municipalities, when the review described in (b) indicates that such densities are appropriate, the Council shall require that a substantial percentage of inclusionary sites be zoned to allow market units within an inclusionary development to be constructed as single family detached units. For these sites, the Council shall generally favor a gross density of four units per acre with a 15 percent set-aside. Municipalities may also seek to zone sites for a gross density of five (5) units per acre with a 17.5 percent set-aside and six (6) units per acre or more with a 20 percent set-aside. The Council shall determine set-asides for densities between four (4) and five (5) and between five (5) and six (6) through a process of interpolation.

(c) The Council may require higher densities in circumstances including, but not limited to:

1. Where the existing zoning exceeds the density proposed by the municipality; or

2. When the Council determines that higher densities are required to provide an opportunity for inclusionary development in a specific municipality, based on the particular circumstances of that municipality.

(d) Municipalities zoning for inclusionary development shall require low and moderate income housing units to be built in accordance with the following schedule:

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

(e) The Council encourages a design of inclusionary developments that integrates the low and moderate income units with the market units.

Amended by R.1994 d.563, effective November 7, 1994.
See: 26 N.J.R. 2514(a), 26 N.J.R. 4349(b).

Case Notes

Settlement of *Mount Laurel* litigation which required developer to construct ten percent of all units to be affordable units, to pay \$800,000 to municipality, and to construct affordable units within specific period of time irrespective of when construction of market-rate units was commenced was fair and reasonable. *East/West Venture v. Borough of Fort Lee*, 286 N.J.Super. 311, 669 A.2d 260 (A.D.1996).

5:93-5.7 Regional contribution agreements

A municipality may address its housing obligation by entering into a regional contribution agreement in accordance with N.J.A.C. 5:93-6.

5:93-5.8 Alternative living arrangements

(a) Alternative living arrangements may be used to address a municipal housing obligation by entering into an agreement for the location of such a facility with the provider of the facility or by granting preliminary approval to a developer of an alternative living arrangement.

(b) The unit of credit for an alternative living arrangement shall be the bedroom.

(c) Alternative living arrangements reserved for senior citizens shall be included with the 25 percent that may be reserved for senior citizens pursuant to N.J.A.C. 5:93-5.13.

(d) Controls on affordability on alternative living arrangements shall remain in effect for at least 10 years. To be eligible for a rental bonus (pursuant to N.J.A.C. 5:93-5.14), controls on affordability shall remain in effect for at least 30 years.

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

5:93-5.9 Accessory apartments

(a) Up to 10 accessory apartments may be used to address a municipal housing obligation. A municipality using an accessory apartment program shall:

1. Demonstrate that the housing stock lends itself to accessory apartments. The Council will favor a large (measured in square feet), older housing stock;
2. Provide at least \$10,000 per unit to subsidize the creation of the accessory apartment;
3. Demonstrate that rents of accessory apartments will average 57.5 percent of median income, including utilities. The rent shall be based on the number of bedrooms in accordance with N.J.A.C. 5:93-7.4; and

4. Demonstrate that accessory apartments will be affirmatively marketed in accordance with N.J.A.C. 5:93-11.

(b) Accessory apartments shall be exempt from Council bedroom mix requirements (N.J.A.C. 5:93-7.3).

(c) Accessory apartments reserved for senior citizens shall be included with the 25 percent that may be reserved for senior citizens pursuant to N.J.A.C. 5:93-5.12.

(d) Controls on affordability on accessory apartments shall remain in effect for at least 10 years. To be eligible for a rental bonus (pursuant to N.J.A.C. 5:93-5.13), controls on affordability shall remain in effect for at least 30 years.

(e) The Council shall assess the municipality's accessory apartment program at the end of a two-year period from date of substantive certification and shall require any necessary changes to address a shortfall, including, but not limited to the zoning of an additional site.

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

5:93-5.10 Purchase of housing units that have never been occupied and vacant housing units

(a) Purchasing housing units that have never been occupied and offering them in sound condition at affordable prices and/or rents to low and moderate income households may be used to address a municipal housing obligation. The sales price or rent of affordable units shall conform to the standards in N.J.A.C. 5:93-7.2 and 7.4. Municipalities that propose to purchase more than 30 percent but less than 100 percent of the market units in any one development and restrict them to low and moderate income households shall consider the impact of such a purchase on the value of the market units within the development. Municipalities shall also consider the impact of the purchase on the economic viability of any condominium or homeowners association.

(b) Purchasing housing units that have been vacant for at least 18 months and offering them in sound condition at affordable prices and/or rents to low and moderate income households may be used to address a municipal housing obligation. To be eligible, the municipality shall demonstrate to the Council's satisfaction, that the housing has been vacant for at least 18 months. The sales price or rent of the affordable units shall be consistent with the standards in N.J.A.C. 5:93-7.2 and 7.4.

(c) The Council shall review plans to purchase housing units that have never been occupied and housing units that the municipality has determined to be vacant for at least 18 months in a manner similar to its review of municipally sponsored construction, conversion and gut rehabilitation. Affordable low and moderate income housing created pursuant to this section shall, as best as practicable, conform to the Council's bedroom mix rules (N.J.A.C. 5:93-7.3) and

shall be affirmatively marketed pursuant to N.J.A.C. 5:93-11.

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

5:93-5.11 Write-down/buy-down of previously owned units

(a) Writing-down or buying-down the cost of previously owned market rate units and offering them in sound condition at affordable prices to low and moderate income households may be used to address a municipal housing obligation. A municipality utilizing this program shall:

1. Propose up to 10 units but no more than 25 percent of a municipality's net inclusionary or new construction component;
2. Demonstrate that there are sufficient for-sale market rate units within the municipality on the multiple listing service for a viable program;
3. Provide at least \$20,000 per unit to subsidize the cost of the buy-down unit;
4. Ensure that the sales prices shall conform to the standards in N.J.A.C. 5:93-7.4;
5. Demonstrate that at least half of the proposed units will be affordable to low income households and that the sales prices will be affordable to households earning an average 57.5 percent of median or the range of affordability will be accommodated elsewhere in the housing plan. The sale prices shall be based on the number of bedrooms in accordance with N.J.A.C. 5:93-7.4;
6. Demonstrate that the program and buy-down units will be affirmatively marketed in accordance with N.J.A.C. 5:93-11;
7. Be exempt from bedroom mix requirements pursuant to N.J.A.C. 5:93-7.3;
8. Place the 30-year deed restriction and mortgage lien on each unit as per Technical Appendix E, N.J.A.C. 5:93;
9. Designate an administrative agency that will:
 - i. Maintain an up-to-date inventory of units that meet the requirements of a buy-down program;
 - ii. Qualify and place income eligible households in low and moderate income units upon initial occupancy;
 - iii. Place income eligible households in low and moderate income units as they become available during the 30-year term of affordability controls;
 - iv. Enforce the terms of the deed restriction and mortgage lien;
 - v. Set up a separate interest bearing escrow account for the buy-down funds from each municipality; and

vi. Sponsor a home ownership counselling program and post purchase session for prospective purchasers; and

10. Encourage the dispersment of these units throughout the municipality;

(b) The Council shall assess the municipality's write-down/buy-down program at the end of a two-year period from date of substantive certification and the municipality shall prepare a plan to address any unmet units at that time.

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

5:93-5.12 Status of sites addressing the 1987-1993 municipal obligation

(a) Municipalities that received substantive certification for their 1987-1993 obligation based, in part, on the municipal choice to sponsor the construction of low and moderate income housing are responsible for constructing the low and moderate income housing. Failure of the community to satisfy the conditions of substantive certification and construct the housing shall not absolve the municipality from its responsibility.

(b) Sites zoned for inclusionary development in addressing the 1987-1993 housing obligation shall retain such zoning in the petition addressing a 1987-1999 fair share obligation if:

1. The site was subject to an agreement pursuant to the Council's mediation process or part of a negotiated settlement in court; or
2. The developer of the site has filed a development application with the municipality prior to the expiration of the 1987-1993 substantive certification period or the municipal petition for substantive certification whichever is later.

(c) A municipality may propose to eliminate a site under N.J.A.C. 5:93-5.12(b) if there is a 12-year petition and a signed agreement between the municipality and the affected property owner of the site on a new, proposed zoning.

(d) When petitioning to address a 12-year obligation, a municipality seeking to replace or delete a site used in addressing the 1987-1993 housing obligation that does not meet the criteria in (b) above shall provide notice at the time of petition to the owner of the site that the site is being replaced or deleted.

(e) A developer seeking an amendment to the density requirements of an inclusionary site shall follow the procedures set forth in N.J.A.C. 5:91-13. In submitting such requests, the developer shall demonstrate:

1. An ability to construct low and moderate income units within a defined period of time; and

2. A plan to address the low and moderate income units required of the site as a condition of substantive certification.

Recodified from 5:93-5.11 and amended by R.1995 d.491, effective September 5, 1995.