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.

(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 dispersement 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 ECHO (elder cottage housing opportunities) housing units

(a) Municipalities shall receive one credit against their rehabilitation component for ECHO housing which complies with N.J.A.C. 5:91, 5:92, and 5:93.

(b) The municipality shall purchase the ECHO housing or lease ECHO housing for a minimum of six years.

(c) Municipalities may receive credit for up to 10 ECHO units or no more than 25 percent of the rehabilitation component, whichever is less.

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

5:93–5.13 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. 5:93–5.13(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 N.J.A.C. 5:93–5.11 and 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. 5:93–5.12 and amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).

5:93–5.14 Age restricted housing

(a) Municipalities may age restrict housing based on the following formulae:

1. For municipalities that have received substantive certification or a judgment of repose and are not seeking a vacant land adjustment: age restricted units = .25 (municipal precredited need – prior cycle credits – credits pursuant to N.J.A.C. 5:93–3.4 – the impact of the 20 percent cap – the impact of the 1,000 unit limitation pursuant to N.J.A.C. 5:93–14) – any units age restricted in addressing the 1987–1993 housing obligation.

2. For municipalities that received or are receiving a vacant land adjustment: age restricted units = .25 (realistic development potential + rehabilitation component – credits pursuant to N.J.A.C. 5:93–3.4) – any age restricted units in addressing the 1987–1993 housing obligation.

3. For municipalities that have never received substantive certification or a judgment of repose and are not seeking a vacant land adjustment: age restricted units = .25 (municipal precredited need – prior cycle credits – credits pursuant to N.J.A.C. 5:93–3.4 – the impact of the 20 percent cap – the impact of the 1,000 unit limitation pursuant to N.J.A.C. 5:93–14.)

(b) If the municipality is transferring or has transferred housing units via an RCA, the maximum amount of age restricted units in the sending municipality is calculated in N.J.A.C. 5:93–6.1(b). Housing units transferred via an RCA may include age restricted housing units provided that the sum of the newly constructed age restricted units created in the sending and receiving municipalities does not exceed the total permitted above. However, if the sending municipality has received or is seeking a vacant land adjustment and is transferring or has transferred housing units via an RCA, the maximum amount of age restricted units in the sending municipality shall not exceed 25 percent of the calculated need minus transferred or proposed RCA units. This restriction shall not apply to the rehabilitation of existing age restricted units in either the sending or receiving municipality.

(c) A receiving municipality in an RCA may seek a waiver to age restrict more low and moderate income units than permitted by (a) above. In reviewing such a request, the Council shall consider the municipality's past inclusionary practices, measured by objective criteria, such as: jobs to housing ratio; municipal median income as compared to the regional median income; and the percentage of low and moderate income households in the municipality as compared to the percentage in the housing region. The Council shall also consider the waiver request within the context of the objectives of the receiving municipality's project plan.

Recodified from N.J.A.C. 5:93–5.12 and 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. 5:93–5.13 and amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).

5:93–5.15 Rental housing

(a) In addressing the 1987–1999 housing need, every municipality shall have an obligation to create a realistic opportunity to construct rental units. For a municipality not receiving an adjustment pursuant to N.J.A.C. 5:93–4.2, the rental obligation shall equal .25 (municipal precredited need – prior cycle credits – impact of the 20 percent cap – the impact of the 1,000 unit limitation pursuant to N.J.A.C. 5:93–14 – the rehabilitation component) or .25 (calculated need – the impact of the 1000 unit limitation pursuant to N.J.A.C. 5:93–14 – the rehabilitation component). For a municipality that receives an adjustment pursuant to N.J.A.C. 5:93–4.2, the rental obligation shall equal 25 percent of the RDP.

(b) Any rental obligation (pursuant to N.J.A.C. 5:92–14.4(a) and (b)) that was a condition of substantive certification in addressing the 1987–1993 municipal fair share shall be considered as an ongoing obligation in addressing the 1987–1999 housing need.

(c) The municipal approach to addressing the rental obligation may include, but not necessarily be limited to, any combination of the following:

1. Creation of alternative living arrangements pursuant to N.J.A.C. 5:93–5.8;

2. A municipally sponsored or non-profit sponsored rental development;

3. Agreements with developers for the municipality to purchase low and moderate income units and maintain them as rental units;

4. The creation of accessory apartments pursuant to N.J.A.C. 5:93–5.9;

5. Permitting inclusionary sites to be developed as sales or rental housing with a density increase if the developer chooses to build rental housing. The Council shall presumptively require a minimum density of ten units per acre and a maximum set-aside of 15 percent for rental housing. Municipalities that choose a zoning response to all or part of the rental obligation shall permit such densities and set-asides on all inclusionary sites until the requirement for rental housing has been addressed;

6. Agreements with developers to construct and administer low and moderate income rental units as part of an inclusionary development.

(d) The Council shall grant a rental bonus for rental units that are constructed and conform to the standards contained in N.J.A.C. 5:93–5.8(d) and 5.9(d) and 5:93–7. The Council may also grant the rental bonus prior to construction when it determines that the municipality has provided or received a firm commitment for the construction of rental units. A municipality may lose the benefit of the rental bonus granted in advance of the actual construction of the rental units if the municipality has not constructed the rental units within the time periods established as a condition of substantive certification; or granted preliminary or final approval for the construction of the rental units (where a developer agreed to construct the rental units). A municipality may also lose the benefit of a rental bonus if the preliminary or final approval is no longer valid or if the developer has abandoned the development.

1. A municipality shall receive two units (2.0) of credit for rental units available to the general public.

2. A municipality shall receive one and one-third (1.33) units of credit for age restricted rental units. However, no more than 50 percent of the rental obligation defined in (a) and (b) shall receive a bonus for age restricted rental units unless:

i. The rental units have been constructed prior to the effective date of this rule;

ii. The development has a valid preliminary or final approval from the municipality and the developer remains committed to building rental housing as of the effective date of this rule; or

iii. The time limit for constructing the rental units as per the conditions of substantive certification has not expired.

3. No rental bonus shall be granted for rental units in excess of the rental obligation defined in (a) and (b).

(e) Municipalities that choose to transfer the rental obligation via an RCA shall do so by creating new rental units in the receiving municipality. Gut rehabilitation units as defined in N.J.A.C. 5:93–1.3 may address the rental component. Municipalities that transfer the rental obligation shall receive a one unit credit for each rental unit transferred.

Recodified from N.J.A.C. 5:93–5.13 and 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. 5:93–5.14 and amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).

SUBCHAPTER 6. REGIONAL CONTRIBUTION AGREEMENTS (RCA)

5:93–6.1 General provisions

(a) Municipalities may propose the transfer of up to 50 percent of their housing obligation based on the procedures in N.J.A.C. 5:91–11 and on the following formulae:

1. For municipalities that have received substantive certification or a judgment of repose and are not seeking a vacant land adjustment:

RCA = .5 (municipal precredited need – prior cycle credits – credits pursuant to N.J.A.C. 5:93–3.4 – the impact of the 20 percent cap – the impact of the 1,000 unit limitation to N.J.A.C. 5:93–14) – any units transferred as a result of a previously approved RCA.

2. For municipalities that have received or are requesting a vacant land adjustment:

RCA = .5 (realistic development potential + rehabilitation component – credits pursuant to N.J.A.C. 5:93–3.4) – any units transferred as a result of a previously approved RCA.

3. For municipalities that have never received substantive certification or a judgment of repose and are not seeking a vacant land adjustment:

RCA = .5 (municipal precredited need – prior cycle credits – credits pursuant to N.J.A.C. 5:93– 3.4 – the

impact of the 20 percent cap – the impact of the 1000 unit limitation pursuant to N.J.A.C. 5:93–14)

(b) RCA municipalities may age restrict the following number of units within their municipalities:

1. For sending municipalities, the number of units that may be age restricted is:

RCA sender = .25 (municipal precredited need – rehabilitation component – prior cycle credits – transferred or proposed RCA units) – any first round age restricted units.

2. For sending municipalities that have received or are seeking a vacant land adjustment, the number of units that may be age-restricted is:

RCA sender = .25 RDP – transferred or proposed RCA units) – any first round age-restricted units.

3. For receiving municipalities, the number of units that may be age restricted with RCA funds is:

RCA receiver = sending municipality's age restricted component based on N.J.A.C. 5:93–5.14 – the number of age restricted units that have been constructed or are planned to be constructed in the sending municipality based on N.J.A.C. 5:93–6.1.

The sum of the maximum age restricted units in both the sending and receiving municipalities (those utilizing RCA funds) equals the sending municipality's maximum age restricted component as calculated according to N.J.A.C. 5:93–5.14. Age restricted units that are prior cycle credits are excluded from this calculation.

(c) A municipality may propose such a transfer to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter. However, a municipality may not transfer any portion of its rehabilitation component. The Council shall not review an RCA without a contractual agreement between the two municipalities that, at a minimum, specifies the number of units to be transferred, the amount of compensation and the type of housing activity anticipated by the receiving municipality. In addition, the provisions of N.J.A.C. 5:93–6.2(a) through (d) shall be addressed in the final contract.

(d) Notwithstanding the contractual agreement that initiates the review of an RCA, described in (c) above, the Council may require any contractual amendments it deems necessary upon reviewing the RCA.

(e) The Council shall maintain current lists of municipalities which have stated an intent to enter into RCAs as receiving municipalities and shall provide copies of such lists to potential sending municipalities as requested.

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 (b)1–3 and recodified b, c, d as c, d, e.

5:93–6.2 Terms

(a) At least 50 percent of the units accepted by a receiving municipality shall be affordable to low income households. The Council may modify this requirement if it determines that the sending municipality has adequately provided for its low income housing obligation elsewhere in its housing element. In the case of RCAs for scattered site rehabilitation of occupied units, the receiving community shall ensure, as best as practicable, that 50 percent of the rehabilitated units are occupied by low income households.

(b) A receiving municipality may use revenues collected as a result of an RCA for any 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.

(c) All RCAs shall specify payment schedules which conform to a construction or rehabilitation schedule and which relate to the receiving municipality's ability to deliver housing units in a timely fashion.

(d) All RCAs shall require that a receiving municipality submit a proposed project plan within 60 days of the sending municipality's petition for substantive certification which shall be in such form and contain such information as the Agency and the Council may require.

(e) Sending and receiving municipalities shall, as part of their contract negotiations, determine the use of transferred funds that may be in excess of the amount necessary to implement the RCA. Such funds shall either be returned to the sending community and/or utilized by the receiving community to produce additional low and moderate income housing units or for a capital expenditure ancillary to or benefiting low and moderate income households. However, if a receiving municipality can accomplish the housing activity approved as part of its project plan for less than the minimum per unit transfer pursuant to N.J.A.C. 5:93–6.4(b), the difference between the cost of the housing activity and the minimum per unit transfer shall be used within the receiving municipality. The specific use of excess funds by the receiving community need not be specified in the RCA contract, but shall be subject to Council approval.

(f) No more than 20 percent of the RCA principal shall be expended on administration. RCA administrative dollars may be calculated at the beginning of each year and expended, once available. In the first year of an RCA program, upon request to the Council, administrative funds may be in excess of the 20 percent but may not exceed the overall 20 percent permitted for the term of the RCA contract.

1. Sell to a qualified low and moderate income household at a price not to exceed the maximum permitted sales price in accordance with existing Council rules, providing the unit is regulated by the deed restriction and lien adopted by the Council and included in Appendix E, incorporated herein by reference, for a period of at least 30 years; or

2. Exercise the repayment option and sell to any purchaser at market price, providing that 95 percent of the price differential is paid to the administrative entity, as an instrument of the municipality, at closing.

(c) If the sale will be to a qualified low and moderate income household, the administrative entity shall certify the income qualifications of the purchaser and shall ensure the housing unit is regulated by the deed restriction and lien required by the Council, which has been included in Appendix E, incorporated here by reference.

(d) The administrative entity shall examine any contract of sale containing a repayment option to determine if the proposed sales price bears a reasonable relationship to the housing unit's fair market value. In making this determination, the administrative entity may rely on comparable sales data or an appraisal. The administrative entity shall not approve any contract of sale where there is a determination that the sales price does not bear a reasonable relationship to fair market value. The administrative entity shall make a determination within 20 days of receipt of the contract of sale and shall calculate the repayment option payment.

(e) The administrative entity shall adopt an appeal procedure by which a seller may submit written documentation requesting the administrative entity to recompute the repayment obligation if the seller believes an error has been made, or to reconsider a determination that a sales price does not bear a reasonable relationship to fair market value. A repayment obligation determination made as a result of an owner's appeal shall be a final administrative determination of the administrative entity.

(f) The repayment shall occur at the date of closing and transfer of title for the first non-exempt transaction after the expiration of controls on affordability.

(g) Repayment proceeds shall be deposited in a housing trust fund (see N.J.A.C. 5:93–8.15 and may be used as per N.J.A.C. 5:93–8.16. Money deposited in housing trust funds may not be expended until the municipality submits and the Council approves a spending plan (See N.J.A.C. 5:93–5.1(c)).

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).
In (g), substituted a reference to N.J.A.C. 5:93–8.15 for a reference to N.J.A.C. 5:93–8.14, and substituted a reference to N.J.A.C. 5:93–8.16 for a reference to N.J.A.C. 5:93–8.15.

5:93–9.9 Municipal rejection of repayment option—sales units

(a) A municipality shall have the right to determine that the most desirable means of promoting an adequate supply of low and moderate income housing is to prohibit the exercise of the repayment option and maintain controls on lower income housing units sold within the municipality beyond the period required by N.J.A.C. 5:93–9.2. Such determination shall be made by resolution of the municipal governing body and shall be effective upon filing with the Council and the authority. The resolution shall specify the time period for which the repayment option shall not be applicable. During such period, no seller in the municipality may utilize the repayment option permitted by N.J.A.C. 5:93–9.8.

(b) Municipalities that exercise the option outlined in (a) above shall:

1. Provide public notice in a newspaper of general circulation; and

2. Notify the administrative entity and Council of its governing body's action.

(c) The administrative entity shall ensure that the deed restriction on all affected housing units reflects the extended period of controls.

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

5:93–9.10 Continued application of options to create, rehabilitate or maintain low and moderate income units; sales units

When a housing unit has been maintained as a low or moderate income unit after controls have been in effect for the period specified in N.J.A.C. 5:93–9.2, the deed restriction governing the housing units shall allow municipalities, the State, non-profit agencies and sellers of low and moderate income units to again exercise all the same options as provided in this subchapter.

5:93–9.11 Eligible capital improvements prior to the expiration of controls; sales units

(a) Property owners of single family, owner-occupied housing may apply to the administrative entity for permission to increase the maximum price for eligible capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household. In no event shall the maximum price of an improved housing unit exceed the limits of affordability for the larger household. Property owners shall apply to the administrative entity if an increase in the maximum sales price is sought.

(b) At resale, all items of property which are permanently affixed to the units and/or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall to wall carpeting) shall be included

in the maximum allowable resale price. Other items of property may be sold to the purchaser at a reasonable price that has been approved by the administrative entity at the time of signing the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price has been approved by the administrative entity. Unless otherwise permitted by the Council, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at resale.

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

5:93–9.12 Subsidy to ensure affordability prior to the expiration of controls; sales units

If the use of median income data adopted by the Council to index the cost of housing renders a unit unaffordable to a low or moderate income household at the time of resale, a municipality shall not lose credit for the housing unit, provided that adequate controls on affordability remain in place, but the municipality may subsidize the housing unit to maintain affordability.

5:93–9.13 Impact of foreclosure on resale while controls are in place; sales units

A judgment of foreclosure or a deed in lieu of foreclosure to a financial institution regulated by State and/or Federal law or to a lender on the secondary mortgage market (including, but not limited to, the Federal National Mortgage Association, the Home Loan Mortgage Corporation, the Government National Mortgage Association or an entity acting on their behalf) shall extinguish controls on affordable housing units provided there is compliance with N.J.A.C. 5:93–9.14. Notice of foreclosure shall allow the administrative entity, the municipality, the DCA, the Agency or a nonprofit entity to purchase the affordable housing unit at a negotiated price not to exceed the maximum sales price and maintain it as an affordable unit for the balance of the intended period of controls. Failure to purchase the affordable housing unit shall result in the Council adding that unit to the municipal present and prospective fair share obligation. Failure of the financial institution to provide notice of a foreclosure action to the administrative entity shall not impair any of the financial institution's rights to recoup loan proceeds; shall not negate the extinguishment of controls or the validity of the foreclosure; and shall create no cause of action against the financial institution.

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).

5:93–9.14 Excess proceeds upon foreclosure; sales units

In the event of a foreclosure sale, the owner of the affordable housing unit shall be personally obligated to pay to the administrative entity responsible for assuring affordability, any surplus funds, but only to the extent that such surplus funds exceed the difference between the sales price at the time of foreclosure and the amount necessary to redeem the debt to the financial institution, including costs of foreclosure.

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).

5:93–9.15 Annual indexed increases while controls are in place; sales and rentals

(a) The price of an owner-occupied housing unit may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative entity be lower than the last recorded purchase price.

(b) With the exception of rentals constructed pursuant to low income tax credit regulations, the rent of a low or moderate income housing unit may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income tax credit regulations shall be indexed pursuant to the regulations governing low income tax credits.

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).

5:93–9.16 Procedures for initial sales, resale prior to the expiration of controls, and rentals

(a) Low and moderate income sales units shall not be offered to non-income eligible households at initial sale without Council approval. Parties that petition the Council for such approval shall document efforts to sell housing units to income eligible households and shall adhere to the procedures outlined in N.J.A.C. 5:91–12.

(b) Persons wishing to sell affordable units shall notify the administrative entity responsible for assuring affordability of the intent to sell. If no eligible buyer enters a contract of sale for the unit within 90 days of notification, the administrative entity shall have the option to purchase the unit for a negotiated price that shall not exceed the maximum price permitted based on the regional increase in median income as defined by HUD or other recognized standard adopted by the Council. If the administrative entity does not purchase the unit, the seller may apply for permission to offer the unit to a non-income eligible household at the maximum price permitted. The seller shall document efforts to sell the unit to an income eligible household as part of this application. In reviewing the request, the administrative entity shall consider the specific reasons for any delay in selling the housing unit and the hardship to the seller in continuing to offer the affordable unit to an income eligible applicant. The inability to sell a unit for the maximum permitted resale price shall not, in itself, be considered an appropriate reason for allowing a housing unit to be sold to a non-income eligible household. If the request is granted, the seller may offer a low income housing unit to a moderate income household and a moderate income housing unit to a household earning in excess of 80 percent of median. In no case shall the seller be permitted to receive more than the maximum price permitted. In no case shall a sale pursuant to this section eliminate the resale controls on the unit or permit any subsequent seller to convey the unit except in full compliance with the terms of this subchapter. The over-income purchaser may pay the same condominium or homeowner association fee as the market purchaser if the master deed so provides. If an income eligible purchaser subsequently purchases a unit previously owned by an over-income purchaser, the condominium or homeowner association fee shall revert to the fee currently charged to all income eligible owners.

(c) Owners of low and moderate income rental units shall not offer rental units to non-income eligible households without prior approval of the Council. Parties that petition for such approval shall document all efforts to rent to income eligible households and demonstrate to the satisfaction of the Council that alternatives, such as a reduction in rent, is not feasible. Parties that petition the Council shall adhere to the procedures outlined in N.J.A.C. 5:91–12.

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

SUBCHAPTER 10. COST GENERATION

5:93–10.1 Purpose and scope

(a) Section 14(b) of the Fair Housing Act (N.J.S.A. 52:27D–301 et seq.) incorporates the need to eliminate unnecessary cost generating features from municipal land use ordinances as a requirement of substantive certification. In order to receive and retain substantive certification, municipalities shall eliminate development standards that are not essential to protect the public welfare and to expedite (or "fast track") municipal approvals/denials on inclusionary development applications. In order to expedite the review of development applications, municipalities shall cooperate with developers of inclusionary developments in scheduling pre-application conferences. Municipal boards shall schedule regular and special monthly meetings (as needed) and provide ample time at these meetings to consider the merits of the inclusionary development application. The goal of such a schedule is to act on a development application within time limits approximating those outlined in the Municipal Land Use Law (N.J.S.A. 40:55D–1 et seq.) Failure to expedite the approval/denial of an inclusionary development application shall be considered a reason for revoking substantive certification.

(b) Inclusionary developments that are included in a housing element and fair share plan have proceeded through a very public process. Therefore, the focus of municipal review shall not be whether the sites are properly zoned. Rather, the focus shall be whether the design of the inclusionary development is consistent with the zoning ordinance and the mandate of the Fair Housing Act regarding unnecessary cost generating features. Municipalities shall be expected to cooperate with developers of inclusionary developments in granting reasonable variances necessary to construct the inclusionary development.

5:93–10.2 Standards

(a) In reviewing the fair share plans, the Council shall use the standards promulgated pursuant to N.J.S.A. 40:55D–40.1 through 40.7 (P.L. 1993 c.32) as a frame of reference. Municipalities that wish to impose more stringent standards shall bear the burden of justifying the need for such standards. In its review of municipal ordinances, the Council shall give special attention to:

1. The combined impact of requirements that cumulatively prevent an inclusionary development from achieving the density and set-aside necessary to address the municipal fair share. Examples of such requirements include but are not limited to: building set-backs, spacing between buildings, impervious surface requirements and open space requirements;

2. Requirements to provide oversize water and sewer mains to accommodate future development without a reasonable prospect for reimbursement;

3. Excessive road width, pavement specifications and parking requirements;

4. Excessive requirements for sidewalks and paved paths;

5. Excessive culvert and pumping station requirements; and

6. Excessive landscape, buffering and reforestation requirements.

(b) Municipal housing elements and fair share plans shall allow for phased construction and phased bonding of on-site, off-site and off-tract improvements required of inclusionary developments.

(c) The Council shall not permit restrictions on the bedroom mix of the market rate units within an inclusionary development.

5:93–10.3 Special studies/escrow accounts

(a) It is common for municipalities to require inclusionary developers to conduct special studies related to the fiscal, traffic and environmental impacts of proposed inclusionary developments. These studies are then reviewed by municipal professionals who are paid from escrow accounts funded by the inclusionary developer as a requirement of the municipal review of the development application. The Council has determined that these studies shall not be used to alter the density of sites that are part of the municipal substantive certification. Such studies may be used to foster proper design and to determine pro-rata off-site and off-tract improvements. The Council has also determined that it is unnecessary for developers of inclusionary developments to pay for the initial preparation of such a study and for its review. Therefore, municipalities that receive substantive certification shall offer inclusionary developers the option of preparing fiscal, traffic and environmental impact studies or choosing a consultant from a list of at least six professionals (prepared by the municipality) to prepare the studies. If the developer chooses a consultant from the municipally prepared list, the developer and municipality shall rely on the consultant's recommendations.

(b) Fees to review development applications shall be estimated prior to payment of filing fees. Developers shall be entitled to review all charges against any escrowed fees and be provided with monthly accounting reports upon request.

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

5:93–10.4 Relief subsequent to substantive certification

(a) Developers may provide notice to the Council of the date they filed their development application with the municipality. The municipality need not have deemed the application complete for the developer to provide such notice.

(b) Developers and/or municipalities that cannot agree on specific standards that apply to a specific inclusionary development may request the Council to provide a mediator to resolve the dispute. The resulting mediation shall not require a transfer to the Office of Administrative Law pursuant to the Administrative Procedures Act.

(c) Inclusionary developers may seek an administrative order to expedite the municipal review of a development application by filing a motion pursuant to N.J.A.C. 5:91–12. Developers need not request mediation pursuant to (b) above in order to file such a motion; and the Council may hear such a motion concurrent with any such mediation.

(d) Inclusionary developers may request the Council to act as an advocate for inclusionary developments that require permits from DEPE and DOT.

5:93–10.5 Revocation of substantive certification

A Council determination, after a hearing conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq., that a municipality has delayed action on an inclusionary development application, required unnecessary cost generating standards or obstructed the construction of an inclusionary development may result in Council action revoking substantive certification.

SUBCHAPTER 11. AFFIRMATIVE MARKETING

5:93–11.1 The affirmative marketing plan; definition and contents

(a) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of sex, age or number of children, to housing units which are being marketed by a developer or sponsor of affordable housing. It is a continuing program and covers the period of deed restriction.

(b) The affirmative marketing plan shall provide the following information:

1. The name and address of the project;

2. The number of units, including the number of sales and rental units;

3. The price of sales and/or rental units;

4. The name of the rental manager and/or sales agent;

5. A description of outreach efforts to groups that are not readily reached by commercial media efforts (See N.J.A.C. 5:92–11.3 for advertising program details); and

6. A description of the random selection method that will be used to select occupants of low and moderate income housing.

(c) The affirmative marketing plan shall be a part of the fair share plan and shall be referenced by ordinance.

(b) The Fair Housing Act at N.J.S.A. 52:27D–307 directs the Council to "give appropriate weight" in carrying out its duties to the implementation of the SDRP. It is the purpose of this subchapter to outline the way in which the goals and policies of the SDRP will be considered by the Council in awarding the site specific relief to an objector to a municipal housing element. This process relies upon the SDRP's definitions of "Planning Areas" and "Centers." The principles outlined in the subchapter are illustrated in Appendix F.

Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
Referenced N.J.A.C. 5:91–3.6.

5:93–13.2 Site–specific relief in Planning Areas 1 and 2

When considering granting site-specific relief to an objector in Planning Area 1 or 2, the Council shall grant such relief if the Council determines that the objector's site is available, approvable, developable and suitable.

5:93–13.3 Site specific relief in Planning Area 3

(a) When considering granting site-specific relief to an objector in Planning Area 3, the Council shall determine if the RDP within the development boundaries of centers and Planning Areas 1 and/or 2 is adequate to address the municipal inclusionary component.

1. If the objector's site is located within a center, the Council shall presumptively grant relief if the site is available, approvable, developable and suitable.

2. If the RDP within the development boundaries of centers and Planning Areas 1 and/or 2 is adequate to address the municipal inclusionary component and the objector's site is not located in a center, the Council shall deny relief to the objector.

3. If the RDP within the development boundaries of centers and Planning Areas 1 and/or 2 is not adequate to address the municipal inclusionary component:

i. The Council shall grant relief to sites that are suitable if it determines the site lies within a center or Planning Area 1 and/or 2; has access to infrastructure; or that infrastructure can be easily extended from Planning Area 2;

ii. Where the objector's site does not lie within a center or Planning Area 1 and/or 2, does not have access to infrastructure or where infrastructure cannot be easily extended from Planning Area 2, the Council shall render a decision on granting relief after consideration of:

(1) A report from the Office of State Planning that contains recommendations pertaining to the appropriateness of the area surrounding the objector's site for center designation; and

(2) The presence of other suitable sites serviced by infrastructure or to which infrastructure can easily be extended from Planning Area 2.

Amended by R.1998 d.21, effective January 5, 1998.
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).
Substituted "RDP" for "realistic development potential".

5:93–13.4 Site specific relief in Planning Areas 4 and 5

(a) When considering granting site specific relief to an objector in Planning Areas 4 and 5, the Council shall determine if the RDP within the development boundaries of centers and Planning Areas 1 and/or 2 is adequate to address the municipal inclusionary component.

1. If the objector's site is located within a center, the Council shall presumptively grant relief if the site is available, approvable, developable and suitable.

2. If the RDP within the development boundaries of centers and Planning Areas 1 and/or 2 is adequate to address the municipal inclusionary component, and the objector's site is not located in a center, the Council shall deny relief to the objector.

3. If the RDP within the development boundaries of centers and Planning Areas 1 and/or 2 is not adequate to address the municipal inclusionary component, the Council shall render a decision on granting relief after consideration of a report from the Office of State Planning that contains recommendations pertaining to the appropriateness of the area surrounding the objector's site for center designation.

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

SUBCHAPTER 14. ONE THOUSAND UNIT LIMITATION

5:93–14.1 General

No municipality shall be required to address a fair share beyond 1,000 units within six years from the grant of substantive certification, unless it is demonstrated, following an objection and an evidentiary hearing, based upon the facts and circumstances of the affected municipality that it is likely that the municipality through its zoning powers could create a realistic opportunity for more than 1,000 low and moderate income units within the six year period. The facts and circumstances which shall determine whether a municipality's fair share shall exceed 1,000 units shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential units in the six year period preceding the petition for substantive certification.