

Somerset County Planning Board
Comments and Recommendations
Proposed Amendments and Proposed New Rules regarding the
Substantive Rules of the NJ Council on Affordable Housing (COAH)
For the period beginning on June 2, 2008

5:97-2.2 (d), Appendix F (1) and Appendix F (2): The outdated NJLWD projections used by COAH to derive the proposed municipal growth projections and associated growth share obligations for 2018 are overly optimistic since they do not adequately reflect the changing socio-economic conditions and demographic trends affecting the State and the COAH Housing Regions through 2018. These projections are updated every two years by the NJLWD. The State-level projections released in July 2008 by the NJLWD represent a reduction in the rate of population and employment growth for the State as compared to the previous projections used by COAH. The State of New Jersey has experienced a significant economic slowdown since 2000. In Somerset County, only 770 new jobs were added between 2000 and 2007, an increase of just 0.004%. A significant recession in the housing market has been driving down home construction, increasing prices and reducing sales during the past few years, both nationally and statewide. The increasing cost of living and doing business in the state has been exacerbated by rising energy costs and tax rates, compounding the reduction in population and job growth occurring statewide. It is strongly recommended that the outdated NJLWD county-level projections not be used by COAH as the basis of the 2018 municipal growth allocations.

The County Planning Board has grave concerns about the allocation model used by COAH's consultant for allocating growth to the municipal level. The methods for calculating the "implied growth rate" and for allocating "spill-over" are inadequately described in Appendix F (2). As such, the process is impossible to replicate. Likewise, it is impossible to properly evaluate the proposed municipal-level growth projections. For example, a table that illustrates the amount of spill-over that has been allocated from and to various municipalities is not included in the Appendix F (2) Report, such that we are unable to determine how a municipality has been affected by "spill-over". We also find that the concept of reallocating "spillover" to adjoining municipalities is arbitrary – there is no rational relationship between the amount of spillover allocated to receiving municipalities and the receiving municipalities' characteristics, growth trends and land use patterns, making the use of this concept unacceptable from a smart growth planning standpoint.

5:97-2.2 (d) specifies that a municipality may utilize its own growth projections to calculate the growth share pursuant to N.J.A.C. 5:97-2.3 (d), provided the municipal projections exceed the 2018 projections in Appendix F(2). Restricting the use of a municipality's own growth projections in this way is inherently unfair. Both the method used for allocating growth to municipalities as described in Appendix F (2) and the May 2, 2008 revised Analysis of Vacant Land - Appendix F (1), do not adequately address residential and non-residential redevelopment. Furthermore, the methods used in

Appendix F (1) and Appendix (F2), and strategy described in 5:97-2.2 are based on the principle that it is in the best interest of the State for all municipalities to build-out to the limits of their physical growth capacity, wherein capacity is defined narrowly based on vacant land. This principle is fundamentally inconsistent with the State Development and Redevelopment Plan, the Highlands Regional Master Plan, Water Quality Management Planning and the principles of sustainability. Furthermore, by not adequately factoring in redevelopment or comprehensive system capacity, COAH's projections are inherently sprawl-inducing, resulting in the over-estimation of projected 2018 growth in municipalities with vacant land, and underestimation of growth in municipalities where redevelopment opportunities exist. Trends documented through a comparison of the 1990 and 2000 Census of Population and Housing show that although unconstrained, undeveloped land was scarce, significant growth resulting from redevelopment activity occurred in several of the State's urban areas. The County Planning Board recognizes that it is very difficult to accurately project growth associated with local redevelopment activities using the broad methods employed by COAH. As such, it is strongly recommended that the use of municipal projections developed through the State Plan Cross Acceptance Process, Plan Endorsement Process and the Wastewater Management Planning Process be permitted, whether or not they exceed the projections in Appendix F (2).

Despite numerous objections raised during the public review period associated with COAH's Third Round Rules Published in the January 22, 2008 NJ Register and the first version of the Vacant Land Analysis; and the presentation and submission of detailed data and information illustrating errors to COAH, no fundamental changes were made to rectify inaccuracies resulting from the use of the NJDEP's 2002 GIS Land Use Land Cover Dataset as the basis for defining vacant land. The bulk of the error is associated with the inclusion of side, rear and front set-back areas associated with many residential and non-residential parcels that cannot be subdivided without a variance as part of vacant developable land. Although the May 2, 2008 Analysis of Vacant Land (Page 6) acknowledges this error and recognizes that improvements to the results that would be possible if parcel data was used, the report states that because uniform, state agency verified parcel data is not available statewide, parcel data could not be used for the analysis.

The County Planning Board strongly disagrees with the decision to deny the use of more detailed GIS datasets based on county tax parcel information in counties that currently have this data available in order to yield more accurate results. COAH utilized different methods, base data and build-out factors for identifying vacant land and build-out capacity in the Meadowlands, Pinelands, and Highlands as compared to what was used in the "Rest of State", yielding inherently different results for each area that are difficult to compare.

If COAH was truly concerned about consistency statewide and applied a uniform methodology to all areas of the State, a very different result would have been generated. For this reason, the County Planning Board is very concerned that the distribution of vacant land and associated development capacity statewide presented in the May 2nd

Analysis is fundamentally flawed. For example, the May 2nd analysis applied GIS data representing actual municipal zoning densities within Sewer Service Areas in the Highlands Planning Area instead of the dwelling units associated with the four land use categories unique to each COAH region that were applied in the “Rest of State”. This resulted in an increase in projected growth share for Somerset County’s five (5) Highlands municipalities (Bedminster, Bernards, Bernardsville, Far Hills and Peapack & Gladstone) from 628 affordable units based on the analysis associated with the June 2, 2008 Adopted Third Round Rules to 797 units (an increase of 169 units) based on the May 2nd Analysis associated with the proposed amendments, even though total vacant land in the Highlands pursuant to the May 2nd Analysis is 104,479 acres, significantly lower than the 110,237 acres calculated previously.

Countywide, projected growth share increased from 4,830 to 5,378, an unexplainable increase of 548 units - despite the removal of additional environmentally constrained lands from vacant lands available for development, the removal of lands from sewer service areas, and the application of DEP’s new WQMP HUC 11 septic densities based on a lower nitrate dilution standard of 2 ppm in areas served by on-site septic systems in both the Highlands Planning Area and Rest of State according to May 2nd Analysis.

It is important to note that the Highlands Council considers the use of the new WQMP HUC 11 septic densities to be inconsistent with the Highlands Regional Master Plan. It is our understanding that the DEP is developing a “hybrid” approach that blends the new WQMP septic standards with the Highlands septic standards for use in the Planning Area. This change would theoretically have the affect of lowering the build-out results and growth share requirements for the County’s Highlands municipalities, and represents another reason why the proposed growth share requirements are inflated.

DEP clipped adopted sewer service areas to remove Habitat ranked 3, 4 and 5, wetlands, C-1 buffers and floodplains to facilitate the County Wastewater Management Planning Process in accordance with the new WQMP Rules. This data layer was used in the May 2nd analysis, despite the fact that the layer is only draft. It is currently being vetted at the municipal level by counties involved in the new Wastewater Planning Process, and is subject to corrections identified by counties and municipalities as part of the WMP process, further diminishing the accuracy of COAH’s Vacant Land Analysis.

5:97-2.2 (e): Just as municipalities may submit an implementation schedule that sets forth a detailed timetable for affordable units to be provided within the period of substantive certification that demonstrates realistic opportunity and a timetable for the submittal of all information and documentation required for each mechanism, municipalities should be permitted to plan for their growth-share obligations in a phased way. The phased submission of housing elements/fair share plans would be very appropriate if COAH prohibits municipalities from using municipal projections developed through the State Plan Cross Acceptance Process, Plan Endorsement Process or the Wastewater Management Planning Process whether or not they exceed the projections in Appendix F (2) as recommended above. Furthermore, the phased development and submission of municipal housing elements/fair share plans is strongly

recommended for municipalities where significant wastewater, water supply, transportation and public school system capacity constraints have been identified, and for which durational adjustments would otherwise be required. For example, if existing and programmed system capacity available during the first half of the Third Round period (2008 – 2013) can accommodate ½ of a municipality’s growth share obligation, then the Phase 1 housing element & fair share plan should include mechanisms that address ½ of the municipality’s total obligation. If at any time prior to 2013 the actual growth share approaches or exceeds ½ of the total projected growth share, the municipality should be required to submit a Phase 2 housing element and fair share plan that includes mechanisms that address the balance of the municipality’s total growth share obligation.

As indicated in 5:97-2.2 (e), municipalities may submit implementation schedules. This provision should be expanded to require that the implementation schedule include information about the measures that must be taken to resolve various system capacity constraints (including but not limited to sanitary sewerage and water supply); the responsible entity(s); how said measures will be funded, and the timeline for completion of capacity improvement measures. This section also specifies that implementation schedules “consider the economic viability of the proposed mechanism, including the availability of public subsidies, development fees and other sources of financing”. It is recommended that the use of local market analyses be added as a permitted tool for municipalities to use when considering economic viability. The County is very concerned that the willingness of an owner to sell land for affordable housing development not be used as the sole factor in defining realistic opportunity, since individual circumstances can change in unforeseen ways.

5:97-3.2: The meaning of the term “realistic opportunity” and how it should be interpreted and applied by both municipalities and COAH must be clarified. This concept must be applied uniformly, objectively and fairly.

5:97-3.7: Given the volatility of the current housing and lending markets, it is unreasonable to require municipalities to submit evidence of a firm commitment from developers for the construction of affordable rental housing. If the tenure of the affordable units must change in order for a project to move forward based on economic conditions and market demand, an amendment to the municipality’s housing element and fair share plan should be required. The successful construction of affordable for-purchase units should be encouraged rather than having no construction of any type of affordable units at all. In addition, greater flexibility regarding the ratio of rental versus for-purchase affordable housing is recommended.

5:97-5: Variable presumptive densities based on the location of vacant sites in urban centers and planning areas have been included in the proposed amendments. However, the proposed change needs to go one step further by establishing more refined presumptive densities unique to each of the COAH Housing Regions, which acknowledge differences in the densities, scale and character of cities, suburban and rural communities comprising each of the Housing Regions.

5:97-5.4: The phased submission of housing elements and fair share plans by municipalities that address affordable housing obligations within the range of existing and programmed system capacity available to accommodate planned development should be permitted in lieu of the use of durational adjustments as currently proposed. The proposed rule specifies that municipalities must plan for their projected growth share obligation by zoning sites to accommodate affordable housing, regardless of capacity constraints. This provision is in direct conflict with the new WQMP rules. It also results in potentially unrealistic development and investment expectations, and potential litigation, if insurmountable environmental, cost or engineering constraints preclude capacity issues affecting sites subject to durational adjustments from being resolved within the timeframe of substantive certification.

5:97-6.4: Variable minimum presumptive densities for inclusionary zoning based on location within urban centers and planning areas have been included in the proposed amendments. Consistent with the above recommendation, more refined minimum presumptive densities unique to each of the COAH Housing Regions, which acknowledge differences in the densities, scale and character of cities, suburban and rural communities of each of the Housing Regions is recommended.

The presumptive density provided for inclusionary development outside of sewer service areas in Planning Areas 3, 4 and 5 (40% over existing zoning) is not consistent with the septic density standards established by the new WQMP rules or Highlands Regional Master Plan. The establishment of inclusionary development zones outside of sewer service areas should not be permitted unless documentation that adequate sanitary sewer service and water supply is available or can be made available within the timeframe of substantive certification.

During the State Plan Cross Acceptance Process, numerous changes to the State Plan Planning Area boundaries within Somerset County were proposed and agreed to by the Office of Smart Growth during the Negotiation Process. Absent an adopted, updated State Development and Redevelopment Plan, municipalities should be permitted to utilize planning area delineations agreed to during the Negotiation Phase of Cross Acceptance when determining appropriate presumptive densities to be applied to inclusionary zoning and vacant land. Furthermore, municipalities should not be bound to the DEP's draft modified sewer service area boundaries used in the May 2nd Vacant Land Analysis, which are subject to correction during the County Wastewater Management Planning Process. COAH should accept the use of existing adopted sewer service area boundaries or revised sewer service area boundaries that have been included in municipally-endorsed draft or final County WMPs.

An agreement between COAH and DEP regarding coordination of Wastewater Management Planning and planning for affordable housing in accordance with the State Fair Housing Act is strongly recommended. In addition, an agreement between COAH and the State Planning Commission is needed regarding coordination between the State Plan and planning for affordable housing statewide. A similar planning coordination agreement involving COAH and the Highlands Council is also recommended.

The proposed maximum affordable housing set-asides proposed for inclusionary zoning make it extremely difficult for municipalities to address back-logged prior round and growth share obligations without imposing significant costs on local taxpayers. The rules should encourage municipalities to negotiate increased set-asides within inclusionary developments in exchange for additional density bonuses, or other incentives. The rules should be further modified to include provisions that encourage the use of affordable housing trust fund dollars to compensate for the cost of providing additional affordable units in excess of the maximum set-aside in inclusionary developments as another way of addressing back-logs. Greater flexibility in the application of maximum set-asides can help maximize affordable housing opportunities in a way that is less sprawl inducing and more sustainable by making a greater proportion of existing and programmed system capacity available to affordable housing.

5:97-6.6: Municipalities should be permitted to work with developers to identify and define a bedroom mix for the market-rate component of redevelopment projects that is consistent with market demand and municipal planning objectives.

DCA does not currently issue written approval of the municipal resolution designating the area in need of redevelopment. Therefore, 5:97-6.6 (d) 2 should be eliminated. The requirements in this section should be made consistent with the State Redevelopment and Housing Act.

Executed redevelopment agreements with developers should also identify any infrastructure capacity improvements necessary to accommodate the affordable housing units that will be created, and specify, its phasing schedule, when said improvements will be made.

The rules should clearly permit municipalities to negotiate affordable housing set-asides within redevelopment areas that exceed the maximums provided in the rules if adequate compensation and incentives are provided.

5:97-6.9: In some municipalities, the pricing of existing “market rate” rental units that are not deed restricted is less than, or equivalent to the pricing of low-and moderate-income rental units created pursuant to COAH requirements. The Market to Affordable Housing Program should be expanded to include provisions that will enable municipalities to obtain COAH credits for existing rental units that fall within COAH’s low-and moderate-income price range. The ten percent cap on the number of affordable units that can be used to address fair share obligations through this mechanism should be increased to equal the percent of rental units that comprise the municipality’s housing stock.

5:97-6.13: provisions should be added to the affordable housing partnership program to assure projects are located in accordance with the State Plan’s smart growth principles. Partnership projects should be located near concentrations of employment, services and mass transit, and designed to enhance neighborhood character and revitalize

communities. Their densities should blend with the surrounding area. Municipal housing elements/fair share plans that include affordable housing partnership programs should be required to demonstrate that the proposed partnership projects have access to adequate existing system capacity.