

# Somerset County Planning Board

## Overview

### Proposed Round 3 COAH Substantive and Procedural Rules Published in the NJ Register on January 22, 2008

**PURPOSE:** The rules are intended to:

1. Establish the statewide affordable housing need for the period of 1999-2018.
2. Assign each municipality its affordable housing obligation.
3. Set forth mechanisms available to each municipality to address its obligation.

**BACKGROUND:** The proposed new rules are the result of the Appellate Division Decision of June 25, 2007 through which the following elements were remanded back to the Council:

1. Calculation and allocation of Affordable Housing Need
2. Filtering
3. Implementation of the growth share requirement
4. Economic feasibility of inclusionary zoning
5. mechanisms available to municipalities for meeting affordable housing need

A series of analyses were conducted by a team of consultants under contract with COAH which were used in developing the rule amendments. These include 1) Task 1-Allocating Growth to Municipalities, 1-2-08; Analysis of Vacant Land in NJ and its capacity to Support Growth, October 5, 2007 and Updated January 2008; Task 2 – Estimating the Degree to which Filtering is a Secondary Source of Affordable Housing, October 5, 2007; Task 3 – Compensatory Benefits to Developers of Affordable Housing: Inclusionary Housing, Lessons from the National Experience, November 5, 2007; and Task 4 – Counting Jobs at the Local Level, October 9, 2007.

#### SUMMARY OF MAJOR CHANGES:

1. Timeline: The municipal fair share obligation period is changed from 1987-2014 to 1987 – 2018.
2. Municipal Fair Share: Although the method for estimating municipal fair share still includes 3 basic components – 1) rehabilitation share, 2) prior round obligation, and 3) growth share, the way these components are determined has changed.
  - a. The new growth share method utilizes growth projections established by the Council or municipal projections that exceed the Council’s projections. Due to the associated increase in estimated affordable housing need, the growth share rations have been increased.
    - i. From one affordable unit in 9 market rate units to one affordable unit in 5 market rate units; and
    - ii. From one affordable unit for every 25 new jobs to one affordable unit for every 16 jobs. (In addition, the table for estimating jobs per 1000 square feet by building type has been updated, yielding a higher number of jobs per 1000 sq. ft. for several use categories)
    - iii. New schools no longer have a growth share obligation.
  - b. Demolitions can no longer be subtracted from projected or actual development activity
  - c. A new approach to estimating filtering was applied when calculating both prior round and third round obligations.
  - d. The method returns to the use of the 1993 prior round new construction un-adjusted need, which is 8,000 units higher than the statewide figure published in 1999.
  - e. A revised formula for calculating prior round obligation will be applied to municipalities requesting a vacant land adjustment that was not finalized during Round 2.
  - f. The rehabilitation share calculation now includes all over crowded properties that were alt least 50 years old in 2000, and excludes spontaneous rehabilitation.
  - g. Growth share will now include jobs created from the occupancy of vacant space.

3. COAH Growth Projections: COAH's projections are based on the NJ Department of Labor's county projections, municipal historical growth rates, and municipal developable land defined by the Vacant Land Analysis. Municipalities are required to plan for the Council's projected affordable housing need for the period of 1-1-04 to 12-31-18, even if it exceeds the growth share obligation generated by actual development activity. Construction of L&M units is required to occur in proportion with actual residential and non-residential development.
  - a. The rules no longer rely on projections from the State Development and Redevelopment Plan (SDRP). Therefore, obtaining Plan Endorsement is no longer a requirement of COAH Substantive Certification, although Plan Endorsement is encouraged. (It should be noted however, that Plan Endorsement and Highlands Conformance require a COAH certified housing plan).
4. Fair Share Plans: Minimum requirements regarding the content and format of fair share plans have been established. Phased submission of the detailed documentation required for the implementation options (such as a municipally sponsored housing program) is permitted, rather than having to submit all this information up-front. However, adoption of inclusionary zoning ordinances is an up-front requirement.
  - a. The plan must document the availability of adequate sewer and water capacity for meeting its entire fair share, or the steps it will take to obtain capacity.
  - b. The amount of affordable units that can be age-restricted has been reduced from a maximum of 50 % to 25% of growth share obligation.
  - c. The new rule requires that 50% of growth share be "family" housing
5. Credits and Bonuses: The way credits and bonuses are calculated has been refined.
  - a. Supportive and special needs housing is now eligible for a .25 bonus for every one unit built.
  - b. Units receiving a "bonus" toward Round 3 must have been built after June 6, 1999.
  - c. Any credits and bonuses must be applied to Round 1 and 2 obligations prior to being applied toward growth share.
6. Vacant Land Adjustments: New procedures for a municipality seeking an adjustment to its prior round obligation or the Council's household and employment projections upon which growth share is based are included.
  - a. Municipalities can pursue a "Vacant Land Adjustment" which comprises a comprehensive land capability analysis that takes into consideration under-developed and redevelopable sites.
  - b. The minimum presumptive density to be applied to developable residential land to calculate "RDP" is 6 units per acre. The minimum presumptive density for non-residential land is 45 jobs per acre.
  - c. Both residential and non-residential growth must be taken into consideration, including actual growth from January 1, 2004 to the date of petition.
7. Durational Adjustments: Municipalities can request durational adjustments for sites included in prior round fair share plans that remain undeveloped based on insufficient water and sewer. The rules require municipalities to reserve and set aside new sewer and water capacity, when it becomes available, for low and moderate income housing on a priority basis; and to endorse applications for sewer and water capacity made to DEP for these sites.
8. Options for Addressing Fair Share: The rules provide much more specificity regarding the various mechanisms that can be used to address fair share and the circumstances under which they can be applied. Municipal documentation and administrative requirements are detailed.
  - a. **Site suitability criteria** have been refined.
    - i. Affordable housing sites must conform to the SDRP.
      1. Sites located within PA1, 2 and centers are preferred.
      2. Municipalities and developers must demonstrate projects located within PA 3, 4, 5 and 5B and not within centers are consistent with sound planning principles and the goals, policies and objectives of the SDRP.
    - ii. Affordable housing sites in the Highlands must conform to the Highlands Act rules.
    - iii. Affordable housing must adhere to all DEP regulations

- iv. NJSHPO will review impacts of affordable housing projects on historic sites and recommend appropriate buffers.
- v. Municipalities seeking transit village designation or that are participating in other state funded smart growth initiatives are required to ensure the plan includes a minimum 20% affordable housing set-aside for residential development.
- b. Municipal rehabilitation investment for hard costs shall average \$10,000 per unit.
- c. New provisions regarding minimum zoning standards and presumptive densities, as well as required compensatory benefits to developers of affordable units are included.
  - i. A **minimum zoning density** of 6 units per acre must be provided for inclusionary for-purchase development with a 20% set-aside, 5 units per acre with a 17.5% set-aside, and 4 units per acre with a 15% set aside, and a minimum of 10 units per acre provided for rental developments with a 15% set-aside.
  - ii. A **density bonus** equal to one additional market rate unit for every affordable unit must be provided based on pre-existing zoning. Bonus units are exempt from the growth share obligation when the units are constructed as part of the development.
  - iii. Bonuses must be provided for non-residential components of mixed use inclusionary development projects in terms of sq. ft. or units.
  - iv. At least **one additional compensatory benefit** to developers must be provided (such as fee waivers, tax abatements, reduced parking standards, further density bonuses, etc.)
  - v. A project size threshold has been added. If a project will accommodate less than 5 dwelling units, and cannot generate at least one affordable unit, it is exempt.
  - vi. Inclusionary zoning mixed-use and non-residential districts shall provide an increase in permitted floor area for non-residential development.
  - vii. Developers can appeal inclusionary zoning provisions if they can demonstrate the project is not economically feasible.
  - viii. The rules favor the construction of affordable housing on site in inclusionary development. If “payment in lieu” is used instead of building affordable units, a lower bonus (1/2 market rate unit for every affordable unit) shall be given, and bonus units shall generate a growth share obligation.
  - ix. The rules specify that COAH shall not permit restrictions on the bedroom mix of the market rate units within an inclusionary development.
- d. The rule requires that **payments in lieu of construction** be equal to the region-specific cost to construct a new affordable unit, and cannot be used to fund RCAs. (Somerset is part of Region 3, and the minimum per unit fee is **\$145,903**)
  - i. “Payment on Lieu” must go into housing trust funds and be spent in accordance with the approved spending plan, and must be submitted in accordance with the payment schedule provided in the rules.
  - ii. Only projects not subject to an affordable housing set-aside (inclusionary zoning) or a payment in lieu may be subject to a development fee. A table comprised of sliding scale development fee – maximum percentages by region is included in the new rules. Development fees for new construction increase from 1% to 1.5% of equalized assessed value; and from 2% to 3% of EAV for non residential development.
- e. New provisions regarding **redevelopment** have been added. Redevelopment projects can be proposed as an option for addressing affordable housing need. A 20% affordable housing set-aside will be required as part of redevelopment projects. The municipality or developer must have control over the redevelopment site in order for COAH credits to apply. Specific, detailed documentation on redevelopment areas must be provided pursuant to the new rules.
- f. The Municipally Sponsored Rental Program has been combined with the Buy-down Program and re-named “**Market to Affordable Program**”. A maximum of 10 rental and 10 for purchase affordable units may be provided in this way until such time as a municipality has demonstrated success implementing this option. A minimum of \$25,000 per unit to subsidize each moderate income unit, and/or \$30,000 to subsidize each low income unit is specified in the new rules.

- g. 10-year affordability controls must be applied to **accessory apartments**. Eligibility has been expanded to include moderate income households. The new rules specify that a municipality must provide a minimum of \$20,000 to subsidize each moderate income accessory unit, and \$25,000 to subsidize each low income unit.
  - h. The new rules refine the requirements of **affordable housing partnership programs**. Each municipality shall contribute resources, including, but not limited to funding, sewer, water and land.
  - i. The minimum cost of transferring an **RCA** unit has increased to \$67,000 in Region 3, and restrictions have been placed on the amount of age restricted units that can be transferred. Receiving municipalities must demonstrate that their need for rehab exceeds their rehab share if money for scattered site rehab is to be accepted. County reviews of RCAs must access consistency with the SDRP.
9. **Trust Funds:** Municipalities can now spend trust fund dollars prior to certification provided COAH has approved their spending plan.
- a. Affordability assistance must be equal to 30% of all development fee revenue.
  - b. The Round 2 Trust Fund balance must be spent within 4 years of approval of the spending plan, or the date of filing the Round 3 petition.
  - c. An enforcement process is now specified for situations where a spending plan is not implemented.
  - d. Spending plans must include provisions for spending any unanticipated excess funds.
  - e. The new rules allow municipalities to use Housing Trust Fund dollars for green building strategies designed to be cost-saving for low-and moderate-income households, either for new construction that is not funded by other sources, or as part of necessary maintenance or repair of existing units; and as leverage to attract additional funding for affordable housing.
10. **Regional Income Limits:** The rules now specify that Regional Income Limits cannot be less than in the previous year.
- a. Owner-occupied units may increase annually in price based on the percent increase in regional median income rather than the Consumer Price Index.
11. **Removal of Barriers:** The rule now includes standards for evaluating unnecessary cost generating requirements and procedures for expediting review and approval of affordable housing projects.
- a. The rule adds that COAH will work with other state agencies to assure permit applications for affordable housing are processed expeditiously.
12. **Procedural Changes:**
- a. **Deadlines for Fair Share Plan Submission**
    - i. Municipalities that received second round substantive certification prior to December 20, 2004 that expires subsequent to the effective date of the new rules shall file or petition with a Round 3 Housing Element and Fair Share Plan by the earlier of the expiration date of its second round substantive certification or December 31, 2008.
    - ii. Somerset County municipalities that petitioned for but did not receive third round substantive certification shall re-petition with an amended Round 3 Housing Element and Fair Share Plan on or Before December 31, 2008.
  - b. The submission of **municipal monitoring reports** is to be done biennially from the date of substantive certification, rather than 3, 5, and 8 years from petition.
  - c. A “**completeness review**” step has been added to the COAH Review Process. Revised timelines for COAH review and issuance of reports, and municipal responses have been added.
  - d. The rules establish a new **education program** for municipal housing liaisons, RCA administrators and administrative agents.

**Somerset County Comparison of 1-08 COAH and 3-05 Cross Acceptance Employment (Jobs) Projections**

<b>Municipality</b>	<b>COAH 2004 Jobs</b>	<b>2018 COAH Projection</b>	<b>COAH Net Change '04 - '18</b>	<b>2015 CA Jobs</b>	<b>CA Net Change '04 - '15</b>	<b>2020 CA Jobs</b>	<b>CA Net Change '04 - '20</b>
Bedminster Twp.	7,373	9340	1,967	5,670	-1,703	6040	-1,333
Bernards Twp.	10,803	10239	-564	16,620	5,817	16840	6,037
Bernardsville Boro.	3,174	3808	634	3,690	516	3850	676
Bound Brook Boro.	4,326	4415	89	3,010	-1,316	3140	-1,186
Branchburg Twp.	8,811	11517	2,706	15,230	6,419	15540	6,729
Bridgewater Twp.	34,145	42573	8,428	32,530	-1,615	35450	1,305
Far Hills Boro.	950	1072	122	290	-660	300	-650
Franklin Twp.	32,964	36889	3,925	50,470	17,506	55470	22,506
Greenbrook Twp.	3,958	4622	664	4,580	622	3940	-18
Hillsborough Twp.	8,138	10566	2,428	11,100	2,962	12540	4,402
Manville Boro.	2,351	2751	400	2,000	-351	2200	-151
Millstone Boro.	118	145	27	90	-28	90	-28
Montgomery Twp.	9,791	12504	2,713	14,150	4,359	15730	5,939
North Plainfield Boro.	3,924	4055	131	4,380	456	4490	566
Peapack & Gladstone Boro.	1,463	1322	-141	2,640	1,177	2710	1,247
Raritan Boro.	9,869	12099	2,230	8,480	-1,389	8850	-1,019
Rocky Hill Boro.	353	371	18	620	267	620	267
Somerville Boro.	14,538	14933	395	17,630	3,092	17700	3,162
South Bound Brook Boro.	515	549	34	440	-75	440	-75
Warren Twp.	10,131	10774	643	12,280	2,149	12210	2,079
Watchung Boro.	6,526	8140	1,614	8,570	2,044	9430	2,904
<b>Somerset County Total</b>	<b>174,221</b>	<b>202684</b>	<b>28,463</b>	<b>214,470</b>	<b>40,249</b>	<b>227580</b>	<b>53,359</b>

Source: COAH Task 1 – Allocating Growth to Municipalities, 1-2-08

**Somerset County Comparison of 1-08 COAH and 3-05 Cross Acceptance Housing Projections**

<b>Municipality</b>	<b>COAH 2004 Units</b>	<b>*2007 Housing Estimate</b>	<b>2018 COAH Projection</b>	<b>COAH Net Change '04 - '18</b>	<b>2015 CA Household Projection</b>	<b>CA Net Change '04 - '15</b>	<b>2020 CA Household Projection</b>	<b>CA Net Change '04 - '20</b>
Bedminster Twp.	4530	4495	5076	546	4290	-240	4300	-230
Bernards Twp.	10225	10204	11366	1141	10440	215	10520	295
Bernardsville Boro.	2914	2945	3291	377	2810	-104	2910	-4
Bound Brook Boro.	3776	3802	3805	29	4130	354	4370	594
Branchburg Twp.	5597	5547	6598	1001	5670	73	5820	223
Bridgewater Twp.	16478	16301	18831	2353	16250	-228	16460	-18
Far Hills Boro.	417	404	533	116	400	-17	400	-17
Franklin Twp.	21412	22878	24298	2886	23930	2518	25260	3848
Greenbrook Twp.	2246	2361	2475	229	2470	224	2480	234
Hillsborough Twp.	13399	13448	15542	2143	15130	1731	16840	3441
Manville Boro.	4298	4485	4382	84	4560	262	4690	392
Millstone Boro.	175	173	189	14	330	155	340	165
Montgomery Twp.	7329	7986	9260	1931	6500	-829	6720	-609
North Plainfield Boro.	7535	7413	7673	138	7480	-55	7480	-55
Peapack & Gladstone Boro.	890	915	1001	111	1040	150	1160	270
Raritan Boro.	2674	2668	2984	310	2880	206	2980	306
Rocky Hill Boro.	296	301	319	23	320	24	330	34
Somerville Boro.	4867	4914	5030	163	5440	573	5590	723
South Bound Brook Boro.	1666	1803	1676	10	1750	84	1760	94
Warren Twp.	5155	5252	6462	1307	5650	495	5670	515
Watchung Boro.	2077	2482	2192	115	2260	183	2330	253
<b>Somerset County Total</b>	<b>117956</b>	<b>120777</b>	<b>132983</b>	<b>15027</b>	<b>123730</b>	<b>5774</b>	<b>128410</b>	<b>10454</b>

Notes: \* The 2007 municipal housing estimate is based on annual certificates of occupancy and demolitions reported by municipality and added to the 2000 Census base year housing unit count.

Sources: COAH Task 1 – Allocating Growth to Municipalities, 1-2-08, Somerset County Cross Acceptance Report, 3, 2005, US Bureau of the Census, 2000 Census of Population and Housing and Somerset County Planning Board, Annual Certificate of Occupancy Survey