

**Somerset County Planning Board Review Comments**  
**Proposed Round 3 COAH Substantive and Procedural Rules**  
**Published in the NJ Register on January 22, 2008**

Projecting the growth share obligation, 5:94-2.4: The State Council on Affordable Housing (COAH) projections appear less accurate for some municipalities than others. Most notably, the Council's projections appear incorrect for municipalities that have recently approached build-out, and for municipalities that are undergoing major revitalization and redevelopment. Both the Department of Labor projections and the vacant land analysis performed by the National Center for Neighborhood and Brownfields Redevelopment (NCNBR) at Rutgers University for COAH, which form the basis of COAH's projections, do not adequately address redevelopment potential which is very unique to individual municipalities, nor do they take into consideration infrastructure capacity and condition or recent preservation efforts. In addition, the Department of Labor projections do not take into consideration the State Development and Redevelopment Plan, or regulated environmental constraints or other limiting factors affecting future growth at the local level. The GIS spatial datasets and method used by the consultant in conducting the vacant land analysis are much more appropriate for regional and statewide analyses. Inaccuracies in the datasets and methods become much more apparent when applied at the local level.

Coordination between the development of projections for use in municipal Housing Elements and Fair Share Plans and projected and build-out based housing and residential growth required for inclusion in County Wastewater Management Plans (WMPs) pursuant to the new Water Quality Management Planning Rules is needed. The rules should provide municipalities with the option of utilizing projections included in County Wastewater Management Plans in lieu of the COAH's household and employment projections. For developing municipalities, COAH should work with the State Department of Environmental Protection (DEP), affected counties and municipalities to associate an appropriate timeline for build-out-based household and employment growth defined in County WMPs and allow the use of the resultant projections. Septic yield based on the new WQMP nitrate dilution standards in non-sewer service areas should be factored into the Council's growth projections.

5:94-2.4(a): A municipality should be permitted to subtract from its household projection both the market-rate and affordable units constructed within residential and mixed-use inclusionary developments that were constructed after January 1, 2004 in accordance with the municipality's third and prior round Fair Share Plans and COAH rules effective at the time of construction. Municipalities are unable to impose retroactive development fees or payments in lieu of constructing affordable housing on development built or approved since 2004. The primary recourse appears to include use of trust funds and/or taxpayer dollars to pay for affordable housing projects built by municipalities or transferred using Regional Contribution Agreements (RCAs). Tax payer obligations will be highest in municipalities that did not collect any in-lieu or developer fees for prior non-inclusionary construction. COAH is requested to provide guidance on how municipalities with budgetary constraints and that lack adequate Trust Fund resources can address these financial impacts without undue burdens on taxpayers, in addition to consideration of existing budget constraints.

The GIS spatial layers, build-out factors and tabulated build-out results for each municipality that forms the basis of the December 31, 2007 report entitled, “Analysis of Vacant Land in New Jersey and its Capacity for Growth” prepared for COAH should be made available for municipal and county review on CD in GIS format. It is important that municipalities have the opportunity to verify the spatial data representing available developable land, and to identify appropriate corrections to this dataset, as well as review the appropriateness of the density factors applied to these lands when calculating build-out. Due to the uniqueness of local redevelopment opportunities, municipalities should be encouraged to evaluate the number of new housing units associated with redevelopment projected to occur for their municipalities as compared to actual redevelopment initiatives planned or underway. Furthermore, as noted in the aforesaid report, wastewater, water supply or other capacity constraints that could inhibit growth were not taken into consideration. It is very important that COAH works with DEP, the Highlands Council and other regional planning entities, counties and municipalities to update its growth projections and build-out analyses to take into account capacity constraints, new GIS data, updated build-out factors and refined methods on a routine basis (every other year).

Measuring the actual growth share obligation, 5:94-2.5(b) 1- ii and 2-iv: Existing vacant non-residential buildings must be treated fairly and appropriately when calculating a municipality’s growth share obligation. Municipal surveys of vacant non-residential space (both long- and short-term vacancies) will be needed in order to determine non-residential growth share obligations. The establishment of uniform standards and procedures for documenting vacant space will be required, and should be recognized in the rules.

Facilities that have been vacant for long periods of time because of lack of market demand and/or functional obsolescence and that underwent substantial “re-fitting” in order to generate new jobs should have a growth share obligation. These facilities should be distinguished from non-residential facilities that have been vacant for short periods of time (i.e. less than 12 months), where re-occupancy will not yield significant employment increases as compared to previous occupants, for which growth share obligations should not apply.

The rules should make it clear that growth share should be based only the net increase in jobs when the use or occupant of a non-residential facility changes, regardless if any alterations were made to the facility.

The proposed rules indicate municipalities can take into consideration job losses resulting from vacancies occurring after the date of petition when addressing their growth share obligation. Again, routine municipal surveys of vacant space will be needed to measure job losses for which the establishment of uniform standards and procedures will be required.

Municipalities should be able to subtract jobs based on square footage associated with new or expanded hospitals, medical rehabilitation and nursing home facilities when determining non-residential growth share obligation.

Coordination with other state agencies, 5:94-3.16: Although municipal participation in the State Planning Commission (SPC) Plan Endorsement Process is encouraged, no specific

references to Highlands Plan Conformance or “Opting-in” by Planning Area Municipalities are included. Guidance is needed regarding how COAH Round 3 Rules should be applied in the Highlands Preservation Area and “Opt-In” municipalities versus Planning Area Municipalities. COAH Certification is a requirement of Highlands Conformance; however certain COAH Round 3 provisions contradict the Highland Act’s resource protection and capacity-based growth principles, such as COAH’s one-for-one bonus credit above base zoning associated with affordable housing projects. The rules should provide clarity regarding the location of affordable housing within unconstrained Highlands Existing Community Zones and cluster developments in the Conservation Zone. It may be appropriate to identify alternative developer incentives applicable to cluster development in the Highlands, instead of the one-for one bonus units above base zoning. In addition, COAH should require initiation of the Plan Endorsement Process in situations where municipalities have petitioned for prior rounds but COAH substantive certification remains outstanding due to unresolved planning issues.

Content of a Fair Share Plan, 5:94-3.2 (a): Municipalities may be unable to demonstrate that existing and/or planned water and sewer capacity sufficient to accommodate all proposed mechanisms are or will be available at the time of petition. As such, the submission of information on sewer and water capacity should be linked to the completion of County Wastewater Management Plans and the associated municipal WMP chapter of the affected municipality. It is important to note that municipalities may not have the legal or administrative authority to reserve scarce resources that may be essential to implement its growth share mechanisms. For example, some municipalities that are served by regional sanitary sewage treatment plants do not control the allocation of sewer capacity or sewer permits. This provision should apply only to the reservation of scarce resources the municipality controls.

Post – 1986 Credits, 5:94-4.3(c) & (d): Credits should be received for each “bed” instead of “bedrooms” created in supportive, special needs and/or assisted living housing (facility licenses are issued by the State are based on number of beds, not bedrooms). This provision will then be consistent with 5:94-6.10 (b) 1.

Vacant land adjustment procedures, 5:94-5.2: The vacant land analysis/projected growth adjustment procedures are extensive and will require a considerable amount of local resources to complete. Fiscal constraints may make this procedure difficult for some municipalities to undertake. Municipalities should be permitted to use, as the basis of their growth share, projections developed as part of County WMPs or included in Endorse Plans or developed as part of the Highlands Plan Conformance Process.

The inventory of vacant parcels should be categorized according to SDRP Planning Area (PA). Deduction of vacant lands in PAs 3, 4, 5 & 5B that are not within designated centers or Sewer Service Areas, and for which open space, historic and farmland preservation are planned should be permitted. A similar approach should be applied regarding the treatment of vacant lands based on the Highlands RMP – Land Use Capability Map – Overlay Zones.

5:94-5.2 (a): “RDP” should be spelled out.

5:94-5.2 (c) 6: The procedure requires an inventory of areas that may develop or redevelop. Objective criteria for identifying redevelopable sites should be included in the rules and applied uniformly.

5:94-5.2 (d) 6: Deduction of environmentally constrained lands designated for active recreation and/or green infrastructure uses such as stormwater or wetland mitigation in the Municipal Master Plan that exceed 3% of the municipality's total land area should be permitted. Likewise, the deduction of environmentally constrained passive recreation lands that exceed 3% of the municipality's total acreage that serve these purposes should also be permitted.

A rational nexus between the amount of land that can be designated for protection through public acquisition and the unique environmental and topologic characteristics of different areas of the State must be provided. For example, the 3% limitation on passive municipal open space in SDRP - PAs 4, 4B, 5 and 5B, and the Highlands LUCM Conservation or Protection Zones is arbitrary. It may be more appropriate to apply this limitation exclusively in Pas 1, 2 centers and Sewer Service Areas. The rules do not indicate how this provision is to be applied in the Highlands.

5:94-5.2 (h): Vacant lands that lack adequate sewer and/or water capacity and for which sewer and/or water capacity is unlikely to become available prior to 2018 should be excluded from Round 3 growth share, provided that adequate documentation (including but not limited to a County Waste Water Management Plan or certification from DEP) to support this condition is submitted. These lands could be included in subsequent COAH Rounds if infrastructure becomes available. As an alternative, presumptive densities consistent with the State Department of Environmental Protection's (DEP) nitrate dilution based septic density standards for areas served by individual on-site septic systems could be applied to these lands (see 5:94-5.6 (e) below). COAH should work with DEP in developing an appropriate definition of "capacity" for inclusion in 5:94-1.4.

5:94-5.2 (c) 5: Municipalities should be encouraged to use GIS data for preparing all maps included with its Fair Share Plan and Housing Element. The use of GIS analyses and technology for completing the vacant land analysis should be supported.

5:94-5.2 (k): The deadline for purchasing active and passive recreational lands of "within one year of substantive certification" is too constrained, particularly given the substantial funding/budgetary constraints that exist at the state and local levels, and lack of control that government entities have over when private property owners decide to sell their land.

Durational adjustment, 5:94-5.4 (h) 1: Municipalities that are served by regional sewer or water providers and are not subject to contractual capacity allocations may not have the authority or administrative mechanisms to reserve new water and sewer capacity for COAH sites. Furthermore, it may be more appropriate to give sites with environmental and health problems or critical public facilities such as schools or hospitals higher priority access to sewer and water than COAH sites when sewer and water capacity is limited.

Adjustment of household and employment growth projections, 5:94-5.6 (e): SDRP – Planning Area-specific and Highlands RMP LUCM – Overlay Zone-specific minimum presumptive densities are needed for determining appropriate adjustments of household and employment projections. The minimum presumptive density of six units per acre for residential sites and 45 jobs per acre for non-residential sites appear too general (i.e. existing densities in urban PA1 and 2 can be 10 - 20 units per acre, while existing densities in non-sewered PA3, 4, 4B and 5 are limited to DEP's nitrate dilution based septic densities that can range from one septic system for every 5 to 10 acres). COAH should work closely with the OSG to assure that more appropriate Planning Area-specific densities be included in the updated SDRP, which can be used as a guide by COAH in establishing appropriate presumptive densities. In addition, densities specific to each type of center and employment nodes should be established in the updated State Plan. The use of municipal zoning district specific densities that have been included in plans Endorsed by the State Planning Commission should be permitted.

Zoning for inclusionary development, 5:94-6.4: The provision of compensatory benefits to developers for residential and mixed-use inclusionary developments that address growth share which are located in unsewered PA 3, 4, 4B and 5 areas should be prohibited, unless these projects utilize clustering, lot averaging or open space ratio approaches that prevent sprawl. Furthermore, the rule's bonus unit provisions, if applied to unsewered PA 3, 4, 4B and 5 areas, appear inconsistent with DEP septic density standards based on nitrate dilution, unless the clustered development or redevelopment is served by alternative, resource protective community sewage treatment facilities approved by DEP.

The requirement that one bonus unit be provided for every affordable unit within planned redevelopment or revitalization areas should be waived if densities have already been maximized as a result of extensive community planning and visioning initiatives which led to the adoption of plans and ordinances that implement designated centers and/or endorsed plans.

COAH is requested to make available evidence available to the public that demonstrates that the compensatory benefits provided in the proposed rules will adequately off-set the cost of constructing growth-share affordable housing or providing payments in-lieu of construction associated with both residential and non-residential development. Although the cyclical nature of the economy is recognized by the draft COAH rules, it is nonetheless important that growth share obligations are not so onerous to developers, municipalities, tax-payers and the state that they act as a deterrent to much needed economic and residential growth in this recessionary period. The needs of low-and moderate income residents will not be served if the mechanisms for addressing affordable housing need cannot be implemented due to fiscal constraints. It is recommended that COAH pursue information and guidance from banks and lending institutions, economists and other experts familiar with development financing and make this information available to the public. A detailed evaluation of the fiscal impacts of the rules on municipal budgets is also needed, since there are significant concerns regarding the ability of municipalities to bear the costs of providing affordable housing associated with development that occurred since January 2004 as required by the proposed rules. The broader fiscal impacts of added municipal services and public school costs resulting from new development should be taken into consideration as well.

Affordable housing partnership program, 5:94-6.13 (b): When an affordable housing partnership results in the creation of affordable housing in a host municipality, the increased local school enrollment cost burden should be shared on a proportional basis, among each of the municipalities involved, for the duration of the deed restriction. COAH should provide a pilot program to develop partnership program models that can be replicated throughout the state. Consideration should be given to the provision of bonus credits to encourage the creation of affordable units through municipal partnerships.

Regional Contribution Agreements 5:94-7.1(d): Two separate minimum per-unit transfer amounts for each region are needed. One amount should be based on rehabilitation costs, the other should be based on new construction costs, rather than the blended average provided for in the proposed rules. This change will provide an incentive for the creation of new affordable housing in municipalities that would be willing to serve as receiving municipalities but do not have eligible rehabilitation units. Furthermore, sending municipalities should provide funding to off-set school enrollment costs associated with the transferred units, for the duration of the deed restriction. The rules should further require that RCAs be consistent with the State Development and Redevelopment Plan, the Highlands RMP and other applicable regional and state agency functional plans if they are to be approved by COAH.

Ratios for determining the growth share obligation resulting from square footage of non-residential development, Appendix D: Greater differentiations between the ratios used for different types of warehouse facilities are needed. Certain types of warehouse operations are much more job-intensive than others, and additional warehouse categories are needed to reflect this difference.

COAH Memorandums of Understanding: An updated Memorandum of Understanding (MOU) between the COAH and the State Planning Commission is recommended to assure maximum coordination between planning and implementing affordable housing statewide with the smart growth framework provided by the State Development and Redevelopment Plan. A similar MOU with the Highlands Council and the NJ Department of Environmental Protection that requires DEP to facilitate planning and permitting of affordable housing projects consistent with the Department's environmental and community sustainability principles, as well as the State Development and Redevelopment Plan and the Highlands RMP.