

*Comments to Proposed Repeal and New Rules: NJAC 5:94
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*Filed on behalf of: Mayor and Township Committee
Cranbury Township, Middlesex County*

“5:94. Appendix D. Comment: COAH should lower the proposed job generation ratio for warehouse construction (or “S” use group) in the 2008 proposed rules to 0.26 jobs per 1,000 square feet.” In COAH’s 2004 adopted rules, COAH established the job generation ratio for warehouses at 0.2 jobs per 1,000 square feet (“sq.ft.”) In the recent proposed rules, COAH would increase the jobs ratio to 1.5 jobs per 1,000 sq.ft. of warehouse space – a 750 percent increase!

This proposed new warehouse job generation ratio of 1.5 jobs per 1,000 sq.ft. does not comport with the number of jobs in existing warehouses in Cranbury - covering millions of square feet. Thus, we had our affordable housing consultant - Clarke Caton Hintz (‘CCH’) prepare a study of actual jobs in warehouses in our community as well as in four other municipalities with high concentrations of warehouses in New Jersey (Perth Amboy, South Brunswick, Robbinsville and Florence). See attached CCH Warehouse Study – dated March 2008.

- What has occurred in the warehouse industry in New Jersey for COAH to have such a changed view of warehouse job generation between its initial third round rules of December 2004 and the proposed rules of January 22, 2008? The CCH report found no reason for this dramatic increase in jobs associated with warehousing. Also, the CCH warehouse study raises serious flaws in the survey prepared by COAH’s consultant. CCH’s survey of 77 warehouses ranging from 4,800 sq.ft. to 1 million sq.ft. found a median of 0.26 jobs per 1,000 sq.ft. COAH should revise its proposed job generation ratio for warehousing from 1.5 jobs per 1,000 sq.ft. to 0.26 jobs per 1,000 sq.ft. Leaving the ratio alone would grossly overstate the responsibility which municipalities with warehouses should bear.
- Also, as COAH has not grandfathered prior approvals, the increased ratio will cause a shortfall of affordable units delivered by the previously approved warehouse space in all of these municipalities as well as across the state to be made up by the municipality. For instance, we have five (5) million sq.ft. of warehouse space with prior approvals that would have previously generated 1,000 jobs (5,000,000 sq.ft. ÷ 1,000 sq.ft. x 0.2 = 1,000 jobs). In turn, the 1,000 jobs would have resulted in 40 affordable units (1,000 jobs ÷ 25 per affordable unit = 40 affordable units).

According to COAH, this previously approved warehouse space will now generate 7,500 jobs - a 750% increase in jobs (5,000,000 sq.ft. ÷ 1,000 sq.ft. x 1.5 = 7,500 jobs). This resulting 7,500 jobs will generate significantly more affordable units as COAH has increased the affordable housing ratio per jobs from 25 jobs per affordable unit in 2004 to 16 jobs per affordable unit in 2008 - a 36% increase. Now, a total of 469 affordable units will be generated by this previously approved 5 million sq.ft. of warehousing (7,500 jobs ÷ 16 jobs per affordable unit = 469 affordable units, rounded up.)

Thus, the 750% increase in jobs plus the 36% increase in the ratio of jobs per affordable unit effectively results in a 1,072% increase in the affordable housing requirements for warehousing from the 2004 rules (40 affordable units required) to the proposed 2008 rules (469 affordable units required). Unfortunately, this is not a theoretical argument; this is a real situation in Cranbury. The 429 additional affordable units generated by this previously approved warehouse development will cost the taxpayers up to \$63 million (429 units x \$145,903 in-lieu payment at *NJAC* 5:94-6.4(c)5). Due to prior approvals, there will be no chance to have the warehouse developers cover this additional financial liability.

As of the 2000 census, the Township had 1,121 housing units. Thus, not only will 429 of the 469 new affordable units prove a financial hardship to the Township, but adding 469 new affordable units will jeopardize the preservation of Historic Cranbury Village and the environs. Historic Cranbury Village is the core of the community and is virtually fully developed. Our existing stock of affordable housing is integrated within the residential community. Significant preserved farmland and open space lie to the west of the Village and form a hard edge between developed/preserved areas. Commercial development is east of Route 130 with a large concentration of warehouse and office buildings with access to the NJ Turnpike. Even if Cranbury continued to rely entirely on municipally-sponsored construction to meet its obligation, these 469 new affordable units would increase Cranbury's housing stock by 42 percent and would drastically alter the established pattern of development, in contravention of the NJ Fair Housing Act at *NJSA* 52:27D-307(c)(2).

- We have no regulatory authority to amend our ordinances until COAH's proposed rules are effective (anticipated by June 2, 2008). Then, once we are able to amend our growth share ordinance to implement COAH's new growth share ratio, a developer of a proposed one (1) million sq.ft. warehouse will now face a \$13.67 million in-lieu payment (1,000,000 sq.ft. ÷ 10,667 sq.ft. = 93.7 affordable units x \$145,903 in-lieu payment) versus what would be a \$1.17 million affordable housing obligation even with the proposed payment in-lieu (1,000,000 sq.ft. ÷ 125,000 sq.ft. = 8 affordable units x \$145,903). The combination of the higher jobs ratio and increased in-lieu payment will not only shut down the warehouse industry in Cranbury Township but in the entire state as well, effectively creating a warehouse

development boon in New York, Pennsylvania and Delaware. New Jersey's economy can not take this added hit.

"5:94-2.5. Comment: We object to COAH's proposed increase in residential and non-residential growth share ratios being retroactive to January 1, 2004." The proposed affordable housing ratios of one (1) affordable unit for every four market-rate units and one (1) affordable unit for every 16 new jobs should only be required to be implemented once COAH's new rules are effective rather than being retroactive to developments receiving a c.o. after January 1, 2004. By not being effective until possibly June 2, 2008, this timing would enable us to amend our previously adopted growth share ordinance, as we need to rely on the regulatory authority only given once COAH's rules are adopted and effective.

The retroactive nature of COAH's proposed rules will impose a tremendous affordable housing burden on Cranbury AFTER it has already granted development approvals requiring either an affordable housing development fee or COAH's prior growth share ratios of one (1) affordable unit for every eight market-rate units and one (1) affordable unit for every 25 net new jobs developed. The Township would be precluded by the Municipal Land Use Law ('MLUL') at *NJSA 40:55D et seq.* to change the zoning on a site so as to generate the new affordable housing requirements imposed by COAH.

Objections were previously made to COAH's 2003 and 2004 third round rule proposals which had not exempted prior municipal approvals that received certificates of occupancy after January 1, 2004 (COAH's rules were not even effective until December 20, 2004). Now COAH has proposed even higher affordable housing ratios that have at least doubled (and increased significantly more for some use groups) the affordable housing requirements of residential and non-residential development from the initial rules. Once again COAH is attempting to retroactively attach an affordable housing requirement to such approved developments without permitting us an opportunity to have them address their impact on growth share.

At the very least, COAH should reconsider its approach and only require this proposed increase in residential and non-residential growth share ratios to be effective once COAH's proposed new rules are effective (anticipated by June 2, 2008) to enable the Township to adopt an amended growth share ordinance. This would honor the three years of Cranbury implementing COAH's prior rule and affordable housing ratios. However, the same grandfathering request still applies to older approvals (from 2002 to 2004) and the Township continues to recommend that COAH's initial growth share ratios should only apply to preliminary approvals granted after December 20, 2004 and until June 2, 2008.

"5:94-2.5. Comment: We object to the elimination of a demolition offset to a growth share obligation." In the summary of the proposed regulations, COAH acknowledges that the

Court in its January 25, 2007 decision upheld the subtraction of demolitions from growth. However, COAH's proposed rules do not allow for the subtraction of demolitions from projected or actual growth. We object to the elimination of a demolition offset in light of the court's approval of this initial third round procedure. Also, it is clear that COAH's proposed new rules (at *NJAC* 5:94-2.5(b)2.iii.) offer a municipality the ability to offset job gains if a non-residential space becomes vacant at some future date in the third round. This job gain and job loss tally is based on the municipality's initial inventory of vacant non-residential space at a specific point in time prior to petitioning with a new or revised third round plan. What better way to count job loss than if a building becomes vacant and is then demolished? Although COAH has focused its methodology on development activity since January 1, 2004, we believe that COAH has now arbitrarily chosen to make a 2008 date (after a municipality petitions) the date to count job loss, per *NJAC* 5:94-2.5(b)2.iii. What about jobs lost as reflected by demolitions between January 1, 2004 and late 2008? COAH should allow the demolition of residential units or non-residential space to offset new residential units or new square footage.

"5:94-2.5(b)1.ii. Comment: COAH should eliminate the requirement to provide affordable housing when existing 'fully vacant' non-residential space becomes reoccupied." Besides the administrative and logistical chaos that would be created, the main objection to this requirement is Cranbury's inability to address the Appellate Court's requirement that a municipality provide a compensatory benefit in order to require the provision of affordable housing or to receive an in-lieu growth share payment.

COAH's rules propose, at *NJAC* 5:94-2.3(a)7, the requirement to prepare an inventory of 'fully vacant' building/tenant space at the time of our third round petition and then to biannually reassess whether the space was reoccupied or whether other existing space has since become vacant. According to COAH's proposed rules, an affordable housing obligation would be triggered (or offset) anytime existing building space at the time of a municipality's petition was either reoccupied (or vacated). Cranbury does not require continuing certificates of occupancy (cco's) for the reoccupancy of non-residential space, so we have no effective means of tracking such business movement. Even if we were able to track such vacancies/reoccupancies, it is the tenant who would typically be pursuing such a cco and, based on these rules, would be generating an affordable housing growth share obligation. This makes no sense especially in light of the fact that there is usually a normal vacancy period between tenancies when a space may need to be painted, new furniture moved out and moved in, etc. To say that this space which was potentially just occupied with the same number of jobs is now reoccupied three months later (now showing up on the inventory or future reassessment) and generates a new affordable housing obligation does not meet the intent of the Fair Housing Act, nor the spirit of the Appellate Court's January 2007 decision. The Appellate Court's decision referred to the 'rehabilitation of vacant space', not the normal flow of reoccupancy of existing space.

Knowing that Cranbury would want to have a tenant or new owner that was reoccupying existing non-residential building space cover any affordable housing obligation generated, how would this even be possible? A tenant entering into a lease for existing non-residential space would not be required to appear before our zoning board or planning board for a development approval, unless there was a change in use. The building exists so no building permit might be required. As noted, we do not require a cco for the reoccupancy of space. How would we know that space was being reoccupied? For argument's sake, say we were aware of such reoccupancy and decided to include such activity in our growth share ordinance so as to capture an affordable housing payment to cover the cost of producing the required affordable housing. Save for possibly a tax abatement for the new tenant, what other options would we have to try to address the Appellate Division's requirement of compensatory benefits? We have an existing building with existing parking. There is no development application approval process for a new tenant so there would be no opportunity to factor in incentive floor area or additional building height or additional impervious coverage as required at *NJAC* 5:94-6.4(b)9. Even when looking at providing a tax abatement (which is not normally thought to be the only financial incentive allowed), to provide a fair financial incentive for the affordable housing, we would be robbing Peter to pay Paul. Ultimately, we would be obligated to provide the affordable housing potentially with in-lieu payments from the tenant, but any affordable housing payment from the tenant would be going back to the tenant in the form of reduced taxes. Where is the fairness in this? All that has happened is that the tenant or new owner of a previously vacated space will effectively have transferred the affordable housing production requirement onto Cranbury's shoulders. COAH should eliminate the requirement for an affordable housing obligation to be generated by the reoccupancy of previously vacant non-residential building space. To do otherwise would fly in the face of the Fair Housing Act provision whereby a municipality is not required to expend its own resources on affordable housing. We would be left with no other option.

"5:94-2.5(e). Comment: COAH should clarify whether a municipality will be required to produce actual affordable housing addressing its projected affordable housing number pursuant to *NJAC* 5:94-2.4 if actual growth does not trigger it." On page 3 of the rules summary, COAH states 'Municipalities are required to construct or other wise provide affordable housing in proportion with actual residential and non-residential development.' The rules at *NJAC* 5:94-2.5(e) further clarify this statement by requiring a municipality to provide a realistic opportunity for the provision of affordable housing opportunities to address its projected affordable housing number if actual growth is less than projected growth. In COAH's procedural rules at *NJAC* 5:95-10.1(a), the rule states "The purpose of plan evaluation is to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing." We read all of this together to say that a municipality must produce or provide affordable housing to

keep up with actual growth, demonstrate this as part of plan evaluation and keep a realistic opportunity for affordable housing for the balance if triggered by growth in the future.

“5:94-3. Comment: COAH should fully honor the second round rules at *NJAC* 5:93-5.6 which had provided substantial compliance bonuses in the prior round for towns that had completed a substantial proportion of its first round affordable housing obligation.” We believe this is fair to towns such as Cranbury that have relied on these bonuses as reflected in its second round substantive certification, in its COAH-approved extension of second round certification and now into the third round where the prior round remains part of the cumulative three-part affordable housing obligation.

“5:94-3.2(a)4.iii. Comment: If a municipality proposes a municipally-sponsored or 100% affordable housing program to address a future anticipated affordable housing obligation that may be generated after the first plan review per *NJAC* 5:95-10, what documentation or information, if any, must be provided at the time of petition?”

“5:94-3.2(a)8. Comment: COAH should provide more guidance as to the steps necessary for a municipality to take to document sewer and water capacity for proposed affordable mechanisms at the time of petition.”

“5:94-3.4(c). Comment: COAH should add extensions of controls (*NJAC* 5:94-6.14) on rental units (both family and senior rentals) to this listing of acceptable ways to address a rental obligation.”

“5:94-3.6(a)1. Comment: COAH should enable extensions of controls on family rental units to be eligible for rental bonuses.”

“5:94-3.6(a)1. Comment: COAH should enable accessory apartments with 30-year controls to be eligible for rental bonuses.”

“5:94-3.6(a)4. Comment: COAH should consider accessory apartments with 30-year controls as a means to address fifty percent of the town’s rental obligation with family rental units and should be added to this listing of other eligible family rental options.”

“5:94-3.6(a)4. Comment: COAH should consider extensions of controls on family rental units as a means to address fifty percent of the town’s rental obligation with family rental units and should be added to this listing of other eligible family rental options. In addition, COAH should consider extensions of controls on senior rental units as a means to address the minimum 25% rental requirement.”

“5:94-3.7(a). Comment: COAH should eliminate the proposed requirement that some minimum number of very low income affordable units are to be provided before a very low income bonus will be allowed.” As the municipal subsidy may be great to create each very low income unit, then a municipality should be entitled to a bonus for each very low income unit.

“5:94-3.10(b)2. Comment: COAH should amend its regulations to increase the proposed 25% senior affordable housing cap to 33% as reflected by COAH’s data.” Although the Appellate Court invalidated COAH’s initial third round senior affordable housing cap of 50%, the Court’s decision also acknowledged that COAH’s own data showed a need for senior affordable housing at a 33% state-wide level. With many municipalities experiencing a significant residential development push to accommodate senior residential communities, COAH should amend its regulations to increase the 25% senior affordable housing cap to 33%, well within the Court’s accepted analysis.

“5:94-3.13(a). Comment: As COAH expands site suitability criteria to include available, approvable, developable, and suitable as in the second round, the definitions of each should be put back in the proposed regulations. Only ‘suitable’ is now defined.”

“5:94-4.3. Comment: COAH should revise the means to determine whether an affordable unit must address applicable COAH regulations from when it received a certificate of occupancy to when the overall affordable housing development including the unit received development application approvals.” We understand the need for COAH to implement new standards and requirements but such implementation should take into account that a municipality has to abide by the Municipal Land Use Law (“MLUL”) at *NJSA 40:55D et seq.* regarding periods of protection from a zoning change afforded preliminary and final development application approvals. A town is precluded by the MLUL from changing the zoning on a site for set periods of time, thus, they would not be able to accommodate any subsequent COAH rule amendments. If adopted as is, this proposed COAH rule would have a detrimental impact on towns receiving COAH credit for affordable units that may have been approved but not yet built before a change in COAH’s affordable unit requirements.

“5:94-4.3(a).4. Comment: The rule references in this subsection on affordability criteria do not appear to be correct.” For instance, subsection 6.5 is the rule section on the status of sites addressing the prior round.

“5:94-6.4(b)2.ii. Comment: COAH should reword subsection 2 so that the submission of an agreement or approval resolution would be a means of providing a realistic opportunity for the creation of affordable housing.” It appears that this rule requires an executed developer’s agreement with a municipality and an adopted board development approval to be deemed to provide a realistic opportunity. By rewording the subsection, this would be similar to the wording of an agreement or approval resolution as noted for inclusionary rental zoning at (b)7 of this subsection.

“5:94-6.4(b)II. Comment: Once a municipality’s growth share ordinance is approved by COAH, no one-on-one appeal process should be afforded.” COAH’s proposed rules will allow a development applicant to appeal the economic feasibility of growth share zoning to demonstrate that the increased densities and/or reduced costs do not provide an appropriate level of compensation. COAH’s proposed appeal process will only add uncertainty to the local approval process and has the potential to require substantial municipal costs in defending its adopted growth share ordinance on an applicant by applicant basis. To avoid this potential costly litigation, COAH should initially provide more guidance in the compensatory benefits that are acceptable. Once a municipality’s growth share ordinance is approved by COAH, no one-on-one appeal process should be afforded.

“5:94-6.4(b).8. Comment: COAH’s rules would prohibit a municipality from charging a full growth share subsidy on residential development that is 4 units or less. Assuming new development of homes with a market value on average of \$400,000, a town may impose a 1.5% development fee that will generate a \$6,000 development fee per home for total development fees of \$24,000 for four homes. However, these four market-rate homes will generate a growth share requirement of one (1) affordable unit. The Township would be precluded from imposing a growth share payment on each market-rate home of \$36,475 which is $\frac{1}{4}$ of \$145,903, the allowed growth share payment for one (1) affordable unit in Region 3 (Middlesex, Hunterdon and Somerset) according to COAH’s rules at *NJAC* 5:94-6.4(c)5. The almost \$122,000 difference in affordable housing subsidies from the \$24,000 in development fees permitted to be charged versus the \$145,903 in-lieu growth share payment not permitted is substantial and will only fall back on the shoulders of the taxpayers of the Township. There would be no other way to generate this needed affordable housing subsidy precluded by this rule. To make up the almost \$122,000 difference, Cranbury may be required to expend municipal revenues (which are already in short supply) in contravention of the Fair Housing Act at *NJSA* 52:27D- 311.

Even if considering this balance of \$24,000 to fund other affordable housing mechanisms listed in COAH's rules, Cranbury would not be able to fully fund a one-unit RCA (which costs \$67,000 for Cranbury to transfer) or the construction of a new unit. Although the \$24,000 could fund the rehabilitation of a unit, this rehabilitation would not address the new construction obligation generated by the four new market-rate homes. The \$24,000 could fund a moderate-income accessory apartment (\$20,000 minimum), but not quite a low-income accessory apartment (\$25,000 minimum). There would not be sufficient funds for a market to affordable program either – COAH's requires a minimum of \$25,000 for a moderate-income unit and a minimum of \$30,000 for a low-income unit (oftentimes it may actually cost up to \$100,000 or more per affordable unit in this program)."

"5:94-6.4(b)9. Comment: COAH should provide more guidance on acceptable compensatory benefits, especially for a growth share imposition on a non-residential development." In many cases, the permitted floor area is the maximum a site can handle without going to structured multi-level parking, steel construction for buildings over a certain height or stories and underground stormwater retention facilities. These options may not always be appropriate or desirable for the circumstances of the municipality and may be cost prohibitive to the developer. Additionally, for many non-residential uses it would not be practical to add additional floors (i.e., warehouses.)

"5:94-6.4(c)1 and 2. Comment: COAH's rules note that the affordable housing requirement should not be rounded. COAH should provide more guidance as to what a town should do if the affordable units required result in a fractional amount and therefore the bonus calculation permits a developer to build a fractional amount of additional market-rate units."

"5:94-6.4(c)5. Comment: Cranbury is opposed to any reduction in the amount of affordable housing subsidies that are to be imposed on non-residential development if there is not a corresponding decrease in the affordable housing growth share obligation that may be generated by non-residential development." As COAH Board Chairman, Commissioner Joseph Doria, announced at the December 17, 2007 COAH Board meeting, there is a move afoot to propose new legislation to require that all non-residential development across the state be charged an affordable housing development fee in the neighborhood of 2% to 3% of equalized assessed value (COAH's proposed rules would permit a non-residential development fee of 3%).

Although not proposed as part of this rule proposal, this potential new legislation was described in COAH's letter of December 24, 2007 sent to all of New Jersey's mayors. Without a significant change in the affordable housing requirements of non-residential development as reflected in Appendix D, this reversion to only development fee collections

will drastically undermine our ability to address the affordable housing generated from non-residential development. Prohibiting us from requiring a non-residential developer to fully address its generated growth share with either the construction of actual affordable units or an in-lieu growth share payment will create a huge shortfall in the necessary affordable housing subsidies we will need.

For example, assuming an office space value of \$250 a square foot and using COAH's proposed ratio of 5,714 square feet per one (1) affordable unit, we would be able to charge a development fee of 3%, thus generating development fees of \$42,855 from this office developer to subsidize one affordable home, far less than the \$145,903 needed according to COAH's rules at *NJAC* 5:94-6.4(c)5. Where will we recoup the lost subsidy of \$103,048 per affordable unit?

This \$42,855 development fee contribution would not be sufficient to fully fund a one-unit RCA which costs \$67,000 for Cranbury to transfer. Ultimately, any such shortfall in needed revenue to actually produce the affordable housing generated by this office developer will fall on the taxpayers of Cranbury Township.

If this mandatory development fee goes ahead, however, we believe the growth share generation should be lessened as well. Additionally, we believe that any municipality under COAH's jurisdiction should be able to retain all monies collected from such fees. None of the development fees collected by the Township from development in the Township should be required to be sent to this proposed state-wide bank. To do otherwise would punish compliant municipalities such as Cranbury, which began building affordable housing before *Mt. Laurel I* was even decided, and which has consistently met – indeed, exceeded – its affordable housing obligations.

“5:94-6.6(b)2. Comment: COAH should reword the second sentence in this subsection to simply read ‘Redevelopment plans and redeveloper agreements that rely on the future use of eminent domain shall not be considered to have site control.’ The balance of the sentence should be eliminated as it appears to be contradictory with the FHA which allows the use of eminent domain to provide affordable housing.

“5:94-6.6(e)3.iii. Comment: The rule citations referenced here do not appear to be correct.”

“5:94-6.14(a)1. Comment: Affordable housing units constructed prior to April 1, 1980 should be included in the eligible unit types for the extension of expiring controls program.” Should these affordability controls expire during the third round, then these units will be converted to market rate. Cranbury, the region and the State would therefore lose existing

affordable housing and the market-rate conversion may also likely result in the displacement of low and moderate-income households.

We understand COAH's rationale as to why these units should not be eligible for credit as part of the first or second round since they pre-date the starting date (April 1, 1980) for determining the first round statewide affordable housing need and then the cumulative first and second round need. However, COAH's third round rules and methodology clearly establish the first and second round need as the prior round obligation. Including these pre-1980 units in the pool of new third round units eligible for extension credits will serve as an appropriate incentive for municipalities to commit funds to preserving the affordability of these units which provide an important housing source for Cranbury's, the region's and the State's existing low and moderate income households.

"5:94-6.14(a)4. Comment: COAH's proposed requirement that a municipality shall fund any required rehabilitation costs associated with extending controls on an existing affordable unit (or building) should be expanded." Presently the proposed rule lists affordable housing trust funds as the only source a municipality may use. The rule should be expanded to permit a municipality (or other development entity such as a non-profit) to use any source of funds it may solicit and receive such as affordable housing preservation tax credits, DCA balanced housing funds, county funds, etc.

"5:94-7.2(b). Comment: COAH should eliminate the provision that states 'Resolutions of intent are not binding upon either municipality and shall not preclude a receiving municipality from negotiating with any other potential sending municipality or renegotiating the per unit transfer amount' of a regional contribution agreement (RCA)." This proposed provision is in direct conflict with the provision immediately above at *NJAC* 5:94-7.1 in which COAH honors adopted resolutions of intent which were processed in good faith by both the sending and receiving municipalities in response to COAH's initial third round regulations setting the minimum RCA transfer at \$35,000 per unit. While we are pleased that COAH will honor third round RCAs that were agreed to by resolutions adopted by both the sending and receiving municipalities, the Township believes it is unfair to permit or even encourage municipalities to opt out of previously entered RCA agreements or adopted resolutions.

"5:94-8.3(e)3. Comment: COAH should revise this exemption from development fees to include the phrase in COAH's prior rules (and in the majority of development fee ordinances) that a town could impose a fee on 'a developer seeking a substantial change in the approval.' In addition, COAH should craft language that allows a municipality to impose an amended development fee zoning ordinance on a development where the protections period has lapsed."

“5:94-8.4(c). Comment: COAH should clarify whether in-lieu payments from entirely non-residential development may be used to fund an RCA.”

“5:94-8.7(a)4. Comment: COAH should clarify whether in-lieu payments from entirely non-residential development may be used to fund an RCA.”

“5:94-8.8. Comment: COAH should clarify whether development fees must be used for income-eligible households in market-rate units as stated in COAH’s proposed rule summary.” COAH’s rule summary states that municipalities should provide an opportunity ‘for affordability assistance to income-eligible households in market-rate units;’ however, it does not appear that the rules section on affordability assistance would actually require such usage of development fees on market-rate units. To be clear, we would not want to be forced to use development fees on market-rate units when these limited resources are necessary to produce affordable units. Using development fees on market-rate units would dilute our needed affordable housing funds.

“5:94-8.8. Comment: COAH should either revise the requirement for 30% of development fees to be spent on affordability assistance and change it to a voluntary program or reduce the affordability assistance to some minor amount of no more than 5% of collected development fees.” The proposed new rules have created potential affordable housing shortfalls or affordable housing subsidy shortfalls - by applying the new ratios retroactively to previously approved developments and by only permitting up to a 2% development fee on small residential developments of four lots/units or less. For COAH to also have this requirement to expend 30% of collected development fees on affordability assistance (where no new affordable unit is being created) will only exacerbate an already potentially disastrous municipal financial obligation.

For example, assuming a house value of \$500,000, Cranbury would be able to charge a development fee of 1.5%, thus generating development fees of \$7,500 for one home. After Cranbury issues c.o.’s for four of these such homes, one affordable housing unit would be triggered but we would only be able to collect \$30,000 in development fees, far less than the \$145,903 needed according to COAH’s rules at *NJAC* 5:94-6.4(c)5. By then requiring 30% of the \$30,000 to be expended on affordability assistance, the collected amount will be further reduced by \$9,000 to \$21,000.

This balance of \$21,000 to fund one affordable unit would not be sufficient to fully fund either an RCA of \$67,000 or the construction of the required unit. Although the \$21,000

could fund the rehabilitation of a unit, this rehabilitation would not address the new construction obligation generated by the four new homes.

“5:94-8.10(a)8. Comment: COAH should allow towns more time to expend existing affordable housing trust fund monies if it has a well-planned implementation schedule to expend the monies on eligible affordable housing activities over the balance of the third round.” COAH’s rule proposal seems to require towns to spend any remaining trust fund monies from the second round within four years of COAH’s approval of the town’s third round spending plan. This rule ends with ‘or in accordance with an implementation schedule approved by the Council (COAH)’. COAH should clarify whether this last quoted phrase allows flexibility to a town that has a well thought out plan to spend existing monies that may extend beyond the noted four-year period.

“5:94 Appendix D. Comment: COAH should provide guidance as to how a municipality is able to assess a growth share obligation on either local, county, state or federal development.”

“5:95-4.2(c). Comment: COAH should extend the period of time a municipality has to respond to an objection from 20 days to 45 days.” Twenty days is not enough time to potentially analyze a new site or program that is being initially offered by an objector.

“5:95-6.2(c). Comment: COAH should extend the period of time a municipality has to potentially address a COAH report requesting additional information if an amendment to the town’s housing element and fair share plan and a repetition is required from 60 days to 120 days.” Sixty days is not enough time to develop a revised plan and then formally amend the plan at a planning board hearing and endorse the plan at a governing body meeting.

“5:95-7.3(c). Comment: COAH should extend the period of time a municipality has to potentially address a COAH premediation report if an amendment to the town’s housing element and fair share plan and a repetition is required from 60 days to 120 days.” Sixty days is not enough time to develop a revised plan and then formally amend the plan at a planning board hearing and endorse the plan at a governing body meeting.

“5:95-8.5(a). Comment: COAH should extend the period of time a municipality has to amend its housing element and fair share plan and a repetition as a result of mediation from 60 days to 120 days.” Sixty days is not enough time to develop a revised plan and then

formally amend the plan at a planning board hearing and endorse the plan at a governing body meeting.

“5:95-8.5(d). Comment: This provision is too vague as to what circumstances would warrant COAH to require an objector’s site to be included in a town’s revised plan.” Even if a municipality must repetition after mediation to add a new program or a new site, this proposed rule would allow COAH to potentially require an objector’s site if COAH deemed that the revised plan had a shortfall. We believe that COAH should permit the town an additional chance to amend the revised plan to cover the shortfall before COAH would contemplate the award in essence of a builder’s remedy. COAH should only contemplate the award of a builder’s remedy in narrowly defined conditions.

“5:95-16.2. Comment: COAH should give municipalities at least six months to repetition with a new third round plan.” As COAH’s proposed rules are not even expected to be effective until June 2008, giving towns four or even five months to fully analyze COAH’s adopted regulations and prepare a new or revised plan is not enough time. The earliest date should be revised from four months to six months after the effective date of COAH’s new rules. The remaining dates should be extended out to seven months and eight months, respectively.