

EXHIBIT D



COAH

Handbook

2001

Council on Affordable Housing

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Municipal Adjustments (N.J.A.C. 5:93-4)

COAH recognizes that there may be circumstances unique to a municipality, wherein an entire development resource (land, water or sewer) may be exhausted without providing the realistic opportunity for affordable housing. This subchapter establishes standards and procedures to demonstrate that a municipality's new construction obligation is limited by a lack of sufficient land, water or sewer. However, the rehabilitation component (substandard units occupied by low and moderate income households minus spontaneous rehabilitation) may not be reduced or deferred by such limitations. This subchapter introduces the concept of realistic development potential (RDP). (See lack of land process in the Appendix.)

Lack of Land (N.J.A.C. 5:93-4.2)

To support this adjustment, a detailed municipal land use map and an inventory of vacant parcels by lot and block must be submitted. COAH will review the map and inventory to identify parcels most likely to develop for low and moderate income housing. In addition to vacant parcels, COAH may include certain sites that, although devoted to specific uses, would have residential development potential if appropriately zoned. Examples include, but are not limited to, farms in SDRP Planning Areas 1, 2 and 3, golf driving ranges, nurseries and golf courses not owned by club members.

A municipality may also exclude land that is owned by a local government if it has adopted a resolution authorizing an agreement with another entity that such land is to be used for a public purpose other than housing as detailed, in N.J.A.C. 5:93-4.2(c).

A further exclusion is any vacant contiguous parcels of land in private ownership that accommodates less than five dwelling units, as per the COAH standard in N.J.A.C. 5:93-4.2(f).

Sites may be excluded, in whole or part, due to: restrictive covenants that run with the land; steep slopes, if regulated by a steep slope ordinance; wetlands; floodplain; the necessity for a buffer surrounding an historic structure; surrounding land uses that are incompatible with residential development and the need to devote land for active and passive recreational purposes.

Municipalities should not expect COAH to agree to the exclusion of land reserved for active and passive recreational purposes unless they are prepared to purchase the land within one year of substantive certification. These exclusions are grouped under the following headings along with a description of the necessary documentation:

Restrictive Covenants

A site may be excluded from consideration for low and moderate income housing if it is restricted for agricultural use through the Right to Farm Act (P.L. 1983 c. 31) (N.J.S.A. 32) (N.J.S.A. 4:1C-1 et seq.) or the Agricultural, Retention and Development Act (N.J.S.A. 32) (N.J.S.A. 4:1C-11 et seq.).

To request an agricultural adjustment, municipalities should submit a copy of the deed restricting the land for agricultural purposes.

Environmental Constraints

A site that is environmentally constrained may be eliminated from consideration for low and moderate income housing for any of the following reasons:

- In areas of the state regulated by the Pinelands Commission, Division of Coastal Area Facilities Review Act (CAFRA) and the Hackensack Meadowlands Development Commission, COAH will adhere to the policies delineated by the governing agencies for those areas.
Documentation: Appropriate maps showing the location of the restricted areas
- Inland wetlands as delineated by the U.S. Army Corps of Engineers or the New Jersey Department of Environmental Protection (DEP).
Documentation: National Wetlands Inventory Maps provided by the U.S. Fish and Wildlife Service

- Flood hazard areas as defined by N.J.A.C. 7:13.
Documentation: Federal Emergency Management Administration (FEMA) National Flood Insurance Program Rate Maps
- Sites with slopes in excess of 15 percent.
Documentation: U.S.G.S. Topographic Quadrangles and the municipal ordinance governing development on steep slopes throughout the municipality

To request an environmental adjustment for a site, the following information should be submitted:

- Vacant land survey describing by block and lot number any environmental constraints
- Appropriate mapping showing the location of the constraint(s)
- A recent aerial map of the municipality

Historic Site Considerations [N.J.A.C. 5:93-4.2(e)3]

A site designated as an historic site on the New Jersey Register of Historic Places prior to the petition for substantive certification may be eliminated from consideration for low and moderate income housing. In addition, land within a reasonable buffer area of an eligible historic site may be excluded.

Active and Passive Recreation Land [N.J.A.C. 5:93-4.2(e)4 and 5] Considerations

Up to three percent of a municipality's developed and developable acreage may be reserved for active recreation purposes. In addition, land designated for conservation, parklands or open space may be excluded. For this purpose, the term "active recreation" means leisure time activities usually of a more formal nature and performed with others, often requiring equipment and taking place at prescribed locations, sites or fields. Active recreation sites include swimming areas, playgrounds, tot lots, play fields, and tennis and other court game facilities. Active recreation does not include areas designated for bike riding, hiking, walking and picnicking. Passive sites are conservation, parklands and open space lands.

All sites so reserved or designated must be verified by the appropriate agency. An open space inventory that has been filed with DEP's Office of Green Acres may be submitted as evidence of all designated open space areas in a municipality. However, if no inventory exists, the section of the municipal master plan pertaining to recreation or open space, should be submitted, as well as the county master plan, if appropriate.

Recreation areas owned and operated by local school boards are not to be included in the calculations of existing municipal open space areas.

Any land designated on a municipal master plan as dedicated for conservation, parklands or open space and owned, leased, licensed or operated by a county, municipality or tax-exempt organization including a board of education or by more than one municipality may be excluded as in N.J.A.C. 5:93-4.2(e) 5.

Please note that if land is reserved for future recreation or open space, the Municipal Land Use Law stipulates that a municipality has one year to enter into a contract to acquire the property or institute condemnation proceedings (N.J.S.A. C.40:55D-44). Sites that are not acquired within the time limit may be subject to an affordable housing obligation if deemed necessary by COAH.

Lack of Water and Sewer Capacity (N.J.A.C. 5:93-4.3)

In the event that a municipality has sufficient land but lacks sufficient water or sewer capacity to support an inclusionary development, COAH will defer the requirement to address the municipal fair share until adequate capacity is available. This durational adjustment does not relieve the municipality of its responsibility to plan and appropriately zone for its fair share of affordable housing. Such deferral will be conditioned upon specific commitments relative to reservations of infrastructure capacity, permit approvals, application endorsements and housing element and fair share ordinance amendments as may be necessary to facilitate inclusionary development.

If a municipality demonstrates that the lack of land, water or sewer limits its ability to address its rehabilitation component as well as its inclusionary component, COAH may require that it apply for federal and/or state housing rehabilitation funds. (See sources of funds.)

Realistic Development Potential (RDP) [N.J.A.C. 5:93-4.2 (e), (f), (g), (h)]

Once sites or parts of sites are eliminated from consideration, the municipal RDP may be determined using the remaining suitable sites. The acreage of each remaining site is multiplied by a gross density that is appropriate to the site. Normally, the density is at least six units per acre. However, the assumed density is generally higher if the infrastructure and character of the area indicate that higher densities are appropriate. COAH will assume that 20 percent of the units will be for low and moderate income households.

The result of this site-by-site analysis yields the RDP for the municipality. It is important to understand that all sites that meet COAH criteria are used to determine the RDP of the municipality. However, a municipality need not use all of these sites in devising a plan. A municipality may reserve sites for other uses by entering into an RCA or permitting higher densities on other sites within the municipality. Therefore, the municipality maintains the flexibility of devising a plan that addresses its RDP.

Where the RDP is less than the municipal calculated need, the unmet need remains as a goal to be addressed. Municipalities that seek vacant land adjustments are expected to capture a contribution toward affordable housing as development or redevelopment occurs in the municipality. Such a contribution may take the form of overlay zoning, a redevelopment zone, accessory apartments (N.J.A.C. 5:93-9) and/or a development fee ordinance (N.J.A.C. 5:93-8).

Municipalities that have already received vacant land adjustments from the first round are presumed to have addressed their RDP. These municipalities may receive substantive certification by capturing a contribution toward affordable housing as development or redevelopment occurs and by addressing any rehabilitation obligation.