

**EXHIBIT E**



If the municipality does not forward certificates of occupancy within the prescribed time, then the units that are unmet as a result of granting the Substantial Compliance rule bonus must be addressed in an amendment to the certified plan.

**The Comment document states that the Substantial Compliance rule applies to court towns that come under COAH's jurisdiction? On what number do you apply the percentages?**

**Response:** N.J.A.C. 5:93-3.6 addresses the COAH fair share obligation. As such, the COAH number, not the court number, would be the basis for the calculation.

#### **N.J.A.C. 5:93-4.2 Lack of Land**

**How do you calculate realistic development potential (RDP) for a municipality that has eligible reductions from a first round certification and is now requesting a vacant land adjustment for the second round?**

**Response:** The municipality identifies sites that are realistic for inclusionary development and an appropriate density is assigned to these sites in order to calculate RDP. After the RDP is determined, then all eligible credits and reductions that occurred from the first round may be used to address the RDP. To do otherwise would increase the obligation of a town that was certified the first round while rewarding the town that did not petition the first round. This procedure treats all municipalities in the same manner.

In addition, N.J.A.C. 5:93-4.2(f) states that a "municipality need not incorporate into its housing element and fair share plan all sites used to calculate the realistic development potential if the municipality can devise an acceptable means of addressing its realistic development potential."

**A municipality is preparing a vacant land adjustment application. N.J.A.C. 5:93-4.2(d) states that "Agricultural lands shall be excluded when the development rights to these lands have been purchased or restricted by convenient." Does this regulation apply to the eight-year deed restriction Farmland Preservation Program?**

**Response:** Yes, with certain conditions. Under the eight-year program, the property is deed restricted and the title is encumbered. Thus, the site would not meet the definition of an "available" site. However, at the end of the eight years if the deed restriction is not renewed, the site would be included as an available site for a future fair share obligation. The substantive certification resolution will contain appropriate language to address this issue and also address the issue of an eight-year deed restriction expiring during the term of certification.

**Pursuant to N.J.A.C. 5:93-4.2(d)2(ii), a municipality seeking a vacant land adjustment may exclude all or a portion of a site due to the location of flood hazard areas as defined in N.J.A.C. 7:13. Please clarify.**

**Response:** The methodology for delineating flood hazard areas has been established by the New Jersey Department of Environmental Protection (DEP) and is set forth in N.J.A.C. 7:13-2.3.

If there is a state adopted study for a stream corridor or basin, then the municipality must use the flood hazard areas delineated in the state study. A list of state adopted studies is listed in N.J.A.C. 7:13-7. If there is no state study and the drainage basin is fully developed, then the municipality may use the most recent flood insurance maps to determine the flood