

Chapter 5:96

with amendments through October 20, 2008



NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Established 1985

Third Round Procedural Rules

**CHAPTER 96
PROCEDURAL RULES OF
THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING
FOR THE PERIOD BEGINNING**

June 2, 2008
with amendments through October 20, 2008

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CHAPTER 96
PROCEDURAL RULES OF
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FOR THE PERIOD BEGINNING

June 2, 2008

with amendments through October 20, 2008

SUBCHAPTER 1. GENERAL PROVISIONS

5:96-1.1 Short title; purpose; scope

- (a) The provisions of this chapter shall be known as the "Procedural Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 2, 2008."
- (b) This chapter establishes procedures to be used by municipalities in addressing their constitutional obligation to provide a fair share of affordable housing for low- and moderate-income households pursuant to N.J.S.A. 52:27D-301 et seq.
- (c) Municipalities filing or petitioning the Council on or after December 20, 2004 shall be governed by the provisions of this chapter.
- (d) If any part of this chapter shall be held invalid, the holding shall not affect the validity of remaining parts of these rules. If a part of these rules is held invalid in one or more of its applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

5:96-1.2 Jurisdiction

- (a) A municipality shall fall within the jurisdiction of the Council if:
 - 1. The municipality has filed a Housing Element and Fair Share Plan and petitioned for substantive certification simultaneously or within two years of such filing;
 - 2. The municipality has filed a Housing Element and Fair Share Plan and is the defendant to an exclusionary zoning suit within two years of such filing;
 - 3. The municipality has been granted substantive certification pursuant to N.J.A.C. 5:96-6.3; or
 - 4. A court transfers jurisdiction of the case to the Council pursuant to N.J.A.C. 5:96-2.3.
- (b) If a municipality fails to petition for substantive certification within two years after filing a Housing Element and Fair Share Plan in accordance with N.J.S.A. 52:27D-313, the filing shall automatically expire.

5:96-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Act” means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.).

“Administrative agent” means the entity responsible for the administration of affordable units in accordance with this chapter, N.J.A.C. 5:97 and UHAC.

“Affordable housing program(s)” means any mechanism in a municipal Fair Share Plan proposed or implemented to address a municipality’s fair share obligation.

“Affordable unit” means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97, and/or funded through an affordable housing trust fund.

“Agency” means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

"Amendment" means the municipal submission of a revision to a certified Housing Element and Fair Share Plan that has been adopted by the planning board and endorsed by the governing body that requires a change in site, substantial change in density, a change in other zoning requirements that result in a change of housing type on a specific site, or a fundamental change in approach to the municipality’s low- and moderate-income housing obligation.

“Controls on Affordability” means any rule governing affordable units as found in N.J.A.C. 5:80-26.

"Council" means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in the State.

"Days" means calendar days.

“Fair Share Plan” means the plan that describes the mechanisms, strategies and the funding sources, if applicable, by which a municipality proposes to address its affordable housing obligation as established in the Housing Element, includes the draft ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:97-3.

"Filed Housing Element and Fair Share Plan" means the municipal submission of a Housing Element and Fair Share Plan accompanied by a duly adopted resolution from the governing body endorsing the Housing Element and the Fair Share Plan adopted by the planning board, but not necessarily petitioning for Council review or certification of the plan pursuant to N.J.A.C. 5:96-3.

"Housing Element" means the portion of a municipality's master plan, required by the Municipal Land Use Law (MLUL), N.J.S.A.40:55D-28b(3) and the Act, that includes all information required by N.J.A.C. 5:97-2.3 and establishes the municipality’s fair share obligation.

“Housing region" means a geographic area, determined by the Council, of no less than two and no more than four contiguous, whole counties that exhibits significant social, economic and income similarities, and which constitutes to the greatest extent practicable, a Primary Metropolitan Statistical Area (PMSA) as last defined by the United States Census Bureau.

"Mediation" means the process established by the Act whereby objectors to a municipality's petition for substantive certification and other participants meet with the municipality under the direction of a Council-appointed mediator to attempt to resolve disputes.

“Minor technical amendment” means a minor revision to a certified municipal Housing Element and/or Fair Share Plan that has been adopted by the planning board and endorsed by the governing body that is not considered an amendment pursuant to N.J.A.C. 5:96-14.1(b).

“Motion” means a written application requesting the Council to make a specified ruling or order pursuant to N.J.A.C. 5:96-13.

“Municipal housing liaison” means an appointed municipal employee who is responsible for oversight and/or administration of the affordable units created within the municipality.

"Objector" means a person who files objections to a municipal Housing Element and Fair Share Plan in accordance with N.J.A.C 5:96-4.1.

"OAL" means the Office of Administrative Law.

"Participant to mediation" means any person the mediator deems necessary to conduct mediation and resolve any objections to a municipality's petition for substantive certification. The Council, or its designee conducting mediation, shall determine the extent to which a participant may take part in mediation.

"Petition for Substantive Certification" means a request made by municipal resolution filed in accordance with this chapter, seeking a determination through the Council's review process as to whether the municipal Housing Element and Fair Share Plan is consistent with the Act and compliant with rules promulgated by the Council. When used in this chapter, petition shall also mean re-petition.

“RCA administrator” means an appointed municipal employee who is responsible for oversight and/or administration of affordable units within the municipality that were funded through regional contribution agreements.

“RCA Project Plan” means a completed application, submitted by the receiving municipality in an RCA, delineating the manner in which the receiving municipality shall create or rehabilitate low- and moderate-income housing.

"Receiving municipality" means, for the purposes of an RCA, a municipality that agrees to assume a portion of another municipality's fair share obligation.

“Regional Contribution Agreement (RCA)” means a contractual agreement, pursuant to the Act, voluntarily entered into by two municipalities to transfer a portion of one municipality's fair share obligation to another municipality within the same housing region.

"Re-petition" means the municipal submission of a revision to a petition that has been adopted by the planning board and endorsed by the governing body, but has not yet received substantive certification.

"Sending municipality" means a municipality that transfers a portion of its fair share obligation to another willing municipality as part of an RCA.

"Service list" means a list maintained by the Council pursuant to N.J.A.C. 5:96-3.7.

"Substantive certification" means a determination by the Council approving a municipality's Housing Element and Fair Share Plan in accordance with the provisions of the Act, this chapter, and N.J.A.C 5:97. A grant of substantive certification may run for a period of 10 years beginning on the date that a municipality files its Housing Element and Fair Share Plan with the Council in accordance with N.J.S.A. 52:27D-313, but shall not extend beyond December 31, 2019.

“UHAC” means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.

SUBCHAPTER 2. FILING A HOUSING ELEMENT AND FAIR SHARE PLAN

5:96-2.1 Filing

A municipality may file its Housing Element and Fair Share Plan with the Council at any time pursuant to the Act.

5:96-2.2 Filing requirements

- (a) A municipal Housing Element and Fair Share Plan that is filed with the Council shall be either hand delivered or mailed and shall contain the following information in a hard copy and electronic format (if possible), in a form provided by the Council:
 1. A copy of the adopted Housing Element in conformance with N.J.A.C. 5:97-2.3(a) and Fair Share Plan with all necessary information and documentation as required by the Council in conformance with N.J.A.C. 5:97-3.2(a);
 2. A certified copy of the resolution of the municipal planning board adopting the Housing Element and Fair Share Plan as part of the municipality's master plan pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.;
 3. A certified copy of the resolution of the governing body of the municipality endorsing the Housing Element and Fair Share Plan; and
 4. A service list pursuant to N.J.A.C. 5:96-3.7.
- (b) The Council's Executive Director shall notify the municipality in writing of any deficiencies in its filing as required by (a) above within 45 days of issuance. If there are no deficiencies, the notification letter will acknowledge receipt of the Housing Element and Fair Share Plan and advise the municipality that it has two years to petition.
- (c) A municipality receiving written notice of any deficiencies in its filing shall respond to the Council within 45 days of the date of such notice. Failure of a municipality to correct all deficiencies within 45 days shall automatically result in the rejection of the municipality's filing and dismissal from the Council's jurisdiction.
- (d) A municipality may revise and re-file before submitting a petition, but such re-filing shall not extend the period of jurisdiction described in N.J.A.C. 5:96-1.2 beyond two years from the date of the initial filing.
- (e) Notwithstanding any cited deficiencies, the date of initial filing starts the maximum 10-year period during which the Council's grant of substantive certification shall apply or the period of the benefits outlined in N.J.A.C. 5:96-3.8.
- (f) Once a filing is deemed complete, the Council's Executive Director may review and approve municipal housing liaisons, administrative agents, RCA administrators, affirmative marketing plans, and operating manuals.

5:96-2.3 Transferred cases

When a case is transferred to the Council by court order pursuant to N.J.S.A. 52:27D-316, the municipality shall submit an adopted Housing Element and Fair Share Plan to the Council within 90 days from the date of transfer. The municipal plan shall conform to the petitioning requirements of N.J.A.C. 5:96-3.

SUBCHAPTER 3. PETITION FOR SUBSTANTIVE CERTIFICATION

5:96-3.1 Petition

A municipality may petition the Council for substantive certification within two years from the date of filing its Housing Element and Fair Share Plan, or may file and petition the Council simultaneously.

5:96-3.2 Petition requirements

- (a) A petition for substantive certification shall be in the form of a filing pursuant to N.J.A.C. 5:96-2.2(a) and shall also include a duly adopted resolution from the governing body requesting Council review and certification of the Housing Element and Fair Share Plan.
- (b) A petition shall be reviewed and accepted according to the requirements in N.J.A.C. 5:96-2.2.
- (c) Once a petition is deemed complete, and after the public review period pursuant to N.J.A.C. 5:96-3.6, the Council may review and approve development fee ordinances and spending plans.

5:96-3.3 Action equivalent to a petition for substantive certification

A municipality engaged in an exclusionary zoning lawsuit whose Housing Element and Fair Share Plan has been transferred to the Council by the courts pursuant to N.J.S.A. 52:27D-316, shall be deemed to have petitioned for substantive certification when the Council accepts the municipality's adopted Housing Element and Fair Share Plan as required pursuant to N.J.A.C. 5:96-2.2.

5:96-3.4 Re-petition requirements

- (a) A municipality that has petitioned the Council may re-petition with a revised Housing Element and Fair Share Plan in accordance with N.J.A.C. 5:96-3.2 prior to the grant of substantive certification. A municipality shall re-petition when the revisions to its plan include a change in site, substantial change in density, a change in any other zoning requirement that results in a change of housing type on a specific site or a fundamental change in approach to its fair share obligation. However, if the revision alters the plan to address the municipality's fair share obligation by ten percent or less, it may be considered a minor revision pursuant to (b) below.
- (b) A municipality seeking a minor revision to its adopted Housing Element and Fair Share Plan that does not substantially alter the terms of its municipally adopted Housing Element and Fair Share Plan pursuant to (a) above, may do so by motion pursuant to N.J.A.C. 5:96-14.3. Examples include, but are not limited to, changing the number of units in an existing mechanism, adding a program that is not site specific, or altering the plan to address the municipality's fair share obligation by 10 percent or less.
- (c) A municipality shall not petition with a revised Housing Element and Fair Share Plan more than three times subsequent to June 2, 2008, without prior authorization of the Council.

5:96-3.5 Notice

- (a) In order to provide the general public with an opportunity to review the municipal Housing Element and Fair Share Plan and to submit objections or comments, when a municipality petitions for substantive certification or is deemed to have petitioned pursuant to N.J.A.C. 5:96-3.3, it shall publish notice of its petition. Within seven days of the issuance of the notification letter from the Council's Executive Director pursuant to N.J.A.C. 5:96-2.2(b) indicating the submission is complete, notice shall be published in a newspaper of general circulation within the municipality and county. The public notice shall be in the legal newspaper of the municipality as well as one that is widely circulated within the county if the legal newspaper is not widely circulated within the county. If the Council's Executive Director determines that notice was not published in a newspaper of general circulation, the municipality shall be required to re-publish in another appropriate newspaper.
- (b) Notice of a petition for substantive certification shall be provided in the following format:

NOTICE OF PETITION FOR
SUBSTANTIVE CERTIFICATION

NOTICE is hereby given that (MUNICIPALITY) has petitioned the New Jersey Council on Affordable Housing for Substantive Certification of its Housing Element and Fair Share Plan pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:96-3.1 et seq. A copy of the adopted Housing Element and Fair Share Plan and supporting documentation is available for public inspection at the office of the (Municipal Clerk, etc.), Municipal Building, located at (street address), during the hours of _____. Comments or objections to said petition for Substantive Certification shall be filed with the New Jersey Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, New Jersey 08625-0813 and with the municipal clerk by (DATE) which is within 45 days of publication of this notice.

Municipal Clerk

- (c) A municipality that chooses to revise its plan and re-petition or is required to re-petition with a revised plan for substantive certification shall provide notice in the following format:

NOTICE OF RE-PETITION FOR
SUBSTANTIVE CERTIFICATION

NOTICE is hereby given that (MUNICIPALITY) has re-petitioned the New Jersey Council on Affordable Housing for Substantive Certification of its Housing Element and Fair Share Plan pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:96-3.4. The (MUNICIPALITY) Planning Board, subsequent to public hearing, adopted a revision to its Housing Element and Fair Share Plan on (date). The adopted plan is a revision of a previously adopted Housing Element and Fair Share Plan for which the (Township/Borough/Town/City) had initially petitioned the Council on Affordable Housing for substantive certification on (date).

A copy of the revised and adopted Housing Element and Fair Share Plan and supporting documentation is available for public inspection at the office of the (Municipal Clerk, etc.), Municipal Building, located at (street address), during the hours of _____. Comments or objections to said re-petition shall be filed with the Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, New Jersey 08625-0813 and with the municipal clerk by (DATE) which is within 45 days of publication of this notice.

Municipal Clerk

- (d) An updated list of all petitions for substantive certification received by the Council shall be published monthly on its website.

5:96-3.6 Public review

A municipality that has petitioned for substantive certification with the Council shall make copies of the Housing Element and Fair Share Plan and all supporting documentation available for public inspection within the municipality. The Housing Element and Fair Share Plan shall be available for inspection during regular business hours for a period of 45 days beginning on the date of publication of the notice of petition for substantive certification pursuant to N.J.A.C. 5:96-3.5.

5:96-3.7 Service list

- (a) At the time it files or petitions for substantive certification a municipality shall provide the Council with a service list that includes the following information:
1. The current names and addresses of owners of sites identified by block and lot that were included in previously certified or court settled plans that were zoned for low- and moderate-income housing and/or were to pay a negotiated fee(s). The owners of sites that have been completely developed shall not be included on the service list;
 2. The names and addresses of owners of all new or additional sites included in the Fair Share Plan. The sites shall be identified by block and lot and paired with the names and addresses of the respective owners;
 3. The names and addresses of all municipal employees or designees that the municipality would like notified of all correspondence relating to the filing or petition; and
 4. The names and addresses of relevant county, regional and/or State entities.
- (b) The owners of sites designated in the municipal submission shall be given written notice by the Council's Executive Director of the submission of a petition. Such property owners may participate in mediation and shall have the rights granted to objectors of the municipal submission.
- (c) Any interested person may submit a written request to the Council to be included on the service list or deleted from a service list for one or more municipalities.

5:96-3.8 Builder's remedy litigation

- (a) When a municipality falls within the jurisdiction of the Council pursuant to N.J.A.C. 5:96-1.2(a)1, 2 and 3, the municipality shall not be subject to a builder's remedy, unless the municipality's petition is dismissed or substantive certification is revoked by the Council.
- (b) If an exclusionary zoning lawsuit is filed either prior to the filing of a Housing Element and Fair Share Plan or after the filing of a Housing Element and Fair Share Plan where a petition for substantive certification was not submitted within two years of the filing, and the case is transferred to the Council by the court, the Council shall require the municipality to include the contested site as a component of its plan provided the site is suitable pursuant to N.J.A.C 5:97-3.13.

SUBCHAPTER 4. OBJECTIONS TO A PROPOSED HOUSING ELEMENT AND FAIR SHARE PLAN

5:96-4.1 Objections

- (a) Within 45 days of publication of the notice of a municipality's petition for substantive certification, any person may file objections to a municipality's Housing Element and Fair Share Plan. Objections shall be filed with the Council and the municipality. The Council shall not consider any objection regarding its rules and regulations as a valid objection. An objection shall be in a form as may be determined by the Council's Executive Director and shall include, at a minimum, the following:
 - 1. A clear and complete statement as to each aspect of the municipality's Housing Element and Fair Share Plan to which an objection is made;
 - 2. An explanation of the basis for each objection including, where appropriate, citations to expert reports, studies or other data relied upon to support each objection;
 - 3. Copies of all referenced expert reports, studies or other data relied upon by the objector;
 - 4. Proposed modifications, changes or other measures which the objector contends will resolve the objection and an explanation of how the objector's proposals are consistent with the Council's criteria and guidelines;
 - 5. A statement documenting the objector's prior efforts at premediation, participation in conferences or public hearings and a summary of the results of any such efforts; and
 - 6. Identification and a description of any site proposed by the objector, including a history of development applications (if any), for inclusion in the Housing Element and Fair Share Plan and a demonstration that the site is suitable in accordance with N.J.A.C. 5:97-3.13.

5:96-4.2 Review of objections

- (a) The Council's Executive Director shall review objections subject to the requirements of N.J.A.C 5:96-4.1 to determine completeness and validity. The Executive Director shall notify the objector who has filed an objection and the service list that the objection is complete and valid and that the objector is permitted to participate in the Council's administrative process beginning with mediation as set forth in N.J.A.C. 5:96-8.
- (b) Objections that are determined to be incomplete or invalid shall be returned to the objector who shall have 14 days to correct deficiencies and resubmit them in a manner conforming to N.J.A.C 5:96-4.1. If the objections are not resubmitted within the 14 days, the Council's Executive Director shall consider the objections to be withdrawn.
- (c) The municipality shall submit a written response to all items delineated in the objector's objection. Such written response shall be submitted to the Council and service list within 20 days of the notification letter issued in accordance with (a) above.
- (d) Each objection and municipal response to same shall be reviewed and summarized in a premediation report that is issued by the Council's Executive Director pursuant to N.J.A.C. 5:96-7.2(a).

SUBCHAPTER 5. REVIEW OF DEVELOPMENT FEE ORDINANCES AND SPENDING PLANS FOR AFFORDABLE HOUSING TRUST FUNDS

5:96-5.1 Development fee ordinance review

- (a) Pursuant to N.J.A.C. 5:97-8.3, a municipality that seeks to impose mandatory development fees shall submit its proposed development fee ordinance to the Council for review and approval.
- (b) The Council shall review a development fee ordinance once the municipality has submitted:
 - 1. A copy of an adopted Housing Element that complies with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.;
 - 2. A copy of the proposed ordinance designed to collect development fees, which is consistent with N.J.A.C. 5:97-8.3;
 - 3. A description of any changes to the municipal zoning ordinance during the previous two years;
 - 4. A request in the form of a resolution by the governing body for the Council to review and approve the development fee ordinance, unless the development fee ordinance was submitted as part of a petition pursuant to N.J.A.C. 5:96-3; and
 - 5. If applicable, a copy of the compliance plan, implementing ordinances, and information regarding the period of time encompassed by the judgment of compliance and a request for review by the court if the municipality has received a court ordered judgment of compliance. The court shall indicate if the Council is to monitor the development fees and authorize the Council to execute an escrow agreement pursuant to N.J.A.C. 5:97-8.2.

- (c) Once the Council has approved the development fee ordinance, the municipality's governing body may adopt the development fee ordinance, which shall be filed with the Council within seven days of adoption.

5:96-5.2 Amendment to an approved development fee ordinance

- (a) A municipal amendment to an approved development fee ordinance pursuant to N.J.A.C. 5:96-5.1 shall be reviewed and approved by the Council prior to the adoption and imposition of fees pursuant to the amendment.
- (b) A municipality shall submit a request in the form of a resolution by the governing body for the Council to review and approve an amendment to an approved development fee ordinance.
- (c) Once the Council has approved the development fee ordinance amendment, the municipality's governing body may adopt the amendment to the development fee ordinance, which shall be filed with the Council within seven days of adoption.

5:96-5.3 Spending plan review

- (a) Pursuant to N.J.A.C. 5:97-8.1(d), a municipality that seeks to maintain an affordable housing trust fund shall submit its proposed spending plan to the Council for review and approval prior to the spending of funds.
- (b) A municipality shall submit a resolution by the governing body endorsing the spending plan compliant with N.J.A.C. 5:97-8.10 and requesting review and approval by the Council, unless the spending plan was submitted as part of a petition pursuant to N.J.A.C. 5:96-3.

5:96-5.4 Amendment to an approved spending plan

- (a) An amendment to an approved spending plan shall be reviewed and approved by the Council prior to the spending of funds pursuant to the amendment.
- (b) A municipality shall submit a request in the form of a resolution by the governing body endorsing the amendment to the spending plan compliant with N.J.A.C. 5:97-8.10.

SUBCHAPTER 6. CONSIDERATION OF A MUNICIPALITY'S HOUSING ELEMENT AND FAIR SHARE PLAN WHEN NO OBJECTIONS ARE FILED

5:96-6.1 Overview

This subchapter outlines the procedures for the review of a Housing Element and Fair Share Plan to which no objections have been filed.

5:96-6.2 Council review

- (a) After the expiration of the 45-day public review period pursuant to N.J.A.C. 5:96-3.6, the Council's Executive Director shall conduct an in-depth review of the petition and prepare a report within 45 days which shall be circulated to the municipality and to the service list. The Council's Executive Director may extend the time in the event that the number of petitions for substantive certification exceeds the resources of the Council's staff to process such petitions. Public notice of any such extension shall be provided to the municipality and the service list. The report may:

1. Request additional information;
 2. Recommend substantive certification; or
 3. Recommend conditional substantive certification.
- (b) Reports recommending substantive certification or conditional substantive certification shall be submitted to the municipality and the service list for a 14-day comment period prior to Council action on the petition for substantive certification.
- (c) If the report requires additional information and/or necessary revisions to the Housing Element and Fair Share Plan to achieve certification, which may require a re-petition, the municipality shall provide said information to the Council and notify the service list within 60 days of issuance of the report. If a re-petition is required, the municipality shall follow the procedures outlined in N.J.A.C. 5:96-3.4.
- (d) If the municipality fails to submit the necessary documentation after receiving a report requesting additional information or fails to revise its Housing Element and Fair Share Plan as requested within the 60-day period, the Council shall issue a report recommending denial, which shall be submitted to the municipality and the service list for a 14-day comment period prior to Council action on the petition for substantive certification. If, within 60 days of the Council's denial, the municipality submits its petition with changes satisfactory to the Council, the Council shall issue substantive certification.
- (e) If the Council finds that a second re-petitioned Housing Element and Fair Share Plan continues to require substantial changes, such as the designation of additional inclusionary sites, a change in inclusionary sites, a substantial change in density or a fundamental change in approach, the Council shall dismiss the petition for substantive certification unless the Council has authorized the municipality to submit an additional re-petition pursuant to N.J.A.C. 5:96-3.4(c).

5:96-6.3 Grant of substantive certification

- (a) The Council shall issue substantive certification of a municipality's Housing Element and Fair Share Plan if:
1. The municipality's proposed Housing Element and Fair Share Plan complies with this chapter and N.J.A.C. 5:97;
 2. The Housing Element and Fair Share Plan is consistent with the achievement of the low- and moderate-income housing needs of the region pursuant to this chapter and N.J.A.C. 5:97; and
 3. The combination of the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations and the affirmative measures in the Housing Element and Fair Share Plan make the achievement of the municipality's fair share of low- and moderate-income housing realistically possible after allowing for the implementation of any regional contribution agreement approved by the Council.

- (b) A grant of substantive certification shall run for a period of 10 years beginning on the date that a municipality files a Housing Element and Fair Share Plan with the Council in accordance with N.J.S.A. 52:27D-313, and not extending beyond December 31, 2019.
- (c) A grant of substantive certification may contain such conditions and terms as the Council considers necessary to make the achievement of a municipality's fair share obligation realistically possible.
- (d) The Council may condition a grant of substantive certification upon specific changes in the Housing Element or Fair Share Plan. Any conditions for approval shall be in writing and shall set forth the reasons for the conditions. If, within 60 days of the Council's conditional approval, the municipality submits changes satisfactory to the Council, the Council shall issue substantive certification. If the municipality fails to revise its Housing Element and Fair Share Plan within the 60-day period the municipality shall be automatically dismissed from the Council's jurisdiction.
- (e) Within 45 days of the grant of substantive certification, the municipality shall adopt its ordinances necessary for the implementation of the mechanisms designed to satisfy the fair share obligation, as approved by the Council. The Council's grant of substantive certification shall be void and of no force and effect in the event that the municipality fails to adopt its ordinances within 45 days.

5:96-6.4 Dismissal

If the Council dismisses or revokes a petition for substantive certification, the municipality shall no longer receive the benefits outlined in N.J.A.C. 5:96-3.8. Such a municipality may revise its Housing Element and Fair Share Plan and submit a new petition no more than two times without prior authorization of the Council. Such new petition shall not extend the total period for which a municipality may receive either substantive certification or the benefits outlined in N.J.A.C. 5:96-3.8.

SUBCHAPTER 7. CONSIDERATION OF A MUNICIPALITY'S HOUSING ELEMENT AND FAIR SHARE PLAN WHEN OBJECTIONS ARE FILED

5:96-7.1 Overview

This subchapter sets forth the procedures for the review of a Housing Element and Fair Share Plan when one or more objections have been filed.

5:96-7.2 Municipalities that petition for substantive certification simultaneously with or within two years of filing their Housing Element and Fair Share Plan

- (a) After the expiration of the 45-day public review period pursuant to N.J.A.C 5:96-3.6 for municipalities that petition for substantive certification simultaneously with or within two years of filing their Housing Element and Fair Share Plan, the Council's Executive Director shall conduct an in-depth review of the petition and prepare a premediation report within 45 days which shall be circulated to the municipality and to the service list. The Council's Executive Director may extend the time in the event that the number of petitions for substantive certification exceeds the resources of the Council's staff to process the petitions. Public notice of any such extension shall be provided to the municipality and to the service list.

- (b) If the premediation report requires additional information and/or necessary revisions to the Housing Element and Fair Share Plan, which may require a re-petition, the municipality shall provide the requested information to the Council and notify the service list within 60 days of issuance of the report. If a re-petition is required, the municipality shall follow the procedures outlined in N.J.A.C. 5:96-3.4.
- (c) The mediation process shall commence in accordance to the procedures set forth in N.J.A.C. 5:96-8.

5:96-7.3 Other municipalities

- (a) The class of other municipalities includes those sued for exclusionary zoning either prior to filing a Housing Element and Fair Share Plan or after filing a Housing Element and Fair Share Plan where a petition for substantive certification was not submitted within two years, and municipalities transferred by the court to the Council.
- (b) Once a petition is filed pursuant to N.J.A.C. 5:96-2.3, the Council's Executive Director shall prepare a premediation report as described in N.J.A.C. 5:96-7.2(a). The report shall indicate that the litigant is entitled to site-specific relief pursuant to N.J.A.C. 5:96-3.8(b).
- (c) If the premediation report requires additional information and/or necessary revisions to the Housing Element and Fair Share Plan, which may require a re-petition, the municipality shall provide the requested information to the Council and notify the service list within 60 days of issuance of the report. If a re-petition is required, the municipality shall follow the procedures outlined in N.J.A.C. 5:96-3.4.
- (d) The mediation process shall commence in accordance with the procedures set forth in N.J.A.C. 5:96-8.
- (e) If mediation concludes unsuccessfully and the Council determines there are contested issues of material fact regarding the suitability of a site pursuant to N.J.A.C. 5:97-3.13, the Council may elect to either consider the contested issues of material fact at a scheduled Council meeting and render a final decision in the matter or refer the matter to OAL pursuant to N.J.A.C. 5:96-9.

5:96-7.4 Substantive certification

- (a) Upon review of a Housing Element and Fair Share Plan that responds to a mediation report pursuant to N.J.A.C. 5:96-8.5 or an initial decision from OAL pursuant to N.J.A.C. 5:96-9.2, the Council may grant substantive certification in accordance with 5:96-6.3.
- (b) In conducting its review set forth in this section, the Council's Executive Director may meet with the municipality and/or any objector thereto.

SUBCHAPTER 8. MEDIATION

5:96-8.1 General

Once an objection to a municipality's petition for substantive certification is deemed valid and complete pursuant to N.J.A.C. 5:96-4.2(a), the Council's Executive Director may engage in mediation. The Executive Director may appoint a designee to act as the mediator in his or her place. The mediator shall meet with the representatives of the municipality and/or the objectors and attempt to mediate a resolution of the objections.

5:96-8.2 Participants to mediation

- (a) The mediator shall have full and complete discretion to permit any person to participate in mediation upon a determination that such participation may facilitate mediation and/or help resolve an objection to a municipality's petition for substantive certification. A person invited to participate pursuant to this subsection shall be deemed a participant to mediation and shall be permitted to participate in mediation to the extent the mediator determines appropriate.
- (b) An objector or site owner in accordance with N.J.A.C. 5:96-3.7 shall be permitted to have a mediation team of not more than three representatives unless otherwise permitted by the mediator.
- (c) A municipality shall have a mediation team comprised of two representatives in addition to a member of the municipal planning board and a member of the municipal governing body (who shall not be the same individual).
- (d) Prior to the commencement of mediation, objectors and owners of sites in accordance with N.J.A.C. 5:96-3.7 and the municipality shall designate their representatives, authorize the representatives to negotiate on their behalf, and also authorize one or more of the representatives to execute any written agreement reached during mediation on their behalf.
 - 1. Objectors and owners of sites in accordance with N.J.A.C. 5:96-3.7 shall submit such designations and authorization to the Council in writing.
 - 2. Municipalities shall submit such designations and authorization to the Council in the form of a duly adopted resolution of the governing body.
- (e) Additions or replacements to mediation teams shall be made only with the approval of the mediator and shall be immediately submitted to the Council in writing by the objector or property owner, and in the form of a duly adopted resolution by the municipality.

5:96-8.3 Scope of mediation

- (a) If the Council's Executive Director finds that the objections raised are not relevant to the compliance mechanisms included in the municipality's Fair Share Plan to address the municipal affordable housing obligation, mediation may be scheduled as quickly as practicable after the end of the 45-day objector period and prior to the issuance of the premediation report.
- (b) If the Council's Executive Director finds that the objections raised are relevant to the compliance mechanisms included in the municipality's Fair Share Plan to address the municipal affordable housing obligation, mediation shall be scheduled after the

municipality has responded to the Premediation Report and as often thereafter as the mediator shall determine necessary. Deadlines for the submission of information, reports, studies or other documentation may be imposed as the mediator finds necessary.

- (c) The mediator may, upon notice to the participants during the course of mediation, rely upon or use any interim adjudications previously entered by a trial court in the matter or any stipulations previously entered into by the participants in any such litigation.
- (d) During mediation the Council may choose to hear and decide an issue itself if, in the Council's determination such an inquiry would facilitate a satisfactory conclusion to the mediation process.
- (e) Mediation may be conducted for a period of 90 days after the first scheduled mediation date. The period for mediation may be extended by the mediator for good cause shown.
- (f) The mediator shall have the widest possible discretion as to the manner by which mediation is conducted.

5:96-8.4 Conclusion of mediation; mediation report

- (a) The mediator may, for any reason, including, but not limited to, a lack of progress in the mediation proceedings or a determination that mediation cannot resolve a dispute, declare an end to mediation.
- (b) At the conclusion of mediation, the Council's Executive Director may, in appropriate instances, require all participants to submit affidavits or certifications from individuals with personal knowledge of the facts at issue. If the Council determines there are contested issues of material fact, the Council may elect to either consider the contested issues of material fact at a scheduled Council meeting and render a final decision in the matter or refer the matter to OAL pursuant to N.J.A.C. 5:96-9.
- (c) At the conclusion of mediation, if the participants have reached an agreement, the participants shall submit the executed agreement to the Council within 45 days from the last mediation session. If the executed agreement is not submitted within 45 days the Council may issue an Order to Show Cause at the next scheduled Council meeting to explain why the agreement has not been executed. The Council shall take whatever action it deems appropriate.
- (d) The mediator shall prepare a mediation report within 60 days of the conclusion of mediation or the date the Council receives the executed agreement between the participants, whichever is later. The report shall, at a minimum:
 - 1. Review any objections that have been successfully resolved and the status of any remaining unresolved issues, including a recommendation as to whether there are contested issues of material fact that necessitate consideration by the Council or the transfer to OAL;
 - 2. Describe whether the municipality has included the objector's proposed site in a re-petition, or has addressed any shortfall noted in the premediation report pursuant to N.J.A.C. 5:96-7.2(b) through the addition of other compliance mechanisms; and

3. Present the stipulations or other agreements reached by the municipality and the objectors.
- (e) The mediation report shall be submitted to the municipality and all participants to the mediation, including owners of sites in accordance with N.J.A.C. 5:96-3.7 and owners of sites in any proposed revision resulting from mediation for a 14-day comment period. At the conclusion of the 14-day comment period, the mediation report and any comments thereto shall be presented to the Council at the next scheduled Council meeting.
- (f) The participants shall be bound by any agreements entered into during mediation when formally reduced to writing and signed by the participants.

5:96-8.5 Revision of Housing Element and Fair Share Plan as a result of mediation

- (a) If an amendment and/or revision to the municipality's Housing Element and Fair Share Plan is required as a result of mediation, at the close of mediation, the municipality shall submit a resolution from the governing body committing to amend and/or revise its Housing Element and Fair Share Plan within 60 days of the conclusion of mediation.
- (b) Revisions to the originally filed municipal Housing Element and Fair Share Plan that are determined to be substantial in accordance with N.J.A.C. 5:96-3.4(a) shall require a re-petition pursuant to N.J.A.C. 5:96-3.2.
- (c) If the revisions to the municipal Housing Element and Fair Share Plan are not substantial in accordance with N.J.A.C. 5:96-3.4(b), the municipality may request that the revision be done by motion pursuant to N.J.A.C. 5:96-13.
- (d) If the mediation proceedings fail to progress or mediation cannot resolve a dispute and the municipality's Fair Share Plan does not create a realistic opportunity pursuant to N.J.A.C. 5:97 and the objector's site is in conformance with N.J.A.C. 5:97-3.13, the Council may either direct the municipality to amend its Housing Element and Fair Share Plan to include the objector's site to address any shortfall noted in the premediation report provided or deny substantive certification pursuant to N.J.A.C. 5:96-12.2. The Council will take into consideration the length of time the municipality has been under the Council's jurisdiction and whether or not the municipality was previously granted substantive certification.
- (e) If the municipality fails to revise its Housing Element and Fair Share Plan as a result of mediation within 60 days from the conclusion of mediation, the Council shall dismiss the municipal submission by administrative order or deny it pursuant to N.J.A.C. 5:96-6.2(d).

5:96-8.6 Reopened mediation

- (a) If during the public review period pursuant N.J.A.C. 5:96-3.6, an objection is filed to a previously mediated and revised Housing Element and Fair Share Plan, mediation may be reopened for a period not to exceed 60 days.
- (b) The mediator shall consider only those objections to the portions of the Housing Element and Fair Share Plan that have been revised following mediation.
- (c) If mediation is reopened, the municipality and objectors to both the initial Housing Element and Fair Share Plan and to the proposed mediated Housing Element and Fair Share Plan shall be given the opportunity to participate in the reopened mediation.

- (d) At the end of the reopened mediation or the date the Council receives the executed agreement between the participants, whichever is later, the mediator shall prepare another mediation report within 30 days. The report shall list all issues that remain in dispute between the municipality and the objectors and shall present the stipulations or other agreements reached by the municipality and the objectors. The mediation report shall be open for comment pursuant to N.J.A.C. 5:96-8.4(e).
- (e) Following a reopened mediation and the presentation of the second mediation report to the Council, the procedures in N.J.A.C. 5:96-8.5 shall be followed.

SUBCHAPTER 9. REFERRAL TO THE OFFICE OF ADMINISTRATIVE LAW

5:96-9.1 General

- (a) In the event contested issues of material fact remain following mediation, the Council, upon the motion of any party or in its own discretion, shall determine whether to consider the issues at a scheduled Council meeting or refer the matter to the Office of Administrative Law (OAL) for resolution as a contested case pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedural Rules, N.J.A.C. 1:1.
- (b) Upon determining that the matter shall be referred to OAL for adjudication as a contested case, the Council shall transmit the matter to OAL together with the mediation report, the municipality's petition for substantive certification and any objections thereto, and any other documentation pertinent to the adjudication.
- (c) The cost of the transcript of all oral testimony transmitted to OAL from the Council shall be shared equally by the municipality and the objectors.

5:96-9.2 Review

Within 45 days after the issuance of an initial decision from OAL, the Council shall review the initial decision of the Administrative Law Judge, the record upon which it is based and all exceptions to the initial decision. The Council shall then accept, reject or modify the decision and issue its final decision on the matter. The decision of the Administrative Law Judge shall be deemed adopted and shall become the final decision of the Council unless the Council modifies or rejects the initial decision within this period of time. For good cause shown the time limit established under this subchapter may be extended pursuant to N.J.A.C. 1:1-16.6.

SUBCHAPTER 10. PLAN EVALUATION

5:96-10.1 Plan evaluation report

- (a) The Council shall conduct biennial plan evaluations upon substantive certification of a municipality's Housing Element and Fair Share Plan. The purpose of the 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. The Council's Executive Director may also review a municipality's Housing Element and

Fair Share Plan at any time to determine if a municipal plan addresses the affordable housing obligation set forth in N.J.A.C. 5:97-2.

- (b) The Council's Executive Director shall issue a report to the municipality and the service list based on a review that considers, at a minimum, the following information:
1. The actual residential growth-related need, measured from January 1, 2004 up to and including the date that the review period ended based on the provisions of N.J.A.C. 5:97-2.5;
 2. The actual employment growth-related need measured from January 1, 2004 up to and including the date that the review period ended based on the provisions of N.J.A.C. 5:97-2.5;
 3. The status of the mechanisms included in a municipality's Housing Element and Fair Share Plan and funding sources, if applicable, designed to meet the total affordable housing obligation (1987 through 2018), including:
 - i. The number of affordable units for which certificates of occupancy have been issued that were needed to address the growth share obligation;
 - ii. The number of affordable units for which certificates of occupancy have been issued that were needed to address the municipality's prior round obligation;
 - iii. The number of units that have been rehabilitated to address the municipality's rehabilitation share; and
 - iv. The implementing ordinances designed to address the fair share obligation, including the ongoing viability of the mechanisms pursuant to N.J.A.C. 5:97-6; and
 4. An accounting of any housing trust fund activity, including the source and amount of funds collected, the amount and purpose for which any funds have been expended, and the status of the plan to spend the remaining balance pursuant to N.J.A.C. 5:97-8.10(a)8;
 5. The amount of funds transferred pursuant to any RCAs;
 6. A comparison of the projected growth share and the actual need on the date of the report and any supporting documentation citing the reasons for any shortfall;
 7. Any revisions to the Fair Share Plan that are needed to address any shortfall between the actual growth-related need and the number of affordable units actually provided;
 8. If applicable, the status of the municipality's application for plan endorsement from the State Planning Commission;
 9. An evaluation of the results of the municipality's affirmative marketing activities; and
 10. Any other information pertaining to the review of the municipality's progress in addressing its fair share obligation.

5:96-10.2 Notice

- (a) Within seven days of the issuance of the results of the Council’s review, the municipality shall publish notice that the results of the Council’s review are available for public inspection at the offices of the municipality. The public notice shall be in the legal newspaper of the municipality as well as one that is widely circulated within the county if the legal newspaper is not widely circulated within the county. If the Council’s Executive Director determines that notice was not published in a newspaper of general circulation, it shall require the municipality to re-publish in another newspaper.
- (b) Notice shall be provided in the following format:

Notice of the Council on Affordable Housing Plan Review

NOTICE is hereby given that (MUNICIPALITY) has filed monitoring with the New Jersey Council on Affordable Housing pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:96-11 et seq. The Council on Affordable Housing has reviewed the Housing Element and Fair Share Plan and monitoring and issued a report. A copy the Council on Affordable Housing report is available for public inspection at the office of the (MUNICIPAL CLERK, etc.), Municipal Building, located at (STREET ADDRESS), during the hours of _____.

Municipal Clerk

5:96-10.3 Public review

The municipality shall make copies of the results of the Council’s review available for public inspection during regular business hours within the municipality. The Council shall publish the results on its website.

5:96-10.4 Enforcement

- (a) If upon any biennial review the difference between the number of affordable units constructed or provided in a municipality and the number of units required pursuant to N.J.A.C 5:97-2.4 results in a pro-rated production shortage of 10 percent or greater, the municipality is not adhering to its implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4, or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, the Council may direct the municipality to amend its plan in conformance with N.J.A.C. 5:96-14 to address the affordable housing obligation set forth in N.J.A.C. 5:97-2.5. Upon a finding that a municipality is no longer meeting its affordable housing obligation, the report issued pursuant to N.J.A.C. 5:96-10.1(b) shall set forth the reasons for such finding and provide a 90-day period for the submission of an amended Housing Element and Fair Share Plan that will meet the affordable housing obligation.
- (b) If upon review of a Housing Element and Fair Share Plan that has been amended in response to (a) above, the Council finds that the plan still does not provide for the affordable housing obligation set forth in N.J.A.C. 5:97-2.5, the Council shall issue an administrative order directing that specific corrective actions be taken and shall establish timeframes for such actions for a period not to exceed 120 days. Failure to comply with the administrative order shall result in the revocation of substantive certification.

SUBCHAPTER 11. MONITORING

5:96-11.1 Applicability

- (a) Municipalities that are under the jurisdiction of the Council, are RCA receiving municipalities, maintain affordable housing trust funds, or are under the jurisdiction of the court and have been ordered to submit monitoring to the Council shall provide monitoring information in accordance with this subchapter at such time and in such form as the Council requires, but at least once a year.
- (b) Municipalities with expired, revoked or dismissed plans shall provide monitoring information until the expiration of the controls on affordability of affordable units.

5:96-11.2 Monitoring of actual growth

The municipal housing liaison shall provide information regarding the municipality's actual growth pursuant to N.J.A.C. 5:97-2.5, which shall be certified by the mayor.

5:96-11.3 Monitoring of affordable housing programs and affordable units

- (a) The municipal housing liaison shall provide information to the Council setting forth the status of all affordable housing programs and affordable units, which may include proposed units, rehabilitated units, or newly constructed units.
- (b) Where applicable, this information shall be provided to the New Jersey Meadowlands Commission, the Highlands Water Protection and Planning Council or the Pinelands Commission.

5:96-11.4 Monitoring of Regional Contribution Agreements

The RCA administrator shall provide RCA monitoring information pursuant to N.J.A.C. 5:97-7.9.

5:96-11.5 Monitoring of affordable housing trust funds

Municipalities that maintain affordable housing trust funds shall provide monitoring information pursuant to N.J.A.C. 5:97-8.12.

5:96-11.6 Monitoring of affirmative marketing plans

The municipal housing liaison or RCA administrator shall provide information regarding the municipality's affirmative marketing pursuant to UHAC.

5:96-11.7 Audits

Audits of municipal affordable housing files may be conducted to ensure that all affordable housing programs and trust funds are administered in accordance with the Council's rules.

5:96-11.8 Enforcement

- (a) Municipalities that fail to provide monitoring information within the time and in the form required by the Council may be subject to Council action.
- (b) If it is determined that the affordable housing programs are not being administered in accordance with the Council's rules, the municipality may be subject to Council action. Such action may include, but is not limited to, one or more of the following:

1. Revoking credit for the affordable housing programs and/or affordable units that are in violation of the Council's rules;
2. Requiring the municipality to enact its municipal resolution appropriating funds from general revenue or its resolution of intent to bond, in the event there is a shortfall in funding for a proposed mechanism;
3. Directing the municipality to amend its plan to address any shortfall;
4. Revoking approval of the municipal housing liaison, the RCA administrator and/or the administrative agent; or
5. Such other actions as the Council may determine necessary.

SUBCHAPTER 12. GENERAL POWERS

5:96-12.1 Orders to restrain scarce resources

At any time, upon its own determination or upon the application of any interested person, and after consideration of that application by the Council, the Council may issue such orders as may be necessary to require that a municipality take appropriate measures to reserve scarce resources that may be essential to fulfill the municipality's fair share obligation. The Council may require additional information or documentation necessary to determine whether the issuance of a scarce resource restraint is appropriate.

5:96-12.2 Accelerated denial of substantive certification

At any time, upon its own determination, or upon the application of any interested person, the Council may deny substantive certification without proceeding further with the mediation and review process.

5:96-12.3 Administrative orders

At any time, upon its own determination, or upon the application of an interested person, the Council may issue an administrative order for a municipality to provide information or take an action that expedites the Council's administrative process and/or the production of low- and moderate-income housing. The Council may dismiss a municipal Housing Element and Fair Share Plan or revoke substantive certification by administrative order. The order shall set forth in detail the reasons for the dismissal or revocation and the actions the municipality shall take before it may refile its Housing Element and Fair Share Plan.

5:96-12.4 Orders to show cause

At any time, upon its own discretion, the Council may issue an Order to Show Cause for a municipality to appear before the Council, provide any information requested by the Council, and show cause why the Council should not limit or terminate the benefits of the Council's jurisdiction or take any other action it deems necessary.

SUBCHAPTER 13. MOTIONS

5:96-13.1 Form of motion

- (a) An application to the Council for an order shall be by motion. A motion shall be by notice of motion in writing unless the Council permits it to be made orally. Every motion shall state the time and place when it is to be presented to the Council, the grounds upon which it is made, and the nature of the relief sought. When a matter becomes a contested case, motions shall generally be made to OAL pursuant to N.J.A.C. 1:1-12.
- (b) A party shall submit one original and 20 copies of all motions, answering papers and accompanying papers. Alternatively, a party may submit one original in a hard copy format and an electronic format. All papers shall be accompanied by a certification of service.
- (c) The Council shall not accept motions for reconsideration.
- (d) The Council shall not accept a motion if an objection has been filed pursuant to N.J.A.C. 5:96-4.1 by the same party on substantially the same matter. After the participants have completed mediation, a motion may be filed on the matter. The mediator shall determine if the motion presents a substantial change in facts or law and, upon a positive finding, shall refer the matter to the Council.

5:96-13.2 Affidavits, briefs and supporting statements

Motions and answering papers shall be accompanied by all necessary supporting affidavits, briefs and documents. All motions and answering papers shall be supported by affidavits for facts relied upon which are not of record or which are not subject to official notice. Such affidavits shall set forth only facts to which the affiants are competent to testify. Properly verified copies of all papers referred to in such affidavits shall be annexed thereto.

5:96-13.3 Oral argument

A movant's request for oral argument shall be made either in the moving papers or in the reply. A respondent's request for oral argument shall be made in the answering papers. All requests for oral argument shall state the reasons therefore. The Council's Executive Director shall determine whether motions shall be heard on the papers or through oral argument.

5:96-13.4 Time for serving and filing motions and affidavits or briefs

- (a) A notice of motion shall establish a return date at least 30 days from the date of service upon the opposing party. All motions, except those that seek emergent relief, shall be made returnable at least 10 days prior to a regularly scheduled meeting of the Council. If a motion is supported by an affidavit or brief, the affidavit or brief shall be served and filed not later than 20 days after receipt of the moving papers. Answers or responses to any opposing affidavits or briefs or to any cross-motions shall be served and filed not later than 10 days after receipt of the opposing papers. The Executive Director may reschedule any motion hearing as necessary.

- (b) A party seeking emergent relief shall contact the Council’s Executive Director to request an emergency hearing by the Council. A determination to proceed with emergent relief shall be made by the Executive Director.

5:96-13.5 Orders

The Council shall render a decision on the motion and may instruct the prevailing party to prepare and submit an appropriate order. If the Council has made findings of fact and conclusions of law explaining its disposition of the motion the order shall so indicate.

SUBCHAPTER 14. AMENDMENT OF SUBSTANTIVE CERTIFICATION

5:96-14.1 General

- (a) A municipality or any other person may request amendments to the terms of substantive certification. Amendments may be approved by the Council at any time following a grant of substantive certification. Amendments may be required by the Council at any time if it is determined that the municipality is no longer meeting the affordable housing obligation set forth in N.J.A.C. 5:97.
- (b) A municipality seeking an amendment to substantive certification that requires a change in site, substantial change in density, a change in other zoning requirements that results in a change of housing type on a specific site, or a fundamental change in approach to its low- and moderate-income housing obligation shall petition for such an amendment pursuant to N.J.A.C. 5:96-14.2. However, if the amendment alters the plan to address the municipality’s fair share obligation by 10 percent or less, it may be considered a minor technical amendment pursuant to (c) below.
- (c) A municipality seeking a minor technical amendment to its certified Housing Element and Fair Share Plan that does not substantially alter the terms of certification pursuant to (b) above may request such an amendment by motion pursuant to N.J.A.C. 5:96-14.3. Examples include, but are not limited to, changing the number of units in an existing mechanism, adding a program that is not site specific, or altering the plan to address the municipality’s fair share obligation by 10 percent or less.
- (d) Requests for amendments of the terms of substantive certification may be made by motion by any party other than a municipality pursuant to N.J.A.C. 5:96-14.3. If the motion requests a change in site, a substantial change in density, a change in other zoning requirements that results in a change of housing type on a specific site, or a fundamental change in how the municipal low- and moderate-income housing obligation is addressed, and if the municipality does not object to the motion, the Council may direct the municipality to seek a plan amendment by petition pursuant to N.J.A.C. 5:96-14.2.
- (e) All parties to the substantive certification, including the municipality and all objectors, shall be permitted to comment on any proposed amendment by motion.
- (f) A municipality shall not amend zoning on sites included in the certified Housing Element and Fair Share Plan without notice to the affected property owner. In amending zoning, a municipality shall adhere to the criteria outlined in N.J.A.C. 5:97-6.4.

5:96-14.2 Municipal petition to amend

- (a) A municipal petition to amend the terms of its certification shall at a minimum include the following information, as well as any other information requested by the Council's Executive Director:
1. A summary of, and detailed reasons for, the proposed amendment;
 2. A duly adopted resolution of the municipal planning board adopting the amended Housing Element and Fair Share Plan, conditioned upon approval by the Council;
 3. A duly adopted resolution of the municipal governing body endorsing the amended Housing Element and Fair Share Plan and requesting Council review and approval of the amended petition;
 4. A copy of the amended Housing Element in conformance with N.J.A.C. 5:97-2.3(a) and Fair Share Plan with all necessary information and documentation as required by the Council in conformance with N.J.A.C. 5:97-3.2(a);
 5. Proof of notice of the petition to the service list pursuant to N.J.A.C. 5:96-3.7; and
 6. Proof of public notice pursuant to N.J.A.C. 5:96-14.4(a).
- (b) The information required in (a)1 through 4 above shall be submitted to the Council by the municipality at the time it petitions for an amendment. The information required in (a)5 above shall be submitted to the Council within seven days of the date of the municipality's petition to amend.

5:96-14.3 Amendment by motion

- (a) A motion to amend the terms of a certification by a municipality or other party shall follow the requirements of N.J.A.C. 5:96-13 and shall at a minimum include, the following information, as well as any other information requested by the Council's Executive Director:
1. A summary of, and detailed reasons for, the proposed amendment;
 2. Proof of notice of the motion to the service list pursuant to N.J.A.C. 5:96-3.7; and
 3. If a party other than the municipality moves to amend the terms of certification, the municipality shall publish notice of the motion in a form required by the Council. The municipality may require the moving party to pay the cost of publishing the required notice. The municipality shall submit proof of publication to the Council within seven days of the Council's issuance of notification to publish notice.

5:96-14.4 Notice of petition to amend

- (a) A municipality that has petitioned to amend its substantive certification shall publish notice of the amended petition in a newspaper of general circulation within the municipality and the county in the following format:

NOTICE OF PETITION TO AMEND
SUBSTANTIVE CERTIFICATION

NOTICE is hereby given that (MUNICIPALITY) has petitioned the New Jersey Council on Affordable Housing to amend its Substantive Certification pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:96-14 et seq. The (MUNICIPALITY) Planning Board, subsequent to public hearing, adopted a revision to its Housing Element and Fair Share Plan on (DATE). The adopted plan is a revision of a previously adopted Housing Element and Fair Share Plan for which the (TOWNSHIP/BOROUGH/TOWN/CITY) received substantive certification on (DATE).

(INSERT BRIEF DESCRIPTION OF AMENDMENT)

A copy of the amended and adopted Housing Element and Fair Share Plan and supporting documentation is available for public inspection at the office of the (MUNICIPAL CLERK, etc.), Municipal Building, located at (STREET ADDRESS), during the hours of _____. Comments or objections to said petition to amend shall be filed with the Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, New Jersey 08625-0813 and with the municipal clerk by (DATE), which is within 45 days of publication of this notice.

Municipal Clerk

- (b) An updated list of all petitions for amendments to substantive certification received and granted by the Council shall be published monthly on its website.

5:96-14.5 Objections to petitions to amend

- (a) Within 45 days of the publication of a notice of a petition to amend the terms of substantive certification, any person may file objections to the terms of the proposed amendment with the Council. Objections shall be filed with the Council and the municipality. The Council shall not consider any objection to its rules and regulations as a valid objection. An objection shall be in a form as may be determined by the Council's Executive Director and shall include, at a minimum, the following:
1. A clear and complete statement as to each aspect of the municipality's proposed amendment to its Housing Element and Fair Share Plan to which an objection is made;
 2. An explanation of the basis for each objection including, where appropriate, citations to expert reports, studies or other data relied upon to support each objection;
 3. Copies of all referenced expert reports, studies or other data relied upon by the objector;
 4. Proposed modifications, changes or other measures which the objector contends will resolve the objection and an explanation of how the objector's proposals are consistent with the Council's criteria and guidelines;

5. A statement documenting the objector's prior efforts at premediation, participation in conferences or public hearings and a summary of the results of any such efforts; and
6. Identification and a description of any site proposed by the objector, including a history of development applications (if any), for inclusion in the Housing Element and Fair Share Plan and demonstration that the site proposed for inclusion in the Housing Element and Fair Share Plan is suitable in accordance with N.J.A.C. 5:97-3.13.

5:96-14.6 Review of objections

- (a) The Council's Executive Director shall review objections subject to the requirements of N.J.A.C. 5:96-14.5 to determine completeness and validity. The Council shall notify the objector who has filed an objection and the service list that the objection is complete and valid and that the objector is permitted to participate in the Council's administrative process beginning with mediation as set forth in N.J.A.C. 5:96-8.
- (b) Objections that are determined to be incomplete or invalid shall be returned to the objector who shall have 14 days to correct deficiencies and resubmit them in a manner conforming to N.J.A.C. 5:96-14.5. If the objections are not resubmitted within the 14 days, the Council shall consider the objections to be withdrawn.
- (c) The municipality shall submit a written response to all items delineated in the objector's objection, including, if applicable, the reason(s) the objector's proposed site was not included in the Housing Element and Fair Share Plan. Such written response shall be submitted to the Council and service list within 20 days of the notification letter issued in accordance with (a) above.
- (d) After the expiration of the 45-day public review period pursuant to N.J.A.C. 5:96-14.5, the Council's Executive Director shall conduct an in-depth review of the amendment, each objection, and the municipal response and prepare a premediation report which shall be circulated to the municipality and to the service list.
- (e) The mediation process shall commence in accordance to the procedures set forth in N.J.A.C. 5:96-8.

SUBCHAPTER 15. WAIVERS

5:96-15.1 General

Any person may request a waiver from a specific requirement of the Council's rules at any time. Such a waiver may be requested as part of a municipal petition, by motion in conformance with N.J.A.C. 5:96-13, or in such other form as the Council may determine, consistent with this chapter.

5:96-15.2 Waiver requirements

- (a) The Council may grant waivers from specific provisions of its rules if the person demonstrates that the strict application of the rule would create an unnecessary financial, environmental or other hardship; or

1. Granting the waiver fosters the production of affordable housing;
2. Granting the waiver fosters the intent of, if not the letter of, the Council's rules; and
3. The Housing Element and Fair Share Plan provide a mix of housing options.

SUBCHAPTER 16. JURISDICTIONAL AND TRANSITIONAL PROCEDURES

5:96-16.1 Municipalities that received second round substantive certification prior to December 20, 2004 that expires subsequent to June 2, 2008

- (a) The Council shall continue to review and approve RCAs, conduct mediation that is in progress, and review and approve amendments to second round certified plans for municipalities that received second round substantive certification prior to December 20, 2004 that expires subsequent to June 2, 2008 until the expiration of substantive certification.
- (b) To remain under the jurisdiction of the Council for the third round fair share obligation, a municipality with second round substantive certification that expires subsequent to June 2, 2008 shall file or petition with a third round Housing Element and Fair Share Plan by the earlier of the expiration date of its second round substantive certification or the date set forth in N.J.A.C. 5:96-16.2.

5:96-16.2 Municipalities that petitioned for but did not receive third round substantive certification

- (a) To remain under the jurisdiction of the Council, a municipality that petitioned for but did not receive third round substantive certification shall re-petition with an amended third round Housing Element and Fair Share Plan on or before noon on December 31, 2008.

5:96-16.3 Municipalities that received third round substantive certification on or before January 25, 2007 which is still valid

- (a) All municipalities that received third round substantive certification on or before January 25, 2007 may petition to address the revised third round obligation in accordance with N.J.A.C. 5:96 and 5:97.
- (b) All municipalities that received third round substantive certification on or before January 25, 2007 and choose not to do (a) above shall be subject to N.J.A.C. 5:94 and 5:95, for the period of substantive certification, not extending beyond 2015.

SUBCHAPTER 17. MUNICIPAL HOUSING LIAISON

5:96-17.1 Requirement for a municipal housing liaison

- (a) All municipalities that have created or will create affordable housing programs and/or affordable units shall establish the position of a municipal housing liaison by ordinance and, subject to the approval of the Council's Executive Director, appoint a municipal employee to serve in this position.

- (b) The municipal housing liaison is responsible for oversight and coordination of all the activities of the municipal government as it relates to the creation, preservation and administration of affordable housing programs and/or affordable units.

5:96-17.2 Responsibilities of the municipal housing liaison

- (a) The following responsibilities of the municipal housing liaison may not be contracted out:
 - 1. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, administrative agents, and interested households;
 - 2. Monitoring the status of all proposed and completed affordable housing programs and affordable units in the municipality's Fair Share Plan;
 - 3. Compiling, verifying, and providing monitoring information at such time and in such form as the Council requires;
 - 4. Coordinating meetings with affordable housing providers and administrative agents, as applicable; and
 - 5. Where applicable, providing to an administrative agent a copy of the adopted municipal operating manual(s), Housing Element and Fair Share Plan and ordinances relating to the creation and administration of the municipality's affordable housing programs and/or affordable units.
- (b) The municipal housing liaison may also serve as the administrative agent pursuant to N.J.A.C. 5:96-18 for some or all of the affordable units in the municipality. These duties shall be outlined in the municipal ordinance establishing the position of the municipal housing liaison. All applicable tasks not performed by the municipal housing liaison, shall be contracted to an administrative agent pursuant to N.J.A.C. 5:96-18.

5:96-17.3 Approval of the municipal housing liaison

- (a) The appointment of the municipal housing liaison is subject to review and approval by the Council's Executive Director.
- (b) Upon petitioning the Council for substantive certification, the municipality shall submit its ordinance establishing the position of the municipal housing liaison and a resolution by the governing body or a letter from the chief executive appointing a municipal employee to serve as the municipal housing liaison.
- (c) If the municipal housing liaison is to perform the duties of an administrative agent, the municipality shall also submit evidence of the municipal housing liaison's history of successful management of affordable housing units, particularly those produced as a result of the New Jersey Fair Housing Act or through a *Mount Laurel* court settlement, which shall include:
 - 1. A resume;
 - 2. A statement of qualifications; and

3. A statement of intent to attend continuing education opportunities related to the creation, preservation and administration of affordable housing programs and/or affordable units provided by the Council.
- (d) The Council shall monitor the performance of the approved municipal housing liaison. In the event the municipal housing liaison does not administer the municipality's affordable housing program and/or affordable units in accordance with the Council's rules, the Council may revoke its approval.

5:96-17.4 Education requirements

- (a) In order to receive approval, all appointed municipal housing liaisons shall successfully complete the Council's Education Program for Municipal Housing Liaisons as described in N.J.A.C. 5:96-20 in the timeframes set forth below:
1. Any municipal employee already serving as municipal housing liaison as of June 2, 2008 shall be required to successfully complete the Education Program for Municipal Housing Liaisons by the later of December 2, 2008, or the date of the next Education Program for Municipal Housing Liaisons.
 2. Any municipal employee appointed to serve as municipal housing liaison subsequent to June 2, 2008 shall be required to successfully complete the Education Program for Municipal Housing Liaisons by the later of six months from the date of appointment, or the date of the next Education Program for Municipal Housing Liaisons.
- (b) If the municipal housing liaison is to perform the duties of an administrative agent, in order to receive approval, the municipal housing liaison shall also successfully complete the Council's Education Program for Administrative Agents as described in N.J.A.C. 5:96-20 in the timeframes set forth below:
1. Any municipal employee already serving as municipal housing liaison as of June 2, 2008 shall be required to successfully complete the Education Program for Administrative Agents by the later of June 2, 2009, or one year after the date of the first Education Program for Administrative Agents.
 2. Any municipal employee appointed to serve as municipal housing liaison subsequent to June 2, 2008 shall be required to successfully complete the Education Program for Administrative Agents by the later of one year from the date of appointment, or the date of the next Education Program for Administrative Agents.
- (c) Approved municipal housing liaisons shall also attend continuing education opportunities related to the creation, preservation and administration of affordable housing programs and/or affordable units provided by the Council.

SUBCHAPTER 18. ADMINISTRATIVE AGENT

5:96-18.1 Requirement for an administrative agent

- (a) All municipalities that have created or will create affordable housing programs and/or affordable units may designate one or more administrative agent(s) to administer the affordable housing program and/or affordable units in accordance with the Council's rules and UHAC.
- (b) The administrative agent may be the municipal housing liaison, the RCA administrator, or a person or entity selected pursuant to UHAC.
- (c) The administrative agent may perform some or all of the duties and responsibilities of an administrative agent as set forth in UHAC.

5:96-18.2 Approval of administrative agent

- (a) The designation of the administrative agent is subject to review and approval by the Council's Executive Director.
- (b) An administrative agent may apply directly to the Council for approval by submitting the following:
 - 1. All documentation required for designation of an administrative agent as set forth in UHAC;
 - 2. A sample contract;
 - 3. A sample operating manual for each type of program and/or unit the administrative agent seeks to administer;
 - 4. Evidence of satisfactory completion of the Council's Education Program for Administrative Agents as described in N.J.A.C. 5:96-20; and
 - 5. Any additional documentation required by the Council's Executive Director.
- (c) The Council shall maintain and publish on its website a list of approved administrative agents, which includes the Agency in accordance with N.J.S.A. 52:27D-324.
- (d) If the administrative agent is not currently approved, evidenced by (c) above, the municipality shall submit to the Council all documentation required for designation of each administrative agent as set forth in UHAC.
- (e) The Council shall monitor the performance of all approved administrative agents. In the event the administrative agent does not administer a municipality's affordable housing program and/or affordable units in accordance with the Council's regulations, the Council may revoke its approval.

5:96-18.3 Education requirements

- (a) All administrative agents shall successfully complete the Council's Education Program for Administrative Agents as described in N.J.A.C. 5:96-20 in the timeframes set forth below:
 - 1. Any person or entity already serving as an administrative agent as of June 2, 2008 shall successfully complete the Education Program for Administrative Agents by June 2, 2010.

2. Any person or entity who anticipates serving as an administrative agent subsequent to June 2, 2008 shall successfully complete the Education Program for Administrative Agents prior to designation by a municipality.
 3. If there is a delay in the availability of one or more sessions required to complete the Education Program for Administrative Agents, the Council may extend the period in which an administrative agent shall successfully complete the Education Program for Administrative Agents.
- (b) Approved administrative agents shall also attend continuing education opportunities related to the creation, preservation and administration of affordable housing programs and/or affordable units provided by the Council.

SUBCHAPTER 19. RCA ADMINISTRATOR

5:96-19.1 Requirement for an RCA administrator

- (a) All municipalities receiving funds through an RCA shall establish the position of RCA administrator by ordinance and, subject to the approval of the Council's Executive Director, appoint a municipal employee to serve in this position.
- (b) The RCA administrator is responsible for oversight and coordination of all the activities of the municipal government as it relates to the creation, preservation and administration of affordable housing units funded through RCAs.

5:96-19.2 Responsibilities of the RCA administrator

- (a) The following responsibilities of the RCA administrator may not be contracted out:
 1. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, administrative agents, and interested households;
 2. Establishing an escrow account(s) for the funds associated with each RCA and coordinating the execution of an escrow agreement between the receiving municipality, the bank and the Council;
 3. Monitoring the status of all proposed and completed affordable housing programs and affordable units in the municipality funded through Regional Contribution Agreements;
 4. Compiling, verifying, and submitting reports at such time and in such form as the Council requires;
 5. Coordinating meetings with affordable housing providers and administrative agents, as applicable; and
 6. Where applicable, providing to an administrative agent a copy of the adopted municipal operating manual(s), RCA Project Plan and ordinances relating to the creation and administration of the municipality's affordable housing programs and/or affordable units funded through Regional Contribution Agreements.
- (b) The RCA administrator may also serve as the administrative agent pursuant to N.J.A.C. 5:96-18 for some or all of the affordable units in the municipality funded through RCAs.

These duties shall be outlined in the municipal ordinance establishing the position of the RCA administrator. All applicable tasks not performed by the RCA administrator, shall be contracted to an administrative agent pursuant to N.J.A.C. 5:96-18.

- (c) A municipality that has also appointed a municipal housing liaison pursuant to N.J.A.C. 5:96-17, shall contract with an administrative agent pursuant to N.J.A.C. 5:96-18 for all applicable tasks not performed by the RCA administrator or municipal housing liaison.

5:96-19.3 Approval of the RCA administrator

- (a) The appointment of the RCA administrator is subject to review and approval by the Council's Executive Director.
- (b) Upon submission of an RCA Project Plan to the Council, the receiving municipality shall submit its ordinance establishing the position of the RCA administrator and a resolution by the governing body or a letter from the chief executive appointing a municipal employee to serve as the RCA administrator.
- (c) If the RCA administrator is to perform the duties of an administrative agent, the municipality shall also submit evidence of the RCA administrator's history of successful management of affordable housing units, particularly those produced as a result of the New Jersey Fair Housing Act or through a *Mount Laurel* court settlement, which shall include:
 - 1. A resume;
 - 2. A statement of qualifications; and
 - 3. A statement of intent to attend continuing education opportunities related to the creation, preservation and administration of affordable housing programs and/or affordable units provided by the Council.
- (d) The Council shall monitor the performance of the approved RCA administrator. In the event the RCA administrator does not administer the municipality's affordable housing program and/or affordable units in accordance with the Council's rules, the Council may revoke its approval.

5:96-19.4 Education requirements

- (a) In order to receive approval, all appointed RCA administrators shall successfully complete the Council's Education Program for RCA Administrators as described in N.J.A.C. 5:96-20 in the timeframes set forth below:
 - 1. Any municipal employee already serving as RCA administrator as of June 2, 2008 shall be required to successfully complete the Education Program for RCA Administrators by the later of December 2, 2008, or the date of the next Education Program for RCA Administrators.
 - 2. Any municipal employee appointed to serve as RCA administrator subsequent to June 2, 2008 shall be required to successfully complete the Education Program for RCA Administrators by the later of six months from the date of appointment, or the date of the next Education Program for RCA Administrators.

- (b) If the RCA administrator is to perform the duties of an the administrative agent, in order to receive approval, the RCA administrator shall also successfully complete the Council's Education Program for Administrative Agents as described in N.J.A.C. 5:96-20 in the time frames set forth below:
 - 1. Any municipal employee already serving as RCA administrator as of June 2, 2008 shall be required to successfully complete the Education Program for Administrative Agents by the later of June 2, 2009, or one year after the date of the first Education Program for Administrative Agents.
 - 2. Any municipal employee appointed to serve as RCA administrator subsequent to June 2, 2008 shall be required to successfully complete the Education Program for Administrative Agents by the later of one year from the date of appointment, or the date of the next Education Program for Administrative Agents.
- (c) Approved RCA administrators shall also attend continuing education opportunities related to the creation, preservation and administration of affordable housing programs and/or affordable units provided by the Council.

SUBCHAPTER 20. EDUCATION PROGRAM

5:96-20.1 Purpose

The purpose of the Education Program is to provide a basic understanding of the roles and duties of any person or entity appointed or contracted with to serve as a municipal housing liaison pursuant to N.J.A.C. 5:96-17, an administrative agent pursuant to N.J.A.C. 5:96-18, and/or an RCA administrator pursuant to N.J.A.C. 5:96-19.

5:96-20.2 Cost and tuition

- (a) The Council's Executive Director shall determine and approve the delivery of the Education Program. The providers may charge a reasonable tuition to cover the cost of offering the Education Program, not in excess of the expense of administration and delivery of the Education Program or parts thereof.
- (b) Subject to the availability of funds, the Council shall provide tuition for municipal employees appointed to serve as the municipal housing liaison, administrative agent, and/or RCA administrator attending any session required by the Council pursuant to N.J.A.C. 5:96-17.4, 18.3 and 19.4. Such funding shall be limited to one municipal employee per year.

5:96-20.3 Curriculum and requirements

- (a) The Education Program may include one or more sessions.
- (b) The initial session is a pre-requisite for all other sessions and is required to be taken by municipal housing liaisons, RCA administrators and administrative agents. The initial session shall, at a minimum, provide an overview of the roles and responsibilities of municipal housing liaisons, RCA administrators and administrative agents.
- (c) Additional sessions shall provide detailed instruction for the administration of affordable housing programs and affordable units, including but not limited to: affirmatively

marketing affordable units, determining affordable sales prices and rents, establishing and managing an applicant pool, matching households to available units, certifying households, implementing affordability controls, preparing legal documents, and ethics.

5:96-20.4 Standards for determining satisfactory completion

- (a) At the conclusion of each session, all attendees shall take a multiple-choice test. Session participants will be permitted to use the session materials and notes for reference while completing the test.
- (b) In order to receive a certificate of completion, attendees shall demonstrate an adequate understanding of the Education Program material by achieving at least a 70 percent score on the test. The tests shall be graded by the session providers.
- (c) Attendees who do not achieve at least a 70 percent score on the test may re-take the test once without re-taking the session. Attendees who do not achieve at least a 70 percent score on the second test shall be required to re-take the session and the test.