

NOTE: This draft MOU is provided for public review and comments will be heard at COAH's meeting on December 10, 2008.

**Draft Memorandum of Understanding Between
Council on Affordable Housing and
Fort Monmouth Economic Revitalization Planning Authority**

This MEMORANDUM OF UNDERSTANDING, dated this ___ day of _____ 2008 is entered into by and between the New Jersey Council on Affordable Housing (“COAH” or “Council”) and the Fort Monmouth Economic Revitalization Planning Authority (“FMERPA”) to establish a cooperative planning process that will foster the constitutional and legislative mandates outlined in the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) and the Fort Monmouth Economic Revitalization Planning Authority Act (P.L.2006, c.16 (C.52:27I-1 et seq.)).

WHEREAS, the New Jersey Supreme Court determined, in its Mount Laurel decisions, that every New Jersey municipality in a growth area has a constitutional obligation to provide, through its land use regulations, a realistic opportunity for a fair share of the region’s present and prospective needs for housing that is affordable to low and moderate income families; and

WHEREAS, the New Jersey Supreme Court, in its 1983 Mount Laurel decision, opined that: “The Constitution of the State of New Jersey does not require bad planning. ... There is nothing in our Constitution that says that we cannot satisfy our constitutional obligation to provide lower income housing and, at the same time, plan the future of the state intelligently;” and

WHEREAS, in response to the Mount Laurel decisions, the New Jersey Legislature enacted the Fair Housing Act, on July 2, 1985, and created COAH as the administrative alternative to the court and granted COAH primary jurisdiction in determining municipal compliance with the Fair Housing Act in accordance with sound regional planning considerations; and

WHEREAS, the Fair Housing Act specifies that the interest of all citizens, including low and moderate income families in need of affordable housing, would be best served by a comprehensive planning and implementation response to this constitutional obligation; and

WHEREAS, the Fair Housing Act recognizes that the Supreme Court, in its Mount Laurel decisions, demands that municipal land use regulations affirmatively afford a reasonable opportunity for a variety and choice of housing including low and moderate cost housing, to meet the needs of people desiring to live there, and that, while provision for the actual construction of that housing by municipalities is not required, they are encouraged but not mandated to expend their own resources to help provide low and moderate income housing; and

WHEREAS, the Fair Housing Act requires COAH to determine housing regions of the State, estimate the present and prospective need for low and moderate income housing at the State and regional levels, and provide population and household projections for the State and housing regions; and

WHEREAS, the Fair Housing Act requires COAH to adopt criteria and guidelines for municipal determination of its present and prospective fair share of the housing need and for municipal adjustment of the present and prospective fair share based upon available vacant and

developable land, infrastructure considerations or environmental or historic preservation factors; and

WHEREAS, the Fair Housing Act authorized COAH to give “appropriate weight to pertinent research studies, government reports, decisions of other branches of government, and implementation of the State Development and Redevelopment Plan;” and

WHEREAS, the Legislature declared in the Fair Housing Act that the statutory scheme is in the public interest in that it comprehends a low and moderate income housing planning and financing mechanism in accordance with regional considerations and sound planning concepts which satisfies the constitutional obligation enunciated by the Supreme Court, and further declared that the State's preference for the resolution of existing and future disputes involving exclusionary zoning is the mediation and review process set forth in this act and not litigation, and that it is the intention of this act to provide various alternatives to the use of the builder's remedy as a method of achieving fair share housing; and

WHEREAS, the Fair Housing Act specifies that a municipality which has filed a housing element may, at any time during a two-year period following the filing of the housing element, petition the council for a substantive certification of its element and ordinances or institute an action for declaratory judgment granting it repose in the Superior Court; and

WHEREAS, the Legislature, recognizing that an adequate response to judicial mandates respecting housing for low and moderate-income persons requires sound planning to prevent sprawl and to promote suitable use of land, also enacted the State Planning Act (N.J.S.A. 52:18A-196 et seq.) as companion legislation to the Fair Housing Act to be effective on January 2, 1986; and

WHEREAS, the State Planning Act created a State Planning Commission (“SPC”) to develop, adopt, and periodically revise a State Development and Redevelopment Plan (“State Plan”) which shall provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions, which shall identify areas for growth, agriculture, open space conservation and other appropriate designations, and which may be used as a tool for assessing suitable locations for infrastructure, housing, economic growth, and conservation; and

WHEREAS, the Fort Monmouth Economic Revitalization Planning Authority Act established the Fort Monmouth Economic Revitalization Planning Authority (Authority) and charged it with developing a comprehensive conversion, reuse, and revitalization plan for Fort Monmouth to promote, develop, encourage, and maintain employment, commerce, economic development, and the public welfare; conserve the natural resources of the State; and advance the general prosperity and economic welfare of the people in the affected communities, the County of Monmouth (County), and the entire State by cooperating and acting in conjunction with other organizations, public and private, to promote and advance the economic use of the facilities located at Fort Monmouth; and

WHEREAS, the scheduled base closing will move the Fort Monmouth mission to the Aberdeen Proving Ground in Maryland by 2011; and

WHEREAS, the Authority is critically concerned about implementing a beneficial reuse plan in order to reclaim high technology jobs. The concerns of host municipalities regarding the

economic impacts and local fiscal impacts of base closure and implementation of a successful reuse plan are also concerns for the State; and

WHEREAS, the Authority has declared that the closure of this premier center of high technology will result in unprecedented economic distress and dislocation in Monmouth County, the host municipalities and throughout the region, of a magnitude that warrants accommodations to promote the timely and efficient implementation of a successful reuse plan in order to promote the County's economic recovery from the base closure; and

WHEREAS, the Fort Monmouth Economic Revitalization Planning Authority Act (P.L.2006, c.16 (C.52:27I-1 et seq.)) declared that the economies, environment, and quality of life of the affected communities and the State will depend on the efficient and proper revitalization of Fort Monmouth; and

WHEREAS, the Legislature has declared that it is in the public interest and the interest of the State to plan for the comprehensive conversion, reuse, and revitalization of Fort Monmouth that will enhance the creation of employment and other business opportunities for the benefit of the host communities, the County of Monmouth, and the entire State; and

WHEREAS, the Fort Monmouth Economic Revitalization Planning Authority Act requires the authority to prepare a comprehensive conversion and revitalization plan for Fort Monmouth, which shall generally be comprised of an Economic Revitalization Study and land use and development proposals, including plans for the development, redevelopment or rehabilitation of the project area with maps, diagrams and text, presenting:

(1) A statement of objectives, principles, assumptions, policies and standards upon which the constituent proposals for the physical, economic and social development of the project area are based;

(2) The relationship of the plan to Statewide, county and municipal objectives as to appropriate land uses, density of population, and traffic and public transportation, public utilities, recreational and community facilities and other public improvements;

(3) Proposed land uses in the project area, taking into account and stating the relationship thereof to the statement provided for in paragraph (1) of this subsection, and other plan elements as the authority deems appropriate, including, but not necessarily limited to, topography, soil conditions, water supply, drainage, flood plain areas, marshes, and woodlands; showing the existing and proposed location, extent and intensity of development of land to be used in the future for varying types of residential, commercial, industrial, agricultural, recreational, educational and other public and private purposes or combination of purposes; and including a statement of the standards of population density and development intensity recommended for the project area. The plan shall not include any proposed State or federal correctional institutions to be located in whole or in part in the project area; and

(4) Any significant relationship of the plan to (a) the master plans of constituent municipalities, (b) the master plan of the county in which the municipalities are located; and (c) The State Development and Redevelopment Plan adopted pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.); and

WHEREAS, the Fort Monmouth Economic Revitalization Planning Authority Act requires the Authority to prepare an economic revitalization study for the project area which includes a comprehensive study of all issues related to the closure, conversion, revitalization and future use of Fort Monmouth, with its primary concern being the retention and attraction of businesses to mitigate the impact of the closure of Fort Monmouth on the economies, workforce, environment and quality of life in the affected communities; and

WHEREAS, Fort Monmouth Economic Revitalization Planning Authority adopted the Fort Monmouth Revitalization Plan on September 3, 2008, which includes among its goals promoting a balance of land uses and varied housing types (including Homeless, COAH & Workforce housing) that meets regional needs and promotes municipal fiscal health; and

WHEREAS, COAH has adopted administrative rules (“Third Round rules”) which require the submission of a Housing Element and Fair Share Plan which projects affordable housing need based on historic residential and non-residential development activity, actual growth, and estimates of available vacant land by region; and

WHEREAS, under COAH’s third round rules the requirement to construct affordable housing is based upon residential and non-residential development as measured by certificates of occupancy issued after January 1, 2004; and

WHEREAS, on July 17, 2008, the Fair Housing Act was amended by P.L. 2008, Chapter 46, to create a responsibility for the Fort Monmouth Economic Revitalization Planning Authority to identify and coordinate opportunities for affordable housing on a regional basis with consideration for infrastructure, employment opportunities, and transportation and to require a 20 percent affordable housing set-aside in residential developments, to the extent this is economically feasible; and

WHEREAS, in 1987, Congress enacted the Stewart B. McKinney Homeless Assistance Act and Title V of that Act made serving the homeless the first priority for use of all surplus Federal properties, including military installations. In 1994, U.S. Departments of Defense (DoD), Housing and Urban Development (HUD), Veterans Affairs (VA), and Health and Human Services (HHS), the General Services Administration (GSA), and homeless assistance providers and other community groups recommended changes to the McKinney Act that led to enactment of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (the Redevelopment Act). The Redevelopment Act, which was amended in 1996, remains in effect and governs the 2005 installation realignments and closures; and

WHEREAS, the Fort Monmouth Economic Revitalization Planning Authority is authorized and directed by the legislature to enter into agreements consistent with the Fort Monmouth Economic Revitalization Planning Authority Act to assist in the planning of Fort Monmouth to benefit the surrounding communities and the entire State, in conjunction with federal, State, local, and other public entities; and

WHEREAS, staff of the Council and Authority have been working with the Mayors of the host towns to address key affordable housing issues related to the revitalization of Fort Monmouth, which will be particularly important if FMERPA is to implement a viable reuse plan for robust redevelopment; and

WHEREAS, the cooperative planning process developed pursuant to this Memorandum of Understanding will advance the timely, coordinated and comprehensive planning of the revitalization of Fort Monmouth, the affected communities, Monmouth County and the State as a whole, will result in greater predictability and transparency in planning with respect to meeting the mandates of the Fort Monmouth Economic Revitalization Planning Authority and COAH and will benefit State agencies, counties, municipalities and the public.

NOW THEREFORE BE IT RESOLVED, in consideration of the principles, assurances and premises contained in this Memorandum of Understanding, the Authority and COAH hereby agree to the following:

A. Coordination of Planning Process

1. A cooperative planning process will be established and maintained between the Authority, COAH, and their respective staff to advance coordinated and comprehensive regional planning, and provide consistent planning policies on which the three host municipalities may rely.
2. Both the Authority and COAH will share all available information and data useful or necessary to achieve the objectives of this Memorandum of Understanding.
3. The Authority shall provide COAH, in a timely manner, such reports, petitions, recommendations or reviews that are necessary for COAH to carry out its responsibilities, including reports, petitions, recommendations or reviews generated through the continued implementation of the Fort Monmouth Revitalization Plan (“Plan”), including selection of a redeveloper(s) to implement the Plan and any approvals necessary to effectuate the Plan.
4. COAH shall provide the Authority, in a timely manner, such reports, petitions, recommendations or reviews that are necessary for the Authority to carry out its responsibilities, including reports, petitions, recommendations or reviews for the three host municipalities generated through COAH’s filing and petition process.
5. The Council and the Authority will convene a joint working group to continue to plan for affordable housing as part of the implementation of the Fort Monmouth Revitalization Plan, giving due consideration to the goal of promoting the economic revitalization of the region.
6. The Council shall work with the Authority and Tinton Falls Borough, the host municipality that has committed to petitioning the Council by December 31, 2008.
7. The Council recognizes that the host municipalities of Eatontown Borough and Oceanport Borough have filed declaratory judgment actions with the New Jersey Superior Court to address their constitutional obligation to provide affordable housing. The Council shall provide any information to the Court that is requested on the affordable housing component of the Fort Monmouth Revitalization Plan and its effect upon the two (2) host municipalities.

B. Implementation of P.L. 2008, Chapter 46

8. The Authority shall, in order to implement the new requirements of P.L. 2008, Chapter 46, create, identify and coordinate opportunities for affordable housing in the Fort Monmouth Reuse and Redevelopment Area based on regional planning considerations.
9. The Authority shall identify sites and opportunities for affordable housing within the Fort Monmouth Reuse and Redevelopment Area, including, in accordance with P.L.2008, Chapter 46, the creation of a realistic opportunity for at least 20 percent affordable housing set-asides in all new residential developments, with consideration for economic feasibility, and the coordination of affordable housing opportunities in the Fort Monmouth Reuse and Redevelopment Area, created pursuant to P.L. 2006 C.16 (52:27I-1 et seq.) with consideration for convenient access to infrastructure, employment opportunities, and public transportation.
10. The Authority shall ensure that developments consisting of newly-constructed residential units located, or to be located, within the Fort Monmouth Reuse and Redevelopment Area shall be required to reserve for occupancy by low or moderate income households at least 20 percent of the residential units constructed. Low and moderate income housing is defined pursuant to N.J.S.A. 57:27D-304.
11. In determining economic feasibility, as required by P.L. 2008, c.46, the Council will be considering the presumptive densities and set-asides in COAH's rules pursuant to N.J.A.C. 5:97-6.4(b)2 (for-sale housing) and N.J.A.C. 5:97-6.4(b)6 (rental housing). A site zoned for inclusionary development would be presumed to be economically feasible if it meets these minimum densities and maximum set-asides or if there is an executed redeveloper's agreement setting forth mutually agreed upon terms for the production of affordable housing.
12. The Authority shall identify and coordinate regional affordable housing opportunities in the Fort Monmouth Reuse and Redevelopment Area in cooperation with the three host municipalities in areas with convenient access to infrastructure, employment opportunities, and public transportation. Coordination of affordable housing opportunities within the borders of the Fort Monmouth regional planning entity may include methods to regionally provide housing in line with regional concerns, such as transit needs or opportunities, environmental concerns, or such other factors as the council may permit; provided, however, that such provision may not result in more than a 50 percent change in the fair share obligation of any municipality.
13. The Authority shall coordinate with COAH and other regional planning entities, as needed, to ensure a coordinated implementation of P.L. 2008, c. 46. The Authority and COAH shall share the findings of any studies or analyses conducted to implement P.L.2008, c.46, and shall consult with each other prior to taking final agency action to implement P.L. 2008, Chapter 46. The Authority will ensure that there is at least a 20 percent set-aside for low and moderate income housing when implementing the Fort Monmouth Revitalization Plan and any other actions needed to implement the Plan.
14. As set forth above, the Authority shall take the steps necessary to ensure that P.L.2008, c. 46 is implemented in the Fort Monmouth Reuse and Redevelopment Area.

C. Growth Share Obligations in the Fort Monmouth Reuse and Redevelopment Area

Growth Share Obligations

15. The Authority shall create realistic opportunities for the three host municipalities to address projected affordable housing need in the Fort Monmouth Reuse and Redevelopment Area based upon the third round growth projections provided in N.J.A.C. 5:97.
16. The Authority shall create realistic opportunities to provide affordable housing to address the actual growth share obligation resulting from residential and non-residential development between January 1, 2004, and December 31, 2018 in the Fort Monmouth Reuse and Redevelopment Area, taking into account the unique methodology set forth herein for counting jobs. Affordable housing production within the Fort Monmouth Reuse and Redevelopment Area shall be in proportion to actual residential growth and employment growth in keeping with N.J.A.C. 5:97-5.7(b), taking into account the unique methodology set forth herein for counting jobs.
17. COAH shall provide the Authority with regularly updated information and data regarding actual residential and non-residential development between January 1, 2004, and December 31, 2018 and the actual obligation accrued to date in the Fort Monmouth Reuse and Redevelopment Area, based upon the methodology for counting jobs to be developed as set forth in this Memorandum of Understanding.

Provide Affordable Housing Opportunities and Promote Economic Development

18. The Authority shall identify additional sites, opportunities, and funding sources for affordable housing developments that could aid in addressing the three host municipalities' affordable housing needs while promoting the beneficial reuse of the base.
19. The Authority shall, in the implementation of P.L.2008 c.46 as set forth above, specifically identify sites, opportunities and funding sources for affordable housing developments through the redevelopment of the Fort Monmouth Reuse and Redevelopment Area.

Acknowledgment of Jobs Lost Due to the Federal Closure of the Base and Unique Methodology for Counting Job Gain

20. COAH shall permit a unique methodology for counting jobs within the Fort Monmouth Reuse and Redevelopment Area. The Council recognizes that job loss can most accurately be measured within the Fort Monmouth Reuse and Redevelopment Area using a unique methodology rather than through demolitions which may not effectively capture the significant job loss that will take place upon closure of the base, as documented by the Department of Defense. The Council acknowledges that non-residential growth share will not begin to accrue until sufficient new jobs have been created to replace the jobs lost to the base closing. The Department of Defense has documented that 5,143 civilian jobs will be lost on the base by the closing of Fort Monmouth, (*Monthly Personnel Authorization and Actual Strength as of 31 August 2005*). Jobs lost shall not be credited against the residential growth share obligation. COAH shall only credit job loss against job gain that happens within the Fort Monmouth Reuse and Redevelopment Area.
21. COAH shall permit a unique methodology for counting job gain within the Fort Monmouth Reuse and Redevelopment Area, in recognition of the plans to reuse existing structures on the base. The Authority maintains that the existing structures earmarked for

retention and reuse, for the most part, all have large open spaces, such as the McAfee Center (97,000 SF), the Meyer Center (445,000 SF), and the CECOM building (295,100), with relatively few jobs compared to the square footage. The Authority will count new hires, which is positive job growth.

22. The Authority shall track job growth on new construction based on square footage pursuant to COAH's regulations at N.J.A.C. 5:97-1 et seq. The Authority will report to the Council actual job gain for the reuse of existing structures, within the Fort Monmouth Reuse and Redevelopment Area on a biennial basis. The Authority will count new hires (positive job growth) using data collected from new tenants and/or owners of redeveloped existing structures. The Authority shall track job growth for new construction based on square footage pursuant to COAH's regulations at N.J.A.C. 5:97-1 et seq. The Council shall incorporate the unique methodology for counting job gain in the Fort Monmouth Reuse and Redevelopment Area into its biennial monitoring.

COAH Credit for HUD-Related Affordable Housing

23. The Council shall credit group homes and permanent supportive housing that is constructed as part of the Fort Monmouth Revitalization Plan pursuant to N.J.A.C. 5:97-.6.10, including the following affordable housing opportunities that are currently supported by FMERPA and have been submitted to HUD:
 - a) a Single Room Occupancy (SRO) program consisting of a minimum of sixteen units, which will be licensed by the Department of Human Services; and
 - b) 40 permanent supportive housing family units.
24. The Authority shall recommend conveyance of land to accommodate a Public Benefit Conveyance Notice of Interest request from Habitat for Humanity for *Self-Help Housing*. The Council shall work with Habitat for Humanity to ensure the units are marketed and developed in accordance with N.J.A.C. 5:80-26.1 and N.J.A.C. 5:97-1 et seq.

D. A Framework for Implementation of the Fort Monmouth Revitalization Plan

25. COAH acknowledges that the base closing has established certain trigger dates and timelines that will result in local and regional economic impacts. COAH recognizes that the closing announcement in August 2005 and the 20-year implementation horizon for the Reuse Plan do not coincide with the 2004-2018 compliance period for the Third Round rules. COAH recognizes that implementation of the Fort Monmouth Revitalization Plan is anticipated to take place over the 2008 to 2028 timeframe and that some of the growth anticipated to take place within the Fort Monmouth Reuse and Redevelopment Area will occur after the conclusion of the third round compliance period. During the course of this planning horizon, the Authority and COAH recognize that various components of the reuse plan will come on line with differing economic and fiscal impacts on the host municipalities and the region. Attractive new housing, preserved historic areas and employment generating, tax-paying uses will be critical to helping the Fort evolve as a model of sustainable development, and the Authority, host municipalities and the Council commit to working together to ensure affordable housing is a part of the growth.

26. The Council further recognizes that only the residential and non-residential growth that takes place between January 1, 2004, and December 31, 2018 within the Fort Monmouth Reuse and Redevelopment Area will trigger a growth share obligation, with consideration for the unique methodology for counting jobs and crediting affordable housing as outlined within this Memorandum of Understanding. Affordable housing production within the Fort Monmouth Reuse and Redevelopment Area shall be in proportion to actual residential growth and employment growth in keeping with N.J.A.C. 5:97-5.7(b).
27. If the Authority ceases to exist, its successors and assigns will continue to fully implement the terms of this Memorandum of Understanding.

BE IT FURTHER AGREED that COAH and the Authority authorize this Memorandum of Understanding to be duly executed by their authorized representatives to be effective on the date first written above.

BE IT FURTHER AGREED that this Memorandum of Understanding shall remain in effect unless either party determines with 60 days written notice to the other party, to terminate the Memorandum of Understanding.

FORT MONMOUTH ECONOMIC REVITALIZATION PLANNING AUTHORITY

By: _____

Title: _____

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

By: _____

Title: _____