

MEMORANDUM OF UNDERSTANDING
BETWEEN THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING (COAH)
AND THE NEW JERSEY MEADOWLANDS COMMISSION (NJMC),
BOTH OF WHICH
ARE AFFILIATE AGENCIES OF
THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS (DCA)

This MEMORANDUM OF UNDERSTANDING, dated this 31st day of March 2009 is entered into by and between the New Jersey Council on Affordable Housing (“COAH” or “Council”) and the New Jersey Meadowlands Commission (“NJMC” or “Commission”) with the intention of assisting the Meadowlands District’s (“District”) fourteen constituent municipalities with the preparation and implementation of fair share housing plans addressing each municipality’s constitutional obligation to create realistic opportunities for the development of affordable housing.

WHEREAS, the New Jersey Supreme Court determined, in its Mount Laurel decisions, that every New Jersey municipality has a constitutional obligation to provide, through its land use regulations and zoning powers, a realistic opportunity for its 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: “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, the Supreme Court additionally opined that: “We emphasize here that our concern for protection of the environment is a strong one and that we intend nothing in this opinion to result in environmentally harmful consequences. ... We are, however, convinced that meeting housing needs is not necessarily incompatible with protecting the environment;” 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 whether municipalities are complying with the Fair Housing Act; and

WHEREAS, the Legislature declared in the Fair Housing Act that it is in the public interest to plan for low- and moderate-income housing and financing mechanisms in accordance with regional considerations and sound planning concepts and further declared that the State's preference for the resolution of existing and future disputes involving exclusionary zoning is the COAH mediation and review process set forth in the Fair Housing Act and not the builder's remedy as a method of achieving fair share housing; 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 housing for households with low- and moderate-incomes, 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 Legislature, recognizing that an adequate response to judicial mandates respecting housing for low- and moderate-income persons requires sound planning, 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, while meeting the affordable housing obligations set forth by the state lies with the individual municipalities, a unique situation occurs in the District as land use and zoning powers are under the jurisdiction of the NJMC; and

WHEREAS, when the Hackensack Meadowlands Reclamation and Development Act of 1969 created the Hackensack Meadowlands Development Commission (which, in 2001, was renamed the NJMC), the Commission was given express powers of planning and zoning for portions of 14 municipalities in Bergen and Hudson Counties, within approximately 30.4 square miles of land along the Hackensack River; and

WHEREAS, this zoning power allows the Commission to create a comprehensive area master plan from a regional perspective, by which, rather than ending zones at municipal borders, land use designations are laid out regionally based on characteristics of the land, the environment, and the infrastructure; and

WHEREAS, the State Plan, in 2001, designated the Hackensack Meadowlands District as a Special Resource Area in New Jersey based upon its unique characteristics and resources of statewide importance; and

WHEREAS, in 2003, during the preparation of a new Master Plan for the District, the NJMC recognized that the majority of the Commission's constituent municipalities did not have affordable housing plans in place, and while the Master Plan acknowledged the fact that there is little vacant land in the District that is not environmentally sensitive, it still recommended that the NJMC set forth efforts to spur the production of affordable housing in the region; and

WHEREAS, in order to do so in the most productive manner, the Master Plan recommended that the Commission assist its constituent municipalities with developing the necessary affordable housing plans for areas both within and outside of the NJMC jurisdiction; and

WHEREAS, toward that end, in January 2004, the NJMC adopted a resolution to provide grants to each municipality to assist with the cost of preparing applications for substantive certification or recertification to COAH, and the NJMC staff, along with COAH representatives, subsequently met with representatives of each of the 14 constituent municipalities to explain what is required to become COAH compliant; and

WHEREAS, new District Zoning Regulations became effective in February 2004 and included new language added as N.J.A.C. 19:4-3.8, stating that the NJMC would entertain petitions for rezoning set forth by constituent municipalities in order to accommodate affordable housing within the District; and

WHEREAS, staff of the Council and the Commission have been working with the Mayors and other municipal representatives to assist the municipalities in creating opportunities for the development of affordable housing; 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, COAH and the NJMC have historically worked together to assist Meadowlands municipalities with creating affordable housing, as is evidenced by an MOU, dated April 13, 2005, by and between the Agencies, which memorialized the initiatives each agency could provide to help create affordable housing and establish a balanced mix of housing types within the Meadowlands District, and which is replaced by the instant MOU; and

WHEREAS, each agency has dedicated staff to be liaisons for affordable housing matters, and these staff members continue to work closely and provide mutual support and assistance; and

WHEREAS, subsequent to the MOU of 2005, COAH's regulations were the subject of a New Jersey Superior Court, Appellate Division, decision of January 25, 2007, In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing (and related cases), 390 N.J. Super. 1 (App. Div. 2007), which affirmed in part, reversed in part, and remanded portions of the rules back to the Council for rulemaking; and

WHEREAS, thereafter, on May 21, 2007, the Appellate Division decided In the Matter of the Adoption of N.J.A.C. 19:3; 393 N.J. Super. 173 (App.Div.2007), and determined that the NJMC's planning and zoning for affordable housing should be based on the affordable housing obligations of its constituent municipalities, and that the NJMC has a greater responsibility to plan and zone for affordable housing to ensure that constituent municipalities of the Meadowlands District are able to meet their affordable housing obligations; and

WHEREAS, in response to these Court decisions, the NJMC adopted interim guidelines on September 19, 2007 entitled, Emergency Restraints upon Further Development in the Meadowlands District, Instituted by the New Jersey Meadowlands Commission ("Emergency Restraints"), to govern the review of, and restraints upon, applications for further development in the Meadowlands District until the NJMC adopted new affordable housing regulations consistent with COAH's anticipated rule amendments; and

WHEREAS, at its December 17, 2007 meeting, COAH proposed the repeal and replacement of its third round methodology and rules, N.J.A.C. 5:94 and N.J.A.C. 5:95, in the form of N.J.A.C. 5:96 and N.J.A.C. 5:97, pursuant to the Appellate Division decision of January 25, 2007, and COAH's new regulations became effective on June 2, 2008, and COAH proposed additional amendments, which became effective on October 20, 2008; and

WHEREAS, on July 17, 2008, the Fair Housing Act was amended by P.L. 2008, Chapter 46, which revised various parts of the statutory law concerning affordable housing and assigned new responsibilities to the NJMC to identify and coordinate opportunities for the creation of affordable housing on a regional basis in cooperation with municipalities in areas with convenient access to infrastructure, employment opportunities, and public transportation, and through the zoning

authority of the NJMC, to require a 20 percent affordable housing set-aside in all residential development, to the extent economically feasible; and

WHEREAS, the Commission acted promptly to address the District's affordable housing matters following the publication of COAH's amended rules of June 2, 2008 and the adoption of P.L. 2008, Chapter 46; and

WHEREAS, among other things, the NJMC staff recommended that the Commission propose new rules to achieve consistency with COAH's amended rules and P.L. 2008, Chapter 46; and

WHEREAS, at the July 23, 2008 Commission meeting, the Board of Commissioners authorized NJMC staff to prepare and submit a notice of proposal to the Office of Administrative Law regarding proposed affordable housing rules consistent with these recent statutory and regulatory changes; and

WHEREAS, the NJMC has designated an Affordable Housing Task Force ("Task Force") to advise the NJMC in these matters and engaged professional planning services to support the Task Force in carrying out its responsibilities; and

WHEREAS, on July 23, 2008 the Commission replaced the Emergency Restraints by adopting Interim Policies Governing Affordable Housing Development in the Meadowlands District ("Interim Policies"), dated July 24, 2008 and amended and supplemented from time-to-time, attached as Exhibit A, which apply to all zoning certificate applications as of July 24, 2008 and shall remain in effect until the NJMC proposes new zoning regulations governing affordable housing or until these policies are withdrawn or rescinded; and

WHEREAS, in summary, these policies: 1) condition all zoning certificates on compliance with COAH regulations, 2) require a 20 percent set-aside for affordable housing in projects of five or more dwelling units in District zones deemed suitable for residential development, 3) call for a maximum permitted density of 13 units to the acre in the Low Density Residential Zone and a maximum permitted density of 32 units to the acre in Planned Residential zones, 4) establish the

payments in lieu of constructing affordable units amount at \$180,267, 5) require that all units meet the administrative regulations set forth in N.J.A.C. 5:80-26, known as UHAC and 6) establish that the NJMC will collect and retain certain residential development fees for constituent municipalities until such time as they are released pursuant to future rule-making; and

WHEREAS, new regulations adopted by COAH and intervening Court decisions affecting both agencies now necessitate this new MOU between COAH and the NJMC; and

WHEREAS, in light of the new responsibilities created by recent statutory and regulatory changes, the Agencies seek to implement a cooperative planning process that will advance coordinated and comprehensive planning statewide and provide predictability and transparency in meeting the mandates of the Agencies, thus benefiting State agencies, counties, municipalities and the public.

NOW THEREFORE, in consideration of the principles, assurances and premises contained in this Memorandum of Understanding, the New Jersey Meadowlands Commission and the New Jersey Council on Affordable Housing hereby agree to the following:

A. Coordination of Planning Process

1. A cooperative planning process will be established and maintained between the NJMC and COAH, and their respective staff, to advance coordinated and comprehensive regional planning and provide consistent planning policies on which municipalities may rely.
2. The Agencies will coordinate the implementation of State regulations, statutes, and other pertinent instruments of affordable housing policy, including but not limited to P.L. 2008, Chapter 46.
3. Both the NJMC and COAH will share all available information and data useful or necessary to achieve the objectives of this MOU.

4. The NJMC shall provide COAH, in a timely manner, such reports, petitions, recommendations or reviews resulting from the implementation of its affordable housing policies that are necessary for COAH to carry out its responsibilities.
5. COAH shall provide the NJMC, in a timely manner, such reports, petitions, recommendations or reviews that are necessary for the NJMC to carry out its responsibilities, including reports, petitions, recommendations or reviews generated through COAH's filing and petition process.
6. The NJMC shall review the District Municipalities' Housing Elements and Fair Share Plans and submit written reports of findings regarding lands within the Hackensack Meadowlands District to COAH within 45 days of the municipality's publication of the notice of its petition or re-petition.
7. The NJMC shall review and convey comments to COAH regarding the annual monitoring reports submitted to COAH by municipalities with substantive certification.
8. The NJMC has created and convened an Affordable Housing Task Force to advise the NJMC on appropriate policies and rulemaking to implement the COAH revised third round rules and P.L. 2008, Chapter 46 in a timely manner. COAH's executive director will serve as a member of this task force, and a COAH staff member shall serve as a liaison to the task force. The agencies agree to request that the task force, in carrying out its responsibilities, evaluate the capacity of the District to accommodate the regional need for low- and moderate-income housing, to include the consideration of both vacant and developed sites, and determine appropriate mechanisms to utilize suitable sites to create affordable housing.
9. P.L. 2008, Chapter 46 assigned new responsibilities to the NJMC to identify and coordinate opportunities for the creation of affordable housing on a regional basis in cooperation with municipalities in areas with convenient access to infrastructure, employment opportunities, and public transportation, and through the zoning authority of the NJMC, to require a 20 percent affordable housing set-aside in all residential development, to the extent economically feasible. In accordance with PL 2008, Chapter

46, any request for a waiver to the requirement that a project provide a twenty percent set-aside for affordable housing, based on economic feasibility shall be made to COAH, which has the responsibility to determine the economic feasibility of a project pursuant to the Fair Housing Act. Such economic feasibility determination will be made after reviewing any technical information provided by the NJMC.

10. Both agencies shall be available to assist District municipalities with determining suitable locations and methods for addressing their affordable housing obligations. Additionally, NJMC shall assist the municipalities, upon request, by providing maps of environmentally sensitive areas in order to determine areas where vacant land adjustments may be warranted in accordance with COAH rules.
11. The NJMC shall continue to offer economic assistance to municipalities in the form of grants totaling \$70,000 per municipality to prepare fair share housing plans and offset administrative and planning costs that are incurred after fair share housing plans receive certification or a judgment of compliance.

B. Providing Affordable Housing Opportunities in the Meadowlands District
Growth Share Obligations

12. The NJMC shall provide technical assistance to the constituent municipalities in the Meadowlands District when they are addressing their projected growth share obligation resulting from projected residential and non-residential development between January 1, 2004, and December 31, 2018, based on COAH's revised third round rules.

Scarce Resource Preservation

13. COAH will consult with the NJMC prior to imposing scarce resource restraints with respect to any lands located within the District. The NJMC will assist COAH by providing technical assistance in evaluating the need for such restraints, and should COAH determine the necessity of restraints, the NJMC agrees to enforce a restraint, on that portion of the municipality where the NJMC has zoning authority, upon issuance of a COAH restraint pursuant to N.J.A.C. 5:96-12.1.

Expedited Review for Affordable Housing Projects

14. In accordance with the goals, policies, and objectives of the District Master Plan, the NJMC shall expeditiously review proposed affordable housing projects during the zoning certificate process.

C. Coordination during Agency Review

15. COAH shall provide the NJMC with copies of all documents concerning any petition for Substantive Certification received from any of the fourteen municipalities in the Meadowlands District and shall consult with and consider the NJMC Master Plan and any comment from the NJMC before approving, rejecting, or approving with conditions, a Petition for Substantive Certification.

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

BE IT FURTHER AGREED that this Memorandum of Understanding shall rescind any previous MOU executed by COAH and the NJMC and shall remain in effect unless either party determines with 60 days written notice to the other party, to terminate the Memorandum of Understanding.

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING:

By: 

Lucy Vandenberg, Executive Director

NEW JERSEY MEADOWLANDS COMMISSION:

By: 

Robert R. Ceberio, Executive Director