

**The State of New Jersey: A Study of Fair Housing, Housing  
Affordability, and Metropolitan Equity**

**By**

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## **BACKGROUND**

In order to understand affordable housing and the issues surrounding public housing, we must know the background of how it evolved. The following section will provide landmark history of affordable housing and its development in the United States. This section will also discuss the evolution of affordable housing and the impact it has had on American families.

### **AFFORDABLE HOUSING HISTORY**

History reveals a longstanding struggle for affordable and available housing in the United States. History begins in 1892 when Congress allocates \$20,000 for an investigative report of city slums. In 1908, President Roosevelt instructed the Housing Commission to investigate the need for decent housing for low-income Americans, but no federal aid was allocated towards the effort. In 1918, Congress authorized funding to the United States Housing Corporation to build and manage housing for war workers. The Housing Corporation built more than 5,000 dwellings in 25 communities, making it the first federal entity to provide affordable housing. (Jacobs, Harney, Edson, & Lane, 1982)

### **THE GREAT DEPRESSION & THE HOUSING STIMULANT**

The Great Depression brought upon an economic crisis that threatened financial ruin to America's economy. The idea of federal public housing began as an action by Congress to create a mechanism to encourage banks to lend money for home purchases by taking pressure off sound home mortgage lending, stimulating home construction, and promoting homeownership. The Emergency Relief and Construction Act of 1932 authorized the Reconstruction Finance

Corporation to make loans to corporations established to provide housing for low-income families or to reconstruct slum areas. Congress went on to enact the Federal Home Loan Bank Act of 1932, Home Owners' Loan Act of 1933, and the National Industrial Recovery Act of 1933 to mitigate the housing crisis in the United States. (The Congressional Research Service, 2003)

It was not until June 27, 1934 that the first influential piece of housing legislation, the National Housing Act, created the Federal Housing Administration (FHA). Headed by a Federal Housing Administrator, the FHA serves as the main mortgage and finance insurance agency to administer housing renovation and modernization, and to provide insurance for mortgages on one- to four-family homes. Although government implemented changes to aid in creating affordable housing for low- to moderate-income families, these federal housing programs did not benefit the families who needed this type of housing the most. With the continued efforts for the government to address the housing needs of lower income families, Congress enacted the United States Housing Act in 1937, which created the statutory structure for public housing. The Housing Act of 1937 created the United States Housing Authority (USHA) in the Department of Interior and authorized it to make loans through a capital financing long-term Annual Contribution Contract (ACCs) to local public housing authorities. States and localities built and locally governed the public housing authorities and states had the right to choose whether or not to participate in the program. Soon after, USHA established the United States Public Housing Administration to spell out the federal requirements of its programs. (The Congressional Research Service, 2003)

The following years provided reorganization of existing programs as well as the implementation of new housing acts that helped guide the course and direction of federal housing

policies. The numerous changes in the FHA housing insurance programs included a new program for farm houses/buildings, a new rental housing program, and a reorganization plan that established the Federal Loan Agency and Federal Works Agency to coordinate and supervise the Federal National Mortgage Association, the Federal Home Loan Bank Board, the Home Owners' Loan Corporation, and the Federal Housing Administration in the Federal Loan Agency. The first census on housing was authorized by the Bureau of the Census on August 11, 1939 in connection with the 1940 census. (The Congressional Research Service, 2003)

## **WORLD WAR II AND POSTWAR HOUSING**

The 1940s brought along many amendments to the National Housing Act, including the 1944 Servicemen's Readjustment Act that authorized the Veterans Administration home loan programs for veterans to purchase, build, or improve homes. The housing construction market increased following World War II congruently with the growth of suburban areas. (U.S. Department of Housing and Urban Development, 2007) The Housing Act of 1949 was congress' response to the declining urban areas and responded with a national housing policy and goal for every American family to have a decent home and suitable living environment. The Housing Act of 1949 expanded the program dramatically with its focus on slum clearance, urban redevelopment, housing research, and by providing amendments to the National Housing Act that authorized millions of dollars to increase FHA mortgage lending. (The Congressional Research Service, 2003)

In 1954, there were substantive changes in the Housing Act that provided for rehabilitation and conservation of deteriorating areas. The shift from new construction to conservation is seen in today's widespread rehabilitation projects. The Housing Act of 1954 also

authorized grants to official State, metropolitan, and regional planning agencies. Two years later the Housing Act of 1956 provided provisions for the elderly and solidified federal involvement in housing. (U.S. Department of Housing and Urban Development, 2007)

## **PUBLIC HOUSING EVOLVES**

By the 1960s, home ownership in American was relatively easy to obtain for middle-class families, which relocated many of them out of the projects and in to the suburbs, leaving public housing authorities in the projects to increase rents. In response, Congress capped tenants rent at 25 percent of income. In 1961 the President transmitted a draft bill to Congress that established the Department of Urban Affairs and Housing. The Civil Rights Act of 1964 assured nondiscrimination on federally assisted programs and provided assurances and protections for a wide range of civil rights. The Housing and Urban Development act of 1965 provided a new program of supplemental rental payments to help make privately-owned homes available to low-income Americans and to cover the costs of the bonds public housing authorities issued to build public housing. (The Congressional Research Service, 2003)

Laws were created in the latter part of the 1960s into the mid-1970s to protect the rights of consumers. These laws were aimed toward the population of consumers in the regions of interstate land sales and real estate settlement procedures. In 1970, the President urged Congress to enact legislation to provide subsidies for housing for low- and moderate-income Americans by reducing interest rates on mortgages. Congress responded by authorizing HUD to make grants to support the training of low-income persons in the management of low- and moderate-income housing. A study about America's Housing Needs was released in 1973 by the Joint Center for Urban Studies of MIT and Harvard that estimated 13.1 million Americans families were

“housing deprived” by reason of unaffordability with pricing more than 25-35 percent of income. (The Congressional Research Service, 2003)

## **THE SHIFT IN HOUSING PRIORITIES**

The encouragement of energy conservation and the use of renewable energy in residential, commercial, and agricultural buildings were promoted through financial assistance to owners or tenants who install solar energy systems through the Solar Energy and Energy Conservation Act of 1980. The Omnibus Budget Reconciliation Act of 1981 limited increases in funding for operating subsidies and targeted assistance towards the poorest families with incomes below 50 percent of the local area median income. Congress also passed a series of amendments for the Community Development Block Grant, Urban Development Action Grants, and Housing Assistance programs to include energy conservation.

The Fair Housing Amendments of 1988 amended the Fair Housing Act of 1968 to strengthen enforcement by giving HUD the power to bring complaints of discrimination before a judge and added requirements for HUD to report on its progress toward fair housing. (The Congressional Research Service, 2003) Concern continued to grow during the 1980s about the physical and social health of public housing communities. In 1989, Congress established a National Commission on Severely Distressed Public Authorities to mandate and identify public authorities projects that were in severe state of distress. The commission found that residents were living in fear of crime, high unemployment, and public authorities had insufficient resources to address needs of residents and housing was unsafe for inhabitation. (McCarty 2014)

The Cranston-Gonzalez National Affordable Housing Act of 1990 reaffirmed the national housing goal that every family should be able to afford a decent home in a suitable environment.

The Act also created the Homeownership and Opportunity for People Everywhere (HOPE) program for homeownership of multifamily units, AIDs Housing, supportive housing for the homeless, supportive housing for people with disabilities, and housing for people with special needs. The Housing and Community Development Act of 1992 authorized additional funding to Section 8 programs and the use of the program for first-time homebuyer home purchase, it established Youthbuild program to provide housing for homeless families, and the Act amended the Emergency Low Income Housing Preservation Act of 1987 to ensure the preservation of low-income housing. (The Congressional Research Service, 2003)

## **THE END OF PUBLIC HOUSING DEVELOPMENT**

The Housing and Community Development Act of 1992 created the HOPE VI housing program for redeveloping distressed public housing. By the late 1990s, Congress passed the Quality Housing and Work Opportunity Reconciliation Act of 1998 that required HUD to develop a new formula for distributing operating funding and prohibited public housing authorities from using any federal capital on operating funding to develop new public housing units, even if funds were available. This act contributed to a steady decline in housing units, and resulted in more units being torn down than built for the decade following its enactment. (McCarty 2014)

The last attempt by congress to provide affordable housing came in 2008 through the Housing Trust Fund in the Economic Recovery Act of 2008 intended to provide grants to states, through HUD, to use for low-income households. Unfortunately, the Housing Trust Fund has not been funded to date, as the contributions were suspended by the Federal Housing Finance Agency after Fannie Mae and Freddie Mac were placed into conservatorship. (Jones, et al. 2014)



## **AFFORDABLE HOUSING IMPACT**

The availability of affordable units has been on the decline because public housing authorities have not adequately replaced demolished units and congress has not authorized the addition of new public housing units. The public housing program was designed to help stimulate the economy after the Great Depression, and has evolved to address shortages of decent housing that is affordable to poor families. (McCarty 2014)

Affordable housing has a significant impact on the general well being of families and neighborhoods. The effects of living in a community of distress intensify characteristics such as poverty, educational achievements, economic prospects and health. Neighborhoods of concentrated poverty often lack the support services and opportunities residents need to reach their full potential. Foreclosure has been the main contributor to the recent collapse of the housing market since the recession began in 2007. The lack of affordable housing has led to high rent burdens, overcrowding, substandard housing, and housing insecurity for many American families, exacerbating poor outcomes for those in economically distressed communities. (Center for the Study of Social Policy 2011)

Segregation is also a negative result of affordable housing as most impoverished communities are racially segregated. This adversely affects the possibility of improving the neighborhood and supplying the community with institutional resources needed to present opportunities to better those communities. Segregation magnifies other challenges such as crime, the movement of middle class residents to better neighborhoods and a perpetual shortage of finance capital, local business, employment opportunities and other institutional resources. (Center for the Study of Social Policy 2011)

In comparison to the negative impact the lack of affordable housing has on a family and its community, there are some positive attributes as well. Having suitable and stable housing can positively improve health, education and economic outcomes. Access to affordable housing alleviate one economic stress and allow the opportunity for a family to focus on allocating finances towards other necessities. When housing is stable and affordable, families can spend more time and resources on medical care, nutritious food, transportation to and from work, and quality day care services. (Center for the Study of Social Policy 2011)

Since the 2007-2009 recession, it is more difficult for lower income households to find housing that costs less than 30% of their incomes. HUD found, in its August 2013 report to congress, there has been an over 20 percent increase in the number of renters whose incomes are at or below 50 percent of area media income, who pay more than half of their incomes on rent, or live in severely inadequate conditions in the United States. (Jones, et al. 2014)

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## RESEARCH QUESTION

This study evaluates the methodologies, regulations, and outcomes of New Jersey's Fair Housing Act's mission to provide an equitable distribution of affordable housing. By conducting a literature review, interviews, and collecting information from studies, statutes and court proceedings, we were able to analyze New Jersey's constitutional mandate for all municipalities to provide a fair share of affordable housing. The study is guided by the following question:

*Does the New Jersey Fair Housing Act, through the Council on affordable Housing, effectively allocate the statewide need for affordable housing through its methodologies to achieve the state's goal for an equitable distribution of affordable housing?* The success of the Act will be measured by the number of affordable units estimated, obligated, and produced since the act was established in 1986.

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## LOGIC MODEL

The logic model encompasses the tools needed to illustrate the logical relationships between components used to evaluate the availability of affordable housing. It shows the relationship between inputs, outputs and outcomes in phases of short-term, medium and long-term goals.

The first column of the logic model shows the inputs, which list resources needed to set the foundation for the construction of affordable housing. Funding is the primary source needed in order to provide much needed affordable housing units. Interests groups, community activists, low-income families, and elected officials are the voices heard by the federal government who express the importance and emergent need for such housing. Once the demand is recognized and the need is established government can bring in contractors who will begin construction.

Outputs require two methods known as activities and participation. Activities highlight what measures can be taken to sufficiently develop affordable housing. The activities include:

1. Develop legislation to ensure funding is appropriated
2. Create incentives and regulatory strategies to encourage affordable housing
3. Enhance information sharing
4. Coordinate strategic actions and convene stakeholders regularly
5. Develop and maintain ongoing qualitative and quantitative research
6. Monitor and track capacity and affordability conditions

Participation includes the federal, state, local, non-profit and for-profit entities. The process of participation would also include policy makers, legislators, agencies, advocates as

well as federal and state monitors. The participation of these various entities is crucial to the development and implementation of housing and housing laws.

The last section of the logic model incorporates the outcomes in phases of short-term, medium and long-term goals. These goals are outlined in phases as each section of the logic model is exercised. The first short-term outcome listed is availability of funding. The availability of funding is crucial; if funding is not available then affordable housing units cannot be built. The second short term goal listed is to set standards and issue penalties for non-compliance. Next is coalition building and getting stakeholders buy-in. Stakeholders are fundamentally important and serve as an intricate asset to the development of affordable housing. The last short term goal listed is to increase awareness of affordable housing amongst constituents, elected officials non-profits, for-profit, lending institutions, and philanthropist.

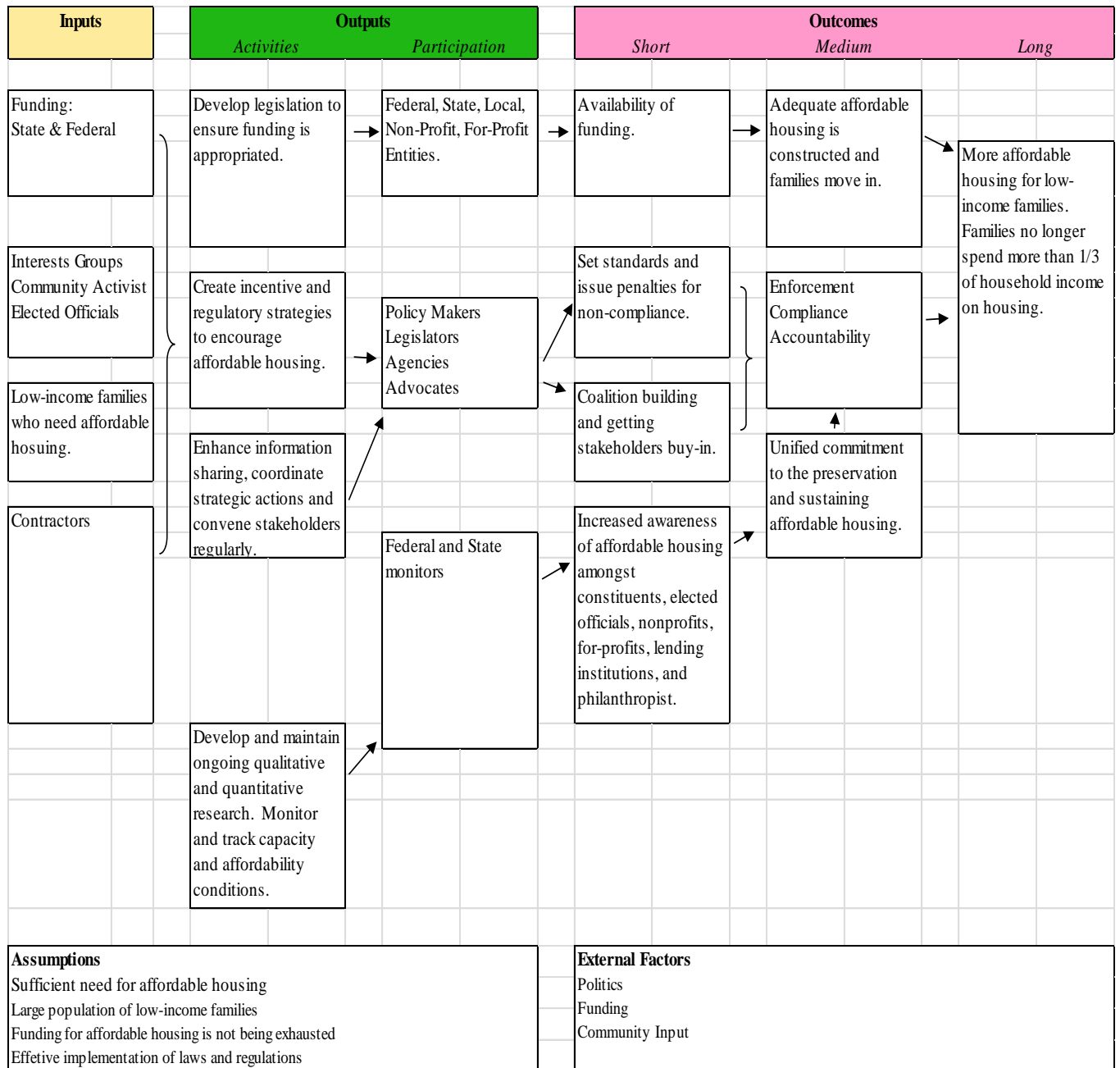
The second column of outcomes focuses on medium outcomes, which is where the process should be at the midway point. The first medium outcome is, adequate affordable housing is constructed and families move in. For example, if the city of Montclair, NJ is ordered through regulations to have ten out of forty housing units made to be affordable housing units, then that exact amount is produced and families are allowed to occupy the space. The second medium outcome is enforcement, compliance and accountability. An example of this goal would be any state, within the United States, who has housing laws and regulations that guide the availability of affordable housing to be enforced and adhered to. There would be some kind of infraction held against the state for non-compliance; holding that state accountable for not complying with regulated laws.

The last medium outcome listed in the logic model is, unified commitment to preservation and sustaining affordable housing. For example, through federal and state monitors,

and continued qualitative and quantitative research, federal and state regulators can stay abreast and conduct performance measures to determine the efficiency and effectiveness providing adequate affordable housing. Adjustments and modifications can be made throughout the process and evaluation of performance measures.

Finally, the last column has one long-term outcome listed: more affordable housing for low-income families is produced. The projected long-term goal is to no longer have families spend more than one third of the household income on housing. The assumption, based on this logic model is that if these steps are followed and states and municipalities are held accountable, follow-up and performance measures are set into play, then adequate affordable housing will be available to those low-income families in need.





**Figure 1: Logic Model Table**

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## **LITERATURE REVIEW**

There is and has been a housing affordability crisis across the United States since the nineteenth century and it continues to grow. Much legal litigation over the years has been held to address the need and lack of affordable housing in the United States.

The literature review explores the impact of affordable housing throughout the United States and the need for stronger and continued support. The literature review will examine exclusionary and inclusionary zoning throughout the United States, and explore regional fair share housing and case law that has shaped the issue of housing affordability. We will examine how policy makers have responded to the housing affordability crisis across the nation and how municipalities have faced challenges in facilitating affordable housing through the examination of case studies.

The literature review looks at four aspects of affordable housing: sources published about exclusionary zoning, inclusionary zoning, regional fair share housing, and case law that have addressed housing affordability.

### **EXCLUSIONARY ZONING**

Sager, Lawrence Gene. (1968). Tight Little Islands: Exclusionary Zoning, Equal Protection and the Indigent. *Stanford Law Review*, 21, 767-800.

Sager (1971) used the phrase “exclusionary zoning” to reference excluding low-income residents from suburban neighborhoods by raising the price of residential access to particular areas. Sager (1971) discussed the applications of exclusionary zoning as “zoning that raises the price of residential access to a particular area” and maintained that the process denies access to

low-income groups. This article discussed the Equal Protection Law's "de facto classification" in public school segregation in *Brown v. Board of Education* where the use of school zones set against segregated housing, produced all white or all black schools. Sager (1971) maintained that exclusionary zoning laws equaled economic zoning that exclude potential residences because of cost incremental attributes added to zoning ordinances. Lastly, Sager (1971) discussed adverse consequences of exclusionary zoning to result in low supply of housing, desirability of the available housing, overcrowding of available units, exclusion from job opportunities because of commuting distance, and mix-residential integration along socioeconomic lines.

Aloi, Frank, & Goldberg, Arthur. (1971). Racial and Economic Exclusionary Zoning: The Beginning of the End. *Urban Law Annual*, 9-62.

Aloi and Goldberg (1971) described how zoning through ordinances designed to "maintain the character of the neighborhood", minimum lot size requirements, exclusion on mobile homes, bedroom restrictions, living density requirements, exclusions of multi-family dwellings, and provisions in building codes will exclude minorities from a neighborhood. They suggested alleviating the concentration of publicly subsidized housing in ghettos by building housing in both city and suburbs. They believe the environmental benefits of land use control cannot be used to improve the quality of life of the affluent and the exclusion of minorities, and land use zoning regulations has affected the minimum price for homes that are well above the means of low-income households. Aloi and Goldberg (1971) also discussed the Equal Protection Clause of the 14<sup>th</sup> Amendment and its historical use to strike down discriminatory enforced legislation, and proposed that municipal land use ordinances that exclude minorities are held

unconstitutional. Lastly, they pointed out that land has no inherent monetary value aside from the land use value given when an exclusionary ordinance is enacted and equal protection is denied when a state permits the enactments of zoning ordinances that inflate land value. This denies low-income families a fair opportunity to rent or own property in land-zoned neighborhoods.

Bergin, Thomas. (1972). Price-Exclusionary Zoning: A Social Analysis. *St. John's Law Review*, 47, 1-37.

Bergin (1972) examined out how suburban neighborhoods priced their areas far beyond the reach of the city poor and suggested that the price-increasing land use ordinances be overridden by courts or barred by state legislatures. Bergin (1972) maintained that land-use ordinances that result in de facto discrimination against racial and religious minorities should be subject to the equal protection view and that land use ordinances may be deemed unconstitutional if courts are persuaded that these ordinances are denying society as a whole optimum use of its resources. In final, Bergin (1972) asserted that suburban communities should accept their fair share of the social cost of poverty by encouraging poor persons into suburban neighborhoods.

Bigham, Harold, & Bostick, Dent. (1972). Exclusionary Zoning Practices: An Examination of the Current Controversy. *Vanderbilt Law Review*, 25, 1111-1150.

Bigham and Bostick (1972) describe the complex relationship between cities and suburbs because of zoning devices that exclude less affluent from suburbs. They discussed how local governments regulate land use measures and most states enable legislation granting zoning

power to local municipalities or counties. Appellate court defers to local legislative bodies to determine what land use best serves general welfare, and Bigham and Bostick (1972) maintained that economic and racial integration of the suburbs would require change pushed by the state legislature and through courts. They list the suburban zoning policy problems to be large lot zoning requirements, subdivision control regulation, minimum floor space requirements, and exclusions of multifamily dwellings.

Burns, Michael. (1974). Class Struggle in the Suburbs: Exclusionary Zoning against the Poor. *Hastings Constitutional Law Quarterly*, 179-202.

Burns (1974) examined the struggles of urban areas that were left with swollen populations and deflated tax bases after the migration of middle class families to the suburbs. The article found that lower-income families were subjected to inadequate police and fire protection, low quality municipal services, poor street maintenance, limited recreational opportunities, poor performing schools, and an overburdened public transportation system in the inner city. Burns (1974) suggested studying zoning ordinances in regional context because zoning ordinances are required to promote “general welfare” and a regional view would determine if the local ordinance violate due process and equal protection. The article states that denial of the right to housing by means of zoning ordinances are economically discriminatory and violates equal protection.

## **INCLUSIONARY ZONING**

Fox, Gregory Mellon; Davis, Barbara Rosenfeld. (1976). Density Bonus Zoning to Provide Low and Moderate Cost Housing. *Hastings Constitutional Law Quarterly*, 1015-1072.

Authors Fox and Davis (1976) examines whether or not inclusionary zoning is a duty or a choice. They discuss a string of Pennsylvania cases that were subjected to strict judicial scrutiny that was applied to municipal ordinances and restrictions were applied to broad socio-economic access to housing. Fox and Davis (1976) described the New Jersey Supreme Court in *Southern Burlington County NAACP v. Township of Mount Laurel* concluded that all New Jersey cities experiencing growth demands must affirmatively make available an appropriate variety of housing for different economic groups. The article also references to the California Supreme Court in *Associated Home Builders of the Greater Eastbay, Inc. v. City of Livermore* who most recently adopted the Mount Laurel concept of regional general welfare for purposes of determining a city's duty to provide low to moderate income housing (Fox & Davis, 1976)

Another case mentioned by Fox and Davis (1976) is the United States Supreme Court in *Hills v. Gautreaux* where a federal court order was upheld and demanded the Chicago Housing Authority and the United States Department of Housing and Development (HUD) to implement a remedial metropolitan housing program to compensate for racial discrimination with the construction and renting of public housing in the past. According to the article, the heavy involvement of HUD in financing local housing programs has increased the influence of *Gautreaux* on an evolving federal duty to implement inclusionary zoning as well as housing policies.

Cowan, Spencer M. (2006). Anti-Snob Land Use Laws, Suburban Exclusion, and Housing Opportunity. *Journal of Urban Affairs*, Vol. 28 Issue 3, 295-313.

Cowan (2006) discussed and examined three different approaches to overcoming exclusionary zoning. The first approach is used in Maryland and Virginia, for the local government to be granted, by the state, the authority to adopt inclusionary zoning, which obligates developers to produce affordable housing units in new residential projects if they surpass a threshold number of units. The Montgomery County program in Maryland has been successful in increasing the availability of affordable housing, similar efforts made in other areas of Maryland and Virginia have not done as well (Cowan, 2006).

Another approach mentioned by Cowan (2006) in this article is to require local governments to take affirmative action to accommodate affordable housing. States such as Florida and Oregon require local government to make affordable housing a part of the states comprehensive planning or growth management program. Cowen (2006) described how in spite of the requirement to make affordable housing a part of planning, neither of these states impose any obligation to do anything other than planning and have no mechanisms in place to ensure affordable housing is built. Cowen (2006) points out other states, such as California and New Jersey, requires the local government to do more than planning by using a “fair share” allocation system. Using the “fair share” allocating system, the state or a regional authority can determine the regional need for affordable housing and allocate a “fair share” of that need to all municipalities within its jurisdiction.

The third approach listed in the article was to vanquish suburban exclusion through the use of “anti-snob” land use laws. States such as Connecticut, Massachusetts and Rhode Island



have adopted this law, which limits the ability of a local government to inhibit the production of affordable housing within its jurisdiction.

Pfeiffer, D. (2007). Passing a Mandatory Inclusionary Housing Ordinance: Lessons from San Francisco and San Diego. *Berkeley Planning Journal*, 20, 77-95.

Pfeiffer (2007) explained how inclusionary zoning in California was enforced through the California Housing and Finance Act of 1975. The Act requires localities to include provisions to house a variety of income groups in their housing plans. According to Pfeiffer (2007) inclusionary housing in the state of California is working and has been successful in its implementation, and California has more inclusionary ordinances than any other state in the United States.

Pfeiffer (2007) also pointed out San Francisco is another state within the US that has been successful with inclusionary housing. He described the legislation that was passed by ten votes to one in 2002, by the Board of Supervisors for a Residential Inclusionary Affordable Housing Program. Pfeiffer (2007) indicates three factors that were critical to driving inclusionary zoning ordinances from proposals to implementation:

- The involvement of a broad-based housing coalition
- The existence of forums for negotiation between stakeholders
- The incremental enactment of tenets

Pfeiffer (2007) explained although all three factors contributed to the implementation of inclusionary zoning in the states of San Francisco and San Diego, the first and second factor contributes to the actors involved and mechanisms that enabled compromise and the third factor suggests a gradual introduction of requirements to enable ordinance passage.

Nirider, L. H. (2008). In Search of "Refinement Without Exclusiveness": Inclusionary Zoning in Highland Park, Illinois. *Northwestern University Law Review*, 102(4), 1919-1951.

Nirider (2008) article described how most of the nationwide inclusionary zoning programs share the same basic structure. Inclusionary zoning is adopted by municipal and or county governments and provides developers with incentives to sell housing units at an “affordable” rate, which is set by the government. Some of the incentives offered to developers were waivers of applicable fees, taxes and other costs that would otherwise be charged, in addition to a density bonus for each affordable housing unit constructed.

Nirider (2008) explained since the ruling on the Mount Laurel case of New Jersey, there have been an increasing number of municipalities and counties, across the country that has adopted inclusionary zoning. Highland Park was one of the first towns in Illinois to adopt inclusionary zoning and its ordinance served as model for other municipalities who were considering adopting inclusionary zoning. Nirider (2008) specified how other Chicago suburban areas followed by considering and or adopting inclusionary zoning because it provided an example by serving as a textual model for their proposed ordinances.

Nirider (2008) further explained how Highland Park’s ordinance also served as a political model for other communities. It decreased the chances of other towns experiencing possible negative effects for adopting inclusionary zoning.

Basolo, V. (2011). Inclusionary Housing: The Controversy Continues. *Town Planning Review*, 82(2), I-VI.

Basolo (2011) described inclusionary zoning as a phrase used when referring to policies and programs that are designed for interrelated incomes within housing developments and communities. Basolo (2011) says the overall idea is straightforward and land use regulations should be used in communities to provide more opportunities for renting and or homeownership for low- and moderate-income households. Basolo (2011) highlighted states within the United States who have adopted the inclusionary zoning approach in response to the lack of affordable housing for low- and moderate-income families. Montgomery County, Maryland was one of the first towns to receive recognition for adopting inclusionary zoning in the US. Thereafter, other states and jurisdictions began to adopt the law but not without facing controversy and legal litigations. Barsolo (2011) discussed Massachusetts and California as two additional states that adopted inclusionary zoning. Massachusetts adopted the law known to them as “anti-snob” zoning, which promotes the development of affordable housing. The article also states California has been successful, mainly at the local level, as over one hundred cities and counties have adopted inclusionary zoning as their local policy. Finally, the article identifies existing research and practice suggests:

- State inclusionary housing policies have a mixed record of success
- The design of local inclusionary housing policies varies considerably across regions
- The existence of inclusionary housing policies may or may not impact the production and process market-rate housing in a region
- Inclusionary housing produces more units in growing regions
- Inclusionary zoning is contentious because it seeks to use the market to achieve social goals

## **REGIONAL FAIR SHARE HOUSING**

Rose, Jerome G. (1976). Fair Share Housing Allocation Plans: Which Formula Will Pacify the Contentious Suburbs? *12 Urb. L. Ann.* 3-22

In spite of all the legal battles to address affordable housing needs and the implementation of inclusionary zoning, some municipalities have responded and other communities have resisted the efforts. Rose (1976) noted that much of the opposition to fair share allocation plans is caused by the ambiguity and uncertain consequences of applying the formulae that have been devised for the computation of fair share allocations. Findings from Rose indicate the purpose of fair share housing allocation plans is used to encourage municipalities to offer a better choice of housing opportunities. By offering a greater choice of housing opportunities it may help to avoid unjustified concentration of low-income persons in central cities or older built-up suburbs.

According to the article, the housing allocation plan was created in response to New Jersey Mount Laurel case and should be designed to achieve the same purpose. Rose described how the plan in response to Mount Laurel should be used to assist courts with determining whether land use regulations adopted by a municipality denies an appropriate variety of housing that violate the general welfare principles of the state constitution.

Rose (1976) explained allocation based upon need is a principle that is designed to allocate housing units to municipalities identified as having the greatest need for low-moderate income families. There are different variables used to measure such factors such as vacancy, deterioration, overcrowding and the percentage of families who paying more than twenty-five percent of their household income for shelter. Rose also identified how using this criterion could cause a negative effect on the allocation process. He noted that it would cause the greatest

obligation for housing to urban neighborhoods where overcrowding and deterioration is most prevalent, as opposed to a suburban municipality within the region who would receive a small allocation of housing units. Finally, Rose found in order to overcome this problem, it would be necessary to base allocation on future not existing housing needs, with the assumption that future growth and housing needs will be in the suburbs.

Moskowitz, David H. (1975). Regional Housing Allocation Plans: A Case History of the Delaware Valley Regional Plan. *7 Urb. Law.* 292-309

Moskowitz (1975) discussed the case history of the genesis and status of a particular plan that was drafted by the Delaware Valley Regional Planning Commission in response to a petition. The Delaware Valley Regional Planning Commission was established in 1965 as a result of an interstate compact between the states of New Jersey and Pennsylvania to plan for both sides of the Delaware River and in the Philadelphia metropolitan area. Moskowitz explained the Delaware Valley Regional Planning Commission allocation plan covered a region that encompasses nine counties who were granted the authority to prepare its own housing allocation plan in conformity with the regional model. The concern was, in many sections of Delaware Valley no low-income or sales properties were available, non-subsidized new housing was too costly and no subsidized housing were being constructed (Moskowitz, 1975).

There were several problems faced with the implementation of the allocation plan. The first problem mentioned in the article is the criteria used in the selection process. Secondly, the figures had to be calculated using the criteria used in the selection process. Although there was not one appropriate criteria identified, after several attempts, the Delaware Valley Regional Planning Commission was able to establish a formulae for the allocation of fair housing in the

state Delaware. Moskowitz highlights approximately two years after the petition was presented; the Board of Commissions of Delaware Valley Regional Planning Commission adopted a resolution containing a regional housing allocation plan for Delaware Valley Region. Moskowitz identified the equalization trend formula, a combination of three criteria, which represent a distribution of equal housing units to each county in the same proportion of income groups, which exists for the entire region. Moskowitz further explained, once figures were presented to each individual county they had to consider distribution of the figures amongst sub-county units, primarily municipalities (Moskowitz, 1975).

Galowitz, Stephen D. (1992). Interstate Metro-Regional Responses to Exclusionary Zoning. 27 Real Property, Trust & Estate Law Journal. 80-100

Galowitz (1992) found that several states such as Florida, Oregon, and Maryland use zoning plans for developments of regional impact. He explained that the American Law Institute has also adopted a plan in its Model Land Development Code, which seeks to assist the states in finding a workable method for state and regional involvement in land development regulation. Galowitz described how this model is designed to provide a procedure for a state governmental agency to “serve” the needs of constituencies bigger than the local government specifically related to developments of regional impact. He further explained there is a difference in Florida’s method of determining developments of regional impact from the Model Land Development Code. He found the original guidelines of Florida made no provision for affordable housing that resulted in confusion as to the scope of development of regional impact and reduced the ability to prevent exclusionary zoning Galowitz, 1992).

Cummins, Justin D. (1995). Recasting Fair Share: Toward Effective Housing Law and Principled Social Policy. 14 Law & Ineq. 339-390

This study features Oregon, New Hampshire, Massachusetts and California and other states that have initiated Fair Share Legislation. Cummins (1995) found that these states have been categorized as Fair Share States however; each states approach to the implementation of fair share varies. Cummins further describes the difference in each approach; in Oregon its law compels municipalities to designate buildable lands and provide for the construction of needed housing through flexible zoning measures. New Hampshire's legislation requires all communities to provide reasonable opportunities for the siting of manufactured housing. He recognized California's Fair Share approach to be different because it compels every community to adopt a long-term developing plan that has a housing element. Massachusetts approach was also identified as being different as its legislation streamlines the appeals process for developers, facilitating challenges to zoning that causes burdens on the construction of affordable housing. Cummins found that Fair Share laws adopted by many states main goal is, to strive to promote economic integration of communities by distributing affordable housing in a fair manner (Cummins, 1996).

The author examines the potential of Fair Share policies and he found Massachusetts Fair Share policies to have been somewhat successful with reducing the prevalence of exclusionary zoning while aiding with the availability of more affordable housing. Cummins noted how Fair Share laws could have a standardizing effect, preventing a regulatory problem. Cummins then explained regulatory problems exist when municipalities overregulate land and consequently produce market inefficiencies that are negative externalities. Cummins concluded Fair Share policies work as a remedy for this type of a market failure. It would improve economic

efficiencies by forcing municipalities and property owners to face the costs of both their housing and zoning practices. Finally, this study also described how Fair Share legislation could also be an effective poverty reduction mechanism. Cummins also pointed out how the dispersing of affordable housing would not only spread poverty evenly across the region but it should also reduce the overall poverty rates of metropolitan areas (Cummins, 1996).

Boger, John Charles. (1993). *Toward Ending Residential Segregation: A Fair Share Proposal for the next Reconstruction.* 71 N.C.L. Rev. 1573-1618

Boger (1993) explained that incentives for compliance could have a positive effect with Fair Share framework as some municipalities are unmotivated and want to delay and or evade the Act itself. Boger found that positive financial incentives alone are not enough to persuade suburban communities to take action in coordination with federal programs that could lead to racial or economic dispersal. He goes on to describe that some policy analyst have made a recommendation for noncomplying jurisdictions to be faced with the threat of losing all federal community development funds. However, to deprive a municipality of these resources would impose a further hardship on low-moderate income families. Boger discussed how municipalities who are resistant to increased economic and racial integration might allow the low-income population to suffer instead of taking on their fair share obligations (Boger, 1993).

In contrast, Boger describes another approach that could be used when municipalities refuse to meet their fair share goals. Boger suggested the National Fair Share Act should withdraw two tax deductions from property owners, incrementally over the years. The author emphasized the objective would not be to end federal support or to deprive any taxpayer of deductions but, to allow taxpayers in noncomplying regions time to persuade reluctant public



officials to take part in framing a fair share plan. Furthermore, what Boger is suggesting is, tax payers living in municipalities who are not in compliance with fair share planning will not be successful in avoiding racial or economic integration. Boger has identified this deterrent as having a greater purpose, which is to transform the market incentives that currently work against desegregation. It will allow buyer and renters of equal homes in fair share municipalities to continue to receive federal tax advantages that noncomplying municipalities were bound to lose (Boger, 1993).

## **AFFORDABLE HOUSING CASE LAW**

Berenson v. Town of New Castle, 341 N.E.2d 236 (N.Y. 1975)

The town of New Castle, New York was an undeveloped suburban community that experienced a huge increase in population as post-World War II residents began to flock to suburbia in the 1950s. The town took steps to prevent construction of apartments through its first ordinance by refusing to authorize or permit the development of any multiple-family dwellings. The zoning ordinance of 1971 replaced the 1945 version and restricted residential use based on minimum lot size.

The court declared the primary goal of a zoning ordinance must be to provide for development of a balanced cohesive community, which will make efficient use of the town's available land. The New York Court of appeals developed a two-part test to evaluate exclusionary zoning provisions and the first branch of the test is whether the board has provided a properly balanced and well-ordered plan for the community. The court must determine whether new construction is necessary to fulfill future needs of New Castle residents.

The second branch of the test includes considering regional needs and requirements in enacting a zoning ordinance. The court considered not only the general welfare of the residents of New Castle, but also the effect of the ordinance of the neighboring communities. The Supreme Court held that the amendment to the zoning ordinance exceeded the authority granted by statute and that the amendment violated constitutional guarantee that no property may be taken for public purposes without just compensation.

Britton v. Town of Chester, 595 A2d 492 (N.H. 1991)

Wayne Britton and a group of low- moderate-income people had been unsuccessful in finding affordable, adequate housing in town, and in 1985 challenged the validity of the multi-family housing provisions of the Chester Zoning Ordinance. The Town of Chester, New Hampshire housing stock was principally single-family homes and did not encourage industrial or commercial development. The majority of Chester's labor force commuted to Manchester, and was projected to have one of the highest growth rates in New Hampshire over the following decade.

Chester Zoning Ordinance provided for a single-family home on a two-acre lot or a duplex on a three-acre lot, and excluded multifamily housing from all five zoning districts in town. The ordinance was amended in 1986 to allow multifamily housing.

The court found that the ordinance placed an unreasonable barrier on the development of affordable housing for low- and moderate-income families because, due to existing home construction and environmental considerations, only 1.73 percent of land in town could reasonably be used for multi-family development. The town argued that the zoning enabling act does not require it to zone for the low-income housing needs of the region beyond its boundaries.

The court struck down Chester's exclusionary zoning ordinance and declared that, as subdivisions of the state, municipalities do not exist solely to serve their own residents and their regulations should promote the general welfare within and without their boundaries. The judge maintained the zoning ordinance evolved as an innovated means to counter the problems of uncontrolled growth, and was not to be used to prevent access to a municipality by outsiders of any disadvantaged social or economic group. The court found the Chester Zoning Ordinance to be blatantly exclusionary and struck down the zoning provision that limited construction to large lots.

Home Builders Association of Northern California v. City of Napa, 108 Cal. Rptr. 2d 60 (Cal. Dist. Ct. App. 2001)

The City of Napa concluded that there was not enough housing for lower income residents after years of expensive set-asides for open space and agriculture, urban-limit lines, and large lot zoning. The city addressed the problem by adopting an inclusionary zoning law on developers by requiring the builder to construct one unit to sell or rent at below market rate for every nine new homes or apartments the builder receives approval to build.

The City of Napa's Ordinance 01999/20 entitled "An Ordinance of the City of Napa, County of Napa, State of California, adding chapter 15.94 to the Napa Municipal Code creating and establishing a Housing Trust Fund, a housing impact fee on non-residential development, and establishing inclusionary in-lieu fee requirements for residential projects" was challenged by the Home Builders Association of Northern California.

The court upheld the City of Napa's ordinance and concluded that the "City has the ability to waive the requirements imposed by the ordinance, the ordinance can not, and does not,

on its face, result in a taking” thus there being no ripe constitutional violation. The court held that the ordinance was valid under the takings clauses of the California and Federal Constitutions and the ordinance was not facially invalid under the due process clause of the Federal Constitution.

Zoning Board of Appeals of Wellesley v. Ardmore Apartments Ltd. P’ship, 767 N.E.2d 584 (2002)

In 1981, Zoning Board of Wellesley was ordered by the Housing Appeals Commission to issue a comprehensive permit to the owner, Cedar Street Association, to build a thirty-six unit apartment project. At the time, Wellesley, Massachusetts has an affordable housing obligation of 800 affordable housing units, and the town had only 373 units. Massachusetts Housing Finance Agency granted the first mortgage on the project, and the project was granted a certification of occupancy in 1986.

In June of 1996, Ardmore Apartments purchased the project from Cedar Street Associates and Massachusetts Housing Finance Agency entered into agreement that Ardmore assumed all of Cedar’s financing and related agreements. Massachusetts Housing Finance Agency seized the property in 1997 and entered it into foreclosure in 1999 because owner defaulted on its obligations. Wellesley promptly requested the foreclosure sale to maintain a requirement of twenty-five percent of the project continue to be maintained as affordable housing, but Massachusetts Housing Finance Agency refused.

Massachusetts Housing Finance Agency scheduled a foreclosure auction for June 1999 and Wellesley filed a complaint in the Superior Court seeking declaratory and injunctive relief. The parties then filed cross motions for summary judgments. A judge entered summary judgment for Wellesley and denied the owners cross motion for summary judgment where in the

owner must continue to provide the affordable housing units as long as it is out of compliance with the zoning regulation.

## **SUMMARY**

The Literature Review gives an overview and explores impacts of the affordable housing crisis across the United States. It encompasses information gathered as progressive measures were taken to establish laws to govern the distribution of affordable housing without prejudice. It describes how the problem has grown over the decades, since the Great Depression, and the approaches taken to provide a solution to the problem. There has been extensive research and literature documented as well as the implementation of laws and programs to aid in reducing affordable housing deficits.

The review of literature from law journals focused on four aspects of affordable housing: exclusionary zoning, inclusionary zoning, regional fair share, and case law that address affordable housing. Exclusionary zoning focuses on the exclusion of low-income housing units in a region and or municipality. It creates segregation among communities by denying individuals who meet the criteria of having low-moderate income. References to studies done on inclusionary zoning discuss whether it should be a duty or a choice. Other studies discussed how litigations regarding inclusionary zoning resulted in the adoption of the Mount Laurel concept by some municipalities, and the requirement to make affordable housing a part of the state's comprehensive planning and growth management program.

Regional fair share housing refers to fair share allocation plans that are used to encourage municipalities to offer a better choice of housing opportunities. Affordable housing case laws discuss how towns would enforce zoning ordinances in efforts of delaying the construction of

affordable housing. Again, litigations and appeals to these types of ordinances in various states led to a declaration from the judicial system stating the primary goal of a zoning ordinance must be to provide for development of a balanced and cohesive community, which would make use of a town's available land.

The information contained in the literature review is substantial in understanding the historical background and the depths in which the United States have gone to find a remedy to affordable housing needs across the US. This information is important to understanding the methodologies researched in response to addressing the need for low-income housing in New Jersey. The literature review briefly introduces the Mount Laurel Doctrine, which set the foundation for the development of the Fair Housing Act and the Council on Affordable Housing in the state of New Jersey.

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## **METHODOLOGY**

The methodology for this analysis examines the impact of the Council on Affordable Housing's regulations on the constitutional duty for every municipality to provide affordable housing in New Jersey. This analysis will serve as a basis for evaluating the adoption of the Fair Housing Act in 1985 and the Council on Affordable Housing (COAH) methodologies to achieve the state's goal of an equitable distribution of affordable housing. The capstone looks at the following issues: the extent to which New Jersey met the goals set in 1985 to provide additional affordable housing units, the distribution of affordable housing, the methodologies used to achieve the state's goal, and the effectiveness of the regulations and methodologies. The capstone also examines the handling of affordable housing obligations in three New Jersey municipalities. The distribution of affordable housing in New Jersey is visibly skewed and a small number of municipalities provide the bulk of the statewide supply, while many municipalities have none.

Through interviews with practitioners from the state, advocates for affordable housing, and experts in the field, data was collected to measure how municipalities in the state are handling their obligation to provide their fair share of affordable housing. Information was collected to support primary data from state departments, U.S. Census records, court documents, and the comprehensive housing affordability strategies (CHAS) data from the Department of Housing and Urban Development (HUD) was accessed.

The basis for evaluating the state's goal of equitable distribution of affordable housing is through comparing present needs, prospective needs, municipal obligations, and funding for affordable housing. Based on an examination of the three municipalities and an assessment of



current affordable housing conditions, the analysis will determine if appropriate measures were used to achieve the state's affordable housing goal. For each municipality being analyzed, a brief overview, including history, social economic status & demographic profile, present housing need, municipal obligation, and the sources of funding. In total, this information provides a view of how municipalities are handling affordable housing obligations. The towns are compared and assessed to determine if they are meeting their affordable housing obligation and providing a fair share.

In summary, this analysis observes how three municipalities, Medford, Glassboro, and Pennsauken, has dealt with affordable housing solutions, and examines the metrics used for determining affordable housing obligations. In comparing the municipalities, it is essential to determine:

1. The regional need for affordable housing and if they are providing their fair share.
2. Affordable housing solutions and proposed approaches.
3. Mechanisms to support fair share of affordable housing.

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## **FINDINGS & ANALYSIS**

This chapter is dedicated to review the findings from the research as a basis for analyzing methodologies used to achieve the state's goal of affordable housing. The first section will examine the history of the Mount Laurel Doctrine and its landmark cases. The second section will discuss the creation of the Fair Housing Act and the third section will discuss the Council on Affordable Housing (COAH). Sections four through six examine three municipalities and discuss means actually used by each municipality to provide affordable housing. The seventh section compares each municipality. In the eighth section of this chapter, COAH's methodologies and regulations, housing problems for renters, vacancy rates, affordable and available rental housing units, the prospective need of affordable units, and each municipality will be assessed. The final section will conclude with the analysis of all findings.

### **THE MOUNT LARUEL DOCTRINE**

The Mount Laurel Doctrine stems back to the 1960's when two major development plans were in effect in the Mount Laurel region of New Jersey. One of the developments was planned for the City of Camden and the other in the Township of Mount Laurel. Policy makers in Mount Laurel were trying to use urban renewal and highway construction to rebuild the city through its upscale development; however, no provisions were made in the development for the indigenous poor living in substandard housing in town. The result was the city's middle-class residents, mostly white, left the city for the suburbs, and the poor, financially unable to move out, were displaced from one slum to the next and sentenced to reside in what became the worst urban ghetto in New Jersey (Fair Share Housing Center).

Through an action seeking declaratory and injunctive relief against the municipality's zoning ordinance, the Superior Court of New Jersey held that Mount Laurel's zoning ordinance unlawfully excluded low and moderate income families and created economic discrimination in Southern Burlington County NAACP v. Mount Laurel, 119 N.J. Super. 151 (Law Div. 1972). Mount Laurel maintained that zoning should be used to provide direct and substantial benefit to the taxpayers while the court held that a developing municipality may not, by a system of land use regulation, make it physically and economically impossible to provide low- and moderate-income housing, and that the ordinance permitting only single-family detached dwellings and building size requirements was unlawful. The court ordered Mount Laurel to take affirmative action to:

1. Undertake a study to identify existing sub-standard dwelling units by family income and size (Id at 178).
2. Determine the housing needs for persons of low and moderate income residing in the township, presently employed by the municipality, and those expected or projected to be employed in the Township (Id at 178).

Upon completion of the study, Mount Laurel was to determine the estimated low and moderate-income units, which need to be constructed each year to provide for the affordable housing need.

The court, in its decision, sought to eliminate bad, exclusionary zoning practices in Mount Laurel. The court made a clear statement that towns cannot make affordable housing impossible for low- to moderate-income families through zoning ordinances and lot requirements. The court directed Mount Laurel to identify substandard homes, determine the housing needs of low- moderate-income families in town, and to determine an estimated number of units to meet the needs of the community.

## ***MOUNT LAUREL I***

The township appealed to the Appellate Court that the judgment should have taken the prescribed plan into account, as well as a fair share of the regional housing needs of low and moderate income families, without limitation to those having past, present or prospective connections with the township. The judgment was modified three years later in Southern Burlington County NAACP. v. Mount Laurel, 67 N.J. 151 (NJ 1975) where the core of the Mount Laurel Doctrine was declared. The legal issue in the case remained the same; it questioned the right of municipalities to limit the kinds of available housing, and any obligations to provide a variety of choices in living accommodations. The Court declared:

1. Every municipality must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing (Id. at 174).
2. Municipalities cannot foreclose the opportunity of low and moderate-income housing through zoning and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need (Id.).
3. It is required that, affirmatively, a zoning regulation, like any police power enactment, must promote public health, safety, morals or the general welfare. A zoning enactment must conform to the basic state constitutional requirements of substantive due process and equal protection of the laws (Id. at 175)
4. Each municipality must affirmatively plan and provide, by its land use regulations, the reasonable opportunity for an appropriate variety and choice of housing, including, low and moderate cost housing, to meet the needs, desires and resources of all categories of people who may desire to live within its boundaries. (Id. at 179)

This landmark case gave developing municipalities in New Jersey the constitutional duty to provide low to moderate-income housing, and served as the foundation of the Mount Laurel Doctrine.

In Summary, the court decided that every municipality must use its land to create a variety of housing options and to provide choices in living conditions. Towns cannot zone low-to moderate-income families out, and must provide opportunity for all through its land use regulations. Zoning laws in every town must adhere to the state constitution of due process and equal protection.

### ***MOUNT LAUREL II***

The court revisited the doctrine almost ten years later and further held that municipalities must satisfy their constitutional requirements to provide a realistic opportunity for its “fair share” of lower income housing in Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (N.J. 1983). By this time, the doctrine had become famous. The Township of Mount Laurel blatantly continued its exclusionary practices and the courts took notice of a widespread non-compliance with the constitutional mandate of its original opinion in the case. The court stated that it is,

*“more firmly committed to the original Mount Laurel doctrine than ever, and we are determined, within appropriate judicial bounds, to make it work. The obligation is to provide a realistic opportunity for housing, not litigation. We have learned from experience, however, that unless a strong judicial hand is used, Mount Laurel will not result in housing, but in paper, process, witnesses, trials and appeals. We intend by this decision to strengthen it, clarify it, and make it easier for public officials, including judges, to apply it”* (Id at 199).

It was now evident to the court that municipalities were ignoring the orders and that additional measures would need to be put into place. The court flexed its muscles to create a

process that resulted in more lawsuits from wealthy and powerful communities whom are against affordable housing regulations. The court was determined to provide a realistic opportunity to families in need and used its strong hand to strengthen the Mount Laurel doctrine and to make the process of implementing it an easy one for public officials.

The revisiting of Mount Laurel II was accompanied by five other cases, all involving questions arising from the Mount Laure doctrine, and addressed in the final ruling. The Court expanded on the core of the Mount Laurel Doctrine in this case, and held that:

5. A builder in New Jersey who finds it economically feasible to provide decent housing for lower income groups will no longer find it governmentally impossible. Builders may not be able to build just where they want, the specific location of such housing will of course continue to depend on sound municipal land use planning (Id. at 211).
6. A brief reminder of the judicial role in this sensitive area is appropriate, since powerful reasons suggest that the matter is better left to the Legislature. We act first and foremost because the Constitution of our State requires protection of the interests involved and because the Legislature has not protected them. We shall continue, until the Legislature acts, to do our best to uphold the constitutional obligation that underlies the Mount Laurel doctrine (Id. at 212).
7. Every municipality's land use regulations should provide a realistic opportunity for decent housing for at least some part of its resident poor who now occupy dilapidated housing (Id. at 214).
8. The existence of a municipal obligation to provide a realistic opportunity for a fair share of the region's present and prospective low and moderate income housing need will no

longer be determined by whether or not a municipality is “developing” and the fact that a municipality is fully developed does not eliminate this obligation (Id. at 215).

9. The municipal obligation may require more than the elimination of unnecessary cost-producing requirements and restrictions. Affirmative governmental devices should be used to make that opportunity realistic, including lower-income density bonuses and mandatory set-asides and attempts to obtain federal subsidies (Id. at 217)
10. Mobile homes may not be prohibited (Id at 217).
11. A municipality's fair share should include lower income regional housing need in such proportion as reflects consideration of all relevant factors, including the proportion of low and moderate income housing that make up the regional need (Id. at 217).
12. Builder's remedies will be afforded to plaintiffs in Mount Laurel litigation where appropriate, on a case-by-case basis (Id. at 218).
13. The determination of fair share takes the most time, produces the greatest variety of opinions, and engenders doubt as to the meaning and wisdom of Mount Laurel. Determination of fair share has required resolution of three separate issues: identifying the relevant region, determining its present and prospective housing needs, and allocating those needs to the municipality or municipalities involved (Id. at 248).

In summary, the legislature has failed to protect the state’s constitution so the court has continued to act to uphold the constitutional obligation until the legislature decides to act. The court acknowledges that these policies should be coming from the legislature, but refuses to sit idly by while residential and economic segregation through land use regulations occur. The court stated that land use planning should be inclusive to builders of low-income housing. If builders propose a housing development with as few as 20 percent of affordable units, and a



town turns down its proposal, the builder could ask a court to direct the project to be built over local objections. The court forewarned that determining fair share brings issues of identifying regions, determining present and prospective need, and allocating needs to municipalities.

A new pattern emerged from wealthy municipalities to sue to divert and discourage ah developers from purchasing land their towns.

## **THE FAIR HOUSING ACT**

In 1986, the New Jersey Legislature responded to Mount Laurel II by enacting the Fair Housing Act, set forth at N.J.S.A. 52:27D-301 et. seq. The Legislature determined that every municipality in a growth area has a constitutional obligation to provide a realistic opportunity for a fair share of its region's present and prospective needs for housing for low and moderate-income families, though their lands use regulations. The Legislature also 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 the act and not litigation. The Housing Act defined 'low income housing' and 'moderate income housing' as affordable housing according to federal Department of Housing and Urban Development (HUD) (N.J. Council on Affordable Housing, 2008).

Pursuant to N.J.S.A. 52:27D-309-310, each municipality was to prepare and file a "Housing Element" designed to achieve the goal of access to affordable housing to meet present and prospective housing needs, with particular attention to low and moderate income housing. The housing element was to contain at least: an inventory of the municipal housing stock; the number of affordable units in the municipality in need of rehabilitation; a projection of the municipal housing stock for the next six years (changed to ten years in 2002); an analysis of the

municipal demographics; a determination of municipal fair share of present and prospective need; and a consideration of lands appropriate for affordable housing. Computing municipal land adjustments were established in N.J.S.A 52:27D-310.1 and provided that no municipality shall be required to utilize land that is not considered vacant land for affordable housing.

N.J.S.A 52:27D-310.2 provided that nothing shall preclude a municipality from reserving three percent of its land area for conservation, park lands or open space and N.J.S.A 52:27D-311 set provisions of fair share by municipality. These provisions, in adopting a housing element, municipalities may provide for its fair share of low and moderate income housing by means of any technique or combination of techniques which provide a realistic opportunity for the provision of the fair share. Within these provisions, Regional Contribution Agreements were also permitted, but later abolished by P.L. 2008, c.46.

The Fair Housing Act also, at N.J.S.A 52:27D-320, created the New Jersey Affordable Housing Trust Fund to be used as a repository of all State funds appropriated for affordable housing purposes. The commissioner is able to award grants or loans from the fund for housing projects and programs in municipalities. Municipal development fees are deposited into the NJ Housing Trust Fund, and those monies are targeted to be spent in the municipality's region. The fund can be applied for rehabilitation of substandard housing units, creating low- to moderate income apartments, demolition and constructions of new housing that will be occupied by low- to moderate-income households, and other housing programs for low- to moderate-income families.

## **THE COUNCIL ON AFFORDABLE HOUSING**

The Fair Housing Act of 1985 established the Council on Affordable Housing (COAH) as an administrative mechanism to satisfy the constitutional obligation enunciated by the Supreme Court N.J.S.A. 52:27d-303. COAH duties were declared under N.J.S.A. 52:27d-307 to be:

1. Determine housing regions of the state.
2. Estimate the present and prospective need for low and moderate income housing at the state and regional levels.
3. Adopt criteria and guidelines for municipal determination of its present and prospective fair share of the housing need in a given region, which shall be computer for a ten-year period.
4. Municipal fair share shall be determined after crediting each current unit of low and moderate income housing of adequate standard.
5. Provide population and household projections for the state and housing regions.
6. The State Planning Commission, established under the act, shall assist the council annually with economic growth, development and decline projections for each housing region for ten years. The commission shall develop procedures for periodically adjusting regional need based upon the low and moderate income housing that is provided in the region through federal, state, municipal or private housing program.

The Council on Affordable Housing officially adopted six housing regions for the State of New Jersey, which consisted of all 21 counties. These regions were developed by the Rutgers University Center for Urban Policy and Research by evaluating a combination of variables such

as income, housing costs, vacant land and commuter patterns. Since 1988, the six housing regions have been modified and adjusted (New Jersey Office of State Planning, 1988).

**Table 1 COAH Six Housing Regions (Modified)**

- Region 1:** Bergen, Hudson, Passaic & Sussex
- Region 2:** Essex, Morris, Union, & Warren
- Region 3:** Hunterdon, Middlesex, & Somerset
- Region 4:** Mercer, Monmouth & Ocean
- Region 5:** Burlington, Camden & Gloucester
- Region 6:** Atlantic, Cape May, Cumberland & Salem

**Source: New Jersey Office of State Planning, 1988**

In determining housing regions, COAH divided the state by counties and designated the Northeast region as region 1 with Bergen, Hudson, Passaic and Sussex counties. The Northwest region, region 2, consists of Essex, Morris, Union and Warren counties. The West Central region, region 3, consists of Hunterdon, Middlesex, and Somerset counties. The East Central region, region 4, consists of Mercer, Monmouth, and Ocean counties. The Southwest region, region 5, consists of Burlington, Camden, and Gloucester counties. Region 6, the South Southwest region, consists of Atlantic, Cape May, Cumberland, and Salem counties (see attachment 1).

The Fair Housing Act was challenged in Hills Development Company v. The Township of Bernard in the County of Somerset, 103 N.J. 1 (1986) and the Superior Court, Law Division, determined that the Act was constitutional on its face. On appeal, the Supreme Court held that there is no time table implicit in municipality's obligation to provide fair share of lower income housing, COAH is empowered to decide if the plan of the municipality would satisfy its Mount Laurel obligation, and the Court reaffirmed its resolve to protect those of low and moderate

income means, but also indicated the legislative response might permit the court to withdraw from the field (Karrow, 2010).

In 1988, the Fair Share Act made the housing element a mandated part of municipal master plans. It is the responsibility of the Council on Affordable Housing (COAH) to provide each municipality in the State of New Jersey with a set of rules that must be used when estimating their fair share obligation. The COAH body of rules is very complex and extremely detailed with its provisions, therefore, an overview of the general meaning and procedures contained in the COAH rules are outlined in the next section (New Jersey Office of State Planning, 1988).

#### ***CALCULATING FIRST AND SECOND ROUND PROSPECTIVE NEED***

COAH First and Second Round methodologies were designed to meet the requirements of the Fair Housing Act. The first round covered the projected period of affordable housing need from July 1, 1987 through July 1, 1993 N.J.A.C. 5:92-1 et. seq. The second round was adopted in 1994 to cover the projected period of need from July 1, 1993 through July 1, 1999 N.J.A.C. 5:93-1 et seq. The methodologies determines prospective need in two phases; first by calculate regional prospective need, and second, allocating each region's prospective need to the municipalities within each region. COAH's estimated housing need was determined in the following table:

**Table 2 COAH Estimated Housing Need, 1987-1993**

**(Statewide and by Region)**

<b>Regions</b>	<b>Need (in units)</b>
1. Northeast	42,534
2. Northwest	28,773
3. West Central	14,720
4. East Central	23,247
5. Southwest	21,884
6. South Southwest	14,549
<b>Total New Jersey</b>	<b>145,707</b>

**Source: New Jersey Office of State Planning, 1988**

The housing need projections made by COAH are based on population projections that are derived from the Historical Migration Model which is developed by the New Jersey Department of Labor, Office of Demographic and Economic Analysis, and published in “Population Projections of New Jersey and Counties: 1990 to 2020”, November 1985 (New Jersey Office of State Planning, 1988). According to the Office of State Planning Housing Trends and Projections report, the present need of the nineteenth century was defined by COAH to total 145, 707 units.

On certification in the matter of the adoption of N.J.A.C. 5:96 and 5:97 by COAH, expert David Kinsey certified the first phase in determining the prospective need as follows:

1. Identify housing regions.
2. Project future need for housing by deciding on a population projection period. COAH’s past projections were based on population projections derived from the Historical Migration Model developed by the department of Labor, Office of Demographic and

Economic Analysis and published in November 1985. COAH's Second Round ended in 1999, and the Fair Housing Act was amended in 2008 to require a ten-year population projection.

3. Project population increase.
4. Identify the population living in group quarters, and remove the projected additional group home residents from the total projected population by region.
5. Calculate headship rates.
6. Project the increase in non-group quarter's population, multiplied by the headship rates to yield the projected increase in households by county.
7. Determine the projected increase in low and moderate-income households, on the basis of income.
8. Reallocate projected growth in low and moderate-income households and statewide basis, pool and assign the working age component of projected low and moderate-income household growth to regions where jobs previously increased.
9. Determine regional prospective need by using the data in step 8 to equal the gross regional prospective need for low and moderate-income housing.

David Kinsey certified the second phase in allocating municipal prospective need as follows:

1. Based on the physical capacity of the municipality's land and on their household incomes and based on the labor force, use three factors; change in equalized nonresidential valuation over previous decade as a proxy for changes in labor force, undeveloped land, and differences in household income. Calculate, for each allocation factor, the total regional value of each factor and each municipality's share of the regional total of the factor.

2. Exempt selected Urban Aid municipalities from any allocation of regional prospective need that has a housing deficiency, population density greater than 10,000 persons per square mile, or has a population density of 6,000 to 10,000 persons per square mile and less than five percent vacant land, non-farm parcels.
3. Calculate the equalized nonresidential valuation factor.
4. Calculate the undeveloped land factor by applying the weighing factors and sum the total weighted undeveloped land area by municipality and the by region.
5. Calculate differences in household income factor.
6. Distribute low and moderate income housing need by municipality by averaging the three individual allocation factors and multiplying the regional gross prospective need by municipality's average allocation factor to yield a municipality's fair share of regional gross prospective need.
7. Calculate the secondary sources of housing demand and supply.
8. Estimate the fileting affecting low and moderate-income households.
9. Estimate residential conversions affecting low and moderate-income households.
10. Estimate demolitions affecting low and moderate income households.
11. Calculate net prospective need by municipality.
12. Calculate the 20% cap ad if applicable, reduce the prospective need.

Both first and second round methodologies use the same approach; they require each municipality represent its current low and moderate income households living in deficient housing known as “indigenous need” and its “prospective need” that consists of its fair share of the region’s projected need for low- and moderate-income housing N.J.A.C. 5:92-2.2 and 2.4, 5:93-2.4, 5:92-2.6, 5:93-2.6.



COAH defines the first and second rounds as the ‘prior round’. The prior round obligation is defined as “the cumulative 1987-1999 fair share obligations” N.J.A.C.5:97-2.2(c). Basically, the prior round is the total obligations imposed on all municipalities for the first two rounds. Table 3 lists each regions obligation in units. The total New Jersey figure of 85,964 depicts the cumulative 1987-1999 fair share housing obligations (see Attachment 2).

**Table 3 COAH Prior Round Obligation 1987 -1999**

**(Statewide and by Region)**

<b>Regions</b>	<b>Obligation (in units)</b>
Region 1	12,471
Region 2	9,383
Region 3	13,323
Region 4	27,359
Region 5	14,056
Region 6	9,372
<b>Total New Jersey</b>	<b>85,964</b>

**Source: COAH Rehabilitation Share, Prior Round Obligation & Growth Projections effective 10/20/2008**

The following table shows the percentage differences in the estimated projections and the actual obligated units. COAH’s estimated housing need is based on population projections that are derived from the Historical Migration Model developed by the New Jersey Department of Labor, Office of Demographic and Economic Analysis.

**Table 4 COAH Estimated Need vs. Prior Round Obligation  
(Statewide and by Region)**

<b>Regions</b>	<b>Estimated Need (in units)</b>	<b>Obligation (in units)</b>	<b>Percent difference</b>
Region 1	42,534	12,471	29.0%
Region 2	28,773	9,383	33.0%
Region 3	14,720	13,323	91.0%
Region 4	23,247	27,359	118.0%
Region 5	21,884	14,056	64.0%
Region 6	14,549	9,372	63.0%
<b>Total New Jersey</b>	<b>145,707</b>	<b>85,964</b>	<b>69.0%</b>

**Source: New Jersey Office of State Planning, 1988 and COAH Rehabilitation Share, Prior Round Obligation & Growth Projections effective 10/20/2008**

The prior round obligation is the cumulative fair share obligations from 1987-1999. In region 2, Essex, Morris, Union, and Warren counties had an estimated need of 28,773 units but an obligated amount of only 9,383 units. The estimated need was overstated and differed from the obligated units by 33 percent. In contrast, Region 4, Mercer, Monmouth, and Ocean counties had an estimated need of 23,247 units but an increased obligation of 27,359 units. This 118 percent difference shows an underestimated need for region 4. There are differences in the estimated and obligated affordable housing need because COAH reduces estimated need at the request of municipalities for numerous reasons. COAH will allow reductions to its estimates of affordable units and reduce obligated amounts based on municipal household and employment projections, allocations over 1000 units, vacant land adjustments, designated Highland municipalities, and because urban aid towns are not obligated any need.

Region 3 shows an estimated need of 14,720 units and an obligated amount of 13,323 units. Hunterdon, Middlesex and Somerset counties in Region 3 had the closest estimated need and obligated responsibility, with a 91 percent similarity rate.

The following chart, Table 5, is the number of affordable units, by region, in COAH from 1987 through 1999. The Non-COAH Low Income Tax Credits refers to units that were awarded federal Low Income House Tax Credits (LIHTC). The federal LIHTC program units were not credited towards any municipal affordable housing plan N.J.A.C. 5:97 App. C, 40 N.J.A.C. 6078-79. That could be because the units were built in municipalities with no obligation to develop or contribute to a municipal affordable housing plan. The LIHTC units did, however, contribute to the statewide housing need. The Court & RCA column is the number of projects in municipalities that are, or have been, under COAH or Court jurisdiction. COAH acknowledges there may be additional municipalities under Court jurisdiction that COAH is not aware of included in the calculations. The COAH Units column shows the number of units built under COAH and the Low Income Units column shows the specific low-income units built (see Attachment 3).

**Table 5 All Units in COAH 1987-1999**

<b>(Statewide and by Region)</b>				
<b>(in units)</b>				
<b>Regions</b>	<b>Non-COAH Low Income Tax Credits</b>	<b>Court &amp; RCAs</b>	<b>COAH Units</b>	<b>COAH Low Income Units</b>
Region 1	1,315	1,087	2,890	2,402
Region 2	2,107	1,630	4,152	3,737
Region 3	48	1,272	1,327	1,320
Region 4	1,166	2,444	3,663	3,610
Region 5	465	1,870	2,371	2,335

Region 6	579	780	1,490	1,359
<b>Total New Jersey</b>	<b>5,680</b>	<b>9,083</b>	<b>15,893</b>	<b>14,763</b>

Source: COAH 1987-99 LIHTC and Balanced Housing Units 4/7/08; and LIHTC Projects – 1987 through 1999 4/4/08

Table 6 shows the percent of obligation met from each region and the total for the state, in units.

**Table 6 COAH Prior Round Obligation vs. Actual Units Build 1987-1999**

(Statewide and by Region)

<b>Regions</b>	<b>Obligation (in units)</b>	<b>Actual Units Built</b>	<b>Percent met</b>
Region 1	12,471	7,694	62.0%
Region 2	9,383	11,626	124.0%
Region 3	13,323	3,967	30.0%
Region 4	27,359	10,883	40.0%
Region 5	14,056	7,041	50.0%
Region 6	9,372	4,208	45.0%
<b>Total New Jersey</b>	<b>85,964</b>	<b>45,419</b>	<b>53.0%</b>

Source: COAH Rehabilitation Share, Prior Round Obligation & Growth Projections effective 10/20/2008 and COAH LIHTC Projects – 1987 through 1999 4/4/08

In region 2, Essex, Morris, Union, and Warren counties exceeded its obligation of units built. In contrast, Region 3, Hunterdon, Middlesex, and Somerset counties had an obligation of 13,323 units but only built 3,967 units, which was only 30 percent of its obligation set by COAH. The big picture shows that the state provided a little over 50 percent of the affordable housing obligations it set, from 1987 through 1999.

This chart puts into context the effectiveness of COAH’s methodologies in determining and administering affordable housing obligations. From 1987-1999 only 53 percent of the

obligated affordable housing units were actually built statewide. This chart further elaborates on COAH's failed methodologies. COAH estimated a 145,707 affordable housing need for the state, but only 30 percent, or 45,419, of the estimation was actually built in the 1987-1999 timespan.

### ***COAH THIRD ROUND RULE***

COAH's third round rules was due to begin in 1999 when the second round ended, however COAH missed the proposal date. Subsequently, COAH proposed the third round rules a whole four years later in October 2003 in 35 N.J.R. 463(a); 35 N.J.R. 4700(a). The third round rules were adopted by COAH on December 20, 2004, five years after its due date 36 N.J.R. 5798(a); 36 N.J.R. 5895(a).

The Builders Association appealed COAH's adoption of third-round rules for calculations of affordable housing needs and In re Adoption of N.J.A.C. 5:94, 390 N.J. Super 1 (App. Div. 2007). COAH's third round rules were designed to establish the responsibilities of municipalities to provide affordable housing during the period of 1999 to 2018. COAH adopted a different approach for determining fair share need. It proposed a 'growth share' methodology for assessing prospective need based on municipal growth. The Appellate Division invalidated COAH's growth share methodology, and the Supreme Court held that:

1. We conclude that the growth share methodology can be valid only if COAH has data from which it can reasonably conclude that the allocation formula can result in satisfaction of the statewide need (Id. at 54).
2. The current growth share approach violates both Mount Laurel doctrine and Fair Housing Act (Id. at 56).
3. The elimination of reallocated present need was sustained (Id. at 56).

4. The two second round rules recognize that certain types of inclusionary developments are more expensive and, therefore, warrant a set-aside of less than twenty percent (Id. at 66).

The court found that certain aspects of COAH's implementation of the growth share method was defective and remanded COAH to determine if there is sufficient vacant land to support growth, evaluate compensation to developers, and include job and housing growth from redeveloped and rehabilitation in its methodologies. The court also held that COAH vested towns with too much discretion over growth.

COAH's third round rules has been in courts since its adoption in 2004. This means that there has not been a methodology for municipalities to determine its fair share obligation for a decade now, and over \$160 million is sitting in trust funds awaiting rules to build affordable units. This decade-long battle has postponed the building of affordable housing for the poor, and COAH has failed to develop lawful third round rules to ensure every municipality provides its fair share of affordable housing. The Supreme Court ordered COAH to produce, approve, and propose third round rules by May 1, 2014. The state, under Governor Christie, has done everything it can to prevent compliance with the Fair Housing Act constitutional mandate of each municipality to provide its fair share of affordable housing. In June of 2011, Governor Christie unilaterally abolished COAH without legislative authorization. The court ruled that the Governor had overstepped his authority and did not have the power to eliminate COAH In re Plan for Abolition of the Council on Affordable Hous., 214 N.J. 444 (2013). Since that ruling, COAH has not presented third round rules or even met as a body to strategize a new methodology.

***INTERVIEW WITH ART BERNARD, FORMER EXECUTIVE DIRECTOR OF COAH***

Art Bernard, who for eight years served as Deputy and Executive Director of COAH in the Department of Community Affairs, was able to provide information in detail about COAH's role in carrying out the duties outlined by third round methodology. Bernard explained, in regard to the 1987-1993 projections, the state had not grown nearly as fast as projected. As a result, the prospective need for this time period was scaled back based on the growth that had actually occurred. COAH then projected a 1993-1999 prospective need based on the most recent projections. Bernard further explained what emerged was a cumulative 1987-1999 housing obligation that included:

1. Indigenous need based on the 1990 census;
2. Reallocated present need based on the 1990 census;
3. 1987-1993 prospective need based on actual growth; and
4. 1993-1999 projection of prospective need.

The regional need was assigned to municipalities based on regional shares of jobs, income and land in the growth areas. A continued modification of municipal housing obligations by demolitions, filtering and conversions took place (see Attachment 4).

Third round rule regulations were due by July of 1999, however, COAH failed to propose any regulations for the following three years. COAH made an attempt to extend a protection period for communities who were planning to implement approved plans, but attempted to do so without verifying whether municipalities were actually implementing approved plans. The Appellate Division intervened by denying COAH the ability to move forward until it established an ability to measure the success of the existing approved plans. COAH simultaneously

prepared third round rules and reviewed municipal plans to see if towns were compliant, and third round rules were finally adopted in 2004 (Bernard, 2014).

According to Bernard, COAH's adopted third round calculations of regional needs were found to be irrelevant. Instead of allocating the housing need to municipalities, the rule allowed COAH to come up with their own housing obligation. Bernard described the rule "growth share" rule, which directed each municipality to project its own household and employment growth. Nevertheless, the growth share rule provided little direction as to how to calculate household and employment growth from 2004-2014. COAH's last set of rules had been projected in 1999, leaving a five-year gap in which growth would have been measured. The 1999 rule required municipalities to build one affordable unit for every 10 housing units constructed and one unit for every 30 jobs projected in a community. The ratios later changed to become 1 for every 8 housing units, and 1 housing unit for every 25 jobs (Bernard, 2014).

Bernard explained how the Supreme Court provided some clarification on how the municipal fair share should be calculated. He explained this data could be found in the municipal status report from December 2003 but did not have access to the report. Bernard referenced that COAH chose the one way the court said could not be used and in addition, the rule making allowed municipalities to shift the Mount Laurel obligation to developers with no density bonus. Shift of the obligation to developers meant:

- Nonresidential developers could be required to build affordable housing to address the obligation generated by the jobs;
- Detached single family developers could be required to build single family detached homes within their subdivisions; and



- If they chose not to build, the municipality would not have any affordable housing obligation.

In an attempt to meet the directives of the Appellate Division, COAH hired consultants who in the end were able to make a distinction between projected growth share and actual growth share. Bernard explained, in essence, third round rules did not result in a hard number because their interpretations of the rules made clear that the actual number was based on actual growth (Bernard, 2014).

### ***REGIONAL CONTRIBUTION AGREEMENTS (RCAs)***

Enacted by the Senate and General Assembly of the State of New Jersey in P.L. 1985, Regional Contribution Agreements (RCAs) allowed for a municipality to transfer up to 50 percent of its fair share to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter. A municipality proposing to transfer to another municipality must provide the housing element and shall request the Council on Affordable Housing to determine a match with a municipality filing a statement of intent. The Council on Affordable Housing should approve regional Contributions and agreements must specify how the housing shall be provided by the second municipality and the amount of contributions to be made by the first municipality. The minimum amount required from a sending municipality for each unit transferred is \$35,000, and contributions may be prorated in municipal appropriations occurring over a period not to exceed ten years (NJ Legislature, 1985). The amount was later amended to allow units to sell for \$25,000.

The New Jersey Legislature enacted a loophole into the Fair Housing Act in 1985 that permitted wealthy communities to buy out of their fair share of affordable housing by paying poorer communities to take in more poor people. RCA's were repealed in 2008, but left behind

twenty-five years of misconduct. We examine three towns whom participated in these pervasive tactics: Medford, a wealthy town who sought to sell off 100 obligated units thru a \$3 Million RCA. Pennsauken rejected the agreement even though it was experiencing hard financial times. Medford ended up entering into a RCA agreement with another cash strapped town, Glassboro. RCAs are problematic because they end up concentrating more affordable housing in poorer towns, which in turns perpetuates housing segregation.

## **THE TOWNSHIP OF MEDFORD**

Medford became a township on March 1, 1847 after the first real estate developer, Mark Reeve, plotted much of the land that still defines the township today. After breaking away from Evesham, the first township meeting was held on March 9, 1847, and in 1889 Medford was connected to the Camden and Atlantic Railroad. Medford borders Evesham, Mount Laurel, Lumberton, Tabernacle, and Shamong Township, and is located in Burlington County (Medford Historic Society, 2013).

The Township of Medford is one of 56 New Jersey municipalities that is a part of our country's first National Reserve. The New Jersey Pinelands National Reserve works to preserve protect and enhance the natural and cultural resources of designated spaces (Pinelands Commission, 2007).

The partisan township is governed under the Faulkner Act Council-Manager form of government. The Council consists of five at-large elected officials that appoint the municipal manger, a municipal clerk, a tax assessor, zoning board, and other boards and commissions. The Council functions as a legislative, policy-making body, and the Council elects one of its members as Mayor. The town Manager is the CEO of the municipality and executes all laws and

ordinances of the municipality. The manager prepares the budget for council approval and appoints administrative heads and subordinate personnel.

***Medford Social Economic Status & Demographics***

According to the 2010 US Census, Medford has a total area of about 40 square miles and a population of 23,033; which is 19.4 percent of Burlington County’s total population of 448,734. The majority of the Township of Medford’s population, 94.3 percent, is white, with a median household income of \$109,971. The second largest racial group in Medford is Hispanic or Latino with 600 or 2.6 percent of town’s racial makeup. Black or African Americans make up 353, or 1.5 percent of Medford’s population.

**Table 7 The Township of Medford Population by Race**

<b>Population by Race</b>	
White	6,029,248
African American	1,204,826
Asian	725,726
American Indian and Alaska Native	29,026
Native Hawaiian and Pacific Islander	3,043
Other	559,722
Identified by two or more	240,303

**Source: U.S. Census Bureau, 2010 Census**

According to American Community Survey, 2008-2012, the median household income for Medford Township is \$109,971. Twenty-five percent of total estimated household income is between \$100k to \$149k. The second highest estimated income is \$200k plus (17%) and the third highest income ranked is at \$50k to \$74k (16.2%). The lowest household income listed is between \$10k to \$14k (0.6%) and the second lowest is less than \$10k (1.3%). (US Census Bureau, 2008-2012 ACS)

**Table 8 The Township of Medford Households Estimate**

Subject	Medford township, Burlington County, New Jersey	
	Households	
	Estimate	
Less than \$10,000		1.3%
\$10,000 to \$14,999		0.6%
\$15,000 to \$24,999		3.4%
\$25,000 to \$34,999		3.8%
\$35,000 to \$49,999		7.4%
\$50,000 to \$74,999		16.2%
\$75,000 to \$99,999		11.5%
\$100,000 to \$149,999		25.4%
\$150,000 to \$199,999		13.0%
\$200,000 or more		17.3%
Median income (dollars)		109,971

Source: US Census American Community Survey 2008-2012

***Medford Present Housing Need***

The present housing need for the township of Medford cannot be identified. There is no Housing Authority entity for the township and no Public Housing Authority 5-Year Plan available. Medford is known to have sold off their fair share housing obligations. The town does offer age restricted affordable housing, according to the townships homepage, through a program called ‘Triad Program’. This program is geared towards the senior population who are referred to as Active Adult Communities, in Medford. In order to be eligible for the age-restricted affordable housing units, applicants must meet certain income limits determined by COAH and at least one member of the household must be 55 years of age (Triad Housing, 2013).

According to Triad Housing income standards, a household maximum income for one person is \$45,640 and a two-person household is \$52,160. There are three properties identified

as Triad Developments in Medford; Heritage, Wingate and Wildflower, and these units are only for sale. The units will be deed restricted to ensure continued affordability and applicants will be required to undergo a credit check. Credit scores of 640 are expected with no recent judgments or bankruptcies in order to qualify for pre-approval. The sales prices of these units range from \$78,334 to \$122,397. Triad Associates has been designated as an Administrative Agent to qualify and assist homebuyers with the application process (Traid Housing, 2013).

### ***Medford Sources of Funding***

Data and research has not confirmed the receipt of any government funding for affordable housing in Medford Township because there is not any public affordable housing in the town. Medford does not participate in housing choice vouchers or public housing assistance programs. In interviewing the leading researcher in this field, David Rusk, he explained historically Medford has done everything in its power to avoid meeting fair share housing obligations and above all, not having any affordable housing built in the township (see Attachment 5). Rusk proclaimed the mission of an elected official in this town would be to prevent affordable housing from being built. This implicit mission, he believes, is shared with other elected officials in many maximum-and high-opportunity towns in New Jersey (Rusk, 2014).

According to the BONJ-NJRC Municipal Opportunity Index, Rusk detailed, Medford Township is one of eight maximum-opportunity towns in the Burlington-Camden-Gloucester County region. Medford had the second highest median family income (\$97,135), the third lowest family poverty rate (0.9%), the eighth highest property tax base per capita (\$150,383),

and the fourth lowest percentage of low-income students (2.8% “FARM”) in its elementary schools. Medford also ranked well as a job center with 8,848 total jobs, or 14<sup>th</sup> out of the 99 towns. Overall, Medford was the second highest-ranking town behind only Moorestown Township in the region (Rusk, 2014).

Rusk explained that according to a COAH report, as of 1999 Medford had an unmet obligation of 456 affordable units. He described how Medford had zero affordable units built within the township and how it sold off 26 percent of its Mount Laurel obligation through RCA contracts transferring 117 units, which includes the 100 units sent to Glassboro. According to the U.S. Census Bureau estimates, there was plenty of new housing built in Medford: 2,534 new units between 1985 and 2009 represented a 30 percent growth in the township’s housing stock but not one unit was affordable housing (Rusk, 2014).

## **THE BOROUGH OF GLASSBORO**

The township of Glassboro is located in Gloucester County, which is in the fifth housing region of New Jersey, as defined by COAH. The history of Glassboro was built on manufactured of glass. Solomon Stranger established the town in 1779 and it was first known as “Glass Works in the Wood”. The glass factory was the primary lucrative source of revenue for the town from the seventeenth century through the twentieth century. Glassboro’s revenue transitioned in the twentieth century as it shifted from the manufacturing of glass to the production of metal closures for glass and metal containers.

In 1923, Glassboro was acknowledged by the state as it became the New Jersey Normal School, later becoming the Glassboro State College, and currently known as Rowan University.

In 1995, the Glassboro Economic Development Corporation was developed to promote and preserve commercial business and a neighborhood preservation grant is aiding in the restoration of houses throughout the town (The Borough of Glassboro, 2013).

Glassboro is known to have participated in regional contribution agreements on the receiving end. According to scholar David Rusk, Glassboro is a low-opportunity town that has experienced no change, ranking 60<sup>th</sup> place on the Municipal Opportunity Index. The Boroughs FARM has been stable over the past fifteen years at 34 percent, and has had an insignificant increase in local job growth from 6,559 to 7,482 in the past two decades. Both factors are significant in the Municipal Opportunity Index (Rusk, 2014).

Rusk explained that leaders of Glassboro did not hesitate to accept Medford's "bribe" of \$3 million to take on 100 units of their affordable housing obligation. Due to the economic status of Glassboro, accepting the RCA increased their budget by \$3 million. David indicated that it is mandatory for RCA funds to be used for housing purposes at \$30K a unit (20%-25% of actual construction costs), however it would not have resulted in the construction of 100 new units of affordable housing in the borough. Nevertheless, the money may have been allocated to low-income homeowners for "major" renovations. Risk described how the allocating of money to low-income homeowners for major renovations was a favorable practice used by mayors in many RCA receiving cities such as Newark and Trenton. Lastly, Rusk explained that he does not believe Glassboro had any involvement in a "stable integration" campaign and definitely was not a part of the BONJ/NJRC'S anti-RCA campaign (Rusk, 2014).

### ***Glassboro Social Economic Status & Demographics***

Over the past ten years, the population in Glassboro grew at double the rate of the Gloucester County population (The Borough of Glassboro, 2013). According to US 2010 Census data, shown in table 9, the current total population in the Gloucester County is 288,288 and of that the total population of Glassboro borough is 18,579. The population of male residents is 9,153 (49.3%) and the female population makes up 9,462, or 50.7 percent. The highest population by race is white with a population of 13,423 (72.2%) and the second largest race is black with a population of 3,469 (18.7%). The population of individuals who are Hispanic or Latino is 1,378 (7.4%) and those who are Non-Hispanic or Latino are 17,201 (92.6%).)

**Table 9 The Borough of Glassboro Population By Race**

<b>Population by Race</b>	
White	13,423
African American	3,469
Asian	534
American Indian and Alaska Native	21
Native Hawaiian and Pacific Islander	10
Other	580
Identified by two or more	542

*Source: U.S. Census Bureau, 2010 Census.*

Total number of households within Glassboro is 6,158 and of that number, according to the 2010 census, there are 3,974 (64.5%) family households, 2,184 (35.5%) non-family households, 2,736 (44.4%) husband-wife families, 255 (4.1%) male no wife and 983 (16.0%) female no husband households. The census data also indicates the average household size of Glassboro, NJ is 2.66 and the average family size is 3.13. There are a total number of 6,590 housing units in Glassboro of which 6,158, or 93.4 percent of housing units are occupied.



Glassboro’s estimated median household income has varied from year to year. The median household income in Glassboro between the years of 2008-2012 is \$61,458. The salary range that has the highest estimated percentile of 19.8 is \$50,000 to \$74,999. The second highest salary listed is \$100,000-\$199,999 (16.4%) and the third is \$75,000 to \$99,999 (14.7%) in the Borough of Glassboro. The lowest household income in the town of Glassboro is listed as under \$10k (7.1%) and second lowest is \$10,000 to \$14,999 (6.5%). (US Census Bureau, 2008-2012 American Community Survey) See Figure2 The population of 16,117, for whom poverty status was determined, 2,833 (17.6%) fall below the poverty level. (quickfacts.census.gov) See Table 4

**Table 10 The Borough of Glassboro Household Estimate**

Subject	Glassboro borough, New Jersey	
	Households	
	Estimate	
Less than \$10,000		7.1%
\$10,000 to \$14,999		6.5%
\$15,000 to \$24,999		10.5%
\$25,000 to \$34,999		9.0%
\$35,000 to \$49,999		6.6%
\$50,000 to \$74,999		19.8%
\$75,000 to \$99,999		14.7%
\$100,000 to \$149,999		16.4%
\$150,000 to \$199,999		7.1%
\$200,000 or more		2.2%
Median income (dollars)		61,458

*Source: US Census American Community Survey 2008-2012.*

***Glassboro Present Affordable Housing Need***

Housing and Urban Development (HUD) determines the need for affordable housing as families who pay more than 30 percent of their income for housing are considered to be cost burdened and may have difficulty affording necessities such as food, clothing, transportation and

medical care. Nationwide there is an estimated 12 million renter and homeowner households who pay more than 50 percent of their annual incomes for housing costs.

The Housing Authority of Glassboro set goals and objectives to achieve their housing obligations and allocates affordable housing units in accordance with rules and regulations set by the COAH. Glassboro Housing Authority's mission statement is as follows:

*“The Mission of The Housing Authority of the Borough of Glassboro is to promote adequate and affordable housing, economic opportunity, and a suitable living environment free from discrimination. The Housing Authority shall service the housing and social needs of lower income, elderly, handicapped, and family households living and working in its jurisdiction.*

*Rental assistance opportunities shall be provided to qualified applicants and families. Rental assistance shall be provided to those otherwise qualified and selected families on public housing owned, tenant-lease-purchase housing, or leased housing that shall be decent, safe, and sanitary.*

*The Housing Authority shall promote independent living among the elderly and the disabled using federal, state, local, and resident contributions.*

*The Housing Authority of the Borough of Glassboro will promote the financial independence and general well-being of all its residents through programs offering educational activities, referral services, family self-sufficiency, drug abuse elimination, and housing counseling.*

*The Housing Authority will be the leader in making excellent affordable housing available for moderate-income persons through the expansion of its homeownership activities.*

*The Housing Authority of the Borough of Glassboro will administer its business affairs in a professional and fiscally prudent manner consistent with the highest ethical standards.”*

The Housing Authority of Glassboro's goals and objectives included:

1. Increase the availability of decent, safe and affordable housing.
2. Improve community quality of life and economic vitality.
3. Ensure Equal Opportunity in Housing for all Americans.

4. Manage the Glassboro Housing Authority's existing Public Housing Program in an efficient and effective manner.
5. Improve existing site conditions.
6. Promote resident participation through effective resident organization partnerships and good neighbor lease enforcement.
7. Prepare and Submit Demolition/Disposition Applications for Ellis Manor and Whitney A Developments.

The housing authority established performance measures for two of their goals and objectives. The performance measure that will be used to manage Glassboro's existing Public Housing Program is, "High Performer" scores in PHAS; an acceptance rate of 80 percent for new applicants offered a unit; and continued improvement in physical conditions at all sites including further changes in Ellis Manor development. Promoting resident participation will be measured by, resident councils that meet on a regular basis and will consistently work with the Glassboro HA regarding problems identification and pursuing positive approaches to addressing community issues (Glassboro Housing Authority).

The present affordable housing need for Glassboro was documented in the Public Housing Authority (PHA) 5-Year and Annual Plan in January of 2010. The number of public housing units in January 2010 was listed at 179. According to the five-year plan, there were 234 families on the Public Housing waiting list with an annual turnover of 20. Families with extremely low-moderate income ( $\leq 30\%$  AMI), which represented 90% of the waiting list. There were 19 families identified as having very low-income ( $>30\%$  but  $\leq 50\%$  AMI), which represented 7% of the waiting list. Remaining low-income families on the list represented ( $>50\%$  but  $<80\%$  AMI) which totaled 3%. Sixty-six percent of the lists were elderly families and 34% were

families with children. Data further shows the highest monthly housing cost to be 1,000 to 1,499 (21.5%) of total occupied housing units in Glassboro (US Department of Housing and Urban Development, 2008).

The Family waiting list was closed in early 2014, and will not reopen until the current list is exhausted. As for the Section 8 based tenant waiting list, it has been closed for over twelve months. The Elderly/Disabled list is open as of the date of the report (US Department of Housing and Urban Development, 2008).

In efforts to address housing needs, Glassboro comprised a list of strategies that would assist families in its jurisdiction and on the waiting list:

1. Increase the number of affordable housing units by applying for additional Section 8 vouchers should they become available and leveraging affordable housing resources in the community through the creation of mixed- income housing;
2. Adopt rent policies to support and encourage work;
3. Apply for special- purpose vouchers targeted to the elderly and/or disabled should they become available;
4. Seek/develop additional housing targeted to the elderly and disabled through mixed- financing or other means;
5. Carry out the modifications needed in public housing based on the section 504 Needs Assessment for Public Housing;
6. Affirmatively market local non-profit agencies that assist families with disabilities;
7. Counsel with Section 8 tenants as to location of units outside of areas of poverty or minority concentration (US Department of Housing and Urban Development, 2008).

### ***Glassboro Sources of Funding***

Glassboro Housing Authority's funding is provided the Capital Fund Financing Program (CFFP). It is required for public housing authorities, which are "qualified" to submit a Capital Fund Program Annual Statement/Performance and Evaluation Report for each current and open CFP & CFFP financing. The report for Glassboro contained information for the fiscal years of 2011-2014; the town has received over one million dollars in funding each year. The original public housing 5-Year Plan Budget Report for Glassboro Housing Authority shows an appropriation of \$1,033,000 for fiscal year 2011 and a significant decrease of \$30,000 over the next three years. The itemized statement lists the annual costs for both physical and management improvements, PHA-Wide non-dwelling structures and equipment, administration, other, operations, demolition, development and Capital Fund Financing Debt Service.

A public housing plan update in section 6.0 of the PHA 5year Plan indicates the plan may have been revised since its last annual submission added a Domestic Violence Policy in accordance with the Violence against Women Act. It mentioned no other updated and none GHA's short or long-term outcomes (see Attachment 6).

### **THE TOWNSHIP OF PENSAUKEN**

Pennsauken is derived from the name "Pindasenaken", a Lenni-Lenape Indian word that means "Tobacco Couch." The Township of Pennsauken was officially created in 1892 and was home to the Lenni-Lenape Indians. President Cleveland Glover passed Law for the construction of the Delaware Bridge in 1984. Presently, Pennsauken is known to be a premier location in the Delaware Valley because of its accessibility to bridges and highways (Pennsauken Township, 2006).

The township has a Planning Board with a primary duty to review and approve the Master Plan of the Township. The Board is made up of nine members; seven regular and two alternate members, who oversee the implementation of policy through site plan reviews and subdivision ordinances. The ordinances are developed and used to set ground rules that all applicants must meet. If the applicant meets all requirements of the ordinance, the board would then approve the application (Pensauken Township, 2006).

The town also has a Housing Authority (HA), which has a Housing Choice Voucher Program that is subsidized by the US Department of Housing and Urban Development (HUD). Pensauken's Housing Authority governs seventy-six tenant based Housing Choice Vouchers (HCV) for families who are income eligible, senior citizens, and disabled households. According to Pensauken's housing authority, the waiting list for Housing Choice Vouchers contains one hundred families and is currently closed. The Township does not own or operate any public housing programs (Pensauken Township, 2006).

Pensauken declined the opportunity to participate in a regional contribution agreement. During the interview with David Rusk, he gave provided insight on the town and why it chose not to participate in RCAs. Rusk described Pensauken as a minimum-opportunity town that had been sinking fast in recent decades. He explained how in 2009, out of 99 towns (including Camden City), Pensauken ranked 71<sup>st</sup> in median income, 72<sup>nd</sup> in family poverty rate, 91<sup>st</sup> in FARM, and 60<sup>th</sup> in property tax per capita. Rusk further explained that Pensauken's "saving grace" was that it was the three-county area's 6<sup>th</sup> largest job center with 23,196 jobs in 2008. Pensauken lost 12.8 percent of since 1990, and is ranked 78<sup>th</sup> on the opportunity index (Rusk, 2014).

Rusk described Pennsauken’s leadership as being acutely aware of the towns decline. He reported that the town was a participant in a very active “stable integration” program to re-attract new white, middle class families. The town wanted to avoid taking on RCA’s from the town of Medford, as it would be counterproductive to Pennsauken’s long-term health. David illustrated this point in a December 2007 exhibit of testimony to the Assembly Housing & Local Government Committee:

**Table 11 “RCAs also Lead to Concentrated Poverty,” Household poverty rates in 1990s.**

<u>MOI category*</u>	<u>up</u>	<u>down</u>	<u>pct</u>
cities - RCAs	6	1	+2.1%
cities - no RCAs	3	2	-0.3%
min. opp. towns - RCAs	13	2	+1.7%
min. opp. towns - no RCAs	43	28	+0.6%
low opp. towns - RCAs	8	0	+2.2%
low opp. towns – no RCAs	65	43	+0.4%
med. opp. town - RCAs	1	0	+0.6%

**Source: David Rusk, 2014**

According to Rusk, the table shows that municipalities who had accepted RCA’s had a significant increase in poverty during the 1990s than those municipalities who did not accept RCAs (see Attachment 5).

***Pennsauken Social Economic Status & Demographics***

Pennsauken is located in Camden County, which is in New Jersey’s 5<sup>th</sup> housing region, as established by COAH. The total population recorded in the 2010 Census Demographic Profile is 35,885. Population by race shows that 47.6 percent of the population is White, 26.9 percent is Black or African American, American and Alaska Native is 0.6 percent, Asians make up 7.7

percent, some other races is 13.6 percent and two or more make up the remaining 3.6 percent of the population.

**Table 12 The Township of Pennsauken Population by Race.**

Population by Race	
White	17,081
African American	9,644
Asian	2,770
American Indian and Alaska Native	210
Native Hawaiian and Pacific Islander	15
Other	4,877
Identified by two or more	1,288

*Source: U.S. Census Bureau, 2010 Census.*

The Pennsauken Township household demographics comprises of the total number of households and household types. According to the 2010 Census, Pennsauken had a total of 12,633 households; of that total 71.2 percent are family households, 28.8 percent nonfamily households, 13.1 percent male and 15.7 percent female households. The number of households that are husband-wife families is 5,925 and the households with no husband present are 2,319.

**Table 13 The Township of Pennsauken Households Estimate**

Subject	Pennsauken township, Camden County, New Jersey	
	Households	
	Estimate	
Less than \$10,000	3.8%	
\$10,000 to \$14,999	4.6%	
\$15,000 to \$24,999	8.2%	
\$25,000 to \$34,999	11.0%	
\$35,000 to \$49,999	13.7%	
\$50,000 to \$74,999	19.9%	
\$75,000 to \$99,999	15.4%	
\$100,000 to \$149,999	14.8%	
\$150,000 to \$199,999	5.2%	
\$200,000 or more	3.4%	
Median income (dollars)	58,587	

*Source: US Census American Community Survey 2008-2012*



The median household income for Pennsauken Township was listed at \$58,587 as per the 2008-2012 American Community Survey. The salary range that has the highest estimated percentile of 19.9% is \$50,000 to \$74,999. The second highest salary listed is \$75,000 to \$99,999 (15.4%) and the third is \$100,000 to \$149,999 (14.8%) in the Township of Pennsauken. The lowest household income in the town is listed at under \$10,000 (3.8%) and second lowest is \$10,000 to \$14,999 (4.6%).

### ***Pennsauken Present Affordable Housing Need***

The Public Housing Authority 5-Year and Annual Plan for Pennsauken Township shows they have 76 housing choice voucher units and no public housing units. This report indicates the housing needs are based on information provided by the Consolidated Plan, HUD, and other general data. The HVC waiting list has a total of eighty-seven families with an annual turnover of 5. The percentile of families whose income is deemed to be extremely low  $\leq 30\%$  AMI is 59 percent, very low income of  $>30\%$  but  $\leq 50\%$  AMI is 26 percent, and low income  $>50\%$  but  $<80\%$  AMI is 2 percent. There are 66 families with children, 7 elderly families, and 18 families with disabilities. The number of families on the list by race is 62 Black, 13 White, and 12 Hispanic (US Department of Housing and Urban Development, 2008).

Pennsauken Housing Authority's strategy for addressing housing needs is to apply for additional housing choice vouchers and issue them as they become available; to alleviate the wait time for households already on the list. The applicants who receive a voucher are assisted by the housing authority to locate housing and they also provide applicants with rental property listings. On the contrary, the PHA report states the waiting list has been closed since 2001 and this report was issued in January 2010 (US Department of Housing and Urban Development, 2008).

The Mission of Pennsauken Housing Authority reads:

“The Mission of the PHA is the same as that of the Department of Housing & Urban Development: To provide adequate and affordable housing, economic opportunity, and a suitable living environment free from discrimination.”

Pennsauken’s Public Housing Authority Goals and Objectives are:

- To maintain its current SEMAP rating as a high performer, which is an indicator of how effective, the Authority is in the administration of the HCV Program?
- Expand the supply of assisted housing.
- Improve the quality of assisted housing.
- Increase assisted house choices.
- Promote self-sufficiency of families and individuals.
- Ensure equal opportunity and affirmatively further fair housing. (PHA 5-Year Plan)

Other goals and objectives for Pennsauken’s Public Housing Authority are to explore the Homeownership Voucher Program as previously submitted in their 5-Year Plan. However at this time the Housing Authority decided not to go forward with the Homeownership Housing Program. The explanation given by the Housing Authority was its incapacity to operate a successful program at that time (see attachment 7).

### ***Pennsauken Sources of Funding***

Pennsauken Housing Authority only administers housing choice vouchers through the Department of Housing and Urban Development. HUD provides funding to allow Public Housing Authority’s to make housing assistance payments on behalf of low-income families. HUD pays PHAs a fee for the costs of administering the program and when additional funds become available HUD “invites” PHA’s to submit applications for funds for the additional housing vouchers. Once applications for additional housing vouchers are reviewed and approved HUD awards to selected PHAs on competitive bases The PHA 5-Year & Annual Plan for

Pennsauken did not contain the breakdown of funding received from HUD. The report did indicate that Pennsauken Housing Authority does receive any funding from the Capital Fund Financing Program (US Department of Housing and Urban Development, 2008).

### **COMPARISON OF MEDFORD, GLASSBORO, & PENNSAUKEN**

The three towns that were closely analyzed for their roles in implementing their fair share of affordable housing and their association with regional contribution agreements were Glassboro Borough, Medford and Pennsauken Townships. All three towns are located in Camden, Burlington and Gloucester County, in COAH region 5. Although each town is in the same region there are significant differences in how they meet or their fair share municipal obligations. Referring back to table four, region five had an estimated need of 21,884 affordable housing units and a municipal obligation of 14,056 units to meet. That is a difference of 64 percent of the housing units estimated need and the obligation required for that region. The total number of actual units built in region five post prior round obligations is 7, 041, which means 50 percent of the prior rounds obligation were met (see Attachment 2).

Medford's top population by race is white 94.3%, Glassboro's is 72.2% white and Pennsauken's is 47.6% white. It is clear that the township of Medford is one of the wealthier towns in the state of New Jersey with a median household income of \$109,971. Glassboro's median household income is \$61,458 and Pennsauken's is \$75,000. With an average number of households in Medford Township making above one hundred thousand dollars annually, there is an obvious underlying reason for this particular town to strategically oppose meeting its fair share obligations. These figures show a correlation to the number of affordable housing units supplied by a municipality to the municipal median household income.

Medford leads Glassboro and Pennsauken in its number 2 ranking on the Municipal Opportunity Index. Medford has done everything in its power to avoid meeting its fair share housing obligations; including suing the state in efforts to evade affordable housing obligations. Glassboro is a low-opportunity town that has experienced no change, and ranks 60<sup>th</sup> on the Municipal Opportunity Index. Out of the three towns, Glassboro has accepted RCA's, in particular, from the township of Medford. It appears Glassboro needed to make up for its budgetary shortfall due to an insignificant increase in local job growth in the past two decades.

Pennsauken is one of the three municipalities to decline the opportunity to participate in RCA's. Pennsauken has the second highest median household income in comparison to the other two towns. Pennsauken has one of the largest job centers in New Jersey, which are often the determining factor in its ranking on the opportunity index. Pennsauken's motive for not getting involved in RCA agreements was to avoid problems that would be counterproductive to the long-term health of its town.

We analyzed how the towns who participated in RCAs implemented their fair share of affordable housing and found that Medford's prior round obligation was to build 418 units and COAH determined Medford has a projected housing need of 852 units. Medford's third round growth share was projected to be 271 units, but if you add Medford's prior round obligation with its current growth share obligation, you will see that the obligated amount is only 689, when there is an estimated need of 852 units. Glassboro, on the other hand, had 112 units remaining from its prior round obligation and COAH projected a growth share of 18 units. Glassboro's estimated need totals 90 units but the town has been obligated to build 130 units! That is 40 units over its projected need. COAH got it wrong again. Lastly, Pennsauken has a prior round need of zero because it fulfilled all of its affordable housing obligations in the prior round. COAH

projected Pennsauken affordable housing need to be 539 but obligated a growth share amount of 358 units, which is 181 less than the estimated need (see attachment

## **ANALYSIS**

This section will assess and bring together the findings from this chapter. In order to answer the guiding question of this capstone, “does the New Jersey Fair Housing Act, through the Council on Affordable Housing, effectively allocate the statewide need for affordable housing through its methodologies to achieve the state’s goal for an equitable distribution of affordable housing,” we will analyze our findings.

It is the constitutional duty for every municipality in the State of New Jersey to provide a fair share of regional housing need. To avoid residential and economic segregation, every municipality must use its land and zoning regulations to provide a variety of housing options. COAH is responsible for ensuring municipalities are inclusive through its guidelines for municipal determination of present and prospective fair share housing need within its region. COAH's methodologies provide each municipality a set of rules to be used when estimating fair share obligation. The prior round rules were examined to show whether or not the methodology was successful in actually providing affordable units, and they reveal overstated projections and unmet goals in producing affordable units. This section is dedicated to an analysis of COAH’s methodologies and regulations.

In determining present and prospective need and calculating municipal fair share, COAH’s prior round methodologies were complex with an understated projected need. The method for determining prospective need has resulted in large estimates because COAH projects housing needs in ten-year increments. The errors in computing and allocating need was made

evident in the 2007 Appellate Division decision where COAH was required to recalculate both prior round and third round need. The court found it “inexplicable” that there was a greater need then projected in the prior round numbers. In the 1994 adopted second round rules, COAH reduced first round prospective need because New Jersey experienced less household growth then projected, which resulted in a reduction in municipal obligations. The prior round estimates show a 69 percent difference in the statewide projected need versus the obligated amount. These discrepancies exist because COAH allow municipalities to reduce their projected need for a variety of reason. This tactic is counterproductive to ensuring municipalities provide their fair share of affordable housing.

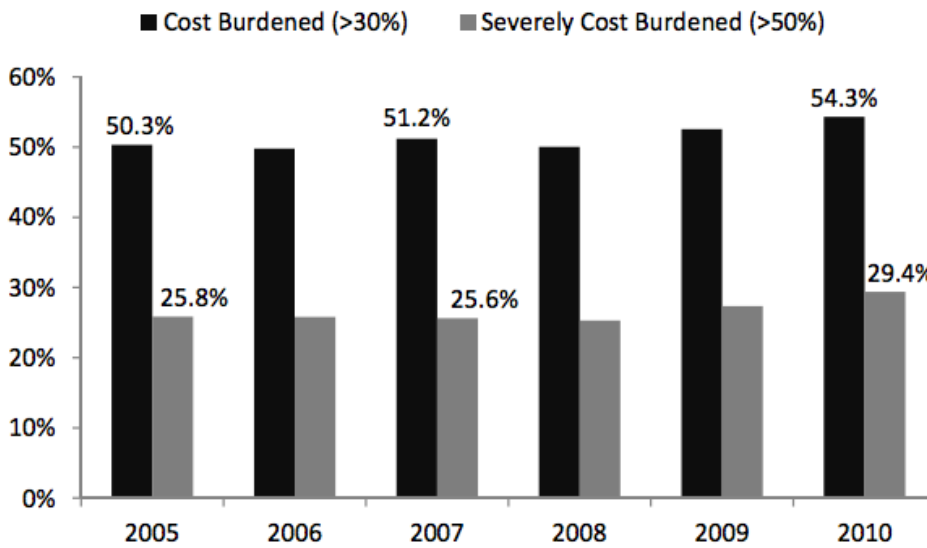
It is very clear that there is a deficit of affordable and available units in the state of New Jersey. Data recently released by the National Low Income Housing Coalition (NLIHC) paints a clear picture of the need across the state. The study also shows a direct correlation in the amount of income in a municipality and the number of affordable units. To assess New Jersey’s present affordable housing need, COAH should focus on the key indicators such as housing problems for renters, vacancy rates, affordable units, and affordable and available housing units. The data for each of these categories is available to COAH from the Department of Housing and Urban Development (HUD) special tabulations of the decennial census data called comprehensive housing affordability strategies (CHAS). The present need can be determined through CHAS as it calculates the numbers of renter households by HUD-adjusted area median family income (HAMFI), which assumes that gross rents that are 30 percent or less of income are affordable.

The cost of living in New Jersey is high and there are large wage variations between New Jersey Counties. A study conducted by Legal Services of New Jersey highlights how the cost of housing in New Jersey is overwhelming for low- to moderate-income residents who must devote

large fractions of their income to meet their housing needs. The study shows the housing need faced by almost 550,000 renter households in NJ are paying more than 30 percent of their household income on rent in 2010 (Legal Services of New Jersey, 2012).

**Table 14 Legal Services of New Jersey, 2102**

**Figure 2.38: Gross Rent as a Percentage of Household Income in New Jersey, 2005 to 2010**



**Source:** U.S. Census Bureau, American Community Survey: 2005 to 2010

The above chart from Legal Services of New Jersey poverty report shows the share of cost-burdened renter households has maintained a steady increase over a period of time measured by COAH’s third round rules (see attachment 8). Housing is deemed affordable if costs are no more than 30% of household income for households earning 80% or less of the region’s media income. Housing cost burden means the households pay over 30 percent of its income on housing and utilities and 31 percent to 50 percent is considered a moderate housing cost burden. A housing wage is the amount a full time (40 hour work week) worker must earn per hour in order to afford a two-bedroom unit at the area’s fair market rent.

About 35 percent of households in New Jersey are renters and 25 percent are of extremely low income. Based on data from 2007-2011 US Census American Community Survey (ACS), fair market rent (FMR) in New Jersey for a two-bedroom apartment is \$1,296. To afford this rent without paying 30 percent of income on housing, a household must earn an annual income of \$51,838. That annual income translates to a \$4,320 monthly income and a \$24.92 hourly wage. In New Jersey, a minimum wage worker earns an hourly wage of \$8.25. This minimum wage household must work 121 hours per week, or house three minimum wage workers in order to make ends meet in a two-bedroom apartment (National Low Income Housing Coalition, 2014).

More than half of renters spend 30 percent or more of household income on housing. There is a large gap between fair market rent and affordable rent in the state, and when housing costs consume more than half of household income, low-income families are at risk of becoming homeless (National Low Income Housing Coalition, 2014).

The National Low Income Housing Coalition reported an 188,974 shortage of units affordable and available for extremely low-income residents in the state. The following chart helps visualize the monthly housing affordability by county:



**Table 15 New Jersey Hourly Wage Necessary to Afford 2 Bedrooms at Fair Market Rent vs. Mean Hourly Renter Wage**

COUNTIES	Percent of Renter Households (2008-2012)	2 BR at Fair Market Rent (FMR)	Hourly Wage Necessary to afford 2 BR at FMR	Estimated Mean Hourly Renter Wage	Full-Time Minimum Wage Jobs needed to afford 2 BR FMR
Bergen	34%	\$ 1,402.00	\$ 26.96	\$ 18.20	1.20
Hudson	67%	\$ 1,291.00	\$ 24.83	\$ 26.70	0.90
Passaic	45%	\$ 1,402.00	\$ 26.96	\$ 12.89	2.10
Sussex	15%	\$ 1,265.00	\$ 24.33	\$ 8.28	2.90
<b>Region 1 Average</b>	<b>40%</b>	<b>\$ 1,340.00</b>	<b>\$ 25.77</b>	<b>\$ 16.52</b>	<b>1.78</b>
Essex	54%	\$ 1,265.00	\$ 24.33	\$ 18.01	1.40
Morris	24%	\$ 1,265.00	\$ 24.33	\$ 20.34	1.20
Union	39%	\$ 1,265.00	\$ 24.33	\$ 17.35	1.40
Warren	25%	\$ 1,171.00	\$ 22.52	\$ 11.91	1.90
<b>Region 2 Average</b>	<b>36%</b>	<b>\$ 1,241.50</b>	<b>\$ 23.88</b>	<b>\$ 16.90</b>	<b>1.48</b>
Hunterdon	67%	\$ 1,458.00	\$ 28.04	\$ 12.05	2.30
Middlesex	33%	\$ 1,458.00	\$ 28.04	\$ 18.84	1.50
Somerset	21%	\$ 1,458.00	\$ 28.04	\$ 21.29	1.30
<b>Region 3 Average</b>	<b>40%</b>	<b>\$ 1,458.00</b>	<b>\$ 28.04</b>	<b>\$ 17.39</b>	<b>1.70</b>
Mercer	34%	\$ 1,225.00	\$ 24.83	\$ 26.70	0.90
Monmouth	24%	\$ 1,345.00	\$ 25.87	\$ 10.58	2.40
Ocean	18%	\$ 1,345.00	\$ 25.87	\$ 10.72	2.40
<b>Region 4 Average</b>	<b>25%</b>	<b>\$ 53,800.00</b>	<b>\$ 25.52</b>	<b>\$ 16.00</b>	<b>1.90</b>
Burlington	22%	\$ 1,135.00	\$ 21.83	\$ 14.31	1.50
Camden	31%	\$ 1,135.00	\$ 21.83	\$ 11.57	1.90
Gloucester	19%	\$ 1,135.00	\$ 21.83	\$ 8.54	2.60
<b>Region 5 Average</b>	<b>24%</b>	<b>\$ 1,135.00</b>	<b>\$ 21.83</b>	<b>\$ 11.47</b>	<b>2.00</b>
Atlantic	30%	\$ 1,139.00	\$ 21.90	\$ 10.13	2.20
Cape May	26%	\$ 1,025.00	\$ 19.71	\$ 9.16	2.20
Cumberland	32%	\$ 1,071.00	\$ 20.60	\$ 10.23	2.00
Salem	28%	\$ 1,135.00	\$ 21.83	\$ 12.26	1.80
<b>Region 6 Average</b>	<b>29%</b>	<b>\$ 1,092.50</b>	<b>\$ 21.01</b>	<b>\$ 10.45</b>	<b>2.05</b>

Source: National Low Income Housing Coalition Out of Reach 2014

The chart shows the percentage of renter households and the fair market rent for each county in New Jersey. The hourly wage necessary to afford a two-bedroom at fair market rent represents the hourly wage that a household must earn working 40 hours a week, 52 weeks a year and the estimated mean hourly renter wage represents the average renter wage in the county. In Gloucester County, a renter household would need to earn at least \$21.83 in order to afford a two-bedroom unit at fair market rent, yet the county's estimated mean hourly renter wage is only \$8.54. That means that a renter household needs 2.6 full-time jobs in order to afford a two-bedroom at a fair market rent in the county. Those figures help explain why the renter households make up only 19 percent, or 20,142, of all households in Gloucester County. It is simply unaffordable to live there if you are a low- to moderate-income household. Region 5 has the lowest renter population in the state, second lowest average renter wage, and requires the highest number of full-time employment for survival.

Since Mount Laurel II, COAH's prior round obligations from 1987-1999 has encouraged 45,419 affordable units to be built or to receive rehabilitation in the state of New Jersey. This number is impressive, but makes up only a very small percentage of the total new housing built in the state during that time. For prior round rules, COAH's methodology in determining present and prospective need resulted in underestimated and under allocated need. The courts invalidated the methodology for third round obligation and COAH has not announced any new methods.

The analysis will conclude with an assessment of COAH's regulatory policies. The history of COAH shows a lack of compliance from municipalities. As of 2009, the number of

New Jersey towns to file an affordable housing element plan with COAH, or the court, is 289 of the 566 municipalities in the state.

**Table 16 Summary of Fair Share Plans Submitted to COAH & Courts**

<b>Category</b>	<b>Number of Municipalities</b>	<b>Percent of Need Allocated by COAH</b>	<b>Percent of Need Projected to be Met</b>
Plans Filed with Court	289	52%	37%
Towns with Court extensions on filing	27	7%	5%
Urban aid towns not filing	41	12%	0%
Highlands towns allowed not to file by COAH-Highlands MOU	53	8%	0%
Towns who have not filed	156	11%	0%
<b>Total</b>	<b>566</b>	<b>90%</b>	<b>42%</b>

**Source: COAH Third Round obligations chart**

For COAH to affirmatively carry out its regulatory duties, compliance cannot be voluntary. There are 250 towns who have not filed plans, of those 41 are designated as urban aid towns and do not have a COAH obligation, 53 are highlands towns who entered into a understanding between The Highlands Water Protection and Planning Council and COAH that exempts them from filing, and 156 municipalities simply decided not to file. The percent of need allocated by COAH adds up to 90 percent because COAH left 10% of need unallocated to any municipality. COAH projected a lower percentage of need estimated to be met because of vacant land adjustments, bonuses, unbuilt prior round developments and a 1000 unit limit of obligation. COAH used the 289 provided plans from municipalities to propose a projected need of 42,596 units from the 115,666 projected affordable housing need (see attachment 9).

The 27 towns with court extensions on filing that have not submitted a plan has a projected growth share of 8,713 affordable housing units. The 53 Highland Towns claiming Highland exemption has a total projected growth share of 8,923 affordable housing units. The projected growth share in the non-participating urban-aid municipalities is 13,414 affordable housing units and the projected growth share adjustment requested resulted in the reduction of 8,122 obligated affordable housing units. The total reductions from unbuilt prior round developments statewide are 3,988. These numbers are troubling and they all resulted in the reduction of affordable housing obligations.

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## CONCLUSIONS & RECOMMENDATIONS

### CONCLUSION

The availability of affordable housing is a national issue that is critical to the quality of life for low-income families. This research provided an analysis of New Jersey's Fair Housing Act and whether it effectively achieves the state's goal of an equitable distribution of affordable housing. There is a growing gap between the number of low- to moderate-income households and the ability to attain affordable housing. The lack of affordable housing has led to high rent burdens, overcrowding, substandard housing and insecurity in economically distressed public housing communities. Having suitable and stable housing can positively improve health, educations, and economic outcome for many families.

The logic model described the resources needed to provide affordable housing as funding from state, local, and federal governments, by in from interest groups, community and elected officials, an established need, and public/private partnerships. The result of those inputs will result in legislation to appropriate funding, incentives and regulatory strategies, information sharing, coordination and the convening of stakeholders.

The methodology for determining whether the Fair Housing Act effectively achieved its goal was simple, it asked:

WHAT: Evaluate methodologies used to achieve state's goal

The extent to which the goals were met

The distribution of affordable housing

The effectiveness of the regulations and methodologies

WHY: To measure the success of the FHA in achieving the state's goal for an equitable distribution of affordable housing.

HOW: Through interviews with practitioners, advocates, experts, and politicians

Collecting information from studies, statutes, and court proceedings

Using data collected by the US Census, HUD, state departments, and towns.

The literature review explored the impacts of affordable housing throughout the United States by reviewing the four major aspects of affordable housing: exclusionary zoning, inclusionary zoning, fair share housing, and how courts have handled affordable housing through case law. Exclusionary zoning summarized to affirm towns should accept their fair share of the social cost of poverty by accepting low-income families into suburban neighborhoods. Inclusionary literature review articles discussed and examined different approaches to overcoming exclusionary enforcement practices. The regional fair share housing section highlighted states whom initiates fair share legislation as a measure towards ending residential segregation and the affordable housing case law section reviewed US state and federal landmark cases that argued inclusionary, exclusionary, and land use zoning practices.

The findings and analysis section broke down the Fair Housing Act into digestible pieces. It discussed the Mount Laurel Doctrine and its controversial decisions that interpreted the New Jersey constitution to affirm that municipal land use regulations must affirmatively provide realistic opportunities for affordable housing. It stated information about the enactment of the Fair Housing Act and COAH, and its regulatory duties. The section then listed the findings from all of the data collected to conclude the New Jersey Fair Housing Act, through the Council on affordable Housing, does not effectively allocate the statewide need for affordable housing

through its methodologies to achieve the state's goal for an equitable distribution of affordable housing.

The three localities of Glassboro, Pennsauken, and Medford represents only three of the 566 municipalities within the state of New Jersey that has evidently found alternative measures to avoid providing their fair share housing obligations. If the data shows how unsuccessful these three towns have been with achieving its obligations, then it speaks volumes about the difficulties presented in effectively meeting the housing needs of Americans across the nation.

There has been several studies conducted and research documented by an array of experts, advocates, and politicians in an attempt to highlight and rectify the emerging housing crisis. In addition, the judicial system has intervened as a mediator between municipalities and government to establish a basic foundation to assure the constitutional mandated requirement of municipalities to provide their fair share of affordable housing. However, the process has presented to be complex and unfavorable, notably to wealthier towns that could provide better opportunities and quality of life for low-income families.

With the current declining economic conditions in today's nation, it appears that the housing crisis will only exacerbate. The lack of jobs, stagnated economic growth, increase in taxes, and elevated housing costs are all contributors to an increased affordable housing need. There is an expectation and a responsibility placed on municipalities to determine what their fair share obligations should be. This is not and has proved to be an ineffective measure used to supply sustainable housing to low-moderate income families. Modifications and adjustment need to be made to existing regulations and guidelines in order for municipalities to be inclusive of and effective with the implementation of providing affordable housing.



This research provided an analysis of New Jersey's Fair Housing Act and whether it effectively achieves the state's goal of an equitable distribution of affordable housing. We conclude that New Jersey has not effectively allocated affordable housing as required by the Fair Housing Act under COAH. Our conclusion is supported by the present need for affordable housing in the State, and is further supported by low percentages of affordable units actually built in the state over the last 25 years, in comparison to the estimated need, and the lack of compliance on a municipal level. COAH's determination of present and prospective need is flawed, and its process is complex and confusing.

## **RECOMMENDATIONS**

While this capstone provides the basic framework of the Council on Affordable Housing (COAH) methodology, more work and time is needed to conduct a thorough examination. Based on the information presented thus far, our recommendations are as follows:

1. Establish strong procedural mechanism to simplify the process.
2. Stop depending on the courts to enforce the mandated constitutional obligation for every municipality to provide a realistic opportunity for a fair share of its region's present and prospective needs for housing for low and moderate-income families.
3. Provide state monetary incentives for affordable housing.
4. Enforce the Affordable Housing Element in Municipal Masters plans and do not allow municipalities to manipulate their obligated responsibility by choosing not to grow.
5. Create and maintain a centralized data tracking and reporting system.

6. Establish performance measures to accurately track municipal effectiveness in providing affordable housing.
7. Conduct a strategic planning process to address various problems and conflicts faced by all stakeholders.
8. Build networks between government and non-profit agencies and developers

Establishing strong procedural mechanisms to simplify the process of effectively allocating affordable housing regionally is essential. Not having clear and concise measures in place to monitor the allocation of affordable housing seems to be one of the major problems. There have been many modifications and adjustments as a result of litigation, so it is evident COAH has had problems implemented affordable housing measures. Depending on the courts to enforce mandated constitutional obligations further complicate the process and decision making as proceedings go on for years while the problem persists and the people it was meant to protect is harmed. Providing state monetary incentives for affordable housing could be used as a buy-in mechanism that would leave room for further consideration for municipalities to comply.

If the state government enforces the housing element of municipal plans and do not permit municipalities to deviate from their obligation need, more affordable housing would be available in affluent and wealthy towns. Having a centralized data system will assist with non-duplication of information, it would create a better tracking system for a broad range of housing and municipal entities. Another benefit of using a centralized system would be that all stakeholders would have access to the same data systems and tracking reports. The efforts of conducting a strategic planning process to address various problems would serve as a support system of inclusion of all stakeholders. A centralized system creates a window where support

would be focused on the central production of affordable units and providing affordable housing effectively.

An additional recommendation is to turn low-income housing developments into mixed-income developments to alleviate the segregation and concentration of low-income families to impoverished neighborhoods. It would serve as a reinvention plan for affordable housing units instead of selling to privatized developers who will eliminate affordable units altogether.

Working with non-profit community developers would present an opportunity to build and rehabilitate housing for families that private developers and landlords don't serve. By improving the neighborhoods where the majority of low-income housing is located, it is essential to the future of affordable housing. Offering training and advanced education on the day-to-day operation of community organizations, on tasks such as fundraising, budgeting, negotiating, conflict resolution, property appraisal, and membership recruitment to members of the community will also have a significant impact on the future of affordable housing. This new wave of experts could provide insight, from a personal and professional view point, as they have lived in the communities and will be better equipped to correlate both personal and professional experience in how to effectively address affordable housing needs.

Lastly, we recommend the Council of Affordable Housing and the State of New Jersey use all resources necessary to enforce the municipal obligation and ensure its most vulnerable constituents suffer no more.

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## **APPENDIX A. ATTACHMENTS**

Attachment 1: Housing Trends and Projections Technical Reference Document

Attachment 2: Rehabilitation share, Prior Round Obligation and Growth Projections

Attachment 3: Memorandum, NJ Council on Affordable Housing, April 7, 2008. Re: 1987-99

LIHTC & Balanced Housing Units

Attachment 4: Interview with Art Bernard, Methods for Calculating Municipal Fair Share, 2014

Attachment 5: Interview with David Rusk, Capstone Project on Regional Contribution

Agreements (RCAs), April 21, 2014

Attachment 6: Housing Authority of the Borough of Glassboro PHA 5-Year & Annual Plan

Attachment 7: Pennsauken Housing Authority PHA 5-Year & Annual Plan

Attachment 8: Legal Services of New Jersey Proportion of Cost-burden Figure 2.38

Attachment 9: Fair Share Housing Center's Summary of Fair State Plans submitted to COAH &

Courts

Attachment 10: NJ Department of Community Affairs 2011 Affordable Housing Regional

Income Limits

Attachment 11: Interview with Mildred C. Crump, Councilwomen Newark, NJ