

**TOWNSHIP OF HOPEWELL**  
MERCER COUNTY

201 Washington Crossing Pennington Road  
Titusville, New Jersey 08560-1410  
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July 29, 2014

Mr. Sean Thompson  
Acting Executive Director  
N.J. Council on Affordable Housing  
P.O. Box 813  
Trenton, NJ 08625-0813

Re: Written Comments/objections by the Township of Hopewell (Mercer County) to the New Jersey Council on Affordable Housing Proposed Procedural Rules at N.J.A.C. 5:98, Substantive Rules at N.J.A.C. 5:99 and Appendix A, B, C, D and E, as Published in the June 2, 2014 *New Jersey Register* at 46 N.J.R. 912-1050

Dear Director Thompson:

Attached please find written comments from Hopewell Township, Mercer County, regarding the proposed rules of the Council on Affordable Housing (COAH) published in the *New Jersey Register* on June 2, 2014.

As we have noted in our comments, there is insufficient information in the rule proposal for the Township to verify to accuracy of the forecast and assignment of need. Nonetheless, Hopewell Township officials have given thoughtful consideration to the rule proposal and hope that you will carefully consider our recommendations.

We have also included a memorandum from our planner dated July 21, 2014 summarizing the assignment of need to Hopewell Township.

Sincerely,

Vanessa Sandom, Mayor

Enclosure

**WRITTEN COMMENTS/OBJECTIONS BY THE TOWNSHIP OF HOPEWELL  
(MERCER COUNTY) TO THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING  
PROPOSED PROCEDURAL RULES AT N.J.A.C. 5:98, SUBSTANTIVE RULES AT N.J.A.C. 5:99  
AND APPENDIX A, B, C, D AND E, AS PUBLISHED IN THE  
JUNE 2, 2014 NEW JERSEY REGISTER AT 46 N.J.R. 912-1050**

Submitted to: Sean Thompson  
Acting Executive Director  
N.J. Council on Affordable Housing  
P.O. Box 813  
Trenton, NJ 08625-0813  
[COAHAdmin@dca.state.nj.us](mailto:COAHAdmin@dca.state.nj.us)

Dear Director Thompson:

The Township of Hopewell in Mercer County objects to the lack of transparency in this rule proposal and the data inputs and methodology used to determine municipal affordable housing mandates. These requirements, if enacted as proposed, will radically transform Hopewell Township, requiring many thousands of housing units, far more than could possibly be absorbed in the marketplace over the next 10 years. Instead of "growth share" we are now faced with *forced growth*.

The rule's near reliance on inclusionary zoning for most future affordable housing construction makes no sense and repeats mistakes of the past that have destroyed natural landscapes, consumed valuable farmland and overburdened municipal budgets.

Despite the State's failure to provide Hopewell Township with sufficient information to determine whether our fair share is actually fair, we are nonetheless being forced to comment without critical information. Thus, Hopewell Township, commenting and participating in this process "under protest", herein submits formal comments on proposed N.J.A.C. 5:98, N.J.A.C. 5:99 and Appendix A, B, C, D and E, published on June 2, 2014 at 46 N.J.R. 912-1050:

**COMMENTS TO N.J.A.C. 5:98 (PROCEDURAL RULES)**

1. *5:98-16.1 Comment: The May 15, 2015 deadline to prepare a fair share plan and submit it to COAH will interfere with the creation of realistic opportunities for affordable housing.*

To remain protected against builder's remedy lawsuits, a new third round Plan must be prepared and submitted to COAH *after* the Economic Feasibility Studies are completed for all undeveloped prior round sites and all proposed future inclusionary

sites. These studies will likely be expensive and will take significant time to prepare. However, several problems will forestall completion of these studies including:

1. Hopewell will not be able to retain real estate economists to prepare the studies unless the municipality can certify the availability of the funds to pay these consultants.
2. Municipalities will not be able to certify the availability of funds unless the funds are available.
3. Municipalities must operate under "cap" constraints.
4. Some municipalities will likely pay, in whole or in part, the economists' bills from the 20% administrative reserve in their affordable housing trust accounts. However, Hopewell doesn't have any money in its housing trust account.
5. This means that the money must come from the 2014 and/or 2015 municipal budgets. Thus, the Township won't be able to retain economists this year which means all the work must be done in 5 and a half months next year.
6. Hopewell may not be able to appropriate sufficient funds in the 2015 budget due to "cap" constraints unless the budget increase to pay the economists is deemed by the Local Finance Board to be a "2% cap" exception pursuant to N.J.S.A. 40A:4-45.3(c.c.)
7. The statute requires COAH to certify the foregoing to the Local Finance Board. Unless COAH will make the certification, the 2% budget cap means there won't be any funds available to pay the economists to prepare their work in time to be useful for a May 15, 2015 deadline.

## **COMMENTS TO N.J.A.C. 5:99 (SUBSTANTIVE RULES)**

1. **5:99-1.1(c) Comment: *Proposals to eliminating many compliance techniques will decrease realistic opportunities for affordable housing.***

5:99-1.1(c) indicates that "...the core focus of the Mount Laurel Doctrine..." requires "...zoning to be the preferred means of meeting a municipality's fair share obligation . . .". This is not accurate. The core focus of the doctrine is the constitutional mandate that towns provide a realistic opportunity for the construction of a fair share of affordable housing through a variety of techniques.

However, the proposed rules eliminate a variety of previously authorized municipal compliance mechanisms (accessory apartments, market-to-affordable, assisted living residences, affordable partnership, extension of expiring controls) as well as innovative production techniques. The elimination of credit for these opportunities for affordable housing production violates the Supreme Court's directives to COAH that it adopt third round rules that are substantially similar to the prior round rules and consistent with the Fair Housing Act.

2. **5:99-1.1(c) Comment: *Restore all rental bonus credits*** This new rule eliminates rental bonus credits, including family rental bonuses, which were permitted in the prior round rules. *There is nothing fair about fair share if past performance is penalized rather than rewarded for those who played by the rules.* The elimination of bonus credits will discourage and impede the provision of affordable family rental housing, the production of which has long been a COAH objective.

3. **N.J.A.C. 5:99-1.1(d) Comment: *Expand the range of compliance techniques to increase realistic opportunities for affordable housing.*** The focus on inclusionary zoning as the primary means of producing affordable housing will promote sprawl and result in poor land planning and limited affordable housing, contrary to the Supreme Court's cautions in Mount Laurel II. All previously authorized compliance mechanisms should be permitted in the new rules in order to maximize opportunities for creation of affordable units.

4. **N.J.A.C. 5:99-1.1 (e) Comment: *Retain the 20% set-aside and restore presumptive density standards.*** Reducing the set-aside from 20% to 10% will require the production of more than double the number of market-rate units, exhausting valuable land and infrastructure resources and placing a greater burden on the public fisc. The reduced set-aside combined with the elimination of other compliance mechanisms authorized in prior rounds means greater development on "greenfield" sites and loss of farmland and open space. This runs contrary to the planning

objectives and policies in the State Development and Redevelopment Plan and the Water Quality Planning Act and DEP's implementing regulations.

5. **5:99-1.2 Comment: The 1,000 unit cap should apply to a community's "aggregate" housing obligation spanning from 1987 to 2024.** N.J.S.A. 52:27D-307(e) clearly indicates that the 1,000 unit cap is based upon ". . . the aggregate number of units which may be allocated to a municipality as its fair share of the region's present and prospective need for low and moderate income housing.". The reference to "aggregate" makes clear that the Legislature intended the cap to apply to a community's cumulative housing obligation from the beginning of the first round in 1987 to the end of the latest round. Thus, at this point in the development of third round rules, the aggregate number runs from 1987 to 2024. Yet, the definition of "Fair Share" in N.J.A.C. 5:99-1.2 when read in para materia with N.J.A.C. 5:99-3.2 would seem to limit the applicability of the cap to just the portion of the third round running from 2014 to 2024. The proposed rule should be revised consistent with the statute and the Legislature's intent in creating the cap.

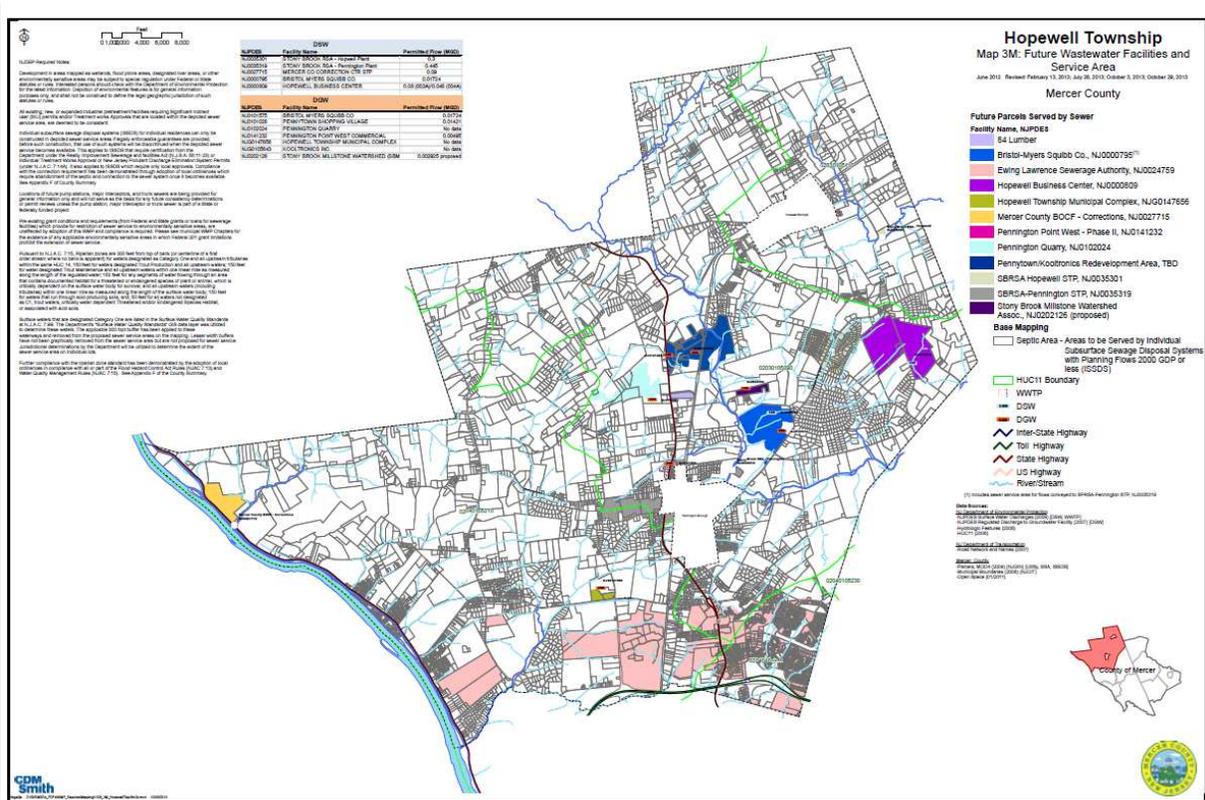
6. **5:99-2.3(b). Comment: Rental bonuses and Regional Contribution Agreements should be allowed credit toward unanswered prior obligations.** 5:99-2.3(b) indicates that the standards in N.J.A.C. 5:93 govern Unanswered Prior Obligations. Those standards permit rental bonuses for prior round obligation and authorize regional contribution agreements ("RCAs"). While RCAs were disallowed as a municipal compliance mechanism on July 17, 2008 pursuant to P.L. 2008, c.48, the continuing gentrification of New Jersey's urban centers requires a rethinking of this policy. Lower income urban housing that was once destined to "filter down" is now "filtering up". RCAs can still provide significant funds for improvement of urban lower income housing and would be particularly helpful in these areas today.

7. **N.J.A.C. 5:99-3.3 and Appendix E: Comment: Buildable limit calculations contain fundamental flaws, with the method and the use of outdated data for determining Statewide Buildable Limit.** The Buildable Limit factor has a major impact on the determination of Municipal affordable housing obligations, affecting both Unanswered Prior Obligation and Fair Share of Prospective Need. Buildable Limit Capacity also determines a municipality's ability to use options other than inclusionary development for addressing its obligation. The broad/generalized density multipliers produce unrealistic results -- results that don't reflect true development potential at the local level.

8. **5:99-4.3(a)(3). Comment: Eliminate the requirement that a municipal Fair Share Plan provide a determination of the total residential zoning necessary to**

**meet the affordable housing obligation with 10% set-aside inclusionary zoning.** This presents an impossibility for communities like Hopewell in the SDRP's rural or environmentally sensitive planning areas, where a lack of centralized sewerage treatment and conveyancing mandates single family lots for septic systems, and lot sizes required to meet DEP's stringent 2 mg/1 nitrate concentration standard are not supportive of affordable housing production.

The Township has very limited sewer service areas, as shown below, and they are nearly built out.



Additionally, as seen on the natural resource mapping from Hopewell's Master Plan, the carrying capacity of non-sewered areas is extremely limited, since development here requires use of septic systems. Owing to a shallow depth to bedrock and seasonal high water table, soil limitations for septic systems are severe throughout most of the Township.

Figure 11  
 Limitations for On-Site  
 Disposal of Sewage Effluent  
 Hopewell Township, NJ  
 January 2002

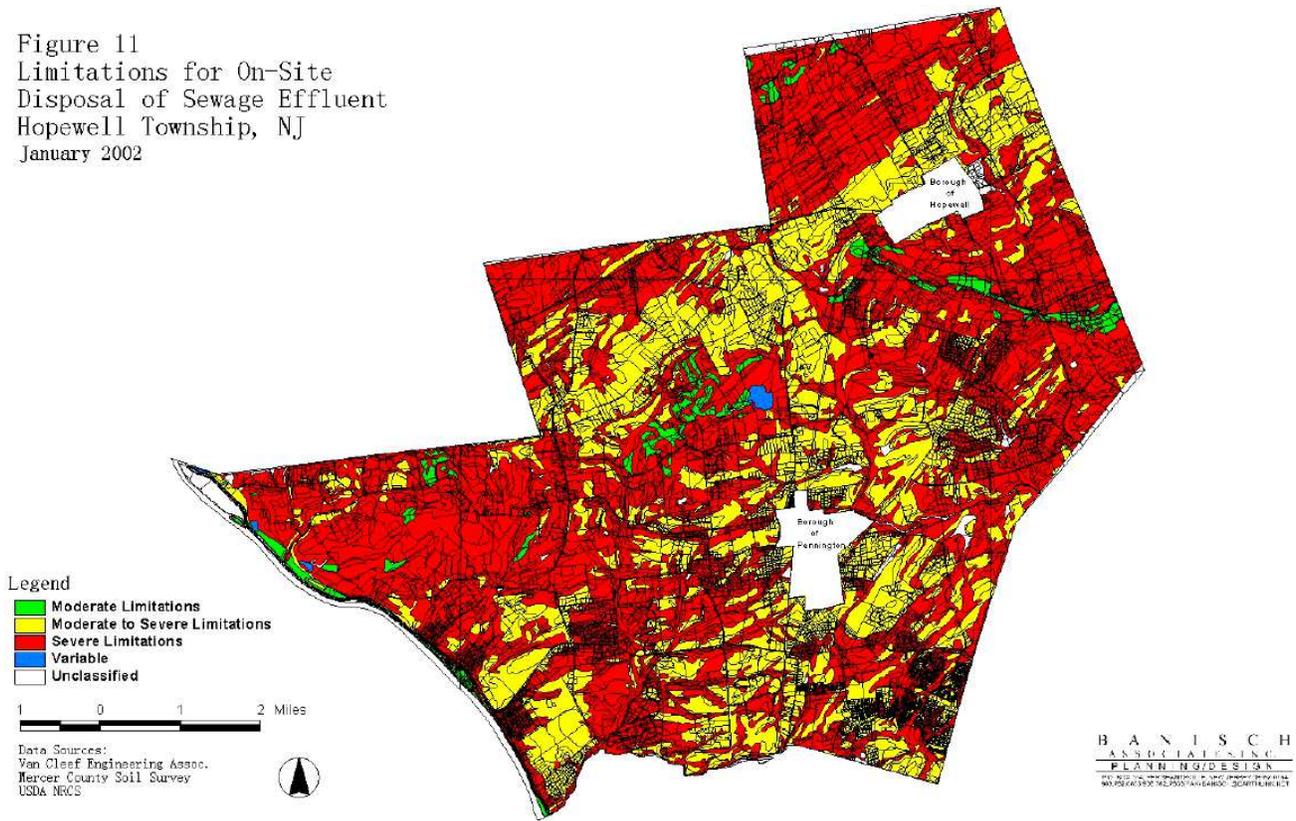


Figure 12  
 Depth to Bedrock  
 Hopewell Township, NJ  
 January 2002

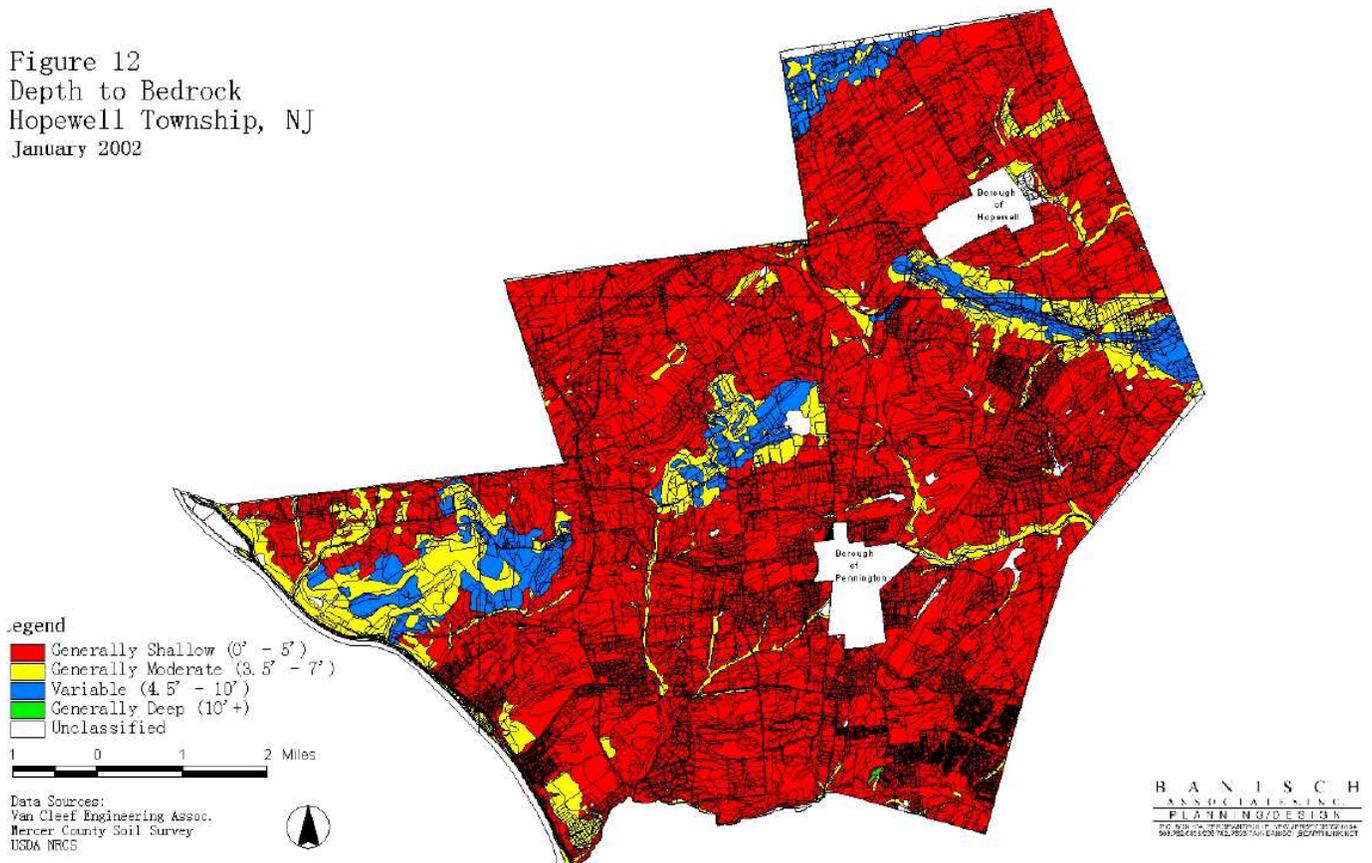
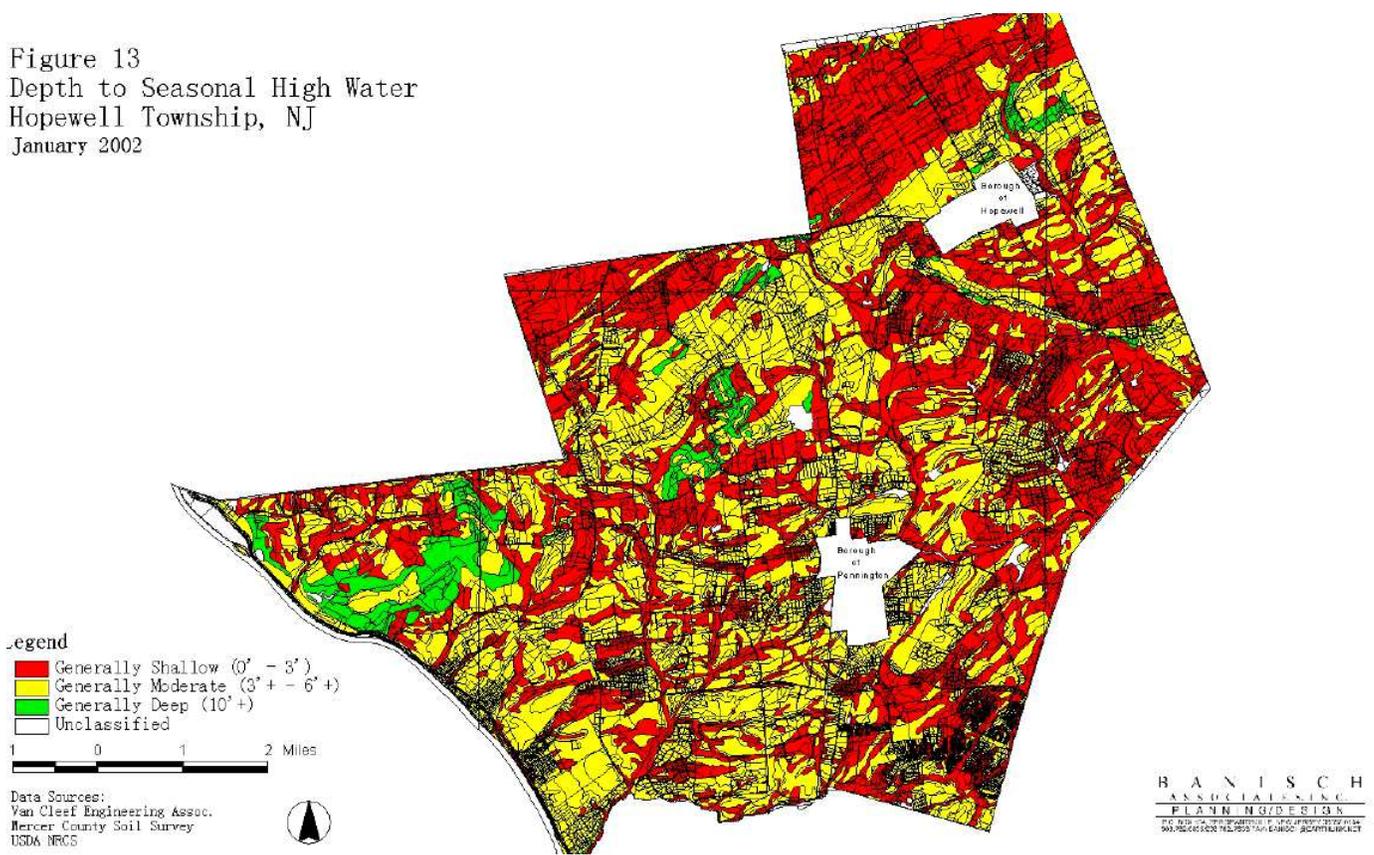
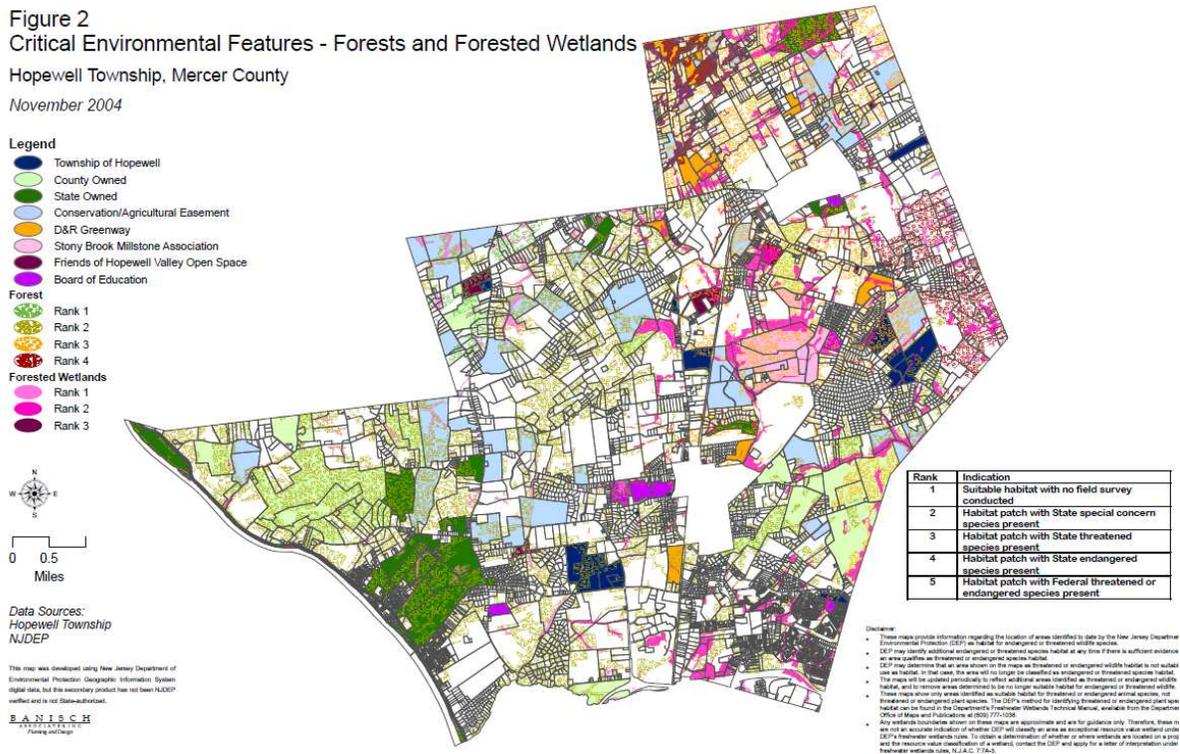


Figure 13  
 Depth to Seasonal High Water  
 Hopewell Township, NJ  
 January 2002



The severe environmental limitations of Hopewell's unsewered areas are also seen in a series of maps from the 2004 Open Space and Recreation Plan. These identify wetland locations and are illustrative of the rare and endangered habitats found in Hopewell.

Figure 2  
 Critical Environmental Features - Forests and Forested Wetlands  
 Hopewell Township, Mercer County  
 November 2004

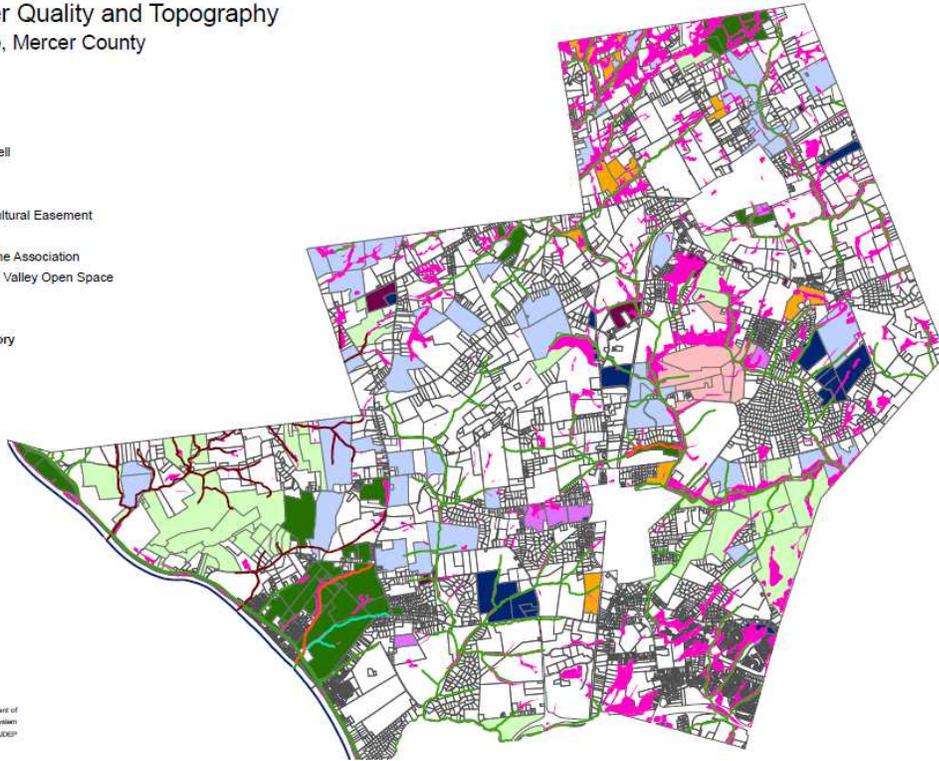


**Figure 3**  
**Wetlands, Water Quality and Topography**  
**Hopewell Township, Mercer County**

November 2004

**Legend**

- Township of Hopewell
  - County Owned
  - State Owned
  - Conservation/Agricultural Easement
  - D&R Greenway
  - Stony Brook Millstone Association
  - Friends of Hopewell Valley Open Space
  - Board of Education
  - Wetlands
- Surface Water Quality Category**
- DRBC-Zone-1E
  - FW1
  - FW2-NT
  - FW2-NTC1
  - FW2-TM



Data Sources:  
 Hopewell Township  
 NJDEP

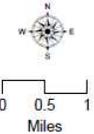
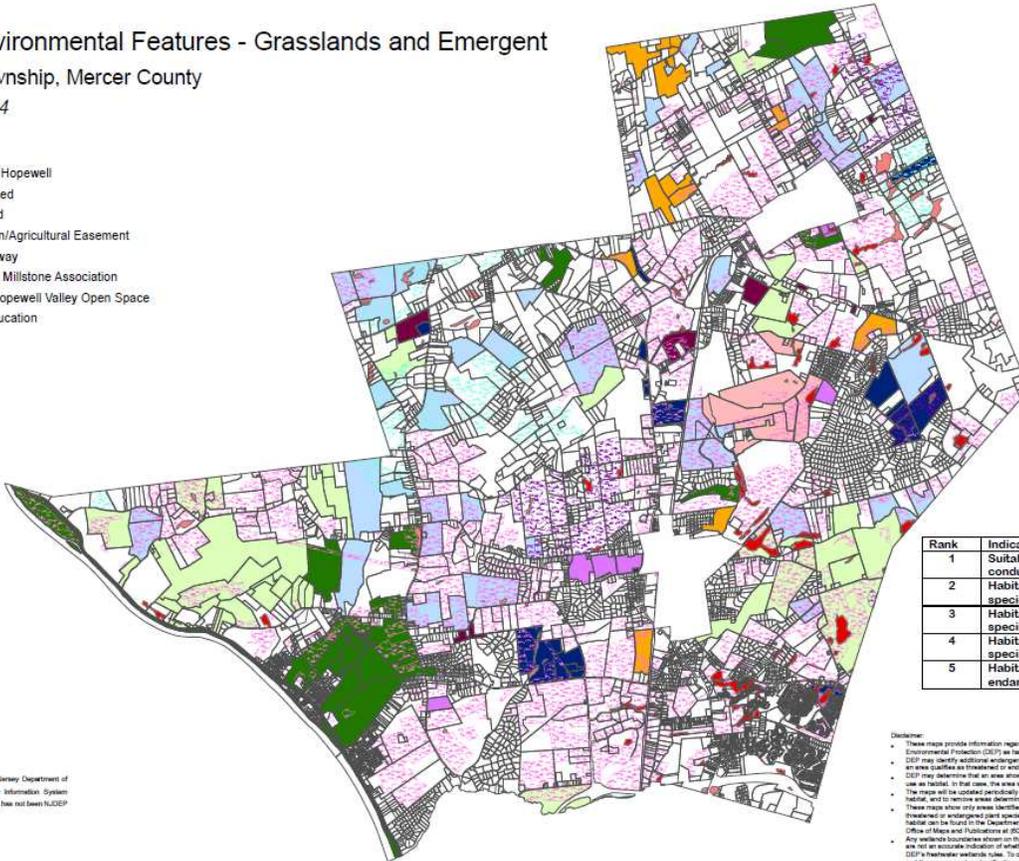
This map was developed using New Jersey Department of Environmental Protection Geographic Information System digital data, but this secondary product has not been NJDEP verified and is not State-authorized.

**Figure 4**  
**Critical Environmental Features - Grasslands and Emergent**  
**Hopewell Township, Mercer County**

November 2004

**Legend**

- Township of Hopewell
  - County Owned
  - State Owned
  - Conservation/Agricultural Easement
  - D&R Greenway
  - Stony Brook Millstone Association
  - Friends of Hopewell Valley Open Space
  - Board of Education
- Grasslands**
- Rank 1
  - Rank 2
  - Rank 3
- Emergent**
- Rank 1
  - Rank 2



Data Sources:  
 Hopewell Township  
 NJDEP

This map was developed using New Jersey Department of Environmental Protection Geographic Information System digital data, but this secondary product has not been NJDEP verified and is not State-authorized.

**BANISCH**  
 Planning and Design

Rank	Indication
1	Suitable habitat with no field survey conducted
2	Habitat patch with State special concern species present
3	Habitat patch with State threatened species present
4	Habitat patch with State endangered species present
5	Habitat patch with Federal threatened or endangered species present

**Disclaimer:**

- These maps provide information regarding the location of areas identified by data by the New Jersey Department of Environmental Protection (NJDEP) as habitat for endangered or threatened wildlife species.
- NJDEP may identify additional endangered or threatened species habitat at any time if there is sufficient evidence an area qualifies as threatened or endangered species habitat.
- NJDEP may determine that an area shown on the maps as threatened or endangered wildlife habitat is not suitable use as habitat, in that case, the area will no longer be classified as threatened or endangered species habitat.
- The maps will be updated periodically to reflect additional areas identified as threatened or endangered wildlife habitat, and to remove areas determined to no longer suitable habitat for threatened or endangered wildlife.
- These maps show only areas identified as suitable habitat for threatened or endangered animal species, not threatened or endangered plant species. The NJDEP is the authority for identifying threatened or endangered plant species and the location of the Department's freshwater Wetlands Technical Manual, available from the Department Office of Maps and Publications at (908) 777-1038.
- Any wetlands boundaries shown on these maps are approximate and are for guidance only. Therefore, these maps are not an accurate indication of whether NJDEP considers an area an exceptional resource value wetland under NJDEP's freshwater wetlands rules. To obtain a determination of whether or when wetlands are located on a plot and the resource value classification of a wetland, contact the DEP and apply for a water or nonpoint-source watershed water quality rules, N.J.A.C. 7:27A-3.

*Note: All maps included in this document are pdfs that can be enlarged for more detail.*

Moreover, the reduction of the standard set-aside from 20% to 10%, which more than doubles the number of market units for each affordable unit, more than doubles all impacts of this inflated development prescription for sprawl, which cannot be accommodated by septic systems.

The situation is made even worse by the elimination of compliance techniques that were permitted in the prior rules, such as market-to-affordable, accessory apartments, assisted living residences, affordable partnership programs and extension of expiring affordable controls. These are all affordable housing delivery methods that can be accommodated in places with such limitations, where sprawling inclusionary growth with a low set-aside will not accomplish the mandate. This is a prescription for failure to meet the affordable housing mandate, as many rural municipalities will be unable to satisfy 5:99(a)(4).

9. **5:99-4.3(a)(4) and 7.2(b). Comment: Eliminate the unfunded mandate for an Economic Feasibility Study and restore presumptive density standards and the 20% set-aside.** The new requirement for Economic Feasibility Studies conflicts with the prior round methodologies and contravenes the Supreme Court's clear and unambiguous rulemaking directives to COAH.

52:27D-311(d) in the Fair Housing Act, which forms the basis for COAH's rulemaking authority, indicates "Nothing in this act shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing.". However, new rules at 46 N.J.R. 926 acknowledge that requiring Economic Feasibility Studies will impose additional costs upon municipalities for expensive Economic Feasibility Studies.

This is an unlawful unfunded mandate that violates (a) Article VIII, Section II, Paragraph 5 of the New Jersey Constitution, (b) N.J.S.A. 52:13H-1, *et seq.*, and (c) Executive Order No. 4 issued by Governor Chris Christie on January 20, 2010. Moreover, there is no indication or confirmation in the published rules that either COAH or the Lieutenant Governor have addressed or complied with Executive Order No. 4. If this is the case, the rules are fatally flawed from their inception and rulemaking should cease until Executive Order compliance is achieved.

The Mount Laurel cases that preceded the adoption of the Fair Housing Act ("FHA") and COAH's promulgation of its initial first round rules and methodologies

emphasized the need to establish “bright-line standards” for inclusionary zoning with “presumptive” densities and set-asides to guide municipal compliance and provide the development community with a clear understanding of the rules for an inclusionary project. The Legislature made clear in Section 307(c) of the FHA [N.J.S.A. 52:27D-307(c)] that COAH has a duty to adopt “criteria and guidelines to facilitate municipal compliance” and the Court has repeatedly emphasized that the regulatory methods that COAH adopts must be consistent with statutory goals.

The abandonment of presumptive densities for inclusionary developments in the third round and the requirement for Economic Feasibility Studies for all inclusionary sites is a reversion to the kind of “project-by-project” determination that was rejected by the Appellate Division and affirmed by the Supreme Court in In re Adoption of NJAC 5:96 and 5:97, 416 N.J. Super. 462, 492 (App. Div. 2010), aff’d, 215 N.J. 578 (2013).

10. **5:99-4.3(a)(6). Comment: What data and analyses must be provided to demonstrate the need for additional age-restricted housing exceeding the 25% limit (i.e. Census data, waiting lists from similar developments, etc.)?**

11. **5:99-5.1. Comment: The proposed rule does not factor rural and environmentally sensitive lands in the State Development and Redevelopment Plan, including lands that are not in sewer service areas.** As noted above, substantial vacant undeveloped lands in rural communities that do not have sewer availability cannot be developed with higher density inclusionary housing and therefore cannot meet site suitability criteria. The proposed rule confuses lack of suitable sites with lack of vacant undeveloped land.

12. **5:99-7.2. Comment: Reinstate the full range of compliance mechanisms previously afforded by the prior round rules.** Expanding the range of housing options qualifying for credit will increase the potential for realistic affordable housing opportunities and reduce the mandate for sprawl that would be imposed by the proposed rules.

Given the hard and soft costs of producing a new affordable unit, the current glut of large suburban houses offers a unique opportunity to expand the affordable housing supply in a “least cost” manner. While it costs over \$100,000 to subsidize a new affordable unit, an accessory apartment can be installed for a fraction of that cost. This can be accomplished without centralized sewer service, since the septic system designed for a four-bedroom or five-bedroom house can easily serve the three or four total occupants of the primary and accessory dwelling units.

This approach, converting single family homes to two family homes, offers many rewards and little cause for concern. The Municipal Land Use Law essentially equates one and two family homes, exempting both from any local requirement for site plan review. Add to this the fact that future occupancy as a 2-family dwelling may well involve fewer occupants than the family that was raised in the house, since 4- and 5-bedroom units abound in the suburbs that could readily be converted to include a one- and two-bedroom unit, which are in great demand.

13. **5:99-7.4. Comment: Retain and expand the range of special needs housing types that qualify for credit.** COAH's prior round regulations permitted the provision of affordable housing for broadly defined individuals with "special needs" and those requiring supportive housing. The proposed rule inexplicably deviates from the prior round rules by narrowing affordable housing opportunities to a single and defined population of "community residences for individuals with developmental disabilities."

The limitation provided by the proposed rule unfairly and discriminatorily restricts and limits affordable shelter opportunities for the rest of the "special needs" population that were accommodated and addressed in the prior round rules. Approximately 50,000 supportive and special needs housing units were produced under the prior rules and this addressed the State's goal and objective to provide affordable shelter opportunities for individuals with special needs. However, many more units are needed in the future and there appears to be no sound public policy rationale for excluding the rest of the special needs population that do not fall under the narrow definition of "developmentally disabled".

Moreover, this change in the third round rule from the prior round rules appears to violate the Supreme Court's September 26, 2013 and March 14, 2014 rulemaking directives that the third round rules be substantially similar to the prior round rules.

14. **5:99-10.1(a)(1). Comment: A judgment of foreclosure or a deed in lieu of foreclosure should not be permitted to extinguish affordability controls on affordable units.** Regardless of whether the lender in a foreclosure action provides notice of the proceeding to the municipality or its administrative agent, the proposed COAH rule is in direct conflict with N.J.A.C. 5:80-26.5(e) in the Uniform Housing Affordable Controls ("UHAC"). Since proposed rule 5:99-10.1(a) clearly and unequivocally indicates that "(a) Affordable housing included in a municipal Fair Share Plan shall comply with UHAC", Subsection (a)(1) of the proposed rule conflicts with the rule itself.

## **COMMENTS TO APPENDICES**

**N.J.A.C. 5:99 APPENDIX "D"** *Comment: The data that Rutgers used to tally Past Affordable Housing Completions is incorrect.*

1. It does not accurately account for the number of physical units that have been constructed and
2. improperly excludes 198 units transferred via RCAs and
3. does not factor bonus credits that were authorized under COAH's prior round rules.
4. These errors in turn influence the accuracy of the 1987 to 2014 Unanswered Prior Round Obligation that has been assigned to municipalities. The totals need to be recalculated using accurate, up-to-date data that includes RCAs and bonus credits.

**N.J.A.C. 5:99 APPENDIX "D"** *Comment: The calculations of Past Affordable Housing Completions are incorrect and overlook significant affordable housing production, The calculation of Past Affordable Housing Completions, which excludes rental bonuses and RCAs transferred by RCA sending municipalities, does not accurately reflect actual Completions. It is therefore inconsistent with the proposed rule, which applies N.J.A.C. 5:93 to the unanswered prior obligation. Moreover, the data used with respect to the physical number of units completed is outdated and inaccurate. These deficiencies underestimate actual completions and significantly increase the calculation of Unanswered Prior Obligations. Additionally, it is not clear how previously granted vacant land adjustments were treated in the calculations.*

**N.J.A.C. 5:99 APPENDIX "E"** *Comment: It is impossible to verify the accuracy and appropriateness of the "buildable limit" and "development capacity" estimate.*

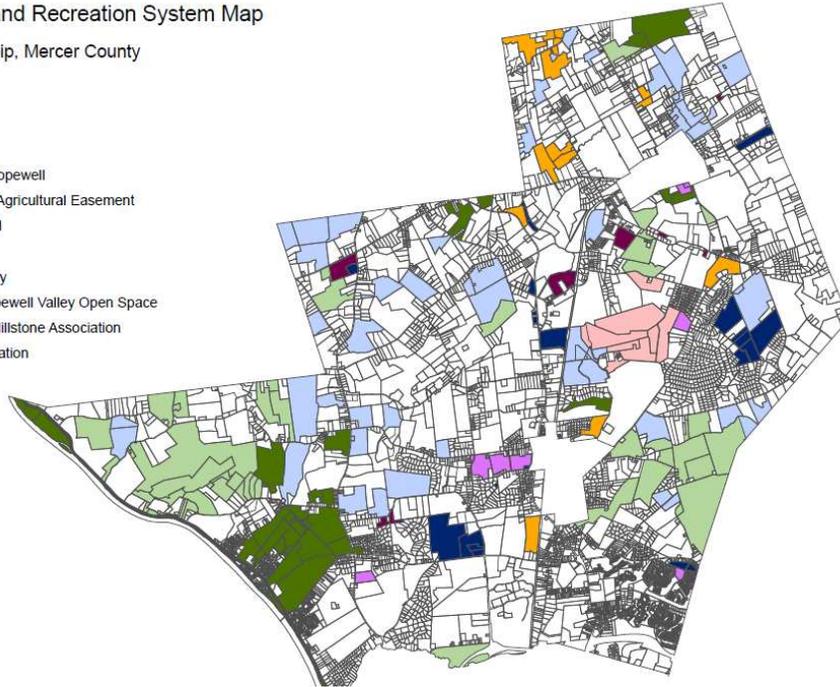
1. The GIS datasets and mapping that were used to calculate "buildable limit" are not included in either the rules or the Appendix. This lack of transparency is further amplified by the failure of OPRA requests from interested parties to produce this information, which makes it impossible for stakeholders to comment on the validity and accuracy of the data, mapping and housing need calculations by the August 1, 2014 comment/objection deadline. Rutgers' data apparently does not include an analysis of 300 foot C-1 SWRPA buffers, other required riparian buffers, properties excluded from development that are on the Green Acres ROSI, and other environmentally sensitive areas that cannot be developed. These represent fatal flaws in the rulemaking process.

2. The Buildable Limit Methodology in Appendix "E" was not a methodology employed in the prior rounds and its use in the third round deviates from the Supreme Court's clear and unambiguous rulemaking directives.
3. Hopewell Township has been a leader in farmland and open space protection, as seen on the accompanying maps. Do the Buildable limit calculations account for these preserved lands?

Figure 1  
Open Space and Recreation System Map  
Hopewell Township, Mercer County  
November 2004

**Legend**

-  Township of Hopewell
-  Conservation/Agricultural Easement
-  County Owned
-  State Owned
-  D&R Greenway
-  Friends of Hopewell Valley Open Space
-  Story Brook Millstone Association
-  Board of Education



Data Sources:  
Hopewell Township

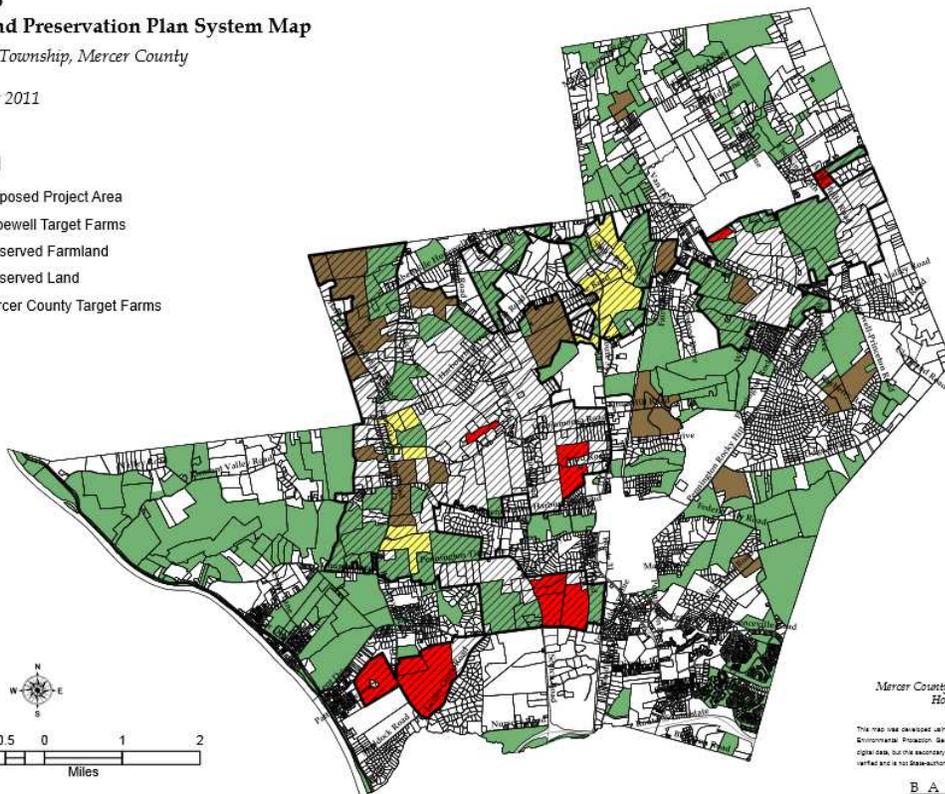
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Figure 5  
Farmland Preservation Plan System Map  
Hopewell Township, Mercer County

November 2011

**Legend**

-  Proposed Project Area
-  Hopewell Target Farms
-  Preserved Farmland
-  Preserved Land
-  Mercer County Target Farms



Data Sources:  
Mercer County GIS Department  
Hopewell Township,  
NJDEP

This map was developed using New Jersey Department of Environmental Protection Geographic Information System digital data, but the accuracy of the data has not been verified and is not State-endorsed.

BANISCH  
ASSOCIATES  
PLANNING AND DESIGN

# Memorandum

To: Paul Pogorzelski, Township Administrator  
 From: Frank Banisch, PP/AICP  
 Date: July 21, 2014  
 Re: Applying N.J.A.C. 5:98 – Updating COAH Estimates of Fair Share

According to the draft COAH rules, Hopewell would have a total 1987-2024 obligation of 1,477 additional affordable housing units after accounting for 301 “completions”, as shown in Table 1.

*Table 1*

<i>COAH Rule Proposal - Affordable Housing Obligation</i>		<u>Units</u>
<b>Affordable Housing Obligation</b>		
– Rehabilitation Need		0
– Prior Cycle Obligation	1987-1999:	565
	1999-2014:	<u>+726</u>
	<b>Total 1987-2014 obligation</b>	<b>1,291</b>
<b>Affordable Unit “Completions”</b>		<u><b>-301</b></u>
<b>Unanswered 1987-2014 Obligation</b>		<b>990</b>
 <b>Remaining Obligation per COAH</b>		
• Fair Share Obligation 2014-2024 (“Post-Project Need”):		<b>487</b>
• Net “Unanswered” 1987-2014 Obligation per COAH		<u><b>+990</b></u>
• <b>Remaining obligation 1987-2024 per proposed COAH rules</b>		<b>1,477</b>

When appropriate crediting is applied, Hopewell’s past performance would reduce COAH’s estimate of 1,477 additional affordable units to 1,083 as shown in Table 2:

*Table 2*

<i>Performance-based Affordable Housing Obligation</i>		<u>Units</u>
<b>Remaining Obligation through 2014 with credit for RCA’s and rental credits</b>		
• Net “Unanswered” 1987-2014 Obligation per COAH:		<b>990</b>
• Minus RCAs		<b>-198</b>
• Minus rental credits		<u><b>-47</b></u>
<b>Net “Unanswered” 1987-2014 Obligation with RCA and rental credits</b>		<b>745</b>
<b>Minus Substantial Compliance Reduction (745 x .2 = 149)</b>		<u><b>-149</b></u>
<b>Net “Unanswered” 1987-2014 Obligation w/RCAs and rental credits</b>		<b>596</b>
• Fair Share Obligation 2014-2024 (“Post-Project Need”):		<u><b>+487</b></u>
<b>ADJUSTED FAIR SHARE 1999-2024</b>		<b>1,083</b>

Where credits for actual construction and other credits have been earned under prior rules, fairness dictates that these actions receive credit in the new third round. To do otherwise would make a mockery out of the process and the parties who participated. Hopewell's proposed unanswered prior obligation of 990 is grossly overstated and should be reduced by at least 245 units (47 rental credits and 198 RCA units). Deducting these from the total yields a remaining 745-unit unanswered obligation.

Hopewell is also eligible for a 20% reduction of the "unanswered prior obligation" since the Township "actually created a substantial percentage of the new units that were part of the municipal 1987 through 1999 housing obligation." ( $499/565 = 88.3\%$ )

Applying the proposed 20% substantial compliance reduction to the 745-unit unanswered obligation allows a reduction of 149 units, bringing this total to 596 affordable units remaining due from prior rounds (down from 990).

**Delivery Requirements by 2024**

• 2014-2024 Obligation	487
• + 50% of Unanswered Prior Obligation after adjustment	<u>+298</u>
<b><i>Total due by 2024:</i></b>	<b>785</b>

Hopewell's buildable limit has been established at 1,641 units, so no reduction of the fair share resulted from limited buildable lands. Given the very limited sewer service area available for dense housing, this limit is highly suspect, probably due in part to the flawed 2007 vacant land data.