

To be Completed in Final Submission to COAH

REHABILITATION PROGRAM (N.J.A.C. 5:97-6.2)

General Description

Municipality/County: Enter Municipality and County Name

Program Name: Indicate Whether Local or County Program

Number of proposed units to be rehabilitated: _____

Information and Documentation Required with Petition

- Determination of Rehabilitation Share
- Accept number in N.J.A.C. 5:97 – Appendix B; **OR**
- Exterior Housing Survey conducted by the municipality
- Information regarding the rehabilitation program on forms provided by the Council. (If relying on previously submitted 2007 monitoring and/or subsequent CTM update, also check here in lieu of submitting forms.)
- Documentation demonstrating the source(s) of funding
- Municipal resolution appropriating funds from general revenue or a resolution of intent to bond in the event of a funding shortfall
- Schedule illustrating how the rehabilitation share will be addressed within the period of substantive certification

Information and Documentation Required Prior to Substantive Certification

- Resolution or executed contract designating an experienced Administrative Agent, and a statement of his/her qualifications, in accordance with N.J.A.C. 5:96-18
- Draft or adopted rehabilitation operating manual that includes a description of the program procedures and administration including a copy of sample deed restriction and/or lien.
- Affirmative Marketing Plan for the re-rental of rehabilitated rental units, in accordance with UHAC

Rehabilitation Narrative Section

TOWNSHIP OF HOLLAND
COUNTY OF HUNTERDON, STATE OF NEW JERSEY
RESOLUTION OF INTENT TO FUND SPENDING PLAN SHORTFALL FOR
AFFORDABLE HOUSING PROGRAMS IN FAIR SHARE PLAN

WHEREAS, portions of the May 26, 2010, Third Round Housing Element and Fair Share Plan of this Township as adopted by the Holland Township Planning Board and endorsed by the Township Committee of the Township of Holland provide for a financial commitment by the Township; and

WHEREAS, the New Jersey Council on Affordable Housing (COAH) requires a municipality to state its intent to cover any shortfall in the funding of its affordable housing programs as set forth in the Spending Plan and the Fair Share Plan, including its intention to incur bonded indebtedness, if necessary, to provide the funds required for the timely implementation of the Fair Share Plan;

RESOLVED, by the Township Committee of the Township of Holland, in the County of Hunterdon, New Jersey, as follows:

1. That to the degree that the funds required for the implementation of the Township's adopted 2010 Fair Share Plan, as more particularly set forth in the Spending Plan adopted by the Township Committee on June 1, 2010, are not available at the time they are needed from funds collected from developers under the Development Fee Ordinance, or from in lieu payments from developers to cover a fraction of an affordable unit generated by their respective developments, or from outside grants, the Township will provide the funding needed to cover any shortfall from appropriations in the Township's annual budget or by incurring indebtedness by authorizing and issuing, pursuant to the Local Bond Law, bonds and/or bond anticipation notes to the extent of the funding deficiency, with the understanding that any payments subsequently collected from developers under the Development Fee Ordinance or any "in lieu of" contributions from developers to cover a fraction of an affordable unit generated by their respective developments may be used to reimburse the Township for the costs of the programs such funds are intended to cover; and

2. That the Township currently has the unencumbered capacity to incur such debt under the Local Bond Law.

CERTIFICATION

I, Catherine Miller, RMC, Clerk of the Township of Holland, County of Hunterdon, hereby certify the foregoing to be a true copy of a resolution adopted by the Township Committee of the Township of Holland at a duly noticed and duly convened regular meeting held on June 1, 2010.

Catherine Miller, RMC, Township Clerk

CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, entered into as of this 1st day of January 2010 between Holland Township, 61 Church Road, New Jersey 08848, (hereinafter referred to as the Township), and Housing and Community Development Services, Inc., 4 Sloan Street, South Orange, New Jersey 07079 (hereinafter referred to as the Consultant).

WITNESSETH THAT: The Township agrees to engage the Consultant and the Consultant hereby agrees to perform the professional services hereinafter set forth, subject to the terms and conditions hereinafter described.

I. INTENT OF THIS CONTRACT

The intent of this contract is for the Township to retain the services of the Consultant to assist the Township to develop, administer and implement the Holland Township's rehabilitation program as described in the Council on Affordable Housing Plan, Certifications and Local Ordinance. The Ordinance is consistent with the New Jersey Council on Affordable Housing Regulations. The Ordinance requires development of a rehabilitation program including marketing of the project and effectuation of the improvement program. It is anticipated that approximately 13 units of housing identified as in substandard condition will be improved to standards acceptable to COAH and in conformance with the regulations of COAH. Funding for the project shall provide for the assistance necessary to address all substandard violations, and will be based on small cities program loan repayment funds, developer fee, and/or local resources.

II. SCOPE OF SERVICES

The Consultant shall, in collaboration with appropriate local officials and staff, at the direction and request of the Township, perform and carry out in a satisfactory and proper manner, the following:

A. Provision for Rehabilitation Policy and Procedural Manual

The Consultant shall provide for a rehabilitation policy and procedures manual. Information will be presented to identify eligible participants, describe benefits, delineate eligible property improvements, describe contractor related procedures, indicate administrative procedures, enumerate affordability controls, establish a system for records and client files, define how funds are to be obligated and paid out by the Township, specify office location, hours and staffing, and provide copies of all forms and agreements, including applications, income verification forms, case logs, form letters, contracts, inspection forms, etc., in order to meet the requirements of N.J.A.C. 5:93-5.2.

- Eligible participants shall consider various categories of participants including homeowners, tenants and investors. Income limits for participation shall be prescribed. Target areas to be served and/or selection criteria relative to building department information shall be clearly defined.
- Available benefits shall be delineated, including subsidy maximums and technical services available through the program (inspections, work write-ups, cost estimates, loan advising, etc.)
- Eligible property improvements shall be defined with respect to health, safety and code violations. Ineligible improvements shall also be indicated. Rehabilitation standards, including HUD minimum housing quality standards or local housing code shall be discussed.

- Contractor related procedures shall be defined, including how the contractor is selected and by whom, the number of estimates required, the requirements for a contractor to participate in the program, and related penalties for non-completion or non-compliance.
- Administrative procedures shall be defined for processing rehabilitation applications, including how each task is undertaken and who is responsible for each. Procedures shall include client application and verification of income eligibility, inspection, certification of a structure as substandard, work write-up, cost estimate, certification of applicant as eligible, decision regarding award and amount of subsidy or loan, loan advising and assistance to obtain private financing, if appropriate, bids or estimates by contractor, contract signing, filing of lien, inspection of work in progress, progress payments, final inspection and certification of standard condition of unit, and case closeout.
- Affordability controls shall be prepared in accordance with COAH requirements as per N.J.A.C. 5:93-5.2(g).
- File maintenance procedures for client households shall be provided on an individual case basis and maintained in a form for retention by the Township.
- Fiscal procedures shall be delineated indicating the necessary recordkeeping and coordination of same with the Township's or Township's Chief Financial Officer and/or other responsible person.

B. Development of Marketing Plan for Rehabilitation Program.

The Consultant shall prepare materials for marketing of the rehabilitation program in a manner acceptable to the Township and NJ COAH.

Consideration shall be given to the properties identified by the Holland Township Building Department and Tax Office as requiring improvements. In addition, the marketing plan shall, at a minimum, provide for:

- Preparation of an information bulletin which may be available for meeting and handout purposes.
- Preparation of newspaper advertisement soliciting homeowner interest and program inquiry.
- Provision for local meetings to describe program opportunities to interested households.
- Delivery to potentially eligible homes of information describing the program's availability.

Program marketing shall continue until the required rehabilitation units have been identified and applicants screened for eligibility so as to meet NJ COAH's goal for rehabilitated dwellings.

C. Provision of Rehabilitation Program Services for Applicant Selection, Work Write-up and Cost Estimate Services, Contracting, Construction Inspections, and Case Closeout

The Consultant shall provide for comprehensive services to implement the rehabilitation services for up to 13 substandard properties located in the Township.

The Township's rehabilitation program shall identify homeowners and provide the following services if there is an insufficient list of eligible homeowners currently available:

- Applicant Selection. If necessary, the Consultant shall provide for the following activities with respect to applicant selection:
 - promote the housing rehabilitation program;
 - schedule interview dates with participating applicants;
 - interview applicants and explain types of rehabilitation assistance available;
 - prepare applicant documents, including verification of income, employment, ownership, tax record, analysis of debt capacity, and related information; and,
 - prepare, with the assistance of the Township as necessary, case materials and documents for approval by the Township.

- Work Write-ups and Cost Estimates. The Consultant shall inspect and prepare work write-ups and cost estimates for up to 13 homes. Activities shall include:
 - inspection of premises of the pre-qualified homeowner;
 - provision for work write-ups of the rehabilitation work to be carried out; and,
 - provision for cost estimates for each home.

- Contracting Services. The Consultant shall provide for contracting assistance, including the following activities:
 - provision for review of the proposed rehabilitation items with the homeowner applicants prior to commencement of home improvement activities;
 - provision for, as required, the reprocessing of the work write-up and cost estimates after the staff has reviewed and revised the work write-ups with the homeowner;
 - provision for bidding and contracting by and between program, homeowner and contractor; and,
 - maintenance of contractor records, including insurance certifications.

- Construction Inspection Service and Case Closeout. The Consultant shall provide for construction inspection services and establish a final case record providing for the following activities:
 - provision for periodic construction inspection and an approval system of payout for work completed;
 - provision for final inspection of work completed and contractor guarantees;

- preparation of required reporting documents for submission to the Township;
- preparation of documents for loan closing as applicable, including mortgage, promissory note, rescission notice, etc.;
- filing of mortgages with Hunterdon County Registrar;
- maintenance of program fiscal and accounting records;
- preparation of monthly financial documents for utilization by the Township's Chief Financial Officer; and,
- preparation of case record documents for the Township and, as necessary, COAH reporting.

III. TIME OF PERFORMANCE

The services of the Consultant shall be undertaken in such sequence as to assure their expeditious completion in light of the purposes of the contract.

The Consultant shall provide the services set forth herein for a period of not less than twelve (12) months. Subsequent to the twelve (12) month period, the provisions of this contract shall be extended for additional period(s) of twelve (12) months through the duration of the rehabilitation program period provided:

A. Performance

The Consultant has, in the judgement of the Township, provided the services set forth herein in a satisfactory manner.

B. Extension Agreement

The Township and the Consultant do not take action to terminate this contract, pursuant to the provisions of Article V. below.

C. Compensation

The amount of compensation to be provided as set forth in Article IV. below may, at the mutual agreement of the Township and the Consultant, be revised to reflect change in the cost of the delivery of the services set forth herein.

IV. COMPENSATION AND METHOD OF PAYMENT

The Authority shall pay the Consultant the maximum of Fifty-Two Thousand Dollars (\$52,000.00) for the agreed upon Consultant services hereunder in accordance with the fee schedules as set forth in Paragraph A of this Article IV. All monies payable to the Consultant are subject to a receipt of a requisition for payment from the Consultant stating that he has performed the work under this contract in conformance with the contract, and that he is entitled to receive the amounts requisitioned under the terms of the contract. Monies called for under such requisition are due and payable within 30 days of the date of said requisition.

A. Provision of Rehabilitation Program Services for Applicant Selection, Work Write-ups, Contracting, Construction Inspections, and Case Closeout.

The fee for the Consultant services as set forth in Article II.C. shall be in accordance with the following per case fee schedule:

-- Applicant Selection	\$1,500
-- Work Write-ups and Cost Estimate	\$1,500
-- Contracting, Construction, Inspection Services and Case Closeout	\$1,000
	\$4,000

The Consultant's fee will be billed monthly in accordance with the above payment schedule, with the provision that with respect to construction inspection services and case closeout, the payments to the Consultant shall be as follows:

- An amount equal to 50 percent of the Consultant's fee when the contractor has completed 50 percent of the required rehabilitation work.
- An amount equal to the remaining 50 percent of the Consultant's fee when all work has been completed, the contractor has been paid, and the case has been closed out.

It is expressly understood and agreed that in no event will the total compensation and reimbursement, if any, to be paid hereunder exceed Fifty-Two Thousand Dollars (\$52,000.00) and that the Consultant shall not be obligated under the terms of the contract after receiving said compensation and reimbursement totaling set amount for the services required hereunder, unless the maximum compensation is increased pursuant to an amendment to this contract.

V. CANCELLATION OR TERMINATION

This contract shall continue in force and govern all relationships and transactions between the parties until cancelled or terminated. Either party may cancel or terminate this agreement at any time for just cause, providing the party desiring to terminate and cancel this agreement gives unto the other a thirty (30) day written notice by registered mail of such intention. If this agreement is terminated, the Consultant shall be paid for all services performed to the date of termination.

VI. INSURANCE AND INDEMNITY

The Township and the Consultant do mutually agree as follows:

- A. Consultant's Insurance. The Consultant shall acquire and maintain statutory workmen's compensation insurance coverage, and comprehensive general liability insurance coverage.
- B. Township's Insurance. The Township shall acquire and maintain statutory workmen's compensation insurance coverage, and comprehensive general liability insurance coverage.

C. Indemnification

The Township shall be solely responsible for and shall keep, save, and hold the Consultant harmless and shall defend the Consultant from all claims, loss, liability, expense, or damage resulting from all mental, physical or property damage or disability, including death or personal injury to employees of the Township or the Consultant and to recipients of the Consultant's services and/or to employees of contractors and the subcontractors or to any other persons and to any property damage sustained in connection with or relating to the delivery of the Consultant's services (collectively referred to as the "Claims"). This agreement shall cover and include Claims arising at any time from the acts or omissions, including negligence or malpractice, of any of the officers, directors, employees, agents, servants, independent contractors, subcontractors, or from the Consultant's failure to provide for the safety or protection of its employees, whether or not due to the fault, negligence or default of Consultant or its officers, directors, employees, agents, servants, independent contractors or subcontractors. The Township's liability under this agreement shall continue after the termination of this agreement with respect to any Claims including liability, loss, expense or damage resulting from acts or omissions occurring prior to termination. Without limiting the foregoing, it is specifically agreed that the Township shall so indemnify, save and hold harmless and defend Consultant from all Claims arising from environmental conditions including lead-based paint, radon, carcinogens or other environmental conditions, and from all Claims arising from any and all acts or omissions of subcontracted personnel whether or not sustained in connection with the delivery of the Consultant's services, including Claims arising from unlawful discrimination or harassment, personal injury or otherwise.

VII. GENERAL

Certain general contractual provisions are set forth as follows:

- A. Extent of Agreement. This agreement represents the entire and integrated agreement between the Township and the Consultant, and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both the Township and the Consultant.
- B. Damages. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lock-outs, accidents, or other events beyond the control of the other or the other's employees and agents.
- C. Limited Warranty by Consultant. The Consultant shall render services under this agreement in accordance with generally accepted professional practices. The Consultant shall not, however, be responsible for delays caused by employees and/or agents of the Township, nor shall the Consultant be responsible for acts or omissions of the Township's employees and/or agents, provided that the Consultant gives timely notice to the Township of any such events.
- D. Waivers. In the event any provisions of the agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall be construed by the other party as a waiver or subsequent breach of the same by the other party. No waiver shall have any effect, unless given in writing by the appropriate officer or employee and served by registered mail. Any such waiver shall be ineffective unless signed to by comment in writing and served by registered mail by either party.

VIII. AUTHORITY RESPONSIBILITIES

The Township shall provide the following assistance and services to the Consultant, as necessary, to assure effective implementation of the services as set forth in Article II of this contract.

- A. Holland Township inspection staff, as required, including housing, building and plumbing inspectors.
- B. Overall interdepartmental cooperation of Holland Township staff.

IX. GOVERNING LAWS

The validity and interpretation of this contract and each clause and part thereof, shall be governed by the laws of the State of New Jersey. Reference is also made to Exhibit A attached.

IN WITNESS WHEREOF, the Township and the Consultant have executed this Agreement as of the day first written above.

HOLLAND TOWNSHIP

HOUSING AND COMMUNITY
DEVELOPMENT SERVICES, INC.

By: Edward J. Bandy

By: Carol Hertweck-Lowy
Carol Hertweck-Lowy
Special Consultant

ATTEST:
Arthur Miller

ATTEST:
Audie Cronquist

Approved as to form and sufficiency

"EXHIBIT A"

GENERAL TERMS AND CONDITIONS

1. Extent of Agreement - This Agreement represents the entire and integrated Agreement between the Public Body and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both the Public Body and the Consultant.
2. Termination of Contract for Cause - If, through any cause, the Consultant shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Consultant shall violate any of the covenants, agreements, or stipulations of the Contract, the Public Body shall thereupon have the right to terminate this Contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Consultant under this Contract shall, at the option of the Public Body become its property and the Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

Notwithstanding the above, the Consultant shall not be relieved of liability to the Public Body for damages sustained by the Public Body by virtue of any breach of Contract by the Consultant, and the Public Body may withhold any payments to the Consultant for the purpose of setoff until such time as the exact amount of damages due the Public Body from the Consultant is determined.

3. Limited Warranty by Consultant - The Consultant shall render services under this Agreement in accordance with generally accepted professional practices. The Consultant shall not, however, be responsible for delays caused by employees and/or agents of the Public Body, nor shall the Consultant be responsible for acts or omissions of the Public Body's employees and/or agents, provided that the Consultant gives timely notice to the Public Body of any such events.
4. Consultant's Insurance - The Consultant shall acquire and maintain statutory workmen's compensation insurance coverage and comprehensive general liability insurance coverage.
5. Damages - Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.
6. Ownership of Material - Ownership of all data, material, manuals, and documentations originated and prepared for the Public Body pursuant to this contract shall belong exclusively to the Public Body.
7. Records, Access & Retention - The Public Body, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. All such records shall be retained for seven (7) years after the Public Body makes final payment and all other pending matters are closed.

8. Audit - The Public Body, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant which are directly pertinent to a specific program for the purpose of making audit, examination, excerpts, and transcriptions.
9. Assignability - The Consultant shall not assign any interest in this Contract; and shall not transfer any interest in the same (whether by assignment or notation) without the prior written approval of the Public Body; provided, however, that claims for money due or to become due the Consultant from the Public Body under this Contract may be assigned to a bank, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Public Body.
10. Equal Employment Opportunity - In compliance with Federal Executive Orders 11246 and 11375, applicable Federal regulations and New Jersey State laws, in carrying out this Agreement the Consultant shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, nationality trait, liability for military service, ornamental or physical disability, subject only to conditions and limitations applicable alike to all persons. The Consultant shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment without regard to race, creed, color, national origin, nationality, ancestry, age, sex, marital status, atypical cellular or blood trait, liability for military service, or mental or physical disability subject only to the limitations applicable alike to all persons. Such action shall include, but not be limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and, setting of work conditions.
11. "Section 3" Compliance in the Provision of Training Employment and Business Opportunities - This Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u) as amended, the HUD regulations issued pursuant thereto at 24 CFR Part 135, and any applicable rules and orders of HUD issued thereunder prior to the execution of this Agreement.

The Consultant agrees to abide by the Section 3 clause set forth above and will also cause this Section 3 clause to be inserted in any subcontracts entered into with third parties for work covered by this Agreement.
12. Conflict of Interest Provision - The Consultant shall comply with the Conflict of Interest Provision as set forth in 24 CFR Part 570.611.
13. Compliance with Local Laws - The Consultant shall comply with all applicable laws, ordinances, and codes of the State and local governments.
14. Remedies - Unless otherwise provided in this Agreement, all claims, counterclaims, disputes and other matters in question between the Public Body and Consultant arising out of or relating to this Agreement or the breach of it, will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of New Jersey.

**Additional Material in the Form of a Manual and Necessary Amendments to the
Township's Ordinances to Reflect COAH's Current Rules
will be Included in Final Submission to COAH**

APPENDIX E
ADOPTED, COAH-APPROVED DEVELOPMENT FEE ORDINANCE



State of New Jersey
Council on Affordable Housing

101 SOUTH BROAD STREET

PO Box 813

TRENTON, NJ 08625-0813

(609) 292-3000

(609) 633-6056 (FAX)

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Acting Commissioner

February 18, 2010

The Honorable Edward J. Burdzy
Holland Township
61 Church Rd
Milford, NJ 08848

RE: Development Fee Ordinance Amendment
Holland Township, Hunterdon County

Dear Mayor Burdzy:

The Council on Affordable Housing (COAH) is in receipt of the amendment to your development fee ordinance.

We are pleased to provide a copy of a COAH report and resolution approving Holland Township's amendment to its development fee ordinance with revisions. The Township must file the revised ordinance with COAH within seven days of adoption. In addition, your municipality must receive COAH's approval of an updated spending plan before it may disburse any funds obtained through this ordinance.

Kindly call Joanne Wiggins at (609) 292-4646 if you have any questions. We look forward to working with you to implement your Housing Element and Fair Share Plan.

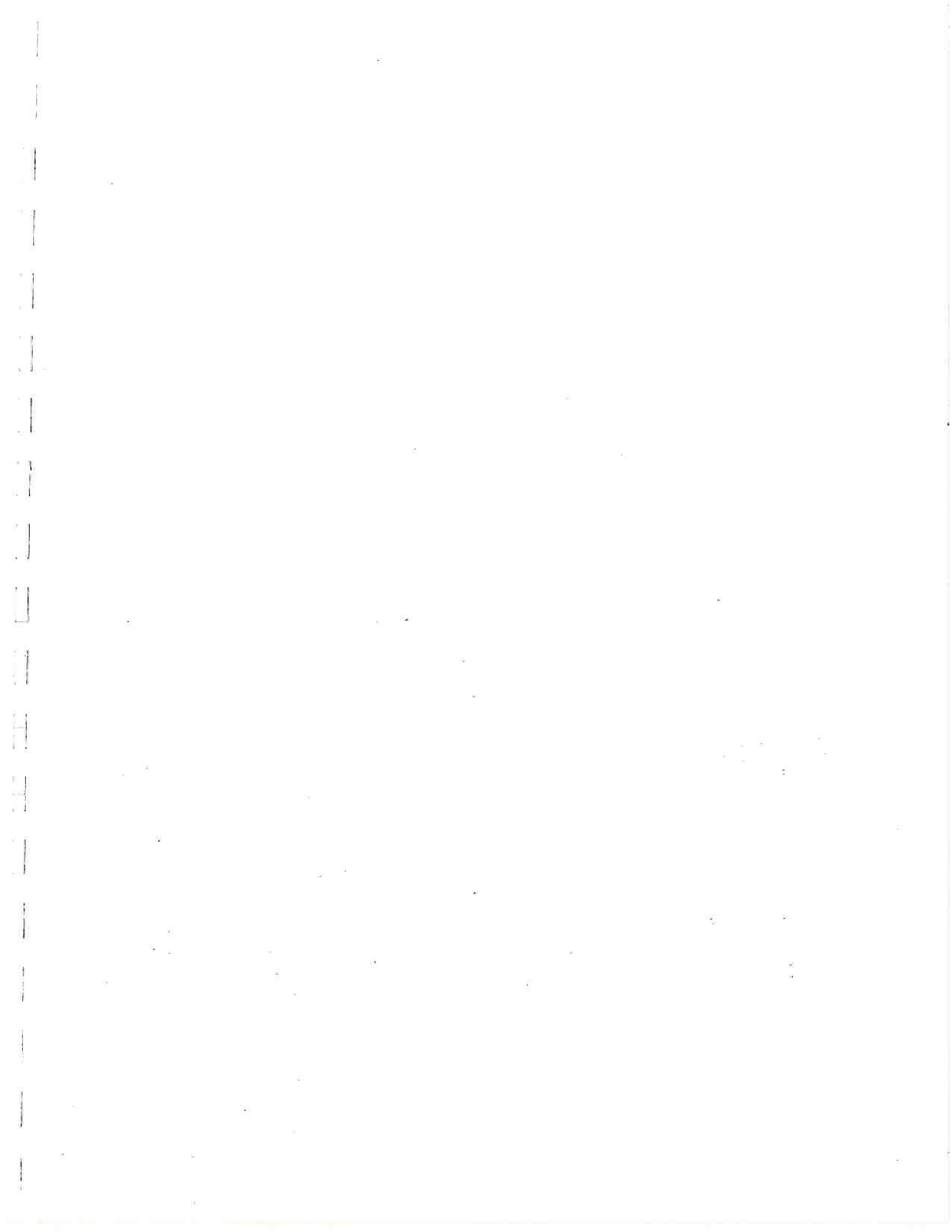
Sincerely,

A handwritten signature in cursive script that reads "Lucy L. Vandenberg".

Lucy Vandenberg, PP, AICP
Executive Director

Enc

cc: Attached Service List
Joanne Wiggins, COAH Supervising Planner
Larissa DeGraw, COAH



The Honorable Edward J. Burdzy
Mayor
Township of Holland
61 Church Rd
Milford, New Jersey 08848

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Gebhardt and Kiefer, PC
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Municipal Clerk
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9 Main St
Flemington, New Jersey 08822

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MHL/Zoning Officer
Township of Holland
61 Church Road
Milford, New Jersey 08848

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Township of Holland
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**RESOLUTION APPROVING MANDATORY DEVELOPMENT FEE ORDINANCE
AMENDMENT
THE TOWNSHIP OF HOLLAND /HUNTERDON COUNTY**

WHEREAS, Township of Holland ("Holland" or "the Township"), Hunterdon County, received first round substantive certification of its housing element and fair share plan on July 1, 1992, and second round substantive certification was granted on December 15, 2004; and

WHEREAS, Holland is a Highlands community and, per the Highlands Memorandum of Understanding (MOU), has requested an extension until June 8, 2010 to petition COAH for third round substantive certification; and

WHEREAS, the Township received approval of a development fee ordinance from COAH on August 4, 2001; and

WHEREAS, on June 20, 2006, COAH approved an amendment to the Township's development fee ordinance; and

WHEREAS, on December 2, 2008, Holland adopted a resolution requesting COAH's review of a proposed development fee ordinance based on COAH's model ordinance; and

WHEREAS, COAH received the Township's resolution and proposed ordinance (Exhibit A) on January 26, 2009; and

WHEREAS, on July 27, 2009 Governor Corzine signed the New Jersey Economic Stimulus Act of 2009 (P.L. 2009, c. 90), portions of which impact local development fee ordinances, in regard to fees collected for non-residential development; and

WHEREAS, this legislation suspends the statewide development fee of two and one-half percent (2.5%) for non-residential development; and

WHEREAS, specifically, the imposition of a non-residential development fee does not apply to non-residential properties that received preliminary or final site plan approval prior to July 1, 2010, provided a building permit is issued prior to January 1, 2013; and

WHEREAS, municipalities may continue to collect non-residential development fees from non-residential properties that have made or committed to making a financial or other contribution prior to July 17, 2008; and

WHEREAS, a developer is considered to have made or committed itself to make a financial or other contribution if the contribution has been transferred, including but not limited to when the funds have already been received by the municipality; the developer has obligated itself to make a contribution as set forth in a written agreement with the municipality, such as a

developer's agreement; or the developer's obligation to make a contribution is set forth as a condition in a land use approval issued by a municipal land use agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.); and

WHEREAS, municipalities may continue to collect non-residential development fees from non-residential properties that received preliminary or final site plan approval prior to July 17, 2008, which have not been issued certificates of occupancy, in accordance with the non-residential fee percentage included in its COAH approved development fee ordinance in place prior to the enactment of the Statewide Non-Residential Development Fee Act; and

WHEREAS, any portion of Holland Township's development fee ordinance that conflicts with P.L. 2009, c. 90 is null and void; and

WHEREAS, the proposed ordinance replaces the previous ordinance with COAH's current model development fee ordinance; and

WHEREAS, pursuant to N.J.A.C. 5:97-8.3(c), the Township of Holland proposes to impose mandatory development fees of one and one-half percent (1.5%) of the equalized assessed value of all new residential development within all zoning districts, provided no increase in density is permitted; and

WHEREAS, a development fee will be imposed and collected when an existing residential structure undergoes a change to a more intense use, is demolished and replaced, or is expanded if not otherwise exempt from the development fee requirement and the development fees shall be calculated based on the increase in the equalized assessed value of the improved structure; and

WHEREAS, if a "d" variance is granted pursuant to N.J.S.A. 40:55D-70d(5), then the additional residential units realized (above what is permitted by right under the existing zoning) will incur a development fee of six percent (6%) of the equalized assessed value of the additional residential development; and

WHEREAS, Holland has exempted from payment of development fees all affordable housing developments, developments where the developer has made a payment in lieu of constructing affordable units, and residential developments that have received preliminary and/or final approval prior to the effective date of the initial development fee ordinance (unless the developer seeks a substantial change in the approval); and

WHEREAS, the proposed ordinance applies a mandatory development fee of two and one-half percent (2.5%) of the equalized assessed value of the land and improvements for all new non-residential construction on an unimproved lot(s) within the Township; and

WHEREAS, the non-residential development fee applies to the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes, or resulting from the replacement of a demolished building, in which cases the fee is based on the difference in equalized value of the pre-existing land and improvements and the equalized value of the newly improved or replaced structure (i.e., land and improvement); and

WHEREAS, the ordinance exempts from the non-residential development fee the following: an increase in equalized assessed value resulting from alterations; change in use within an existing footprint; reconstruction, renovations and repairs; and other exemptions required pursuant to P.L.2008, c.46; and

WHEREAS, one hundred percent of the development fees shall be collected prior to issuance of a final certificate of occupancy; and

WHEREAS, the procedure for development fee collection is outlined in the ordinance; and

WHEREAS, Holland Township has established a separate interest bearing housing trust fund for the purpose of depositing development fees collected in accordance with the ordinance and other sources of funding, which shall at all times be identifiable by source and amount; and

WHEREAS, development fees that are contested will be placed in an interest bearing escrow account by the Township, and any part of fees returned to a developer will include interest accrued on the returned amount; and

WHEREAS, Holland has executed a three-party escrow agreement with the institution in which the funds are deposited and COAH; and

WHEREAS, the expenditure of funds must be consistent with a spending plan to be approved by COAH, and in case of non-conformance with COAH's rules, COAH may direct the manner in which the housing trust fund shall be expended; and

WHEREAS, at least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the Township's Fair Share Plan, one-third of which shall be used to provide affordability assistance to very low-income households; and

WHEREAS, COAH has reviewed Holland's development fee ordinance for compliance with N.J.A.C. 5:97-8 and has determined that with minor revisions noted, the ordinance complies with all the requirements set forth in these sections, as outlined in the COAH report dated February 2, 2010 (Exhibit B).

NOW THEREFORE BE IT RESOLVED that COAH hereby approves Holland Township's development fee ordinance amendment with the following minor revision:

1. **Section 66-4. (b)(vi)** to read: *Owner-occupied residential structures demolished and replaced as a result of a fire, flood or natural disaster shall be exempt from paying a development fee.*

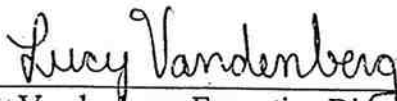
BE IT FURTHER RESOLVED that COAH's approval of the development fee ordinance and the adoption of the ordinance by Holland's governing body will enable the Township to begin imposing development fees at the higher amounts permitted by N.J.A.C. 5:97-8.3(c) and continue to collect as required pursuant to P.L.2008, c.46 and P.L. 2009, c. 90 ; and

BE IT FURTHER RESOLVED that the development fee ordinance must be submitted to COAH within seven days of adoption by the governing body; and

BE IT FURTHER RESOLVED that Holland must receive approval of a development fee spending plan prior to the grant of third round substantive certification and before it may disburse any of these funds; and

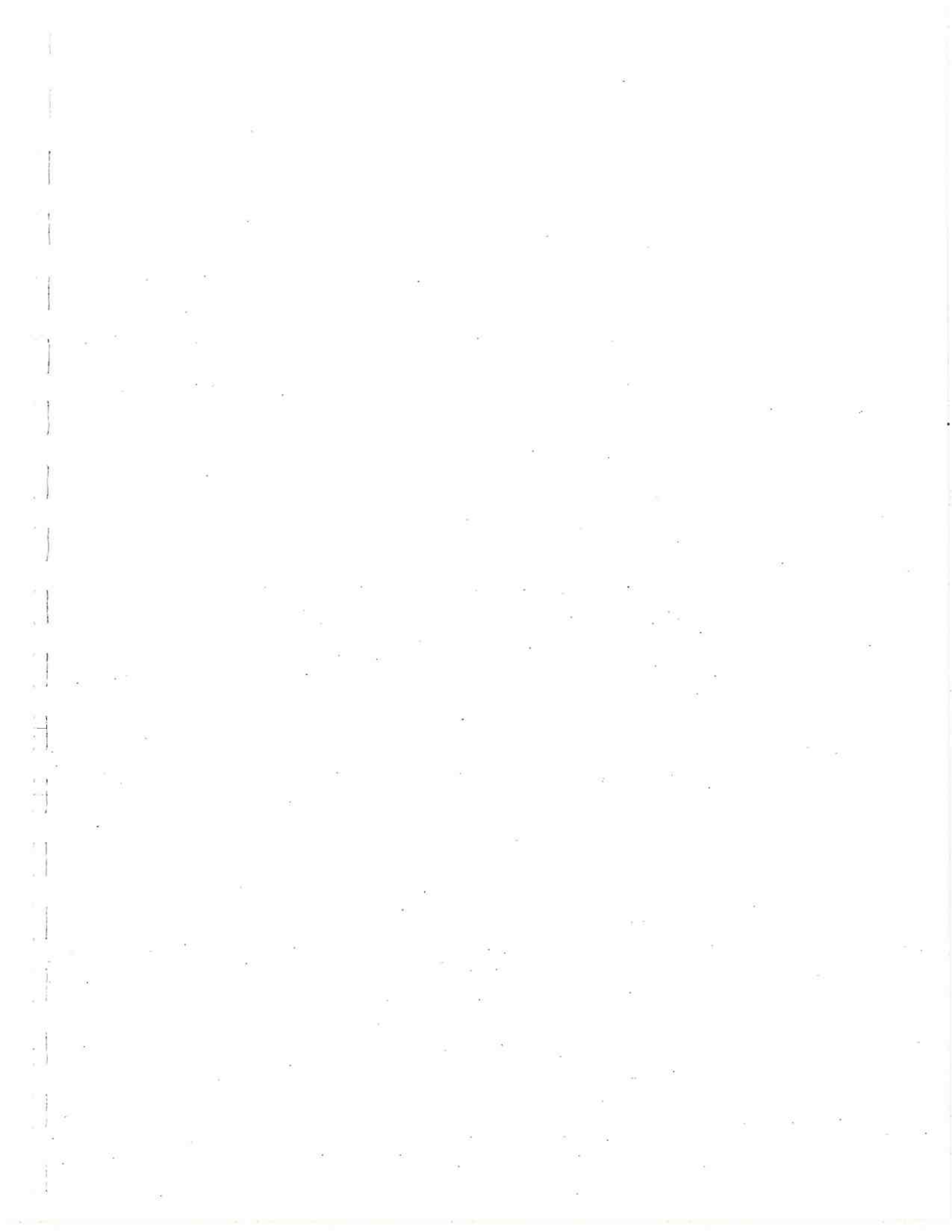
BE IT FURTHER RESOLVED that in the event Holland withdraws its petition, fails to obtain substantive certification, allows its certification to lapse, or its substantive certification is revoked, this ordinance shall be null and void.

Date: 2/2/10



Lucy Vandenberg, Executive Director
Council on Affordable Housing

Exhibit A



**TOWNSHIP OF HOLLAND
COUNTY OF HUNTERDON
ORDINANCE 2008-**

**AN ORDINANCE AMENDING CHAPTER 66, ENTITLED
"DEVELOPMENT FEES," OF THE CODE OF THE TOWNSHIP OF
HOLLAND BY REVISING THE TEXT THEREOF TO CONFORM
TO RECENT REQUIREMENTS OF THE COUNCIL ON
AFFORDABLE HOUSING**

WHEREAS, pursuant to P.L.2008, c.46 section 8 (N.J.S.A. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate, and has now adopted and promulgated, new regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans.; and

WHEREAS, this Township has substantive certification from COAH and wishes to revise its present development fee ordinance set forth in Chapter 66, entitled "Development Fees," of the Code of the Township of Holland;

BE IT ORDAINED by the Township Committee of the Township of Holland, in the County of Hunterdon and State of New Jersey, that the Chapter 66, entitled "Development Fees," of the Code of the Township of Holland is hereby amended in its entirety to read as follows:

Chapter 66

DEVELOPMENT FEES

§ 66-1. Purpose

- A. In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 *et seq.*, and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- B. Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.

- C. This Chapter establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

§ 66-2. Basic requirements

- A. This ordinance shall not be effective until approved by COAH pursuant to N.J.A.C. 5:96-5.1.
- B. The Township shall not spend development fees until COAH has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.

§ 66-3. Definitions

The following terms, as used in this ordinance, shall have the following meanings:

"Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

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

"Development fee" means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

"Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

"Equalized assessed value" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (N.J.S.A. 54:1-35a through 54:1-35c).

"Township" means the Township of Holland, in the County of Hunterdon, New Jersey.

§ 66-4. Residential Development fees

- A. Imposed fees

1. Within all the zoning districts of the Township, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1 ½ percent of the equalized assessed value for residential development provided no increased density is permitted pursuant to N.J.S.A. 40:550-70d(5).
2. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" density variance) has been permitted, developers may be required to pay a development fee of 6 percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1 ½ percent of the equalized assessed value on the first two units; and the specified higher percentage up to 6 percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

B. Eligible exactions, ineligible exactions and exemptions for residential development

1. Eligible construction, as referred to in this Chapter, shall be new construction for which a construction permit is required pursuant to the New Jersey State Uniform Construction Code Act.
2. Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
3. Developments that have received preliminary or final subdivision or site plan approval prior to the original adoption of a municipal development fee ordinance (contained in this Chapter) shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a subdivision or site plan approval does not apply, a zoning and/or construction permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the construction permit is issued.
4. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee

requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

5. Development which is entitled to exemption from New Jersey real property tax shall be exempt from paying a development fee.

§ 66-5. Non-residential Development fees

A. Imposed fees

1. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2 ½ percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
2. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2 ½ percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2 ½ percent shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

B. Eligible exactions, ineligible exactions and exemptions for non-residential development

1. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the 2 ½ percent development fee, unless otherwise exempted below.
2. The 2 ½ percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
3. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.

4. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
5. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Township as a lien against the real property of the owner.

§ 66-6. Collection procedures

- A. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the Construction Official responsible for the issuance of a construction permit and the Township Development Regulations Officer.
- B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF according to the instructions provided. The Construction Official shall verify the information submitted by the non-residential developer according to the instructions provided in the Form N-RDF. The Township Tax Assessor shall verify exemptions and prepare estimated and final assessments according to the instructions provided in Form N-RDF.
- C. The Construction Official responsible for the issuance of a construction permit shall notify the Township Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.
- D. Within 90 days of receipt of that notice, the Township Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- E. The Construction Official responsible for the issuance of a final certificate of occupancy shall notify the Township Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.

- F. Within 10 business days of a request for the scheduling of a final inspection, the Township Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. Should the Township fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (N.J.S.A. 40:55D-8.6).
- H. The developer shall pay 100 percent of the calculated development fee amount prior to the municipal issuance of a final certificate of occupancy for the subject property.
- I. Appeal of development fees
 - 1. A developer may challenge residential development fees imposed by filing a challenge with the Hunterdon County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the Township. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
 - 2. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Township. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

§ 66-7. Affordable Housing trust fund

- A. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer of the Township for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

- B. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
1. payments in lieu of on-site construction of affordable units;
 2. developer contributed funds to make 10 percent of the adaptable entrances in a townhouse or other multistory attached development accessible;
 3. rental income from municipally operated units;
 4. repayments from affordable housing program loans;
 5. recapture funds;
 6. proceeds from the sale of affordable units; and
 7. any other funds collected in connection with the Township's affordable housing program.
- C. Within seven days from the opening of the trust fund account, the Township shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the Bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
- D. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

§ 66-8. Use of funds

- A. The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the Township's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.
- B. Funds shall not be expended to reimburse the Township for past housing activities.
- C. At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households

in affordable units included in the Township's Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.

1. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
 2. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
 3. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- D. The Township may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
- E. No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

§ 66-9. Monitoring

- A. The Township shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Township's housing program, as well as to the expenditure of revenues and implementation of

the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

§ 66-10. Ongoing collection of fees

- A. The ability of the Township to impose, collect and expend development fees shall expire with its substantive certification received from COAH unless the Township has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If the Township fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (N.J.S.A. 52:27D-320). The Township shall not impose a residential development fee on a development that receives preliminary or final subdivision or site plan approval after the Township expiration of its substantive certification or judgment of compliance, nor shall the Township retroactively impose a development fee on such a development. The Township shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect immediately after publication following final passage, in accordance with law.

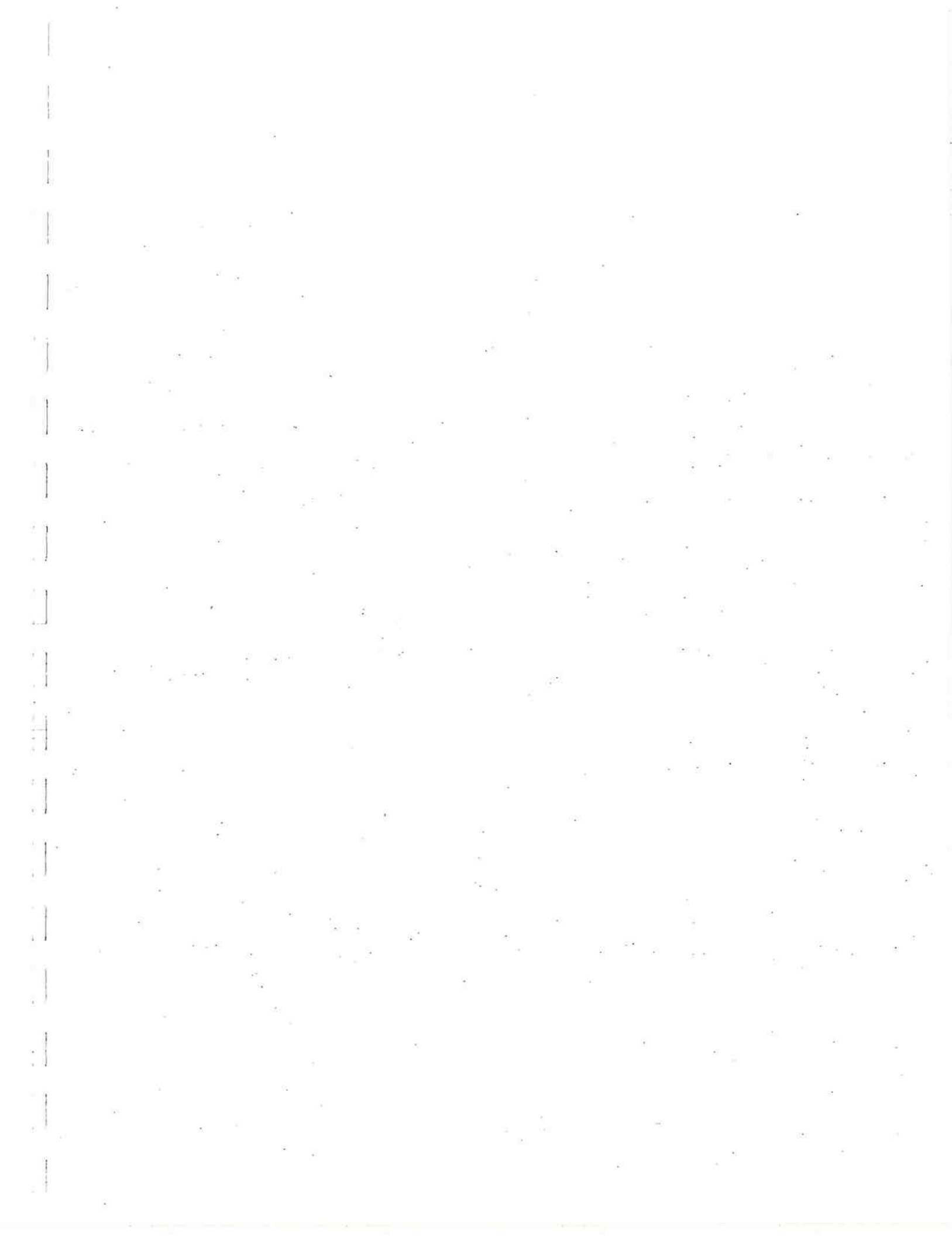
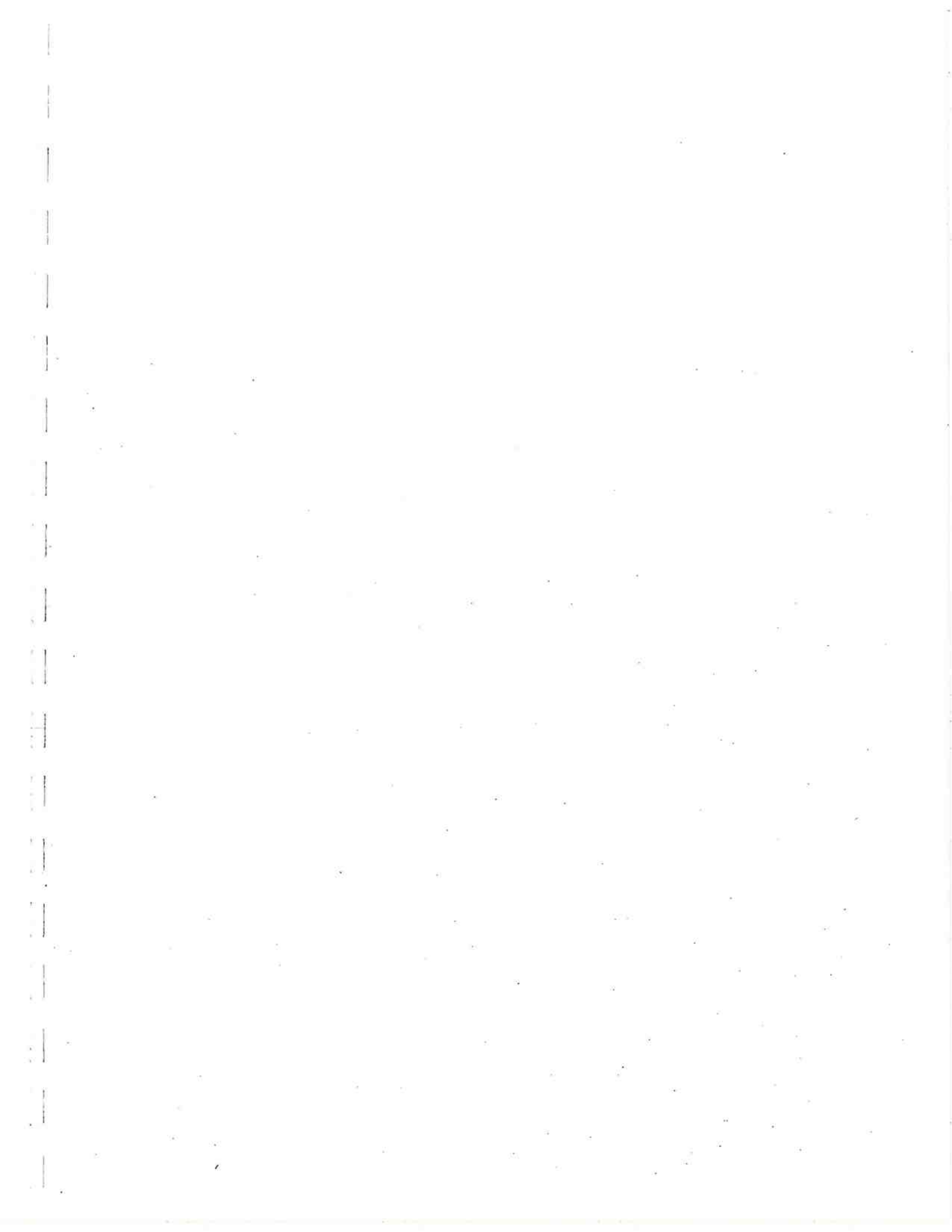


Exhibit B





NEW JERSEY COUNCIL ON AFFORDABLE HOUSING
REVIEW OF DEVELOPMENT FEE ORDINANCE AMENDMENT
TOWNSHIP OF HOLLAND/HUNTERDON COUNTY
REGION # 3



Prepared by Ngozi Obi, Assistant Planner
February 2, 2010

I. BACKGROUND

The Council on Affordable Housing (COAH) granted first round substantive certification of a housing element and fair share plan to the Township of Holland, Hunterdon County, ("Holland" or "the Township") on July 1, 1992, and second round substantive certification was granted on December 15, 2004. Holland is a Highlands community and, per the Highlands Memorandum of Understanding (MOU), has requested an extension to file its third round petition until June 8, 2010.

The Township received approval of a development fee ordinance from COAH on August 4, 2001. On June 20, 2006, COAH approved an amendment to the Township's development fee ordinance. On December 2, 2008, Holland adopted a resolution requesting COAH's review of a proposed development fee ordinance amendment based on COAH's model ordinance. COAH received the resolution and draft ordinance on January 26, 2009. This report reviews the draft development fee ordinance amendment in accordance with N.J.A.C. 5:97-8.

II. ORDINANCE REVIEW

Pursuant to N.J.A.C. 5:97-8.3(c), the Township of Holland proposes to impose a mandatory development fee of one and one-half percent (1.5%) of the equalized assessed value of all new residential development within all the zoning districts, provided no increase in density is permitted. A development fee will be imposed and collected when an existing residential structure undergoes a change to a more intense use, is demolished and replaced, or is expanded if not otherwise exempt from the development fee requirement. The development fees shall be calculated based on the increase in the equalized assessed value of the improved structure.

If a "d" variance is granted pursuant to N.J.S.A. 40:55D-70d(5), then the additional residential units realized (above what is permitted by right under the existing zoning) will incur a development fee of six percent (6%) of the equalized assessed value of the additional residential development.

Within all the zoning districts within the Township, the proposed ordinance applies a mandatory development fee of two and one-half percent (2.5%) of the equalized assessed value of the land and improvements for all new non-residential construction on an unimproved lot(s). This fee also applies to the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes, or resulting from the replacement of a demolished building. In the case of expansion or replacement, the fee is based on the difference in equalized value of the pre-existing land and improvements and the equalized value of the newly improved or replaced structure (i.e., land and improvement).

The Township of Holland has exempted from payment of development fees all affordable housing developments and developments where the developer has made a payment in lieu of constructing affordable units. An exemption also applies to developers that have received preliminary and/or final approval of a residential development prior to the effective date of the initial development fee ordinance, unless the developer seeks a substantial change in the approval.

The ordinance exempts from the non-residential development fee the following: an increase in equalized assessed value resulting from alterations; change in use within an existing footprint; reconstruction, renovations and repairs; and other exemptions required pursuant to P.L.2008, c.46.

One hundred percent of the development fees shall be collected prior to issuance of a final certificate of occupancy. The procedure for development fee collection is outlined in the ordinance.

The Township of Holland has created a separate interest bearing housing trust fund for the purpose of depositing development fees collected in accordance with the ordinance and other sources of funding, which shall at all times be identifiable by source and amount. Other sources of funding include: recapture funds, proceeds from the sale of affordable units, payments in lieu, developer contributed barrier free funds, repayments from affordable housing program loans, and other funds collected in connection with the Township's affordable housing program. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

Development fees that are contested will be placed in an interest bearing escrow account by the Township. Any part of fees returned to a developer will include interest accrued on the returned amount.

The Township of Holland has executed a three-party escrow agreement with the institution in which the funds are deposited and COAH. In case of non-conformance with COAH's rules, COAH may direct the manner in which the housing trust fund shall be expended.

The expenditure of funds must be consistent with a spending plan to be approved by COAH. At least 30 percent of the development fees collected and interest earned shall be used for affordability assistance to low- and moderate-income households in affordable units included in the Township's Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to very low-income households.

On July 27, 2009 Governor Corzine signed the New Jersey Economic Stimulus Act of 2009 (P.L. 2009, c. 90), portions of which impact local development fee ordinances, in regard to fees collected for non-residential development. This legislation suspends the non-residential statewide development fee of 2.5% for non-residential development. Specifically, the imposition of a non-residential development fee does not apply to non-residential properties that received preliminary or final site plan approval subsequent to July 17, 2008 and prior to July 1, 2010, provided a building permit is issued prior to January 1, 2013. However, municipalities may continue to collect non-residential development fees from non-residential properties that have made or committed to making a financial or other contribution prior to July 17, 2008. A developer is considered to have made or committed itself to make a financial or other contribution if the contribution has been transferred, including but not limited to when the funds have already been received by the municipality; the developer has obligated itself to make a contribution as set forth in a written agreement with the municipality, such as a developer's agreement; or the developer's obligation to make a contribution is set forth as a condition in a land use approval issued by a municipal land use agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) Therefore, municipalities may continue to collect non-residential development fees from non-residential properties that received preliminary or final site plan approval prior to July 17, 2008, which have not been issued certificates of

occupancy, in accordance with the non-residential fee percentage included in its COAH approved development fee ordinance in place prior to the enactment of the Statewide Non-Residential Development Fee Act. Any portion of Holland Township's development fee ordinance that conflicts with P.L. 2009, c. 90 is null and void.

Holland will complete and return to COAH all monitoring forms, including the annual monitoring report related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls and any other funds collected in connection with Holland's housing program, and the expenditure of revenues and implementation of the plan certified by COAH. Holland's Trust Fund monitoring is currently up to date.

III. RECOMMENDATION

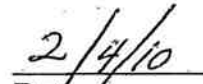
Based on this review, COAH staff recommends approval of the Township of Holland's development fee ordinance subject to the following revisions:

1. Add section 66-4. (b)(vi) to read: *Owner-occupied residential structures demolished and replaced as a result of a fire, flood or natural disaster shall be exempt from paying a development fee.*

COAH's approval of the development fee ordinance amendment and the adoption of the ordinance amendment by Holland's governing body will enable the Township to begin imposing development fees at the higher percentages permitted pursuant to N.J.A.C. 5:97-8.3(c) and continue to collect non-residential fees pursuant to N.J.S.A. 52:27D-329.2 and as required by N.J.S.A. 40:55D-8.1 through 8.7 and P.L. 2009, c. 90. The amended development fee ordinance must be submitted to COAH within seven days of adoption by the governing body. Holland must receive approval of an updated development fee spending plan prior to the grant of third round substantive certification and before it may disburse any of these funds. In the event Holland fails to obtain substantive certification, allows its certification to lapse or be revoked the amended ordinance shall be null and void.

Reviewed by:


Deputy Attorney General


Date

**APPENDIX F
PROPOSED SPENDING PLAN AND
RESOLUTION TO INTENT TO FUND SHORTFALL**

To be Completed in Final Submission to COAH

Council on Affordable Housing

Sample Affordable Housing Trust Fund Spending Plan

OVERVIEW

[This model Spending Plan reflects the latest amendments to COAH's rules. In addition to demonstrating how municipal affordable housing trust funds will be expended, the spending plan should be prepared together with the implementation schedule of the fair share plan. The spending plan will serve as the basis for demonstrating realistic opportunity of each proposed affordable housing option that relies on affordable housing trust funds as well as a basis for any affordable housing delivery mechanisms that are the subject of an implementation schedule. Another key provision in this update is the requirement to spend existing balances as of July 17, 2008 within four years of the date the municipality's spending plan is approved by COAH. To ensure timeliness of fund expenditures, there is a requirement to spend or contractually commit newly collected funds within three years from the calendar year in which those funds were collected. Proposed spending may be through a revolving loan, no-interest loans, forgivable loans, below-market loans, bridge loans, a hybrid loan and grant program, etc.]

This document is organized into five sections that address the standard information required by N.J.A.C. 5:97-8.10. A process describing the collection and distribution procedures for barrier free escrow funds pursuant to N.J.A.C. 5:97-8.5 should be detailed separately within the municipality's Affordable Housing Ordinance. Please tailor this form to the individual municipality's circumstance(s) and provide or insert information where text is italicized and in brackets [thus]. Depending on when this spending plan is completed, the actual versus projected years will vary and should be adjusted accordingly. Instructions for completing this model document are bolded, italicized and in brackets [thus] and should be deleted from the final document submitted to COAH for approval.

Please be aware that COAH staff will be utilizing the actual collections, expenditure and balances reported in the municipal affordable housing trust fund monitoring submitted to COAH via the Computer Tracking and Monitoring (CTM) system. The preparer is encouraged to collaborate with the municipal affordable housing trust fund report preparer to ensure consistency. Information about viewing municipal data in the CTM system is available on COAH's website at www.nj.gov/dca/coah/training.shtml.]

INTRODUCTION

[Insert name of municipality, county] has prepared a Housing Element and Fair Share plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:97-1 et seq. and N.J.A.C. 5:96-1 et seq.). A development fee ordinance creating a dedicated revenue source for affordable housing was approved by COAH on *[insert date of approval]* and adopted by the municipality on *[insert date of adoption]*. The ordinance establishes the *[insert name of municipality]* affordable housing trust fund for which this spending plan is prepared.

As of December 31, 2008, *[insert name of municipality]* has collected \$ *[insert amount of revenue already collected]*, expended \$ *[insert amount of funds already expended]*, resulting in a balance of \$ *[insert balance as of December 31, 2008]*. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund in *[insert name of bank]* for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:97-8.7-8.9 as described in the sections that follow.

[If your municipality maintained an affordable housing trust fund as part of a previous third round petition under N.J.A.C. 5:94 or second round substantive certification, please complete the following section.]

[Insert name of municipality] first petitioned COAH for substantive certification on *[insert earliest date of previous second or third round petition]* and received prior approval to maintain an affordable housing trust fund on *[date COAH first approved a development fee ordinance]*. As of December 31, 2004, the prior round balance remaining in the affordable housing trust fund was \$ *[insert trust fund balance as of December 31, 2004]*. From January 1, 2005 through December 31, 2008, *[insert name of municipality]* collected an additional \$ *[insert total revenue]* in development fees, payments in lieu of construction, other funds, and/or interest. From January 1, 2005 through December 31, 2008, *[insert name of municipality]* expended funds on the affordable housing activities detailed in section 4 of this spending plan.

1. REVENUES FOR CERTIFICATION PERIOD

To calculate a projection of revenue anticipated during the period of third round substantive certification, *[insert name of municipality]* considered the following:

(a) Development fees:

1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
3. Future development that is likely to occur based on historical rates of development.

(b) Payment in lieu (PIL):

Actual and committed payments in lieu (PIL) of construction from developers as follows:

[List affordable housing sites from inclusionary zone(s) where the developer(s) has made or committed to make a PIL along with the associated PIL amount(s). If payments in lieu have not been collected or assessed, so indicate. Please note that while all other fund sources include projected revenues, PIL funds are based only on actual revenues]

(c) Other funding sources:

Funds from other sources, including, but not limited to, the sale of units with extinguished controls, repayment of affordable housing program loans, rental income, proceeds from the sale of affordable units and *[insert name of other fund(s)]*. *[If no other funds have been or are anticipated to be collected, so indicate.]*

(d) Projected interest:

Interest on the projected revenue in the municipal affordable housing trust fund at the current average interest rate.

[Provide a breakdown by year for all sources of funds collected and/or anticipated during the substantive certification period. COAH will substitute actual revenue for the period between the preparation of this spending plan and COAH's approval, as entered by the municipality in the CTM system. Use and submit additional spreadsheet(s) as necessary. A sample spreadsheet format is provided below.]

SOURCE OF FUNDS	PROJECTED REVENUES-HOUSING TRUST FUND - 2009 THROUGH 2018										
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total
(a) Development fees:											
1. Approved Development											
2. Development Pending Approval											
3. Projected Development											
(b) Payments in Lieu of Construction											
(c) Other Funds (Specify source(s))											
(d) Interest											
Total											

[Insert name of municipality] projects a total of \$ [insert total of all revenue listed above] in revenue to be collected between January 1, 2009 and December 31, 2018. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing.

2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by *[insert name of municipality]*:

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with *[insert municipality]*'s development fee ordinance for both residential and non-residential developments in accordance with COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

(b) Distribution of development fee revenues:

[Provide a brief explanation of local procedures for distributing the municipality's affordable housing trust funds.]

3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

(a) **Rehabilitation and new construction programs and projects (N.J.A.C. 5:97-8.7)**

[Insert name of municipality] will dedicate \$ *[insert amount of revenue to be dedicated]* to rehabilitation or new construction programs (see detailed descriptions in Fair Share Plan) as follows:

Rehabilitation program: \$ *[insert amount of revenues to be expended]*

New construction project(s): \$ *[insert amount of revenues to be expended, by project and total; individually list programs and projects e.g. for-sale and rental municipally sponsored, accessory apartments, etc.]*

(b) **Affordability Assistance (N.J.A.C. 5:97-8.8)**

[Municipalities are required to spend a minimum of 30 percent of development fee revenue to render existing affordable units more affordable and one-third of that amount must be dedicated to very low-income households (i.e. households earning less than 30 percent of the regional median income). Utilize the formulae below to project the minimum affordability assistance requirements. The actual affordability assistance minimums are calculated on an ongoing basis in the CTM system based on actual revenues.]

To initially project a funding amount that will be dedicated to affordability assistance, first subtract actual expenditures on all new construction, previously funded regional contribution agreements and rehabilitation activities from inception of the fund

through June 2, 2008 from the sum of actual and projected development fees and interest through December 31, 2018. Multiply this amount by 30 percent and then subtract actual affordability assistance expenditures from inception of the fund through December 31, 2008 from the result. The outcome of this calculation will be the total remaining funds that must be dedicated to affordability assistance for the period January 1, 2009 through December 31, 2018.

To initially project a funding amount that will be dedicated to affordability assistance for very low-income households, divide the affordability assistance figure derived from the above paragraph by three. The outcome of this calculation will be the total remaining funds that must be dedicated to very low-income affordability assistance for the period January 1, 2009 through December 31, 2018. Municipalities will receive credit against this projected minimum for affordability assistance activity from January 1, 2009 to the present.]

Projected minimum affordability assistance requirement:

Actual development fees through 12/31/2008		\$
Actual interest earned through 12/31/2008	+	\$
Development fees projected 2009-2018	+	\$
Interest projected 2009-2018	+	\$
Less housing activity expenditures through 6/2/2008	-	\$
Total	=	
30 percent requirement	x 0.30 =	\$
Less Affordability assistance expenditures through 12/31/2008	-	\$
PROJECTED MINIMUM Affordability Assistance Requirement 1/1/2009 through 12/31/2018	=	\$
PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement 1/1/2009 through 12/31/2018	÷ 3 =	\$

[Insert name of municipality] will dedicate \$ [insert amount of revenues to be dedicated] from the affordable housing trust fund to render units more affordable, including \$ [insert amount of revenue to be dedicated] to render units more affordable to households earning 30 percent or less of median income by region, as follows:

[List affordability assistance programs such as down-payment assistance, rental assistance, converting low-income units to very-low-income units, etc.]

(c) **Administrative Expenses (N.J.A.C. 5:97-8.9)**

[Municipalities are permitted to use affordable housing trust fund revenue for related administrative costs up to a 20 percent limitation pending funding availability after programmatic and affordability assistance expenditures. The actual administrative

expense maximum is calculated on an ongoing basis in the CTM system based on actual revenues.

To initially project a funding amount that will be available for administrative costs, sum all development fees actually collected since the inception of the account and all actual interest earned since the inception of the account with all projected development fees and interest projected to be collected through December 31, 2018. To this amount, add all payments in lieu of constructing affordable units and other account deposits from the inception of the account through July 17, 2008. From this total amount, subtract RCA expenditures made or contractually obligated from the inception of the account through December 31, 2018. Multiply this amount by 20 percent and then subtract actual administrative expenditures made from the inception of the account through December 31, 2008. The outcome of this calculation will be the total remaining funds that will be available to defray administrative expenses for the period January 1, 2009 through December 31, 2018.]

[Insert name of municipality] projects that \$[insert projected amount of revenue available] will be available from the affordable housing trust fund to be used for administrative purposes. Projected administrative expenditures, subject to the 20 percent cap, are as follows:

[Provide detailed description]

4. EXPENDITURE SCHEDULE

[Insert name of municipality] intends to use affordable housing trust fund revenues for the creation and/or rehabilitation of housing units. Where applicable, the creation/rehabilitation funding schedule below parallels the implementation schedule set forth in the Housing Element and Fair Share Plan and is summarized as follows.

[In developing this spending plan, it is important to note that all funds in the municipal trust fund as of July 17, 2008 must be fully expended or committed to be expended within four years of COAH's approval of the spending plan.]

[A sample spreadsheet format is provided below.]

5. EXCESS OR SHORTFALL OF FUNDS

Pursuant to the Housing Element and Fair Share Plan, the governing body of *[insert name of municipality]* has adopted a resolution agreeing to fund any shortfall of funds required for implementing *[insert types of housing programs]*. In the event that a shortfall of anticipated revenues occurs, *[insert name of municipality]* will *[describe method of handling the shortfall of funds such as a resolution of intent to bond]*. A copy of the adopted resolution is attached.

[COAH requires a municipality to pass a resolution of intent to bond or a resolution appropriating funds from general revenue for any unanticipated shortfall in a municipal rehabilitation program or municipal construction project.]

In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be used to *[describe type of housing activities]*.

6. BARRIER FREE ESCROW

Collection and distribution of barrier free funds shall be consistent with *[insert municipality]*'s Affordable Housing Ordinance in accordance with N.J.A.C. 5:97-8.5.

[Reference section of Affordable Housing Ordinance that explains the collection and distribution of barrier free funds.]

SUMMARY

[Insert name of municipality] intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:97-8.7 through 8.9 and consistent with the housing programs outlined in the housing element and fair share plan dated *[insert date]*.

[Insert name of municipality] has a balance of \$ *[insert balance]* as of December 31, 2008 and anticipates an additional \$ *[insert total projected revenue]* in revenues before the expiration of substantive certification for a total of \$*[insert total of balance and projections]*. The municipality will dedicate \$ *[insert amount of revenue for housing activities]* towards *[insert types of housing programs]*, \$ *[insert amount of revenue for affordability assistance]* to render units more affordable, and \$*[insert amount of revenue for administrative costs]* to administrative costs. Any shortfall of funds will be offset by *[insert source of funds]*. The municipality will dedicate any excess funds toward *[insert types of housing programs]*.

SPENDING PLAN SUMMARY	
Balance as of December 31, 2008	\$
PROJECTED REVENUE 2009-2018	
Development fees	+ \$
Payments in lieu of construction	+ \$
Other funds	+ \$
Interest	+ \$
TOTAL REVENUE	= \$
EXPENDITURES	
Funds used for Rehabilitation	- \$
Funds used for New Construction	
1. <i>[list individual projects/programs]</i>	- \$
2.	- \$
3.	- \$
4.	- \$
5.	- \$
6.	- \$
7.	- \$
8.	- \$
9.	- \$
10.	- \$
Affordability Assistance	- \$
Administration	- \$
Excess Funds for Additional Housing Activity	= \$
1. <i>[list individual projects/programs]</i>	- \$
2.	- \$
3.	- \$
TOTAL PROJECTED EXPENDITURES	= \$
REMAINING BALANCE	= \$0.00

TOWNSHIP OF HOLLAND
COUNTY OF HUNTERDON, STATE OF NEW JERSEY
RESOLUTION OF INTENT TO FUND SPENDING PLAN SHORTFALL FOR
AFFORDABLE HOUSING PROGRAMS IN FAIR SHARE PLAN

WHEREAS, portions of the May 26, 2010, Third Round Housing Element and Fair Share Plan of this Township as adopted by the Holland Township Planning Board and endorsed by the Township Committee of the Township of Holland provide for a financial commitment by the Township; and

WHEREAS, the New Jersey Council on Affordable Housing (COAH) requires a municipality to state its intent to cover any shortfall in the funding of its affordable housing programs as set forth in the Spending Plan and the Fair Share Plan, including its intention to incur bonded indebtedness, if necessary, to provide the funds required for the timely implementation of the Fair Share Plan;

RESOLVED, by the Township Committee of the Township of Holland, in the County of Hunterdon, New Jersey, as follows:

1. That to the degree that the funds required for the implementation of the Township's adopted 2010 Fair Share Plan, as more particularly set forth in the Spending Plan adopted by the Township Committee on June 1, 2010, are not available at the time they are needed from funds collected from developers under the Development Fee Ordinance, or from in lieu payments from developers to cover a fraction of an affordable unit generated by their respective developments, or from outside grants, the Township will provide the funding needed to cover any shortfall from appropriations in the Township's annual budget or by incurring indebtedness by authorizing and issuing, pursuant to the Local Bond Law, bonds and/or bond anticipation notes to the extent of the funding deficiency, with the understanding that any payments subsequently collected from developers under the Development Fee Ordinance or any "in lieu of" contributions from developers to cover a fraction of an affordable unit generated by their respective developments may be used to reimburse the Township for the costs of the programs such funds are intended to cover; and

2. That the Township currently has the unencumbered capacity to incur such debt under the Local Bond Law.

CERTIFICATION

I, Catherine Miller, RMC, Clerk of the Township of Holland, County of Hunterdon, hereby certify the foregoing to be a true copy of a resolution adopted by the Township Committee of the Township of Holland at a duly noticed and duly convened regular meeting held on June 1, 2010.

Catherine Miller, RMC, Township Clerk