

**RESOLUTION WITHDRAWING THE ORDER TO SHOW CAUSE ISSUED TO THE
BOROUGH OF TINTON FALLS, MONMOUTH COUNTY COAH 06-1805**

WHEREAS, on February 28, 2006, Avalon Bay, LLC ("Avalon Bay"), a contract purchaser of property located in Tinton Falls, filed a motion with the New Jersey Council on Affordable Housing (the "Council" or "COAH"), seeking the imposition of a scarce resource restraint against the Borough of Tinton Falls; and

WHEREAS, the purpose of the request for a scarce resource restraint against Tinton Falls was to reserve all existing unallocated sewer capacity available to the Borough from the Township of Neptune Sewerage Authority ("TNSA"), in order to permit the development of Avalon Bay's housing development; and

WHEREAS, Avalon Bay stated that its development consists of 216 residential units, including 33 affordable housing rental units, and is relied upon in Tinton Falls' Housing Element and Fair Share Plan that received second round substantive certification on December 15, 2004; and

WHEREAS, on June 14, 2006, after reviewing the papers submitted and having heard oral argument, the Council imposed a temporary scarce resource restraint upon Tinton Falls in order to ensure that adequate sewer capacity was available for Tinton Falls to meet its affordable housing obligation pursuant to its second round substantive certification; and

WHEREAS, the scarce resource restraint also applied to the TNSA and was limited to TNSA sewer capacity contracted to service Tinton Falls; and

WHEREAS, the scarce resource restraint was limited to a period of 60 days or until the next Council meeting, scheduled for August 9, 2006; and

WHEREAS, the Council also referred the matter to a task force and encouraged all parties to meet in order to determine the actual available sewer capacity at the TNSA facility, what capacity is available to Tinton Falls and whether such capacity includes the Avalon Bay project; and

WHEREAS, the purpose of granting a scarce resource restraint is to ensure that “a participating municipality take appropriate measures to reserve scarce resources that may be essential to fulfill the municipality’s fair share obligation,” N.J.A.C. 5:91-10.1; and

WHEREAS, at oral argument before the Council on June 14, 2006, the parties to the scarce resource restraint motion presented conflicting representations as to what capacity existed at the TNSA facility, what capacity Tinton Falls was entitled to and what capacity, if any, remained for the Avalon Bay project; and

WHEREAS, on June 21, 2006, a number of the parties met with COAH staff and a representative of TNSA and, based on the representations made at that meeting, COAH found that it was questionable whether there was sufficient remaining sewer capacity available, let alone committed, to the Avalon Bay project or other elements of Tinton Falls’ affordable housing plan; and

WHEREAS, if there is not available sewer capacity for elements of Tinton Falls’ affordable housing plan, then Tinton Falls no longer has a plan that meets the criteria of their substantive certification as granted by COAH; and

WHEREAS, at its August 9, 2006 meeting, the Council ordered that given the uncertainty of the situation facing Tinton Falls, the scarce resource restraint imposed by the Council on June 14, 2006 would remain in effect against the Borough of Tinton Falls until such time that the Council issued a decision stating it had been provided with credible information evidencing that sufficient sewer capacity was available to fulfill Tinton Falls’ affordable housing obligation; and

WHEREAS, the Council also ordered that the temporary scarce resource restraint against TNSA would expire with the issuance of the Council's August 9, 2006 decision; and

WHEREAS, the Council also ordered at its August 9, 2006 meeting that Tinton Falls show cause as to why the Council should not revoke Tinton Falls' second round substantive certification, and that this order to show cause would be returnable on October 11, 2006, at the Council's monthly meeting; and

WHEREAS, in correspondence dated September 12, 2006, Tinton Falls represented to COAH that it had completely alleviated COAH's concerns by arranging to purchase an additional 130,000 gallons per day of capacity from the Borough of Avon's available sewer capacity obtained from the TNSA, at a cost of \$750,000; and

WHEREAS, Tinton Falls represents that this additional capacity would be sufficient to fulfill its affordable housing obligations pursuant to its second round substantive certification; and

WHEREAS, at the October 11, 2006 COAH meeting, Tinton Falls provided the Council with a signed agreement between Avon and Tinton Falls for the transfer of the right to the capacity of 130,000 gallons per day at the TNSA facility, from Avon to Tinton Falls; and

WHEREAS, Tinton Falls represented that this agreement represented a final and complete agreement permitting Tinton Falls to make use of its purchase from Avon of an additional 130,000 gallons at the TNSA facility; and

WHEREAS, the Council determined that the Order to Show Cause as to Tinton Falls' ability to meet its second round substantive certification obligation would be carried until the next Council meeting in November, 2006; and

WHEREAS, on October 18, 2006, Tinton Falls provided COAH with written confirmation from TNSA, that it acknowledged the transfer of sewer capacity in the amount of 130,000 gallons per day from Avon to Tinton Falls and that TNSA had no objections to the transfer.

NOW THEREFORE BE IT RESOLVED that based upon the representations of Tinton Falls before the Council at its October 11, 2006 meeting, the signed agreement for the transfer of 130,000 gallons per day of capacity at the TNSA facility from Avon to Tinton Falls, and TNSA's affirmation of the Avon/Tinton Falls Agreement, the Council hereby withdraws its Order to Show Cause issued to Tinton Falls on August 9, 2006.

I hereby certify that this Resolution was duly adopted by the Council on Affordable Housing at its meeting on November 1, 2006


Renee Reiss, Secretary
Council on Affordable Housing