

**RESOLUTION DENYING MOTION OF FAIR SHARE HOUSING CENTER TO STAY
AUGUST 12, 2009 COAH RESOLUTIONS GRANTING AN ADDITIONAL
EXTENSION FOR HIGHLANDS REGION MUNICIPALITIES TO FILE THIRD
ROUND PLANS AND WAIVING N.J.A.C. 5:97-2.3(a), 5:97-2.4 AND
APPENDIX F FOR HIGHLANDS MUNICIPALITIES THAT CONFORM TO THE
HIGHLANDS REGIONAL MASTER PLAN AND FILE WITH COAH BY JUNE 8,
2010**

WHEREAS, on May 6, 2008, COAH adopted its revised third round rules and, as a result of comments received to those revised regulations, COAH also proposed amendments to those rules, which included providing a single deadline of December 31, 2008 for all municipalities to file their third round plans with COAH; and

WHEREAS, on November 12, 2008, COAH adopted a resolution granting a waiver from the December 31, 2008 deadline to submit a revised housing element and fair share plan, extending that deadline to December 8, 2009; and

WHEREAS, on August 12, 2009, COAH adopted a resolution extending the deadline until June 8, 2010 for conforming Highlands municipalities to submit their revised third round housing element and fair share plan for substantive certification and also extending the scarce resource restraint imposed upon the Highlands Region by COAH, and a copy of the August 12, 2009 resolution extending the December 8, 2009 deadline is incorporated within this resolution and attached hereto as Exhibit A; and

WHEREAS, on August 12, 2009, COAH adopted a resolution waiving the application of N.J.A.C. 5:97-2.3(a), 5:97--2.4 and Appendix F of COAH's third round regulations, for Highlands municipalities that conform to the Highlands Regional Master Plan and file third round plans with COAH by June 8, 2010, and a copy of the August 12, 2009 resolution waiving these regulations is incorporated within this resolution and attached hereto as Exhibit B; and

WHEREAS, on August 19, 2009, COAH received a motion from the Fair Share Housing Center ("FSHC") seeking a stay of COAH's two August 12, 2009 resolutions concerning the extension of the filing deadline for Highlands municipalities and the waiver of specific COAH regulations for Highlands municipalities

conforming with the Highlands Regional Master Plan and filing third round plans with COAH by June 8, 2010; and

WHEREAS, FSHC asserts that COAH's August 12, 2009 resolutions were adopted in violation of the Administrative Procedure Act, N.J.S.A. 52:14B--1 et seq. (APA), representing new rules that required COAH to follow the APA's rulemaking process and that COAH's action denied the public the right to comment; and

WHEREAS, the Highlands Council and the Highlands Coalition filed opposition papers to FSHC's motion to stay the August 12, 2009 resolutions and FSHC filed a reply to the opposition of the Highlands Council and the Highlands Coalition; and

WHEREAS, the courts have held that a party is entitled to the remedy of a stay only if it can be demonstrated that: 1) there is a reasonable likelihood of eventual success on the merits; 2) the party will suffer irreparable harm if the stay is not granted; 3) the grant of the stay will not work an inequitable result considering the hardships to the parties against whom the relief is sought, and 4) the restraint sought will not harm the public interest. See Crowe v. DeGioia, 90 N.J. 126 (1982); and

WHEREAS, it is the finding of the Council that municipalities permitted to submit third round plans by June 8, 2010 and the continuation of the scarce resource restraint imposed upon the Highlands Region will not cause any irreparable harm and FSHC does not otherwise meet the legal standard necessary for granting of a stay of an extension of the third round filing deadline for conforming Highlands municipalities; and

WHEREAS, it is the finding of the Council that waiving N.J.A.C. 5:97--2.3(a), 5:97--2.4 and Appendix F for those Highlands municipalities that petition COAH and petition the Highlands Council to conform with the Highlands Regional Master Plan by June 8, 2010 will not cause any irreparable harm; and

WHEREAS, COAH will be proposing amendments to its regulations pursuant to the APA in order to conform to the Highlands Regional Master Plan upon completion by the Highlands of the Regional Master Plan municipal build-out reports and revised municipal third round growth projections based upon the

build-out reports and, therefore, FSHC is unlikely to prevail on its APA challenge and FSHC does not otherwise meet the legal standard necessary for granting of a stay of the waiver of these particular third round regulations for conforming Highlands municipalities.

NOW, THEREFORE, BE IT RESOLVED THAT COAH that finds that no irreparable harm will be suffered by permitting conforming Highlands municipalities to submit a fair share plan for Council review by June 8, 2010 or by COAH's waiving of N.J.A.C. 5:97-2.3(a), 5:97-2.4 and Appendix F, as the term "irreparable harm" has been defined by the courts, See Crowe v. DeGioia, supra, 90 N.J. at 132-33; Zoning Bd. Of Adj. v. Service Elec. Cable TV., 198 N.J. Super. 370, 381 (App. Div. 1985); Morton v. Beyer, 822 F.2d 364, 372 (3d Cir. 1987); and

BE IT FURTHER RESOLVED as a result of the findings of the Council set forth above and set forth in the Council's August 12, 2009 resolutions attached hereto as Exhibits A and B, FSHC's motion seeking a stay of COAH's resolution extending the filing date to June 8, 2010 for conforming Highlands municipalities to submit their third round plans, as well as the scarce resource restraint imposed upon the Highlands Region, and waiving N.J.A.C. 5:97-2.3(a), 5:97--2.4 and Appendix F for those Highlands municipalities that petition COAH and petition the Highlands Council to conform with the Highlands Regional Master Plan by June 8, 2010 is hereby DENIED.

I hereby certify that this resolution was duly adopted by the Council on Affordable Housing at its meeting on September 9, 2009



Renee Reiss, Secretary
Council on Affordable Housing