Four Things Every LIHTC Developer in New Jersey Should Know for 2026

Feb 17, 2026

Categories:

Multifamily Matters
Publications

Authors:

Cameron W. MacLeod
S. Bradford Butler

Most New Jersey municipalities — 380 to date — have entered into either consent orders or compliant housing element and fair share plans in connection with their constitutional fair housing obligations. Many of these municipalities are now back before the courts for approval, whether by way of certifications or compliance hearings. For low-income housing tax credit (LIHTC) developers, 2026 presents strong opportunities to identify potential projects and begin development plans for both 4% and 9% projects while these fair share plans solidify and are reviewed by the courts. When doing so, developers should bear in mind the four key considerations outlined below.

1. Municipally Sponsored Projects Need Developers

Many municipalities are relying on a combination of 100% affordable developments and supportive housing projects to satisfy a significant portion of their affordable housing obligations. Now more than ever, municipalities are calculating the development potential for a site through the lens of the amended Fair Housing Act. Compliance under both the *Mt. Laurel* doctrine and the Fair Housing Act to create a "realistic opportunity" for affordable housing through a sponsored development may be negatively impacted if a municipality cannot or has not identified a private-developer partner to move the sponsored development forward. 100% affordable projects are often proposed for sites that are municipally owned or controlled, or for sites that are being redeveloped. In either case, partnering with the municipality is crucial at this early stage to ensure a smooth development process moving forward.

2. Site Location Matters

New Jersey's qualified allocation plan (QAP) for competitive (9%) low-income housing tax credits places a premium on site

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

conditions and the municipalities in which those sites are located. Applications for projects in municipalities that rank in the bottom half of the Municipal Revitalization Index, or that qualify as a designated "targeted urban municipality," score highly within the QAP rubric for awards. Applications receive additional points under the QAP rubric for proximity within one-half mile to positive land uses, including grocery stores, hospitals, schools, daycares, and — for supportive housing projects — community mental health and counseling centers. Yet they may lose points for proximity to non-desirable uses, such as landfills, refineries, wastewater treatment facilities, and prisons. The QAP rubric also considers project proximity to transit facilities, awarding additional points for locations within designated transit villages and near public transportation.

3. Inclusionary Project Challenges

The New Jersey Housing and Mortgage Finance Agency's (HMFA) inclusionary housing policy presumes that any project that includes both market-rate and affordable housing has sufficient market-rate housing to underwrite the project's affordable housing given New Jersey's strong emphasis on inclusionary housing through zoning controls (i.e., density bonuses for inclusionary development or mandatory set-asides). The HMFA places the burden on developers to show a lack of financial feasibility and that the anticipated return on investment is not adequate before it will make a tax credit allocation to a project when developers claim that projects do not have sufficient market-rate housing to underwrite affordable housing.

4. Energy Benchmarking Expansion

New Jersey has strongly focused, and likely will continue to focus, on project energy benchmarking when allocating tax credits, particularly in light of surging electric and gas rates within the state. The HMFA has historically required benchmarking for tax credit projects as part of its commitment to green energy development and compliance under the QAP. Additionally, ***all*** commercial building owners are required to annually report energy and water usage data

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

to the New Jersey Board of Public Utilities pursuant to New Jersey's Clean Energy Act. While LIHTC developers are used to a similar obligation, the Clean Energy Act's expansion into non-tax-credit-funded development may lead to changes in how tax-credit-funded projects report energy compliance.

These affordable housing compliance requirements arise out of New Jersey's constitutional obligation to provide realistic opportunities for the development of housing affordable to low- and moderate-income families. This has been the case for more than 50 years now under the watch of the New Jersey judiciary and what's known as the *Mt. Laurel* doctrine. In the latest legislative amendment, the requirements for reviewing and establishing compliance during the next decade (2025-2035) were established by statute early in 2024 and are presently progressing before judges across New Jersey.

Focusing on these issues well ahead of the anticipated municipal consent order or compliant housing element and fair share plan submissions will allow for smoother project applications and more straightforward and cooperative permitting. Early identification of sites, redevelopment opportunities, and potential pitfalls is critical.

FBT Gibbons counsels developers, owners, investors, and key stakeholders on both tax-credit and conventionally-funded multifamily developments throughout the country. We stay at the forefront of all critical issues affecting the multifamily housing industry and are ready to assist clients with navigating the rapidly changing legal environment. For more information, please contact the authors of this article or any attorney on the **Multifamily Housing Industry Team**.

Multifamily Matters Blog

Providing relevant legal perspectives to keep developers, investors, and lenders at the forefront of the multifamily industry in our footprint.

Visit blog

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons