

HOUSING ELEMENT AND FAIR SHARE HOUSING PLAN

**BOROUGH OF ENGLEWOOD CLIFFS
MASTER PLAN**



June 2025

Prepared by

HARBOR CONSULTANTS
ENGINEERS, SURVEYORS, AND PLANNERS
320 NORTH AVENUE EAST
CRANFORD, NJ 07016
TEL (908) 276-2715 FAX (908) 709-1738



The original of this report was signed and sealed in accordance with N.J.S.A. 45:14A-12.

Michael Mistretta

Michael Mistretta, PP #00575900
Wyatt Grant, Assistant Planner
Giuliana Seymour, Assistant Planner

TABLE OF CONTENTS

- I. INTRODUCTION**
- II. FOURTH ROUND HOUSING ELEMENT**
 - A. OVERVIEW
 - B. AFFORDABLE HOUSING HISTORY PRIOR TO THE FOURTH ROUND
 - C. SUMMARY OF ENGLEWOOD CLIFF'S PAST AFFORDABLE HOUSING HISTORY & ACTIVITIES
 - D. FOURTH ROUND OF AFFORDABLE HOUSING BACKGROUND
 - E. FOURTH ROUND METHODOLOGY
 - F. MUNICIPAL DETERMINATION OF FOURTH ROUND PRESENT NEED AND PROSPECTIVE NEED OBLIGATIONS
 - G. VACANT LAND ADJUSTMENT
 - H. HOUSING, DEMOGRAPHIC AND EMPLOYMENT INFORMATION
 - 1. Analysis of Population and Demographics
 - 2. Analysis of Housing Characteristics
 - 3. Analysis of Employment Characteristics
 - 4. Projection of Borough Housing Stock
 - 5. Consideration of Lands of Developers Who have Expressed a Commitment to Affordable Housing
 - 6. Consistency with State Plan and Redevelopment Plan
 - 7. Preserving Multigenerational Continuity
- III. FOURTH ROUND FAIR SHARE PLAN**
 - A. SATISFACTION OF COMPLIANCE MECHANISMS PRIOR TO THE FOURTH ROUND
 - B. FOURTH ROUND PLAN COMPLIANCE MECHANISMS
 - C. SITES FOR INCLUSIONARY DEVELOPMENT
 - D. AFFORDABLE HOUSING ORDINANCE AND AFFIRMATIVE MARKETING PLAN
 - E. SPENDING PLAN AND AFFORDABILITY ASSISTANCE MANUAL
 - F. CONCLUSION
- IV. APPENDICIES**

APPENDICES

- APPENDIX A. Resolution No. 25-27, dated January 28, 2025, Borough Committing to Fourth Round Present and Prospective Need Affordable Housing Obligations.
- APPENDIX B. Borough of Englewood Cliffs Declaratory Judgement Compliant, dated January 30, 2025
- APPENDIX C. [RESERVED] Order Fixing Municipal Obligations for “Present Need” and “Prospective Need” for the Fourth Round Housing Cycle.
- APPENDIX D. Letter on Behalf of Fair Share Housing Center on Plan Summary Submission of the Borough of Englewood Cliffs, dated May 17, 2018.
- APPENDIX E. Critique of the 2018 Housing Element and Fair Share Plan of Englewood Cliffs, prepared by David N. Kinsey, dated January 7, 2019.
- APPENDIX F. Response to December 10, 2018 Housing Element and Fair Share Plan, prepared by Art Bernard, dated January 7, 2019.
- APPENDIX G. Englewood Cliff Planning Board Resolution adopting Third Round Housing Element and Fair Share Plan.
- APPENDIX H. Resolution No. 19-51, Borough endorsed Third Round Housing Element and Fair Share Plan, dated January 24, 2019.
- APPENDIX I. [RESERVED] Master’s Report Reviewing the Housing Element and Fair Share Plan, Compliance Determination, prepared by Mary Beth Lonergan, dated August 14, 2019.
- APPENDIX J. Letter, with Exhibits, Memorializing the Terms of a Settlement Agreement Reached Between the Borough of Englewood Cliffs and the Fair Share Housing Center, dated October 8, 2020.
- APPENDIX K. Final Judgment of Compliance and Repose, filed December 22, 2020.
- APPENDIX L. Vacant Land Adjustment with Attached Exhibits, dated May 2025.
- APPENDIX M. Affordable Housing Trust Fund Report per June 18, 2024 deadline.
- APPENDIX N. Project/Unit Monitoring and Trust Fund Report, per September 16, 2024 deadline.

- APPENDIX O. Proof of Affordable Housing Trust Fund and Project/Unit Monitoring Data Submission on the Affordable Housing Monitoring System (“AHMS”) for February 15, 2025 deadline.
- APPENDIX P. [RESERVED] Englewood Cliffs Affordable Housing Program Policies and Procedures Manual.
- APPENDIX Q. Affordable Housing Ordinance No. 20-20.
- APPENDIX R. DRAFT Mandatory Set-Aside Ordinance
- APPENDIX S. Affirmative Marketing Plan Resolution.
- APPENDIX T. Development Fee Ordinance No. 20-18.
- APPENDIX U. Resolution No. 25-30, Appointing Triad Associates as the Borough of Englewood Cliff’s Administrative Agent.
- APPENDIX V. [RESERVED] Resolution Appointing Municipal Housing Liaison.
- APPENDIX W. 2025-2035 Spending Plan (Draft)
- APPENDIX X. [RESERVED] Affordability Assistance Manual.
- APPENDIX Y. Rezoning and Overlay Ordinances (Draft, Unadopted)
 - 1. Downtown Tiers (Southern Sylvan Avenue Overlay Zones C And Sylvan Avenue D) Inclusionary Housing Overlay - 4 (IHO-4) Zones
- APPENDIX Z. Letter from Edward W. Purcell to Michael Mistretta, dated June 6, 2025.
- APPENDIX AA. Letter from Palisades Interstate Park Commission, dated May 15, 2025.

THE BOROUGH OF ENGLEWOOD CLIFFS HOUSING ELEMENT AND FAIR SHARE PLAN

I. INTRODUCTION

This document is presented in two parts; which include (i) the Borough of Englewood Cliffs Master Plan Housing Element and (ii) the Borough of Englewood Cliffs Fair Share Plan. This Housing Element and Fair Share Plan (“HEFSP”) addresses the Borough’s compliance with the Municipal Land Use Law (“MLUL”), relevant Uniform Housing Affordability Controls (“UHAC”) regulations, the requirements of the Uniform Housing Affordability Controls (“UHAC”) regulations, the requirements of the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) as amended by the A4/S50 legislation signed into law on March 20, 2024, and other applicable law.

The Master Plan Housing Element will examine the Borough’s demographic, population, and employment characteristics, along with the Borough’s housing stock and development trends throughout the decades. A Housing Plan, according to the MLUL N.J.S.A. 40:55D-28b(3), must include, but is not limited to, residential standards and proposals for the construction and improvement of housing. According to N.J.S.A. 52:27D-310, the Housing Element shall contain at least the following:

- An inventory of the municipality’s housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low- and moderate-income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor’s office, including but not limited to the property record cards;
- A projection of the municipality’s housing stock, including the probable future construction of low- and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;
- An analysis of the municipality’s demographic characteristics, including but not necessarily limited to, household size, income level and age;
- An analysis of the existing and probable future employment characteristics of the municipality;
- A determination of the municipality’s present and prospective fair share for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing, as established pursuant to section 3 of P.L.2024, c.2 (N.J.S.A. 52:27D-304.1);
- A consideration of the lands that are most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing;
- An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021, c.273 (N.J.S.A. 52:27D-329.20);

- For a municipality located within the jurisdiction of the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (N.J.S.A. 13:20-4), an analysis of compliance of the housing element with the Highlands Regional Master Plan of lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands-conforming municipalities. This analysis shall include consideration of the municipality’s most recent Highlands Municipal Build Out Report, consideration of opportunities for redevelopment of existing developed lands into inclusionary or 100 percent affordable housing, or both, and opportunities for 100 percent affordable housing in both the Highlands Planning Area and Highlands Preservation Area that are consistent with the Highlands regional master plan; and
- An analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.

The Fourth Round Housing Element and Fair Share Plan reiterates how the Borough complied with its Third Round affordable housing obligations under the Borough’s Court-approved Third Round Housing Element and Fair Share Plan and Third Round Final Judgment of Compliance and Repose (“JOR”), entered on December 22, 2020 (attached hereto as *Appendix K*), and also addresses how the Borough intends to meet its fair share obligations for the Fourth Round as adopted by the Borough in its binding resolution on January 28, 2025 (attached hereto as *Appendix A*), and affirmed by Court in its Order entered on DATE¹ (attached hereto as *Appendix C*). The Housing Element and Fair Share Plan is part of the Borough of Englewood Cliffs’ request via its Declaratory Judgment Complaint filed January 30, 2025 (attached hereto as *Appendix B*) to acquire compliance certification from the Affordable Housing Dispute Resolution Program (“the Program”) and will include the projects and strategies addressing the Borough’s affordable housing obligations.

II. BOROUGH OF ENGLEWOOD CLIFFS FOURTH ROUND HOUSING ELEMENT

A. OVERVIEW

This Fourth Round Housing Element and Fair Share Plan has been prepared in response to the requirements set forth in the amendments to the Fair Housing Act known as Bill A4/S50 (“FHA Amendments”) signed into law on March 20, 2024. The law reformed municipal responsibilities regarding the provision of affordable housing for the fourth round and beyond in 10-year rounds of housing obligations beginning on July 1, 2025. The changes and regulations for the FHA Amendments are further explained in Section II.D and Section II.E below.

In accordance with the Municipal Land Use Law (“MLUL”) at N.J.S.A. 40:55D-28b(3), this Fourth Round Housing Element and Fair Share Plan (“HEFSP”) has been prepared pursuant to N.J.S.A. 52:27D-310, which specifies that the HEFSP must include a “determination of the municipality’s present and prospective fair share for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing, as established pursuant to section 3 of P.L.2024, c.2 (N.J.S.A. 52:27D-

¹ The Court Order fixing the Borough’s Fourth Round affordable housing obligations has not yet been issued at the time of the preparation of this Housing Element and Fair Share Plan. Once provided, the Court Order will be attached as an appendix to this Housing Element and Fair Share Plan.

304.1).” In accordance with the requirements of section 3 of P.L.2024, c.2 (N.J.S.A. 52:27D-304.1), this Fourth Round Housing Element and Fair Share Plan addresses its affordable housing obligations for the Prior Round, the Third Round, and the Fourth Round. The Borough’s Fourth Round numbers have been established via the Borough resolution adopted on January 28, 2025 (see Appendix A) and memorialized by the Court on behalf of the Program in its Order (see Appendix C).² The Fourth Round Housing Element and Fair Share Plan has also been prepared to comply with all requirements of the FHA, applicable COAH and UHAC regulations, and relevant Mount Laurel case law.

B. AFFORDABLE HOUSING HISTORY PRIOR TO THE FOURTH ROUND

New Jersey affordable housing law began with the New Jersey Supreme Court’s (hereinafter the “Supreme Court”) creation of the Mount Laurel doctrine in its landmark case, So. Burl. Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, 67 N.J. 151 (1975) also known as “Mount Laurel I”. In Mount Laurel I, the Supreme Court decided that under the State Constitution, each municipality “must, by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there”, including those of low and moderate income. Thus, the Supreme Court in its Mount Laurel I decision ruled that municipalities should not use their zoning powers to prevent the potential for the development of affordable housing.

Displeased with the municipal response to Mount Laurel I, the NJ Supreme Court issued a second Mount Laurel decision entitled So. Burlington Ct. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983) (“Mount Laurel II”). Mount Laurel II established a whole new body of procedural and substantive laws to advance the Mount Laurel doctrine. The Court established a standard pursuant to which developers could secure a builder’s remedy against exclusionary municipalities. Pursuant to that standard, a successful builder’s remedy plaintiff could secure the right to construct housing at much higher densities than a municipality otherwise would allow provided that the developer reserve 20 percent of the units for low and moderate income households and that the developer’s proposed project is not clearly contrary to sound land use planning. Developers filed over a hundred builder’s remedy lawsuits pursuant to Mount Laurel II creating pressure for a legislative solution. In addition, Judge Serpentelli decided AMG Realty Co. v. Warren Tp., 207 N.J.Super. 388 (Law 1984) establishing a fair share formula that generated very substantial fair share obligations based upon Mount Laurel II.

Responding to the flood of builder’s remedy litigation generated by the Mount Laurel II decision and the high fair share obligations generated by the AMG fair share formula, the State Legislature passed the Fair Housing Act (hereinafter “FHA”) in 1985. The Supreme Court upheld the constitutionality of the FHA in Hills Dev. Co. v. Bernards Twp., 103 N.J. 1 (1986), commonly referred to as “Mount Laurel III”.

The FHA created COAH, and required COAH to adopt criteria and guidelines not only to establish a fair share formula, but also to establish various means by which a municipality could adjust its fair share based upon credits, adjustments and other factors within COAH’s discretion. The FHA also required COAH to adopt criteria and guidelines to identify the techniques available to a municipality to meet its obligation. The FHA included a process for municipalities to obtain

² The Court Order fixing the Borough’s Fourth Round affordable housing obligations has not yet been issued at the time of the preparation of this Housing Element and Fair Share Plan. Once provided, the Court Order will be attached as an appendix to this Housing Element and Fair Share Plan.

Substantive Certification, which, if granted by COAH, would protect municipalities against an exclusionary zoning lawsuit for a defined period of time. The FHA also provided a means by which a municipality in an exclusionary zoning case at that time could seek to transfer its case to the newly created state agency, COAH. Finally, the FHA established an administrative process by which a municipality could bring itself under COAH's jurisdiction and comply "without litigation" N.J.S.A. 52:27D-303.

To implement the FHA requirements, COAH adopted a series of regulations. COAH adopted Round One regulations in 1986. In Round 1, COAH adopted regulations establishing a fair share formula by which any municipality could ascertain its fair share in the first instance. COAH also adopted regulations to enable municipalities with insufficient land to adjust the number generated by the formula to the number of units that could realistically be achieved through traditional inclusionary zoning, i.e., rezoning suitable sites at densities of at least 6 units per acre with a 20 percent set-aside. The adjusted fair share became the municipality's fair share and COAH imposed no obligation on the municipality beyond its fair share.

COAH adopted Round 2 regulations in 1994. As in Round 1, COAH adopted regulations (a) by which all municipalities could ascertain the number generated by a fair share formula and (b) by which land-poor municipalities could obtain an adjustment to the number generated by the formula. COAH labelled the adjusted number the "realistic development potential" or "RDP" and COAH labeled the difference between the number generated by the formula and the RDP as the "unmet need."

COAH should have adopted Third Round regulations in 1999 when the Round 2 rules were set to expire. However, COAH did not adopt the first iteration of Third Round rules until 2004. In 2007, the Appellate Division affirmed some of COAH's 2004 Third Round rules, but invalidated others. See In Re Adoption of N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1 (App. Div. 2007). The opinion remanded the matter to COAH for adoption of new regulations compliant with its decision and gave the agency six months to do so.

After the Appellate Division gave COAH two extensions of the six-month deadline, COAH finally adopted a second set of Third Round rules in September of 2008. Many municipalities submitted Third Round affordable housing plans to COAH and to courts for approval in December of 2008 based upon this second version of Third Round regulations. However, on October 8, 2010, the Appellate Division concluded that COAH's new regulations suffered from many of the same deficiencies as the first set of Third Round rules. Consequently, it invalidated substantial portions of the 2008 Third Round regulations. See In re Adoption of N.J.A.C. 5:96 & 5:97, 416 N.J. Super. 462 (App. Div. 2010). Municipalities appealed that decision to the New Jersey Supreme Court, which affirmed the Appellate Division's invalidation of several of the regulations COAH adopted in 2008. The Supreme Court directed COAH to use an approach to fair share methodologies similar to the formula used in Rounds 1 and 2 and not to take a "growth share" approach to the fair share methodology. The Supreme Court also directed COAH to adopt on an expedited basis a third version of Round 3 regulations that complied with its decision.

Frustrated with the lack of movement by COAH to adopt a third version of Round 3 regulations compliant with its decision, the Supreme Court issued an order on March 14, 2014, which required COAH to adopt new Third Round regulations by October 22, 2014. COAH proposed the third version of Third Round regulations on April 30, 2014. Unfortunately, in October of 2014, the COAH Board deadlocked 3-3 when voting to adopt the third version of Round 3 regulations. COAH never

made any effort to overcome the deadlock and, consequently, COAH never adopted Round 3 regulations for a third time.

On March 10, 2015, in response to COAH's failure to adopt round 3 regulations, the Supreme Court issued Mount Laurel IV. In this decision, the Court (1) found that COAH had violated the March 14, 2014 Order by failing to adopt new Third Round regulations by October 22, 2014, (2) held that, without new Third Round regulations, COAH could not process municipalities' petitions for substantive certification, (3) directed trial courts to assume COAH's functions, and (4) authorized municipalities under COAH's jurisdiction to file Declaratory Judgment Actions along with a motion for Temporary Immunity between June 8, 2015 and July 8, 2015, or risk exposure to Builder's Remedy lawsuits.

In Mount Laurel IV, the Supreme Court declined to endorse a specific fair share methodology to calculate the third round affordable housing obligations of the municipalities. Instead, the Supreme Court provided some guidance to the 15 Mount Laurel Judges (one in each vicinage) and left the determination for an appropriate fair share formula to these judges. The Court also labeled municipalities that had participated in the COAH process at the point it issued its decision, but had not yet secured COAH's approval of their affordable housing plans as participating municipalities. Pursuant to the new procedure it established, the Court ruled that the trial judges presiding over these Mount Laurel cases treat these municipalities in a similar way to the past - how COAH treated municipalities that had been in builder's remedy litigation at that time the Legislature enacted the FHA and thereafter secured a transfer of their case from the court to COAH, pursuant to this legislation. Such municipalities secured enormous protections from developers seeking to dictate how the municipalities satisfied their obligations.

On March 20, 2024, Governor Murphy signed into law affordable housing bill A4/S50, which amended the FHA. The FHA Amendments established new guidelines for determining and regulating the affordable housing obligations of New Jersey municipalities for the Fourth Round and subsequent 10-year rounds as mandated by the Mount Laurel Doctrine and the FHA. The changes and regulations for the FHA Amendments are further explained in Section II.D and Section II.E below. This Housing Element and Fair Share Plan has therefore been prepared to demonstrate how the Borough intends to meet its fair share obligations for the Fourth Round in accordance with the FHA Amendments and applicable COAH and UHAC regulations, as well as relevant Mount Laurel case law.

C. SUMMARY OF ENGLEWOOD CLIFFS' PAST AFFORDABLE HOUSING HISTORY & ACTIVITIES

On March 2, 1995, in response to the Round 2 regulations COAH adopted in 1994, the Borough of Englewood Cliffs filed its Housing Element and Fair Share Plan with COAH and petitioned COAH for approval of that plan. In response to the Borough's petition, COAH determined that the Borough had a realistic development potential of 4 units and accepted the Borough's proposal for satisfying the RDP of 4. However, COAH also determined that the Borough had an obligation to satisfy some portion of its "unmet need" obligation. The unmet need was 215: the difference between the number generated by the fair share formula (219) and the RDP (4). To address a portion of the unmet need, COAH required the Borough to adopt an overlay zone to rezone an approximately 25-acre parcel, known as the Prentice Hall site, at a density of 6 units per acre with a 20 percent set-aside. The Borough did not adopt the overlay zone on the Prentice Hall site.

In 1997, because of the Borough's not adopting an overlay zone on the Prentice Hall site, COAH denied Englewood Cliffs' petition for substantive certification. As a result, instead of securing protection from exclusionary zoning lawsuits, the Borough remained exposed to such lawsuits.

On December 19, 2008, after COAH adopted the second iteration of COAH's third round regulations in 2008, the Planning Board adopted this HEFSP. On March 11, 2009, the Borough of Englewood Cliffs petitioned COAH for substantive certification for this plan. On April 2, 2009, COAH determined that the Borough's petition for substantive certification was complete. However, COAH never certified the Borough's plan because the Appellate Division invalidated the regulations upon which that plan was based before COAH acted on the Borough's petition for substantive certification. On October 16, 2006, COAH approved a development fee ordinance creating a dedicated revenue source for affordable housing and the Borough adopted the ordinance on December 20, 2006. As part of its March 11, 2009, petition for substantive certification, the Borough included a Spending Plan for COAH's approval, and on April 7, 2011, COAH approved the spending plan. The Borough remained under COAH's jurisdiction until it filed a Declaratory Judgment Action on July 1, 2015, in response to Mount Laurel IV.

In the Declaratory Judgment Action, the Borough prepared a Third Round Housing Element and Fair Share Plan dated December 10, 2018. The Planning Board adopted the HEFSP by Resolution 2019-01 on January 7, 2019, and the Borough Council endorsed the HEFSP by Resolution 19-51 on January 24, 2019. Afterwards, this matter was tried before the Hon. Christine A. Farrington, J.S.C. (ret'd, t/a) to determine the validity of the HEFSP, which resulted in a decision dated January 17, 2020 ("Trial Decision") in which Judge Farrington found that the plan was insufficient. Judge Farrington made various other decisions as well both before and after the Trial Decision that adversely affected the Borough.

On June 29, 2020, the Borough brought a motion to reconsider several of Judge Farrington's decisions; the parties fully briefed the issues, and the Court heard oral argument on the motion. However, before Judge Farrington issued her decision, the parties engaged in settlement discussions. An amended Third Round Housing Element and Fair Share Plan, dated November 13, 2020, was consequently prepared to implement these settlements. The amended Third Round Housing Element and Fair Share Plan was consequently adopted by the Planning Board and endorsed by Borough Council. On December 17, 2020, a duly-noticed Fairness and Compliance Hearing was held to entertain approval of the amended Third Round Housing Element and Fair Share Plan and the Settlement Agreements between the Borough and Fair Share Housing Center ("FSHC") and 800 Sylvan Avenue LLC. On December 22, 2020, the Court issued a Final Judgment of Compliance and Repose for the Borough (see *Appendix K*), which approved the amended Third Round HEFSP and its supporting documents, and secured immunity for the Borough from all Mount Laurel lawsuits, including but not limited to, Builders Remedy lawsuits, until July 1, 2025.

In response to the FHA Amendments regulating the Fourth Round and beyond, the Borough adopted Resolution No. 25-27 on January 28, 2025, committing to its Fourth Round present need and prospective need obligations, beginning on July 1, 2025 (see *Appendix A*). On January 30, 2025, pursuant to the Administrative Office of the Courts' Directive No. 14-24, the Borough filed a Declaratory Judgment Action in Superior Court (see *Appendix B*), Docket No. BER-L-775-25, requesting that the Program: (1) approve its Round 4 obligations set forth in its January 28, 2025 binding resolution; (2) approve its Round 4 HEFSP; and (3) continue the Borough's immunity from Mount Laurel related lawsuits, as granted by the Court in Round 3.

No objections to the Borough's adopted Round 4 obligations were received by the statutory deadline of February 28, 2025, so according to the FHA Amendments, the Borough's adopted obligations set forth in its binding resolution are automatically set as the Borough's Round 4 obligations. In an Order entered on DATE³, the Court memorialized the Borough's present and prospective need obligations on behalf of the Program, therefore setting the Borough's prospective need at 329 and its present need (also known as rehabilitation obligation) at zero (0) for the Fourth Round (see Appendix C).

Leading up to the Fourth Round, the Borough has assessed the status of the affordable units to be provided in accordance with its Court-approved Third Round Housing Element and Fair Share Plan. The projects and mechanisms used towards the Borough's compliance with the Third Round HEFSP are detailed further in Section III of this HEFSP.

D. FOURTH ROUND OF AFFORDABLE HOUSING BACKGROUND

On March 20, 2024, Governor Murphy signed into law affordable housing bill A4/S50. The law established new guidelines for determining and regulating the affordable housing obligations of New Jersey municipalities for the fourth 10-year round as mandated by the Mount Laurel Doctrine and the FHA. This section outlines the key provisions instituted by the FHA Amendments.

Major Items of the FHA Amendments

- The Council on Affordable Housing ("COAH") is abolished, and its regulatory powers and functions are transferred to the Department of Community Affairs ("DCA") and the Administrative Office of Courts ("AOC").
- The DCA is responsible for calculating the regional need and municipal present and prospective fair share obligation for each municipality using the methodology established in sections 6 and 7 of A4/S50. The March 8, 2018 Superior Court, Law Division, Mercer County, In re Application of Municipality of Princeton (also known as the "Jacobson opinion") serves as the basis for any datasets or methodologies not directly addressed in A4/S50. This Fourth Round methodology is further explained in subsection d below.
- Per Section 2 of P.L.1985, c.222 (C.52:27D-302), as amended by the new law, "the changes made to affordable housing methodologies, obligations, and fair share plans, as determined to be a necessity by the Legislature, through the enactment of [A4/S50] are made with the intention of furthering consistency with the State Development and Redevelopment Plan."
- A municipality will still be permitted to conduct a vacant land adjustment (VLA).
- A municipality may take into consideration the DCA calculations in determining its present and prospective obligation, but the DCA calculations are not binding on any municipality. Each municipality establishes its own obligation number, and a municipality may deviate from DCA's calculations in determining its obligation, provided that it adheres to the methodology established by A4/S50.
- The Affordable Housing Dispute Resolution Program ("Program") is established within the AOC and is responsible for handling any dispute regarding a municipality's determination of and/or compliance with its fair share obligation. The Administrative Director of the

³ The Court Order fixing the Borough's Fourth Round affordable housing obligations has not yet been issued at the time of the preparation of this Housing Element and Fair Share Plan. Once provided, the Court Order will be attached as an appendix to this Housing Element and Fair Share Plan.

Courts makes appointments to the Program, which consists of 3-7 retired Mount Laurel judges. These judges include Hon. Thomas C. Miller (chair), Hon. Ronald E. Bookbinder, Hon. Thomas F. Brogan, Hon. Stephan C. Hansbury, Hon. Mary C. Jacobson, Hon. Julio L. Mendez, and Hon. Paulette M. Sapp-Peterson.

- The availability of bonus credits has been expanded but credits remain capped. Notable credit provisions include:
 - More than one type of bonus credit may not be received for the same unit.
 - A maximum of 25% of a municipality’s prospective need obligation may be satisfied by bonus credits.
 - The rental bonus credit is eliminated.
 - A summary of the types of bonus credits is provided in the table below:

Description	Bonus
Special Needs or Supportive Housing Units	1.0 bonus credit for each unit of low- or moderate-income housing for individuals with special needs or permanent supportive housing.
100% Affordable Developments with Municipal Contribution of Land or Funds	1.0 bonus credit for each unit of low- or moderate-income housing in a 100% affordable housing project for which the municipality contributes to the cost of the project. This contribution can either be real property or contributions from the municipal affordable housing trust fund that covers no less than 3% of the project costs.
Market-to-Affordable	1.0 bonus credit for each unit of low- or moderate-income housing created by transforming an existing rental or ownership unit from market rate to affordable. A municipality may only rely on this bonus credit as part of its fair share plan and housing element if the municipality demonstrates that a commitment to follow through with this market to affordable agreement has been made and: (a) this agreement has been signed by the property owner; or (b) the municipality has obtained ownership of the property.
Non-Profit Partnership for For-Sale Housing	0.5 bonus credit for each unit of low- or moderate-income ownership unit created in partnership with a non-profit housing developer.
Proximity to Transit	0.5 bonus credit for each unit of low- or moderate-income housing located within a 0.5 mile radius (or 1 mile radius if located in a Garden State Growth Zone) surrounding a NJ Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations.
Redevelopment	0.5 bonus credit for each unit of low- or moderate-income housing constructed on land that is or was previously developed and utilized for retail, office, or commercial space.

Age-Restricted Units (with 10% Cap)	0.5 bonus credit for a unit of age-restricted housing (Bonus credit only applicable to 10% of all age-restricted housing built that count towards the municipality's affordable housing obligation).
Family Housing	0.5 bonus credit for each unit of low- or moderate-income family housing with at least three bedrooms above the minimum number required by the bedroom distribution. This bonus credit shall be calculated by taking into account the full municipal fair share plan and housing element, and the number of units with at least three bedrooms required for projects satisfying the minimum 50 percent family housing requirements.
Very Low-Income Units Beyond Minimum	0.5 bonus credit for each unit of very low-income housing for families above the 13% of units required to be preserved for very low-income housing.
Extension of Affordability Controls	0.5 bonus credit for each existing low- or moderate-income rental housing unit for which affordability controls are extended for a new term, and the municipality contributes funding towards the costs necessary for this preservation.

- A municipality must adopt and file with the Program and the Court a Housing Element and Fair Share Plan, along with drafts of the appropriate zoning and other ordinances and resolutions implementing its present and prospective obligation by June 30, 2025. The Housing Element and Fair Share Plan must assess the degree to which the municipality has complied with its obligations for the prior three rounds and determine whether the municipality has credits in excess of its prior round obligations. If any units are determined to be unfulfilled from prior rounds, the Plan must address how this unmet obligation will be fulfilled, as well as explain how it plans to meet its Fourth Round obligation. The Plan must also include a spending plan for current funds in the municipal affordable housing trust fund and projected funds towards the round.
- The law establishes several limitations on how units may be counted towards fulfilling a municipality's fair share obligation:
 - A maximum of 30% of the units counted toward the prospective need obligation may be age-restricted units, exclusive of bonus credits.
 - A minimum of 50% of the units used toward the prospective need obligation, exclusive of bonus credits, must be available to families with children.
 - A minimum of 25% of the units used toward the prospective need obligation, exclusive of bonus credits, must be rental units and at least half of that number must be available to families with children.
 - A minimum of 13% of affordable housing units must be available to very low-income households and at least half of that number must be available to families with children.
 - A maximum of 10% of a municipality's fair share obligation may be counted by transitional housing credits.

- A municipality may lower its prospective need obligation to prevent an obligation of more than 1,000 housing units or a number exceeding 20% of the total number of households in the municipality.
- The law increases the minimum period requiring affordability controls to 40 years for rental units and maintains a 30-year period for for-sale units. The minimum requirement for affordability controls cannot be reduced.
- The law establishes new development fee collection, expenditure and monitoring rules. The amended FHA also establishes many deadlines, including but not limited to, the submission of a Fourth Round Housing Element and Fair Share Plan by June 30, 2025, and any objections being filed by August 31, 2025.

E. FOURTH ROUND METHODOLOGY

Per N.J. Stat. § 52:27D-304.1.d, “For the fourth round of affordable housing obligations, the [Department of Community Affairs] shall prepare and submit a report to the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature providing a report on the calculations of regional need and municipal obligations for each region of the State within the earlier of seven months following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.) or December 1, 2024.” On October 18, 2024, the Department of Community Affairs (DCA) released a report titled “Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background,” inclusive of a calculation spreadsheet, which detailed the datasets and calculations used to generate the affordable housing obligation for each municipality within New Jersey for the Fourth Round. Per this report, the Borough of Englewood Cliffs was calculated to have a present need of 0 units and a prospective need of 329 units for the Fourth Round. The subsections below outline the methodology for calculating the Borough’s Fourth Round affordable housing obligation per the DCA report and in accordance with the FHA Amendments.

Present Need

Per the amended FHA, “A municipality’s present need obligation shall be determined by estimating the existing deficient housing units currently occupied by low- and moderate-income households within the municipality, following a methodology comparable to the methodology used to determine third round present need, through the use of datasets made available through the federal decennial census and the American Community Survey, including the Comprehensive Housing Affordability Strategy dataset thereof” (N.J.S.A. 52:27D-304.2). P.L.2024, c.2 further defines “deficient housing units” as “housing that: (1) is over fifty years old and overcrowded; (2) lacks complete plumbing; or (3) lacks complete kitchen facilities” (N.J.S.A. 52:27D-304).

In the Third Round, municipal present need calculations were based on the number of housing units lacking complete kitchen facilities, the number of units lacking complete plumbing facilities, and the number of overcrowded units. The present need calculations for the Fourth Round conducted by the DCA similarly use datasets measuring these three factors, but as explained in their report, “The US Department of Housing and Urban Development (HUD) and the US Census Bureau publish separate tables on housing age, lack of plumbing facilities, lack of kitchen facilities, and overcrowding. However, there is no data source that reports the number of units that meet any one of those three conditions. Therefore, this number must be estimated using data from existing tables, with measures taken to account for overlap and to narrow the scope to deficient housing units occupied by low- and moderate-income [(LMI)] households.” The DCA therefore used a combination of the latest data

from HUD’s Comprehensive Housing Affordability Strategy (CHAS) LMI dataset corresponding to the latest Census Bureau American Community Survey (ACS) data (which was 2017-2021 5 Year Estimates at the time of the report’s release), data from the IPUMS Center for Data Integration, and the ACS Public Data Microdata Sample (PUMS) at the Public Use Microdata Area (PUMA) level to estimate the number of substandard/deficient low- and moderate-income occupied units (“present need”) for each municipality in New Jersey.

Per the methodology outlined above and described in further detail in the DCA report, the Fourth Round present need obligation for the Borough of Englewood Cliffs was calculated as 0.

Prospective Need

The statewide obligation for the Fourth Round has been calculated as 84,698. This obligation is distributed among the State’s municipalities, excluding Qualified Urban Aid municipalities.

A municipality’s present need obligation is determined by estimating the existing deficient housing currently occupied by low-and moderate- income households within the Housing Region to which it belongs. Per the Fourth Round law, the State is broken into six regions as follows:

Housing Region	Counties
1	Bergen, Hudson, Passaic, and Sussex
2	Essex, Morris, Union, and Warren
3	Hunterdon, Middlesex, and Somerset
4	Mercer, Monmouth, and Ocean
5	Burlington, Camden, and Gloucester
6	Atlantic, Cape May, Cumberland, and Salem

A municipality’s Fourth Round prospective need obligation is calculated by multiplying its average allocation factor to the total prospective need of its corresponding Housing Region.

The average allocation factor is the average of three measures indicative of a municipality’s capacity/potential to address the regional prospective need: the equalized nonresidential valuation factor, the income capacity factor, and the land capacity factor.

The prospective need for each Housing Region was calculated by dividing the change in the number of households within each Housing Region between the 2010 Census and 2020 Census by 2.5, which is the assumed low-and moderate-income household growth per the Fourth Round law.

The Borough of Englewood Cliffs is in Housing Region 1, which consists of Bergen County, Hudson County, Passaic County, and Sussex County. The regional prospective need for Housing Region 1 was calculated as 27,743, and the Borough’s average allocation factor was calculated as 1.185%. The regional need of 27,743 multiplied by the Borough’s average allocation factor of 1.185% therefore resulted in a Fourth Round prospective need obligation calculation of 329.

Equalized Nonresidential Valuation Factor

The equalized nonresidential valuation factor is one of the three components of the average allocation factor for each municipality. The equalized nonresidential valuation factor is

representative of a municipality's share of the change in nonresidential property value within its Housing Region.

This factor was calculated as follows:

1. The valuations of commercial properties and industrial properties in each municipality in 2023, per data from the NJ Division of Local Government Services, were summed and then divided by the 2023 State Equalization Table Average Ratio corresponding with the municipality to obtain a total equalized nonresidential valuation for 2023.
2. The valuations of commercial properties and industrial properties in each municipality in 1999, per data from the NJ Division of Local Government Services, were summed and then divided by the 1999 State Equalization Table Average Ratio corresponding with the municipality to obtain a total equalized nonresidential valuation for 1999.
3. The difference in total equalized nonresidential valuation from 1999-2023 was calculated for each municipality.
4. The difference in total nonresidential valuation from 1999-2023 was summed for all municipalities (excluding Qualified Urban Aid municipalities) within each Housing Region.
5. The difference in total nonresidential valuation from 1999-2023 for each municipality was divided by the sum of differences in total nonresidential valuation from 1999-2023 for its corresponding Housing Region to compute the municipality's share of the regional nonresidential valuation change from 1999-2023.

The Borough's equalized nonresidential valuation factor was calculated as 1.78%.

Income Capacity Factor

The second component of the average allocation factor for each municipality is the income capacity factor. The income capacity factor measures the degree to which a municipality's median household income differs from an income floor of \$100 below the lowest median household income in its Housing Region. The Borough of Englewood Cliffs is in Housing Region 1 and therefore was compared to an income floor of \$51,992 (\$100 below the lowest median household income in Housing Region 1 of \$52,092, which belongs to the City of Paterson).

The income capacity factor was calculated by averaging two measures:

1. The municipal share of the sum of the differences for each municipality in the Housing Region (excluding Qualified Urban Aid municipalities) from the Housing Region's income floor.
2. The municipal share of the sum of the differences for each municipality in the Housing Region (excluding Qualified Urban Aid municipalities) from the Housing Region's income floor, weighted by the number of households in each municipality.

Data for median household income and number of households was sourced from the most recent American Community Survey (ACS) Five-Year estimates, as mandated by the Fourth Round law, which is found in Table S1903 of the Census Bureau's American Community Survey 2018-22 5-Year Estimates.

The Borough's income capacity factor was calculated as 1.41% per the DCA report.

Land Capacity Factor

The third component of the average allocation factor for each municipality is the land capacity factor. The land capacity factor indicates the percentage share of total “developable” land in a Housing Region accounted for by each municipality within that Region, excluding land area corresponding to Qualified Urban Aid municipalities. The DCA conducted a GIS analysis to identify the “developable” land within the state using several publicly-available datasets, including but not limited to 2020 land use/land cover (LULC) data, New Jersey State Plan Planning Areas weighted by area type, statewide parcel data, open space and preserved farmland, category 1 waterways and wetlands, steep slopes, and open waters.

The steps below provide a summary of the methodology used to identify the vacant land in the state, and consequently identify each municipality’s share of developable land within its corresponding Housing Region.

1. Weights were applied to all New Jersey State Plan Planning Areas as specified in the Fourth Round Law.
2. The layer of weighted Planning Areas was merged with land use/land cover (LULC) data for the entire state sourced from 2020 aerial imagery. 18 different types of LULC, such as cropland and pastureland, deciduous forest, and coniferous forest, were identified and extracted as “vacant, developable land” from this merged dataset.
3. Of these areas identified as “developable” from the merged dataset, areas without underlying parcel data and areas with MOD-IV Property Tax data with property class codes for residential, commercial, industrial, apartment, railroad, and school uses were removed to prevent rights-of-way, tree-covered rear yards on residential properties and buffer areas on non-residential development from being included in the “developable” land calculation.
4. Municipally-reported construction permit data to the DCA was used to remove properties otherwise identified as vacant through the LULC analysis.
5. Areas mapped as open space, preserved farmland, category 1 waterways and wetlands (and associated buffers based on special resource area restrictions) were removed from the “developable” land dataset.
6. Using 10 foot digital elevation LiDAR data, steep slope areas exceeding 15% and steep slope areas consisting of 5,000 square feet or less were removed from the “developable” land dataset.
7. DCA reviewed an unspecified 22,000 vacant parcels to further remove homeowner association common areas, detention basins, and road and utility rights of way.
8. After the removal of all the aforementioned layers from the “developable” land dataset, remaining “slivers” of land with an area of 2,500 square feet or less were also removed due to their inability to support any kind of development.
9. The remaining land was identified as “developable” land and was summed based on the limits of each Housing Region and its corresponding municipalities.
10. The municipality’s percentage of total identified “developable” land within its Housing Region constitutes its land capacity factor.

Through this analysis, the DCA reported 7.053 acres of developable land in the Borough of Englewood Cliffs and 1,979.764 acres of developable land in Housing Region 1 (excluding Qualified Urban Aid municipalities), therefore computing a land capacity factor of 0.36% for the Borough.

DCA Calculated Fourth Round Obligation

Given the calculations of the Borough's equalized nonresidential valuation factor as 1.78%, income capacity factor as 1.41%, and land capacity factor as 0.36%, the average allocation factor for the Borough computes to 1.185%. The average allocation factor of 1.185% multiplied by the Housing Region 1 regional prospective need of 27,743 totals to a Fourth Round prospective need obligation of 329 for the Borough.

F. MUNICIPAL DETERMINATION OF FOURTH ROUND PRESENT NEED AND PROSPECTIVE NEED OBLIGATIONS

As per N.J.S.A. 52:27D-304.1, “[e]ach municipality shall determine its municipal present and prospective obligations in accordance with the formulas established in [N.J.S.A. 52:27D-304.2 - 304.3] and may take into consideration the calculations in the report published by the department.” Furthermore, “For the fourth round of affordable housing obligations, this determination of present and prospective fair share obligation shall be made by binding resolution no later than January 31, 2025” (N.J.S.A. 52:27D-304.1). The Borough reviewed and evaluated the DCA's non-binding calculations of the Borough's Fourth Round present need and prospective need, and as provided in the Resolution No. 25-27 adopted by Borough Council on January 28, 2025 (see *Appendix A*), the Borough of Englewood Cliff's “commits to the DCA Round 4 Present Need Obligation of 0 units and the Round 4 Prospective Need Obligation of 329 units” subject to all reservations of rights as specified in the Resolution. The Court memorialized the Borough's Fourth Round present and prospective need obligations on behalf of the Program in an Order. The Borough's plan for satisfying its adopted Fourth Round present need and prospective need obligations is detailed further in Section III of this Fourth Round HEFSP.

G. VACANT LAND ADJUSTMENT

Given municipal constraints on the amount of vacant land available for the development of affordable housing, the amended FHA, similarly to the Third Round, permits municipalities to adjust their prospective need obligations for the Fourth Round based on a lack of vacant land. The process for preparing a vacant land adjustment (“VLA”) for the Fourth Round follows the methodology established in the Municipal Adjustments Subchapter of COAH's Prior Round Substantive Rules (N.J.A.C. 5:93-4.2), with some minor differences as specified in the Amended FHA. The application of the methodology for vacant land adjustments from COAH's Prior Round Substantive Rules in the Fourth Round is affirmed by language in N.J.S.A. 52:27D-311.m.: “All parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by statute, including but not limited to P.L.2024, c.2 (C.52:27D-304.1 et al.), or binding court decisions.”

Most notably, the FHA Amendments added an additional requirement to the vacant land adjustment process: “Any municipality that receives an adjustment of its prospective need obligations for the fourth round or subsequent rounds based on a lack of vacant land shall, as part of the process of adopting and implementing its housing element and fair share plan, identify sufficient parcels likely to redevelop during the current round of obligations to address at least 25 percent of the prospective need obligation that has been adjusted and adopt realistic zoning that allows for such adjusted obligation, or demonstrate why the municipality is unable to do so” (N.J.S.A. 52:27D-310.1).



In addressing its Third Round prospective need obligation, the Borough prepared a VLA, which was adopted as part of the Borough’s Court-approved amended Third Round Housing Element and Fair Share Plan via the final JOR issued on December 22, 2020.

The Borough has also conducted a VLA for the Fourth Round, which is attached hereto as *Appendix L*. The Fourth Round VLA calculates a Realistic Development Potential (“RDP”) of 10 units for the Borough for the Fourth Round, which is detailed in Table 3 below:

Table 2: RDP Borough of Englewood Cliffs						
Sites “Likely to Redevelop” Contributing to the Borough’s RDP						
Block	Lot	Comments/Discussions	Net Developable Acreage	Density (du/ac)	Est. Total Units	RDP
201 & 205	10-14 & 1, 2, and 4	20-32 Sylvan Avenue & 4 Bayview Avenue; Cioffi Site	1.985	24.18	48	10
Total Units Based on Estimated Development Density					48	
					Total RDP (20%)	10

The Borough’s satisfaction of the 25% “likely to redevelop” requirement is addressed in the VLA attached in *Appendix L*.

H. HOUSING, DEMOGRAPHIC AND EMPLOYMENT INFORMATION

The Borough of Englewood Cliffs is located in eastern Bergen County, and, per 2020 Census data, has a population of 5,342 in a geographic land area of 2.089 square miles. The Palisades Interstate Park runs the length of Borough’s frontage along the Hudson River. The Borough sits directly across the river from Fort Tryon Park and upper Manhattan. The Borough of Fort Lee and the George Washington Bridge are located directly south of Englewood Cliffs, while the Borough of Tenafly is located to the north. The City of Englewood comprises the entire western border of Englewood Cliffs.

The Borough has several local and regional routes that traverse through it, including the north/south directional Palisades Interstate Parkway and state highway 9W in the eastern portion of Englewood Cliffs. These two highways largely run parallel with one another. However, characteristically, 9W has signalized intersections and provides local access to properties along it, while the Palisades Interstate Parkway is an unsignalized, limited access highway. Several regionally important interstate and state highways merge at the foot of the George Washington Bridge to the south of the Borough’s border in Fort Lee. The combination of roadways traversing the Borough and those located just south of the municipality provide excellent highway access for Borough residents to eastern Bergen County, the larger northern New Jersey region and New York City.

The following detailed Housing, Demographic, and Employment background addresses the components of a Housing Element required by the Fair Housing Act (N.J.S.A. 52:27D-310) and Municipal Land Use Law (N.J.S.A. 40:55D-28b(3) quoted above.

1. Analysis of Population and Demographics

The following tables look to analyze the population trends in Englewood Cliffs from the decennial Census and American Community Survey data. An analysis of population demographics in a target area can help a community to understand and plan for the range of people that live and work within its borders. Also, local population demographics understood in the context of and compared to the larger regional area provide a unique opportunity to understand larger geographic implications of present conditions and future local and regional opportunities. This demographic profile was broken down into functional areas including analyses of community demographics, housing stock, and employment data.

Year	Total Population	% Change
1930	809	-
1940	888	9.8
1950	966	8.8
1960	2,913	201.6
1970	5,938	103.8
1980	5,698	-4.0
1990	5,634	-1.1
2000	5,322	-5.5
2010	5,281	-0.8
2020	5,342	1.2

Source: U.S. Bureau of the Census, 1930-2020 Decennial Censuses

Population

Year	Englewood Cliffs	% Change	Bergen County	% Change
1980	5,698	-	845,385	-
1990	5,634	-1.1	825,380	-2.4
2000	5,322	-5.5	884,118	7.1
2010	5,281	-0.8	906,541	2.4
2020	5,342	1.2	955,732	5.6

Source: U.S. Bureau of the Census, 1980-2020 Decennial Censuses

Englewood Cliffs is a developed municipality. According to the U.S. Census, 5,342 residents lived in Englewood Cliffs in 2020. Between 2000 and 2010 the municipality saw its population shrink by 41 residents, from 5,322 to 5,281, or 0.77%. This reduction in population is not a new or recent trend, and between 1990 and 2000, it is estimated that there was a decrease of 312 residents, or 5.5%. However, between 2010 and 2020, this trend appeared to have reversed; the population rose slightly from 5,281 residents to 5,342 residents, or an increase of 1.2%.

Table 1 depicts the population change since 1930, and shows that from 1930 to 1970, the Borough saw a significant increase in population. The numbers demonstrate that the population spiked mostly between the 1950s and 1970s, and subsequently the Borough saw a slight decrease in population between 1970 and 1980. Since the 1990s, the Borough has experienced minor fluctuations as increases and decreases in population.



Englewood Cliffs' largest increase in growth occurred from the 1950s to the 1970s. The Borough's population more than tripled between 1950 and 1960, and then more than doubled during the 1960s. The population stabilized in the 1970s and experienced a slight decline into the 1980s. In recent years, the Borough has experienced mostly slight declines in population, but 2020 Census data reflected a modest increase in population between 2010 and 2020.

From 1980 to 1990, Bergen County likewise saw a modest decline in population of 2.4%. However, unlike the Borough, Bergen County has seen steady increases in total population since 2000 (Table 2).

Age Characteristics

Understanding the age make up of a community is important when planning for new housing, resources, and the future of the Borough as a whole. Looking at a further breakdown of population data by age and sex, it shows that a municipality's population can be concentrated in specific age cohorts. Table 3 depicts that the population is skewed towards older cohorts, with the data showing people aged 0 to 19 comprising 22.5%, people aged 20-39 comprising 15.6%, people aged 40-59 comprising 28.3%, and people aged 60 or over comprising 33.5%. Thus, over 60% of the population are aged 40 or older.

Likewise, the data shows that the percentage of younger school children is larger than that of young professionals. Additionally, the median age in Englewood Cliffs is 49.0. Overall, Englewood Cliffs has a significant aging population.

	All	Male	Female
Total 2020 Census Population	5,342	2,569	2,773
Under 5	208	113	95
5 to 9 years	336	178	158
10 to 14 years	366	186	180
15 to 19 years	294	158	136
20 to 24 years	234	122	112
25 to 29 years	196	100	96
30 to 34 years	134	71	63
35 to 39 years	270	120	150
40 to 44 years	336	148	188
45 to 49 years	385	175	210
50 to 54 years	389	194	195
55 to 59 years	403	205	198
60 to 64 years	385	182	203
65+	1,406	617	789
Median age (years)	49.0	47.6	50.0

Source: U.S. Bureau of the Census, 2020 Decennial Census



**Table 6 : Population by Age, 2000-2020
Borough of Englewood Cliffs and Bergen County**

Age	2000				2010				2020			
	Englewood Cliffs		Bergen County		Englewood Cliffs		Bergen County		Englewood Cliffs		Bergen County	
	#	%	#	%	#	%	#	%	#	%	#	%
Under 5	304	5.7	55,363	6.3	252	4.8	50,281	5.6	208	3.9	48,025	5.0
5 to 17	797	15.0	147,691	16.7	886	16.8	154,124	17.0	902	16.9	144,418	15.1
18 to 24	301	5.7	58,728	6.6	244	4.6	67,253	7.4	328	6.1	84,607	8.8
25 to 44	1,274	23.9	270,628	30.6	1,056	20.0	234,181	25.9	936	17.6	238,562	24.9
45 to 64	1,475	27.7	216,888	24.5	1,571	29.7	262,174	28.9	1,562	29.2	270,842	28.4
65 & over	1,171	22.0	134,820	15.2	1,272	24.1	137,103	15.1	1,406	26.3	169,278	17.8
Total	5,322	100	884,118	100	5,281	100	905,116	100	5,342	100	955,732	100

Source: U.S. Census, 2000, 2010, and 2020.

Table 4 complements the data in Table 3 and further compares it to that of Bergen County as a whole. It depicts the steady increase in the number of children ages 5 to 17 in Englewood Cliffs from 2000 to 2020— from 15% to 16.8% to 16.9% respectively. Similarly, the number of over-65-year-olds has increased from 22% to 24.1% to 26.3. Interestingly, the number of 18- to 24-year-olds decreased from 5.7% in 2000 to 4.6% in 2010, but, for the first time in several decades, the population aged 18 to 24 increased to 6.1% from 2010 to 2020.

Comparatively, Bergen County also saw a steady increase in the 5 to 17 age cohort between 2000 and 2010, however between 2010 and 2020, this age cohort has experienced decline. There have been steady declines in the 25 to 34 age cohorts; however, the over-65 age cohort has reflected an increase from 2010 to 2020 after remaining steady around 15% for the county. Overall, decreases in the 25 to 34 age range at both the Borough and County level suggest that this area has had a difficult time attracting younger professionals and young families, and increases in the over-65 age cohort at both levels reflect an aging population in this area.

Race

Table 7 shows the racial breakdown of the population according to responses from the 2020 Decennial Census. Over 94% of the population responded as “One Race,” with 50% responding as Asian, 45% identifying as White, 2.2% identifying as Black or African American, 2.2% identifying as Some other Race, and 0.001% identifying as American Indian/Alaska Native.

The other 5.6% of respondents identified as “Two or More Races,” with the largest subgroup in that category being “White; Some other Race” with 160 respondents comprising 5.4%.

Table 7 : Race, 2020 Borough of Englewood Cliffs		
	#	%
One Race	5,043	94%
White	2,276	45%
Black or African American	111	2.2%
Hispanic or Latino	0	0.0
American Indian/Alaska Native	5	0.001%
Asian	2,538	50%
Native Hawaiian/Other Pacific Islander	0	0.0
Some Other Race	113	2.2%
Two or More Races	299	5.6%
White; American Indian and Alaska Native	4	0.01%
White; Asian	82	0.3%
White; Black or African American	20	0.1%
White; Some Other Race	160	5.4%
Total Population	5,342	100%
Source: U.S. Census, 2020		
Note: Percentages May Not Add Due To Rounding		

Household Size and Characteristics

In addition to population demographics, household size in relation to the population helps to characterize the Borough. Using Decennial Census data from 2000-2020, Table 6 below shows that the Average Household Size in Englewood Cliffs has been steadily decreasing from 2.91 to 2.88 to 2.78 between 2000 and 2020, which may be connected to the steady decrease in the population in the same time periods. Bergen County experienced a steady average household size of about 2.65 from 2000 to 2020, with slight increases each year. The household population and number of occupied housing units have likewise steadily increased over this time, suggesting that the household size has remained steady because new families of similar size are moving into the county. The county decreased from 3.30 persons per household in 1960 to 2.64 in 2000, a decline of 20 percent. Englewood Cliffs' household size has slowly and marginally declined between 2000 and 2020, as depicted in Table 6.



Table 8 : Households and Population, 2000-2020 Borough of Englewood Cliffs and Bergen County									
	2000			2010			2020		
	HH Population	Occupied Housing Units	Avg HH Size	HH Population	Occupied Housing Units	Avg HH Size	HH Population	Occupied Housing Units	Avg HH Size
Englewood Cliffs	5,275	1,818	2.91	5,238	1,824	2.88	5,312	1,846	2.78
Bergen County	872,757	330,817	2.64	894,694	335,730	2.66	945,146	350,664	2.69

Source: U.S. Census, 2000, 2010, 2020.

Table 9 shows that the most common household size in Englewood Cliffs was 4 or more people, accounting for 33% of households, followed by households with 2 people, accounting for over 28.6% of households. Three person households make up 24% of households and the least common form of households is single person households, at 14.4% of households.

The American Community Survey was utilized to evaluate Englewood Cliffs income characteristics compared to Bergen County as a whole. Table 8 demonstrates that the per capita income and the median household income in Englewood Cliffs, \$102,113 and \$213,261, are both higher than the County’s of \$60,222 and \$118,714.

Table 9 : Household Size, 2022 ACS, 5- Year Estimates Borough of Englewood Cliffs		
Household Size	Number of Households	Percent
1 Person	268	14.4
2 Persons	535	28.6
3 Persons	447	24.0
4 Persons or More	613	33.0
Total Occupied Housing Units	1,860	100%

Source: 2022 American Community Survey 5- Year Estimates

Table 8 demonstrates that the per capita income and the median household income in Englewood Cliffs, \$102,113 and \$213,261, are both higher than the County’s of \$60,222 and \$118,714.

In addition to a higher per capita income, fewer Englewood Cliffs residents are living below the poverty level. Based on the 2022 5 Year Estimates from the American Community Survey

(Table 8) 2.2% of Englewood Cliffs residents compared to 5.2% Bergen County residents are living below the poverty level.

Table 10 : Income Characteristics – 2022 ACS, 5- Year Estimates, Borough of Englewood Cliffs and Bergen County			
	Borough of Englewood Cliffs	Bergen County	State of New Jersey
Median Household Income	\$213,261	\$118,714	\$97,126
Median Family Income	\$301,952	\$144,348	\$119,240
Per Capita Income	\$102,113	\$60,222	\$50,995
Percent of Persons Below Poverty Level	2.2%	5.2%	6.9%

Source: Selected Economic Characteristics, 2022 American Community Survey 5- Year Estimates

The income limits in Table 11 were produced by the Affordable Housing Professionals of New Jersey in 2024 to set the Affordable Housing Regional Income Limits. The table shows the very low income, low income, and moderate-income thresholds for Bergen County for each household size. Specific rows are for calculating the pricing for one and three-bedroom sale and rental units per N.J.A.C. 5:80-26.4(a).

Table 11 : Affordable Housing Professionals of New Jersey 2024, Affordable Housing Regional Income Limits Bergen County, New Jersey			
Household Size	Moderate Income	Low Income	Very Low Income
1 Person	\$67,431	\$42,144	\$25,286
1.5 Persons*	\$72,247	\$45,154	\$27,093
2 Persons	\$77,064	\$48,165	\$28,899
3 Persons	\$86,697	\$54,185	\$32,511
4 Persons	\$96,329	\$60,206	\$36,124
4.5 Persons*	\$100,183	\$62,614	\$37,568
5 Persons	\$104,036	\$65,022	\$39,013
6 Persons	\$111,742	\$69,839	\$41,903
7 Persons	\$119,449	\$74,655	\$44,793
8 Persons	\$127,155	\$79,472	\$47,683
Source: Affordable Housing Professionals of New Jersey			
* These are for calculating the pricing for one and three-bedroom sale and rental units per N.J.A.C. 5:80-26.4(a)			

2. Analysis of Housing Characteristics

Age of Housing

Englewood Cliffs is a substantially developed community. Population spikes from the 1950s to 1970 predicated a large increase in the number of houses being built from 1940 to 1969. From 1940 to 1959, 335 houses were built and then, from 1960 to 1979, 598 houses were built. From 1950 to 1970 there was an increase of 4,972 people, which correlates to the spike in residential construction. The Borough continued to experience construction to a lesser extent through the 1980s and 1990s, with an additional 402 units built through 1999. Table 10 demonstrates that an estimate of 418 413 housing units in total was built from 2000 to the present day. There are 0 reports of housing units being built after 2020.

The percentage of housing constructed prior to 1960 is 24%. Housing constructed after 1960 totals 1,413 dwelling units. 22.2% of the housing stock was constructed after 2000.

Table 12 : Age of Housing – 2022 ACS, 5- Year Estimates Borough of Englewood Cliffs		
Year Housing Unit Built	Borough of Englewood Cliffs	
	Number of Units	Percent
2020 or later	0	0.0%
2010 – 2019	151	8.1%
2000 – 2009	262	14.1%
1980 – 1999	402	21.6%
1960 – 1979	598	32.2%
1940 – 1959	335	18.0%
1939 or earlier	112	6.0%
Total	1,860	100%
<i>Note: Figures may not add due to rounding</i>		
<i>Source: 2022 American Community Survey 5-Year Estimates</i>		

Table 13 : Residential Building Permits, 1990-2020 Borough of Englewood Cliffs	
Year	Residential Building Permits
2005 – 2009	129
2010	15
2011	6
2012	15
2013	24
2014	23
2015	25
2016	29
2017	22
2018	20
2019	20
2020	18
2021	24
2022	24
Total	394
2005 – 2009	129
<i>Source: New Jersey Department of Labor and Workforce Development</i>	

The number of residential building permits has slowed down since the early 2000s. In tandem with Table 10 above, the number of residential building permits in Table 11 shows that, while 14.1% of the current stock of housing was built from 2000-2009, the pace of construction is almost non-existent in comparison from 2010 to 2013, where only 3.2% was built. From 2005 to 2009, 129 building permits were issued, and thus averaged at 32.3 per year. From 2010 to 2022, 265 permits have been issued, representing an average of 20.4 per year. This demonstrates a decline in the construction of homes; however, it should be noted that the time frame of 2010 to 2013 also overlapped with a significant economic downturn. The average for the 5-year period after that represents 23.8 per year, which is clearly not a significant decline despite the lack of developable land in the Borough. The pattern of development and issuance of building permits for housing units suggests that many residents choose to tear down existing homes and replace them with new homes, whether to increase the size of their homes or to reinvest in their properties.

Table 14 shows the housing size by the number of rooms. In general, Englewood Cliffs has a larger and significant number of housings with more rooms, with 93.9% of housing having 5 or more rooms. Overall, the share of units with 3 rooms or less comprises just 1.8% of the housing stock. The Borough has a greater share of large single-family homes than multi-family units, which would typically provide 1 or 2 bedroom type units, as indicated by 2018 ACS estimates which report that that 96.7% (1,720) of all housing units are 1-unit detached (single-family) residences, and 3.3 (59) % comprise units that are 1 or more unit attached (multi-family).

Table 14 : Housing Size by Number of Rooms - 2022 ACS, 5- Year Estimates Borough of Englewood Cliffs and Bergen County				
Number Of Rooms	Borough of Englewood Cliffs		Bergen County	
	Number Of Units	Percent	Number Of Units	Percent
1 Room	0	0.0	10,090	2.7
2 Rooms	0	0.0	13,229	3.6
3 Rooms	36	1.8	41,700	11.3
4 Rooms	89	4.3	51,568	14.0
5 Rooms or More	1,924	93.9	251,948	68.4
Total	2,049	100%	368,535	100%
<i>Source: 2022 American Community Survey 5-Year Estimates Note: Percentages May Not Add Due To Rounding</i>				

Most of the housing in Englewood Cliffs is owner-occupied. Only slightly more than 12% of housing in Englewood Cliffs is rented. Table 13 indicates whether housing is occupied or not and if occupied whether the units are owned by the occupant or rented. This table also indicates how many units are vacant.

The total vacancy rate in the Borough is 5.9%, based on the 2020 U.S. Census which reported that 115 units were vacant out of 1,961 total units.

Table 15 : Tenure and Housing Vacancy Rates, 2020 Borough of Englewood Cliffs			
	Total	Owner Occupied	Renter Occupied
Total Housing Units	1,961	1,601	245
Vacant Units	115	49	66
Vacancy Rate	5.9%	2.4%	6.8%
Source: Source: U.S. Census, 2020 (1) Includes all vacant units, including those rented or sold but not occupied, seasonal recreational and occasional use units, and "other" vacant units. (2) Includes units available for sale only (3) Includes units available for rent.			

Table 16 shows the value of owner-occupied housing reported by the 2022 American Community Survey 5-year Estimates. Based on the data provided, most of the housing in Englewood Cliffs, 69.9%, is valued above \$1,000,000. Indeed, 90.6% is valued at \$500,000 or above. Contrastingly, most of the housing in Bergen County is valued between \$500,000 and \$999,999. Overall, housing values in the county are less concentrated than in Englewood Cliffs, but more than 75% of the housing in the county is valued between \$300,000 and \$999,999 – which is still significant because it is a concentration at the higher end of the price spectrum for housing.

Table 16 : Value of Owner-Occupied Housing, 2022 ACS 5- Year Estimates Borough of Englewood Cliffs and Bergen County				
Housing Value	Borough of Englewood Cliffs		Bergen County	
	Number of Units	Percent	Number Of Units	Percent
Under \$50,000	51	3.3	3,963	1.7%
\$50,000 to \$99,999	10	0.6	2,369	1.0%
\$100,000 to \$149,999	0	0.0	2,538	1.1%
\$150,000 to \$199,999	0	0.0	3,073	1.3%
\$200,000 to \$299,999	35	2.3	12,357	5.4%
\$300,000 to \$499,999	50	3.2	71,877	31.5%
\$500,000 to \$999,999	318	20.7	105,652	46.2%
\$1,000,000 or more	1075	69.9	26,616	11.7%
Total	1,539	100%	228,445	100%
Note: Figures may not add due to rounding. Source: Value of Owner-occupied housing units, 2022 American Community Survey 5-Year Estimates				

Table 15 depicts that most rent levels in Englewood Cliffs were found to be \$3,000 or more, with 69% of the 301 total rental units reported falling in that range. The next significant rent level was \$2,000 to \$2,499, with 12% of the total rental units estimated to be in that range. In relation to the income levels indicated in Table 9 under this Section, it appears that many of these rents would exceed 30% of income for many household sizes and therefore not be affordable. None of the units in Table 15 are deed restricted as affordable units with controls for low- or moderate-income households and are therefore subject to increases that could also affect future affordability.

Table 17 : Rent Levels, 2022 ACS, 5- Year Estimates Borough of Englewood Cliffs		
Rent	Number of Units	Percent
Less than \$500	0	0.0
\$500 to \$999	0	0.0
\$1,000 to \$1,499	5	1.7
\$1,500 to \$1,999	31	10.3
\$2,000 to \$2,499	36	12.0
\$2,500 to 2,999	20	6.6
\$3,000 or more	209	69.4
No cash rent	20	(x)
Total	301	100%
<i>Source: Contract Rent for Renter-occupied housing units, 2022 American Community Survey 5- Year Estimates</i>		

3. Analysis of Employment Characteristics

Economic data regarding Englewood Cliffs, retrieved from various census tables, reports that the estimated Median Household Income in 2023 was \$222,192, an increase of 46% from 2013 (Table 16). However, based on the CPI Inflation Calculator from the Bureau of Labor Statistics, an income of \$120,333 would have the buying power of \$157,204 in 2023, which demonstrates that incomes have experienced real growth. During the same period the median home value increased 22%, indicating that income growth in Englewood Cliffs has outpaced the increase in home values.

Table 18 : Economic Data Borough of Englewood Cliffs	
Description	Amount
Estimated Median Household Income in 2023	\$222,192
Estimated Median Household Income in 2013	\$120,333
Estimated Median Home Value (Owner Occupied) in 2023	\$1,232,700
Estimated Median Home in 2013	\$963,700
Mean Price of All Housing Units in 2000	\$495,561
Mean Price of Detached Houses in 2000	\$506,691
Mean Price of Townhouses/Other Attached Units in 2000	\$262,068
Mean Price of Two Unit Structures in 2000	\$163,281
Mean Price of 3-4 Unit Structures in 2000	-
Mean Price of 5 or more Unit Structures in 2000	\$269,230
Median Gross Rent in 2023	\$3,500
<i>Source: Units in Structure, 2023 American Community Survey 5-Year Estimates. Aggregate Value (Dollars) by Units in Structure, 2023 American Community Survey 5- Year Estimates. Median Gross Rent, 2023 American Community Survey 5- Year Estimates. Selected Housing Characteristics – 2012 and 2023 5-Year American Community Survey. Selected Economic Characteristics 2012 and 2023, 5-Year American Community Survey. Most recent available data for Aggregate Value by Units in Structure for the Borough is from 2000</i>	

OCCUPATIONS AND INDUSTRIES

A way of understanding the economic health of Englewood Cliffs is to look at the industries and occupations of the current Englewood Cliffs residents. Table 21 provides a more detailed picture of the job market and industries in Englewood Cliffs. The three most common industries and occupations in Englewood Cliffs as of the 2023 American Community Survey Five-Year Estimates are “Educational, Healthcare, and Social Services” at 33.5% of the workforce, “Professional, Scientific, and Management” at 17.9% of the workforce, and “Wholesale Trade” at 9.2% of the workforce.

Table 19 : Most Common Industries and Occupations Borough of Englewood Cliffs	
Educational, Healthcare, and Social Services	33.5%
Professional, Scientific, and Management	17.9%
Retail Trade	7.9%
Arts, Entertainment, Recreation, and Food Services	6.0%
Manufacturing	6.0%
Finance and Insurance, and Real Estate and Rental Leasing	8.9%
Construction	3.4%
Transportation, Warehousing, and Utilities	2.5%
Other Services, except public administration	3.5%
Information	0.9%
Wholesale Trade	9.2%
Public Administration	1.9%
<i>Source: 2023 American Community Survey 5- Year Estimates</i>	

EDUCATION

Table 22 shows the educational attainment of Englewood Cliffs residents based on 2023 American Community Survey 5-Year Estimates data. For the population aged 25 years and older, 96.7% of residents have attained a High School Degree or higher, and 76.9% of residents have obtained a Bachelor’s degree or higher. This data can assist the Borough in understanding regional employment trends.

Table 20 : Education and Employment Data Borough of Englewood Cliffs	
For population 25 years and over	
High school or less	9.1%
Some College	5.6%
Bachelor’s Degree or Higher	76.9%
Graduate or Professional Degree	44.9%
Percent High School Graduate or Higher	96.7%
Percent Bachelor’s Degree or Higher	76.9%
<i>Source: 2023 American Community Survey 5- Year Estimates</i>	

COMMUTING CHARACTERISTICS

Commuting data provides more information on the workers in Englewood Cliffs regarding the necessity of a car or public transportation and how isolated Englewood Cliffs is from employment opportunities. As shown in Table 23, 70.3% of the workers in Englewood Cliffs work in New Jersey, while a lower percentage, but still a majority (58.5%), work within Bergen County. This shows that employment opportunities are available and accessible close to Englewood Cliffs residents. Also, it takes residents an average of 34 minutes to travel to work every day.

Table 21 : Commuting Characteristics Borough of Englewood Cliffs	
Place of Work	Estimates
Worked in State	70.3%
Worked in County of residence	58.5%
Worked outside County of residence	11.8%
Worked outside State of residence	29.7%
Travel Time to Work	Estimates
Less than 10 minutes	8.2%
10 to 14 minutes	12.6%
15 to 19 minutes	10.7%
20 to 24 minutes	13.3%
25 to 29 minutes	2.3%
30 to 34 minutes	11.8%
35 to 44 minutes	3.9%
45 to 59 minutes	11.3%
60 or more minutes	25.9%
Mean travel time to work	34.3
<i>Source: 2023 American Community Survey 5- Year Estimates</i>	

POPULATION AND EMPLOYMENT PROJECTIONS

Table 22 : 2015-2045 Population Projection, Borough of Englewood Cliffs			
Year	Population	Change (#)	Percent Change (annual)
2015	5,366	-	-
2045	5,883	517	0.3%
<i>Source: NJPTA Employment Forecast by County and Municipality, 2015-2045</i>			

Every four years, the North Jersey Transportation Planning Authority (“NJTPA”) conducts regional forecasts for population, households and employment as part of updating its long range transportation plan. The latest set of formal forecasts was released in 2021. Per these forecasts, which are detailed in Table 24 and Table 25, neither population nor employment is predicted to increase significantly in the Borough between 2015 and 2045. Population is only predicted to increase by 517 people from 2015 to 2045, which is a 0.3% annual change, and employment is predicted to increase by 511 from 2015 to 2045, which is a 0.2% annual change

Table 23 : 2015-2045 Employment Projection, Borough of Englewood Cliffs			
Year	Population	Change (#)	Percent Change (annual)
2015	9,065	-	-
2045	9,576	511	0.2%

Source: NJPTA Employment Forecast by County and Municipality, 2015-2045

1. Projection of Borough Housing Stock

As per the MLUL, specifically, N.J.S.A. 52:27D-310.b, a housing element must contain a projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing, for the next ten years, considering, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands.

The Department of Community Affairs' Division of Codes and Standards website provides data on Certificates of Occupancy and demolition permits for both residential and non-residential development. Within the Division of Codes and Standards website is the New Jersey Construction Reporter, which contains building permit, certificate of occupancy and demolition data that is submitted by the municipal construction officials within the State each month.

Table 26 presents data on certificates of occupancy and demolition permits issued in the Borough between 2013 and 2023, as reported by the New Jersey Department of Community Affairs. Over this period, the number of certificates of occupancy issued exceeded the number of demolitions permits, indicating that residential development has been occurring at a higher rate than demolition. A net gain of 33 units were built over the ten-year period of 2013-2023, which averages to approximately 3 housing units per year.

Table 25 : Historic Trend of Certificates of Occupancy and Demolition Permits, Borough of Englewood Cliffs as Provided by the Department of Community Affairs												
Type	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
CO	14	12	11	14	16	14	11	10	16	9	14	141
Demo	14	17	18	13	1	10	No data provided	No data provided	11	13	11	108
Net	0	-5	-7	1	15	4	11	10	5	-4	3	33

Source: Department of Community Affairs

Table 27 below projects 10 years out for residential development between the present and 2035. The projected development includes an extrapolation of the historic trend of residential certificates of occupancy, which is based on an average of 3 housing units constructed in the Borough per year over the last 10 years, and anticipated development through the projects in this Plan. Based on the data below, the Borough anticipates 80 new residential units between now and the end of 2035. Table 27 provides a loose approximation of the timing of residential development based upon this Plan intended to depict that units will be constructed over time in the next 10 years and is no way an exact prediction.

Table 24 : 10-Year Projection of Residential Development Borough of Englewood Cliffs												
Type	<i>July 1, 2025</i>	2026	2027	2028	2029	2030	2031	2032	2033	2034	<i>June 30, 2035</i>	Total
1. Projected Historic Trends	1	3	3	3	3	3	3	3	3	3	1	32
2. Other Projected Development (Cioffi)	--	--	--	--	48	--	--	--	--	--	--	48
Total Projected Residential Development	1	3	3	3	51	3	3	3	3	3	1	80

Of the 80 projected new residences in the Borough between 2025 and 2035, 10 of the units are anticipated to be reserved for low- and moderate-income households (see Table 28).

Table 26 : Projection of Affordable Units Borough of Englewood Cliffs												
Type	July 1, 2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	June 30, 2035	Total
1. Approved New Residential Development Permits Issued	--	--	--	--	--	--	--	--	--	--	--	0
2. Other Projected Development (Cioffi Site)	--	--	--	--	10	--	--	--	--	--	--	10
Total Projected Development	--	--	--	--	10	--	--	--	--	--	--	10

5. A Consideration of Lands of Developers Who Have Expressed a Commitment to Affordable Housing

Pursuant to N.J.S.A.52:27D-310.f and the N.J.S.A. 40:55D-28b(3), a Housing Element must include “a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing.” Thus, it is the Borough’s responsibility to consider sites offered for affordable housing. However, the Borough does not have an obligation to include every parcel a developer has proposed. In this case, a developer (Cioffi) has expressed interest in the construction of affordable housing at the site located at 20-32 Sylvan Avenue and 4 Bayview Avenue, identified as Block 201, Lots 10-14 and Block 205, Lots 1 and 4. This project has been included in this HEFSP as further detailed in Section III.

6. Consistency with State Plan and Redevelopment Plan

Pursuant to N.J.S.A. 52:27D-310.i and N.J.S.A. 40:55D-28b(3), a Housing Element must include “an analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.” Per the existing State Development and Redevelopment Plan (SDRP), which was adopted in 2001, the Borough of Garwood is located in the Metropolitan Planning Area (PA1). As stated in the 2001 SDRP, the State Plan’s intention in PA1 is to “provide for much of the state’s future redevelopment; revitalize cities and towns; promote growth in compact forms; stabilize older suburbs; redesign areas of sprawl; and protect the character of existing stable communities.” The SDRP further elaborates that “these goals will be met

by strategies to upgrade or replace aging infrastructure; retain and expand employment opportunities; upgrade and expand housing to attract a balanced residential population; restore or stabilize a threatened environmental base through brownfields redevelopment and metropolitan park and greenway enhancement; and manage traffic effectively and create greater opportunities for public transportation connections within the Metropolitan Planning Area and between the Metropolitan Planning Area, suburban employment centers, and the Philadelphia and New York areas.”

On December 4, 2024, the State Planning Commission approved the updated Preliminary State Development and Redevelopment Plan. Per the Preliminary SDRP, Englewood Cliffs remains in Metropolitan Planning Area (PA1). The Preliminary SDRP provides that the intent of the Metropolitan Planning Area is to "provide for much of the state’s future growth in compact development and redevelopment; revitalize cities, towns and neighborhoods, and in particular overburdened neighborhoods; address existing legacy issues such as air pollution, urban heat islands, lead contamination, Brownfields, urban highways, and combined sewer systems; prevent displacement and gentrification; promote growth that occurs in Centers, other appropriate areas that are pedestrian friendly, and in compact transit-oriented forms; rebalance urbanization with natural systems; promote increased biodiversity and habitat restoration; stabilize and enhance older inner ring suburbs; redesign and revitalize auto oriented areas; protect and enhance the character of existing stable communities.” Given that the final updated SDRP is not expected to be adopted until late Fall 2025, the consistency of the Borough’s Fourth Round Housing Element with the State Development and Redevelopment Plan is evaluated based on the 2001 SDRP.

Redevelopment has been used as a primary tool for housing development in Englewood Cliffs over the last decade, which is reflected in the inclusionary projects completed and/or approved during the Third Round (see Table 30 of this HEFSP) and is a core objective of the existing SDRP and Preliminary SDRP for PA1. During the Third Round period, over 500 residential units began construction through the implementation of inclusionary redevelopment projects stimulated by the Borough’s Third Round HEFSP. These redevelopment efforts have brought an influx of residential development to the Borough’s urban core, improved walkability and infrastructure, and leveraged access to the Borough’s rail station, which is consistent with providing “future growth in compact development and redevelopment” as envisioned by the SDRP. The Borough is continuing to promote redevelopment as a tool for the provision of affordable housing units as part of its compliance with its Fourth Round affordable housing obligations. The Borough evaluates the viability of all planned and prospective affordable housing sites with respect to utility access, environmental impacts, and traffic/circulation. The projects contemplated for compliance towards the Borough’s Fourth Round affordable housing obligation are further evaluated in this Housing Element and Fair Share Plan.

7. Preserving Multigenerational Continuity

As required by N.J.S.A 52:27D-310, a municipality's housing element shall contain an "analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20)." The Multigenerational Family Housing Commission was established in 2021 and is responsible for preparing and adopting "recommendations on how State government, local government, community organizations, private entities, and community members may most effectively advance the goal of enabling senior

citizens to reside at the homes of their extended families, thereby preserving and enhancing multigenerational family continuity, through the modification of State and local laws and policies in the areas of housing, land use planning, parking and streetscape planning, and other relevant areas." The Commission also must "report annually to the Governor and to each house of the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), its activities, as well as its findings and recommendations, if any, for State and local government."

The Borough will consider additional mechanisms to advance the goal of preserving multigenerational family continuity and will evaluate any report issued by the Commission when released.

III. 2025 FOURTH ROUND FAIR SHARE PLAN

A. SATISFACTION OF COMPLIANCE MECHANISMS PRIOR TO THE FOURTH ROUND

Compliance with Fourth Round Deadlines

As described in Section II.D of this Housing Element and Fair Share Plan, the A4/S50 legislation established several deadlines prior to the commencement of the Fourth Round on July 1, 2025. This section details the Borough's compliance with the deadlines mandated by the Fourth Round law leading up to the preparation of this Housing Element and Fair Share Plan. The Borough's compliance with the deadlines below are provided in the Appendices of this Plan.

- **June 18, 2024:** Deadline for the municipality to submit to the DCA a detailed accounting of all nonresidential development fees collected and expended since it was authorized to collect such fees. This deadline was retroactively moved to coincide with the September 16, 2024 unit and program monitoring report deadline.
- **September 16, 2024:** Deadline for the municipality to submit to the DCA a detailed accounting of all residential development fees collected and expended since it was authorized to collect such fees. Starting in September 2024, the DCA released a new Affordable Housing Monitoring System (AHMS) as required by A4/S50 for all municipalities to record and report all affordable housing trust fund and unit monitoring activity.
- **September 16, 2024:** Deadline for the municipality to submit a unit and program monitoring report to the DCA.
- **October 20, 2024:** Deadline for DCA to prepare and submit a report on the calculation of regional need and municipal obligations for each region. The DCA released a report titled "Affordable Housing Obligations for 2023-20235 (Fourth Round) Methodology and Background" on October 18, 2024.
- **January 31, 2025:** Deadline for a municipality to adopt its fair share obligation numbers via binding resolution, which will either accept the DCA numbers, or describe why the numbers should be adjusted and what those adjusted numbers should be.

- **48 hours following adoption of the resolution:** Deadline for a municipality to file an action with the Program regarding the adopted resolution and committing to its fair share numbers. The resolution must be published on the municipal website.
- **February 15, 2025:** Deadline for the municipality to submit to the DCA a detailed accounting of all nonresidential and residential development fees collected and expended from the previous year and a municipal status report of unit and program monitoring data from the previous year.
- **February 28, 2025:** Deadline for an interested party to challenge a municipality’s adopted numbers. There were no challenges from an interested party on the Borough’s adopted Fourth Round present need obligation and prospective need obligation prior to the February 28, 2025 deadline.
- **March 1, 2025:** If no challenges, the Borough’s numbers are established by default and immunity from exclusionary zoning litigation remains in effect.
- **June 30, 2025:** Deadline to adopt and endorse a Housing Element and Fair Share Plan and propose drafts of the appropriate zoning and other ordinances and resolutions implementing the municipality’s present and prospective obligation. This Fourth Round Housing Element and Fair Share Plan, inclusive of all ensuing attachments and appendices, has been prepared for review and adoption by the Borough Planning Board, endorsement by the Borough Council, and submission to the Program and the Court for review and approval prior to the June 30, 2025 deadline.
- **June 30, 2025 or 48 hours following the Plan’s adoption (whichever is sooner):** Deadline for the municipality to file the Housing Element and Fair Share Plan and drafts of resolutions and ordinances to implement its present and prospective obligation with the Program. The Plan and appropriate resolutions and ordinances must be posted on the municipal website. This Plan will be filed with the Program and the Court by June 30, 2025.

Fair Share Obligations Prior to the Fourth Round

The Borough has a zero-unit Third Round Rehabilitation obligation per the January 2020 Order issued by Judge Farrington, a 219-unit Prior Round obligation pursuant to the methodology under N.J.A.C. 5:93, and a 365-unit Round 3 obligation as previously determined by the trial court per the Order issued by Judge Farrington. The following chart illustrates the Borough’s affordable housing obligations for the Prior Round and the Third Round per the Settlement Agreement reached with Fair Share Housing Center and the defendant-intervenor on October 8, 2020, and as addressed in the Borough’s amended Third Round Housing Element and Fair Share Plan approved via the final JOR issued on December 22, 2020:

Table 27: Englewood Cliffs’ Fair Share Obligations Prior to the Fourth Round	
Third Round Rehabilitation Obligation:	0
Prior Round Obligation (1987-1999):	219
Third Round Obligation (1999-2025 (gap and prospective need period)	365
Total Obligation:	584

Third Round Present Need (Rehabilitation) Obligation

As detailed above, the Borough’s Third Round present need (rehabilitation) obligation is zero (0).

While the Borough is not required to provide any units towards its Rehabilitation obligation during the Fourth Round, the Borough may elect to facilitate the rehabilitation of units through participation in a rehabilitation program to be credited towards any future present need obligation.

Satisfaction of Combined New Construction Obligation for the Third Round

As specified in the Borough’s October 8, 2020 Settlement Agreement, “the Borough has a Prior Round (new construction) Obligation of 219 units and a Third Round (new construction) obligation of 365 units, for a combined new construction obligation of 584 units. The parties agree that the Borough is eligible for a vacant land adjustment pursuant to N.J.A.C. 5:93-4.2.” The ensuing sections therefore detail the Borough’s satisfaction of its combined 584-unit new construction obligation for the Third Round.

1. Vacant Land Adjustment

The Borough was permitted to conduct a vacant land adjustment for the Third Round in accordance with N.J.A.C. 5:93-4.2 and as granted the October 8, 2020 Settlement Agreement. On behalf of the Borough of Englewood Cliffs as their consulting Planner, Harbor Consultants, Inc. conducted a Vacant Land Adjustment (“VLA”) and prepared two reports, both dated December 10, 2018, and which supported its conclusion that the realistic development potential (RDP) for the Borough was 77 for the Third Round. David Kinsey, FAICP, of Kinsey and Hand, prepared a report, dated January 7, 2019, which concluded that the Borough’s RDP was 223. Arthur Bernard, PP prepared a report for 800 Sylvan, dated January 7, 2019, which concluded that the Borough’s RDP was 334. After the Court made rulings on the RDP, the Borough brought a motion to reconsider various rulings of the Court including the RDP. Before the Court ruled on the motion, the Parties entered negotiations and agreed that the RDP was 97, which was settled in the October 8, 2020 Settlement Agreement. The table below illustrates the basis for this number.

Table 29 : Third Round RDP Borough of Englewood Cliffs, Bergen County, NJ					
Site Name	Location	Block / Lot	Acreage (Net)	Density (units/a cre)	20% Set-Aside (RDP #)
Prentice Hall / New LG	111 Sylvan Ave	207 / 6	27.03	12	65
Sites #17-20	146, 150 & 154 Wood Rd. & 312 Bolz St	303 / 35, 36, 37 and 44	0.91	10	2
Sites #21-23	Sara Hill Lane	303 / 40.05, 40.07, and 40.08	0.67	10	1

Sites #29-31 (Municipal Site on Hudson Terrace)	Hudson Terrace	513 / 5 and 7, 514 / 4 and 5 & approximately 0.25-acre portion of Clendinen Place to be vacated	--	Min. 60 units	12
Sites #35 and 36	2 Kim Hunter Rd.	601 / 14 and 15	2.73	6	3
Site #41	552 Summit St.	603 / 20	1.04	10	2
Site #55-56	575-577 Floyd St	802 / 7.01 and 7.02	1.43	10	3
Site #64-65	41-45 Laurie Drive	1009 / 15-16	0.69	10	1
Site #67	98 Roberts Rd.	1101 / 6	0.73	10	1
Site #72	980 Sylvan Ave.	1202 / 2	3.0	12	7
Total RDP					97

As specified in the amended Third Round Housing Element and Fair Share Plan, “After approval of the 800 Sylvan Avenue project... the Borough shall be entitled to apply to the court to increase its RDP and the number of units eligible for rental bonuses based upon the following formula: the Borough is entitled to claim rental bonus credits for 25 percent of its RDP.”

On July 15, 2022, the Appellate Division of the Superior Court of New Jersey upheld the Settlement Agreement for the provision of 450 residential units, inclusive of 90 affordable family rental units, at 800 Sylvan Avenue. The 800 Sylvan Avenue site has secured approvals and is currently under construction; therefore, the Borough has applied the 90 affordable family rental units towards the calculation of its Third Round RDP, thereby increasing its Third Round RDP to 187.

2. Third Round Rental Obligation

COAH’s Second Round regulations (at N.J.A.C. 5:93-1, et seq.) provide that at least twenty-five percent (25%) of the new construction component (i.e. excluding the present need or rehabilitation share) must be satisfied with rental units. Based upon the RDP of 187, at least 47 rental units are required. The Borough satisfies this requirement through the provision of 155 family rental units from the Hudson Terrace/Michaels Development/”Cliffs on Hudson” project and the 800 Sylvan Avenue project.

3. Third Round Age-Restricted Housing

COAH’s Second Round regulations permit a total of no more than 25 percent of the new construction obligation to be satisfied with age-restricted housing. Based upon the actual units to be constructed to satisfy the RDP, up to 46 age-restricted housing units are permitted at this time. However, as explained below, the Borough’s plan envisions that none of the 187-unit RDP will be satisfied with age-restricted housing.

4. Third Round Very Low-Income Housing Obligation

As a result of the July 2008 amendments to the Fair Housing Act known as the “Roberts Bill”, all municipalities have an obligation to reserve at least 13% of the new affordable units built to satisfy

the Third Round obligation to be for very low income households.⁴ The Fair Housing Act states that the thirteen percent (13%) threshold only has to be maintained Borough wide. To ensure that enough very low income units are produced, the Borough adopted an Affordable Housing Ordinance (Ord. No. 20-13) requiring that within any inclusionary or one hundred percent (100%) affordable rental housing development, at least thirteen percent (13%) of the low and moderate income units built shall be affordable to very low income households for all rental or for-sale projects.

The Borough will comply with providing VLI units from the following: 1) fourteen (14) from family rental units from the municipally-sponsored 100% affordable site; 2) two (2) from family rental units at the New LG/ North Woods site; and twelve (12) from the family rental units at the 800 Sylvan Avenue site. In total, the Borough anticipates twenty-eight (28) family VLI units.

5. Third Round Rental Bonuses

In accordance with N.J.A.C. 5:93-5.15(d), the Borough is eligible to seek rental bonuses up to twenty-five percent (25%) of the RDP. While the Third Round RDP for the Borough was settled as 97 units, since the execution of the October 8, 2020 Settlement Agreement and amended Third Round HEFSP, the 800 Sylvan Avenue project (450 residential units, inclusive of 90 affordable family rental units) has secured approvals and is currently under construction, thereby increasing its Third Round RDP to 187. The Borough therefore is eligible to seek up to 46 rental bonus credits, which have been applied entirely from the 65 family rental units at the Hudson Terrace/Michaels Development/“Cliffs on Hudson” project.

6. Satisfaction of the Borough’s Third Round RDP

The Borough satisfies its 187-unit Third Round RDP as follows:

Table 30 : Projects Addressing the Borough’s Third Round RDP Borough of Englewood Cliffs, Bergen County, NJ				
BOROUGH RDP	187			
	Completed Units	Proposed Units	Rental Bonuses	Total
<i>Proposed Affordable Housing Sites</i>				
100% Affordable Site		65	46	111
Hudson Terrace/Michaels Development/ “Cliffs on Hudson” (Municipally Sponsored 100% Affordable Site) <i>(Approx. 2.3 +/- acres - Block 514, Lots 4 & 5; Block 513, Lots 5 & 7, and approximately 0.25-acre vacated portion of Clendinen Place)</i>		65 (F)(R)	46 (BC)	111
Inclusionary Sites		102	-	102
New LG / North Woods <i>(3.5-acre portion - Block 207, Lot 6)</i>		12	-	12

⁴ For projects used to satisfy the Third Round new construction obligation, the FHA requirements and UHAC regulations applicable to the Third Round shall apply. Projects credited towards the Borough’s Fourth Round prospective need obligation shall be subject to the requirements of the amended FHA and shall be subject to the revised UHAC rules effective as of December 19, 2024, and subject to final revision and adoption, which include amendments at N.J.A.C. 5:80-26.1, 26.2, 26.4 through 26.27 and at Appendices A through Q, and new rules at N.J.A.C. 5:80-26.3 and 26.28 to codify statutory requirements enacted pursuant to P.L. 2024, c.2.

800 Sylvan Avenue <i>(Block 910, Lot 1)</i>		90 (F)(R)	-	90
TOTAL UNITS AND BONUS		213		
(R) = Rental (F) = Family Units (BC) = Bonus Credit				

7. Detailed Summary of Third Round RDP Satisfaction

a. 65 affordable family rental units from a Municipally-Sponsored 100% Affordable Site:

- i. Per the October 8, 2020 Settlement Agreement, at least sixty (60), but not more than sixty-five (65), affordable housing units shall be built from a municipally-sponsored 100% affordable housing development located at (i) “Municipal Site A”: Borough-owned Block 513, Lot 7, Block 514, Lots 4 & 5 (approximately 1.4-acres owned by the Borough), and an approximately 0.24-acre, 190 feet long portion of Clendinen Place to-be-vacated, with street addresses of 474 & 482 Hudson Terrace and 4 Clendinen Place and (ii) “Municipal Site B” Block 513, Lot 5 at 488 Hudson Terrace which is currently partially developed with the Borough’s community center and emergency squad facility. On March 10, 2021, the Borough Council authorized the execution of a Developer’s Agreement between the Borough and Michaels Development Company I, L.P. for the construction of a 65-unit municipally-sponsored 100% affordable housing development at Municipal Site A & Municipal Site B. On August 8, 2024, the Planning Board granted amended preliminary and final site plan approval for the “Cliffs on Hudson” project, which will provide 65 affordable family rental units (14 very-low, 19 low, 32 moderate). The site is currently undergoing construction.

b. 102 affordable units from the following inclusionary sites:

- i. **12 affordable units from the New LG/North Woods site (Portion of Block 207 Lot 6 located at 111 Sylvan Avenue).** A development of up to sixty (60) total family units with a 20% affordable housing set-aside, yielding 12 affordable non-age-restricted housing units, shall be permitted on a +/- 3.5-acre portion of the “New LG site” (Block 207, Lot 6). The site was rezoned as Inclusionary Housing-1 (IH-1) Zone via Ordinance No. 20-13.
- ii. **90 affordable family rental units from 800 Sylvan Avenue (Block 910, Lot 1).** On July 15, 2022, the Appellate Division of the Superior Court of New Jersey upheld the Settlement Agreement for the provision of 450 residential units, inclusive of 90 affordable family rental units, at 800 Sylvan Avenue. The 800 Sylvan Avenue site has secured approvals and is currently under construction

c. 46 rental bonus credits:

- i. **46 rental bonus credits shall be applied from 46 of the 65 family rental units provided from the Hudson Terrace/Michaels Development/ “Cliffs on Hudson” project.** These 46 rental bonus credits are based on a 25% rental bonus credit cap applied to the 187-unit Third Round RDP.

Satisfaction of the Borough’s Third Round Unmet Need

The Borough’s Third Round combined new construction obligation of 584, subtracted by 213 units and bonuses credited towards the Third Round RDP, yields a Third Round unmet need of 371. The Borough proposes addresses its Third Round unmet need as follows:

Table 31 . Projects and Mechanisms Addressing the Third Round Unmet Need Borough of Englewood Cliffs, Bergen County, NJ			
Unmet Need	371		
Mechanism	Completed Units	Proposed Units	Total
Hudson Terrace Overlay Zone		62 (78) ⁽¹⁾	62 (78)⁽¹⁾
East Palisades Overlay Zone		38 (48) ⁽¹⁾	38 (48)⁽¹⁾
B-3 Zone District Overlay Zone		31 (39) ⁽¹⁾	31 (39)⁽¹⁾
Northern Sylvan Avenue Corridor Mixed Use Overlay Zones (A)			
910, 910-920, 930-940 Sylvan Avenue		194	194
1000 Sylvan Avenue		36	36
Northern Sylvan Avenue Corridor Mixed Use Overlay Zones (B)			
980 Sylvan Avenue		9	9
1000 Sylvan Avenue		10 (15) ⁽²⁾	10 (15)⁽²⁾
Sisters of St. Joseph of Peace Site		16 ⁽³⁾	16 ⁽³⁾
Remaining Rental Bonus Credits (25% Cap)		100	100
TOTAL CREDITS AND UNITS		496 (535)	
⁽¹⁾ Projects with residential or mixed-use options (mixed-use unit numbers in parentheses) ⁽²⁾ Projects with non-age-restricted or age-restricted options (age-restricted unit numbers in parentheses) ⁽³⁾ Units shall be age-restricted			

1. Detailed Summary of Third Round Unmet Need Satisfaction

a. Hudson Terrace, East Palisades, and the B-3 Zone District Overlay Zones

Per the October 8, 2020 Settlement Agreement, the Borough agreed to overlay zoning rights to permit family inclusionary developments in three areas, at 19 units/acre with a 20% affordable housing set-aside if strictly residential and 24 units/acre with a 20% affordable housing set-aside if mixed-use, unless specified otherwise, with accommodating and flexible bulk standards within a three (3) story building height. These standards shall apply to the Hudson Terrace Overlay, the East Palisades Overlay & the B-3 Zone District Overlay. These overlay zones were adopted as the Downtown Tiers Inclusionary Housing Overlay-2 (IHO-2) Zone via Ordinance No. 20-14.

The preservation of the viewshed of the Palisades is a critically important aesthetic and scenic design consideration. Any zoning standards for the sites described in this subsection shall require the applicant to demonstrate that the proposed development would not adversely affect the scenic integrity of the Palisades Interstate Park and its surroundings

when viewed from the vantage points east and south of the Palisades, specifically the George Washington Bridge center and the Cloisters Terrace and high point of Fort Tryon Park, Manhattan.

i. Hudson Terrace Overlay Zone

Per the October 8, 2020 Settlement Agreement, the Borough has agreed to overlay zoning rights for the area located along Sylvan Avenue, to the south of Palisades Avenue – which comprises the B-4 zoning district in the northern portion and B-2 zoning district in the southern portion so that as development and redevelopment occur, there are opportunities for inclusionary development. This area includes a total of approximately 16.2 acres of existing developed sites that are unconstrained. This overlay zone allows for inclusionary affordable housing as a permitted use at 19 units/acre with twenty percent (20%) affordable housing set-aside if strictly residential (which yields a maximum of 307 residential units, inclusive of 62 affordable units) and 24 units/acre with a twenty percent (20%) affordable housing set-aside if mixed-use (which yields a maximum of 388 residential units, inclusive of 78 affordable units), and in either case within a three (3) story building height.

ii. East Palisades Avenue Overlay Zone

Per the October 8, 2020 Settlement Agreement, the Borough has agreed to overlay zoning rights for the area located along East Palisades Avenue, west of Sylvan Avenue – which largely comprises the B-1 zoning district and a portion of the B-4 zoning district so that as development and redevelopment occur, there are opportunities for inclusionary development. The Overlay Rezoned Area includes a total of approximately 9.97 acres of existing developed sites that are unconstrained. This overlay zone allows for inclusionary affordable housing as a permitted use at 19 units/acre with twenty percent (20%) affordable housing set-aside if strictly residential (which yields a maximum of 189 residential units, inclusive of 38 affordable units) and 24 units/acre with a twenty percent (20%) affordable housing set-aside if mixed-use (which yields a maximum of 239 residential units, inclusive of 48 affordable units), and in either case, within a three-story building height.

iii. B-3 Zone Overlay Zone

Per the October 8, 2020 Settlement Agreement, the Borough has agreed to overlay zoning rights for the properties located within the B-3 Zone District, at the southern portion of the Borough so that as development and redevelopment occur, there are opportunities for inclusionary development. This area includes a total of approximately 9.95 acres of existing developed sites that are unconstrained; however, approximately 1.985 acres from the properties belonging to the Cioffi site are used towards the Borough's Fourth Round RDP, therefore these 1.985 acres must be subtracted from the total acreage of the B-3 Overlay Zone to avoid double counting the projected affordable housing units from the site. The remaining developable acreage is therefore 7.965. This overlay zone allows for inclusionary

affordable housing as a permitted use at 19 units/acre with twenty percent (20%) affordable housing set-aside if strictly residential (which yields a maximum of 151 residential units, inclusive of 31 affordable units) and 24 units/acre with a twenty percent (20%) affordable housing set-aside if mixed-use (which yields a maximum of 191 residential units, inclusive of 39 affordable units), and in either case, within a three-story building height.

b. Northern Sylvan Avenue Corridor Mixed Use Overlay Zones (A) and (B)

The preservation of the viewshed of the Palisades is a critically important aesthetic and scenic design consideration. Any zoning standards for the sites described in this subsection shall require the applicant to demonstrate that the proposed development would not adversely affect the scenic integrity of the Palisades Interstate Park and its surroundings when viewed from vantage points east and south of the Palisades, specifically the George Washington Bridge center and the Cloisters Terrace and high point of Fort Tryon Park, Manhattan.

i. Northern Sylvan Avenue Corridor Mixed Use Overlay (A)

Properties:

- i. 910 Sylvan Avenue
Block 1201, Lot 8 and Lot 9.01, 22.3 acres
- ii. 910-920 Sylvan Avenue
Block 1201, Lot 9.03, 9.295 acres
- iii. 930-940 Sylvan Avenue
Block 1201, Lot 9.04, 10.457 acres

Per the October 8, 2020 Settlement Agreement, the Borough has agreed to overlay zoning rights for the properties listed above so that as development and redevelopment occur, there are opportunities for inclusionary development in these areas that allow for family development, at 23 units/acre with twenty percent (20%) affordable housing set-aside (therefore yielding a maximum of 967 residential units, inclusive of 194 affordable units) with accommodating and flexible bulk standards, provided that the building height does not exceed four (4) stories for the area north of Hollywood Avenue, west of Sylvan Avenue to Sage Road, and east of Johnson Avenue and Floyd Street, excluding the 800 Sylvan Avenue site with the exception of the area described for the remainder of 800 Sylvan Avenue site (Block 910, Lot 1). The Northern Sylvan Avenue Corridor Inclusionary Overlay-A (OL-A) Zone includes the aforementioned properties and was adopted via Ordinance No. 20-11.

Properties:

- i. Remainder of 800 Sylvan Avenue site
Portion of Block 910, Lot 1, approximately 8 acres

Per the October 8, 2020 Settlement Agreement, the Borough has agreed to overlay zoning rights for the property listed above so that as development and

redevelopment occur, there are opportunities for inclusionary development in the remaining 8.0 +/- acres of 800 Sylvan Avenue site (Block 910, Lot 1) provided that the building height does not exceed four (4) stories. This roughly 8-acre portion of a larger site is currently developed with an existing research and development facility, and the Borough will permit family development at the same density (22.5 du/acre) as the bulk of the 28.78-acre 800 Sylvan Avenue property used toward the Borough's Third Round RDP (therefore yielding a maximum of 180 residential units, inclusive of 36 affordable units). The Northern Sylvan Avenue Corridor Inclusionary Overlay-A (OL-A) Zone includes the aforementioned property and was adopted via Ordinance No. 20-11.

ii. Northern Sylvan Avenue Corridor Mixed Use Overlay (B)

Per the October 8, 2020 Settlement Agreement, the Borough has agreed to overlay zoning rights so that as development and redevelopment occur, there are opportunities for inclusionary development for the Old LG site (1000 Sylvan Avenue) and 980 Sylvan Avenue, provided that the building height does not exceed four (4) stories, as detailed below. The Northern Sylvan Avenue Corridor Inclusionary Overlay-B (OL-B) Zone was adopted via Ordinance No. 20-12.

Properties:

- i. 980 Sylvan Avenue
Block 1202, Lot 2 (Lighthouse)

6.009 acres, a gross density of 7.5 units per gross acre in a family inclusionary project, with a 20% set aside, provided that the building height does not exceed four (4) stories (therefore yielding a maximum of 45 residential units, inclusive of 9 affordable units). Google Earth shows that Block 1202, Lot 2 has been developed with an office building on the southeast portion of the site.

- ii. 1000 Sylvan Avenue
Block 1202, Lot 2.01 (Old LG headquarters)

5.46 acres, a gross density of 13.5 units per acre for an age-restricted development with a 20% set aside (therefore yielding a maximum of 73 residential units, inclusive of 15 affordable units), provided that the building height does not exceed four (4) stories, shall only be allowed for a period of three years from the entry of the JOR and if no application is approved for an age-restricted development by that time the permitted uses shall also allow an alternative use as a non-age-restricted development with family affordable units to be constructed on the property at a gross density of 8.5 units per acre with a 20% set aside (therefore yielding a maximum of 46 residential units, inclusive of 10 affordable units), provided that the building height does not exceed four (4) stories.

c. Sisters of St. Joseph of Peace Site (Block 1302, Lot 5)

Per the October 8, 2020 Settlement Agreement, the Borough has agreed to overlay zoning rights so that as development and redevelopment occur, there are opportunities for inclusionary development on the property located at Block 1302, Lot 5 (12.7 +/- acres) to permit age-restricted residential development at a gross density of six (6) units/acre with a 20% set-aside (therefore yielding a maximum of 76 residential units, inclusive of 16 affordable units). A second and separate development will allow for a bonus density of additional age-restricted units provided those units are limited to the conversion of the main “historic buildings” on the property, whether these building is on or eligible to be on any State or National Registers of Historic Places list. The conversion of these “historic buildings” for any bonus density shall be limited to one-bedroom, age-restricted units, with a 20% set aside. As stated by the Settlement Agreement, any development on the property shall maintain, or if not inconsistent with the historical preservation requirements herein, reduce any current visual intrusions to the scenic integrity of the Palisades viewshed from the vantage point of Manhattan and the George Washington Bridge.

d. Bonus Credits

After subsequent approval of an inclusionary or 100% affordable housing project that would otherwise address the unmet need is final and not subject to further appeal, the Borough shall be entitled to apply to the court to increase its RDP and the number of units eligible for rental bonuses based upon the following formula: the Borough is entitled to claim rental bonus credits for 25 percent of its RDP. Based on the combined Third Round new construction obligation of 584, the Borough will be eligible for a maximum of 146 rental bonus credits for the Third Round. 46 of these rental bonus credits have already been applied to the Third Round RDP, therefore an additional 100 rental bonus credits may be allocated towards the Third Round unmet need and may be used towards the RDP upon full build out of the Thid Round new construction obligation. However, any right to additional rental bonus credits shall not relieve the Borough of its responsibilities and obligations under any approval of this HEFSP by the Court. Moreover, pursuant to N.J.A.C. 5:93-5.15(d) there are circumstances wherein a municipality may lose rental bonuses, previously granted, if approvals lapse or a project is abandoned.

B. FOURTH ROUND COMPLIANCE MECHANISMS

Fourth Round Present Need (Rehabilitation) Obligation

As explained in detail in Section II of this Fourth Round Housing Element and Fair Share Plan, the Borough’s Fourth Round present need (rehabilitation) obligation is zero (0).

While the Borough is not required to provide any units towards its present need obligation during the Fourth Round, the Borough may elect to facilitate the rehabilitation of units through participation in a rehabilitation program to be credited towards any future present need obligation.

1. Vacant Land Adjustment

As discussed in Section II.G of this HEFSP, the Borough has conducted a Vacant Land Adjustment as part of addressing its Fourth Round prospective need obligation (see *Appendix L*). As a result of the VLA, the Borough calculated an RDP of 10 from the properties located at 20-32 Sylvan Avenue

and 4 Bayview Avenue (Block 201, Lots 10-14 and Block 205, Lots 1, 2 and 4), which are developed and approved properties determined to generate an RDP.

2. Percentage Requirements

- Minimum Rental: Per N.J.S.A. 52:27D-311, “A municipality shall satisfy a minimum of 25 percent of the actual affordable housing units, exclusive of any bonus credits, to address its prospective need affordable housing obligation, through rental housing, including at least half of that number available to families with children.”
- Minimum Family Housing: Per N.J.S.A. 52:27D-311, “A municipality shall satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its prospective need affordable housing obligation through the creation of housing available to families with children and otherwise in compliance with the requirements and controls established pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321).”
- Age-Restricted Cap: Per N.J.S.A. 52:27D-311, “A municipality may not satisfy more than 30 percent of the affordable housing units, exclusive of any bonus credits, to address its prospective need affordable housing obligation through the creation of age-restricted housing.”
- Minimum Very-Low Income: Per N.J.S.A. 52:27D-329.1, “Housing elements and fair share plans adopted pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) shall ensure that at least 13 percent of the housing units made available for occupancy by low-income and moderate-income households to address a municipality’s prospective need obligation will be reserved for occupancy by very low income households, as that term is defined pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304), with at least half of such units made available for families with children. The 13 percent shall count towards the minimum 50 percent of the housing units required to be made available for occupancy by low-income households to address a municipality’s prospective need obligation.”
- Bonus Credit Cap: Per N.J.S.A. 52:27D-311, “A municipality shall not receive more than one type of bonus credit for any unit and a municipality shall not be permitted to satisfy more than 25 percent of its prospective need obligation in the fourth round or any subsequent round through the use of bonus credits.”

The Borough is currently allocating 10 affordable family rental units from a proposed inclusionary development at the Cioffi site to satisfy the Borough’s Fourth Round RDP, as well as 2.5 rental bonus credits based on a 25% cap of the 10-unit RDP. The income distribution and bedroom distribution are undetermined at this time. As additional sites are built out and the RDP increases over the Fourth Round, the Borough will ensure compliance with all of the percentage requirements per the amended FHA as listed above, as well as any other additional requirements of the amended FHA and UHAC regulations.

3. Satisfaction of Fourth Round RDP

Table 32 . Existing and Proposed Projects Addressing the Fourth Round RDP Borough of Englewood Cliffs, Bergen County, NJ						
BOROUGH RDP	10					
	Completed Units	Proposed Units	L	M	VL	Total
Cioffi Site (20-32 Sylvan Avenue and 4 Bayview Avenue; Block 201, Lots 10-14, Block 205, Lots 1,2, & 4)		10 (F)(R)	-	-	-	10
TOTAL UNITS						10
Bonus Credits (2.5 maximum based on 25% of 10-unit RDP)						2.5
TOTAL CREDITS AND UNITS						12.5
(R) = Rental (BC) = Bonus Credit (F) = Family						

Detailed Summary of Fourth Round RDP Satisfaction

1. 10 units from the following inclusionary redevelopment project:

10 units from the Cioffi Site (20-32 Sylvan Avenue and 4 Bayview Avenue; Block 201, Lots 10-14, Block 205, Lots 1,2, & 4).

The proposal is for a three-story inclusionary mixed-use development consisting of 9,494 square feet of commercial space on the ground floor and forty-eight (48) apartments on the upper two floors. The residential portion of the development includes a twenty percent (20%) set aside that will create ten (10) affordable family rental units. The site is located in the Downtown Tiers (Hudson Terrace, East Palisades and B-3 Zone) Inclusionary Housing Overlay -2 (IHO-2) Zone.

2. 2 rental bonus credits, based on a maximum of 25% of the 10-unit RDP.

Fourth Round Unmet Need Obligation

The Borough’s Fourth Round prospective need obligation of 329 units subtracted by the 12.5 credits used to satisfy the Borough’s Fourth Round RDP results in a Fourth Round unmet need obligation of 316.5 units. The Borough will address its 316.5-unit unmet need through the mechanisms detailed in the table below:

Table 33 . Existing and Proposed Projects Addressing the Fourth Round Unmet Need Borough of Englewood Cliffs, Bergen County, NJ						
Fourth Round Unmet Need	316.5					
	Completed Units	Proposed Units	L	M	VL	Total
New Overlay Zones		177 (213) ⁽¹⁾	-	-	-	177 (213) ⁽¹⁾
New Southern Sylvan Ave Corridor Overlay Zone C		11 (14) ⁽¹⁾	-	-	-	11 (14) ⁽¹⁾
New Southern Sylvan Ave Corridor Overlay Zone D		166 (199) ⁽¹⁾	-	-	-	166 (199) ⁽¹⁾
Other Mechanisms		60	-	-	-	60
Mandatory Set-Aside Ordinance (MSO)		60	-	-	-	60
Remaining Bonus Credits to Reach 25% Cap						79.5
TOTAL CREDITS AND UNITS		316.5				

⁽¹⁾Projects with residential or mixed-use options (mixed-use unit numbers in parentheses)

Detailed Summary of Fourth Round Unmet Need

1. Detailed Summary of Fourth Round Unmet Need Satisfaction

a. Units from New Inclusionary Overlay Zones

- i. **11 units (or up to 14 units for mixed-use projects) from the Southern Sylvan Avenue Overlay Zone C.** The Borough will adopt a new Inclusionary Overlay Zone, known as Southern Sylvan Avenue Overlay Zone C, which consists of the area located along Sylvan Avenue, to the east of Palisades Avenue, and is comprised of the existing B-4 Zoning District in the southern portion and the existing R-B Zoning District in the northern portion. It is bounded by Sylvan Avenue (US Route 9W) and Demarest Avenue. The Overlay Zone shall apply to the following properties: Block 617, Lots 6 and 13-17. The unconstrained acreage of the Overlay Zone totals approximately 2.7935 acres. Every property within the Overlay Zone may be redeveloped as a completely residential inclusionary project at a density of 20 units per acre with a 20 percent set aside, totaling to a maximum of 55 residential units, inclusive of 11 affordable units. Alternatively, the site can be redeveloped as a mixed commercial/residential project in which the residential component may be developed at a density of 24 units per acre with a 20% set aside, totaling to a maximum of 67 residential units, inclusive of 14 affordable units.



Figure A – Aerial Map of Southern Sylvan Ave Overlay Zone C

- ii. **166 units (or up to 199 units for mixed-use projects) from the Southern Sylvan Avenue Overlay Zone D.** The Borough will adopt a new Inclusionary Overlay Zone, known as Southern Sylvan Avenue Overlay Zone D, which consists of the area located along Sylvan Avenue, west of Sherwood Avenue, and is only comprised of the existing B-2 Zoning District. The Overlay Zone shall apply to the following properties: Block 130, Lots 22-25, Block 313, Lots 1-3, Block 314, Lots 10-15, and Block 411, Lots 16-23. The unconstrained acreage of the Overlay Zone totals approximately 41.38 acres. Every property within the Overlay Zone may be redeveloped as a completely residential inclusionary project at a density of 20 units per acre with a 20 percent set aside, totaling to a maximum of 827 residential units, inclusive of 166 affordable units. Alternatively, the site can be redeveloped as a mixed commercial/residential project in which the residential component may be developed at a density of 24 units per acre with a 20% set aside, totaling to a maximum of 993 residential units, inclusive of 199 affordable units.



Figure B – Aerial Map of Southern Sylvan Ave Overlay Zone D

b. 60 units from Additional Mechanisms

- i. Mandatory Set-Aside Ordinance. The Borough will amend its already adopted Borough-wide Mandatory Set-Aside Ordinance (MSO), to require that that any site that benefits from a rezoning, variance or redevelopment plan approved by the Borough or the Borough’s Land Use Board that results in multi-family residential development of five (5) or more dwelling units to produce affordable housing at a set-aside rate of 20% for for-sale affordable units and at a set aside rate of 20% for rental affordable units. In addition, sites that fall under the terms and conditions of the MSO shall not be subdivided so as to avoid compliance with the requirements of the MSO (see Appendix R). A minimum of 60 affordable units generated from the Borough’s MSO during the Fourth Round shall be used towards satisfaction of the Borough’s Fourth Round unmet need.

- c. **79.5 remaining bonus credits.** Given that municipalities are permitted to satisfy up to 25% of their Fourth Round prospective need from bonus credits from completed units (Borough’s Fourth Round prospective need of $329 \times 25\% =$ maximum of 82 bonus credits), the Borough will be eligible for 79.5 remaining bonus credits based on the full build out of its Fourth Round prospective need.

C. SITES FOR 100% AFFORDABLE/INCLUSIONARY DEVELOPMENT

As required by the FHA, proposals for inclusionary and/or 100% affordable residential development have been considered during the preparation of this Housing Element and Fair Share Plan, and the only site considered was ultimately included in this Plan.

1. Cioffi Site (20-32 Sylvan Avenue and 4 Bayview Avenue; Block 201, Lots 10-14 and Block 205, Lots 1, 2, & 4)

The proposal is for a three-story inclusionary mixed-use development consisting of 9,494 square feet of commercial space on the ground floor and forty-eight (48) apartments on the upper two floors. The residential portion of the development includes a twenty percent (20%) set aside that will create ten (10) affordable housing units. The site is located in the Downtown Tiers (Hudson Terrace, East Palisades and B-3 Zone) Inclusionary Housing Overlay - 2 (IHO-2) Zone.

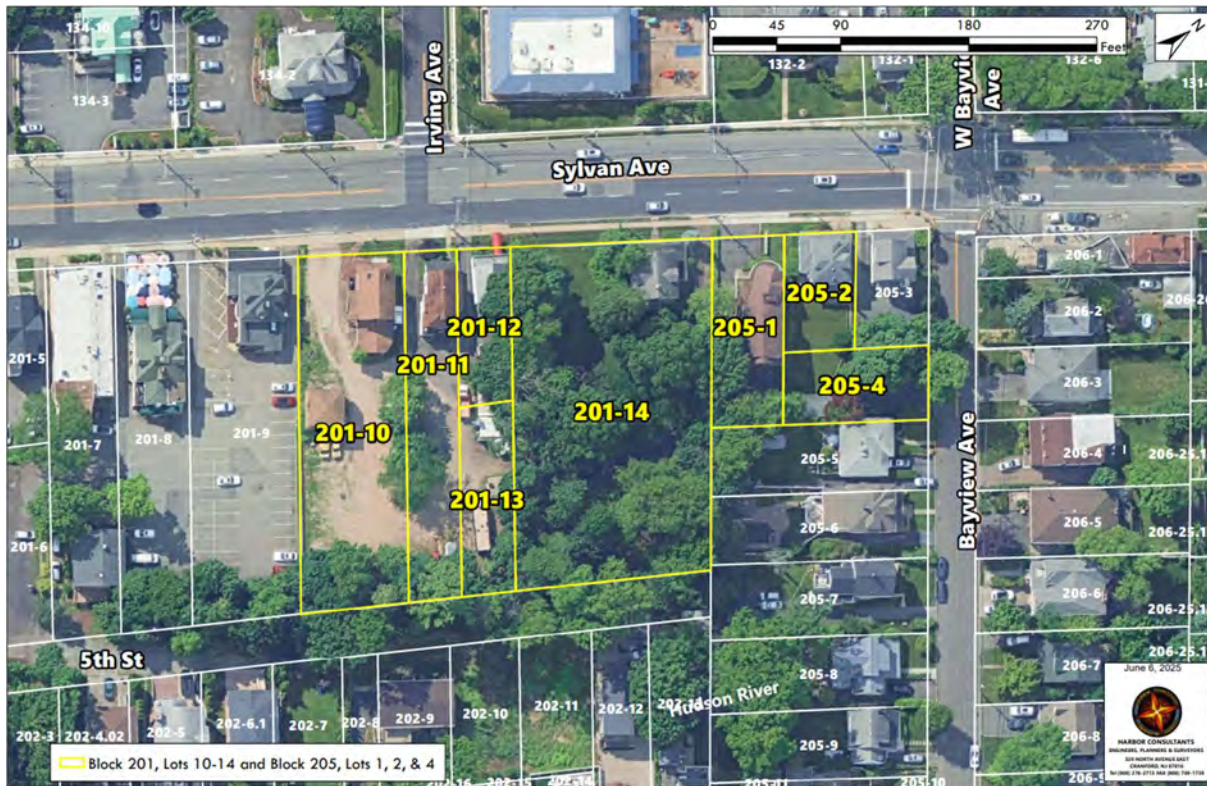


Figure C – Aerial Map of Cioffi Site

i. Site Description and Project History

- i. The Cioffi Site is comprised of Block 201, Lots 10-14 and Block 205, Lots 1, 2, & 4. The site is located along Sylvan Avenue and Bayview Avenue and is within the Downtown Tiers (Hudson Terrace, East Palisades and B-3 Zone) Inclusionary Housing Overlay - 2 (IHO-2) Zone. The area of the site is approximately 1.985 acres. There are six former principal buildings on the site and multiple

accessory structures and garages. The overall condition of the buildings and structures show evidence of disrepair and neglect.

- ii. Site Control. The property is owned by CFI Development, LLC.
- iii. Administrative Agent. The Borough's Administrative Agent will ensure that all units are affirmatively marketed and all applicants for the project are properly income qualified in compliance with all UHAC requirements per N.J.A.C. 5:80-26.1 et seq.
- iv. Proforma and Construction Schedule. A proforma and construction schedule will be provided as the project moves forward.

ii. **Site Suitability**

The project, which is proposed to include 48 total units with a twenty percent (20%) set aside of 10 affordable family rental units as part of the Borough's compliance with its Fourth Round prospective need obligation, complies with N.J.A.C. 5:93-1.1, 5.3 and 5.6 that require all new construction sites to be available, approvable, developable, and suitable. This consistency is demonstrated as follows:

- i. There are no known encumbrances that would prohibit or otherwise effect the development of the property in general.
- ii. The subject property located at 20-32 Sylvan Avenue and 4 Bayview Avenue consists of eight (8) individual lots. The overall tract contains 1.985 acres and has 289.54 +/- feet of frontage along Fifth Street, and unimproved thirty-three-foot-wide Borough right-of-way, 50.00 feet of frontage along Bayview Avenue and 393.36 feet of frontage along Sylvan Avenue (State Highway Route 9W). South of the tract along Sylvan Avenue are commercial businesses. East along Bayview Avenue are single family residences. South of and across from unimproved Fifth Street are single family residences. The tract contains approximately fifty-seven (57) large deciduous trees.
- iii. There is adequate water infrastructure and water capacity to serve the site.
- iv. The site is located in a sewer service area, and there is adequate sewer infrastructure and sewer capacity to serve the site.
- v. The site location is consistent with the adopted State Development and Redevelopment Plan. It is located in Planning Area 1, where development is encouraged.
- vi. Per NJDEP mapping, there are no critical habitats, C-1 streams, wetlands, or floodplains on site.
- vii. There are no slopes greater than 15 percent on the site.

- viii. Per NJDEP, the site is not an active property on the Known Contaminated Sites list.
- ix. There are no known historic or cultural resources on the site.
- x. The site is located in the Downtown Tiers (Hudson Terrace, East Palisades and B-3 Zone) Inclusionary Housing Overlay -2 (IHO-2) Zone.
- xi. The preservation of the viewshed of the Palisades is a critically important aesthetic and scenic design consideration. Any zoning standards for the sites described in this subsection shall require the applicant to demonstrate that the proposed development would not adversely affect the scenic integrity of the Palisades Interstate Park and its surroundings when viewed from the vantage points east and south of the Palisades, specifically the George Washington Bridge center and the Cloisters Terrace and high point of Fort Tryon Park, Manhattan.

D. AFFORDABLE HOUSING ORDINANCE AND AFFIRMATIVE MARKETING PLAN

The Borough will continue to utilize the Affordable Housing Ordinance and the Affirmative Marketing Plan from the preceding round (See Appendices). Additionally, the Borough has appointed a Municipal Housing Liaison by Resolution No. 25-52 (See Appendix) and is under contract with Triad Associates as their Administrative Agent (See Appendix) to manage the affordability controls and the affirmative marketing plan for all affordable housing units in the Borough.

E. SPENDING PLAN AND AFFORDABILITY ASSISTANCE MANUAL

The Borough prepared a draft 2025-2035 Spending Plan (see Appendix) , which is to be adopted by the Borough Council as part of its Fourth Round compliance. The Spending Plan outlines the anticipated collection and distribution of mandatory development fees and in lieu contributions and the Borough's proposals for spending the money that comes into the Affordable Housing Trust Fund. Development fees are collected in accordance with the Borough's Development Fee Ordinance, which was prepared during the Third Round and adopted by Borough Council on November 13, 2020 (see Appendix). The Borough will revise the Development Fee Ordinance if necessary to comply with statutory changes in the Fourth Round. The Borough understands that no funds may be expended without the Court's approval of the Spending Plan.

A draft Affordability Assistance Manual will be prepared by the Borough's Administrative Agent. The Affordability Assistance Manual shall be adopted by the Borough Council as part of its Fourth Round compliance. It is understood that any documents not completed and/or adopted by the time of the adoption of this HEFSP will be subject to review by the Special Adjudicator and the Court and may be a condition of any judgment of repose.

F. CONCLUSION

The Borough of Englewood Cliffs will address its Fourth Round affordable housing obligation as follows:

Table 34 : Summary of Englewood Cliffs' Fourth Round Affordable Housing Plan Borough of Englewood Cliffs, Bergen County, NJ		
Obligation	#	Summary of Affordable Housing Strategies
Fourth Round Obligation	329	
RDP	12	<p>TOTAL CREDITS = 12.5 Total new units: 10 Bonus credits: 2.5 redevelopment bonus credits</p> <p>Proposed New Units</p> <ul style="list-style-type: none"> • Cioffi Site (Block 201, Lots 10-14 and Block 205, Lots 1, 2, & 4) <ul style="list-style-type: none"> ○ <u>10</u> units
Unmet Need	316.5	<p>TOTAL CREDITS = 316.5 Total new units through New Overlay Zones: 177 (or 213 if mixed-use)</p> <ul style="list-style-type: none"> • Southern Sylvan Avenue Corridor Overlay Zone C <ul style="list-style-type: none"> ○ <u>11 units (or 14 if mixed-use)</u> • Southern Sylvan Avenue Corridor Overlay Zone D <ul style="list-style-type: none"> ○ <u>173 units (or 60 if mixed-use)</u> <p>Other Mechanisms/Credits:</p> <ul style="list-style-type: none"> • Amended MSO: <u>60 units</u> • <u>79.5 credits</u> from remaining bonus credits permitted per 25% cap of 329-unit prospective need <ul style="list-style-type: none"> ▪



October 18, 2024
 June 12, 2025
HARBOR CONSULTANTS
 400 WEST 11TH AVENUE SUITE 200
 DENVER, CO 80202
 TEL: 303.733.2700 FAX: 303.733.2718

Figure D – Summary of Plan Map

IV. APPENDICES

APPENDIX A

**BOROUGH OF ENGLEWOOD CLIFFS
BERGEN COUNTY, NEW JERSEY**

RESOLUTION # 25-27

**RESOLUTION COMMITTING TO DCA'S FOURTH ROUND
AFFORDABLE HOUSING PRESENT NEED AND PROSPECTIVE NEED
NUMBERS PURSUANT TO P.L. 2024, C. 2 AND FAIR HOUSING ACT,
N.J.S.A. 52:27D-302.**

WHEREAS, on March 20, 2024, Governor Murphy signed into law Bill A4/S50 (P.L. 2024, c. 2), which legislation amends the Fair Housing Act, N.J.S.A. 52:27D-302 et. seq. ("Amended FHA") and requires each municipality to provide its fair share of affordable housing obligation under the Mount Laurel Doctrine based on a new process and updated methodology; and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to produce non-binding estimates of fair share obligations on or before October 20, 2024; and

WHEREAS, on October 18, 2024, the DCA calculated the non-binding statewide and regional affordable housing needs and released a non-binding determination of each municipality's Fourth Round (2025 to 2035) affordable housing obligation as set forth in DCA's report, entitled "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background" (the "DCA Report"); and

WHEREAS, pursuant to the DCA Report the Borough of Englewood Cliffs' non-binding Present Need or Rehabilitation Obligation is 0 and the Borough's non-binding Prospective Need is 329; and

WHEREAS, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support lower calculations of Round 4 affordable housing obligations; and

WHEREAS, the Amended FHA further provides that "[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by COAH unless those regulations are contradicted by statute, including P.L. 2024, c.2, or biding court decisions" (N.J.S.A. 52:27D-311(m)); and

WHEREAS, COAH regulations authorize vacant land adjustments as well as durational adjustments; and

WHEREAS, based on the foregoing, the Borough of Englewood Cliffs accepts the DCA calculations of the Borough of Englewood Cliffs' fair share obligations and commits to its fair share of 0 units present need and 329 units prospective need subject to any vacant land and/or

durational adjustments it may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA; and

WHEREAS, the Borough of Englewood Cliffs reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, the Borough of Englewood Cliffs also reserves the right to adjust its position in the event of any rulings in the *Montvale* case (MER-L-1778-24) or any other such action that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, the Borough of Englewood Cliffs reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 Prospective Need Obligation should be lower than described herein; and

WHEREAS, in light of the above, the Municipal Council for the Borough of Englewood Cliffs finds that it is in the best interest of the Borough to declare its commitment to the obligations as reported by the DCA on October 18, 2024 subject to the reservations set forth herein; and

WHEREAS, in addition to the above, the Acting Administrative Director issued Directive #14-24, dated December 13, 2024, and made the directive available later in the week that followed; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking a certification of compliance with the FHA shall file an action in the form of a declaratory judgment complaint . . . in the county in which the municipality is located . . . within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner"; and

WHEREAS, the Borough of Englewood Cliffs seeks a certification of compliance with the FHA and, therefore, directs King, Moench & Collins, its Affordable Housing Attorney, to file a declaratory relief action within 48 hours of the adoption of this resolution in Bergen County.

NOW, THEREFORE, BE IT RESOLVED on this 28th day of January, 2025 by the Municipal Council for the Borough of Englewood Cliffs as follows:

1. The foregoing recitals are incorporated herein as if set forth in full; and
2. The Borough of Englewood Cliffs hereby commits to a Round 4 Present Need Obligation of 0 units and Round 4 Prospective Need Obligation of 329 units as described in this resolution, subject to all reservations of rights set forth above; and
3. The Borough of Englewood Cliffs hereby directs King, Moench & Collins, its Affordable Housing Attorney, to file a declaratory judgment complaint in Bergen County within 48 hours after adoption of the within resolution; and

4. The Borough of Englewood Cliffs authorizes King, Moench & Collins to attach this resolution as an exhibit to the declaratory judgment action that is filed and to submit and/or file this resolution with the Program or any other such entity as may be determined to be appropriate; and

5. This resolution shall take effect immediately, according to law.

CERTIFICATION

I, Laura Borchers, Clerk of the Borough of Englewood Cliffs, County of Bergen, State of New Jersey, do hereby certify that the foregoing is a true copy of a resolution adopted by the Municipal Council for the Borough of Englewood Cliffs at a meeting held on January 28, 2025.

Laura Borchers

 Laura Borchers, RMC, CMR
 Borough Clerk

Members	Motion	Second	Ayes	Nayes	Abstain	Absent
Kim						X
Biegacz	X		X			
Liang		X	X			
Patel					X	
Koutroubas			X			
Mayor Park						

APPENDIX B

KING MOENCH & COLLINS, LLP

Matthew C. Moench, Esq.
Attorney Id. No. 031462007
51 Gibraltar Drive, Suite 2F
Morris Plains, New Jersey 07950
973-998-6860
973-998-6863 (facsimile)
Attorneys for the Borough of Englewood Cliffs

IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
ENGLEWOOD CLIFFS, COUNTY OF
BERGEN, STATE OF NEW JERSEY

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY

Docket No.:

Civil Action

**COMPLAINT FOR A DECLARATORY
JUDGMENT OF COMPLIANCE WITH
THE FAIR HOUSING ACT**

Plaintiff, Borough of Englewood Cliffs, a municipal corporation and body politic organized under the laws of the State of New Jersey (“Englewood Cliffs” or the “Borough”), with offices located at 482 Hudson Terrace, Borough of Englewood Cliffs, County of Bergen, State of New Jersey, by way of this Administrative Office of the Courts alleges and says:

BACKGROUND

1. Englewood Cliffs is a municipal corporation of the State of New Jersey.
2. The Planning Board of Englewood Cliffs (“Planning Board”) is a municipal agency created and organized under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., (“MLUL”), and, among other duties and obligations, is responsible for adopting the Housing Element and Fair Share Plan (“HEFSP”) of the Borough’s Master Plan.

3. Through this Declaratory Judgment Action, the Borough seeks the following relief in relation to its Fourth Round (2025-2035) affordable housing obligation:
 - a. To secure the jurisdiction of the Affordable Housing Alternative Dispute Resolution Program (the “Program”) pursuant to P.L. 2024, c.2 (the “Act”) and the Court, pursuant to Directive #14-24;
 - b. To have the Program and the Court approve the Borough’s Present and Prospective affordable housing obligations as set forth in the binding resolution adopted by the Borough, attached hereto as **Exhibit 1**;
 - c. To have the Program and the Court approve a HEFSP to be adopted by the Borough’s Planning Board and endorsed by the Borough’s Council, and issue a “Compliance Certification” pursuant to the Act or other similar declaration such as a judgment of compliance and repose;
 - d. To the extent it is not automatically granted pursuant to the Act, through the filing of this Declaratory Judgment Action and binding resolution, to have the Program and the Court confirm Englewood Cliffs’ immunity from all exclusionary zoning litigation, including builder’s remedy lawsuits, during the pendency of the process outlined in the Act and for the duration of Fourth Round, *i.e.*, through June 30, 2035; and
 - e. To have the Program and the Court take such other action(s) and grant such other relief as may be appropriate to ensure that Englewood Cliffs receive and obtain all protections as afforded to it in complying with the requirements of the Act, including, without limitation, all immunities and presumptions of validity necessary to satisfy its affordable housing obligations voluntarily

without having to endure the expense and burdens of unnecessary third party litigation.

COUNT ONE
(Establishment of Jurisdiction Under P.L. 2024, c. 2)

1. Englewood Cliffs repeats and reiterates the allegations set forth above as if set forth at length herein.
2. The Act represents a major revision of the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq.
3. Among other things, the Act abolished the Council on Affordable Housing (“COAH”), and replaced it with seven retired, on recall judges designated as the Program. Among other things, the Act authorized the Director of the Administrative Office of the Courts (respectively, “Director” or “AOC”) to create a framework to process applications for a compliance certification.
4. On or about December 13, 2024, the Director issued Directive #14-24, which among other things, required municipalities seeking compliance certification to file an action in the form of a declaratory judgment complaint and Civil Case Information Statement in the County in which the municipality is located within 48 hours after the municipality’s adoption of a binding resolution as authorized under the Act and attach a copy of said binding resolution to the Declaratory Judgment Action.
5. The Borough adopted a binding resolution establishing its present and prospective affordable housing obligations within the statutory window of time set forth in the Act and in accordance with the methodology and formula set forth in the Act, a certified copy of which resolution is attached to this Declaratory Judgment Action as **Exhibit 1**.

6. Based on the foregoing, the Borough has established the jurisdiction of the Program and the Court in regard to this Declaratory Judgment Action for a compliance certification as set forth hereinafter.

WHEREFORE, the Borough of Englewood Cliffs seeks a declaratory judgment for the following relief:

- (a) Declaring that the Borough has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached hereto as **Exhibit 1** to this Declaratory Judgment Action or to adjust such determination consistent with the Act;
- (b) Declaring the present and prospective affordable housing obligations of the Borough under the Act;
- (c) Declaring the approval of the Borough's HEFSP subsequent to its adoption by the Borough's Planning Board and its endorsement by the Borough's Council, including, as appropriate and applicable: (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iii) an adjustment of rehabilitation obligation based upon a windshield survey; (iv) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (v) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (vi) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or (vii) any other

applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

(d) Declaring that the Borough continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;

(e) Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive #14-24 to Englewood Cliffs for the period beginning July 1, 2025 and ending June 30, 2035; and

(f) Declaring such other relief that the Program and the Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT TWO

(Determination of the Present and Prospective Need of the Borough of Englewood Cliffs)

1. Englewood Cliffs repeats and reiterates the allegations set forth above as if set forth at length herein.
2. The Act adopted the methodology to calculate every municipality's present and prospective need affordable housing obligation for the Fourth Round (2025-2035) and beyond.
3. The Act directed the Department of Community Affairs ("DCA") to apply the methodology and to render a non-binding calculation of each municipality's present and prospective affordable housing obligations to be contained in a report to be issued not later than October 20, 2024.

4. The DCA issued its report on October 18, 2024. Pursuant to the October 18, 2024 report, the DCA calculated the Borough’s present and prospective affordable housing obligations as follows:

PRESENT NEED (REHABILITATION OBLIGATION)	FOURTH ROUND PROSPECTIVE NEED OBLIGATION (2025-2035)
0	329

5. The proposed non-binding Present Need obligation, also known as the rehabilitation obligation, represents the number of substandard existing deficient housing units in the municipality currently occupied by low- and moderate-income (“LMI”) households.
6. The proposed non-binding Prospective Need obligation, is calculated as a share of the region in which the municipality is located.
7. Region 1, in which Englewood Cliffs is located, includes Bergen, Hudson, Passaic, and Sussex Counties.
8. As established by the Act, the regional Prospective Need is calculated by establishing the increase in households in the region between the 2020 and 2010 federal decennial Census, and dividing the household change increase by 2.5 to estimate the number of low- and moderate- income households (and the number of homes needed to address same).
9. Regional Prospective Need is allocated across the region by applying three factors:
- a. Equalized Nonresidential Valuation;
 - b. Income Capacity; and
 - c. Land Capacity.

10. Pursuant to the Act, a municipality desiring to participate in the Program is obligated to adopt a “binding resolution” determining its present and prospective affordable housing obligations to which it will commit based upon the methodology set forth in the Act.
11. On January 28, 2025, the Council of the Borough of Englewood Cliffs adopted Resolution #25-27, accepting the Present Need obligation of 0 units and setting forth a Prospective Need obligation of 329 units as its Fourth Round (2025 to 2035) affordable housing obligation, accepting DCA’s calculation of 329 units. A true and accurate copy of Resolution #25-27 is attached hereto as **Exhibit 1**.
12. Englewood Cliffs seeks the approval of and confirmation by the Program and the Court of the Present and Prospective affordable housing obligations as set forth in the binding resolution attached hereto and made a part hereof as **Exhibit 1**.
13. Pursuant to the binding resolution, Englewood Cliffs reserves all rights to amend its affordable housing obligations in the event of a successful legal challenge, or legislative change, to the Act.
14. The Borough’s determination of its affordable housing obligation has the presumption of validity as the determination was established in accordance with N.J.S.A. 52:27D- 304.2 and N.J.S.A. 52:27D-304.3.

WHEREFORE, the Borough of Englewood Cliffs seeks a declaratory judgment for the following relief:

- (a) Declaring that the Borough has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set

forth in the binding resolution attached as **Exhibit 1** to this Declaratory Judgment Action;

- (b) Declaring the present and prospective affordable housing obligations of Englewood Cliffs under the Act;
- (c) Declaring the approval of the Borough's HEFSP subsequent to its adoption by the Borough's Planning Board and its endorsement by the Borough's Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iii) an adjustment of rehabilitation obligation based upon a windshield survey; (iv) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (v) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (vi) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or (vii) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;
- (d) Declaring that the Borough continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- (e) Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive #14-24

to the Borough for the period beginning July 1, 2025 and ending June 30, 2035;
and

(f) Declaring such other relief that the Program and the Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT THREE
(Housing Element and Fair Share Plan)

1. Englewood Cliffs repeats and reiterates the allegations set forth above as if set forth at length herein.
2. Pursuant to the Act, a Housing Element and Fair Share Plan (“HEFSP”) must be prepared and adopted by the Planning Board and endorsed by the municipality by June 30, 2025.
3. Englewood Cliffs hereby commits for its professionals to prepare the appropriate HEFSP to address its affordable housing obligations, as determined by the Program and the Court which HEFSP shall apply as appropriate, any applicable adjustments, including, without limitation, 1) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 2) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); 3) an adjustment of rehabilitation obligation based upon a windshield survey; 4) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; 5) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 6) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or 7) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations.

WHEREFORE, the Borough of Englewood Cliffs seeks a declaratory judgment for the following relief:

- (a) Declaring that the Borough has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as **Exhibit 1** to this Declaratory Judgment Action or to adjust such determination consistent with the Act;
- (b) Declaring the present and prospective affordable housing obligations of Englewood Cliffs under the Act;
- (c) Declaring the approval of the Borough's HEFSP subsequent to its adoption by the Borough's Planning Board and its endorsement by the Borough's Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iii) an adjustment of rehabilitation obligation based upon a windshield survey; (iv) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (v) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (vi) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or (vii) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

- (d) Declaring that the Borough continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- (e) Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive #14-24 to the Borough for the period beginning July 1, 2025 and ending June 30, 2035; and
- (f) Declaring such other relief that the Program and the Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT FOUR
(Confirmation of Immunity)

1. Englewood Cliffs repeats and reiterates the allegations set forth above as if set forth at length herein.
2. Pursuant to the Act, a municipality that complies with the deadlines in the Act for both determining present and prospective affordable housing obligations and for adopting an appropriate HEFSP shall have immunity from exclusionary zoning litigation.
3. Englewood Cliffs has met the deadline for the adoption and filing of its binding resolution (and the filing of this Declaratory Judgment Action in accordance with Directive #14-24) not later than January 31, 2025 by adopting the binding resolution attached to this Declaratory Judgment Action as **Exhibit 1**, and has committed to the adoption of its HEFSP by June 30, 2025.

WHEREFORE, the Borough of Englewood Cliffs seeks a declaratory judgment for the following relief:

- (a) Declaring that the Borough has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as **Exhibit 1** to this Declaratory Judgment Action or to adjust such determination consistent with the Act;
- (b) Declaring the present and prospective affordable housing obligations of Englewood Cliffs under the Act;
- (c) Declaring the approval of the Borough's HEFSP subsequent to its adoption by the Borough's Planning Board and its endorsement by the Borough's Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iii) an adjustment of rehabilitation obligation based upon a windshield survey; (iv) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (v) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (vi) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or (vii) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;
- (d) Declaring that the Borough continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;

- (e) Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive #14-24 to the Borough for the period beginning July 1, 2025 and ending June 30, 2035; and
- (f) Declaring such other relief that the Program and the Court deems just and proper within the parameters of the Act and applicable COAH regulations.

DESIGNATION OF TRIAL COUNSEL

In accordance with R. 4:25-4, you are hereby notified that Matthew C. Moench, Esq., is assigned to try this case.

CERTIFICATION PURSUANT TO R. 4:5-1

It is hereby certified in accordance with R. 4:5-1 that the specific matter in controversy is not, to my knowledge, the subject of any action pending in any Court, nor of any pending arbitration proceeding. I know of no other party who should be joined in this action at this time. I hereby certify that these statements made by me are true and that I am aware that if any of these statements is willfully false, I am subject to punishment.

CERTIFICATION PURSUANT TO R. 1:38-7(b)

It is hereby certified that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b). I hereby certify that the foregoing statements made by me

are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

KING MOENCH & COLLINS, LLP
Attorneys for Borough of Englewood Cliffs

/s/ Matthew C. Moench
Matthew C. Moench, Esq.

DATED: January 30, 2025

EXHIBIT 1

**BOROUGH OF ENGLEWOOD CLIFFS
BERGEN COUNTY, NEW JERSEY**

RESOLUTION # 25-27

**RESOLUTION COMMITTING TO DCA'S FOURTH ROUND
AFFORDABLE HOUSING PRESENT NEED AND PROSPECTIVE NEED
NUMBERS PURSUANT TO P.L. 2024, C. 2 AND FAIR HOUSING ACT,
N.J.S.A. 52:27D-302.**

WHEREAS, on March 20, 2024, Governor Murphy signed into law Bill A4/S50 (P.L. 2024, c. 2), which legislation amends the Fair Housing Act, N.J.S.A. 52:27D-302 et. seq. ("Amended FHA") and requires each municipality to provide its fair share of affordable housing obligation under the Mount Laurel Doctrine based on a new process and updated methodology; and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to produce non-binding estimates of fair share obligations on or before October 20, 2024; and

WHEREAS, on October 18, 2024, the DCA calculated the non-binding statewide and regional affordable housing needs and released a non-binding determination of each municipality's Fourth Round (2025 to 2035) affordable housing obligation as set forth in DCA's report, entitled "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background" (the "DCA Report"); and

WHEREAS, pursuant to the DCA Report the Borough of Englewood Cliffs' non-binding Present Need or Rehabilitation Obligation is 0 and the Borough's non-binding Prospective Need is 329; and

WHEREAS, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support lower calculations of Round 4 affordable housing obligations; and

WHEREAS, the Amended FHA further provides that "[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by COAH unless those regulations are contradicted by statute, including P.L. 2024, c.2, or biding court decisions" (N.J.S.A. 52:27D-311(m)); and

WHEREAS, COAH regulations authorize vacant land adjustments as well as durational adjustments; and

WHEREAS, based on the foregoing, the Borough of Englewood Cliffs accepts the DCA calculations of the Borough of Englewood Cliffs' fair share obligations and commits to its fair share of 0 units present need and 329 units prospective need subject to any vacant land and/or

durational adjustments it may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA; and

WHEREAS, the Borough of Englewood Cliffs reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, the Borough of Englewood Cliffs also reserves the right to adjust its position in the event of any rulings in the *Montvale* case (MER-L-1778-24) or any other such action that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, the Borough of Englewood Cliffs reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 Prospective Need Obligation should be lower than described herein; and

WHEREAS, in light of the above, the Municipal Council for the Borough of Englewood Cliffs finds that it is in the best interest of the Borough to declare its commitment to the obligations as reported by the DCA on October 18, 2024 subject to the reservations set forth herein; and

WHEREAS, in addition to the above, the Acting Administrative Director issued Directive #14-24, dated December 13, 2024, and made the directive available later in the week that followed; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking a certification of compliance with the FHA shall file an action in the form of a declaratory judgment complaint . . . in the county in which the municipality is located . . . within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner"; and

WHEREAS, the Borough of Englewood Cliffs seeks a certification of compliance with the FHA and, therefore, directs King, Moench & Collins, its Affordable Housing Attorney, to file a declaratory relief action within 48 hours of the adoption of this resolution in Bergen County.

NOW, THEREFORE, BE IT RESOLVED on this 28th day of January, 2025 by the Municipal Council for the Borough of Englewood Cliffs as follows:

1. The foregoing recitals are incorporated herein as if set forth in full; and
2. The Borough of Englewood Cliffs hereby commits to a Round 4 Present Need Obligation of 0 units and Round 4 Prospective Need Obligation of 329 units as described in this resolution, subject to all reservations of rights set forth above; and
3. The Borough of Englewood Cliffs hereby directs King, Moench & Collins, its Affordable Housing Attorney, to file a declaratory judgment complaint in Bergen County within 48 hours after adoption of the within resolution; and

4. The Borough of Englewood Cliffs authorizes King, Moench & Collins to attach this resolution as an exhibit to the declaratory judgment action that is filed and to submit and/or file this resolution with the Program or any other such entity as may be determined to be appropriate; and

5. This resolution shall take effect immediately, according to law.

CERTIFICATION

I, Laura Borchers, Clerk of the Borough of Englewood Cliffs, County of Bergen, State of New Jersey, do hereby certify that the foregoing is a true copy of a resolution adopted by the Municipal Council for the Borough of Englewood Cliffs at a meeting held on January 28, 2025.

Laura Borchers

Laura Borchers, RMC, CMR
Borough Clerk

Members	Motion	Second	Ayes	Nayes	Abstain	Absent
Kim						X
Biegacz	X		X			
Liang		X	X			
Patel					X	
Koutroubas			X			
Mayor Park						

**BOROUGH OF ENGLEWOOD CLIFFS
BERGEN COUNTY, NEW JERSEY**

RESOLUTION # 25-27

**RESOLUTION COMMITTING TO DCA'S FOURTH ROUND
AFFORDABLE HOUSING PRESENT NEED AND PROSPECTIVE NEED
NUMBERS PURSUANT TO P.L. 2024, C. 2 AND FAIR HOUSING ACT,
N.J.S.A. 52:27D-302.**

WHEREAS, on March 20, 2024, Governor Murphy signed into law Bill A4/S50 (P.L. 2024, c. 2), which legislation amends the Fair Housing Act, N.J.S.A. 52:27D-302 et. seq. ("Amended FHA") and requires each municipality to provide its fair share of affordable housing obligation under the Mount Laurel Doctrine based on a new process and updated methodology; and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to produce non-binding estimates of fair share obligations on or before October 20, 2024; and

WHEREAS, on October 18, 2024, the DCA calculated the non-binding statewide and regional affordable housing needs and released a non-binding determination of each municipality's Fourth Round (2025 to 2035) affordable housing obligation as set forth in DCA's report, entitled "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background" (the "DCA Report"); and

WHEREAS, pursuant to the DCA Report the Borough of Englewood Cliffs' non-binding Present Need or Rehabilitation Obligation is 0 and the Borough's non-binding Prospective Need is 329; and

WHEREAS, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support lower calculations of Round 4 affordable housing obligations; and

WHEREAS, the Amended FHA further provides that "[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by COAH unless those regulations are contradicted by statute, including P.L. 2024, c.2, or biding court decisions" (N.J.S.A. 52:27D-311(m)); and

WHEREAS, COAH regulations authorize vacant land adjustments as well as durational adjustments; and

WHEREAS, based on the foregoing, the Borough of Englewood Cliffs accepts the DCA calculations of the Borough of Englewood Cliffs' fair share obligations and commits to its fair share of 0 units present need and 329 units prospective need subject to any vacant land and/or

durational adjustments it may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA; and

WHEREAS, the Borough of Englewood Cliffs reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

WHEREAS, the Borough of Englewood Cliffs also reserves the right to adjust its position in the event of any rulings in the *Montvale* case (MER-L-1778-24) or any other such action that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in the event that a third party challenges the calculations provided for in this Resolution, the Borough of Englewood Cliffs reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 Prospective Need Obligation should be lower than described herein; and

WHEREAS, in light of the above, the Municipal Council for the Borough of Englewood Cliffs finds that it is in the best interest of the Borough to declare its commitment to the obligations as reported by the DCA on October 18, 2024 subject to the reservations set forth herein; and

WHEREAS, in addition to the above, the Acting Administrative Director issued Directive #14-24, dated December 13, 2024, and made the directive available later in the week that followed; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking a certification of compliance with the FHA shall file an action in the form of a declaratory judgment complaint . . . in the county in which the municipality is located . . . within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner"; and

WHEREAS, the Borough of Englewood Cliffs seeks a certification of compliance with the FHA and, therefore, directs King, Moench & Collins, its Affordable Housing Attorney, to file a declaratory relief action within 48 hours of the adoption of this resolution in Bergen County.

NOW, THEREFORE, BE IT RESOLVED on this 28th day of January, 2025 by the Municipal Council for the Borough of Englewood Cliffs as follows:

1. The foregoing recitals are incorporated herein as if set forth in full; and
2. The Borough of Englewood Cliffs hereby commits to a Round 4 Present Need Obligation of 0 units and Round 4 Prospective Need Obligation of 329 units as described in this resolution, subject to all reservations of rights set forth above; and
3. The Borough of Englewood Cliffs hereby directs King, Moench & Collins, its Affordable Housing Attorney, to file a declaratory judgment complaint in Bergen County within 48 hours after adoption of the within resolution; and

4. The Borough of Englewood Cliffs authorizes King, Moench & Collins to attach this resolution as an exhibit to the declaratory judgment action that is filed and to submit and/or file this resolution with the Program or any other such entity as may be determined to be appropriate; and

5. This resolution shall take effect immediately, according to law.

CERTIFICATION

I, Laura Borchers, Clerk of the Borough of Englewood Cliffs, County of Bergen, State of New Jersey, do hereby certify that the foregoing is a true copy of a resolution adopted by the Municipal Council for the Borough of Englewood Cliffs at a meeting held on January 28, 2025.

Laura Borchers

Laura Borchers, RMC, CMR
Borough Clerk

Members	Motion	Second	Ayes	Nayes	Abstain	Absent
Kim						X
Biegacz	X		X			
Liang		X	X			
Patel					X	
Koutroubas			X			
Mayor Park						

Civil Case Information Statement

Case Details: BERGEN | Civil Part Docket# L-000775-25

Case Caption: IN THE MATTER OF ENGLEWOOD CLIFFS BORO

Case Initiation Date: 01/30/2025

Attorney Name: MATTHEW C MOENCH

Firm Name: KING, MOENCH & COLLINS, LLP

Address: 51 GIBRALTAR DR STE 2F

MORRIS PLAINS NJ 079501254

Phone: 9739986860

Name of Party: PLAINTIFF : Borough of Englewood Cliffs

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: AFFORDABLE HOUSING

Document Type: Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: Borough of Englewood Cliffs?
NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO Medical Debt Claim? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

01/30/2025

Dated

/s/ MATTHEW C MOENCH

Signed

APPENDIX C [RESERVED]

APPENDIX D



Peter J. O'Connor, Esq.
Kevin D. Walsh, Esq.
Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.
David T. Rammier, Esq.
Joshua D. Bauers, Esq.

May 17, 2018

Honorable Menelaos W. Toskos, J.S.C.
Superior Court of New Jersey
Bergen County Courthouse
10 Main Street, 4th Floor
Hackensack, NJ 07601

**Re: In the Matter of the Application of the Borough of Englewood Cliffs,
Docket No. BER-L-6119-15**

Dear Ms. Lonergan:

Please accept this comment letter on behalf of Fair Share Housing Center (FSHC) with respect to the plan summary submission of the Borough of Englewood Cliffs. FSHC objects to the plan summary proposal for the following five reasons:

First, Englewood Cliffs claims that its Third Round Fair Share obligation (1999-2025) is 365, consisting of a 160 unit calculation for the Gap Present Need and a 205 unit calculation for the Prospective Need. FSHC contends that Englewood Cliffs' obligations are substantially higher. FSHC's expert has calculated that the Gap Present Need is 234 and the Third Round prospective need is 387, for a total Third Round new construction obligation of 621 units. While Englewood Cliffs has indicated that it intends to request a vacant land adjustment of its Third Round obligations even if the obligations are 365 and thus would clearly continue to request the vacant land adjustment at 621 as well, the difference is important nonetheless. That Englewood Cliffs' obligations are potentially 256 units greater than the current plan summary indicates is important because it should inform how the vacant land analysis is conducted and how much and to what extent the Borough must plan for unmet need. The COAH regulations require an assessment of the "need to provide housing for low and moderate income households in establishing densities and set-asides for each site" where a municipality is requesting a vacant land adjustment. N.J.A.C. 5:93-4.2(f). Thus, Englewood Cliffs must take into account the fact that it has a substantial Third Round affordable housing obligation and that, according to the plan summary, there are no existing affordable housing units yet constructed in Englewood Cliffs when it calculates its RDP and develops proposals for addressing unmet need.

Second, the Borough provides no explanation for how it has met or intends to meet its Prior Round obligations of 219 units. If the Borough's proposal is for the vacant land adjustment to stretch between the Prior Round and Third Round then the comments in the first paragraph are amplified that much more. If that is the case then we are talking about a combined obligation of 840 (621 + 219) units and an even more enhanced need to provide affordable housing now.

Third, the Borough's claims about the application of the 20% cap are just wrong and not supported by any reading of the COAH regulations or the March 8, 2018 decision from Judge Jacobson. The 20% cap calculation applies separately to the Prior Round and the Third Round. In Judge Jacobson's March 8, 2018 decision she noted that "the cap does not apply to either Princeton or West Windsor's combined new construction obligation and thus is not a matter of dispute in regard to Mercer County." [Page 201] Note that she did not add the Prior Round and

Third Round together and then apply the cap as suggested by the Borough's Plan Summary. It is important to note the entire purpose of the cap in a regional need methodology, which is to prevent a "drastic alteration" of a community from the housing need imposed in a "single round." [200-201] Considering the fact that Englewood Cliffs has yet to produce even one affordable housing unit in over thirty years since the adoption of the Fair Housing Act I think we can be assured that the Borough is safe from any drastic changes relating to the construction of affordable housing.

Fourth, I circulated an email dated April 5, 2018 with comments to the Borough's calculation of its realistic development potential (RDP). In that email I suggested that the Borough should begin planning for a substantially higher RDP and the same rings true today. While I will provide comments on the individual mechanisms in this proposal, it must be noted that FSHC's position is that the Borough's RDP is likely to finally be calculated in the 150-200 unit range, if not higher. In addition to my previous comments dated April 5, 2018 the Borough should also examine some of the properties that are included in the unmet need proposal for inclusion in the calculation of the RDP. The COAH regulations clearly require an analysis of properties that may redevelop if inclusionary zoning is put into place and it seems that the Borough has already identified such properties. For instance, the Borough has identified 34 parcels in zone B-3 which it deemed to be an area in need of rehabilitation, why would none of these properties be candidates for inclusion in the calculation of the RDP and receive inclusionary zoning? Likewise, the Borough has identified the former LG site which is likely to become vacant soon as a potential property for study as an area in need of redevelopment. Why wouldn't this property be considered for RDP?

Fifth, the Borough's only mechanisms to address its RDP of 42 are three, small 100% affordable sites for a total of 32 units, plus 10 bonus credits. The proposal is apparently for these three sites to submit a joint application for low income housing tax credits and to be funded simultaneously. The Borough provides no explanation for why such a small project is likely to be funded or for the New Jersey Housing and Mortgage Financing Agency's likelihood to fund a split site project such as this. A review of the family cycle reservation list for the two previous cycles reveals that a 32 unit project is very unlikely to be funded. In the last two cycles which were in 2015 and 2017 no project smaller than 48 units received an allocation and the average size of a funded project in 2015 was 70 units and in 2017 was 72 units. Further, the Borough provides no explanation for why these sites are likely to be funded other than a net opinion that the application will score well and will likely be funded. Neither the Borough's plan summary nor its expert's April 17, 2018 letter explain, for instance, what the project's potential score might be. In the last cycle in 2017 five family projects which self-scored at 94, one point less than perfect, were not funded. It is not reasonable for the Borough to include these projects in the plan with the expectation that they will be funded with low income housing tax credits. As such, the Borough needs to propose different funding sources for these sites to be considered realistic.

As stated in the April 5, 2018 email, the Borough should present a new plan summary to address a substantially higher RDP. I also suggested that negotiating RDP, unmet need, and the various compliance mechanisms in a piecemeal fashion is not likely to be fruitful with respect to settlement. The Borough should update its RDP and complete a new plan summary, then the parties can commence with more productive mediation.

Thank you for your attention to this matter.

Respectfully,



Joshua D. Bauers, Esq.

Counsel for Fair Share Housing Center

c: Jeffrey R. Surenian, Esq.
Christopher E. Martin, Esq.
Antimo Del Vecchio, Esq.
Thomas F. Carrol III, Esq.

APPENDIX E



Kinsey & Hand, Planning
14 Aiken Avenue
Princeton, New Jersey 08540
(609) 924-4990
david@kinseyhand.com

CRITIQUE OF THE 2018 HOUSING ELEMENT AND FAIR SHARE PLAN OF ENGLEWOOD CLIFFS, NEW JERSEY

January 7, 2019

In re Borough of Englewood Cliffs, Docket No. BER-L-6119-15 (Mount Laurel)

Prepared for:

Fair Share Housing Center
510 Park Boulevard
Cherry Hill, New Jersey 08002

Prepared by:

A handwritten signature in blue ink that reads "David N. Kinsey". The signature is written in a cursive, flowing style with a long, sweeping underline that extends to the right.

David N. Kinsey, PhD, FAICP, PP

CONTENTS

	page
Introduction	3
Compliance Standards	5
Fair Share Housing Obligations	6
Realistic Development Potential	
Introduction	10
COAH Criteria	12
Steep Slopes Exclusion Criterion	14
Exclusion of Approved or Built Sites	18
Density Assumptions	20
Inventory of Potential Sites	23
Analysis of Sites	25
Analysis of the 800 Sylvan Avenue Site	31
Exclude the Site or Portions of the Site Based on COAH-Prescribed Criteria	31
Determine the Appropriate RDP Density for the Site	41
Calculate the RDP	48
Adjusted Fair Share Housing Obligations, 2019	49
Compliance Analysis: Plan to Satisfy Prior Round and Third Round Obligations	51
Satisfying the RFP	51
Addressing the Unmet Need	53
Consideration of Lands of Developers	56
Conclusion	58



INTRODUCTION

The Borough of Englewood Cliffs, Bergen County, New Jersey (“Englewood Cliffs” or “Borough”) prepared and submitted on December 10, 2018 to the Court (Special Master), Fair Share Housing Center (“FSHC”), and the defendant-intervenor in its Mount Laurel IV declaratory judgment proceedings, 800 Sylvan Avenue, LLC, its 298-page Housing Element and Fair Share Plan, Borough of Englewood Cliffs, Master Plan, prepared by Harbor Consultants of Cranford, New Jersey and signed by Michael Mistretta, PP, dated December 10, 2018 (“2018 Plan”). The 2018 Plan is the Borough’s proposal “...to address the fair share obligations as determined by Judge Christine Farrington.”¹ The 2018 Plan presents the Borough’s calculations of its fair share housing obligations and its proposed compliance mechanisms to “meet” its obligations.²

Under the Mount Laurel Doctrine on exclusionary zoning and affordable housing³ and the state Fair Housing Act⁴, municipalities in New Jersey have an affirmative, constitutional obligation to create a realistic opportunity to satisfy their fair share of the present need and regional prospective need for housing affordable to low and moderate income households. In 2015, in its Mount Laurel IV decision⁵, the New Jersey Supreme Court unanimously reaffirmed the Doctrine, ruled on the correct method for calculating Third Round, post-1999 constitutional housing obligations, and offered municipalities an opportunity to update their housing elements and fair share plans to comply with the Doctrine with the protection of temporary immunity from builder’s

¹ 2018 Plan, p. 2.

² 2018 Plan, p. 1.

³ So. Burlington Cty. N.A.A.C.P., et al. v. Mount Laurel Tp., et al., 67 N.J. 151 (1975) (Mount Laurel I), So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983) (Mount Laurel II), and subsequent decisions, including Hills v. Bernards Township, 103 N.J. 1 (1986), Toll Bros. v. West Windsor Township et al., 173 N.J. 502 (2002), and In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 215 N.J. 578 (2013).

⁴ N.J.S.A. 52:27D-1 et seq.

⁵ In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (Mount Laurel IV).



remedy and other litigation. Englewood Cliffs filed a declaratory judgment action in 2015 in response to the Court's invitation. By a decision rendered November 16, 2018 in response to a motion and cross-motions, the Hon. Christine Farrington, J.S.C., determined that the Borough's Third Round fair share housing obligation was 365 units and directed the Borough to prepare and file its plan with its both its claimed Realistic Development Potential ("RDP") and Unmet Need calculations and its proposed compliance mechanisms. The court established a deadline of December 10, 2018 for the Borough's submission and a deadline of January 7, 2019 for the FSHC response.⁶ In brief, the 2018 Plan was filed in responses to the court's determinations and directives and presents Englewood Cliffs' proposed approach to satisfying its constitutional fair share housing obligations under the Mount Laurel Doctrine.

In this report, prepared for FSHC, I analyze and critique the 2018 Plan, both the Borough's asserted fair share housing obligations and its plan to satisfy those obligations, in terms of compliance with the Mount Laurel Doctrine, Mount Laurel IV, Mount Laurel V⁷, the state Fair Housing Act, and applicable rules adopted by the now defunct New Jersey Council on Affordable Housing ("COAH").

⁶ As discovery is ongoing, I reserve the right to supplement or revise this report as additional information becomes available.

⁷ In re Declaratory Judgment Actions Filed By Various Municipalities, County of Ocean, Pursuant To The Supreme Court's Decision In In re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015), 227 N.J. 508 (2017) (Mount Laurel V).



COMPLIANCE STANDARDS

New, amended, revised, or updated municipal housing elements and fair share plans prepared and adopted, and submitted to a trial court for review in response to Mount Laurel IV, such as the 2018 Plan, should comply with well-established law and rules. In my report previously submitted in this litigation by FSHC, Third Round (Post-1999) Mount Laurel Fair Share Housing Obligations and Compliance Standards for New Jersey Municipalities, dated October 2015, I detailed my recommended compliance standards and their basis.⁸ In that report I concluded that the compliance standards for Third Round, post-1999 obligations generally should be COAH rules:

“...N.J.A.C. 5:93, as updated or revised by not specifically invalidated provisions of N.J.A.C. 5:97, the Fair Housing Act, or appellate decisions, as specified below [in my October 2015 report].”⁹

In the absence of valid, comprehensive, up-to-date rules adopted by the now “moribund” COAH, in this report I use these standards to evaluate the compliance of Englewood Cliffs, through its 2018 Plan, with the Mount Laurel Doctrine.

⁸ My recommended compliance standards are at pages 11-20 of my October 2015 report. FSHC submitted my report to the Mount Laurel trial judges in Bergen County, Special Masters, and counsel for the parties by a letter-brief from Kevin D. Walsh, Esq., dated October 30, 2015. I rely upon this FSHC letter-brief as well in conducting my review of the 2018 Plan.

⁹ David N. Kinsey, Third Round (Post-1999) Mount Laurel Fair Share Housing Obligations and Compliance Standards for New Jersey Municipalities, October 2015, p. 14.



FAIR SHARE HOUSING OBLIGATIONS

Under Mount Laurel IV and Mount Laurel V, a municipality's fair share housing obligations consist of four components:

- Present Need, 2015 (rehabilitation)
- Prior Round Obligation, 1987-1999
- Gap Present Need, 1999-2015
- Prospective Need, 2015-2025

Since Mount Laurel IV in 2015, two alternative fair share housing methodologies have been developed and received judicial scrutiny in trials that resulted in two court decisions: (a) for and in collaboration with FSHC, I prepared one methodology, which I refined and revised during 2015-2017 and (b) a methodology prepared, refined, and revised by Econsult Solutions, Inc., Philadelphia-based economic consultants retained by a consortium of more than 200 New Jersey municipalities, including the Borough. In the first trial, the court essentially approved the FSHC methodology but for one component.¹⁰ In the second trial, Hon. Mary C. Jacobson, A.J.S.C. in March 2018 adopted the court's own methodology, incorporating components from the two competing methodologies.¹¹ While arising from litigation in Mercer County, municipal fair share housing obligations have since been calculated for all municipalities in New Jersey using the Judge Jacobson Methodology.

First, it is undisputed that Englewood Cliffs has a Present Need, 2015, of zero (0) housing units, i.e., no substandard housing units occupied by low or moderate income households existed

¹⁰ In re Twp. of S. Brunswick, 448 N.J. Super. 441 (Law Div. 2016).

¹¹ Hon. Mary C. Jacobson, A.J.S.C., In the Matter of the Application of the Municipality of Princeton and In the Matter of West Windsor Township, Superior Court of New Jersey, Law Division, Opinion of Fair Share Methodology to Implement the Mount Laurel Affordable Housing Doctrine for the Third Round, Docket Numbers: MER-L-1550-15 and MER-L-1561-15, Slip Opinion, March 8, 2018, 217 pages.



in Englewood Cliffs in 2015. Consequently, the Borough is not responsible for establishing a local housing rehabilitation program or otherwise satisfying a Present Need obligation.

Second, it is undisputed that Englewood Cliffs has a Prior Round Obligation of 219 housing units for the period 1987-1999, as previously calculated by COAH in 1994 and confirmed in 2008.

Third, while the calculations of Gap Present Need and Prospective Need differ under the FSHC/Kinsey and Judge Jacobson methodologies, they reached the same net calculation after applying the so-called "20% cap," as that cap was applied in Judge Jacobson's decision. The 20% cap is a provision of the COAH Prior Round methodology derived from the Fair Housing Act that capped the fair share obligation at 20% of the existing occupied housing in a municipality, which Judge Jacobson ruled for the Third Round applies to the combined Gap Present Need and Prospective Need for the municipality. According to the 2010 Census, Englewood Cliffs had 1,824 occupied units as of April 1, 2010. To estimate its number of occupied units as of July 1, 2015, in my methodology I added new housing units authorized by building permits and subtracted residential demolition permits from April 2010 through June 2015 and estimated Englewood Cliffs had a total of 1,826 occupied housing units as of July 1, 2015. Applying the 20% cap to the 2015 estimate of 1,826 occupied housing units yields 364.8, rounded up to a cap of 365 housing units.¹²

By a ruling on November 16, 2018, Hon. Christine Farrington, J.S.C., held that the Borough's Third Round Obligation (1999-2025, Gap Present Need + Prospective Need) is 365 housing units and accepted the application of the 20% cap as decided by Judge Jacobson.¹³

¹² $1,826$ (2015 occupied units) $\times 0.2 = 365.2$, rounded down to 365 and $1,824$ (2010 occupied units) $\times 0.2 = 364.8$, rounded up to 365.

¹³ Hon. Christine Farrington, J.S.C., In re Englewood Cliffs, Docket No. BERG-L-6119-15, Transcript of Motion Proceedings Decision, November 16, 2018.



The Borough's total fair share housing obligation is the sum of its Prior Round (1987-1999) obligation of 219 units, as determined by COAH in 1994, and the Third Round Obligation of 365 units, for a total of 584 needed affordable housing units (219 + 365 = 584).

The 2018 Plan accurately cites my estimate of 2015 occupied housing at 1,826 units but then explains that the court denied its motion on calculation of the 20% cap and curiously concludes "Therefore, this affordable housing plan will use the 584 number that would result if there was no 20 percent reduction."¹⁴ However, "the 584 number," i.e., the Borough's capped fair share, non-rehabilitation obligation for 1987-2025 of 584 housing units, is the result of applying the 20% reduction. Under the Judge Jacobson Methodology, Englewood Cliffs has a Calculated Gap Present Need of 160 units plus a Calculated Prospective Need of 252 units, for a total uncapped 1999-2025 need of 412 units. It is precisely the application of the 20% cap that results in the determination that the 1999-2025 New Construction Obligation is capped at 365 units, which, added to the Prior Round Obligation of 219 units, yields the total 1987-2025 New Construction Obligation of 584 units.¹⁵

It is undisputed that Englewood Cliffs does not have any existing affordable housing to credit against its fair share obligations.

It is also undisputed that Englewood Cliffs also has very little vacant land, less than 17 acres in 48 parcels in 2018,¹⁶ and even less vacant developable land.

When a municipality has insufficient "available land capacity" to satisfy its fair share housing obligations, under COAH rules adopted in 1994 it may seek an adjustment by calculating

¹⁴ 2018 Plan, p.19.

¹⁵ While my methodology yields a higher uncapped need for 1999-2025, under the ruling by the Hon. Christine Farrington, J.S.C. as to the application of the 20% cap, that higher uncapped need still yields a capped obligation of 365 units.

¹⁶ MOD-IV tax assessment data for Borough of Englewood Cliffs, excluding the 27-acre LG site currently under construction (Block 207, Lot 6), [New Jersey Assessment Records Search Web site](#) <accessed November 16, 2018>



its Realistic Development Potential ("RDP"), which is the potential yield of affordable housing units if inclusionary zoning with a 20% set-aside were established on suitable vacant, underutilized, and likely to redevelop sites in the municipality.¹⁷ If the RDP is less than the housing obligation, the remainder is called the "Unmet Need,"¹⁸ which remains part of the municipality's obligation.¹⁹

The 2018 Plan concisely and accurately states "There is controversy over the Borough's RDP ..."²⁰ The 2018 Plan presents publicly, for the first time in the Borough's Mount Laurel IV declaratory judgment proceedings, the Borough's calculation of its RDP, at 77 units.

While the court has not yet reviewed or determined the Borough's RDP, it is unquestioned that there is a considerable difference between the Borough's housing obligations, i.e., 584 units, with minimums and maximums of specific affordable housing types such as family rental housing and senior housing, and the capacity of its vacant, developable land to produce affordable housing. Consequently, it is also unquestioned that Englewood Cliffs has a substantial Unmet Need of hundreds of affordable housing units. In fact, according to the Borough, its Unmet Need is up to 507 units.

I disagree with the Borough's RDP analysis and resulting Unmet Need calculation, as I will now explain.

¹⁷ N.J.A.C. 5:93-4.2.

¹⁸ COAH Second Round Rules implied the concept of but did not name Unmet Need, N.J.A.C. 5:93-4.2(h). COAH Third Round Rules defined the term but only with reference to the Prior Round Obligation, as the Third Round Obligation was then to be calculated based on the "growth share" concept invalidated in 2004 and 2008, N.J.A.C. 5:97-1.4 and N.J.A.C. 5:97-5.3.

¹⁹ As the Supreme Court noted in 1983, in developed communities, "The most significant question ... will ordinarily be whether there is any land available for development, and, if not, what kind of remedy is appropriate to assure that as land becomes available, a realistic opportunity exists for the construction of lower income housing, assuming it is otherwise suitable for that purpose." Mount Laurel II, 92 N.J. 158, 248, FN 21 (1983).

²⁰ 2018 Plan, p. 18.



REALISTIC DEVELOPMENT POTENTIAL - INTRODUCTION

The long-established procedure prescribed by COAH rules for calculating a municipality's RDP has four steps:

1. Inventory vacant, underutilized, and likely to redevelop sites,
2. Exclude sites and portions of sites based on COAH-prescribed criteria,
3. Determine the appropriate density for each site, and
4. Calculate the RDP (20% of net developable acreage multiplied by density)²¹

The Borough's RDP analysis, which follows this procedure except for the 800 Sylvan site, is presented in two appendices to the 2018 Plan. Appendix A..1. is a report entitled Vacant Land Adjustment for the Borough of Englewood Cliffs, prepared by Harbor Consultants of Cranford, New Jersey and signed by Michael Mistretta, PP, dated December 10, 2018 ("2018 VLA"), a 24-page report with four exhibits and four appendices for a total of 86 pages. Appendix A.2. is a report entitled RDP Analysis of 800 Sylvan Avenue, Borough of Englewood Cliffs, Bergen County, NJ, also prepared by Harbor Consultants of Cranford, New Jersey and signed by Michael Mistretta, PP, dated December 10, 2018 ("800 Sylvan RDP Analysis"), a 16-page report with 11 exhibits for a total of 32 pages.²²

At the outset I must note that the 2018 VLA at least three times confusingly uses the verb "extrapolate" in describing how the RDP is determined.²³ "Extrapolate" means "The process of estimating an unknown number outside the range of known numbers."²⁴ Determination of RDP

²¹ N.J.A.C. 5:93-4.2 and N.J.A.C. 5:97-5.2.

²² RDP Analysis of 800 Sylvan Avenue refers, at pages 131, 139, and 140, to an Exhibit J, but the referenced boundary and topographic survey of the 800 Sylvan Avenue site, latest revision May 11, 2017, is provided instead in Exhibit K.

²³ "In addition to take [sic] into account vacant and underutilized sites to **extrapolate** and RDP ..." [emphasis added] 2018 VLA, p. 2. "...asked the Borough to take the site into account in **extrapolating** its RDP." [emphasis added], 2018 VLA, p. 3. "...COAH staff is **extrapolating** the RDP..." [emphasis added], 2018 VLA, p. 11. "...for purposes of **extrapolating** an RDP..." [emphasis added], 2018 VLA, p. 12.

²⁴ Henry Campbell Black, Black's Law Dictionary, Fifth Edition. St. Paul, Minn.: West Publishing Co., 1987, p. 528.



involves selection of one number, the density for a hypothetical residential development on the net developable land area of a site, and multiplying that land area by the density, and then multiplying the yield of housing units by 0.2, the 20% set-aside prescribed by COAH Rules. It is not an estimate. It is not based on a range of known numbers. Determination of RDP is not an extrapolation; it is a calculation, the accurate terminology that the 2018 VLA also sometimes uses.²⁵

Before reviewing the Borough's RDP analysis, I have general comments on the Borough's approach, which I believe has strayed impermissibly too far from the applicable COAH rules.

²⁵ "To put the **calculation** of the Borough's RDP as provided in this report into perspective ..." [emphasis added], 2018 VLA, p. 3.



REALISTIC DEVELOPMENT POTENTIAL – COAH EXCLUSION CRITERIA

COAH Second Round Rules specify six types of land areas that "...[m]unicipalities may seek to eliminate from the [vacant land] inventory ...

1. Agricultural lands ...
2. Environmentally sensitive lands ...
3. Historic and architecturally important sites ...
4. Active recreation sites ...
5. Conservation, parklands and open space lands ...
6. Individual sites that the Council [COAH] determines are not suitable for low and moderate income housing ..."²⁶

COAH Second Round Rules detail what COAH describes as its "criteria" for each of these land types.

The sixth land type by its plain language is a notice to municipalities that COAH, not municipalities, may exclude a site or part of a site that COAH determines to be "...not suitable for low and moderate income housing." COAH Second Round Rules define a "suitable site," as "...a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4 [i.e., COAH's second vacant land analysis criterion]." In the present Mount Laurel IV declaratory judgement proceedings, "Council" should be read to mean "the court and/or the special master," not a municipality. The Borough, however, devotes four introductory pages of the 2018 VLA to a rambling argument on COAH criteria for excluding sites in a vacant land analysis, COAH criteria for new construction of low and moderate income housing, sound planning, and zoning.²⁷ Englewood Cliffs has attempted

²⁶ N.J.A.C. 5:93-4.2(c).

²⁷ 2018 VLA, pp. 4-7.



to bootstrap COAH's notice to municipalities into a sixth criterion to be used by municipalities expansively to reduce the net developable area of RDP sites.

In my opinion, the exclusion criteria used in a vacant land analysis by a municipality should be limited to the first five of COAH's six criteria. The court or special master may, however, in accordance with COAH Second Round Rules invoke the sixth criterion and determine that a site or part of a site should be excluded on the basis of land use incompatibility, inadequate street access, wetlands or flood hazard areas, and steep slopes if the municipality has an adopted steep slopes ordinance (see below on steep slopes).²⁸

²⁸ The sixth criterion could also be used exclude a site or part of a site in the Pinelands, coastal zone, Meadowlands, or Highlands on the basis of the adopted policies of the state agencies that plan and regulate those regions.



REALISTIC DEVELOPMENT POTENTIAL – STEEP SLOPES EXCLUSION CRITERION

The “Introduction” to the 2018 VLA asserts Englewood Cliffs’ entitlement to exclude portions of sites with slopes in excess of 15% from the calculation of the net developable area of a site, notwithstanding the Borough’s lack of an adopted steep slopes ordinance. The Borough claims, without citation or authority, that “It is not essential that there be a steep slopes ordinance for areas with steep slopes to be excluded to calculate the Borough’s RDP.”²⁹ I disagree.

COAH Second Round Rules are succinct and clear on this issue. A municipality may exclude steep slopes in its vacant land analysis, but only if the municipality has an adopted steep slopes ordinance applicable consistently to both inclusionary and non-inclusionary development:

“In the case of slopes in excess of 15 percent, a municipality may regulate inclusionary development through a steep slopes ordinance, provided the ordinance also regulates non-inclusionary developments in a consistent manner.”³⁰

Englewood Cliffs has not adopted such an ordinance.

The likely reason COAH required nondiscriminatory treatment of environmentally sensitive steep slopes, in both a vacant land analysis and a municipality’s choice of compliance sites,³¹ is that no State agency regulated such areas, nor did (or does) any legislation require regulation of steep slopes statewide. COAH First Round and Second Round Rules prescribe five (5) types of “[e]nvironmentally sensitive lands” required to be excluded: (a) three areas of New Jersey regulated by State agencies under regional planning and environmental protection

²⁹ 2018 VLA, p. 11.

³⁰ N.J.A.C. 5:93-4.2(c)2.ii.

³¹ COAH Second Round Rules require sites designated for affordable housing in a housing element and fair share plan to be “suitable,” defined in part as “consistent with the environment policies delineated in N.J.A.C. 5:93-4.2,” i.e., the criteria for excluding environmentally sensitive lands in a vacant land analysis. N.J.A.C. 5:93-5.3(b) and N.J.A.C. 5:93-1.3.



laws³² and (b) two types of environmental resources regulated by NJDEP under State laws, wetlands and flood hazard areas.³³

COAH recognized the importance of steep slopes, notwithstanding a municipality's failure to adopt a steep slopes ordinance, and reserved to itself "...the right to exclude sites in whole or in part when excessive slopes threaten the viability of an inclusionary development."³⁴ COAH did not define "excessive slopes," which presumably meant slopes considerably greater than 15%, a standard threshold for defining steep slopes. Nor did COAH by this rule in any way authorize municipalities without steep slope ordinances to use steep slopes as an exclusion criterion.

That COAH intended to exclude only environmentally sensitive areas regulated consistently statewide, or consistently within a municipality in the case of steep slopes, is also made clear by the plain language in the COAH Second Round Rules and subsequent COAH rule-making:

"Where the Legislature adopts legislation that requires the mapping of other natural resources and provides a mechanism for their regulation, the Council shall include such resources in its criteria and guidelines for municipal adjustment."³⁵

After enactment of the Highlands Water Protection and Planning Act in 2004, COAH added the Highlands to its exclusion criteria.³⁶ After NJDEP adopted rules to protect high quality waterways under the authority of three state environmental laws, COAH in 2008 added so-called Category One waterway constraints to its exclusion criteria.³⁷

Englewood Cliffs claims the COAH rule on steep slope ordinances

³² The three regions are the Meadowlands, the Pinelands, and the coastal zone, N.J.A.C. 5:92-8.2(b)3.i. and N.J.A.C. 5:93-4.2(c)2.i. COAH's Third Round Rules, N.J.A.C. 5:97-5.2(c)4.i., adopted after enactment of the Highlands Water Protection and Planning Act in 2004, added the Highlands as a fourth region where COAH would defer and adhere to the policies of a state regional planning and environmental protection agency.

³³ N.J.A.C. 5:92-8.2(b)3.ii. and N.J.A.C. 5:93-4.2(c)2.ii.

³⁴ N.J.A.C. 5:93-4.2(c)2.ii.

³⁵ N.J.A.C. 5:93-4.2(c)2.iii. and N.J.A.C. 5:97-5.2(c)4.iii.

³⁶ N.J.A.C. 5:97-5.2(c)4.i.

³⁷ N.J.A.C. 5:97-5.2(c)4.ii.



“...does not require adoption of a steep slopes ordinance in order to exclude a site or portion of a site for purposes of vacant land analysis so long as such an ordinance does not discriminate between inclusionary developments and non-inclusionary developments.”

I disagree. The plain language of the COAH rule requires adoption of an ordinance. Furthermore, COAH intentionally added this requirement in its Second Round rule-making, in 1994; it was not part of its First Round Rules.³⁸ The Borough has been on notice for 24 years of the requirement to adopt a steep slopes ordinance if it sought to exclude such lands from its vacant land analysis, but by its inaction chose not to. The Borough’s failure to adopt such an ordinance is particularly puzzling in light of the importance of steep slopes so aptly recognized by the 2018 VLA:

“The principal development constraint that affects most of Englewood Cliffs, as evidenced by the Borough’s name, is topography and steep slopes that make it difficult or prohibitive for development in some areas.”³⁹

Finally, Englewood Cliffs claims the authority to exclude “...portions of sites with slopes in excess of fifteen percent...” on the basis of “...consistent with notions of sound planning...” without citing any law, COAH rule, or judicial ruling.⁴⁰ As an authority the Borough claims that

“The Superior Court has approved settlements between municipalities and FSHC where the municipality has excluded vacant land from the inventory even though the municipality does not have a steep slopes ordinance.”⁴¹

However, the Borough does not provide the names of any of these municipalities, so it is impossible to evaluate the Borough’s claim. I reserve the right to comment further on this point if the Borough provides this information. And in any case, it is well known that one incentive for

³⁸ Compare N.J.A.C. 5:92-8.2(b)3.ii. (18 N.J.R. 1537, August 4, 1986) with N.J.A.C. 5:93-4.2(c)2.ii.

³⁹ 2018 VLA, p. 6.

⁴⁰ 2018 VLA, p. 3.

⁴¹ 2018 VLA, p. 11.



settlement is measured flexibility in Mount Laurel compliance, which theoretically could include flexible treatment of vacant land analysis exclusion criteria.

Consequently, in my opinion the Borough has no authority to exclude a site or a portion of a site from its vacant land analysis solely on the basis of steep slopes. The consequence of the Borough's approach is only a reduction in RDP yield; a proposed office development that conformed to the site's zoning could still be developed on the site's steep slopes under the Borough Zoning Ordinance.



REALISTIC DEVELOPMENT POTENTIAL – EXCLUSION OF APPROVED OR BUILT SITES

The 2018 VLA asserts that

“Rezoning a recently approved or newly-developed site for inclusionary zoning will not generate a realistic opportunity for any affordable housing. Therefore, such sites should not generate an RDP. Accordingly, this report will not treat sites that have been approved for development or developed with new construction as contributing to the RDP.”⁴²

I disagree with this sweeping claim and approach for several reasons.

Although a development proposed for a site may have received municipal subdivision and/or site plan approval under the Municipal Land Use Law (“MLUL”), the proposed development may still require regulatory approvals from state agencies, particularly the New Jersey Department of Environmental Protection (“NJDEP”) and the New Jersey Department of Transportation, that have not been granted and are problematic. Also, while a planned development may have received general development plan approval under the MLUL,⁴³ not all of its sections or phases may have received subdivision and/or site plan approval or be built. Similarly, a municipally-approved site may be only partially developed and have undeveloped areas. Finally, if a municipality has squandered opportunities for providing affordable housing through inclusionary zoning during 1999-2015, when COAH failed to adopt and enforce valid affordable housing regulations, by knowingly amending zoning providing compensatory benefits such as increased density, FAR⁴⁴, and/or bulk and approving developments without requiring affordable housing set-asides although it had not satisfied its Prior Round Obligation, including

⁴² 2018 VLA, pp. 2-3.

⁴³ N.J.S.A. 40:55D-45.1 et seq.

⁴⁴ Floor area ratio, a measure of the gross floor area permitted on a lot or its intensity of development, used in zoning and regulating nonresidential development.



on sites that had been identified as appropriate for housing by COAH, then consideration should be given by the court to calculating and assigning an RDP to such a site.



REALISTIC DEVELOPMENT POTENTIAL – DENSITY ASSUMPTIONS

The Borough claims that the density assumptions in its 2018 VLA and 800 Sylvan RDP Analysis -- densities of 7, 9, 10, and 30 units/acre -- for the five sites it identified in its RDP calculations are “very reasonable” in light of densities assumed by COAH in general and for Englewood Cliffs in particular, citing court decisions and COAH’s 1997 compliance report on Englewood Cliffs.⁴⁵

In support of this position, the Borough cites the directive in Mount Laurel IV that trial judges use the COAH First and Second Round methodologies in establishing Third Round fair share obligations. The Borough also cites a passage from Judge Jacobson’s March 2018 decision in In re Princeton where the court accurately characterized the FSHC approach to Third Round methodology as “adherence as much as possible to past COAH practice, especially as to the model developed in the Second Round.” However, these citations are irrelevant to the present vacant analysis and RDP calculations, as neither Mount Laurel IV nor In re Princeton even mentioned either RDP or “vacant land analysis.” Furthermore, the approach I took to adhere to the Prior Round methodology is to use the most up to date factual data within the methodological framework COAH had developed; more recent factual data are certainly important in evaluating the appropriate density standards in Englewood Cliffs, as described more below.

The Borough further cites the COAH’s 1997 compliance report for Englewood Cliffs that accepted an RDP of four (4) units on the basis of 3.28 developable acres at three sites at an RDP density of 6 units/acre. The Borough also cites COAH’s 1997 directive to the Borough to adopt an inclusionary overlay zone at 8 units/acre at a nonresidential site where redevelopment then seemed likely, the 27-acre Prentice-Hall publishing company headquarters property at 111 Sylvan

⁴⁵ 2018 VLA, pp. 12-13 and 800 Sylvan RDP Analysis, p. 12.



Avenue.⁴⁶ The 2018 VLA omits the critical fact that the Borough ignored COAH's directive, leading COAH to a rare denial of a petition for substantive certification of a municipal housing element and fair share plan.

In support of its argument on deference to the COAH minimum presumptive density of 6 units/acre for an RDP analysis, the Borough cited a passage in a 2018 report by a municipal planner not involved in the In re Englewood Cliffs proceedings that in turn cited the 1986 comity directive in Hills v. Bernards Township ("...any proceedings before a court should conform wherever possible to the decisions, criteria, and guidelines of [COAH]..."⁴⁷) and the 2015 admonition in Mount Laurel IV that "The judicial role is not to become a replacement agency for COAH."⁴⁸ It is important to establish the context for this COAH density minimum for RDP analyses, unchanged in 25 years since adopted in a different era when multifamily housing construction was less common than today. During 1990-1999 only 13% of statewide building permits were for multifamily housing. By contrast, during 2000-2009 multifamily housing development was more significant, accounting for 30% of building permits.⁴⁹ By 2017, 62% of residential building permits issued in New Jersey were for multifamily housing.⁵⁰ Increasing densities partially explain the increase in multifamily housing, where inclusionary densities of 30 units/acre or more are not uncommon.⁵¹

⁴⁶ 2018 VLA, p. 12. 800 Sylvan RDP Analysis, p. 12, states that COAH required a lower density of 6 units/acre. Both statements by the Borough cannot be correct.

⁴⁷ 103 N.J. 1, 63 (1986).

⁴⁸ Mount Laurel IV, 221 N.J. 1, 52 (2155).

⁴⁹ Tim Evans, "Built-Out" But Still Growing," New Jersey Future, December 2010, p. 4. <https://www.njfuture.org/wp-content/uploads/2011/06/Built-Out-12-10.pdf> <accessed January 6, 2019>

⁵⁰ New Jersey Department of Community Affairs, Building Permits: Yearly Summary, https://www.state.nj.us/dca/divisions/codes/reporter/building_permits.html <accessed January 6, 2019>

⁵¹ For example, in 2017 AvalonBay Communities completed a 280-unit four story apartments-townhouses complex in Princeton, NJ (100 Albert Way, Block 7101, Lots 1 & 12-14), built at a density of 39.7 units/acre with a 20% set-aside, redeveloping the site of former community hospital that closed, moved, and expanded.



In discussing RDP density assumptions, and attempting to justify its assumed densities, the Borough ignores the COAH rule that actually prescribes how densities are to be selected for RDP calculations:

“The Council [COAH] shall consider the character of the area surrounding each site and the need to provide housing for low- and moderate-income households in establishing densities and set-asides for each site, or part thereof, remaining in the inventory. The minimum presumptive density shall be six units per acre and the maximum presumptive set-aside shall be 20 percent.”⁵²

While this rule clearly states that a density of 6 units/acre is a minimum, the 2018 VLA omits this critical distinction in misleadingly referring to “...to the 6 unit [sic] per acre density referenced in its [COAH’s] regulations” The 2018 VLA only points to the “character” half of this rule and only in its analysis of one of its four RDP sites.⁵³ Furthermore, nowhere does Englewood Cliffs recognize or admit that the “need to provide housing for low- and moderate-income households” is a mandatory consideration in establishing densities, particularly because of the Borough’s record of providing zero affordable housing units and its current total 1987-2025 New Construction Obligation of 584 units.

Furthermore, all of Englewood Cliffs is in the Metropolitan Planning Area (PA1) under the current adopted State Development and Redevelopment Plan, which is intended to “...provide for much of the state’s future development...” and whose housing policy objective is to “[p]rovide for a full range of housing choices through redevelopment, new construction, rehabilitation, adaptive use of nonresidential buildings, and the introduction of new housing into appropriate nonresidential settings.”⁵⁴

⁵² N.J.A.C. 5:93-4.2(f).

⁵³ 2018 VLA, p. 15.

⁵⁴ New Jersey State Planning Commission, The New Jersey State Development and Redevelopment Plan, Adopted March 1, 2001, Policy Map and pp. 190-191.



REALISTIC DEVELOPMENT POTENTIAL – INVENTORY OF POTENTIAL SITES

The first building block in a vacant land analysis and calculation of a municipality's RDP is an inventory of three types of potential sites to analyze: (a) vacant sites, (b) underutilized sites, and (c) developed sites likely to redevelop. In some circumstances, sites of missed opportunities for inclusionary and affordable housing development should also be identified and analyzed. In addition, a thorough inventory will list, for RDP analysis, publicly owned properties, whether developed or not.

The Borough identified and mapped 53 privately-owned vacant (Class 1) parcels with a total land area of 24.97 acres and 20 Borough-owned (Class 15C) developed and undeveloped properties with a total land area of 19.84 acres.⁵⁵ The Borough listed and analyzed these parcels in an eight-page, appropriately comprehensive spreadsheet.⁵⁶ The Borough did not identify, map, and analyze properties owned by NJDOT or the Palisades Interstate Park Commission, which is reasonable. The Borough reasonably did not include in its inventory public school property (Class 15A) and other school property (Class 15B), which total seven parcels, all but two developed. The largest "vacant" other school property, 6.1-acre Block 702, Lot 21 at Eagan Place, is actually developed as playing fields for the nearby private Dwight-Englewood School (K-12) in adjacent Englewood, and presumably vital for the school's operations and appropriately excluded from the inventory.

The 2018 VLA did not identify any "underutilized" properties. If the Borough believes it has no such properties, it should make such a finding explicitly.

⁵⁵ 2018 VLA, pp. 4-5

⁵⁶ 2018 VLA, Exhibit D. Vacant Land Adjustment Analysis Spreadsheet



The 2018 VLA identified and analyzed, in a separate report, only three developed, owner-initiated properties deemed “likely to redevelop:” (a) the 800 Sylvan Avenue property identified by its owner, the defendant-intervenor 800 Sylvan, LLC, (b) the 2.03-acre mostly Borough-owned municipal complex (Block 513, Lots 4 & 7 and Block 514, Lots 4 & 5) proposed for redevelopment in the 2018 Plan, and (c) the 1.9-acre privately sponsored redevelopment at 20-32 Sylvan Avenue and 4 Bayview Avenue (Block 201, Lots 10-14 and Block 205, Lots 1 & 4) pending before the Borough Zoning Board of Adjustment.⁵⁷

The Borough does not disclose or describe the proposed redevelopment or the variance relief requested at the Sylvan and Bayview Avenues site, shown here (lots outlined in blue).⁵⁸ However, this redevelopment proposal, whatever its nature, is revealing, as it demonstrates active private sector interest in pursuing redevelopment in Englewood Cliffs, as the project involves assemblage of seven different properties, all but one with existing commercial uses in 2.5



story former residential structures. If the Borough believes it has no other such properties likely to redevelop, it should make such a finding explicitly.

⁵⁷ 2018 VLA, p. 21.

⁵⁸ Source: NJ MAP Parcel Explorer.



REALISTIC DEVELOPMENT POTENTIAL – ANALYSIS OF SITES

The 2018 VLA analyzed its 73 identified Class 1 and Class 15C properties and concluded that only four properties totaling 5.87 acres, with only 3.75 unconstrained acres, met its RDP criteria and would be included in its RDP. The Borough's VLA spreadsheet does not total either the land area analyzed or the resulting total unconstrained land area.

The Borough excluded many lots on the basis of being undersized, but did not specify its cutoff lot area, which appears to be 0.72 acre, the minimum land area needed to develop five (5) total units at 7 units/acre, only one unit per acre higher than the COAH minimum presumptive density of 6 units/acre. The 2018 VLA also did not specify whether the Borough calculated the minimum lot size threshold on the basis of a lot's total land area or its unconstrained land area. The Borough appropriately excluded developed Borough-owned lots and Borough-owned lots mapped on its 2001 Master Plan, Recreation and Open Space Plan. As a result, the Borough identified only four privately-owned parcels of 0.72 acre or more, with ID numbers #17-#20, #35-#36, #41, and #67 on its spreadsheet. Had the Borough had used a higher density of 10 units/acre to calculate a cutoff of 0.5 acre, the Borough would have identified only two additional parcels: #55 and #56. A higher vacant land analysis density is reasonable and appropriate for Englewood Cliffs, as the Borough itself used densities of 9 units/acre and 10 units/acre in its RDP calculations.⁵⁹ I have, therefore, added sites #55 and #56 at RDP densities of 10 units/acre to my calculation of the Borough's RDP.

The Borough impermissibly, in my opinion, used steep slopes as an exclusion criterion, notwithstanding its lack of an adopted steep slopes ordinance, but did not break out the land area

⁵⁹ 2018 VLA, p. 20.



of lots excluded solely on that basis. Consequently, it is not possible to ascertain from the data provided by the Borough whether any additional parcels, beyond the four identified by the Borough and the two I recommend adding on the basis of a lower minimum size, would have a net, unconstrained land area of at least 0.50 acre and generate an RDP.

It is possible, however, to calculate the steep slopes portion that the Borough excluded from one of its four selected RDP sites. I increase the RDP densities from those proposed by the Borough in consideration of the need for low and moderate income housing in Englewood Cliffs, as directed by COAH rules.

Site #17-20, at 146, 150, and 154 Wood Road and 312 Boltz Street (Block 303, Lots 35-37 & 44), is four lots in common ownership with a total land area of 0.92 acre, two with no constrained land and two with a total of 0.23 acre of steep slopes according to the Borough's analysis.⁶⁰ Calculating the RDP of the entire 0.92-acre parcel at 12 units/acre increases its RDP from 1 unit to 2 units (1.6 units rounded up to 2).⁶¹

Site #35-36, at 2 Kim Hunter Road (Block 601, Lots 14-15), is constrained by a flood hazard area leaving 1.27 unconstrained acres. I accept the Borough's constraint analysis for these two lots but add 0.42-acre Lot 7 to the parcel area for RDP purposes. Although this lot has a small house built in 1963, it abuts Kim Hunter Road and provides street access for the site.⁶² I also increase the RDP density from 9 units/acre to 12 units/acre. The result is a total net area of 1.27 acre and an RDP of 3 units.

⁶⁰ 2018 VLA, p. 13-14.

⁶¹ The calculation is $0.92 \times 10 \times 0.2 = 1.84$, rounded up to 2.

⁶² If the two lots identified by the Borough were developed, the existing house would most likely be demolished in order to provide access.



CRITIQUE OF THE 2018 HOUSING ELEMENT AND FAIR SHARE PLAN OF ENGLEWOOD CLIFFS, NJ

Site #41, at 552 Summit Street (Block 603, Lot 20), has a total and unconstrained land area of 1.07 acre. I increase the RDP density from 7 units/acre to 12 units/acre. The result is a total net area of 1.27 acre and an RDP of 3 units (2.6 units rounded up to 3).

Site #67, at 98 Roberts Road (Block 1101, Lot 6), is a 0.73-acre lot without constraints. I increase the RDP density to 12 units/acre. The result is an RDP of 2 units (1.8 rounded up to 2).

The table below summarizes these RDP determinations for vacant sites in Englewood Cliffs:

Vacant Sites Determined to Generate an RDP, Englewood Cliffs, NJ - Kinsey Analysis, January 2019									
Site #	Block(s)	Lot(s)	Site Address/Name	Gross Area (acres)	Net Area (acres)	Density (units/acre)	Total Units	RDP	Comments
17-20	303 303	35-37 44	146, 150, & 154 Wood Road & 312 Boltz St	0.92	0.68	12	8	2.0	1.6 rounded up
35-36	601	7 & 14-15	2 Kim Hunter Rd (near Karens Lane)	3.59	1.27	12	15	3.0	Mostly vacant. Borough did not include 0.43-acre Lot 7, which, although it has a house, is essential for access to Lots 14-15.
41	603	20	552 Summit St	1.07	1.07	12	13	3.0	Vacant. 2.6 units rounded up
67	1101	6	98 Roberts Rd	0.73	0.73	12	9	2.0	Vacant. 1.8 units rounded up
TOTAL RDP								10	

Notes:
1. Site # as numbered by the Borough in 2018 VLA Report
Prepared by David N. Kinsey, PhD, FAICP, PP, January 7, 2019

The 2018 VLA also included three parcels deemed by the Borough likely to redevelop, as their owners have proposed redevelopment (see the adjacent

Table 2. Developed Properties Determined to Generate an RDP Borough of Englewood Cliffs								
Block	Lot(s)	"Site"	Zone	Gross Acreage	Net Developable	Density (du/ac)	Est. Total Units	RDP
514	4 & 5	Redevelopment of the Borough of Englewood Cliffs Municipal Complex & "Lions Club" Site	B-4	2.03	28	28	57	11
513	4 & 7							
205	1 & 4	20-32 Sylvan Avenue and 4 Bayview Avenue, Pending ZBA Application	B-3	1.90	15.7	15.7	30	6
201	10-14							
910	1	Vacant Portion of 800 Sylvan Avenue	B-2	28.37	9.14 (a)	30	274	55
Total Units Based on Estimated Development Density							361	
Total RDP (20%)								72



table).⁶³ The Borough did not explain or justify the RDP density it assigned to the municipal complex or Sylvan and Bayview Avenues sites. I will comment on the 800 Sylvan Avenue site later. The character of the area surrounding the municipal complex site is commercial and public use (fire station), with parkland to the east across Hudson Terrace (Route 505). The character of the area to the west and south of the Sylvan and Bayview Avenues sites is commercial, the Route 9W corridor, with buffering trees and small houses to the north and east. The 2018 VLA proposes RDP densities of 28 units/acre and 15.7 units/acre respectively for these sites. In light of the unquestioned “need for low- and moderate-income housing” in Englewood Cliffs, one of the two COAH-prescribed considerations in assigning RDP densities, I recommend that RDP densities of 30 units/acre, as assigned by the Borough to the 800 Sylvan Avenue site, be assigned to these two sites. These increased densities would increase the RDP of the municipal complex site by one (1) unit from 11 to 12 units and increase the RDP of the Sylvan & Bayview site by five (5) units, from 6 to 11 units.

The table below summarizes these RDP determinations for two of the developed sites in Englewood Cliffs (excluding the 800 Sylvan Avenue site, which is analyzed separately below):

⁶³ The source of the table is the 2018 VLA, p. 21. The column headed “Net Developable” in the table incorrectly indicates the net developable acreage of the municipal complex and Sylvan & Bayview sites, which is identical to their gross acreage.



CRITIQUE OF THE 2018 HOUSING ELEMENT AND FAIR SHARE PLAN OF ENGLEWOOD CLIFFS, NJ

Two Developed Properties Determined to Generate an RDP, Englewood Cliffs, NJ - Kinsey Analysis, January 2019									
Site #	Block(s)	Lot(s)	Site Address/Name	Gross Area (acres)	Net Area (acres)	Density (units/acre)	Total Units	RDP (units)	Comments
K-1	201	10 thru 14	20-32 Sylvan Avenue & 4 Bayview Avenue redevelopment (pending ZBA application)	1.9	1.9	30	57	11.4	Site assembled and proposed for redevelopment by private developer
	205	1 & 4							
K-2	513	4 & 7	Redevelopment of Municipal Complex & "Lions Club" site, 474-476 Hudson Terrace, 4 Clendinen Place and police headquarters	2.03	2.03	30	61	12.2	Inclusionary mixed use redevelopment proposed by Borough in 2018 HEFSP, including acquisition of privately-owned 0.42-acre Block 513, Lot 7 at 476 Hudson Terrace and vacating part of Clendinen Place
	514	4 & 5							
TOTAL RDP								24	
<p>Notes:</p> <p>1. Sites not numbered by the Borough in its 2018 VLA Report have sequential numbers preceded by a "K," e.g., K-1.</p> <p>2. Total RDP is the sum of individual sites' RDP, rounded up</p> <p>Prepared by David N. Kinsey, PhD, FAICP, PP, January 7, 2019</p>									

The Borough did not identify any underutilized properties or indicate that Englewood Cliffs had no such properties. Nor did the Borough identify any properties likely to redevelop, other than the three properties whose owners had expressed interest in redevelopment or indicate that Englewood Cliffs had no such properties. The pending application before the Borough Zoning Board of Adjustment for the Sylvan and Bayview Avenues redevelopment demonstrates a strong likelihood of private sector redevelopment at two sites in Englewood Cliffs, subject to municipal land use and other approvals.

Finally, the Borough did not identify any sites that represent missed opportunities for affordable housing and inclusionary development either through zoning amendments and subsequent non-inclusionary development or failure to amend zoning in a manner that created affordable housing opportunities "when land became available," which the Supreme Court had noted in 1983 in Mount Laurel II was of particular importance in developed communities such as Englewood Cliffs.⁶⁴ At least three significant sites in Englewood Cliffs have become available since the Borough, aware of its fair share housing obligations, petitioned COAH for substantive

⁶⁴ See Footnote 18.



CRITIQUE OF THE 2018 HOUSING ELEMENT AND FAIR SHARE PLAN OF ENGLEWOOD CLIFFS, NJ

certification in 1995 and again in 2009, or are expected to become available in the near future, as summarized below:

Missed Opportunity Sites Determined to Generate an RDP, Englewood Cliffs, NJ - Kinsey Analysis, January 2019									
Site #	Block(s)	Lot(s)	Site Address/Name	Gross Area (acres)	Net Area (acres)	Density (units/acre)	Total Units	RDP (units)	Comments
K-4	207	6-Jan	111 Sylvan Avenue (new LG)	27.03	27.03	8	216	43.2	Inclusionary overlay site and density mandated by COAH in 1997, but ignored by the Borough; office complex currently under construction
K-5	1202	2	980 Sylvan Avenue	6	3	30	90	18.0	Vacant in 2016, developed by Lighthouse E C, LLC in 2017-2018
K-6	1202	2.01	1000 Sylvan Avenue	5.46	2.75	30	83	16.5	Current LG headquarters, expected to be vacated when new LG headquarters is completed
TOTAL RDP								78	
<small>Notes: 1. Sites not numbered by the Borough in its 2018 VLA Report have sequential numbers preceded by a "K," e.g., K-1. 2. Total RDP is the sum of individual sites' RDP, rounded up Prepared by David N. Kinsey, PhD, FAICP, PP, January 7, 2019</small>									

Both the 980 Sylvan Avenue and adjacent 1000 Sylvan Avenue sites have some wetlands that have been excluded in calculating the net developable area of these sites. The RDP density for the 111 Sylvan Avenue site should be a range of 8 units/acre, the density mandated by COAH in 1997 for an inclusionary overlay zone for the site, to 30 units/acre, a realistic current (2019) multifamily density for a prime site only 1.1 mile from the George Washington Bridge ramps, yielding an RDP of from 43 units to 162 units. The RDP density of 30 units/acre is the same RDP density used in this RDP analysis for the 800 Sylvan Avenue site to the south located in the same corridor of suburban office buildings separated from residential neighborhoods by wooded buffers on the west and facing wooded Palisades Interstate Park on the east.



REALISTIC DEVELOPMENT POTENTIAL – ANALYSIS OF THE 800 SYLVAN AVENUE SITE

The long-established typical procedure for calculating the RDP of a site is the four-step procedure the Borough followed in the 2018 VLA report for all but the 800 Sylvan site, as described by the Borough itself:

1. Inventory vacant, underutilized, and likely to redevelop sites,
2. Exclude sites or portions of sites based on COAH-prescribed criteria,
3. Determine the appropriate density for each site, and
4. Calculate the RDP (20% of net developable acreage multiplied by density)⁶⁵

Exclude the Site or Portions of the Site Based on COAH-Prescribed Criteria

For the 800 Sylvan site, the Borough's planner added exclusion criteria not specified or authorized by COAH Second Round Rules and added a significant step in the RDP process by preparing a conceptual site plan for the site, and ostensibly deriving two alternative RDP densities for the site based on his concept of the area of the site and how it should be redeveloped, presented in the 32-page 800 Sylvan RDP Analysis report. The Borough planner also evaluated a 600-unit concept plan prepared by 800 Sylvan and submitted to the Special Master, the Borough, and FSHC during mediation in July 2018.⁶⁶ A planner for the defendant-intervenor, Art Bernard, PP, also prepared a 50-page report on this site's RDP, entitled REALISTIC

⁶⁵ 2018 VLA, p. 2. The Borough referred to a three-step process but ended its process with an unnumbered fourth step: "Applying a 20 percent set aside to each site and aggregating the affordable units from each site results in a determination of the municipality's realistic development potential or 'RDP'."

⁶⁶ While the 600-unit concept plan was submitted to counsel for the Borough, counsel for FSHC, and the Special Master by a letter dated July 11, 2018 from counsel for the intervenor-defendant labeled "CONFIDENTIAL MEDIATION DOCUMENT, I will refer to this plan as it has been disclosed publicly now by the Borough. The July 11, 2018 letter transmitted an eight-page "CONFIDENTIAL EXPLANATORY MEMORANDUM WITH EXHIBITS" and a letter-agreement dated July 10, 2018 between the defendant-intervenor and the Natural Resources Defense Council and Scenic Hudson, Inc. concerning the height and location of the proposed buildings in relation to the scenic integrity of the Palisades.



DEVELOPMENT POTENTIAL (RDP) OF 800 SYLVAN AVENUE, dated April 4, 2018 ("Bernard Report").

The 800 Sylvan site is part of the approximately 28.8-acre Block 910, Lot 1 at 800 Sylvan Avenue, bounded by Sylvan Avenue (Route 9W) on the east, the MSNBC-NBCUniversal office-media-entertainment complex to the north, Floyd Street to the west, and Hollywood Avenue to the south, as shown here:



However, not all of the developed site is available for redevelopment, as the existing research & development building on the site's southern portion is slated by the defendant-intervenor to remain in use. This developer has proposed a subdivision line, or at least a division of the lot into two parcels, for the purpose of redevelopment of its existing now underutilized office building, with

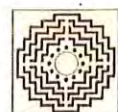


an approximately 8.78-acre parcel for the existing office-R&D building and its associated driveways, parking, setbacks, and open space, leaving an approximately 20.0-acre parcel for redevelopment and this RDP analysis, as shown here:



Before analyzing the site for any environmental or other constraints, the Borough increased the land area reserved for the existing office-R & D building and its parking by almost 50% from the developer's proposal of an 8.78-acre parcel, to approximately 13.1 acres, which consequently significantly reduces the area for RDP analysis to 15.27 acres, as shown here (northern 53% of current Block 910, Lot 1).⁶⁷

⁶⁷ 800 Sylvan RDP Analysis, Exhibit B.

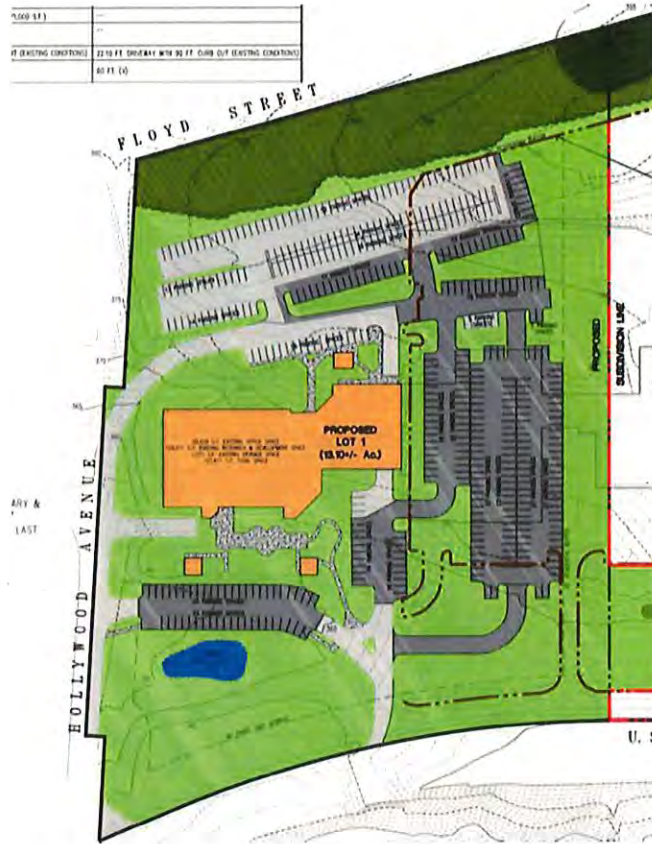




The Borough achieves this dramatic reduction in the RDP area primarily by proposing sufficient additional surface parking lots to create the 466 parking spaces apparently required by the Borough's Zoning Ordinance for the 157,411 square feet office building that is to remain, as shown here in this excerpt from the Borough's "Concept Analysis of 800 Sylvan Avenue," dated December 6, 2018.⁶⁸

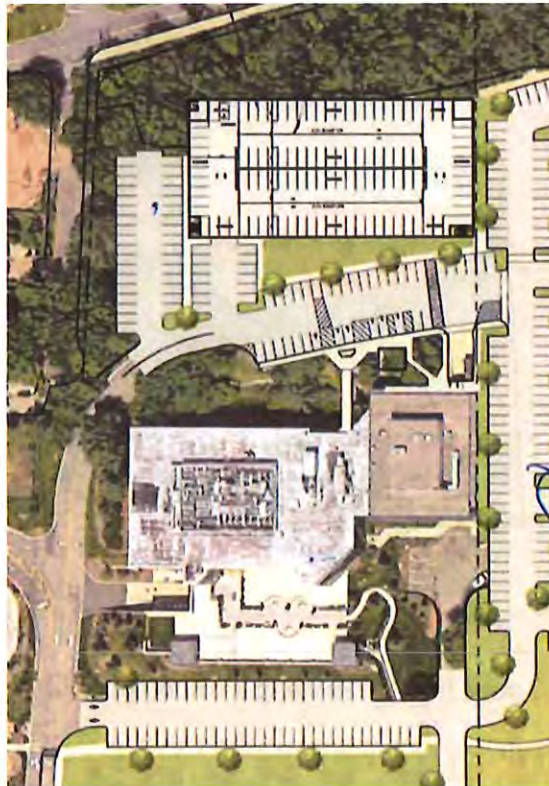
⁶⁸ 800 Sylvan RDP Analysis, Exhibit B.





The Borough also argues that the existing and potential future uses of the existing office building are incompatible with any residential use of the northern portion of the 800 Sylvan site, disregarding the long-established residential uses to the southwest of the site, three single family houses on Hollywood Avenue. The Borough asserts that there must be a buffer between the two uses and proposes a 60 feet wide “residential buffer,” as shown above in the Borough’s conceptual analysis of the site (green area between parking area and red subdivision line). However, in reality the Borough is proposing to separate the office building from the residential site by a distance of about 270 feet, across an 180 feet wide parking area.

The Borough ignored the structured parking approach to providing the necessary parking spaces taken by 800 Sylvan. The developer's concept plan⁶⁹ shows a parking structure for the office building parcel in addition to reconfigured and additional surface parking that in total yields the 466 parking spaces required by the Borough Zoning Ordinance, as shown here:



Shared parking between the office and residential uses is also a concept worthy of exploration.

I find the developer's conceptual approach to parking for the office building to be acceptable, as it meets the Borough's parking standard.

⁶⁹ Concept Yield Plan, A01, 800 Sylvan Avenue, The Borough of Englewood Cliffs, New Jersey, prepared for 800 Sylvan Avenue, LLC, Minnow & Wasko, Architects and Planners, February 9, 2018. Presented to the Borough and Special Master, as referenced in the Bernard Report, p. 5.



I also accept the Borough's standard of a 60 feet buffer between office and residential uses, but note that it is identical to the 60 feet side yard already required by the Borough Zoning



Ordinance in the B-2 Limited Business zone applicable to the site.⁷⁰ Consequently, I begin the buffer at the northern edge of the office building that is to remain, as shown below, with a different subdivision or parcel line from those proposed by the developer and the Borough:

The result is a parcel for RDP analysis with an area of about 18.7 acres, more than the 15.27± acres that remained in the Borough's analysis and less than the 20 acres that remained in the developer's proposed subdivision of the 28.78-acre lot.

⁷⁰ Borough of Englewood Cliffs Zoning Ordinance, Schedule A – Schedule of Regulations, §30-6.1.



Before calculating the RDP, the Borough excludes five types of land areas from the 15.27± acres of the 800 Sylvan site that remained after its “conceptual analysis:”

1. Freshwater wetlands
2. Wetland transition areas
3. Steep slopes
4. Mature groves of forested vegetation
5. Unpaved land interspersed throughout the forested area

Application of these criteria excluded 3.96 ± acres, leaving 9.14 ± acres for the RDP calculation, according to the Borough.

The Borough’s stated intention in its RDP analysis was to apply RDP densities only to the “disturbed” portions of the site. In support in this novel approach, not authorized by COAH rules, the Borough cited a provision of an order entered in Mount Laurel IV litigation in In re Mahwah elsewhere in Bergen County that required municipal adoption of a zoning ordinance amendment that calculated the maximum density for an inclusionary site based on “disturbed/impervious acre.” However, undertaking an RDP analysis is not the same as adopting a zoning ordinance; different standards govern. The Mahwah provision is irrelevant to the calculation of the RDP of Englewood Cliffs in accordance with COAH rules.

The Borough’s last two exclusion criteria – mature groves of forested vegetation and unpaved land interspersed throughout the forested area -- are simply not authorized by COAH Rules. No statewide legislation protects and regulates the use of these land types. And as I explained earlier, Englewood Cliffs is not authorized to exclude steep slopes under COAH rules, because it does not have an adopted steep slopes ordinance.



Finally, the site does have wetlands and wetlands transition areas whose delineation has been approved by NJDEP by a Freshwater Wetlands Letter of Interpretation (“LOI”), DLUR File No. 0216-16-0001.1, issued February 27, 2017.⁷¹ NJDEP confirmed the delineation on the site of four small wetlands areas of Intermediate Resource Value that require a 50-foot transition area (buffer) and two small wetlands areas of Ordinary Resource Value that do not require a transition area. According to engineers for the developer, all the wetlands on the site total less than one acre.⁷² Under NJDEP’s Freshwater Wetlands General Permit #6, up to one acre of isolated (“non-tributary”) wetlands can be filled (“disturbed”).⁷³ ⁷⁴ The Borough acknowledges that the wetlands classified as Intermediate Resource Value that require a buffer are located in the existing 120 feet wide forested buffer along the site’s western edge by Floyd Street.⁷⁵ NJDEP also confirmed the delineation of a small, isolated wetlands offsite adjacent to the site’s northwest corner; its required 50 feet transition area is located entirely within the 120 feet wide forested buffer. The developer’s concept plan does not disturb this forested area, including its forested wetlands, except for a proposed connecting path, presumably for pedestrians and bicycles, between the site and Floyd Street, across from the North Cliff Elementary School.

A major theme of the Borough in 800 Sylvan RDP Analysis is that

“The point of a vacant land analysis is to determine the number of affordable housing units that can **realistically be created** through traditional inclusionary development of vacant and underutilized sites.”⁷⁶ [Emphasis in original]

⁷¹ The LOI is reproduced in the Bernard Report, Exhibit 5.

⁷² Bernard Report, Exhibit 6.

⁷³ N.J.A.C. 7:7A-7.6.

⁷⁴ The Borough incorrectly claims that the developers of 800 Sylvan Avenue “...cannot develop on [the site’s] wetlands and wetland buffers ...,” disregarding the availability of NJDEP Freshwater Wetlands General Permit #6, 800 Sylvan RDP Analysis, p. 13.

⁷⁵ “Forested freshwater wetlands with a fifty foot (50’) transition area have been field delineated within the forested area along Floyd Street.” 800 Sylvan RDP Analysis, p. 8.

⁷⁶ 800 Sylvan RDP Analysis, p. 5, quoting a municipal planning consultant to Roseland Borough in pending Mount Laurel IV proceedings.



In that spirit, it is “realistic” to assume that the site’s less than one acre of isolated wetlands will either be preserved in the existing 120 feet wide forested buffer on its western edge or can be filled under the authority of NJDEP Freshwater Wetlands General Permit #6 and that no wetlands transition areas will be required outside of the existing 120 feet wide forested buffer. Furthermore, it is currently generally accepted practice among planners and special masters in Mount Laurel IV proceedings to not exclude wetlands transition areas in calculating the net developable area of a site for RDP purposes. Therefore, there is no reason to exclude any wetlands or wetlands transition area from the site in calculating its net developable acres for RDP calculation purposes. While the Borough excluded 1.7 acres of wetlands and wetlands transitional area in its RDP analysis, for the reasons stated above I believe such a sweeping exclusion is unfounded and not realistic under the administration by NJDEP of the Freshwater Wetlands Protection Act and COAH Second Round Rules.

The Borough also claims the 800 Sylvan site has “... unique environmental characteristics... .”⁷⁷ I disagree. Such hyperbole cannot be ignored, as it appears to have colored the Borough’s analysis of this site. None of the five types of land areas excluded by the Borough are “unique,” which means “being the only one” or “being without a like or equal.”⁷⁸ All five land types are found throughout New Jersey. The Borough also claims, without justification or documentation, that the site’s

“...freshwater wetlands and wetland transition areas ... have been identified by the Department of Environmental Protection as providing some of the most highly diverse and critical habitats and species in New Jersey.”⁷⁹

⁷⁷ 800 Sylvan RDP Analysis, p. 6.

⁷⁸ Merriam-Webster website, <https://www.merriam-webster.com/dictionary/unique> <accessed January 5, 2019>

⁷⁹ 800 Sylvan RDP Analysis, p. 15.



This, too, is hyperbole, as the isolated Ordinary Resource Value and Intermediate Resource Value wetlands found on the site are found throughout Englewood Cliffs, Bergen County, and New Jersey. Furthermore, NJDEP determined that the site did not have any freshwater wetlands of Exceptional Resource Value, its highest resource value, which must have habitat for threatened or endangered species to qualify.⁸⁰

Consequently, I conclude that no COAH-prescribed exclusion criteria are applicable to the 800 Sylvan site and that its net developable area for RDP purposes is 18.7 acres, the same as its total land area.

Determine the Appropriate RDP Density for the Site

To determine the RDP density of the 800 Sylvan site the Borough prepared a concept plan for developing the 15.27-acre site that remained after its exclusions, limiting development to the 9.14-acre portion that is currently “disturbed/impervious” area with existing buildings, internal roadways, parking areas, walkways, sidewalks, and a tennis court. The Borough's concept plan limits development to two three-story, 36 feet high apartment buildings with a total of 274 units, all parking in an interior parking structure, an outdoor pool and play area, preserved trees on the site's Sylvan Avenue frontage, a single access road from Sylvan Avenue,⁸¹ pedestrian paths, and a dog area at the site of the existing tennis court.⁸² The resulting RDP density is 30 units per net

⁸⁰ See N.J.A.C. 7:7A-3.2 for the criteria for classification of freshwater wetlands by resource value.

⁸¹ This single access point would be considered a cul-de-sac under the Residential Site Improvement Standards (“RSIS”), as it is “A street with a single means of ingress and egress and having a turnaround,” where the maximum average daily traffic may not exceed 250 trips. N.J.A.C. 5:21-4.2, Table 4.2. A 274 unit residential complex will undoubtedly exceed 250 trips per day and thus the concept plan fails to comply with RSIS.

⁸² 800 Sylvan RDP Analysis, Exhibit D.



developable acre, defined as the 9.14-acre existing "disturbed/impervious" area. The Borough also notes that the gross density, based on the 15.27-acre site, is about 18 units/acre (17.94).⁸³

The Borough defends the concept plan claiming it

"... provides for sufficient open space, buffers, and reasonable building setbacks and design standards ... [and] ...recognizes and respects the environmentally sensitive areas of the site which should not be cleared and paved over with impervious surfaces and buildings regardless of the use. ... [and] provides for open space/passive recreation for future residents, provides adequate parking, and preserves the forested wetlands which contain freshwater wetlands along Floyd Street and Sylvan Avenue."⁸⁴

In an effort to buttress its argument on the importance of open space and recreation areas in planning this site, the Borough cites a general statement by a municipal planner not engaged in the Englewood Cliffs declaratory judgment proceedings about a municipality's likely future need for active recreation due to anticipated new affordable housing family developments. I agree that municipalities should provide adequate and diverse active and passive recreation areas and open spaces for residents and visitors to their communities, but that is not an acceptable or apt rationale for the RDP density the Borough advances for this site. In a second effort to buttress its argument, the Borough quotes me, twice, from a report to the court I made as the special master in the Cove v. Wall Township (Monmouth County) Mount Laurel litigation thirteen years ago on the importance of open space and recreation in the then disputed municipally-proposed development of affordable housing in the privately-owned recreation areas and open space at the core of a garden apartment complex.⁸⁵ I continue to believe that open space and recreation are important at both

⁸³ 800 Sylvan RDP Analysis, p. 13.

⁸⁴ 800 Sylvan RDP Analysis, p. 14.

⁸⁵ 800 Sylvan RDP Analysis, p. 14. The Borough reproduces, as Exhibit I, my 23-page letter-report analyzing Wall Township's proposed 2005 amendment to its court-approved Housing Element and Fair Share Plan. I was superseded as special master in Wall in 2013. A review of a current Google Earth aerial image of Wall Township from May 24, 2018 indicates that housing first proposed at this Atlantic Manor Apartments site by Wall Township in 2005 still has not been built and that the private open space is still preserved.



site planning and community scales, but my comments are not a rationale for the RDP the Borough advances for the 800 Sylvan site.

The Borough quotes verbatim the actual COAH rule on the two factors required to be considered in establishing RDP densities,⁸⁶ but then ignores the rule in explaining how it selected the RDP density of 30 units/acre on the 9.14-acre existing “disturbed/impervious” area.⁸⁷

First, the “character of the area surrounding the site” is to be considered. The character of the area surrounding the 800 Sylvan site to the north, east, and south is nonresidential with a mix of large three-story office buildings with large surface parking lots and lawns and scattered trees on the frontage with Sylvan Avenue (Route 9W). Across Sylvan Avenue to the east is the heavily forested open space of the Palisades Interstate Park and its parkway. A gas station is located at the southwest corner of Sylvan Avenue and Hollywood Avenue across from the southeast corner of the 28.8-acre 800 Sylvan lot. The character of the western edge of the site is also open space, established by the 120 feet wide wooded buffer on-site of mature trees that extends north of the site as well. A narrower wooded buffer wraps around and along the short, three-house, 100 yards long Hollywood Avenue cul-de-sac at the southwest corner of the 28.8-acre 800 Sylvan lot. No streets connect the site and adjacent nonresidential areas with the residential area to the west. The separation of land uses is complete. While the 18.7-acre RDP site I have defined has about 900 feet of frontage on adjacent Floyd Street, only three houses and one elementary school front on this street. The character of the area is also defined by its direct and excellent vehicular access to the regional road network through frontage on Sylvan

⁸⁶ 800 Sylvan RDP Analysis, p. 4.

⁸⁷ The Borough’s planner merely writes: “Consideration of the surrounding character of the area requires an understanding and respect for height, setbacks, neighboring uses and other planning standards.” 800 Sylvan RDP Analysis, p. 5. The Borough’s report does not describe the character.



Avenue (US Route 9W) and proximity (less than one-mile) to an entrance/exit of the Palisades Parkway. In short, the character of the site and surrounding area visible and experienced from the site is classic suburban office park or campus with adjacent wooded open space.

Second, "...the need to provide housing for low and moderate income households..." is to be considered. In its concept planning and density selection, the Borough assumed a maximum three-story, 36 feet building height, which is the current standard under the site's B-2 Limited Business zoning. However, an RDP analysis is not bound by existing zoning. Its whole point is to determine the realistic yield of affordable housing from a site, if the zoning were changed. Consideration of the need for affordable housing could be given, for example, by selecting an RDP density that assumed a four-story building height, particularly since the Borough has authorized a five-story building (maximum 70 feet high) elsewhere in Englewood Cliffs, at the new LG headquarters now under construction at 111 Sylvan Avenue.⁸⁸

I conclude that, because of the nonresidential and adjacent wooded open space character of the area surrounding the 800 Sylvan site and the clear need to provide affordable housing in Englewood Cliffs, a municipality that has never provided any affordable housing and has a substantial constitutional housing obligation of more than 500 units, an appropriate RDP density for this site is 30 units/acre, as adopted by the Borough, but for the 18.7 net developable acres RDP site I have defined, for the reasons explained above.

⁸⁸ The applicable zoning for the LG site, the B-2A Limited Business Southeast Overlay, permits a maximum building height of six (6) stories and 90 feet, as well as parking garages with a height of 60 feet. Englewood Cliffs Zoning Ordinance, §30-5.11.b.1. and §30-6.1, Schedule A – Schedule of Regulations, Table 2.



I now address the Borough's three-point critique of 800 Sylvan's 600-unit proposal,⁸⁹ i.e., an RDP density of 30 units/acre (the same as the Borough's and mine), but an RDP site area of 20.0 acres. In a word, the Borough characterizes the proposal as "overdevelopment."

First, the Borough asserts the developer proposes "...not sufficient separation between the existing research and development facility which is set to remain and the proposed residential use."⁹⁰ I agree in principle and have adopted the Borough's 60 feet residential buffer concept, but rejected the Borough's reliance on a vast area of surface parking that has the effect of extending the buffer and shrinking the land area available for RDP calculation.

Second, the Borough argues that the developer's proposal "...does not provide sufficient open space for the 1,300 residents a 600-unit project would likely generate."⁹¹ The developer's "Conceptual Yield Plan" does, however, depict recreation areas (two swimming pools), courtyards, and open spaces, even though it is intentionally far from a full-fledged site plan, which would be the appropriate stage to detail proposed on-site recreation and open space areas.

The Borough also claims the proposal "...does not satisfy the open space needs of future residents, needs which have been detailed by Dr. Kinsey in his reports for the Township of Wall's compliance Plan."⁹² I respectfully disagree with the Borough's reading of my 2005 letter-report.⁹³ Nowhere did I "detail" "open space needs of future residents." Faced with a municipal proposal to develop a 32-unit 100% affordable development on a 1.4-acre site to be carved out of the private open space of a 13.21-acre, 158-unit garden apartment complex, without requiring any on-site open space or recreation areas, I recommended that Wall Township follow its own zoning

⁸⁹ 800 Sylvan RDP Analysis, pp. 15-16.

⁹⁰ 800 Sylvan RDP Analysis, p. 15.

⁹¹ 800 Sylvan RDP Analysis, p. 15.

⁹² 800 Sylvan RDP Analysis, p. 15.

⁹³ The Borough reproduced my 2005 letter-report as Exhibit I to its 800 Sylvan RDP Analysis report.



requirements for open space and recreation areas established for a 100% affordable family development elsewhere.⁹⁴ I indicated that such a requirement was particularly important because the site was "...isolated from any public parks or playground readily and safely accessible by public sidewalks."⁹⁵

In addition to whatever open space and recreation areas may be provided at the 800 Sylvan site, the availability of recreation areas in the neighborhood is an apt consideration at the 800 Sylvan site, one that is ignored by the Borough. The largest municipal park in Englewood Cliffs, the 6-acre Fred Witt Recreation Complex is located to the north of the 800 Sylvan site on Johnson Avenue (Block 1201, Lot 7), less than one-quarter mile along Floyd Street from the developer's proposed pedestrian-bicycle connection through the 120 feet wide wooded buffer,⁹⁶ as shown here:



⁹⁴ See my 2005 letter-report, pages 18-19, in Exhibit I to 800 Sylvan RDP Analysis report.

⁹⁵ See my 2005 letter-report, page 19, in Exhibit I to 800 Sylvan RDP Analysis report.

⁹⁶ I realize that Floyd Street does not currently have a sidewalk or sidewalks, not even for safe pedestrian-bicycle access to the North Cliffs Elementary School, but a sidewalk could be installed.



This park has ball fields, tennis courts, and a basketball court.

Third, the Borough argues that the building height proposed by the developer "...is significantly out of character which [sic] the surrounding properties ..."97 The two buildings, with two internal parking structures, are proposed at four stories, in some places above a garage level, making use of the sloping character of the site. The building heights proposed by the developer range from 48 feet to 60 feet above the garage level or first floor level, depending on the location of the site.98 The Borough claims that the developer proposes heights of "... approximately 5 stories and 6 to 7 stories..."99, but does not document this assertion, which is belied by the developer's Conceptual Plan with elevations. The existing character of Englewood Cliffs is exclusionary, as evidenced by the total lack of affordable housing. Buildings taller than the large three-story office buildings adjacent to the site have been approved recently by the Borough, notably at the new LG headquarters site. In my opinion, siting four story residential buildings at the 800 Sylvan site will not adversely affect the character of this suburban office campus area that is well buffered by wooded open space from adjacent low rise residential neighborhoods.

I recognize that building heights are an important and sensitive issue in Englewood Cliffs, which attracted interstate attention with the initial proposal for a 7-story building for the new LG headquarters that would have been visible above the Palisades tree line from the Gorge Washington Bridge and across the Hudson River. In the present matter, the developer of 800 Sylvan has reached a significant agreement with the Natural Resources Defense Council and Scenic Hudson, Inc., dated July 10, 2018, that the proposed building heights and locations are

⁹⁷ 800 Sylvan RDP Analysis, p. 15.

⁹⁸ Building heights determined from elevations indicated on Conceptual Plan, SK5, 800 Sylvan Avenue Campus Enhancements, Block 910, Lot 1, Borough of Englewood Cliffs, Bergen County New Jersey, prepared by Minno & Wasko and PSS, 5/16/2018.

⁹⁹ 800 Sylvan RDP Analysis, p. 16.



acceptable and will not negatively impact the Palisades or historic vistas from across the Hudson River.

Calculate the RDP

Once the net developable area of an RDP site has been determined and an RDP density has been determined, the calculation of the site's RDP is simply math: net developable area multiplied by RDP density multiplied by 0.2. Consequently, I conclude that the RDP of the 800 Sylvan site is 112 units ($18.7 \times 30 \times 0.2 = 112$), a 20% set-aside of a 561 unit development.



ADJUSTED FAIR SHARE HOUSING OBLIGATIONS, 2019

I conclude, for the reasons detailed above, that Englewood Cliffs has an RDP of at least 223 units derived from four vacant sites, three sites proposed for redevelopment by their owners, and three sites that represent missed opportunities for sites that “became available,” as summarized in the table below. Englewood Cliffs may also have additional underutilized sites that I have not identified but may be known, for example, to the Special Master.

Properties Determined to Generate an RDP, Englewood Cliffs, NJ - Kinsey Analysis, January 2019									
Site #	Block(s)	Lot(s)	Site Address/Name	Gross Area (acres)	Net Area (acres)	Density (units/acre)	Total Units	RDP (units)	Comments
17-20	303	35-37	146, 150, & 154 Wood Road & 312 Boltz St	0.92	0.68	12	8	2	Vacant. Same RDP whether density is 7-10 units/acre
	303	44							
35-36	601	7 & 14-15	2 Kim Hunter Rd (near Karens Lane)	3.59	1.27	12	15	3	Mostly vacant. Borough did not include 0.43-acre Lot 7, which, although it has a house, is essential for access to Lots 14-15.
41	603	20	552 Summit St	1.07	1.07	12	13	3	Vacant. Same RDP whether density is 7-10 units/acre
67	1101	6	98 Roberts Rd	0.73	0.73	12	9	2	Vacant. Same RDP whether density is 7-10 units/acre.
K-1	201	10 thru 14	20-32 Sylvan Avenue & 4 Bayview Avenue redevelopment (pending ZBA application)	1.9	1.9	30	57	11	Site assembled and proposed for redevelopment by private developer
	205	1 & 4							
K-2	513	4 & 7	Redevelopment of Municipal Complex & "Lions Club" site, 474-476 Hudson Terrace, 4 Clendinen Place and police headquarters	2.03	2.03	30	61	12	Inclusionary mixed use redevelopment proposed by Borough in 2018 HEFSP, including acquisition of privately-owned 0.42-acre Block 513, Lot 7 at 476 Hudson Terrace and vacating part of Clendinen Place
	514	4 & 5							
K-3	910	1 (partial)	800 Sylvan Avenue	18.7	18.7	30	561	112	Developer-intervenor's site. Gross and net area reduced by accommodating 60 feet residential buffer from adjacent office building.
K-4	207	6-Jan	111 Sylvan Avenue (new LG)	27.03	27.03	8	216	43	Inclusionary overlay site and density mandated by COAH in 1997, but ignored by the Borough; office complex currently under construction
K-5	1202	2	980 Sylvan Avenue	6	3	30	90	18	Vacant in 2016, developed by Lighthouse E C, LLC in 2017-2018
K-6	1202	2.01	1000 Sylvan Avenue	5.46	2.75	30	83	17	Current LG headquarters, expected to be vacated when new LG headquarters is completed
TOTAL RDP								223	
Notes: 1. Site # as numbered by the Borough in 2018 VLA Report 2. Sites not numbered by the Borough in its 2018 VLA Report have sequential numbers preceded by a "K," e.g., K-1. Prepared by David N. Kinsey, PhD, FAICP, PP, January 7, 2019									



As previously noted, the new LG site (K-4) may have an RDP of from 43 units to 162 units, depending on the density selected from the range of 8 units/acre to 30 units/acre.

Now that the Borough's RDP has been calculated, its Unmet Need may also be calculated, resulting in the Borough's adjusted fair share housing obligations for 1987-2025, as summarized below:

Borough of Englewood Cliffs, NJ, Adjusted Fair Share Housing Obligations for 1987-2025, January 2019		
Component of Housing Need	affordable housing units	
Present Need, 2015		0
Prior Round Obligation	219	
Gap Present Need & Prospective Need (capped)	365	
Total New Construction Obligation, 1987-2025		584
RDP	223	
Unmet Need	361	
Prepared by David N. Kinsey, PhD, FAICP, PP, January 7, 2019		

The RDP could range as high as 342 units, if an RDP density of 30 units/acre is applied to the new LG site (Site K-4).



COMPLIANCE ANALYSIS: PLAN TO SATISFY PRIOR ROUND AND THIRD ROUND OBLIGATIONS

The 2018 Plan is essentially a two-part plan for satisfying the two major components of the Borough's fair share housing obligations, as calculated by the Borough, which differ from my calculations. I find that the Borough has an RDP of at least 223 units, while the Borough claims its RDP is only 55 units. I find that the Borough has an Unmet Need of 361 units, while the Borough claims a larger Unmet Need of 507 units.

Satisfying the RFP

To satisfy its RDP of at least 223 units, the Borough proposes development of a 57-unit, 100% affordable municipally-sponsored family rental project on a 2.03 ± acre site (K-2 in my RDP tables above), fronting on Hudson Terrace (Block 513, Lots 5 & 7, Block 514, Lots 4 & 5, and a portion of the right-of-way of Clendenin Place that presumably will be vacated).¹⁰⁰

The Borough is aware of and addresses all the pertinent requirements of COAH rules for this compliance mechanism, but some of the Borough's responses raise questions.

First, as to site control, the Borough describes as Borough-owned Block 513, Lot 7 at 476 Hudson Terrace, but public property tax records available on-line¹⁰¹ indicate that this approximately 0.42 acre with two-story commercial building is owned by Dowa Line America Co. Ltd., with a mailing address of 476 Hudson Terrace, Englewood Cliffs. The Borough should resolve this discrepancy.

Second, the conceptual site plan for the project submitted by the Borough as Exhibit A to 2018 Plan implies use of about 0.21 acre of an existing public street, Clendenin Place, but does

¹⁰⁰ 2018 Plan, pp. 23-26.

¹⁰¹ NJTaxMaps.com.



not mention vacating this area. Of course, the Borough has the authority to undertake this action and demonstrate site control through the public redevelopment process, but the Borough should resolve this discrepancy.

Third, the 2018 Plan refers to a construction schedule for the 57-unit project that is “attached hereto,”¹⁰² but no such schedule is attached or is an appendix. The Borough should resolve this discrepancy.

Importantly, the Borough has submitted a financial analysis and pro forma for the project, prepared by Robert S. Powell, Jr., PhD, of Princeton-based Nassau Capital Advisors, LLC.¹⁰³ The Powell report projects a total development cost of \$282,001 per unit with two financing scenarios, assuming either 4% Low Income Housing Tax Credits (“LIHTC”) or an allocation of competitive 9% LIHTC. The Powell report projects a shortfall of \$124,133 per unit under the 4% LIHTC scenario and no shortfall under the 9% LIHTC scenario

The Powell report assumes zero land acquisition costs; this assumption is questionable until municipal ownership of Block 513, Lot 7 at 476 Hudson Terrace is confirmed.

The Borough has committed to adopting an updated resolution of intent to bond for the 57-unit project if necessary.¹⁰⁴

The Borough also claims 20 rental bonus credits from its proposed 57-unit family rental project under COAH Second Round Rules, specifically N.J.A.C. 5:93-5.15(d).¹⁰⁵ As the Borough has provided no affordable housing to date, it is assumed that any affordable housing that is created is credited first towards satisfying the Borough’s Prior Round Obligation of 219 units. The

¹⁰² 2018 Plan, p. 25.

¹⁰³ 2018 Plan, Appendix F.

¹⁰⁴ 2018 Plan, p. 26.

¹⁰⁵ 2018 Plan, p. 22 and 26.



Borough's claim to rental bonus credits ignores the 2010 Appellate Division decision of Judge Skillman that invalidated the COAH rule that purportedly authorized rental bonus credits against the Prior Round Obligation for units not yet built:

"The rationale under which the validity of rental bonus credits have been upheld, even though they decrease the total number of affordable housing units that are created, is to "encourag[e] the construction of more rental housing." *In re N.J.A.C. 5:94, supra*, 390 N.J. Super. at 82, 914 A.2d 348. This salutary objective is not served by allowing a municipality to claim a rental bonus credit for a planned affordable rental unit that still has not been constructed more than a decade after expiration of the prior round periods for which a municipality has unmet affordable housing obligations. Therefore, *N.J.A.C. 5:97-3.5* is invalid."¹⁰⁶

Consequently, in my opinion Englewood Cliffs is not entitled its claimed 20 rental bonus credits.

In conclusion, provided the Borough provides satisfactory responses to the unresolved issues identified above, Englewood Cliffs is entitled to at most 57 credits against its RDP obligation of at least 223 units, leaving a substantial gap of at least 166 units.

Addressing the Unmet Need

Englewood Cliffs has an Unmet Need of 361 units by my calculation and 507 units by the Borough's calculation. To address its Unmet Need, the Borough proposes three mixed use inclusionary overlay zones at densities of 15-20 units/acre with an anticipated yield of only 95 affordable units, a mere 22% of its Unmet Need in three different areas of the community:¹⁰⁷

- The central east-west East Palisade Avenue corridor from the Borough boundary with adjacent Englewood on the west to Sylvan Avenue (Route 9W) on the east

¹⁰⁶ In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 416 N.J. Super. 416, 495-496 (App. Div., 2010).

¹⁰⁷ 2018 Plan, pp. 27-30.



- The 24 ± acre Hudson Terrace area in eastern-central Englewood Cliffs, bounded generally by Palisades Avenue on the north, Hudson Terrace on the east, Charlotte Place on the south, and Sylvan Avenue (Route 9W) on the west
- The previously proposed 12.4-acre B-3 Rehabilitation Area straddling Route 9W in southern Englewood Cliffs¹⁰⁸

I recommend a density of 20 units/acre in all three overlay zones, not an average as proposed by the Borough, due to the need for affordable housing in Englewood Cliffs.

Englewood Cliffs also recently adopted a mandatory set-aside ordinance, Ordinance No. 18-14 in October 2018, that may eventually capture affordable housing opportunities if a rezoning, variance, or adoption of a redevelopment plan results in multifamily residential development of five (5) dwelling units or more.¹⁰⁹ However, I do not expect this mechanism to be a significant source of affordable housing production in view of the municipality's exclusionary record.

Finally, the 2018 Plan takes notice of a use variance application at 20-32 Sylvan Avenue & 4 Bayview Avenue pending before the Borough's Combined Land Use Board that may yield an unspecified number of affordable units under the Borough's mandatory set-aside ordinance.

However, the bottom line is that the Borough has a huge gap of hundreds of units in addressing its Unmet Need in addition to the gap in satisfying its RDP Obligation. Under such circumstances the Borough must examine the community for additional sites and areas appropriate for inclusionary overlay zoning, to incentivize inclusionary development and assist the Borough in addressing and eventually satisfying its constitutional housing obligations.

¹⁰⁸ For maps of these areas, see 2018 Plan, Exhibit B.

¹⁰⁹ 2018 Plan, pp. 30-31.



Two obvious candidate sites for such treatment are currently underutilized with office buildings that either are vacant now or will be vacated in the near future.

First, the 28.8-acre site at 800 Sylvan Avenue (Block 910, Lot 1), if not otherwise used in the municipality's compliance plan, is appropriate for inclusionary overlay zoning to address Unmet Need, at 30 units/acre, as detailed above in my RDP analysis, for at least its northern 18.7 acres. The developer-intervenor 800 Sylvan proposes redevelopment of the northern 20 acres of the site and the site's remaining 8.8 acres may be vacated at some time in the future. At a gross density of 30 units/acre and a standard 15% rental set-aside, the entire 28.7-acre site could eventually yield 130 affordable units.

Second, the 5.5-acre site at 1000 Sylvan Avenue (Block 1202, Lot 2.01) is currently the headquarters of LG Electronics USA, but will become vacant and therefore underutilized when its owner moves to its newer, larger corporate headquarters now under construction at a much larger site at 111 Sylvan Avenue. Consequently, the site is appropriate for inclusionary overlay zoning to address Unmet Need. Existing woods at the site provide a buffer from four adjacent single-family detached houses across Johnson Avenue to the west and one adjacent house to the north. To the east beyond Sylvan Avenue (US Route 9W) is heavily wooded Palisades Interstate Park and its parkway. To the south, at 980 Sylvan Avenue, is a recently built office building (2017), mostly buffered by some of its woods. Therefore, the property is appropriate for inclusionary overlay zoning, at a gross density of 24 units/acre, as the site has wetlands constraints, and could yield a total of 132 units with a 15% rental set-aside of 20 affordable units.



CONSIDERATION OF LANDS OF DEVELOPERS

As required by the Municipal Land Use Law, the 2018 Plan considers, and rejects, the inclusionary development of the 800 Sylvan Avenue site proposed by its owner, the defendant-intervenor, for reasons that are later reprised in detail in the Borough's report 800 Sylvan RDP Analysis.¹¹⁰ As explained above in my analysis of the 800 Sylvan Avenue site, I agree in part with the Borough's analysis, but mostly I disagree, for the reasons I have detailed above.

In this "consideration" the Borough makes two additional points that deserve a response.

First, the Borough notes that

"For a hypothetical resident of the proposed Sylvan project to buy milk or limited groceries, for example, they would have to walk or drive at least 1 mile in one direction to the closest delicatessen. The nearest full-service supermarket is almost 3 miles away in the neighboring municipality, Englewood."¹¹¹

The Food for Life Deli, at 489 Sylvan Avenue, is not quite one mile to the south of the site. The Shop-Rite of Englewood, at 55 Nathaniel Place/Palisades Court in adjacent Englewood, is 1.5 miles ("as the crow flies") from the site, not three miles. And in any case, many of the current estimated 1,783 households living in Englewood Cliffs¹¹² are similarly situated or live even further away from these stores. The distance to these stores is hardly a credible reason to reject the 800 Sylvan Avenue site.

Second, the Borough argues that

"Targeting what is often referred to as "the Trillion Dollar mile" based on the existing commercial tenants and presence of large, international companies is hardly the best place to locate an isolated, multi-family residential projects [sic]."¹¹³ [emphasis added]

¹¹⁰ 2018 Plan, pp. 5-6.

¹¹¹ 2018 Plan, p. 6.

¹¹² 2018 Plan, p. 11.

¹¹³ 2018 Plan, p. 6.



When an exclusionary community, such as Englewood Cliffs, finally comes to grips with its constitutional housing responsibilities, as is happening now in the current declaratory judgment proceedings, it may not be able to limit its response to what it perceives as only the “best” locations if it is to satisfy, or at least address substantially, its fair share housing obligations. That is the situation now in Englewood Cliffs, as I have detailed above in calculating the gaps in the Borough’s efforts to satisfy its RDP and address its Unmet Need. I believe the 800 Sylvan Avenue site can be developed in a manner that both assists the Borough in satisfying its constitutional obligation and is consistent with principles of sound planning,



CONCLUSION

For the reasons detailed above in this report, I conclude that the 2018 Plan does not comply with the Mount Laurel Doctrine and the Borough has not satisfied its constitutional fair share housing obligations. I disagree with many, but not all, of the analyses and conclusions in the 2018 Plan and its appendices and exhibits.

The court has determined that the Borough has a 1999-2025 New Construction Obligation of 584 affordable housing units. In my opinion, this obligation is composed of an RDP of at least 223 units and an Unmet Need of 361 units, although the range of the RDP could be up to a total of 342 units if an RDP density 30 units/acre is applied to the new LG site (Site K-4).

In addition to the RDP sites proposed by the Borough, where I recommend higher RDP densities be applied and COAH exclusion criteria be applied strictly and realistically, I include three additional missed opportunity sites in my RDP calculation.

I conclude that the Borough's approach to satisfying its RDP and addressing its Unmet Need are inadequate and leave substantial gaps compared with the Borough's obligations. The Borough's 57-unit 100% affordable municipally-sponsored family rental development is generally acceptable, but the Borough is not entitled to its claimed 20 rental bonus credits from this project as the Appellate Division invalidated rental bonus credits from as yet unbuilt units for Prior Round Obligations in 2010.



APPENDIX F

Art Bernard and Associates, L.L.C.

Housing and Land Use Planning

RESPONSE TO DECEMBER 10, 2018 HOUSING ELEMENT AND FAIR SHARE PLAN

JANUARY 7, 2019

PREPARED FOR:
800 SYLVAN AVENUE, LLC

PREPARED BY:



ART BERNARD, P.P.

TABLE OF CONTENTS

	PAGE
Credentials	1
Documents Reviewed	2
The Impact of Exclusionary Zoning	2
The Borough's Housing Obligation	7
Land as s Scarce Resource	8
Calculation of the RDP	9
Impact of Highlands Regulations	11
Critique of Harbor's Proposed Calculation of the RDP	12
Vacant and Underutilized Sites with Unused Approvals	12
Sites with Slopes in Excess of 15 Percent	13
Harbor's Analysis of Vacant Sites	15
Other Developed Sites	17
Changing Circumstances/Squandered Opportunities	17
Inclusion of the Vacant Land Inventory of the 800 Sylvan Avenue Site	20
Correction of RDP Based on COAH's Rule	20
THE UNMET NEED	21
THE INTERPRETATION OF THE RULE CHANGES WITHOUT RULE MAKING	24
CRITIQUE OF HARBOR'S RDP ANALYSIS OF 800 SYLVAN AVENUE	26

MEETING THE HOUSING OBLIGATION - 800 SYLVAN AVENUE	31
MEETING THE HOUSING OBLIGATION – THE BOROUGH'S PLAN FOR SATISFYING THE RDP	35
THE UNMET NEED	40
CONCLUSION	46

EXHIBITS

1. CURRICULUM VITAE
2. COAH REPORTS FOR ENGLEWOOD CLIFFS, WOODRIDGE AND FAIRLAWN
3. COAH REPORTS FOR ATLANTIC HIGHLANDS AND HADDONFIELD
4. 800 SYLVAN AVENUE
5. SCENIC HUDSON, INC./NATIONAL RESOURCES DEFENSE COUNCIL AGREEMENT
6. MONTVALE
7. SOUTH BRUNSWICK
8. CHERRY HILL
9. OVERLAY ZONES

The purpose of this report is to provide my professional opinion regarding the December 10, 2018 Housing Element and Fair Share Plan, prepared by Harbor Consultants. I have been retained by 800 Sylvan Avenue, L.L.C (800 Sylvan Avenue) to prepare this report.

CREDENTIALS

I am the managing member of my own firm. I have a Masters in City and Regional Planning (MCRP) from Rutgers University. I am a licensed professional planner with 40+ years of experience in land use planning and affordable housing. I served the New Jersey Council on Affordable Housing (COAH) from March of 1986 to October of 1994 as its Deputy and Executive Directors. During that time, I developed and supervised COAH's entire work program and was responsible for working directly with the COAH Board on all of its rules and motion decisions. I prepared the First and Second Round rules that have been upheld by the Appellate Division, which include, but are not limited to, the fair share methodology, COAH's vacant land adjustment process and municipal compliance.

Since leaving COAH in 1994, I have worked for 27 municipalities in various capacities. I have worked with private sector clients before local boards and in Superior Court. I have testified as an expert witness in most of the State's vicinages and I have served the Superior Court, as a Special Master, in six (6) municipalities.

I have also served the New Jersey Builders Association (NJBA) as its affordable housing consultant and wrote the expert reports that NJBA submitted in its successful appeals of COAH's 2004 and 2008 rule adoptions. Pursuant to the Appellate Division's 2010 order for COAH to develop Third Round rules based on COAH's First and Second Round methodologies, I developed 1999-2023 fair share calculations. I also wrote an expert report for NJBA challenging COAH's 2014 rule proposal that the COAH Board failed to adopt.

I have served as an expert witness in the fair share trials in Middlesex and Mercer Counties. I have attached my curriculum vitae as Exhibit 1.

DOCUMENTS REVIEWED

In preparing this report, I have reviewed the December 10, 2018 Housing Element and Fair Share Plan, prepared by Harbor Consultants (Harbor). I have reviewed Judge Jacobson's March of 2018 Mercer County fair share decision. I have reviewed N.J.A.C. 5:93-1 et seq and N.J.A.C. 5:97-1 et seq. I have reviewed COAH's 2001 Handbook. I have reviewed various decisions rendered by the courts and COAH. I have reviewed COAH's records regarding municipalities that have prepared housing elements alleging that vacant land is a scarce resource for purposes of addressing the municipal housing obligation. I have also reviewed the 2012-2016 American Community Survey.

THE IMPACT OF EXCLUSIONARY ZONING

The Mount Laurel Decisions are designed to combat the evils of exclusionary zoning. The courts have recognized that lower income households should be able to live in every municipality in New Jersey. As a result, tens of thousands of lower income households have been able to live in a safe environment, closer to their jobs; and their children have been able receive a quality education.¹

It is clear that Englewood Cliffs has been very successful in attracting jobs. At page 9 of its RDP Analysis of 800 Sylvan Avenue, (Appendix A-2 of the December 10, 2018 Housing Element) Harbor discusses Englewood's Trillion Dollar Mile and its ability to attract office users. It is clear that Englewood Cliffs has a great deal of office development. *But, as demonstrated by the 2018 Housing Element, it has not produced a single unit of affordable housing in the past 35 years.*

The absence of affordable housing is not an accident. After reviewing the Borough's zoning ordinance, I conclude that the Borough has created three (3) residential zones. The only housing type permitted in each zone is a single-family detached home. No form of attached housing is a permitted or conditional use in any of the Borough's zoning districts.

¹ COAH's December 20, 2013 data indicate nearly 62,000 units were built at that time.

So, it is not surprising that the 2012-2016 American Housing Survey reveals that the Borough has very little diversity in its housing stock. Englewood Cliffs is in Housing Region 1, including Bergen, Passaic, Hudson and Sussex Counties. In a region in which over 60 percent of the housing stock is in some form of attached housing, Englewood Cliffs is a bastion of single family homes – 96 percent of the housing are single-family detached homes

Percentage of Housing by Units in Structure			
Structure Type	New Jersey	Housing Region 1	Englewood Cliffs
<i>1 unit, detached</i>	53.5%	39.0%	96.0%
<i>1 unit, attached</i>	9.4%	5.4%	0.4%
<i>2 units</i>	9.5%	18.0%	1.5%
<i>3 or 4 units</i>	6.5%	9.1%	0.4%
<i>5 to 9 units</i>	4.8%	6.6%	1.2%
<i>10 to 19 units</i>	5.0%	5.2%	0.0%
<i>20 to 49 units</i>	3.9%	5.6%	0.0%
<i>50 or more units</i>	6.5%	10.6%	0.4%
<i>Mobile home</i>	1.0%	0.4%	0.0%
<i>Boat, RV, van, etc.</i>	0.0%	0.0%	0.0%

Source: 2012-16 ACS, Census Bureau

Single family homes and mobile homes are the least likely housing types to be available for rent. In New Jersey, only 7.8 percent of single family homes are available for rent. Within the housing region, only 9.2 percent of single-family homes are available to rent.² Harbor’s Housing Element indicates that only 191 of the Borough’s 1,924 units (less than 10 percent) are available for rent.³

It is not surprising that the Housing Element reveals that the median household income in Englewood Cliffs is significantly higher than the median household income for Bergen County and the rest of the State. The American Community Survey (2012-2016) reports that the median

² 2012-2016 American Community Survey.

³ Page 15 of December 10, 2018 Housing Element.

household income for the Borough is \$131,936. The median income for the County is \$88,487; and the State’s median income is reported to be \$73,702.

The midpoint year of the 2012-2016 American Community Survey (ACS) information is 2014. When COAH existed, it calculated the State’s income limits for very low, low and moderate income households each year based on similar income calculations released by HUD. The affordable housing obligation is a regional obligation and Englewood Cliffs is located in a housing region including Bergen, Passaic, Hudson and Sussex Counties. In 2014, the housing region’s maximum income for a very low income household of three (3) was \$22,794. The maximum income limit for a low-income household of three (3) was 37,990; and the maximum income for a moderate-income household of three (3) was 60,784.⁴ The data for Englewood Cliffs, Bergen County and the State of New Jersey demonstrate the effectiveness of Englewood Cliffs’ zoning in excluding very low, low and moderate income households.

% of Households by Income Group			
Household Income	New Jersey	Bergen County	Englewood Cliffs
<i>Less than \$20,000</i>	13.2%	10.8%	5.5%
<i>\$20,000 to \$34,999</i>	11.6%	9.3%	3.9%
<i>\$35,000 to \$49,999</i>	10.3%	8.8%	6.3%
<i>\$50,000 to \$74,999</i>	15.7%	14.3%	9.4%
<i>\$75,000 or more</i>	49.3%	56.8%	74.9%

Source: 2012-16 ACS

The census presentation of income data is different than the State’s definition of very low, low and moderate income households. But, one can readily see that the percentage of lower income households is much lower in Englewood Cliffs than in New Jersey and in Bergen County.

Households qualify as low and moderate income if they earn less than 80 percent of median income. By definition, the term median is a mid-point in a data distribution. Half of the

⁴ The income limits vary by household size. I have used a household of three because the median household size in New Jersey is approximately 2.7 people.

distribution lies above and half the data fall below the median. If one assumes an even distribution of income data around the median, one would expect income qualified households to encompass 80 percent of the households earning below the median, or 80 percent of 50 percent of all households. Thus, one would expect that approximately 40 percent (half of 80 percent) of all households to be income eligible as very low, low and moderate income households.

The upper income limit for moderate income households in the housing region is \$60,784. If we interpolate the data for Bergen County and Englewood Cliffs for the \$50,000 to \$74,999 income range, one finds that 10.2% of County households and 6.8 percent of Englewood Cliffs households earn between \$50,000 and \$60,784. Overall, 39.1 percent of County households might qualify as very low, low and moderate income households; only 22.5 percent might qualify in Englewood Cliffs.

The above analysis is not statistically pure because this simple analysis does not attempt to match incomes with household size. But the table above does demonstrate the effectiveness of Englewood Cliffs' land use policies in excluding lower income households.

The Mount Laurel decisions outlaw exclusion based on income. However, the data demonstrate that a large percentage of lower income households are African-American and Hispanic households.

Household Income by Race, Statewide				
Household Income	White, Non-Hispanic	Asian-American	African-American	Hispanic
<i>Less than \$20,000</i>	14.9%	8.1%	28.8%	25.4%

\$20,000 to \$34,999	7.0%	6.6%	10.7%	10.5%
\$35,000 to \$49,999	10.0%	6.3%	12.4%	14.1%
\$50,000 to \$74,999	15.6%	12.4%	16.9%	17.5%
\$75,000 or higher	52.5%	66.7%	31.2%	32.4%
Source: 2012-16 ACS, Census Bureau				

The 2012-2016 ACS reports that the median income for African-American and Hispanic households is significantly less than white and Asian-Americans. The median household income for these groups are as follows: white households – 83,969; Asian-American households - \$106,785; African-American households - \$47,299; and Hispanic households - \$49,939.

As a result, African-American and Hispanic households are much more likely to rent than other population groups. An overwhelming majority of African-American and Hispanic households rent in New Jersey and the housing region.

<div style="background-color: black; color: white; padding: 5px; text-align: center;">% of Population that Rents Housing, by Householder's Race</div>					
Geography	Overall	White, Non-Hispanic	Asian-American	African-American	Hispanic
<i>New Jersey</i>	35.91%	23.32%	38.33%	61.06%	64.51%
<i>Housing Region 1</i>	47.03%	31.71%	49.97%	70.74%	70.48%
<i>Englewood Cliffs</i>	12.39%	13.82%	11.89%	0.00%	0.00%
Source: 2012-16 ACS, Census Bureau					

Thus, given the lack of diversity and the lack of rentals in the Englewood Cliffs housing stock, it is not surprising that few African-American and Hispanics, population groups expressly protected by federal law, live in the Borough. It seems clear that the Borough’s land use policies have had a disparate impact on these minority populations.

% of Population by Race or Ethnicity

Race/Ethnicity	New Jersey	Housing Region 1	Englewood Cliffs
<i>White, Non-Hispanic</i>	56.7%	48.1%	50.2%
<i>Asian alone</i>	9.2%	12.3%	42.5%
<i>Black</i>	13.5%	9.1%	1.4%
<i>Hispanic</i>	19.8%	30.6%	4.9%

Source: 2012-16 ACS, Census Bureau

THE BOROUGH’S HOUSING OBLIGATION

Harbor’s Housing Element⁵ builds off the direction provided by the Supreme Court and the methodology endorsed in Judge Jacobson’s recent fair share decision in Mercer County. The Supreme Court has established that: every municipality is responsible for addressing: a present need of substandard housing occupied by low and moderate income households; a 1987-1999 (prior round) housing obligation as had been calculated pursuant to COAH’s second round rule making (N.J.A.C. 5:93-1 et seq.); and a 1999 - 2025 housing obligation to be determined by the court. Judge Jacobson, after listening to over 40 days of testimony devised a methodology to compute present need and a 1999 - 2025 housing obligation.

Pursuant to Judge Jacobson’s methodology, there are no substandard housing units occupied by low and moderate income households in Englewood Cliffs Borough. Therefore, the Borough has a present need of zero. The Borough’s prior (second) round housing obligation as calculated by COAH equals 219 housing units. Finally, Judge Jacobson’s methodology results in a 365 unit 1999-2025 housing obligation. Thus, the Borough’s total 1987-2025 housing obligation is 584 housing units.

Harbor makes an argument that the Borough’s 584-unit housing obligation should be further reduced based on a COAH regulation that reduces the housing obligation based on 20 percent of the municipal housing stock. However, this court has already, consistent with Judge Jacobson’s decision, rejected this argument.

⁵ There is no indication that this document is any more than a consultant’s report. It does not indicate that the Housing Element has been adopted by the Planning Board or endorsed by the Governing Body.

Thus, the Borough is responsible for a second round housing obligation of 219 affordable housing units that is part of its 1987-2025 housing obligation of 584 affordable housing units.

LAND AS A SCARCE RESOURCE

Harbor's plan asserts that land is a scarce resource and that the Borough is entitled to a vacant land adjustment. COAH has adopted rules related to vacant land adjustments. These rules were interpreted authoritatively through the rule adoption process, which included publication of official agency responses to public comments. The rules and their interpretations were the result of a three (3) year process that included: the publication of an issue paper; public hearings; discussions with a working group of professionals appointed by stake holders in the public process; discussions with staff and Council members; publication of draft rules in the New Jersey Register; public hearings on the proposed rules; a review of the comments from the public by the staff and COAH Board members; and publication of the final rules in December of 1993 and June of 1994.

As adopted, the second-round rules establish a process for calculating the development capacity of "vacant sites and sites that are devoted to a specific use which involve relatively low density development"⁶ to provide affordable housing. The capacity analysis calculation is called the "realistic development potential" (RDP). A municipality must craft a plan to address its RDP. The municipality must create a plan to meet its RDP pursuant to N.J.A.C. 5:93-4.2(g):

The municipality may address its realistic development potential through any activity approved by the Council pursuant to N.J.A.C. 5:93-5. The municipality need not incorporate into its housing element and fair share plan all sites used to calculate the realistic development potential if the municipality can devise an acceptable means of addressing its realistic development potential. The realistic development potential shall not vary with the strategy and implementation techniques employed by the municipality.

COAH's second round rule mandates that the portion of the housing obligation that cannot be addressed with vacant sites or sites devoted to low density development does not go away. The

⁶ N.J.A.C. 5:93-4.2(c).

increment between the RDP and the municipal fair share (in this case 584 low and moderate income housing units) is the unmet need and must be addressed with a plan that promotes redevelopment. N.J.A.C. 5:93-4.2(h).

CALCULATION OF THE RDP

Determination of a municipality's RDP involves two steps: 1) determining which sites or portions of sites should be included in the inventory of land that contributes to the RDP and 2) determining the appropriate density for each site. In its promulgated regulations, COAH has established the standards to be applied in each of these steps.

The process of calculating the realistic development potential begins with an inventory of all vacant sites and all sites devoted to a specific use which involves relatively low-density development. Examples of such low density sites include, but are not limited to golf courses, not owned by their members, farms in SDRP planning areas 1, 2 and 3; driving ranges; nurseries and non-conforming uses. N.J.A.C. 5:93-4.2(c).

The inventory of vacant and low density sites is, in effect, an inventory of possibilities for low and moderate-income housing. However, COAH regulations provide that sites or portions of these sites may be eliminated due to: environmental limitations; the size of the parcel; the governmental purchase of development rights to preserve agricultural land and open space; the need to provide a buffer from structures listed on the State and National Register of Historic Places; poor access; municipal plans to devote the site for recreation or open space; and/or incompatible surrounding land uses. The criteria for elimination of sites or portions of sites are codified at N.J.A.C. 5:93-4.2(c) and (e).

Once a site, or a portion of a site, has been determined to be suitable for inclusion in the realistic development potential, it is necessary to determine an appropriate density for the site. The rules establish a minimum density of six (6) units per acre for purposes of establishing the realistic development potential. N.J.A.C. 5:93-4.2(f). This, however, is a minimum. COAH's rules require that COAH make a site specific determination of the density, expressly balancing the need for low and moderate-income housing, i.e., the size of the municipal housing obligation and

the need for housing within the housing region, with the character of the site and the surrounding area in establishing the density of each site (N.J.A.C. 5:93-4.2(f)).

The Council shall consider the character of the area surrounding each site and the need to provide housing for low and moderate income households in establishing densities and set-asides for each site, or part thereof, remaining in the inventory.

In practice, the courts, with the aid of a Special Master, have frequently determined that the appropriate density for purpose of determining the realistic development potential far exceeds COAH's minimum density requirement.

The density is then multiplied by the acreage of the site, or that portion of the site that has been determined suitable for low and moderate-income housing. The resulting "product" is the total development capacity of the site. For example, a 10-acre site might be suitable for residential development at 25 units per acre. Multiplying 25 units per acre by 10 acres yields a site capacity of 250 units. Density is a key issue in calculating the realistic development potential.

COAH's rules require that 20 percent of the site's capacity be reserved for low and moderate-income households. This reservation is termed a set-aside. With a 20 percent set-aside, the hypothetical 250-unit site, used in the example, would yield 50 low and moderate-income units. The sum of each site's capacity analysis equals the municipal realistic development potential. (N.J.A.C. 5:93-4.2(f))

There are compelling reasons for not lightly eliminating sites or portions of sites, and for utilizing the highest density consistent with sound planning. Eliminating sites or understating the density eliminates housing opportunities for low and moderate income household that may not be made up elsewhere in the municipality. In addition, state policies withdrawing otherwise developable land from the potential inventory in the housing region make it especially important, from a regional perspective, to take advantage of all the land potentially available for creation of low and moderate income housing.

IMPACT OF HIGHLANDS REGULATIONS

The need for affordable housing within the COAH housing region in which Englewood Cliffs is located is very large. Judge Jacobson, in her recent comprehensive fair share decision, calculated a 1999-2025 housing need of 38,228 low and moderate-income housing units for that region.

In many instances, the affordable housing obligation is addressed through inclusionary developments in which one (1) of every five (5) housing units is an affordable housing unit. If the entire housing obligation was addressed through inclusionary development, the 38,228 low and moderate income units, resulting from Judge Jacobson's decision, would require 191,140 housing units throughout the housing region. However, the ability of each municipality within the housing region varies based on a number of factors, including the availability of infrastructure and the impact of State regulations.

Englewood Cliffs lies in a COAH housing region that includes lands regulated by the Highlands Council. The passage of the Highlands Act and the implementation of the Highlands Regional Master Plan have drastically reduced the development potential of 859,358 acres of land within three (3) housing regions (including the Englewood Cliffs housing region). The Highlands' build-out reports indicate that the total residential build-out capacity of 72 of its 88 municipalities, in sewerred areas, is only 626 housing units. These same reports indicate that the residential build-out in non-sewerred areas is 6,338 housing units. Therefore, the Highlands Council estimates the total residential build-out in these 72 municipalities to be 6,964 units.

In contrast, COAH adopted projections for the same 72 municipalities based on historic growth trends. It projected that 31,815 residential units would be constructed between 2004 and 2018.⁷ The maximum Highlands build-out in the 72 municipalities (6,964 units) is 21.8 percent of the COAH projections through 2018 based on historical trends.

It is clear that the implementation of the Highlands legislation has severely limited the land, within the seven (7) county Highlands area, that will be able to accommodate higher density housing. Englewood Cliffs lies outside of the Highlands. It has the infrastructure to support

⁷ COAH's residential projections appear at 40 N.J.R. 2992. They were part of N.J.A.C. 5:97-1 et seq., regulations which have been overturned by the courts.

growth and is located in Planning Area 1, an area in which the State Development and Redevelopment Plan (SDRP) encourages growth and redevelopment. If places like Englewood Cliffs do not adapt to higher densities, the housing needs of New Jersey's citizens will be severely impacted.

The idea that regional limitations on the production of affordable housing are relevant to individual, municipal compliance is not novel. The AMG Court recognized that land would be a scarce resource throughout the State and increased each municipal housing obligation by 20 percent to help address portions of the regional housing obligation that could not be addressed due to the scarcity of vacant land. The limits of available infrastructure and the impacts of the Highlands regulations are important factors in balancing the need for affordable housing against the character of the given area.

CRITIQUE OF HARBOR'S PROPOSED CALCULATION OF THE RDP

Harbor's December 10, 2018 Vacant Land Adjustment report inventories the municipality's vacant properties. It does not do so in accordance with COAH's regulations as promulgated.

Vacant and Underutilized Sites with Unused Approvals

Harbor's Report is clear (at page 2) that it has eliminated any vacant/underutilized site that has received an approval. However, there is no authority within N.J.A.C. 5:93-4.2 to eliminate properties with approvals from the vacant land inventory.⁸

Vacant or underutilized sites with approvals should be included in the analysis of the realistic development potential. It is common for property owners and potential developers who have received approvals, that are based on the current zoning, to find a limited or non-existent market

⁸ The only authority this report provides for eliminating sites with approvals is a report written for Roseland Borough by former COAH Executive Director Shirley Bishop. The Surenian firm, representing Englewood Cliffs, is also Special Affordable Housing Counsel to Roseland Borough.

for the approved use. In such a situation, rezoning the site for inclusionary development could very well provide a valuable incentive for affordable housing. I would urge the Special Master and the Court to ensure that no site is eliminated from the realistic development potential calculation based solely on a pre-existing approval.

Sites with Slopes in Excess of 15 Percent

Harbor's Report also eliminates parcels due to the presence of slopes in excess of 15 percent. N.J.A.C. 5:93-4.2 discusses when and how a municipality can regulate slopes, for purposes of the vacant land adjustment process:

In the case of slopes in excess of 15 percent, a municipality may regulate inclusionary development through a steep slope ordinance, provided the ordinance also regulates non-inclusionary developments in a consistent manner.

In other words, if the Borough had regulated slopes by adopting an ordinance regulating all land use development in the municipality, it may apply the existing ordinance to a potential affordable housing site. However, if a municipality has allowed, for example, shopping center and office space development to occur without regulating the type and intensity of development that may occur on slopes, the COAH regulation does not allow a municipality to lower its realistic development potential due to slopes.

The Report does not claim that the Borough has adopted an ordinance regulating slopes. I have reviewed the municipal zoning, site plan and subdivision ordinances and have found no standards regulating the use of land based on slopes. Absent an ordinance regulating slopes, there is no authorization for Englewood Cliffs to eliminate any site or any portion of a site based on slopes.

The Harbor Vacant Land Adjustment Report disputes my analysis of N.J.A.C 5:93-4.2 as it relates to slopes in excess of 15 percent. The Report takes the position that the rule allows a municipality to allow all forms of development on slopes in excess of 15 percent – except affordable housing. For example, in approving the new LG office building at 111 Sylvan Avenue, the Borough permitted the disturbance of slopes in excess of 15 percent; but for some

reason finds these areas too sensitive to disturb for an inclusionary development. This logic cannot prevail in an exclusionary zoning case.

The New Jersey Department of Environmental Protection has no regulation that prevents or limits development on slopes in excess of 15 percent, except for slopes in excess of 15 percent that area also located within regulated wetlands. COAH allowed municipalities that had steep slope ordinances to regulate inclusionary developments to the same extent that they regulate all other forms of development. Without an ordinance regulating slopes, the COAH regulations do not permit the Borough to eliminate any land on 800 Sylvan Avenue or on any other site in the Borough due to slopes.

COAH's slope rule, as interpreted by the rule adoption process, is consistent and clear. The rule says that towns may eliminate sites or portions of sites due to wetlands, flood hazard areas and slopes in excess of 15 percent. In explaining the exclusion for slopes, the rule says:

In the case of slopes in excess of 15 percent, a municipality may regulate inclusionary development through a steep slope ordinance, provided the ordinance also regulates non-inclusionary developments in a consistent manner.

State agencies interpret rules by responding to comments from the public and publishing those comments in the State Register. The following was Comment 18 at 26 N.J.R. 2303:

COMMENT: In establishing the realistic development potential, will the Council compute it using gross or net density?

RESPONSE: The Council shall apply a density to the developable portion of the site. For example, it will allow the exclusion of wetland areas, floodplains, *areas appropriately regulated by steep slope ordinance* (emphasis provided) as permitted by the Council's rules and other areas that may be excluded as part of the Council's adjustment process. It will then apply a density of at least six units per acre and a 20 percent set-aside to the remaining portions of the site to determine a yield for the site.

State agencies also interpret their rules through publications. For a number of years, COAH published a manual to help the public understand COAH, its rules and its process. The manual

provided direction related to the preparation of a Housing Element and Fair Share Plan. I have several COAH manuals in my possession. Each contains similar language as found on page 11 of the 2001 COAH Handbook:

Sites may be excluded, in whole or part, due to: restrictive covenants that run with the land; *steep slopes, if regulated by a steep slope ordinance (emphasis provided)*; wetlands, floodplain; the necessity for a buffer surrounding an historic structure; surrounding land uses that are incompatible with residential development and the need to devote land for active and passive recreational purposes.

I conclude that the Borough has no legitimate basis for excluding any site from the realistic development potential due to slopes.

Harbor's Analysis of Various Sites

The Harbor Report includes Block 303, Lots 35, 36, 37 and 44 in the vacant land analysis. The site is .91 acres in size. The Report eliminates all but 0.68 acres from the realistic development calculation based on slopes in excess of 15 percent. Since the Borough has no ordinance regulating slopes, there is no justification for eliminating any part of Block 303, Lots 35, 36, 37 and 44 from the vacant land analysis based on slopes in excess of 15 percent.

In calculating the RDP for the site, the Borough utilizes a density of 10 units per acre. I agree with the proposed density. Applying the density to the full .91 acres, yields a potential yield of 9.1 units and an RDP (20 percent of 9.1) of 1.8 units. ✓

The Vacant Land Adjustment Report includes Block 601, Lots 14 and 15 in its vacant land inventory. The Report asserts that these contiguous lots are constrained by a stream and riparian buffers; but 1.27 acres are developable. The Report uses a density of nine (9) units per acre to calculate the site's RDP, compared to the 10 units per acre used for Block 303, Lots 35, 36, 37 and 44.⁹

⁹ I note that a prior consultant included Block 601, Lot 16 in the RDP. The prior consultant opined that 1.39 acres of this property is developable and should be included in the RDP. The Harbor Report excludes this parcel for a variety of reasons, in part justifying its exclusion because COAH had determined that the site is landlocked. I would

Both densities will yield two to 2.5 story development. Given the need for affordable housing, I have used 10 units per acre on the 1.27 acres of developable land to compute an RDP of 2.5.

Block 603, Lot 20 is a 1.07-acre lot at the corner of Summit Street and Demarest Avenue. The Harbor Report does not identify any environmental constraints on the property. Harbor uses a density of seven (7) units per acre to calculate the site's RDP. I opt for a higher density due to the need for affordable housing and calculate the RDP based on a density of 10 units per acre. This density should yield similar two (2) to 2.5 story construction and will yield an RDP of 2.0 units.

Block 1101, Lot 6 is located across from the intersection of Roberts Road and Barbara Drive. It is an unconstrained 0.73-acre site. Applying a density of 10 units per acre, based on the need for affordable housing, results in an RDP of 1.4.

Sites 21-24 (8, 10 and 12 Sara Lane) are sites that have been excluded from the vacant land inventory due to slopes in excess of 15 percent. However, since the Borough has not adopted a steep slope ordinance, there is no basis for eliminating these properties. It appears that some of these lots could be consolidated with Block 303, Lots 35, 26, 37 and 44 (Sites 17-20), which have also been erroneously eliminated due to slopes in excess of 15 percent, to provide additional affordable housing opportunities.

The combined acreage of these lots (Sites 17-24) is 1.57. Harbor's vacant land adjustment analysis spreadsheet identifies 10 units per acre for Lots 17-20 and eight (8) units per acre for Lots 21-24. At 10 units per acre, these lots would yield an RDP of 3.1.

Portions of Sites 55 and 56 have also been eliminated due to steep slopes. They are contiguous properties under common ownership (at 575 and 577 Floyd Street) and represent approximately

urge the Special Master to analyze the realistic development potential of Block 601, Lot 16 and determine if there is a possibility of consolidation with Block 601 Lots 14 and 15.

1.2 acres that may yield affordable housing. The narrative in the vacant land spreadsheet does not indicate any development on these sites. At 10 units per acre, this site would generate an RDP of 2.4 units.

Other Developed Sites

One of the principles of COAH's vacant land adjustment process is that the RDP increases as sites become available. Based on this principle, the Borough has properly included a 2.03 acre site that it allegedly controls on which it proposes to build 57 units. Since the RDP for the site equals 20 percent of the anticipated yield, the municipal site has an RDP of 11.4.

Changing Circumstances/Squandered Opportunities

COAH and the Courts have established that the realistic development potential can change based on misrepresentations or changing circumstances. In Montvale, COAH recalculated the Borough's RDP due to the Borough's failure to purchase open space.

COAH also determined that the realistic development potential of a site may change based on the actual zoning. In Wanaque, COAH determined that the realistic development potential of a site was to be based on a density of six (6) units per acre. However, when Fair Share Housing Center (FSHC) highlighted that the site had been approved at a much higher density, COAH altered the realistic development potential based on the density permitted by the municipal ordinance. In fact, COAH increased the realistic development potential of this site despite the fact that the developer of the property had already received approvals based on the higher density without the higher affordable housing obligation. The Borough was ordered to address the larger realistic development potential even though the developer of the subject property was under no obligation to amend the terms of its approval (and the developer did not accept a higher affordable housing obligation).

In Cherry Hill, the Township had established that land was a scarce resource and had received a vacant land adjustment. It proceeded to support a redevelopment effort designed to convert the "Garden State Race Track" to a large regional shopping center and market housing. However, Fair Share Housing Center petitioned the court to require that an affordable housing obligation

be attached to any approval of the “race track site.” The issue was heard by the Supreme Court. The Supreme Court sought COAH’s guidance before deciding this case and COAH’s amicus brief established the concept of changing circumstances:

the fact that N.J.A.C. 5:93-4.2(f) allows a presumption that a first-round RDP calculation will continue in the second round does not permit Cherry Hill to ignore the fact that the racetrack site is now available for development and should now be included in Cherry Hill's vacant land inventory. *The rule establishes a presumption, which can be rebutted by facts such as those that are presented here.... The Council's administration of vacant land adjustment [for] municipalities has always allowed for changes in the RDP calculation due to changed municipal circumstances.* Fair Share Housing Center, Inc. v. Cherry Hill, 173 N.J. 393, 413 (2002)(emphasis in original opinion).

In 1995, Roseland updated its 1988 vacant land inventory and represented Block 20, Lots 3-6, 11, 12 and 14 as almost entirely wetlands and/or flood hazard area and said that the parcel was the subject of an application for office space that was not pursued because of the environmental constraints. Subsequently, Lot 3, approximately 28 acres, was developed as office space.

Court Master, Elizabeth McManus, P.P., has recommended that Roseland must include Block 20, Lot 3 in its RDP:

Block 20, Lot 3 (as well as adjacent lots) was determined not to generate an RDP in the 1985 Housing Plan due to being “almost entirely wetland and/or flood hazard area. It is located in an area of new commercial office development.” The site’s subsequent office development suggests that the environmental constraints did not accurately reflect the developability of the property. In the absence of additional relevant information being submitted, I recommend the site generate an RDP at a density that reflects the character of the area and the need for affordable housing.

In Cranford, Cranford Development Associates received a “builder’s remedy” for an inclusionary development that would have generated 54 very low, low and moderate income units. The Township purchased the property and resold it at a reduced density. The Township, through these transactions, reduced the affordable housing yield of the subject property to 34 units. The Honorable Judge Kenny ruled that the Township must create a realistic opportunity

for the 20 lost affordable housing units when submitting its plan for its third round housing obligation.

In 1997, COAH directed Englewood Cliffs to rezone the Prentice Hall site for inclusionary development. The Borough refused. During this declaratory judgement process, I have learned that the Prentice Hall site is being redeveloped per Borough approvals, not for affordable housing, but for a massive office complex for LG.

The Borough's refusal to create affordable housing opportunities on the Prentice Hall/LG site is similar to the inaccurate portrayal of a site's development potential in Wanaque. Its refusal to rezone for inclusionary development and allow redevelopment for an office building is similar to Roseland permitting an office building to be constructed on a site that could have been zoned for affordable housing. Englewood Cliffs' defiance of COAH's directive to rezone the Prentice Hall site is similar to Cranford's defiance of a Cranford "builder's remedy order." A requirement to account (make up for) for its refusal to comply with COAH's requirement is similar to Judge Kenny's response to Cranford's effort to lower the density on the builder's remedy site. A requirement for Englewood Cliffs to be accountable for the squandered opportunity of the Prentice Hall site is also similar to the AMG Court increasing each municipal obligation by 20 percent to account for units lost as a result of vacant land being a scarce resource.

As in Wanaque, Cherry Hill, Roseland and Cranford, the Borough must be accountable for squandering an affordable housing opportunity. The massive office construction currently underway (four stories over parking) on the future LG site demonstrates that the site would also have been suitable for high density residential development, similar to the 800 Sylvan Avenue proposal. The site has significant frontage on Sylvan Avenue, State Highway 9W. It is across the street from intense, existing, commercial development.

The site's irregular shape is a factor that would suggest a lower density than might otherwise be assigned. **At 25 units per acre, this 27.3 acre site would generate an RDP of 136 affordable units.**

Inclusion in the Vacant Land Inventory of the 800 Sylvan Avenue site

The most extraordinary deviation from COAH's regulations as promulgated, in Harbor's Vacant Land Analysis, is its inclusion of the site at 800 Sylvan Avenue as a site that contributes to the RDP. This site is not vacant. It is not devoted to a "low density use." It is a fully developed site, developed with currently unoccupied office buildings and associated parking. It is thus not a site that can be included in the calculation of the RDP under N.J.A.C. 5:93-4.2(e), as promulgated. Rather, as discussed below, it is the Court's responsibility to determine how the site should be utilized to enable the municipality to satisfy its so-called "unmet need."

Similarly, at page 21 of Harbor's Vacant Land Analysis, Harbor also improperly includes a proposal, before the Board of Adjustment, to redevelop 1.90 acres at 20-32 Sylvan Avenue and 4 Bayview Avenue for 30 total units. This site, however, is a currently developed property. It is neither vacant nor a "low density use." Harbor improperly assigns this site an RDP of 6.

Correction of RDP based on COAH's Rule

Corrected to conform to COAH's rules as written, Harbor's proposed determination of the RDP of Englewood Cliffs under COAH's rules should be recalculated as follows:

The vacant sites in the community have a realistic development potential of 13.2.

The RDP of the municipal site is 11.4 affordable units.

The RDP for the LG site is 136.5 affordable units.

The total corrected RDP under the COAH rules as written is 161.1, or 161, affordable units.

THE UNMET NEED

As noted above, COAH's second round rule mandates that the portion of the housing obligation that cannot be addressed with vacant sites or sites devoted to low density development does not go away. The increment between the RDP and the municipal fair share (in this case, 584 low

and moderate income housing units) is referred to as the “unmet need” and must be addressed with a plan that promotes redevelopment. N.J.A.C. 5:93-4.2(h).

As COAH recognized, there may be sites within the municipality that are neither “vacant sites” nor “sites that are devoted to a specific use which involve relatively low density development,” but which may be available--or become available—for future redevelopment. Those sites must be considered to meet the unmet need (N.J.A.C. 5:93-4.2(h)):

If the realistic development potential described in (e) above is less than the municipal calculated need, minus credits, pursuant to N.J.A.C. 5:93-3.4, the Council shall review the existing municipal land use map for areas that may develop or redevelop. Examples of such areas include, but are not limited to; a private golf club owned by its members, publicly owned land; downtown mixed use areas; high density residential areas surrounding the downtown; areas with a large aging housing stock appropriate for accessory apartments; and properties that may be subdivided and support additional development. . . .

The rule placed on COAH - not the municipality - the ultimate responsibility to determine how these sites would be rezoned to address the unmet need.

N.J.A.C. 5:93-4.2(h):

. . . After such an analysis, the Council, may require at least any combination of the following in an effort to address the housing obligation:

1. Zoning amendments that permit apartments or accessory apartments.
2. Overlay zoning requiring inclusionary development or the imposition of a development fee, consistent with N.J.A.C. 5:93-8; in approving an overlay zone, the Council may allow the existing use to continue and expand as a conforming use, but provide that where the prior use on the site is changed, the site shall produce low and moderate income housing or a development fee; or
3. Zoning amendments that include a development fee.

State agencies have the opportunity to explain their rules by responding to public comments in the New Jersey Register. COAH explained the intent of this rule at 25 N.J.R. 5770:

Comment: After the realistic development potential is determined, the rule proposal says that the Council may require at least some combination of methods to capture a contribution toward affordable housing as development or redevelopment occurs. Insofar as this language is intended to give the Council discretion in which combination of backup provisions to apply, this language is acceptable. However, it could be read to allow the Council not to require any backup provisions at all.

Response: *The language is intended to give the Council discretion in the appropriate method(s) to capture the contribution toward affordable housing* (emphasis provided). In general, some method(s) will be required of all municipalities seeking a vacant land adjustment.

Sites like 800 Sylvan Avenue and 20-32 Sylvan Avenue/4 Bayview Avenue¹⁰ are clearly covered by N.J.A.C. 5:93-4.2(h), sites that are considered when the capacity of vacant land and sites with relatively low density development to absorb affordable housing (the realistic development potential) is insufficient to satisfy the total housing obligation. In such circumstances, the regulation places upon COAH or a court the responsibility to determine how such properties should be rezoned to address the remaining unmet housing obligation.

Clearly, this is how COAH viewed the rule in 1997, when it required Englewood Cliffs to rezone the Prentice Hall office site to address the unmet need. The Borough's refusal to create the housing opportunities through COAH's second round adjustment process resulted in COAH denying Englewood Cliffs substantive certification. (See COAH's September 10, 1997 Compliance Report, page 8, Exhibit 2 to this Report) It is also the way that COAH viewed the rule in 1995, when it required another redevelopment site to be rezoned in Wood-Ridge. Similarly, Fair Lawn received a 1996 substantive certification based on creating three (3) zones to address the unmet need. (COAH's reports on Wood-Ridge and Fair Lawn are also included as part of Exhibit 2)

¹⁰ 20-32 Sylvan Avenue/4 Bayview Avenue had an application to build a mixed-use development before the Board of Adjustment according to the Vacant Land Analysis (Harbor Housing Element, Appendix A-1, page 21).

The Harbor report implicitly suggests that even if suitable redevelopable sites are available, the municipality may disregard those sites and attempt to meet only a small portion of the unmet need.

COAH's rule does not justify that position. In explaining its rules to the public in various manuals over the years, COAH described the entire unmet need as a goal to be addressed.¹¹

Later, in adopting its third round rules, the unmet need was described as follows at N.J.A.C. 5:97-5.3(a):

All components designed to address unmet need as part of a municipality's prior round certification or judgment of compliance shall continue in full force (for example, overlay zoning shall be retained). Any affordable housing units created thereunder shall be credited toward unmet need until such time as the municipality has provided for its entire unmet need. During the Council's review of the municipality's petition for substantive certification, the Council shall review the municipality's mechanisms to address unmet need and may require the municipality to amend or add additional mechanisms in accordance with (b) below.

Thus, the rules, as written, envision sites like 800 Sylvan Avenue to be a response to the unmet need; and the rules, as written, envision a robust response to the unmet need.

As explained below, by addressing the unmet need through a zoning amendment under N.J.A.C. 5:93-4.1(h)(1), the Court can create realistic housing opportunities on 800 Sylvan Avenue to satisfy a substantial portion of the unmet need of Englewood Cliffs that would otherwise go unaddressed.

THE INTERPRETATION OF THE RULE CHANGES WITHOUT RULE MAKING

Harbor includes sites that are not vacant and are not currently devoted to low density uses in the RDP. It justifies this shift based on COAH practices.

¹¹ Page 13 of 2001 COAH Handbook.

The Supreme Court recognized that COAH had ceased to function in its March 2015 Decision. However, the seeds of COAH's demise came long before the Supreme Court "signed the death certificate." The Supreme Court's Decision was based on COAH's failure to adopt constitutionally compliant rules since the 1993 and 1994 adoption of N.J.A.C. 5:93-1. However, the failure to adopt compliant rules was only the proverbial "tip of the iceberg" of COAH's non-compliance with its responsibilities under the Fair Housing Act and the Constitution.

As the Appellate Division itself noted in striking down COAH's 2004 regulations, COAH went into slow motion between 1999 and the court's decision on the validity of its 2004 rules in 2007. It did not adopt third round rules until 2004 and, during the period between 2004 and 2007, it processed only four petitions for substantive certification all the way through to a grant of substantive certification.

The seeds of COAH's demise also included the failure to enforce its rules and its practice of re-interpreting its rules to reduce municipal housing obligations without proper rule making. As discussed above, based on the plain language at N.J.A.C. 5:93-4.2(d), the realistic development potential includes only vacant sites and sites that are devoted to a specific use which involves relatively low density development. However, without rule making, COAH "pivoted" to an approach that deviated from the terms of this rule. In Atlantic Highlands and Haddonfield (see Exhibit 3), for example, COAH determined that developed sites could--or perhaps should--be included in the realistic development potential. This was particularly significant because N.J.A.C. 5:93-4.2(g) allows a municipality to satisfy its RDP without zoning specific sites, included in the RDP calculation, if the municipality can address its entire RDP through other means. COAH also allowed the municipality to exclude a developed site, offered for inclusionary development, from its response to its unmet need.

For example, in Atlantic Highlands, K. Hovnanian was offering to redevelop two (2) sites for affordable housing. Rather than directing the Borough to rezone the sites to address the unmet need, COAH allowed the Borough to use the sites to calculate its realistic development potential. At the time, the Borough could have addressed its realistic development potential through a variety of compliance techniques, including a regional contribution agreement (in which a

municipality could pay another municipality to address a housing obligation). With no prospect of receiving relief from COAH, K. Hovnanian dropped out of the COAH process.

In Haddonfield, the Bancroft school was in the process of vacating its Haddonfield campus and the campus was being offered for inclusionary development. Again, COAH allowed the Borough to incorporate the Bancroft campus in its realistic development potential.

In Atlantic Highlands and Haddonfield, rather than requiring that developed sites, offered for redevelopment, be zoned for affordable housing, COAH allowed the municipality to include the sites in the calculation of the realistic development potential. In each case, the Borough was allowed to use other compliance techniques in lieu of rezoning the sites offered for affordable housing.

COAH's disregard of the actual language of its own rule has two consequences. First, it creates perverse incentives. If the owner of a developed property comes forward and offers its property for inclusionary redevelopment, that property is included in the RDP and the municipality would be free not to rezone it for inclusionary development. If the owner withholds the property, the property is not included in the RDP and COAH or the court may require the site to be rezoned for affordable housing. This practice thus creates an incentive for property owners and developers to withhold developed properties during the period that municipalities are formulating their housing plans.

Second, it actually diminishes the extent to which municipalities satisfy their constitutional housing obligations. Under COAH's latter practice described above, a municipality with one significant developed but potentially redevelopable site can attempt to "low-ball" the RDP of that site and then formulate a plan to address its artificially small RDP without utilizing that site. It could then refuse to utilize the site to meet either its artificially small RDP or its much larger unmet need. This leaves the municipality with a large unmet need and with a site that is indisputably suitable for inclusionary development but not rezoned for that purpose.

These practices raise legal issues which are beyond the scope of this report. I merely note that COAH's latter practices were notably unsuccessful in actually producing housing to address the unmet need portion of municipal housing obligations. As of 2015, COAH's records had indicated that approximately 1,204 units had been produced state-wide to address the unmet need. Nearly 30 percent of this housing had been produced in one (1) municipality - Cherry Hill Township.

From a planning perspective, I find that the State would be much more successful in addressing affordable housing in land poor municipalities if the courts would implement the COAH regulations as written.

Even if one accepts for purpose of argument Harbor's suggestion that the site at 800 Sylvan Avenue can legitimately be included in the calculation of the RDP, Harbor's calculation is incompatible with COAH's rules.

CRITIQUE OF HARBOR'S RDP ANALYSIS OF 800 SYLVAN AVENUE

800 Sylvan Avenue is a 28-acre infill redevelopment site located between Hollywood Avenue and the CNBC office building. (Exhibit 4) Approximately, eight (8) acres is occupied by Unilever. The other 20 acres is occupied by a vacated office use and is being offered for inclusionary development.

N.J.A.C. 5:93-4.2 describes the process for determining the developable portion of the subject property. When one follows the regulations, virtually the entire 20 acres is developable.

However, *Harbor has devised its own methodology* to shrink the developable portion of the site from 20 acres to 9.14 acres. First, Harbor has determined that there must be a subdivision line separating the Unilever portion of the site from the residential portion of the site. Then, Harbor improperly reduces the size of 800 Sylvan Avenue from 20 acres to 15.27 acres based on set-back requirements from its artificially created subdivision line. COAH rules do not require any subdivision line and they certainly do not authorize that the size of the site be diminished by set-back requirements from internal lot lines.

Harbor then reduces the remaining 15.27 acres to 9.14 acres by subtracting the following from the developable portion of the site:

1. 1.7 acres for wetlands and transition areas;
2. 2 acres of forested area not already removed as wetlands and transition areas.
3. Approximately two acres of land, which is interspersed throughout the forested area, which comprised the remaining unpaved area was removed.

The narrative, on page 13 of the Harbor report¹², also mentions the removal of slopes in excess of 15 percent.

COAH regulations do not allow the land area used in the RDP calculation to be diminished due to forested areas. Thus, the removal of approximately four (4) acres of land because the land is forested or not covered by impervious surfaces (2 and 3 above) is not authorized by state regulations.

The State regulations do authorize the area impacted by wetlands to be subtracted from the area of land utilized for the RDP calculations. They do not authorize subtracting transition areas. This makes sense in that a reviewing agency does not necessarily know the size of the transition area when reviewing a vacant land inventory. The exclusion of transition areas in Englewood Cliffs, while all other municipalities comply with the State regulations, would conflict with COAH regulations and also result in an uneven enforcement of COAH's rules. Such selective enforcement would be unfair both to the municipalities that have complied with COAH's rules and to low and moderate income households who would be denied affordable housing in Englewood Cliffs.

As indicated by the attached illustrative concept plan, 167 units can be developed on the 800 Sylvan Avenue site without intrusion into protected wetlands.

¹² RDP of 800 Sylvan Avenue, December 10, 2018.

The narrative at page 13 of Harbor's RDP report for the 800 Sylvan site also discusses the removal of slopes in excess of 15 percent from the land area used to calculate the RDP. However, as discussed above, the Borough does not have an ordinance to regulate slopes. Without an ordinance regulating slopes, the COAH regulations do not permit the Borough to eliminate any land on 800 Sylvan Avenue or on any other site in the Borough due to slopes. The Borough has no basis for excluding any of the subject property from the realistic development potential due to slopes.

Thus, contrary to Harbor's report, the developable portion of the 800 Sylvan Avenue site as determined under COAH rules is much greater than 9.14 acres. The developable portion of the site is closer to 20 acres.

As explained above, in determining the density for purposes of calculating the RDP, COAH rules require that the character of the property and surrounding uses be weighted against the magnitude of the need for affordable housing. N.J.A.C. 5:93-4.2(e).

The State Development and Redevelopment Plan (SDRP) locates the site in its Metropolitan Planning Area, Planning Area 1. This is an area of New Jersey in which the SDRP encourages growth in compact forms. The SDRP encourages new housing units into appropriate non-residential settings. It encourages redevelopment at densities sufficient to support public transportation.¹³

The site is served by public water and sewer. Sewerage flows to the Bergen County Utilities Authority. Suez provides water to the property.

The site has significant frontage on Sylvan Avenue. Sylvan Avenue is State Highway 9W. As a State Highway, 9W is designed to move traffic from one community to another. There is a traffic light at Hollywood Avenue that will facilitate traffic movements in and out of the site. The site also has significant frontage on Floyd Street.

¹³ See Housing and Redevelopment Objectives at pages 191 and 192 of the SDRP.

In terms of the regional traffic network, the site is in close proximity to The Palisades Interstate Highway, Route 4 and Route 95. Thus, the site is an excellent location for younger households and older households seeking to locate in close proximity to work, recreation and cultural activities in New York City and the New York City Metropolitan Area.

There are few single-family detached homes in close proximity to the site. The main land use west of Floyd Avenue is the North Cliff Elementary School. There are recreation areas north of the School, including tennis courts and ball fields. It is sound planning to place high density housing adjacent to schools and recreational facilities. 800 Sylvan Avenue can include a walking path from the site to the school and the recreation areas as part of a future site plan approval.

There is a tree line on the property that helps screen the property from the land uses along Floyd Avenue and another tree line that helps screen the property from the CNBC building to the north.

The land to the east of State Highway 9W is part of the Palisades Interstate Park. The Park is 12 miles long and a half mile wide. It includes: more than 30 miles of hiking and ski trails; a boat launch ramp; a nature sanctuary; two boat basins; and historic sites.¹⁴ The subject property is less than a 10-minute drive to park locations such as the Alpine Picnic Area and the Greenbrook Nature Sanctuary.

I conclude that the 800 Sylvan Avenue can easily accommodate four-story¹⁵ inclusionary development because:

1. The site is an infill redevelopment site where the SDRP promotes densities that can support public transportation;

¹⁴ Source: Palisades Interstate Park website.

¹⁵ The various illustrative concept plans show buildings that are four residential stories above grade and four residential stories above one level of structured parking. Because of the topography of the site, the buildings that are four residential stories above one level of structured parking have a height similar to the buildings that are simply four residential stories above grade. For purposes of this report, I refer them all as four story buildings.

2. The site enjoys close proximity to an excellent regional traffic network that provides access to commuting, recreation and cultural centers.
3. The site is in close proximity to a school and recreational facilities.
4. The mass of the proposed buildings is consistent in scale with the surrounding non-residential uses.

The regional need for low and moderate income housing, based on Judge Jacobson's decision, is 38,228 units. The State has imposed severe development restrictions within much of the housing region as a result of the Highlands Legislation. Therefore, the need for affordable housing is particularly acute in the areas of the housing region that have the infrastructure to support higher density development. The need for affordable housing is particularly acute in Englewood Cliffs, which has failed to produce a single unit of affordable housing in the 40+ years since the initial Mount Laurel decision. When I consider the character of the area surrounding 800 Sylvan Avenue and the need to provide affordable housing, I conclude that the density used to calculate the realistic development potential of 800 Sylvan Avenue should be based on a four (4) story housing product.

800 Sylvan Avenue has prepared an 835-unit plan to demonstrate how much affordable housing can be situated on the site. The four (4) story inclusionary development can be constructed without intruding in regulated wetlands. The plan demonstrates that the site can yield a great deal of affordable housing within a four-story inclusionary development. The plan provides reasonable set-backs and buffers to Floyd Avenue and Sylvan Avenue. The plan complies with the State's RSIS parking standards.

In sum, if one accepts, for purpose of argument, Harbor's suggestion that the site at 800 Sylvan Avenue can legitimately be included in the calculation of the RDP, Harbor's calculation must be revised to conform to the standards established in COAH's rules.

The RDP should be recalculated as follows:

The vacant sites in the community have a realistic development potential of 13.2 affordable units.

The RDP of the municipal site and the site before the Board of Adjustment is 17.4 affordable units.

The RDP for the LG site is 136.5 affordable units.

The RDP for 800 Sylvan Avenue is 167 affordable units (20% of a total of 835 units).

The total corrected RDP is therefore 334.1 units.

MEETING THE HOUSING OBLIGATION—800 SYLVAN AVENUE

In a municipality which claims to have little remaining vacant land, the 20-acre site, at 800 Sylvan Avenue, is the largest site available for development of low and moderate income housing. Given the magnitude of the housing obligation of Englewood Cliffs and the paucity of its previous efforts to meet that obligation, any housing plan in 2019 that seriously attempts to satisfy the municipality's housing obligation must make efficient use of 800 Sylvan Avenue. This is true regardless of whether the site is utilized to satisfy the municipality's RDP or to address the municipality's unmet need.

800 Sylvan has offered two (2) illustrative concept plans (Exhibit 4) that demonstrate how the 20-acre site could properly be developed for 600 rental units, including 90 units of rental low and moderate income housing (a 15% set-aside). This plan consists of a number of 4-story multi-family buildings together with structured parking. This is not a plan that maximizes the yield of the property. Rather, it was designed to be appealing to the municipality while still providing a large number of low and moderate income units.

As explained above, four-story development is suitable for this site and compatible with the surrounding uses. Significantly, Scenic Hudson, Inc. and the National Resources Defense Council, organizations that have a significant interest in preserving the scenic integrity of the Palisades Interstate Park and its surroundings, have reviewed the illustrative concept plan and do not oppose the four (4) story construction proposal developed by 800 Sylvan Avenue. (Exhibit 5).

The illustrative concept plans provide very generous building set-backs of approximately 175 feet from Floyd Street and 270 feet from Sylvan Avenue. The rear yard is screened by an existing tree line. Floyd Street provides additional separation between the proposed dwellings and the homes located across Floyd Street.

Harbor objects to the proposed illustrative concept plan on various planning grounds. None are valid.

Harbor's Report asserts that one of the 600-unit concept plans is flawed because it is based on shared parking between Unilever and the residents of the proposed inclusionary development. However, as shown by the illustrative concept plans, the site can be laid out so that Unilever parking is totally independent of the parking for the inclusionary development.

Harbor contends that the Unilever portion of the site must be separated from the inclusionary portion of 800 Sylvan Avenue by a subdivision line and that there must be 60 feet of distance between the buildings on either side of the subdivision line—a total of 120 feet of separation. There is no valid planning justification for any such separation. In effect, 800 Sylvan Avenue is offering to create a mixed use planned community. There is no need for a subdivision line and no need for 120 feet of space between residential and non-residential buildings.

Other settlements in municipalities, that have actually produced some affordable housing, have provided for mixed-use development and do not require a subdivision to separate the residential and non-residential uses. For example, South Brunswick has negotiated a settlement that creates a Planned Residential Development (PRD) Zone where existing and proposed commercial development will be situated adjacent to townhouse and multi-family development (Exhibit 7).

In Montvale (Exhibit 6), on a similar sized parcel as 800 Sylvan Avenue,¹⁶ the Borough negotiated a very creative settlement involving the former Mercedes Benz office campus. The settlement includes a mixed-use development that includes decked parking and four (4) story

¹⁶ The Montvale site is approximately 32 acres, compared to the approximately 28 acres associated with 800 Sylvan Avenue.

development, including: a hotel; retail, office and residential development situated side by side with shared parking. In other words, Montvale did not require a large buffer between the residential and non-residential uses on its inclusionary site.¹⁷

The 600-unit illustrative concept plans provide approximately 90+ feet between the existing Unilever buildings and the nearest proposed housing unit. In contrast, the South Brunswick settlement agreement and ordinance referenced above permits residential buildings and non-residential buildings to be located 50 feet apart. (Exhibit 7) The Montvale ordinance requires 60 feet between buildings.

In my professional opinion, the 90+ feet proposed by 800 Sylvan Avenue is more than adequate. The scale of the residential buildings will be similar to the surrounding non-residential uses. The distance between buildings does not conflict with any federal or state standard of which I am aware. The people that move into the proposed housing will be aware of the presence of the adjacent non-residential uses and will make a conscious decision to move into the proposed housing.

The Harbor Report raises purported “security and safety risks.” This contention is puzzling at best. Harbor seems to accept that the Unilever site is a safe use but that a subsequent research and development use, permitted by the current zoning, may not be safe.¹⁸ Harbor’s concern about potential “security and safety risks” raises the question, “If the research and development use is so dangerous, why does the ordinance permit the use adjacent to a single-family neighborhood and an existing school?” The answer to the question may be that there is no reason to be concerned about the alleged “security and safety risks.” However, should the court agree with the Borough that there should be a greater separation between residential and non-residential uses, 800 Sylvan Avenue can easily redesign its concept plans to accommodate well over 600 units since the current 600-unit concept plans provide very generous set-backs of

¹⁷ The MPUD ordinance adopted by Montvale. The ordinance includes standards for two sites: the old Mercedes Benz campus and another site located approximately one mile away.

¹⁸ Page 11 of Harbor Consultants Report.

approximately 174 feet from Floyd Street and approximately 270 feet from Sylvan Avenue.¹⁹ 800 Sylvan could also use its land more efficiently by wrapping its residences on all four sides of structured parking.

Harbor criticizes the illustrative concept plans due to the lack of recreational space displayed on those plans. But the concept plans are not finished site plans. They have been drawn to illustrate the potential yield of the site. 800 Sylvan Avenue has planned to create recreational areas within its buildings and courtyards. Thus, the concept plans include fitness areas. Each building will have a pool and hot tubs. There will be sitting areas and barbecue pits. There is space on the site, if necessary, for tot lots. There will be sidewalks and walking trails throughout the site. I would also note that the site is within walking distance of the recreational areas associated with the North Cliff Elementary School. It is also in close proximity to the tennis courts and recreational areas associated at the terminus of Floyd Street, just north of the school.

For those that would use them, there are ball fields and tennis courts located at the terminus of Floyd Street. In addition, the Palisades Interstate Park is located across Sylvan Avenue. I am convinced that 800 Sylvan can adequately address the recreational needs of its tenants with the fitness center and play areas that can be incorporated in the courtyards and in other areas of the site.

So, in conclusion, I find that 800 Sylvan Avenue's proposals are compatible with the surrounding area. I conclude that the site has excellent access and that the site is relatively constraint free. I conclude that 800 Sylvan Avenue has demonstrated that it can provide adequate parking on-site and has provided very generous set-backs to adjacent streets. I conclude that it can address the recreational needs of its residents within its proposed buildings, court yards and other areas of the site. I find that the distance between the proposed buildings on the 28 acre 800 Sylvan Avenue site is adequate. This plan would create realistic opportunities for the construction of 90 units of rental low and moderate income housing.

¹⁹ There is a deed restriction that prevents parking in a dedicated area along Sylvan Avenue. Buildings are permitted within the area.

MEETING THE HOUSING OBLIGATION--THE BOROUGH'S PLAN FOR SATISFYING THE RDP

Englewood Cliffs has planned for an RDP of 77 units by proposing to build 57 affordable housing units between Sylvan Avenue and Hudson Terrace. Since the concept is to build family rentals, the Borough is seeking a rental bonus, or extra credit of 20 units. This plan is plainly insufficient. As outlined above, if the RDP is calculated in accordance with COAH's rules, the RDP is 161 units. If it is calculated utilizing Harbor's understanding of COAH's more recent practice, the RDP is 334 units. The Borough's response is between 84 and 257 units short of addressing its RDP. This is a shortfall that can be closed or eliminated by zoning 800 Sylvan Avenue.

As presented, however, the plan does not comply with COAH rules. Englewood Cliffs has never addressed its second-round obligation of 219 housing units. Clearly, a municipality must address its second-round obligation before addressing its third-round housing obligation.²⁰

At this point Englewood Cliffs can no longer secure prior round rental bonus credits for rental projects designed to meet its prior round obligation. The rental bonus was offered by COAH as an incentive to build affordable housing in a timely manner. The prior (second) round housing obligation ran from 1987-1999 housing obligation. It expired nearly 20 years ago. In 2010, Judge Skillman, writing for the panel of the Appellate Division of Superior Court that overturned COAH's third round rules in 2010, determined that the rental bonus was designed as an incentive to build rental housing. He found that this salutary objective is not served by allowing a

²⁰ COAH determined that credits shall be applied to the second round obligation prior to the third round obligation in adopting N.J.A.C. 5:97-4.1(a) ("At the time of petition, credits and corresponding bonuses for previous housing activity shall be applied toward the prior round obligation before the credits may be applied toward the growth share obligation, provided such activity complies with the applicable criteria in this subchapter and the applicable formulas set forth in N.J.A.C. 5:97-3. If the municipality's second round substantive certification included a vacant land adjustment, the credits shall be applied toward the realistic development potential (RDP) before the credits may be applied toward unmet need or the growth share obligation.")

municipality to receive a rental bonus for rental units that are still not constructed a decade after the expiration of the prior round.

It is now nearly two decades after the second-round rules expired. Clearly, Englewood Cliffs cannot receive a rental bonus for second round rental units that are still not constructed. Without these rental bonus credits, the plan provides at most 57 credits, all in a single problematic project on municipal property

Harbor's concept plan (Exhibit 8) for the municipally-owned property includes the demolition of at least two (2) major structures and the closing off of Clendinen Place for parking. The proposed construction of the 57 affordable housing units is part of an overall redevelopment of the property providing for construction of a new police department building, as well as 57 low and moderate income units. The affordable housing would be concentrated immediately behind a new police department building and an existing fire station. The Borough also proposes to build a new community center adjacent to the police station.

In effect, Harbor has developed a mixed use concept plan. Although Harbor has opined that 800 Sylvan's mixed use concept plan must include subdivision lines and specific set-back requirements, the Harbor plan for the municipal site does not include any subdivision lines or set-back requirements. It is a site dominated with buildings and parking and little space in between.

Parking would be at a premium at this municipal/affordable housing site. The concept plan shows 200 parking spaces for a variety of uses. The parking appears to be available for residents and people visiting municipal buildings (for example, the community center and police department). Thirty-two of the parking spaces are on the street. Few of the parking spaces are adjacent to the housing. In order to provide the 200 spaces, the concept plan requires on street parking, with 11 parking spaces at right angles to New Street in close proximity to the Hudson Street intersection. The location of some of the parking spaces along New Street and Kahn Terrace are dangerously close to intersections and some of the parking will have to be eliminated.

In addition, the parking adjacent to the municipal building does not seem to be functional. The 12 spaces, as drawn, are literally adjacent to the building with no room for circulation.

Traffic circulation is also an issue with the proposed concept plan. The driveways are practically adjacent to each other on Sylvan Avenue and Hudson Terrace. The driveway locations will contribute to confusion due to multiple cars entering and exiting the adjacent roads from multiple directions. Much of the parking is dead-end parking, and the 11 parking spaces between the proposed housing and proposed police station appear unworkable unless it can be accessed from Clendinen Place (they are angled in the wrong direction). Also, the concept plan does not provide convenient locations for solid waste disposal and the proposed dead-end parking will make trash pick-up a challenge.

The concept plan seems to require building the proposed three story, 36-foot high buildings virtually to the street lines. By comparison, 800 Sylvan Avenue is proposing minimum set-backs of 174 and 270 feet on its 600-unit concept.

There is no room for above ground storm water detention. The below ground detention would add to the cost of the project.

The proposed 57 affordable units must comply with the State's regulations regarding bedroom mix. Therefore, the Borough's proposed development must include at least 12 three (3) bedroom units and may not include more than 11 one (1) bedroom units. The remaining 34 units must be two (2) bedroom units. Based on the data from the Rutgers Center for Real Estate study entitled "Who Lives in New Jersey," the Borough's proposal will generate 30 school age children in addition to younger children that may require recreation facilities. The only recreation area shown on the plan is a small play area adjacent to Hudson Terrace. The concept plan does not indicate what type of recreational activities or facilities (if any) will be provided within the proposed community center.

In my professional opinion, a site plan with such negligible set-backs, such poor circulation and so much questionable parking does not represent sound planning. The concept plan demonstrates that the site is not suitable for 57 housing units.

It is useful to compare the Borough's concept plan to that of 800 Sylvan Avenue. 800 Sylvan proposes to intersperse very low, low and moderate income households into a community with generous set-backs. 800 Sylvan Avenue is adjacent to a school and within walking distance of a major recreational area. 800 Sylvan Avenue will be offering state of the art fitness centers. It will be providing swimming pools, hot tubs, barbecue pits and sitting areas within its courtyards. The Borough offers to cluster all of its affordable housing in one location. The affordable housing would not be dispersed among housing for other people in the community. It would have minimal parking immediately adjacent to the housing. It would be immediately adjacent to the traffic and noise associated with the police and fire department. The buildings are proposed to be constructed almost to the street line.

In addition, the Borough's site requires demolition, remediation and the construction of a new police department and community center. The Harbor Report does not indicate if the housing will be constructed before or after the buildings dedicated to the police department and community center.

The phasing of the new municipal complex is important because N.J.A.C. 5:93-5.5, the regulation the Borough relies on in proposing to build the housing themselves, requires that construction begin on the affordable housing within two years.

The Harbor Housing Element, at page 26, says that the Borough had submitted a construction schedule in a previous submission for 40 units and that Englewood Cliffs was relying on that same construction timetable for its 57-unit project, plus a new police department and community center. In the absence of a construction schedule for the entire project, dealing with demolition, remediation and the timing associated with the construction of the police station and community center, it is impossible to determine whether provision of 57 affordable units within this project is realistic on a timely basis. Missing is an overall phasing plan for the site to demonstrate the

sequenced construction of the police station, community center and the affordable housing. Under COAH standards, the construction timetable must demonstrate that the affordable housing will be constructed within two years of any court approval of the municipal plan.

Harbor has attached an undated spending plan with its December 10, 2018 Housing Element. The spending plan indicates that the Borough's site will be designed for 36 to 40 units, not 57 units. The spending plan was prepared prior to the Borough purchase of land along Hudson Terrace. At the time, the spending plan indicated that the Borough had \$2,906,207.47 in its affordable housing trust fund. It anticipated the potential of collecting an additional \$1,986,411.93 in residential development fees, \$1,009,274.77 in non-residential development fees, and \$14,531 in interest.

The Borough's projections indicate that it would have \$5,916,425 available in the affordable housing trust fund by 2025. Of this total, \$1,774,928 would be dedicated to affordability assistance (a regulatory requirement) and up to \$1,161,092 would be devoted to administrative purposes. The Borough is projecting that the remaining \$2,980,405 will be spent on building the affordable housing. It is my understanding that, of this sum, nearly \$2 million has already been spent on the land purchase that expanded its 100 percent affordable housing site to 2.03 acres.

The Borough's consultant, Dr. Robert Powell, has developed various estimates of the cost to construct the 57 units proposed for the Hudson Terrace property. Dr. Powell estimates the total development budget to be between \$15,447,258 and \$16,704,104. I find no estimate of demolition and remediation costs included in either development budget. Dr. Powell recognizes that a successful nine (9) percent tax credit application could generate the equity necessary to build the proposed project. However, he also notes that the tax credit program is a highly competitive program.

New Jersey's Housing Mortgage Finance Agency administers the program and its website indicates that the program receives three (3) applications for every one (1) it can fund. In the more likely event that the Borough receives four (4) percent tax credits, Dr. Powell estimates a

municipal obligation to fund a shortfall of 11.5 million, unless the Borough also receives a Home Loan Fund loan of 4.5 million dollars.²¹

But the \$11.5 million is only part of the Borough's responsibility based on its 57-unit plan. It must also pay for the new police station and community center.

The court is faced with a municipality that has not built one affordable housing in the 40+ years since the Supreme Court issued its initial Mount Laurel Decision. It is now asking the court to believe that it will clear a site for a municipal complex and construct a new police station, community center and 57 units of affordable housing within two years. It is asking the court to believe that it will pay for all of this activity – *no matter what it costs*.

THE UNMET NEED

With a total housing obligation of 584 units, the Borough will have a large unmet need, even if the court accepts my recommendations regarding the RDP.

If, in accordance with the COAH rule, the site at 800 Sylvan Avenue is not utilized to calculate the municipal RDP, the Court must utilize it to address a portion of the unmet need. N.J.A.C. 5:93-4.2(h).

The Harbor Report does not utilize the site at 800 Sylvan Avenue for this purpose. Instead, it recommends that the Borough respond to the remaining housing obligation with a mandatory set-aside ordinance and with overlay zones on three (3) areas of the Borough.

Mandatory Set-aside Ordinance

The mandatory set-aside ordinance imposes an obligation to provide affordable housing whenever the Borough approves an application for multi-family housing or single-family

²¹ Dr. Powell's estimates will be the subject of another consultant's review.

detached housing for five or more units. If the site had been zoned for a residential use, there must be a density bonus granted in order for the mandatory set-aside ordinance to take effect. However, the ordinance does not require the Borough to approve any such developments and the New Jersey Construction Reporter reveals that it has been at least a decade since any form of attached housing has been constructed in the Borough. The mandatory set-aside ordinance does not create a realistic opportunity for any affordable housing.

Overlay Zone

An overlay zone does not amend the uses permitted in the impacted zoning district. It adds another development option. In the context of this litigation, the overlay zone adds an option designed to produce affordable housing. Property owners are not obligated to opt for the affordable housing development option.

In the case of Englewood Cliffs, the Borough is proposing an overlay zone on three (3) commercial areas: the East Palisades Avenue area, comprising 9.97 acres currently developed as permitted in the B-1 and B-4 Zones; the Hudson Terrace Mixed-Use Overlay Zone, which includes 16.2 acres which are also developed based on business zone uses; and the B-3 Rehabilitation Area Mixed Use Zone, an area described as a 9.95 acre commercial corridor in the southern portion of the Borough. The densities in all three (3) overlay zones are proposed as 15-20 units per acre and each will require a 20 percent set-aside for affordable housing that is for sale and a 15 percent set-aside for affordable rental housing.

COAH never developed standards for placing overlay zones on previously developed sites. The COAH minimum density and maximum set-aside standards have proved effective on vacant sites but are not relevant to fully developed properties.

The track record for such overlay zones in producing affordable housing is not inspiring. Many in the field have characterized overlay zoning as aspirational, with the hope that they create

affordable housing. I researched COAH's track record with regards to overlay zones during my representation of Cherry Hill. (Exhibit 9)²²

In preparing a May 14, 2015 Report for Cherry Hill, I reviewed COAH's regulations and the requirements that COAH has imposed on municipalities since 1994. I personally reviewed the compliance reports written by COAH staff between 1994 and 2002 in March of 2002. I have also reviewed COAH's *Municipal Status Reports* of second round compliance. With regards to third round substantive certifications of municipalities that received a second-round vacant land adjustment, I have relied on a July 25, 2013 planner's report, prepared by the Court's Master, Ms. Mary Beth Lonergan, P.P., in a matter involving Haddonfield Borough and Estaugh Commons, L.L.C. The Lonergan report provides information regarding the efforts of 10 municipalities to address the unmet need. I have supplemented the data from these sources with COAH's December 20, 2013 data regarding the total number of units built in municipalities that have received vacant land adjustments. I have limited this analysis to municipalities before COAH because I am unaware of a data source that provides the same information for municipalities seeking repose in court.

Exhibit 4 to my Cherry Hill Report includes a chart providing data on 54 municipalities that have received vacant land adjustments from COAH. The chart provides the fair share number, the realistic development potential and the units actually constructed in response to the unmet need. Units constructed toward the unmet need were calculated by subtracting units built from the realistic development potential. If the units built exceed the RDP, the municipality is given credit toward the unmet need (since the unmet need is that portion of the housing obligation in excess of the RDP). The data regarding the certification date and fair share are derived from COAH's Second Round *Municipal Status Report* as well as the narrative and appendices in the Lonergan Report. The RDP is derived from the *Municipal Status Report* by subtracting the numerical vacant land adjustment from the new construction obligation (see new and adjustment

²² The Cherry Hill plan that I prepared was the result of a settlement with FSHC. The plan incorporated previously developed sites in the RDP, contrary to N.J.A.C. 5:93-4.2 as written. The Township addressed its RDP and received credit for over 2000 units. The plan, resulting from the settlement, included all developers that had offered sites for affordable housing. The Township's plan for the unmet need may be the most robust plan approved by COAH or a court.

columns). It is also derived from the COAH Compliance Reports in the appendix of Ms. Lonergan's report. The units constructed are gleaned from COAH's monitoring records as of December 20, 2013.

Of the 54 municipalities, 28 municipalities (more than half) had not created a single affordable unit in response to its unmet need.

As of my May 14, 2015 Report, Cherry Hill had created 1,067 low and moderate income units. Since its realistic development potential was calculated to be 706, the Township had created 361 units toward its unmet need. Cherry Hill's 361 units toward the unmet need is the most in New Jersey and is 29 percent of the total units created toward the unmet need of the 54 COAH municipalities combined (1,254 units). Cherry Hill continues to be providing affordable housing by creating redevelopment opportunities with developers interested in building multi-family housing on previously developed properties.

In my professional opinion, there are two reasons why the Cherry Hill experience is so different than the remainder of the State. The first reason involves COAH's inability/refusal to enforce its own regulation to promote redevelopment in an effort to address the unmet need contrasted with FSHC's determination to enforce COAH's rule in Cherry Hill.

But the second reason involves the unpredictable nature of the redevelopment process. There is no density standard that creates an incentive to redevelop properties for inclusionary development that are currently: used as a thriving lumber yard; or inhabited by outdated buildings on contaminated properties that will require extensive remediation. It can be fairly common for a municipality to provide an overlay zone on properties and find that no one is interested within the overlay zone; but that other property owners outside of the overlay zone are interested in providing affordable housing.

In Cherry Hill, two (2) properties (Dwell and Pro Build (involving 58 affordable units)), that have contributed to the unmet need, have been approved as a result of receiving use variances. The Garden State Race Track is being redeveloped for a mixed-use development that will

include over 200 affordable housing units as a result of municipal efforts to promote redevelopment and FSHC's efforts to promote affordable housing. In addition, a developer that sought to build an inclusionary development on the Woodcrest Golf Course reached a settlement agreement that results in the developer redeveloping two (2) large developed parcels for inclusionary development (Hampton Road and Park Boulevard (involving 148 units)).

The main point to be made is that, in order to promote affordable housing, the courts should recognize developers that have an interest in building affordable housing. The second-round rules, as written, provided COAH and, of course, the courts the power to recognize the efforts of the private sector and treat the private sector as a resource rather than a pariah.

It is not clear that any of the property owners within Harbor's proposed overlay zones have expressed an intent to build inclusionary developments. However, 800 Sylvan Avenue has offered to build an inclusionary development with at least 90 very low, low and moderate income affordable rental units.

Englewood Cliffs is asserting that the three (3) overlay zones will produce a total of 95 affordable housing units. But, in order for the overlay zones to be effective, they need to create a financial incentive to redevelop an existing site that may be a thriving commercial property. Commercial properties, in a downtown, are not large tracts of land and often are in diverse ownership. Thus, to be effective, the overlay zones must provide an incentive for diverse property owners to cooperate in order to effectively use a housing option.

Even with financial incentives, many commercial properties are encumbered by long term leases. Certainly, municipal overlay zones should avoid counting on redevelopment of a government facility that will not redevelop because of the important governmental service offered.

I have examined the properties within the three (3) overlay zones (Exhibit 9). I have found that the three (3) overlay zones include 91 lots that would have to be consolidated in order to produce any meaningful affordable housing contribution.

The East Palisades Overlay Zone includes 31 lots. Thirteen of the lots appear to be owned by six (6) different entities. The rest of the lots appear to be in separate ownership. The Housing Element concludes that this overlay zone will include 9.97 acres that will be zoned at 15-20 units per acre and will produce 26 affordable housing units. In order for this overlay zone to generate 26 affordable housing units, the entire 9.95 acres would have to redevelop at a density of 17.5 units per acre with a 15 percent set-aside.

The B-3 Rehabilitation Area includes 34 lots. The only common ownership involves eight (8) lots owned by four (4) different entities. The Housing Element indicates that this overlay zone will include 9.95 acres that will be zoned at 15-20 units per acre and will produce 26 affordable housing units. In order for this overlay zone to generate 26 affordable housing units, the entire 9.95 acres would have to redevelop at a density of 17.5 units per acre with a 15 percent set-aside.

The Hudson Terrace area includes 24 lots. Five (5) of the lots are owned by two (2) separate entities. Two additional lots, encompassing approximately 1.5 acres of this 16.2 acre overlay zone, are owned by the Borough of Englewood Cliffs. According to Pogodata; NJ TaxRecords.net, the lots are used for public works and administration. Based on their use, I find them unlikely to redevelop as housing. The rest of the lots are in separate ownership. The Housing Element indicates that this overlay zone includes 16.2 acres of land that will be rezoned at 15-20 units per acre and will “produce an estimated 43 affordable housing units.”²³ In order for this overlay zone to generate 43 affordable housing units, the entire 16.2 acres would have to be developed at an average density of 17.5 units per acre with a 15 percent set-aside.

Each property owner and the Borough would have to agree to cooperate, consolidate lots, abandon uses that may be thriving, work through the contractual obligations of each lease and decide to build housing. In addition, the proposed density, as of right, in all the overlay zones is only 15 units per acre. In order to achieve an average density of 17.5 units per acre, property owners would be required to achieve various open space standards or maintain commercial uses on the first floor.

²³ Page 28 of Harbor’s 2018 Housing Element.

In contrast, 800 Sylvan Avenue is offering 20 acres that the Borough concedes is suitable for multi-family housing. It is ready, willing and able to build multi-family housing with a 15 percent affordable housing set-aside if rental housing is provided, and a 20 percent set-aside if housing is offered for sale. The 800 Sylvan Avenue site can readily accommodate up to 90 units of very low, low and moderate rental income housing.

CONCLUSION

The second-round rules, as written, provide an incentive for the private sector to come forward and help a municipality make a substantial contribution to a municipality's unmet housing obligation. The rules, as written, envision a robust response to the unmet need.

The interpretation of the rule has changed, without rulemaking, in such a way that private sector developers that offer to build affordable housing may be denied inclusionary zoning in favor of property owners who have no interest in redeveloping their properties; and, therefore, the interests of very low, low and moderate income households can be thwarted. I would ask the court to keep the Appellate Division's Fair Lawn Decision in mind and order the rezoning of 800 Sylvan Avenue for multi-family, inclusionary development:

The Fair Housing Act, N.J.S.A. 52:27D-301 to -329, contemplates the provision of actual affordable housing, not endless promise of future compliance. See Hills Dev. Co. v. Twp of Bernards, 103 N.J. 1, 43-44 (1986). The FHA grants a municipality significant discretion in structuring its housing element. (See N.J.S.A. 52:27D-311(a); *In re Montvale Petition for Substantive Certification*, 386 N.J.Super. 119, 133 (App.Div. 2006). But the statute does not require COAH to sanction the playing of "shell games," in which towns include properties in their fair share plans for decades, only to seek their removal from the plans when the developers are close to building the affordable housing.

Notwithstanding the rule as written, should the court choose to include 800 Sylvan Avenue in the calculation of the realistic development potential (RDP), I conclude that the site has an RDP of 167 units. I find that the Borough's total RDP is between 161 and 334 units.

The Borough has developed a plan that addresses an RDP of 77. The Borough has developed a plan that would place 57 units on a 2.03 acre parcel. The concept plan that the Borough has prepared appears to have minimal set-backs as well as parking and circulation issues. There is little recreation on site. It does not appear suitable for 57 units.

The Borough's plan hinges on receiving a bonus, or extra credit, for building rental housing. However, Englewood Cliffs is a community that has never built a single affordable housing unit. It has never addressed its prior (second round) housing obligation. Thus, any units built on this site would be credited to the second round which ended nearly 20 years ago in 1999. Judge Skillman, in his 2010 Opinion invalidating COAH's third round rules, has determined that no municipality shall receive a rental bonus for the second-round housing obligation until the rental units have been constructed. The Supreme Court has affirmed this decision. Englewood Cliffs is not entitled to any rental bonus.

The Borough's plan for its unmet need includes a mandatory set-aside ordinance that would require affordable housing to be imposed on multi-family development approved by the Borough. But the ordinance does not require the Borough to approve any multi-family development.

The remainder of the plan includes overlay zones that the Borough claims can yield as many as 95 affordable housing units. However, in order to yield 95 units, the owners of all 91 lots would have to decide to work together, consolidate lots, disrupt existing businesses and work through existing contractual lease agreements. The 91 lots are currently in diverse ownership. Two (2) of the lots are owned by Englewood Cliffs and house the Borough's administration and public works department. The Borough's zones are aspirational; but they do not compare to the realistic opportunity presented by 800 Sylvan Avenue.

I would urge the court to order the rezoning of 800 Sylvan Avenue for an inclusionary development.

APPENDIX G

ORIGINAL

BOROUGH OF ENGLEWOOD CLIFFS PLANNING BOARD

RESOLUTION NO. 2019-01

ADOPTING

2019 HOUSING ELEMENT AND FAIR SHARE PLAN

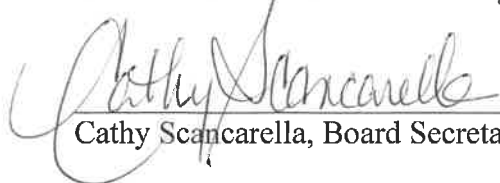
WHEREAS, upon notice duly provided pursuant to N.J.S.A. 10:4-6 et seq. and pursuant to N.J.S.A. 40:55D-13, the Borough of Englewood Cliffs Planning Board (the "Board") held a public hearing on January 7, 2019 at a duly noticed hearing to entertain adopting a Housing Element and Fair Share Plan, dated December 10, 2018, prepared by Michael Mistretta, P.P. of Harbor Consultants (hereinafter "Affordable Housing Plan"), attached hereto; and

WHEREAS, upon the conclusion of the public hearing held on the Affordable Housing Plan, the Board determined that the proposed plan: (1) is consistent with the goals and objectives of the Borough Master Plan; (2) will guide the use of lands in the municipality in a manner which protects public health and safety and promotes the general welfare in accordance with N.J.S.A. 40:55D-28; and (3) is designed to achieve, and its adoption and implementation will achieve, access to affordable housing to meet present and prospective housing needs in accordance with N.J.S.A. 52:27D-301 et seq.;

NOW THEREFORE BE IT RESOLVED, by motion duly made and seconded on January 7, 2019, that the Board hereby (a) adopts the Affordable Housing Plan attached hereto; (b) rescinds all prior housing elements and fair share plans; (c) declares that the adoption of the attached Affordable Housing Plan constitutes an amendment to the Borough's Master Plan; and (d) recommends that the Borough of Englewood Cliffs Governing Body endorse the attached Affordable Housing Plan.


Russell Porrino, Chairman

I hereby certify that this is a true copy of the Resolution adopting the 2019 Housing Plan Element and Fair Share Plan of the Borough of Englewood Cliffs on the 7th day of January, 2019.


Cathy Scancarella, Board Secretary

APPENDIX H

	MOTION	SECOND	YES	NO	ABSTAIN	RECUSE	ABSENT
WOOD			✓				
SONG			✓				
TSABARI			✓				
PARK	✓		✓				
AVERSA			✓				
OH			✓				
MAYOR (TIE)							

**BOROUGH OF ENGLEWOOD CLIFFS
BERGEN COUNTY, NEW JERSEY**

RESOLUTION 19-51

WHEREAS, upon notice duly provided pursuant to N.J.S.A. 40:55D-13, the Planning Board held a public hearing on January 7, 2019 on the Housing Element and Fair Share Plan, prepared by Michael Mistretta, P.P. of Harbor Consultants, dated December 10, 2018 (hereinafter “Affordable Housing Plan”) and;

WHEREAS, the Planning Board adopted the Affordable Housing Plan on January 7, 2019; and

WHEREAS, the Borough of Englewood Cliffs wishes to endorse the Affordable Housing Plan in conjunction with its application for approval of the plan by the Court; and

WHEREAS, in endorsing the Affordable Housing Plan, the Borough wishes to emphasize that the Borough based the Affordable Housing Plan on its assessment of its entitlement to a vacant land adjustment; and

WHEREAS, more specifically, the Borough determined that it was entitled to adjust its fair share to 77; and

WHEREAS, the Court rejected the Township’s efforts to proceed in phases where all fair share and adjustment issues were resolved in Phase 1 and where all compliance issues were resolved in Phase 2; and

WHEREAS, as a result of the foregoing, the Borough was forced to file a plan before the Court had determined its adjusted number; and

WHEREAS, the Borough wishes to reserve its right to amend its plan based upon the Court’s determination of its adjusted number and any other concerns the court might express.

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE BOROUGH OF ENGLEWOOD CLIFFS on this 24th day of January, 2019 as follows:

1. The Borough hereby endorses the Affordable Housing Plan.
2. The Borough authorizes and directs its professionals to file with the Court (i) the Affordable Housing Plan as referenced herein, (ii) the Resolution of the Planning Board adopting the Affordable Housing Plan, (iii) the within Borough Resolution endorsing the Affordable Housing Plan, and (iv) any additional documents the representatives deem necessary or desirable or as ordered by the Court.
3. The Borough authorizes its professionals to seek Court approval of the Affordable Housing Plan in conjunction with the ongoing declaratory judgment action initiated by the Borough pursuant to a case commonly referred to as Mount Laurel IV.
4. The Borough reserves the right to amend the Affordable Housing Plan, should that be necessary, once the Court determines its realistic development potential and based upon any other concerns the Court may express.

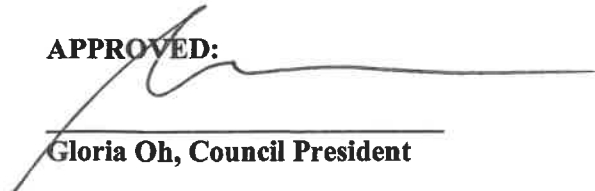
ADOPTED by above vote at a meeting duly called and held on the 24th day of January, 2019.

ATTEST:



Lisette M. Duffy, RMC, Borough Clerk

APPROVED:



Gloria Oh, Council President

APPENDIX I [RESERVED]

APPENDIX J



Peter J. O'Connor, Esq.
Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.
David T. Rammler, Esq.
Joshua D. Bauers, Esq.
Bassam F. Gergi, Esq.

October 8, 2020

Albert H. Wunsch, Esq.
Law Offices of Albert H. Wunsch
400 Sylvan Avenue
Englewood Cliffs, New Jersey 07632

Jeffrey R. Surenian, Esq.
Surenian, Edwards, and Nolan, LLC
707 Union Avenue, Suite 301
Brielle, New Jersey 08730

Thomas J. Trautner, Jr.
Chiesa Shahinian & Giantomasi PC
One Boland Drive
West Orange, NJ 07052

**Re: In the Matter of the Borough of Englewood Cliffs, County of Bergen,
Docket No. BER-L-6119-15**

Dear Messrs. Wunsch, Surenian and Trautner:

This letter memorializes the terms of a settlement agreement ("Settlement Agreement" or "Agreement") reached between the Borough of Englewood Cliffs (the "Borough" or "Englewood Cliffs"), the declaratory judgment plaintiff and Fair Share Housing Center ("FSHC"), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (Mount Laurel IV) and defendant-intervenor in this matter pursuant to court order (collectively, "the parties"). It is expressly understood that the Planning Board of the Borough of Englewood Cliffs is neither a party to this Agreement, nor bound by the terms of this Agreement.

Background

Englewood Cliffs filed the above-captioned matter on July 1, 2015, seeking a declaration of its compliance with the Mount Laurel doctrine and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., in accordance with Mount Laurel IV, 221 N.J. 1 (2015).

The matter was tried before the Hon. Christine A. Farrington, J.S.C. (ret'd, t/a), which resulted in a decision dated January 17, 2020 ("Trial Decision") and other orders and decisions before and after that date issued by Judge Farrington as well as by the Hon. Bonnie J. Mizdol, A.J.S.C.¹

After trial, the parties have agreed to settle the litigation and to present this Agreement to the trial court of the Superior Court of New Jersey with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it ends delays and results more quickly in the construction of homes for lower-income households.

¹ These relevant orders and decisions include Judge Farrington's August 27, 2019, January 17, 2020; February 12, 2020, April 17, 2020, and June 8, 2020 Orders; as well as Judge Mizdol's April 17, 2020 Order, which are attached hereto as **Exhibit A**.

Settlement Agreement Terms

Englewood Cliffs and FSHC hereby agree to the following terms:

1. The parties recognize that this Settlement Agreement occurs after the main trial in this matter but before the entry of final judgment by the trial court. The parties recognize that, at this juncture, certain issues remain pending before the trial court and also that the parties, absent entering into this Agreement, would have certain rights to appeal aspects of the trial court's adjudication. By entering into this Agreement and subject to the trial court approving this Agreement at a duly noticed fairness hearing as specified herein and entering a final judgment of compliance and repose ("JOR") in accordance with the terms specified in this Agreement, the parties (a) agree to abide by the trial court's orders and decisions to this point, except as specifically modified herein; (b) agree to resolve the outstanding issues before the trial court in the manner specified herein; (c) agree to not appeal, and to relinquish and waive all rights to appeal, any and all aspect of the trial court's adjudication since the filing of the declaratory judgment action, and (d) agree to withdraw with prejudice any appeals or motions that may be pending as specified further herein. This Agreement contemplates that the court may (and in some cases shall) act in lieu of the municipality and that the hearing officer may (and in some cases shall) be required to act in lieu of the Planning Board. Such action by the court and/or hearing officer shall not be a basis for the parties not abiding by the terms of this paragraph. It is expressly understood that the Planning Board of the Borough of Englewood Cliffs is not a party to this Agreement.
2. The parties agree to act in good faith, with candor, and with all continuity of purpose to ensure the full and swift implementation of the terms of this Agreement and the expeditious provision of the affordable housing agreed to herein. The parties shall work to avoid all delays and to promptly and amicably resolve any disagreements that may arise. Where the parties are unable to reach a prompt accord and/or where disputes arise, the parties agree and accept that the ultimate authority and power to resolve all issues and to take/order all required action and to enforce this Agreement rests with the Superior Court of New Jersey based upon input from the Special Master/Counsel and the Hearing Officer, which may be paid for with the administrative component of the Trust Fund beginning as of the date of execution of this Agreement by all parties. Such issues include, but are not limited to, adopting zoning ordinances, voiding zoning ordinances, issuing requests for proposals/qualifications, selecting developers, requiring municipal bonding if necessary after two housing cycles to obtain 9 percent tax credits as more fully detailed below, approving site plan applications, issuing permits, terminating immunity from exclusionary zoning suits in the event of a material violations of this Agreement, and/or issuing orders of contempt. The Parties agree that, where appropriate, the court may delegate appropriate tasks to the Special Master and/or Hearing Officer subject to the final decision of the court. As an essential term of this Agreement, the Parties accept and agree that where the court takes such actions as the court deems necessary hereunder to ensure the full and swift implementation of this Agreement, including resolving disagreements and/or disputes amongst the parties or ordering appropriate relief, that the parties shall abide by that decision and shall not thereafter challenge nor appeal such a decision.
3. The parties agree that Englewood Cliffs, through the adoption by the Superior Court of New Jersey of a Housing Element and Fair Share Plan conforming with the terms of this Agreement (hereafter, "the Plan") and all required implementing ordinances, resolutions,

and actions to implement that Plan, and through the full and swift implementation of the Plan and this Agreement and all required actions thereunder, will satisfy its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).

4. The parties agree that this Agreement contemplates that the court may (and in some cases shall) act in lieu of the municipality and that the hearing officer may (and in some cases shall) be required to act in lieu of the Planning Board. Such a circumstance when envisioned by and consistent with this Agreement shall not be considered a violation of this Agreement. Except as otherwise noted in this Agreement, if the court resolves a dispute between and/or among the parties, that also shall not be considered a violation of this Agreement. Notwithstanding anything to the contrary, in the event the Borough engages in a bad faith pattern of repeatedly disputing or delaying the court's implementation of this Agreement, nothing shall prevent FSHC from applying to the court for a revocation of immunity and counsel fees.
5. The parties recognize that aside from the above-captioned litigation there is a separate action entitled Fair Share Housing Center v. Borough of Englewood Cliffs, Docket No. BER-L-2457-20 (the "Civil Rights Action"), wherein FSHC alleges that the Borough has violated New Jersey's Civil Rights Act. FSHC agrees that, upon execution of this Agreement, the parties shall jointly request the court to stay that litigation. If the Agreement is approved by a court order following a duly noticed fairness hearing and if Englewood Cliffs abides by the Agreement, the court subsequently enters a final judgment of compliance repose, and the Borough pays in full the attorneys fees referenced in paragraph 29, FSHC shall dismiss the Civil Rights Action with prejudice; and agrees on behalf of itself, and its past, present and future parent companies, subsidiaries, affiliated and related entities, divisions, representatives, agents, directors, officers, employees, advisors, licensees, successors and assigns, as well as the persons and entities whom it represents in this action, to irrevocably and forever, fully and finally, remise, release, acquit and discharge the Borough, along with the Borough's, subsidiaries, agencies, divisions, representatives, agents, elected officials, appointed officials, directors, officers, employees, advisors, attorneys, licensees, successors and assigns, of and from any and all claims asserted in the Civil Rights Action, or which could have been asserted in the Civil Rights Action, or which existed from the beginning of time through the execution of this Agreement, including but not limited to both known claims and unknown claims that have been or could have been asserted directly, indirectly, individually, representatively, derivatively or in any other capacity, in the Civil Rights Action. Notwithstanding the foregoing, it is mutually agreed that the foregoing releases do not relate to any breach of this Agreement or to any claims which arise after the date of execution of this Agreement.
6. The parties recognize that at the time of this Agreement, Englewood Cliffs does not have immunity from builder's remedy litigation. Englewood Cliffs and FSHC consent to the entry of an order in the form appended to this Agreement as **Exhibit B** which, among other matters, grants the Borough temporary immunity commencing September 29, 2020 pending a fairness and compliance hearing on this Agreement and the entry of a final JOR, which order shall be revoked if the Borough does not comply with any of the provisions set forth in this Agreement, provided that this Agreement contemplates that the court may (and in some cases shall) act in lieu of the municipality and that the hearing officer may (and in some cases shall) be required to act in lieu of the Planning Board and that the court and/or hearing officer acting in lieu of the municipality and/or Planning Board as permitted by this Agreement shall not be considered a basis for revocation of immunity.

7. In addition to the terms described above, **Exhibit B** provides that upon the Borough's timely fulfillment of the terms of this Agreement and the entry of a final JOR, the Borough shall be immune from exclusionary zoning suits through July 1, 2025, other than litigation to enforce the terms of this Agreement and to implement this agreement and/or the JOR in accordance with the procedures previously established by the Court in orders entered on April 17, 2020 and June 8, 2020. The order also provides that the provisions of Judge Farrington's April 17, 2020 Order concerning the invalidation of the Borough's ordinances, the appointment of a special hearing officer and the imposition of scarce resource restraints, shall remain in place until the entry of final JOR. Upon the entry of such a JOR, the Borough's ordinances shall become effective once again with the modifications that are set forth in this Agreement, the scarce resource restraint shall expire, and the role of the special hearing officer shall continue to function as set forth herein. Notwithstanding the foregoing, prior to the fairness and compliance hearing, the Borough shall provide proof(s) to the court, Special Master, and FSHC of the adequacy of sewer and water capacity for the sites that address the RDP as well as for the 800 Sylvan and Cioffi sites. In the event the Borough cannot provide sufficient proof(s), the restraint on sewer and or water capacity, as the case may be, shall continue until such time as adequate proof(s) have been presented.

8. Englewood Cliffs and FSHC hereby agree that Englewood Cliffs' combined affordable housing obligations is 584, as previously determined by the trial court, and as shown below:

Present Need (per Farrington Order)	0
Prior Round Obligation (pursuant to <u>N.J.A.C. 5:93</u>)	219
Third Round (1999-2025) Obligation (per Farrington Order)	365

9. For purposes of this Agreement, the Third Round Obligation shall be deemed to include the Gap Period present need for new construction to address the affordable housing needs of very low, low, and moderate income households formed from 1999-2015, a need that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017), and the Prospective Need, which is a measure of the affordable housing need anticipated to be generated between July 1, 2015, and June 30, 2025.

10. The parties agree that the Borough's Present Need (aka Rehabilitation Share) is 0 and therefore no compliance mechanisms are needed.

11. As noted above, the Borough has a Prior Round (new construction) Obligation of 219 units and a Third Round (new construction) obligation of 365 units, for a combined new construction obligation of 584 units. The parties agree that the Borough is eligible for a vacant land adjustment pursuant to N.J.A.C. 5:93-4.2.

12. The parties agree for the purposes of settlement that Englewood Cliffs has a combined realistic development potential (RDP) of 97 units. That RDP is calculated as follows:

Name of site, Block and Lot, Address	Acreage (Net)	Density (du/a)	20% Set-aside (RDP #)

Prentice Hall / New LG, Block 207, Lot 6 (111 Sylvan Ave.)	27.03	12	65
Site #17-20 – Block 303, Lots 35, 36, 37, and 44 (146, 150 & 154 Wood Rd. & 312 Boltz St.)	0.91	10	2
Site #21-23 – Block 303, Lots 40.05, 40.07, and 40.08 (Sara Hill Lane)	0.67	10	1
Site #35 and 36 – Block 601, Lots 14 and 15 (2 Kim Hunter Rd.)	2.73	6	3
Site #41 – Block 603, Lot 20 (552 Summit St.)	1.04	10	2
Site #55-56 – Block 802, Lots 7.01 and 7.02 (575-577 Floyd St.)	1.43	10	3
Site #64-65 – Block 1009, Lots 15-16 (41-45 Laurie Drive)	0.69	10	1
Site #67 – Block 1101, Lot 6 (98 Roberts Rd.)	0.73	10	1
Site #29-31 – Block 513, Lots 5 & 7, Block 514, Lots 4 & 5, and approximately 0.25-acre portion of Clendinen Place to-be-vacated (“Municipal Site” on Hudson Terrace)	N/A	N/A Minimum 60 Total Units	12
Site #72 – Block 1202, Lot 2 (980 Sylvan Avenue)	3.00	12	7
Total			97

The combined RDP shall be satisfied as follows:

Name of development	# of AH units	# of bonus credits	Total AH credits
Municipally-sponsored 100% AH site (family rental units)	60	25	85
New LG / North Woods – Block 207, Lot 6 (3.5-acre portion (family units)	12		12
Total	72	25	97

13. The Borough shall provide a realistic opportunity for satisfaction of its combined realistic development potential in the following manner:

- a. Municipally-sponsored 100% affordable housing development located at (i), Borough-owned Block 513, Lot 7, Block 514, Lots 4 & 5 (approximately 1.4-acres owned by the Borough), and an approximately 0.24-acre, 190 feet long portion of Clendinen Place to-be-vacated, with street addresses of 474 & 482 Hudson Terrace and 4 Clendinen Place (hereinafter “Municipal Site A”) and (ii) Block 513, Lot 5 at 488 Hudson Terrace which is currently partially developed with the Borough’s community center and emergency squad facility (hereinafter “Municipal

Site B” or “community center site”). In the event that there are any title issues that impair the construction of the municipally sponsored project on the community center site, the Borough will take appropriate steps to resolve them.

- b. Englewood Cliffs shall provide a realistic opportunity for a 100% affordable development of at least sixty (60) affordable non-age-restricted rental units at Municipal Sites A and B. The parties agree that Municipal Sites A and B shall be developed in accordance with the standards attached hereto as **Exhibit C**, which require that any building on Municipal Site A shall not exceed 4 stories and any building on Municipal Site B shall not exceed 3 stories. The parties agree to the following process to ensure the timely construction of at least sixty (60), but not more than sixty-five (65), affordable housing units on the Municipal Sites A and B in accordance with **Exhibit C**:
 - i. The parties agree that within one (1) week of the execution of this Agreement that the Borough shall furnish to the Special Master and FSHC any and all documents, materials, mapping, and information necessary to issue the Request for Proposals/Request for Qualifications (“RFP/RFQ”).
 - ii. The parties agree that within two (2) weeks of the execution of this Agreement that the Special Master will issue a RFP/RFQ for the production of affordable housing on the Municipal Sites A and B. The RFP/RFQ shall require a minimum of sixty (60) and a maximum of sixty-five (65) affordable non-age-restricted rental units, all which all shall be family rental units except for up to five (5) special need units, which are credited by the bedroom. The RFP/RFQ shall require that the income and bedroom distribution of the affordable units shall comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. (“UHAC”), with the sole exception that thirteen percent (13%) of the affordable units within each bedroom distribution shall be very low income units for households earning thirty percent (30%) or less of median income.
 - iii. The RFP/RFQ to be issued by the Special Master shall provide anticipated municipal funding. In this regard, the Borough shall commit all present and future Affordable Housing Trust Fund monies received up to July 1, 2025, to this project to increase the likelihood of a successful nine percent (9%) tax credit application except for those reserved for administrative expenses in accordance with the twenty percent (20%) cap established by the New Jersey Fair Housing Act, understanding that the commitment of monies anticipated to be received in the future may require the municipality to bond or otherwise advance the funds to be repaid by the Affordable Housing Trust Fund. FSHC agrees with the Borough’s right to obtain a refund from the trust fund should it bond for monies not yet received in this time frame.
 - iv. To the degree that the Borough chooses to require a portion of the project to include the rebuilding of the existing community center, which is not a requirement of the affordable housing settlement, any additional funding necessary for such rebuilding shall be provided by Borough funds outside of the Affordable Housing Trust Fund, and any such specifications or requirement shall be set forth in the RFP/RFQ. Demolition of the existing community center, if required, may be funded by Affordable Housing Trust

Fund dollars. The RFP/RFQ shall also provide the Borough's specifications, the existing conditions of the sites(s), any lands within Sites A and B to be donated by the Borough and the anticipated condition of the lands to be conveyed (i.e., whether the existing buildings will be demolished and all site improvements removed), and any other municipal actions. The parties agree that the RFP/RFQ shall include a required response within six (6) weeks of being issued.

- v. The RFP/RFQ shall require each applicant to provide at least the following information: (1) a proposal to develop the site with at least sixty (60), but not more than sixty-five (65) affordable housing units; (2) a concept plan of the site layout, a typical floor plan, and a typical building elevation illustrating what the developer proposes; (3) a detailed development program; (4) a pro forma with estimate of total development costs and sources of funds; (5) a construction schedule providing for construction to begin within two years of court approval of this Agreement after a fairness and compliance hearing; (6) a draft scorecard (HMFA Form 10) on how the applicant believes it would score for an application for 9 percent tax credits based upon HMFA criteria; (7) a list of comparable tax credit (LIHTC) projects that have been completed by the developer; and (8) resumes of key personnel of the developer and the developer's design team. The RFP/RFQ shall also require each applicant to copy the Borough and FSHC on its application. The RFP/RFQ shall require the selected developer to be prepared to apply for Low-Income Housing Tax Credits in the next available cycle after this Agreement is executed. Notwithstanding anything to the contrary, the Parties consent to any adjustment of the construction schedule based upon the award of 9 percent tax credits in 2021 or 2022.
- vi. Within two (2) weeks of receipt of the responses to the RFPs/RFQs, counsel and planner for the Borough and counsel and planner for FSHC shall meet with the Special Master in person or virtually to review and discuss the responses and provide any comments to the Special Master.
- vii. The Borough shall make the final determination to whom to award the approval, subject to review and decision by the court if requested by FSHC or Special Master on the basis that the awardee is not able to viably develop the site in accordance with this Agreement.
- viii. If the Borough does not select a developer by December 24, 2020, or if there is a request by FSHC or the Special Master for the court to review the Borough's award, the parties agree that the Superior Court of New Jersey shall have the sole power to select a proposal among the responses received and that decision shall be binding on all parties. The parties agree that the court may solicit recommendations from the Special Master and the parties on which proposal to select.
- ix. If no viable response to the RFP/RFQ is received, the parties agree that, the Superior Court shall have the power to modify the RFP/RFQ, including altering the maximum number of units and the design constraints in this paragraph, so long as at least sixty (60) , but no more than seventy (70) affordable non-age restricted rental all of which shall be family rental units

except for up to five (5) supportive need units compliant with the terms of this Agreement shall be developed. All parties shall have the ability to provide comments to the Superior Court on any necessary revisions, but the Superior Court shall have the ultimate power to issue a revised RFP/RFQ and the Borough shall have the power to select a proposal. The revised RFP/RFQ shall be subject to the zoning limitations in **Exhibit C** unless the Court makes a determination after reviewing the advice of the Special Master and comment by the parties that any such limitation is a reason why no viable response to the RFP/RFQ, in which case the Court shall have the binding power to revise Exhibit C accordingly provided that under no circumstance can the structures on Site A be more than four (4) stories and the structures on Site B be more than three (3) stories. If no viable response to the RFP/RFQ is received and the court revises the zoning standards, the Superior Court shall have the power to reissue the RFP/RFQ with responses required within six (6) weeks. Responses to the reissued RFP/RFQ shall be provided to the Borough, Special Master, and FSHC, and the parties and the Special Master shall meet, either virtually or in person, to discuss the responses. The Borough shall, within three (3) weeks of the receipt of responses, make the final determination to whom to award the approval, subject to review and a decision by the court if requested by FSHC or Special Master on the basis that the awardee is not able to viably develop the site in accordance with this Agreement. If the Borough does not select a developer within three (3) weeks, or if there is a request by FSHC or the Special Master for the court to review the Borough's award and the Court agrees upon considering a response from the Borough that the awardee is not viable, the parties agree that the Superior Court of New Jersey shall have the sole power to select a proposal among the responses received and that decision shall be binding on all parties.

- x. The parties agree that once a developer is selected that the Borough, FSHC, and the Special Master shall work with the developer to jointly prepare modifications to the Borough's zoning ordinance to permit the development selected subject to the limitations in **Exhibit C**, unless the court has determined that any such limitations make the project unviable pursuant to the above process, provided that under no circumstance can the structures be more than four (4) stories on Site A and no more than three (3) stories on Site B.
- xi. The parties agree that the court shall be empowered in place of the Borough to adopt the appropriate zoning ordinance and that any disputes between the parties as to the form of ordinance shall be resolved finally by the court, which ordinance shall be initially adopted by the court as part of the joint fairness and compliance hearing. The Borough, FSHC, and the Special Master shall endeavor to jointly present a zoning ordinance amendment to the court by November 10, 2020 though the failure of the parties to agree on part or all of the ordinance shall not invalidate this agreement. If the parties do not agree on any aspect of the form of any such ordinance, counsel for both parties and the Special Master shall provide their positions to the court no later than November 10, 2020. There may need to be revisions to the ordinance which shall remain otherwise

consistent with all terms of this Agreement herein once a site is fully engineered by the developer selected through the RFP/RFQ; the parties agree that any such revisions subject to the height limitations may be accomplished as a post-judgment condition of or post-judgment modification to a final judgment of compliance and repose. The parties consent to the applicant selected by the Borough or by the court to request that the Special Hearing Officer may process a development application for site plan approval for its project with a targeted date of approval by June 30, 2021, which may be extended on consent of the parties and the developer so long as such extension does not make it infeasible for the developer to apply for nine percent (9%) Low Income Housing Tax Credits in the 2021 application cycles. Notwithstanding anything to the contrary, the court shall have the power to craft an ordinance after a developer has been selected and after that developer has engineered the site plan for the project subject to the height limitations set forth above.

- xii. The parties agree that the Borough shall expeditiously take appropriate additional steps in order to enable a developer to apply competitively for Low Income Housing Tax Credits including, but not limited to, adopting a resolution of intent to bond no later than November 1, 2020, and adopting a resolution of need, entering into a PILOT agreement at a rate that enables the applicant to maximize point(s) for Low Income Housing Tax Credit projects, and entering into a developer's agreement no later than December 31, 2020. The parties agree that the Superior Court shall have the power to enter into any or all of these agreements on behalf of the Borough or take any such action needed for a competitive Low Income Housing Tax Credit application if not concluded by the Borough by the dates specified herein, which the parties agree may be accomplished as a post-judgment condition of or post-judgment modification to a final judgment of compliance and repose.
- xiii. The parties agree that the developer shall apply for Low Income Housing Tax Credits in the next available tax credit cycle, which is expected to be sometime in the Summer or Fall of 2021. In the event that the development is not approved for funding via nine percent (9%) Low Income Housing Tax Credits in the 2021 application cycle, the Parties agree that the developer selected to apply in 2021 shall be able to apply again in the 2022 cycle. In the event the developer does not secure nine (9%) tax credits in 2022, the Borough shall be responsible for covering the funding gap through municipal bonding, the use of the trust fund, and/or through any legal means no later than December 31, 2022, deducting only firmly committed funding from outside sources at that time from the total development cost necessary to complete the project. If the Borough does not voluntarily cover such a funding gap, the court shall be empowered to compel the Borough to bond to cover the funding gap.
- xiv. The parties agree that the Borough will receive, under this Agreement, rental bonus credits in addressing its RDP for the Municipal Site only because the Borough has agreed to move forward expeditiously to construct family rental affordable housing units on this site with funding being secured no later than December 31, 2022, either via Low Income

Housing Tax Credits or municipal bonding or some other legal means including the use of Trust Fund monies if necessary, and construction shall begin on or before June 30, 2023. The parties agree that in the event that the Borough breaches this Agreement or attempts to prevent the development of affordable housing on the Municipal Site including, for example, refusing to pass a bond ordinance if Low Income Housing Tax Credits are not secured or hindering the applicant to miss the deadline for the start of construction, the Borough shall lose access to those rental bonus credits and shall be required to make up the twenty-five (25) credit shortfall through additional compliance sites and mechanisms as shall be directed by the court through a process established by the court.

- c. New LG/North Woods site (Block 207 Lot 6 portion) – the parties agree to jointly request the court to rezone the +/- 3.5-acre portion on the northern end of the New LG site to permit development of up to sixty (60) total units and require a twenty percent (20%) affordable housing set-aside of twelve (12) affordable non-age-restricted housing units, which zoning shall provide a realistic opportunity for such development to occur on the site while allowing all of the approved buildings and uses on the remainder of the New LG site to continue as conforming uses and allow for the preservation of the two isolated forested freshwater wetlands areas that will act as a buffer between the residential development on the Northern most portion of the site and the new LG office complex.
 - i. Counsel for the Borough, FSHC, and the Special Master shall endeavor to jointly present a zoning ordinance to the court by November 10, 2020, though the failure of the parties to agree on part or all of the ordinance shall not invalidate this Agreement. If the parties do not agree on aspects of the ordinance, all parties and the Special Master shall provide their positions to the court no later than November 10, 2020. The Superior Court shall have the ultimate power to adopt a zoning ordinance consistent with the process set forth in prior orders entered by the court. Notwithstanding the foregoing, no zoning ordinance shall be required that authorizes building heights on the North Woods site higher than the existing New LG buildings or that would adversely affect the scenic integrity of the Palisades Interstate Park and its surroundings and be visible above the tree canopy from vantage points east and south of the Palisades, specifically the George Washington Bridge center and the Cloisters Terrace and high point of Fort Tryon Park, Manhattan, so other bulk, set back, etc. standards shall be adjusted to provide a realistic opportunity for sixty (60) units with a twenty percent (20%) affordable housing set-aside and comply with these height limits.
- d. The Borough and FSHC will support a provision in the final judgment of compliance and repose that provides that the Borough shall be entitled to apply to the court to adjust its RDP to increase the RDP after approval of the 800 Sylvan Avenue project, as described in paragraph 14.a, the approval of the CFI site, as described below in paragraph 14.b., and/or any other subsequent approval of an inclusionary or 100% affordable housing project that would otherwise address the unmet need, provided any such approval is final and not subject to further appeal. The RDP adjustment shall provide that 20% of the total number of units approved shall be added to the RDP and the sites shall be removed from unmet need, and its rental

bonus cap shall be adjusted so that twenty-five percent (25%) of the increased RDP shall be eligible for rental bonus credits and the site(s) shall be removed from unmet need. However, pursuant to N.J.A.C. 5:93-5.15(d) there are circumstances wherein a municipality may lose granted rental bonuses if approvals lapse or a project is abandoned. Under no circumstances shall the Borough be relieved of any of its responsibilities and obligations under this Agreement as a result of any claim for additional rental bonus credits pursuant to this subparagraph and/or as a result of an increase to the RDP pursuant to this subparagraph.

14. Subject to an adjustment to the RDP based upon the redevelopment for inclusionary purposes of sites slated to address the unmet need as described in paragraph 13(d), the RDP is 97, which if subtracted from the combined Prior Round and Third Round Obligation of 584 units, results in a combined Unmet Need of 487 units. The combined 487-unit unmet need shall be addressed through the following mechanisms:
 - a. 800 Sylvan Avenue site (Block 910, Lot 1) – The parties acknowledge that the Borough has entered into a separate agreement with 800 Sylvan that permits up to 450 units with a required twenty percent (20%) affordable housing set-aside.
 - b. CFI (Cioffi) site (Block 201, Lots 10-14; Block 205, Lots 1 and 4) - The parties agree to jointly request the court to establish a process whereby the CFI site may be reviewed and approved by the Special Hearing Officer consistent with the Special Hearing Officer process previously established by the Court in its April 17, 2020 Order.
 - c. The Borough agrees to implement inclusionary overlay zoning that allows for family development, at 19 units/acre with twenty percent (20%) affordable housing set-aside if strictly residential and 24 units/acre with a twenty percent (20%) affordable housing set-aside if mixed-use, unless specified otherwise, with accommodating and flexible bulk standards within a three (3) story building height. These standards shall apply to Hudson Terrace Overlay, East Palisades Overlay & the B-3 Zone District Overlay as depicted on the attached **Exhibit D** which is the same Exhibit that is contained in the Borough's HE&FSP approved by the Planning Board and endorsed by the Borough Council and which the Borough used as an exhibit at trial.
 - d. Northern Sylvan Avenue Corridor Overlay (A), inclusionary overlay zoning that allows for family development, at 23 units/acre with twenty percent (20%) affordable housing set-aside with accommodating and flexible bulk standards, provided that the building height does not exceed four (4) stories for the area north of Hollywood Avenue, west of Sylvan Avenue to Sage Road, and east of Johnson Avenue and Floyd Street, excluding the 800 Sylvan Avenue site with the exception of the area described under section d.i. below, and including the following properties (about 48 acres):
 - i. Remainder of 800 Sylvan Avenue site, remaining portion of Block 910, Lot 1, about 8.0 +/- acres, with an existing research and development facility, at same density as the bulk of the 28.78-acre property
 - ii. 910 Sylvan Avenue, Block 1201, Lot 8, 22.3 acres
 - iii. 910-920 Sylvan Avenue, Block 1201, Lot 9.03, 9.295 acres
 - iv. 930-940 Sylvan Avenue, Block 1201, Lot 9.04, 10.457 acres

- e. Northern Sylvan Avenue Corridor Overlay (B), inclusionary overlay zoning on the Old LG site (1000 Sylvan Avenue) and 980 Sylvan Avenue, provided that the building height does not exceed four (4) stories, as follows:
 - i. 980 Sylvan Avenue, Block 1201, Lot 2 (Lighthouse), 6.009 acres, a gross density of 7.5 units per gross acre in a family inclusionary project with a 20% set aside.
1000 Sylvan Avenue, Block 1201, Lot 2.01 (Old LG headquarters), 5.46 acres, a gross density of 13.5 units per acre for an age-restricted development with a 20% set aside shall only be allowed for a period of three years from the entry of the JOR and if no application is approved for an age-restricted development by that time the zoning shall also allow as an alternative a non-age-restricted development with family affordable units to be constructed on the property at a gross acreage of 8.5 units per acre with a 20% set aside.
- f. Sisters of St. Joseph of Peace – The Parties agree that the Court is empowered to adopt an inclusionary overlay zoning ordinance on the property located at Block 1302, Lot 5 (12.7 +/- acres) to permit age-restricted residential development at a gross density of six (6) units/acre with a 20% set-aside. A second and separate development will allow for a bonus density of additional age-restricted units provided those units are limited to the conversion of the main “historic buildings” on the property, whether or not these building are on or eligible to be on any State or National Registers of Historic Places list. The conversion of these “historic buildings” for any bonus density shall be limited to one bedroom age-restricted units with a 20% set aside. Any development on the property shall maintain, or if not inconsistent with the historical preservation requirements herein, reduce any current visual intrusions to the scenic integrity of the Palisades viewshed from the vantage point of Manhattan and the George Washington Bridge.
- g. The preservation of the viewshed of the Palisades is a critically important aesthetic and scenic design consideration. Any zoning regulations for the sites in subparagraphs (c) through (e) of this paragraph shall require the applicant to demonstrate that the proposed development would not adversely affect the scenic integrity of the Palisades Interstate Park and its surroundings when viewed from vantage points east and south of the Palisades, specifically the George Washington Bridge center and the Cloisters Terrace and high point of Fort Tryon Park, Manhattan. The proposed zoning regulations for the site in subparagraph (f) of this paragraph specify additional requirements for preservation of the viewshed for zoning regulations for that site.
- h. The parties agree that the court is empowered to amend Ordinance No. 18-14, dated October 20, 2018, requiring a mandatory affordable housing set aside for all new multifamily residential developments of five (5) units or more to provide a set-aside of twenty percent (20%) regardless of whether the affordable units are for-sale or for-rent.
- i. For the ordinances in paragraphs (c) through (g), the Borough, FSHC, and the Special Master shall endeavor to jointly present a zoning ordinance amendment to the court by November 10, 2020 though the failure of the parties to agree on part or all of the ordinance shall not invalidate this agreement. If the parties do not agree on any aspect of the form of any such ordinance, counsel for both parties and the

Special Master shall provide their positions to the court no later than November 10, 2020. The Superior Court shall have the ultimate power to adopt a zoning ordinance consistent with the process set forth in prior orders entered by the court.

- j. The parties agree to request an order of the court requiring that any party submitting an application to develop property consistent with the above-mentioned overlay zoning shall have the option of filing its application with the Planning Board or requesting a process before the Special Hearing Officer.
15. The Borough agrees to require at least 13% of all affordable housing units within each bedroom distribution referenced in this Agreement, excepting those units that were constructed or granted preliminary or final site plan approval prior to July 1, 2008, to be very low income units ("VLI," reserved for households earning less than 30% of area median income), with half of the very low income units being available to families. The municipality will comply with those requirements as follows:

Municipal site	At least 8 including at least 7 or 13% of family rental units, whichever is greater
New LG/ North Woods (family)	2
800 Sylvan Avenue (family rental)	12
Total VLI	22
Total Family VLI	21

In addition, the Borough agrees that at least 13% of all affordable housing units constructed as a result of any development approved pursuant to the overlay zoning or Borough-wide set-aside mentioned in Paragraph 14 shall be available to very low income households earning 30% or less of regional median income.

16. The Borough shall meet its combined Prior Round and Third Round Obligation in accordance with the following standards as agreed to by the Parties:
- a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
 - b. At least fifty percent (50%) of the units addressing the Third Round Obligation shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
 - c. At least twenty-five percent (25%) of the Third Round Obligation shall be met through rental units, including at least half in rental units available to families.
 - d. At least half of the units addressing the Third Round Prospective Need in total must be available to families.
 - e. The Borough agrees to comply with an age-restricted cap of twenty-five percent (25%) and to not request a waiver of that requirement. This shall be understood

to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed twenty-five percent (25%) of all units developed or planned to meet its cumulative prior round and third round fair share obligation.

17. The Borough shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Bergen County NAACP, Passaic County NAACP, Bergen County Urban League, Bergen County Housing Coalition, and Supportive Housing Association, and shall, as part of its regional affirmative marketing strategies during its implementation of the affirmative marketing plan, provide direct notice to those organizations of all available affordable housing units, along with copies of application forms. As part of its regional affirmative marketing strategies during implementation of its fair share plan, the Borough and/or its Administrative Agent shall also provide notice of all available affordable housing units to the above-referenced organizations and ensure posting of all units on the New Jersey Housing Resource Center, <https://www.nj.gov/njhrc> consistent with applicable law including the new HRC law effective November 1, 2020. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph .
18. All units shall include the required bedroom distribution, be governed by controls on affordability² and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq., or any successor regulation, with the exception that in lieu of ten percent (10%) of affordable units in rental projects being required to be at thirty-five percent (35%) of median income, thirteen percent (13%) of affordable units within each bedroom distribution in rental projects shall be required to be reserved for very low income households earning less than thirty percent (30%) of area median income, and in conformance with all other applicable law. The Borough, as part of its HEFSP, shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. Limits for all units that are part of the Plan required by this Agreement and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Borough annually within 30 days of the publication of determinations of median income by HUD as follows:
 - a. Regional income limits shall be established for the Housing Region in which the Borough is located (in this case, Housing Region 1) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated number of households within the county according to the most recent decennial Census. The resulting product for each county within

² This shall require all affordable units (non-LIHTC units) to be subject to affordability controls of at least 30 years and affordable deed restrictions as provided for by UHAC, and the affordability controls shall remain until the Borough, in its sole discretion, takes action to release the unit from such requirements pursuant to the requirements of N.J.A.C. 5:80-26.1. Restricted rental units created as part of developments receiving Low Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period.

the housing region is summed. The sum is divided by the estimated total number of households from the most recent decennial Census in the Borough's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be eighty percent (80%) of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be fifty percent (50%) of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be thirty percent (30%) of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

- b. The income limits attached hereto as Exhibit E are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2020, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
 - c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
 - d. The parties agree that the Court shall have the power to adopt an ordinance implementing this paragraph of this Agreement.
19. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.
20. The parties agree that the Court shall adopt all necessary ordinance or ordinances providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning contemplated herein and the Court shall adopt a Housing Element and Fair Share Plan and Spending Plan and accompanying resolutions and ordinances (e.g. appointing municipal housing liaison and administrative agent, etc.) in conformance with the terms of this Agreement. All parties shall have the ability to provide comments to the Superior Court on the form of the ordinances and plans, which ordinances and plans shall be prepared by the Special Master with assistance by the Borough and FSHC, provided that the Superior Court shall have the ultimate power to adopt the ordinances and plans consistent with the process set forth in prior orders entered by the court and the terms of this Agreement.
21. The Borough's RDP shall not be revisited by FSHC or any other interested party absent a substantial changed circumstance and, if such a change in circumstance occurs with the RDP, the Borough shall have the right to address the issue without negatively affecting its continuing entitlement to immunity from all Mount Laurel lawsuits through July 2, 2025.

22. The Parties hereto support a provision of the final judgment of compliance and repose in this matter that the expenditures of funds contemplated under the Spending Plan constitute a “commitment” for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions and that the four year period commences with the entry of a final judgment in this matter that includes approval of the Spending Plan in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff’d 442 N.J. Super. 563).
23. The Borough agrees to prevent the expenditure of any municipal funds, revenue, or other municipal resources by the Borough of Englewood Cliffs Planning Board for any purpose related to or arising from any proceeding or orders that have been or will be entered in the DJ Action, including any further trial court, appellate proceedings, or other state or federal court actions related thereto, and/or this Agreement and/or the Consent Order attached hereto as Exhibit B. Upon the entry of the Consent Order attached as Exhibit B, the Borough shall notify the Borough of Englewood Cliffs Planning Board that the Borough will not provide any funds to pay any bills, invoices or other costs incurred by the Planning Board for any purpose related to or arising from any proceeding or orders that have been or will be entered in the DJ Action, including any further trial court, appellate proceedings, or other state or federal court actions related thereto, and/or this Agreement and/or the Consent Order attached hereto as Exhibit B. This provision does not impact the Borough’s obligation to appropriate funds for the normal expenses of the Borough of Englewood Cliffs Planning Board, and the Borough is not obligated to discontinue funding for such normal expenses associated with customary operations of the Borough of Englewood Cliffs Planning Board for matters including, but not limited to, employing a secretary and professionals to attend meetings and consider applications for development other than those related to or arising from any proceeding or orders that have been or will be entered in the DJ Action, including any further trial court, appellate proceedings, or other state or federal court actions related thereto, and/or this Agreement and/or the Consent Order attached hereto as Exhibit B. This obligation to prevent the expenditure of municipal funds, revenue or resources is specifically applicable to: (1) any of the terms of this Agreement; (2) any of the terms of any JOR entered in favor of the Borough; (3) any zoning ordinances or amendments implemented in connection with this Agreement; or (4) any land use approvals or permits sought or obtained to develop any of the sites in this Agreement before the court and/or special hearing officer, or any judicial proceeding arising therefrom. Notwithstanding the provisions in this section, the Borough may provide the Borough of Englewood Cliffs Planning Board with reasonable funds for the purposes of commenting on any of the plans (including future site plan applications for the potential creation of affordable housing pursuant to the terms of the Agreement), ordinances or resolutions referenced in this Agreement (other than the 800 Sylvan site which shall be governed by the separate agreement between the Borough and 800 Sylvan), and/or any process before the Special Hearing Officer provided that such funds shall not extend to any appeal or other judicial challenge to any decision of the trial court or Special Hearing Officer, and FSHC shall have the right to apply to the court for a limitation on these funds or the use thereof and appropriate counsel fees in the event the Planning Board engages in a bad faith pattern of repeatedly disputing or delaying the court’s implementation of this Agreement.
24. In mutual consideration for the execution of this Agreement, and subject to the trial court approving this Agreement at a duly noticed fairness hearing as specified herein and entering a final judgment of compliance and repose in accordance with the terms specified in this Agreement at a duly noticed compliance hearing, which fairness and compliance

hearing the parties anticipate shall be combined pursuant to paragraph 28, the Parties agree to waive any and all appellate rights that they may have as well as any rights they may have to bring claims related to or arising out of the DJ Action in any court of competent jurisdiction. Specifically, the Parties voluntarily agree to waive and surrender any and all claims arising out of any order, decision, opinion or ruling, or any failure to make any enter any order, or make any decision, opinion or ruling in the DJ Action and agree not to seek any relief, of any kind, regarding any order, decision, opinion or ruling in the DJ Action in the Superior Court of New Jersey, Appellate Division, the Supreme Court of New Jersey, or any court established pursuant to Article III of the United States Constitution. In waiving their appellate rights, the Parties acknowledge that a change in political control of the Borough Council may occur, but such a change would not constitute a change in circumstances that would warrant a retraction of waiver of the right to appeal. In the event that either Party files an appeal or seeks any relief related to the DJ Action in any court of the State of New Jersey or in any court established pursuant to Article III of the United States Constitution, the non-breaching Party may move to enforce this provision of the Agreement and the breaching Party shall be liable for all legal fees incurred. Additionally, the breaching Party shall be liable to the other party for all costs incurred in connection with the negotiation of this Agreement and any related costs, including but not limited to fees paid any consultant, attorney, architect, engineer, planner, or traffic consultant, arising from the implementation of this Agreement.

25. On the first anniversary of the Court's approval of the Spending Plan, and on every anniversary of that date thereafter through July 1, 2025, the Borough agrees to work with the Special Master so that the Special Master may provide annual reporting of trust fund activity to Fair Share Housing Center and for posting by the Borough on the municipal website, using monitoring forms provided by FSHC. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
26. On the first anniversary of the execution of this Agreement, and every anniversary thereafter through the end of this Agreement, the Borough agrees to work with the Special Master so that the Special Master may provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website, with a copy of such posting provided to Fair Share Housing Center, using monitoring forms provided by FSHC.
27. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the period of protection provided in this Agreement. The Borough agrees to comply with those provisions as follows:
 - a. The midpoint realistic opportunity review, due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, has passed without the Borough preparing a report. The Borough agrees to work with the Special Master so that the Special Master may prepare the midpoint report as part of the second annual reporting required in paragraph 25. The Borough shall post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of the Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer

present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.

- b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this Agreement, and every third year thereafter, the Borough shall work with the Special Master so that the Special Master may provide to the Borough to post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.
28. This Agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Borough shall present its planner as a witness at this hearing. FSHC agrees to support this Agreement at the fairness hearing. The Parties further agree to request that the Court to conduct a compliance hearing contemporaneously with the fairness hearing and to enter a final JOR approving the Borough's affordable housing plan and implementing ordinances as adopted by the Court, which final JOR may have conditions the Court deems necessary to implement the settlement. The parties agree to request from the court that such combined hearing be conducted, and final JOR be entered, prior to December 31, 2020, or as soon as possible as scheduled by the court. In the event the Court approves this proposed settlement and the affordable housing plan resulting therefrom, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025. If this Agreement is rejected by the Court at a fairness hearing, it shall be null and void and all parties shall return to *status quo ante* with all of the rights they had prior to the execution of this Agreement.
 29. The Borough agrees to pay FSHC's attorneys fees and costs in the amount of \$335,000.00 within ten (10) days of the court's approval of this Agreement and entry of a final JOR, which final JOR may have conditions the Court deems necessary to implement the settlement, following a duly-noticed fairness and compliance hearing. If such approval is not provided by the Court prior to December 21, 2020, the Borough shall place \$335,000.00 in escrow with FSHC's attorney escrow account on that date; counsel for the Borough and FSHC shall negotiate an escrow agreement in good faith that shall disburse the funds to FSHC upon court approval of the agreement and entry of a final JOR.
 30. If an appeal is filed of the Court's approval or rejection of this Agreement and/or the entry of a final JOR, the Parties agree to defend the Agreement and/or JOR on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and Englewood Cliffs commits to continue to fully and swiftly implement the terms of this Agreement and approved plan and implementing ordinances if the Agreement and/or plan and implementing ordinances is approved before the trial court unless and

until an appeal of the trial court's approval is successful. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.

31. This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court of New Jersey, Bergen County. A prevailing movant or plaintiff in such a motion or separate action shall be entitled to reasonable attorney's fees and costs.
32. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable except for the height limitations. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.
33. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
34. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
35. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.
36. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.
37. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.
38. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.
39. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.
40. No member, official or employee of the Borough shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

41. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.
42. All Notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight carrier or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) Notices shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be effected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC:

Adam M. Gordon, Esquire
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: adamgordon@fairsharehousing.org

TO THE BOROUGH:

Attention: Lisette Duffy
Borough of Englewood Cliffs
482 Hudson Terrace
Englewood Cliffs, NJ 07632
Fax: (201) 569-4356

WITH COPIES TO:

Surenian Edwards & Nolan, LLC
Attention: Jeffrey R. Surenian, Esq.
707 Union Avenue, Suite 301
Brielle, NJ 08730
Fax: (732) 612-3101

AND TO:

Albert H. Wunsch, III, Esq.
400 Sylvan Ave., #2
Englewood Cliffs, NJ 07632
Fax: (201) 541-0606

Chiesa Shahinian & Giantomasi, P.C.
Thomas J. Trautner, Jr. Esq.
1 Boland Drive
West Orange, NJ 07052
Fax: (973) 530-2279

Joseph R. Mariniello, Jr.
Mariniello & Mariniello PC
265 Columbia Ave.
Fort Lee, NJ 07024
Fax: (201) 947-6605

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

Please sign below if these terms are acceptable.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed, this Agreement to be effective as of the Effective Date.

ON BEHALF OF FAIR SHARE HOUSING CENTER:

John D. Davis By: [Signature]
Witness/Attest:

Dated: October 8, 2020

ON BEHALF OF THE BOROUGH OF ENGLEWOOD CLIFFS, WITH THE AUTHORIZATION OF THE GOVERNING BODY:

_____ By: _____
Witness/Attest:

Dated: _____, 2020

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

Please sign below if these terms are acceptable.

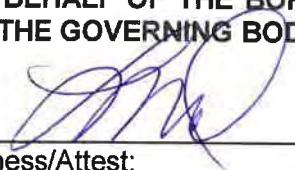
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed, this Agreement to be effective as of the Effective Date.


ON BEHALF OF FAIR SHARE HOUSING CENTER:

Witness/Attest: By: _____

Dated: _____, 2020

ON BEHALF OF THE BOROUGH OF ENGLEWOOD CLIFFS, WITH THE AUTHORIZATION OF THE GOVERNING BODY:



Witness/Attest: By: 
Gloria Oh, Council President

Dated October 8th, 2020

Exhibit A: Court Orders

Thomas F. Carroll, III, Esq.
Attorney ID # 022051983
Hill Wallack LLP
21 Roszel Road
Princeton NJ 08543
(609) 924-0808
tcarroll@hillwallack.com

Antimo A. Del Vecchio, Esq.
Attorney ID # 015191989
Beattie Padovano, LLC
50 Chestnut Ridge Road, Suite 208
Montvale, New Jersey 07645
(201) 799-2149
adelvecchio@beattielaw.com

Attorneys for Defendant-Intervenor
800 Sylvan Avenue, LLC

FILED

AUG 27 2019

**CHRISTINE A. FARRINGTON,
J.S.C.**

IN THE MATTER OF THE APPLICATION
OF THE BOROUGH OF ENGLEWOOD
CLIFFS, a Municipal Corporation of the State
of New Jersey

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY - LAW DIVISION

DOCKET NO. BER-L-6119-15

Mt. Laurel
CIVIL ACTION

**ORDER DENYING THE BOROUGH'S
MOTION FOR AN EXTENSION OF
IMMUNITY AND GRANTING 800
SYLVAN AVENUE'S CROSS-MOTION
TO TERMINATE IMMUNITY FROM
EXCLUSIONARY ZONING
LITIGATION**

THIS MATTER having come before the Court on application of the Borough of Englewood Cliffs, though its counsel, Jeffrey R. Surenian and Associates, LLC (Jeffrey R. Surenian, Esq., appearing) ; Chiesa, Shahinian & Giantommasi, PC (Thomas J. Trautner, Esq., appearing); and Law Offices of Albert H. Wunsch, III (Albert H. Wunsch, III, Esq., appearing) for an extension of the Borough of Englewood Cliffs' immunity from builder's remedy suits and the application of 800 Sylvan Avenue, LLC though its counsel, Hill Wallack, LLP (Thomas F.

Carroll, III, Esq., appearing) and Beattie Padovano, LLC (Antimo A. Del Vecchio, Esq., appearing) for the termination of the Borough of Englewood Cliffs' immunity from exclusionary zoning litigation, and Fair Share Housing Center (Kevin D. Walsh, Esq., appearing), the Court having considered the papers filed in support of the motion to extend immunity filed by the Borough of Englewood Cliffs and the papers filed in opposition to the motion seeking an extension of immunity and in support of the cross-motion seeking revocation of immunity by Defendant-Intervenor 800 Sylvan Avenue, LLC and the Fair Share Housing Center, and for good cause shown:

IT IS on this 27th day of August 2019,

ORDERED as follows:

1. The Court finds that the Borough of Englewood Cliffs has acted in bad faith. *
2. The Court finds that the Borough of Englewood Cliffs has made a concerted effort to avoid compliance with its obligation to create a realistic opportunity for the creation of its fair share of the regional need for low and moderate cost housing. *
3. The Borough of Englewood Cliffs' immunity from exclusionary zoning litigation is denied and immunity is terminated. *
4. Defendant-Intervenor 800 Sylvan Avenue, LLC's cross-motion to terminate the Borough of Englewood Cliffs' immunity from exclusionary zoning litigation as to 800 Sylvan is hereby granted. *
5. Defendant-Intervenor 800 Sylvan Avenue, LLC is hereby authorized to file an amended answer and counterclaim setting forth a claim for site-specific relief.
6. Copies of this Order shall be served via ECourts and via direct service upon the Court-appointed Master

Christine Farrington
Hon. Christine A. Farrington, J.S.C., *ctd, +/a*

Opposed []
Unopposed []

** For reasons set forth in
the attached Rider*

JEFFREY R. SURENIAN AND ASSOCIATES, LLC

707 Union Avenue, Suite 301

Brielle, NJ 08730

(732) 612-3100

Attorneys for Plaintiff, Borough of Englewood Cliffs

By: Jeffrey R. Surenian (Attorney ID: 024231983)

Christine M. Faustini (Attorney ID: 023361993)

FILED**AUG 27 2019****CHRISTINE A. FARRINGTON,
J.S.C.**

**IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
ENGLEWOOD CLIFFS, COUNTY OF
BERGEN**

**SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY: LAW DIVISION**

Docket No.: BER-L-6119-15

*Civil Action
Mount Laurel*

ORDER

THIS MATTER having been brought before the Court on application of the Borough of Englewood Cliffs (“the Borough”), through its counsel, Jeffrey R. Surenian, Esq. of Jeffrey R. Surenian and Associates, LLC, Thomas J. Trautner, Esq., of Chiesa, Shahinian and Giantommasi, PC and Albert Wunsch, III, Esq. of the Law Offices of Albert H. Wunsch, III, and the Defendant-Intervenor, 800 Sylvan Avenue, LLC (“Sylvan”) being represented by Thomas F. Carroll, III, Esq., of Hill Wallack, LLP, and Antimo A. Del Vecchio, Esq., of Beattie Padovano, LLC, and Fair Share Housing Center (“FSHC”), being represented by Kevin D. Walsh, Esq.; and for good cause shown:

IT IS on this 27th day of August, 2019 **ORDERED** as follows:

1. The Court finds that there has been no proof that the Borough “is determined to be constitutionally noncompliant.” *Denied*
2. The Court hereby declines to rescind or withdraw the Borough’s immunity from exclusionary zoning lawsuits.

3. The immunity from all exclusionary zoning actions previously granted to the Borough of Englewood Cliffs, the Governing Body of the Borough of Englewood Cliffs, and the Planning Board of the Borough of Englewood Cliffs shall remain in full force until such time as the Court completes a trial in this matter and until further order by this Court.

4. Counsel for the Borough shall provide all parties ^{via e Court} and the Court Master with a copy of this Order within seven (7) days of the date hereof.

Christine Farrington
 Hon. Christine A. Farrington, J.S.C., ret'd, t/a recall

Opposed
 Unopposed

** For reasons set forth in the attached order*

FILED

SUPERIOR COURT OF NEW JERSEY

AUG 27 2019

BERGEN VICINAGE

**CHRISTINE A. FARRINGTON,
J.S.C.**

CHAMBERS OF

CHRISTINE FARRINGTON

SUPERIOR COURT JUDGE, RET'D, *va*



Bergen County Justice Center

10 Court Street
Chambers 202

Hackensack, New Jersey 07601

Telephone (201) 221-0700 Ext. 25552

Facsimile (201) 371-1130

Email: Christine.Farrington@njcourts.gov

August 27, 2019

RIDER TO ORDERS DATED AUGUST 27, 2019

**RE: In the Matter of the Application of the Borough of
Englewood Cliffs
BER-L-6119-15**

Jeffry R. Surenian & Associates
Brielle Galleria
707 Union Avenue, Ste. 301
Brielle Borough, NJ 08730

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Blvd.
Cherry Hill, NJ 08002

Thomas F. Carroll, Esq.
Hill Wallack LLP
21 Roszel Road
Princeton, NJ 08543

Antimo A. Del Vecchio Esq.
Beattie Padavano
50 Chestnut Ridge Road, Ste. 208
Montvale NJ 07645

Special Master Mary Beth Lonergan, PP, AICP
Clarke Caton Hintz
100 Barrack Street
Trenton, NJ 08608

Page 2

August 27, 2019

Re: **In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

This matter comes before the court upon the motion of the Borough to extend immunity pending a trial to determine the Borough's Fair Share Housing obligation. Both Fair Share Housing Center and Intervenor 800 Sylvan Avenue, LLC (800 Sylvan) oppose. 800 Sylvan cross moves for revocation of immunity. For the reasons which follow the court has determined that the Borough has acted in bad faith and determined to be constitutionally non-compliant and immunity from builders remedy actions is revoked.

The Borough of Englewood Cliffs took no action to comply with either of our Supreme Court's decisions of 1975 and 1983 in So. Burlington Cty. N.A.A.C.P. v. Twp of Mount Laurel (67 N.J. 151 and 92 N.J. 158). The Borough did not participate in the Council on Affordable Housing's (COAH) First Round.

As set forth in Special Master Lonergan's report, the Borough petitioned COAH for substantive certification based upon its Second Round Plan. In the Second Round plan, the Borough requested a Vacant Land Adjustment (VLA) which would reduce its then 219 unit pre-credited need to a 4-unit RDP with a 215-unit unmet need. COAH conditioned its 1997 denial of substantive certification upon the Borough's

Page 3

August 27, 2019

Re: **In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

adoption of an overlay zone to permit inclusionary development of a former Prentice-Hall headquarters, now the site of LG headquarters under construction. The Borough failed to adopt the overlay zoning and COAH denied certification in 1997, making the Borough vulnerable to possible builders remedy complaints. It is noteworthy that when the LG redevelopment was approved, it included no provision for affordable housing.

The Borough prepared an initial Third Round Housing Element and Fair Share Plan in January 2006. On account of Judge Skillman's 2010 decision overturning COAH's Third Round rules, the Borough's petition for substantive certification was not addressed by COAH. The Borough never implemented the mechanisms identified in its HEFSP adopted by the Englewood Cliffs Planning Board January 7, 2009.

In 2013, our Supreme Court upheld Judge Skillman and directed COAH to prepare and adopt necessary rule revisions. When COAH failed to do so, FSHC filed a motion in aid of litigant's rights to compel the production of constitutional affordable housing regulations. In March 2015, the Supreme Court transferred responsibility of review and approving to designated

Page 4

August 27, 2019

Re: **In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

Mount Laurel trial judges by way of declaratory judgments with temporary immunity from third party lawsuits during the municipality's development of compliant HEFSPs.

The Borough filed this declaratory judgment action on June 26, 2015. Special Master Lonergan issued a report in January 2016. The Borough pressed its claim for a vacant land adjustment which was disputed by FSHC. The Special Master proposed reviewing the VLA analysis and proposed zoning changes. The report also recommended mediation.

In January 2017 our Supreme Court issued its decision In Re Declaratory Judgment Actions Filed by Various Municipalities, County of Ocean, Pursuant to the Supreme Court's Decision in In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015), the so-called "Gap" decision which found that the period between the end of the Second Round in 1999 and 2015 generates an affordable housing obligation.

The Borough was ordered to prepare an updated housing plan and updated VLA by December 2017.

On November 17, 2017, 800 Sylvan advised the Borough of their interest in offering a 20+ acre portion of their 28 acre property for inclusionary development. The offer consisted of

Page 5

August 27, 2019

Re: **In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

600 homes of which 15% (rental set-aside) or 20% (sale set-aside) would be affordable. The Honorable Menelaos Toskos (retired) entered an order granting 800 Sylvan's motion to intervene January 10, 2018. Judge Toskos subsequently entered an April 13, 2018 order dismissing 800 Sylvan's builder's remedy law suit. 800 Sylvan appealed and the Appellate Division issued an order on September 17, 2018 permitting 800 Sylvan's builder's remedy lawsuit to proceed as of right. On June 7, 2019 the Appellate Court stayed the proceedings before it until August 1, 2019 pending settlement discussions.

In March 2018, the court established a schedule for the parties to set forth their positions on a confidential basis and attempt settlement. The Borough was unable to reach agreement with FSHC. On October 1, 2018, the court entered an order ending mediation and scheduling trial for January 22, 2019.

On October 22, 2018, this court entered an order approving expenditure of the Borough's trust funds for the purchase of 476 Hudson Terrace for the purpose of construction of a 100% affordable housing project.

The Borough sought a bifurcated trial and to limit the first phase to quantification of the RDP and the second to the

Page 6

August 27, 2019

Re: **In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

sufficiency of the Borough's plan. This court denied those motions. Thereafter, this court denied the Borough's request to bifurcate trial for a determination of its RDP, followed by a compliance hearing. This court also advised the parties that the trial would utilize the same methodology as determined by the Honorable Mary C. Jacobsen, A.J.S.C., In the Matter of the Application of the Municipality of Princeton, decided March 29th, 2018. In its decision, the court stated:

The failure of the Borough to provide a single unit of Affordable Housing between 1985 and 2018 resonates with this court. The Borough's dilemma is one of its own making and the result of a willful refusal to comply with its Constitutional obligations. . . This court continues to believe under circumstances where a municipality is desirous of meeting its Constitutional obligation, there might be a benefit to the municipal officials who are tasked with the obligation of implementing the Ordinances and housing plan, often unpopular with constituents, to ascertain the realistic development potential first, making it easier for those officials to explain to those constituents what the realities are. In the court's mind this might motivate the municipality to reach a settlement with Fair Share Housing to enable them to plan and build units in locations they deem best. The court believed the proximity of the trial following Judge Jacobson's decision might motivate the Borough of Englewood Cliffs to move forward in a constructive manner to meet its Constitutional obligation to provide affordable housing. The court has not seen anything which indicates this to be the case. Notwithstanding the extraordinary efforts of the Special Master in a mediation attempt spanning months and essentially accommodating the Borough in terms of a confidentiality agreement no progress has been made. That lack of progress cannot be blamed on the Intervener and/or

Page 7

August 27, 2019

Re: **In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

Fair Share Housing alone. The court is persuaded by the arguments of the Intervener and Fair Share Housing that the ultimate decision can no longer be delayed.

The court ordered the Borough to submit its Housing Element and Fair Share Plan and all expert reports by December 7, 2018. The court also denied FSHC's motion to strip the Borough of immunity at that time. This court also issued two orders on December 5,

2018, requiring the Borough to address its unmet need and denying FSHC's motion to require specific inclusionary overlay zoning as premature, noting the court found no bad faith as to that issue and the proximity of the then trial date of January 22, 2019.

On January 9, 2019 this court denied the Borough's motion for reconsideration of the issues of bifurcation, discovery and the trial date and denied 800 Sylvan's motion to terminate immunity. The trial date was adjourned to March 5, 2019 to permit the Special Master additional time to complete her report. The Borough's governing body adopted its Housing Element and Fair Share Plan on January 24, 2019. That plan acknowledges the Borough's obligation to be 584 units, but calculates its realistic development potential as 77 units. The calculation is

Page 8

August 27, 2019

Re: **In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

based in part on exclusion of certain properties based on steep slope, despite the fact the Borough has no steep slope ordinance. It is further based upon a density of 6 units per acre which the Special Master concluded was based solely on the character of the surrounding area as its threshold for determining density, and did not provided any context in its decision-making for the need for housing. The Master concluded that the densities assigned to some sites should be increased. The Plan further addresses only 95 of the 507 units of unmet need based upon the Borough's calculation of its RDP. The Plan excludes 800 Sylvan's property, despite the fact that the 800 Sylvan appears to be the only remaining location in the Borough available for significant affordable housing development. 800 Sylvan has committed to provide 120 units of affordable housing. This court has fact based concerns that the 800 Sylvan site will go the way of the Prentice Hall/LG site if a builder's remedy suit does not go forward.

According to the Borough's attorney, the Borough, recognizing a potential exposure to an estimated 12.7 million dollar costⁱ, re-entered negotiations with 800 Sylvan and on April 25, 2019 the Borough's Mount Laurel subcommittee consisting

Page 9

August 27, 2019

Re: **In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

of three members of the Borough Council, FSHC, and 800 Sylvan entered into a non-binding Memorandum of Understanding.

On July 10, 2019, an informational town hall meeting was held. The governing body did not approve the non-binding Memorandum of Understanding nor did it adopt the ordinance regarding same. Instead, the Borough passed Resolution 19-57 on July 29, 2019 which states in part:

. . . WHEREAS as a result of finding itself forced to prepare a plan before it knew with a measure of reliability the RDP it needed to plan for. . .
WHEREAS the Borough remains committed to complying and has emphasized that commitment at every turn even though, like so many public officials in other municipalities, the Borough's public officials have questioned the wisdom of the Mount Laurel doctrine. . .
WHEREAS as a result of the foregoing, the Governing Body wishes to express its commitment to providing affordable housing in a manner of its choosing and that the best way for the Borough to satisfy its obligations would not be to rezone the Sylvan site for residential housing. (emphasis provided)

Trial is currently scheduled for October 11, 2019. The court permitted the filing of the instant motion to terminate immunity and ordered release of the Special Master's report.

In addition to the procedural aspects of the case set forth herein, the court has been made aware that two council members

Page 10

August 27, 2019

**Re: In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

have reportedly had recall petitions commenced against them allegedly related to their support of the Memorandum of Understanding; and that the Mayor has been consistently opposed to resolution of the litigation.

It is clear from the rulings of our Supreme Court, the legislative enactments and the case law that voluntary compliance is preferred, and should be encouraged and that a builder's remedy action should be considered a remedy of last resort. This voluntary compliance, however, was not meant to refer to compliance with a judgment following trial, rather it derived from a desire to promote voluntary compliance and early settlement. It has to do with the desire to simplify litigation in this area and encourage voluntary compliance with the constitutional obligation. Here, despite the evidence to the contrary, the Borough as evidenced in its July Resolution, continues to insist it does not know what the range of its constitutional obligation is, and further provides no concrete plan for funding or building affordable units within that range.

The Borough argues that until the court adjudicates the Borough's realistic development potential, it is not clear to whether and to what extent the Borough must adjust its affordable

Page 11

August 27, 2019

Re: **In the Matter of the Application of the Borough of Englewood Cliffs**
BER-L-6119-15

housing plan to satisfy the RDP the court finds satisfactory. The Borough advanced this same argument in November 2018. At that time, making arguments relative to the applicability of the 20-percent cap, Kevin Walsh, Esq., on behalf of FSHC noted that in that this court had indicated it would follow the methodology determined by Judge Jacobsen. Based upon that methodology, FSHC noted that the two components of the Borough's Third Round obligation total 599 units (Prior round obligation 219 units, Gap Period 234 units and prospective obligation of 418 units, capped at 365 (234+365)). The court rejects the Borough's argument here for the same reasons set forth in its opinion in the earlier motion.

As set forth in Judge Wolfson's opinion In the Matter of the Application of the Twp. Of South Brunswick, 448 N.J. Super 441 (Law Div. 2016):

In enacting the FHA, the Legislature "clearly signaled," and the Supreme Court recognized, that an administrative remedy that resulted in "voluntary municipal compliance" with its affordable housing obligation, was "preferred" to litigation culminating in a "compelled rezoning." Mount Laurel IV, supra. Because of COAH's inability to function, the Supreme Court dissolved the FHA's "exhaustion-of-administrative-remedies requirement" leaving the courts to "resume" their role as "the forum of first instance," in adjudicating a municipality's constitutional compliance. The Supreme Court

Page 12

August 27, 2019

Re: **In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

undoubtedly envisioned that "certified" and "participating" towns would likely subject themselves, as South Brunswick did in this case, to judicial review via the filing of a declaratory judgment action, taking advantage of the temporary immunity from the threat of multiple builder remedy lawsuits. The Court also recognized, however, that some municipalities might not embrace, in full, their affordable housing obligation, but instead might pursue a path of resistance, resulting in a loss of immunity. Judge Serpentelli's admonition in J.W. Field Co., Inc., bears repeating here: "[i]f a municipality chooses not to voluntarily comply, it brings upon itself the potential that multiple builders will force it to comply. The choice is the municipality's." (internal citations omitted)

It is clear to this court that the Borough of Englewood Cliffs has chosen to pursue a path of resistance. In In re N.A.C.C., 221 N.J. 1 (2015) our Supreme Court held:

We emphasize that the courts should employ flexibility in assessing a town's compliance and should exercise caution to avoid sanctioning any expressly disapproved practices from COAH's invalidated Third Round Rules. Beyond those general admonitions, the courts should endeavor to secure, whenever possible, prompt voluntary compliance from municipalities in view of the lengthy delay in achieving satisfaction of towns' Third Round obligations. If that goal cannot be accomplished, with good faith effort and reasonable speed, and the town is determined to be constitutionally noncompliant, then the court may authorize exclusionary zoning actions seeking a builder's remedy to proceed against the towns either that had substantive certification granted from COAH under earlier iterations of Third Round Rules or that had held "participating" status

Page 13

August 27, 2019

Re: **In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

before COAH until this action by our Court lifted the
FHA's exhaustion of administrative remedies
requirement.

This court has been diligent and flexible in its
effort to secure voluntary compliance. The court's earlier
reliance on the commitment of municipal elected officials
to carry out their constitutional duties to provide
opportunity for the construction of affordable housing was
apparently misplaced. The result has been a long delay and
the denial of equal treatment to the poor contrary to the
holding in Mount Laurel II, 92 N.J. 158, 306 (1983),
"Equal treatment requires at the very least that government
be as fair to the poor as it is to the rich in the
provision of housing opportunities. That is the basic
justification for Mount Laurel."

Further in Mount Laurel II, the Supreme Court held,
"Experience since Madison, however, has demonstrated to us that
builder's remedies must be made more readily available to achieve
compliance with Mount Laurel." A builder's remedy may result in
site specific relief when the builder meets a three prong test:
(1) the builder succeeds in Mount Laurel litigation, (2) the
builder proposes a project with substantial amount of affordable

Page 14

August 27, 2019

**Re: In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

housing and (3) the builder's site is suitable. The court finds that the first prong would be satisfied if 800 Sylvan was permitted to file a builder's remedy suit as demonstrated by the Special Master's report and recommendations which includes the recommendation that this court to give the Borough an additional ninety (90) days to amend its deficient HEFSP. The amendments would include items which the Borough has failed to provide or provided incorrectly or incompletely. These include but are not limited to:

- (1) Affordable Housing Ordinance and Affirmative Marketing Plan
- (2) A Housing Element which includes a complete compilation of the Borough's housing inventory, assessment of housing size and occupancy, data on the number of bedrooms, accurate discussion of housing stock, and correlation of data regarding rental units and average rents to affordability.
- (3) A projection of the Borough's housing stock including probably construction of low and moderate income housing for the next ten years.

Page 15

August 27, 2019

Re: **In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

(4) An analysis of existing and probably future employment characteristicsⁱⁱ.

These deficiencies, together with the Borough's failure to produce a single unit of affordable housing in the forty- plus years since the original Mount Laurel decision convinces this court that further delay will be justice denied.

The second prong is met by 800 Sylvan's proposal to build 120 units of affordable housing.

The third, site suitability, is not contested by the Borough's experts from a reading of its HEFSP.

Regarding the Special Master's recommendation that the court receive her report as a pre-mediation report pursuant to N.J.A.C. 5:91-6.2 and recommending a 90-day process (which would exceed the trial date) during which the Master would work with the Borough to ascertain immediately if the Borough's proposed means to address what is likely an increased Court-approved RDP, a meeting to review the VLA analysis and the proposed zoning changes for unmet need and to explore additional development opportunities for unmet need, the court finds the time for such a process is long past. Such a process should have been pursued by the Borough following the Special Master's first report in 2016

Page 16

August 27, 2019

**Re: In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

or at any time prior to now. In its Resolution 19-157, the governing body states,

WHEREAS, the plan was for the professionals to negotiate agreements consistent with a non-binding negotiation with Sylvan and FSHC; to introduce an ordinance to rezone the Sylvan site and thereafter, to take into account the public's input before voting on whether to adopt the Sylvan ordinance at second reading and to sign a settlement agreement with Sylvan; and . . .

WHEREAS, the public made its sentiments clear at the July 10, 2019 town hall meeting: (1) It was committed to comply voluntarily - even if the plan was even more expensive than its January 2019 affordable housing plan; and (2) it did not want to comply by rezoning the Sylvan site for high density residential zoning. .

WHEREAS as a result of the foregoing, the Governing Body wishes to express its commitment to providing affordable housing in a manner of its choosing and the best way for the Borough to satisfy its obligations would not be to rezone the Sylvan site for residential housing. . .

In essence, the Governing Body wants this court to believe that it negotiated in good faith for months with FSHC and 800 Sylvan, but the time, money and effort of the parties, the intervener and the Special Master in reaching the terms of the Memorandum of Understanding were all for naught in the face of public opposition. The court finds this to be an abuse of the process. The Governing Body says it "wishes to express its commitment to providing affordable housing in a manner of its

Page 17

August 27, 2019

**Re: In the Matter of the Application of the Borough of Englewood
Cliffs
BER-L-6119-15**

choosing," but the manner of its choosing has been to stall, procrastinate and evade its obligations. The result of allowing the Borough to provide affordable housing "in a manner of its choosing" has produced not a single unit of affordable housing. As a result, the Borough has lost the ability to determine the elements of its affordable housing plan which will be designed by third parties, the Special Master and the court.

The motion for an extension of the Borough of Englewood Cliffs' immunity from builders remedy suits is denied. The motion of 800 Sylvan Avenue, LLC through its counsel for the revocation of the Borough of Englewood Cliffs' immunity and FSHC opposition to the Borough's application is granted for the reasons set forth herein.

CHRISTINE FARRINGTON, J.S.C., ret'd, t/a

ⁱ This statement is also reflected in Resolution 19-157, July 30, 2019, p. 4

ⁱⁱ Special Master's report, August 14, 2019, pp. 52-53

FILED

JAN 17 2020

CHRISTINE A. FARRINGTON,
J.S.C.

IN THE MATTER OF THE : SUPERIOR COURT OF NEW JERSEY
BOROUGH OF ENGLEWOOD : LAW DIVISION: BERGEN COUNTY
CLIFFS : DOCKET NO. BER-L-6119-15
: CIVIL ACTION
: ORDER
:

This matter having come before the court for trial on multiple dates concluding December 9, 2019; and

The court having heard the testimony of witnesses, arguments of counsel and considered the legal submissions of all parties, and for reasons set forth in the attached Decision and for good cause shown;

IT IS on this 17th day of January, 2020,

ORDERED:

The court finds the Borough of Englewood Cliffs to be constitutionally non-compliant with the Mount Laurel doctrine;

The court directs the Borough of Englewood Cliffs to revise its ordinances in accordance with the attached decision within 90 days of this date;

The court will hold a hearing on April 16, 2020 upon notice to all parties, at which time the Special Master shall testify under oath whether the revised ordinances, in her opinion, conform with the decision of the court. In the event the Special Master shall fail to do so, the court shall consider voiding all zoning ordinances of the Borough;

The Borough shall provide a phasing plan and construction timetable for the 100% affordable municipal project on or before April 16, 2020;

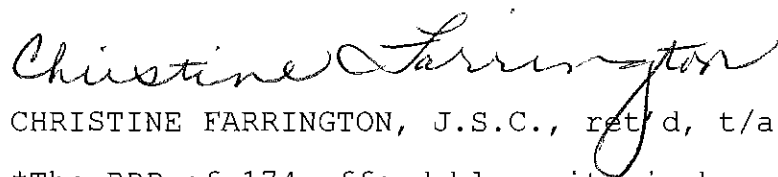
The Borough shall provide title assurance that the lots comprising the Borough's 100% affordable municipal project are free of such encumbrances as would prevent development of the proposed 57 units. Shall the Borough fail to provide such assurance to the satisfaction of the court the court shall hold

a hearing on a date to be determined regarding the refunding of the purchase monies for the properties to the Housing Trust Fund;

The court finds the realistic development potential of the Borough of Englewood Cliffs to be 174 affordable units*;

The court finds the Borough is not entitled to rental bonus credits;

The court incorporates the attached decision into this order.


CHRISTINE FARRINGTON, J.S.C., ret'd, t/a

*The RDP of 174 affordable units is based upon no RDP assigned to Sites A and D which the court has determined to be rezoned for affordable housing. Had the court not included those sites for rezoning to meet the unmet need, the court would have determined the RDP for Site A to be 6 affordable units and the RDP for Site D to be 167 affordable units making the Borough's total RDP 347 affordable units. The court makes this finding in the event the court's determination to include those sites in overlay zones for the Borough's affordable housing unmet need were reversed on appeal.

NOT TO BE PUBLISHED WITHOUT THE APPROVAL OF THE
COMMITTEE ON OPINIONS

IN THE MATTER OF THE : SUPERIOR COURT OF NEW JERSEY
BOROUGH OF ENGLEWOOD : LAW DIVISION: BERGEN COUNTY
CLIFFS : DOCKET NO. BER-L-6119-15
: :
: :
: CIVIL ACTION

DECISION

FILED

JAN 17 2020

Trial ended: DECEMBER 9, 2019
Submissions: JANUARY 7, 2020
Decided: JANUARY 17, 2020

**CHRISTINE A. FARRINGTON,
J.S.C.**

Honorable Christine Farrington, J.S.C., ret'd, t/a

Thomas J. Trautner, Jr., Esq. and Mara Mathews, Esq., Chiesa, Shahinian & Giantomasi; Jeffrey R. Surenian, Esq., Jeffrey R. Surenian & Associates; Albert H. Wunsch, III, Law Office of Albert H. Wunsch appearing on behalf of plaintiff, Borough of Englewood Cliffs.

Antimo A. DelVecchio, Esq., and Daniel Steinhagen, Esq., Beattie Padovano; and Thomas F. Carroll, III, Esq., Hill Wallach appearing on behalf of Defendant- Intervenor 800 Sylvan Avenue, LLC.

Kevin D. Walsh, Esq. and Joshua Bauers, Esq., appearing on behalf of Fair Share Housing Center.

Special Master, Mary Beth Lonergan, PP

This matter arises out of a declaratory judgment action filed with this court by the Borough of Englewood Cliffs seeking to establish its constitutional housing obligation under New Jersey's Mount Laurel Affordable Housing Doctrine. In

particular, this matter comes before the court for determination of whether the Borough's Housing Element Fair Share Plan (HEFSP) dated, December 10, 2018, satisfies the Borough's constitutional Fair Share obligation pursuant to the Fair Share Housing Act Fair Share Housing Act, N.J.S.A. 52:27D-307 and COAH Regulations; In Re Adoption of N.J.A.C. 5:96 and 5:97 by New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (Mount Laurel IV); S. Burlington County NAACP v. Twp of Mount Laurel, 67 N.J. 151, 174 (1975) (Mount Laurel I); In re Adoption of N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1, 15 (App. Div. 2007) certify. denied, 192 N.J. 72 (2007).

This declaratory judgment action was filed in response to the New Jersey Supreme Court's 2015 decision that declared the Council on Affordable Housing (COAH) defunct and reinstated the courts as "the forum of first instance for evaluating municipal compliance with Mount Laurel." Mount Laurel IV, 221 N.J. at 20.

In Mount Laurel IV, 221 N.J. at 3-4, the Supreme Court reaffirmed its commitment to ensuring that New Jersey's municipalities create a "realistic opportunity" for producing their fair shares of the regional Present and Prospective Need for low-and moderate-income housing. The court directed the trial courts to follow "as closely as possible the FHA's processes," *id* at 6, as implemented by COAH in determining municipal fair share obligations and reviewing the municipal

zoning ordinances proposed to achieve constitutional compliance with those obligations. As noted by the Honorable Mary C. Jacobson, A.J.S.C. in her unpublished 2018 opinion on *Fair Share methodology to implement Mount Laurel housing doctrine for the Third Round*, In the Matter of the Application of the Municipality of Princeton, Docket No. MER-L-1550-15 (Law Div., Mercer Cty., March 29, 2018). the trial courts were directed "not to become a replacement agency for COAH" nor to become "an alternate form of statewide administrative decision maker for unresolved policy details" but rather "to utilize previous methodologies developed in the First and Second Round rules by COAH to "establish present and prospective statewide and regional affordable housing need."

Judge Jacobson, following forty plus days of trial and hearing testimony of many experts, some of whom appeared in the trial before this court, devised a methodology which this court determined to accept. As set forth in the court's correspondence of October 26, 2018:

The court finds as a matter of law that the proper application of the 20-percent cap requires the same result determined by the Honorable Mary C. Jacobson, A.J.S.C. in In the Matter of the Application of the Municipality of Princeton, Docket No. MER-L-1550-15 (Law Div., Mercer Cty., March 29, 2018). The court accepts FSHC's agreement that the Borough's Third Round obligation "in that context (including the gap period [is] 365 units." The court further accepts the application of the 20-cap as set forth in Judge Jacobson's opinion. The court has indicated to

counsel on multiple occasions that to undertake a methodology trial as the one tried before Judge Jacobson is a waste of judicial resources. While the outcome might be different, qualitatively it could not be better, given the exhaustive testimony presented to Judge Jacobson. The court is persuaded by the thorough, scholarly analysis of Judge Jacobson, and her consideration of the position of all stakeholders. The review of the methodology and conclusions should be left to the Appellate Division.

Accordingly, it was established that the Borough's Gap Present need and Prospective Need (capped) is 365 units. This when combined with the Borough's Prior Round Obligation of 219 units resulted in a total new construction obligation, 1987-2025 of 584 units.

The procedural history of this matter was contained in the opinion of the court of August 27, 2019, finding the Borough had acted in bad faith and withdrawing immunity. The court wrote at that time:

The Borough of Englewood Cliffs took no action to comply with either of our Supreme Court's decisions of 1975 and 1983 in So. Burlington Cty. N.A.A.C.P. v. Twp of Mount Laurel (67 N.J. 151 and 92 N.J. 158). The Borough did not participate in the Council on Affordable Housing's (COAH) First Round.

As set forth in Special Master Lonergan's report, the Borough petitioned COAH for substantive certification based upon its Second Round Plan. In the Second-Round plan, the Borough requested a Vacant Land Adjustment (VLA) which would reduce its then 219 unit pre-credited need to a 4-unit RDP with a 215-unit unmet need. COAH conditioned its 1997 denial of substantive certification upon the Borough's adoption of an overlay zone to permit inclusionary development of a former Prentice-Hall headquarters, now the site of LG headquarters under construction. The Borough

failed to adopt the overlay zoning and COAH denied certification in 1997, making the Borough vulnerable to possible builder's remedy complaints. It is noteworthy that when the LG redevelopment was approved, it included no provision for affordable housing.

The Borough prepared an initial Third Round Housing Element and Fair Share Plan in January 2006. On account of Judge Skillman's 2010 decision overturning COAH's Third Round rules, the Borough's petition for substantive certification was not addressed by COAH. The Borough never implemented the mechanisms identified in its HEFSP adopted by the Englewood Cliffs Planning Board January 7, 2009.

In 2013, our Supreme Court upheld Judge Skillman and directed COAH to prepare and adopt necessary rule revisions. When COAH failed to do so, FSHC filed a motion in aid of litigant's rights to compel the production of constitutional affordable housing regulations. In March 2015, the Supreme Court transferred responsibility of review and approving to designated Mount Laurel trial judges by way of declaratory judgments with temporary immunity from third party lawsuits during the municipality's development of compliant HEFSPs.

The Borough filed this declaratory judgment action on June 26, 2015. Special Master Lonergan issued a report in January 2016. The Borough pressed its claim for a vacant land adjustment which was disputed by FSHC. The Special Master proposed reviewing the VLA analysis and proposed zoning changes. The report also recommended mediation.

In January 2017 our Supreme Court issued its decision In Re Declaratory Judgment Actions Filed by Various Municipalities, County of Ocean, Pursuant to the Supreme Court's Decision in In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015), the so-called "Gap" decision which found that the period between the end of the Second Round in 1999 and 2015 generates an affordable housing obligation.

The Borough was ordered to prepare an updated housing plan and updated VLA by December 2017.

On November 17, 2017, 800 Sylvan advised the Borough of their interest in offering a 20+ acre portion of their 28 acre property for inclusionary development. The offer consisted of 600 homes of which 15% (rental set-aside) or 20% (sale set-aside)

would be affordable. The Honorable Menelaos Toskos (retired) entered an order granting 800 Sylvan's motion to intervene January 10, 2018. Judge Toskos subsequently entered an April 13, 2018 order dismissing 800 Sylvan's builder's remedy lawsuit. 800 Sylvan appealed and the Appellate Division issued an order on September 17, 2018 permitting 800 Sylvan's builder's remedy lawsuit to proceed as of right. On June 7, 2019 the Appellate Court stayed the proceedings before it until August 1, 2019 pending settlement discussions.

In March 2018, the court established a schedule for the parties to set forth their positions on a confidential basis and attempt settlement. The Borough was unable to reach agreement with FSHC. On October 1, 2018, the court entered an order ending mediation and scheduling trial for January 22, 2019. On October 22, 2018, this court entered an order approving expenditure of the Borough's trust funds for the purchase of 476 Hudson Terrace for the purpose of construction of a 100% affordable housing project.

The Borough sought a bifurcated trial and to limit the first phase to quantification of the RDP and the second to the sufficiency of the Borough's plan. This court denied those motions. Thereafter, this court denied the Borough's request to bifurcate trial for a determination of its RDP, followed by a compliance hearing. This court also advised the parties that the trial would utilize the same methodology as determined by the Honorable Mary C. Jacobsen, A.J.S.C., In the Matter of the Application of the Municipality of Princeton, decided March 29th, 2018. In its decision, the court stated:

The failure of the Borough to provide a single unit of Affordable Housing between 1985 and 2018 resonates with this court. The Borough's dilemma is one of its own making and the result of a willful refusal to comply with its Constitutional obligations. . . This court continues to believe under circumstances where a municipality is desirous of meeting its Constitutional obligation, there might be a benefit to the municipal officials who are tasked with the obligation of implementing the Ordinances and housing plan, often unpopular with constituents, to ascertain the realistic development potential first, making it easier for those officials to explain to those constituents what the realities are. In the court's

mind this might motivate the municipality to reach a settlement with Fair Share Housing to enable them to plan and build units in locations they deem best. The court believed the proximity of the trial following Judge Jacobson's decision might motivate the Borough of Englewood Cliffs to move forward in a constructive manner to meet its Constitutional obligation to provide affordable housing. The court has not seen anything which indicates this to be the case. Notwithstanding the extraordinary efforts of the Special Master in a mediation attempt spanning months and essentially accommodating the Borough in terms of a confidentiality agreement no progress has been made. That lack of progress cannot be blamed on the Intervener and/or Fair Share Housing alone. The court is persuaded by the arguments of the Intervener and Fair Share Housing that the ultimate decision can no longer be delayed.

The court ordered the Borough to submit its Housing Element and Fair Share Plan and all expert reports by December 7, 2018. The court also denied FSHC's motion to strip the Borough of immunity at that time. This court also issued two orders on December 5, 2018, requiring the Borough to address its unmet need and denying FSHC's motion to require specific inclusionary overlay zoning as premature, noting the court found no bad faith as to that issue and the proximity of the then trial date of January 22, 2019. On January 9, 2019 this court denied the Borough's motion for reconsideration of the issues of bifurcation, discovery and the trial date and denied 800 Sylvan's motion to terminate immunity. The trial date was adjourned to March 5, 2019 to permit the Special Master additional time to complete her report. The Borough's governing body adopted its Housing Element and Fair Share Plan on January 24, 2019. That plan acknowledges the Borough's obligation to be 584 units but calculates its realistic development potential as 77 units. The calculation is based in part on exclusion of certain properties based on steep slopes, despite the fact the Borough has no steep slope ordinance. It is further based upon a density of 6 units per acre which the Special Master concluded was based solely on the character of the surrounding area as its threshold for determining density and did not provided any context in its decision-making for

the need for housing. The Master concluded that the densities assigned to some sites should be increased. The Plan further addresses only 95 of the 507 units of unmet need based upon the Borough's calculation of its RDP. The Plan excludes 800 Sylvan's property, despite the fact that the 800 Sylvan appears to be the only remaining location in the Borough available for significant affordable housing development. 800 Sylvan has committed to provide 120 units of affordable housing. This court has fact-based concerns that the 800 Sylvan site will go the way of the Prentice Hall/LG site if a builder's remedy suit does not go forward. According to the Borough's attorney, the Borough, recognizing a potential exposure to an estimated 12.7-million-dollar cost, re-entered negotiations with 800 Sylvan and on April 25, 2019 the Borough's Mount Laurel subcommittee consisting of three members of the Borough Council, FSHC, and 800 Sylvan entered into a non-binding Memorandum of Understanding.

On July 10, 2019, an informational town hall meeting was held. The governing body did not approve the non-binding Memorandum of Understanding nor did it adopt the ordinance regarding same. Instead, the Borough passed Resolution 19-57 on July 29, 2019 which states in part:

. . .WHEREAS as a result of finding itself forced to prepare a plan before it knew with a measure of reliability the RDP it needed to plan for. . .

WHEREAS the Borough remains committed to complying and has emphasized that commitment at every turn even though, like so many public officials in other municipalities, the Borough's public officials have questioned the wisdom of the Mount Laurel doctrine. . .

WHEREAS as a result of the foregoing, the Governing Body wishes to express its commitment to providing affordable housing in a manner of its choosing and that the best way for the Borough to satisfy its obligations would not be to rezone the Sylvan site for residential housing. (emphasis provided)

Trial is currently scheduled for October 11, 2019. The court permitted the filing of the instant

motion to terminate immunity and ordered release of the Special Master's report.

In addition to the procedural aspects of the case set forth herein, the court has been made aware that two council members have reportedly had recall petitions commenced against them allegedly related to their support of the Memorandum of Understanding; and that the Mayor has been consistently opposed to resolution of the litigation.

It is clear from the rulings of our Supreme Court, the legislative enactments and the case law that voluntary compliance is preferred and should be encouraged and that a builder's remedy action should be considered a remedy of last resort. This voluntary compliance, however, was not meant to refer to compliance with a judgment following trial, rather it derived from a desire to promote voluntary compliance and early settlement. It has to do with the desire to simplify litigation in this area and encourage voluntary compliance with the constitutional obligation. Here, despite the evidence to the contrary, the Borough as evidenced in its July Resolution, continues to insist it does not know what the range of its constitutional obligation is, and further provides no concrete plan for funding or building affordable units within that range.

The Borough argues that until the court adjudicates the Borough's realistic development potential, it is not clear to whether and to what extent the Borough must adjust its affordable housing plan to satisfy the RDP the court finds satisfactory. The Borough advanced this same argument in November 2018. At that time, making arguments relative to the applicability of the 20-percent cap, Kevin Walsh, Esq., on behalf of FSHC noted that in that this court had indicated it would follow the methodology determined by Judge Jacobson. Based upon that methodology, FSHC noted that the two components of the Borough's Third Round obligation total 599 units (Prior round obligation 219 units, Gap Period 234 units and prospective obligation of 418 units, capped at 365 (234+365)). The court rejects the Borough's argument here for the same reasons set forth in its opinion in the earlier motion.

As set forth in Judge Wolfson's opinion, In the Matter of the Application of the Twp. Of South Brunswick, 448 N.J. Super 441 (Law Div. 2016):

In enacting the FHA, the Legislature "clearly signaled," and the Supreme Court recognized, that an administrative remedy that resulted in "voluntary municipal compliance" with its affordable housing obligation, was "preferred" to litigation culminating in a "compelled rezoning." Mount Laurel IV, supra. Because of COAH's inability to function, the Supreme Court dissolved the FHA's "exhaustion-of-administrative-remedies requirement" leaving the courts to "resume" their role as "the forum of first instance," in adjudicating a municipality's constitutional compliance. The Supreme Court undoubtedly envisioned that "certified" and "participating" towns would likely subject themselves, as South Brunswick did in this case, to judicial review via the filing of a declaratory judgment action, taking advantage of the temporary immunity from the threat of multiple builder remedy lawsuits. The Court also recognized, however, that some municipalities might not embrace, in full, their affordable housing obligation, but instead might pursue a path of resistance, resulting in a loss of immunity. Judge Serpentelli's admonition in J.W. Field Co., Inc., bears repeating here: "[i]f a municipality chooses not to voluntarily comply, it brings upon itself the potential that multiple builders will force it to comply. The choice is the municipality's. (internal citations omitted)

It is clear to this court that the Borough of Englewood Cliffs has chosen to pursue a path of resistance. In In re N.A.C.C., 221 N.J. 1 (2015) our Supreme Court held:

We emphasize that the courts should employ flexibility in assessing a town's compliance and should exercise caution to avoid sanctioning any expressly disapproved practices from COAH's invalidated Third Round Rules. Beyond those general admonitions, the courts should endeavor to secure, whenever possible, prompt voluntary compliance from

municipalities in view of the lengthy delay in achieving satisfaction of towns' Third Round obligations. If that goal cannot be accomplished, with good faith effort and reasonable speed, and the town is determined to be constitutionally noncompliant, then the court may authorize exclusionary zoning actions seeking a builder's remedy to proceed against the towns either that had substantive certification granted from COAH under earlier iterations of Third Round Rules or that had held "participating" status before COAH until this action by our Court lifted the FHA's exhaustion of administrative remedies requirement.

This court has been diligent and flexible in its effort to secure voluntary compliance. The court's earlier reliance on the commitment of municipal elected officials to carry out their constitutional duties to provide opportunity for the construction of affordable housing was apparently misplaced. The result has been a long delay and the denial of equal treatment to the poor contrary to the holding in Mount Laurel II, 92 N.J. 158, 306 (1983), "Equal treatment requires at the very least that government be as fair to the poor as it is to the rich in the provision of housing opportunities. That is the basic justification for Mount Laurel."

Further in Mount Laurel II, the Supreme Court held, "Experience since Madison, however, has demonstrated to us that builder's remedies must be made more readily available to achieve compliance with Mount Laurel." A builder's remedy may result in site specific relief when the builder meets a three-prong test: (1) the builder succeeds in Mount Laurel litigation, (2) the builder proposes a project with substantial amount of affordable housing and (3) the builder's site is suitable. The court finds that the first prong would be satisfied if 800 Sylvan was permitted to file a builder's remedy suit as demonstrated by the Special Master's report and recommendations which includes the recommendation that this court to give the Borough an additional ninety (90) days to amend its deficient HEFSP. The amendments would include items which the Borough has failed to provide or provided incorrectly or incompletely. These include but are not limited to:

(1) Affordable Housing Ordinance and Affirmative Marketing Plan

(2) A Housing Element which includes a complete compilation of the Borough's housing inventory, assessment of housing size and occupancy, data on the number of bedrooms, accurate discussion of housing stock, and correlation of data regarding rental units and average rents to affordability.

(3) A projection of the Borough's housing stock including probably construction of low- and moderate-income housing for the next ten years.

(4) An analysis of existing and probably future employment characteristics.

These deficiencies, together with the Borough's failure to produce a single unit of affordable housing in the forty- plus years since the original Mount Laurel decision convinces this court that further delay will be justice denied.

The second prong is met by 800 Sylvan's proposal to build 120 units of affordable housing.

The third, site suitability, is not contested by the Borough's experts from a reading of its HEFSP.

Regarding the Special Master's recommendation that the court receive her report as a pre-mediation report pursuant to N.J.A.C. 5:91-6.2 and recommending a 90-day process (which would exceed the trial date) during which the Master would work with the Borough to ascertain immediately if the Borough's proposed means to address what is likely an increased Court-approved RDP, a meeting to review the VLA analysis and the proposed zoning changes for unmet need and to explore additional development opportunities for unmet need, the court finds the time for such a process is long past. Such a process should have been pursued by the Borough following the Special Master's first report in 2016 or at any time prior to now.

In its Resolution 19-157, the governing body states:

WHEREAS, the plan was for the professionals to negotiate agreements consistent with a non-binding negotiation with Sylvan and FSHC; to introduce an ordinance to rezone the Sylvan site and thereafter, to take into account the public's input before voting on whether to adopt the Sylvan ordinance at second reading and to sign a settlement agreement with Sylvan; and . . .

WHEREAS, the public made its sentiments clear at the July 10, 2019 town hall meeting: (1) It was committed to comply voluntarily - even if the plan was even more expensive than its January 2019 affordable housing plan; and (2) it did not want to comply by rezoning the Sylvan site for high density residential zoning. .

.

WHEREAS as a result of the foregoing, the Governing Body wishes to express its commitment to providing affordable housing in a manner of its choosing and the best way for the Borough to satisfy its obligations would not be to rezone the Sylvan site for residential housing. . .

In essence, the Governing Body wants this court to believe that it negotiated in good faith for months with FSHC and 800 Sylvan, but the time, money and effort of the parties, the intervenor and the Special Master in reaching the terms of the Memorandum of Understanding were all for naught in the face of public opposition. The court finds this to be an abuse of the process. The Governing Body says it "wishes to express its commitment to providing affordable housing in a manner of its choosing," but the manner of its choosing has been to stall, procrastinate and evade its obligations. The result of allowing the Borough to provide affordable housing "in a manner of its choosing" has produced not a single unit of affordable housing. As a result, the Borough has lost the ability to determine the elements of its affordable housing plan which will be designed by third parties, the Special Master and the court.

The motion for an extension of the Borough of Englewood Cliffs' immunity from builder's remedy suits is denied. The motion of 800 Sylvan Avenue, LLC through its counsel for the revocation of the Borough of Englewood Cliffs' immunity and FSHC opposition to the Borough's application is granted for the reasons set forth herein.

Thereafter, this trial was scheduled.

The following exhibits were marked into evidence:

P-1 Borough Housing Element and Fair Share Plan with attachments

P-1C Borough Complex Concept plan drawing prepared by Harbor Consultants dated December 4, 2018

P-1D Map of Proposed Sites for Unmet Need

P-1M Vacant land analysis

P-1U Vacant land adjustment prepared by Michael Mistretta

P-2 Class 1 vacant and 15C Public Exempt Parcel Inventory

P-4 Developed Sites determined to contribute to Borough's RDP

P-7 COAH Compliance report

P-11 Concept Analysis of 800 Sylvan prepared by Harbor Consultants dated December 6, 2019

P-13 RDP Analysis of 800 Sylvan Avenue prepared by Harbor Consultants dated August 2018

P-27 Borough 100% Affordable Housing Project model assuming 4% low income housing tax credits, dated December 10, 2018

P-36 Borough 100% Affordable Housing Project model assuming 9% low income housing tax credits, dated December 10, 2018

P-36A Borough New Jersey 9% tax credit model

P-44 Project scoring criteria

P-56 Dr. Powell report

P-114 Borough Resolution 19-51

P-130 Borough Resolution 19-52

P-141 Development timetable Borough Municipal project dated September 14, 2018

DF-2 Dr. Kinsey Critique of Borough 2018 Plan

DF-5 Special Master's August 14, 2019 report

DF-10 COAH Executive Summary with exhibits dated October 17, 1997

DF-12 COAH Resolution dated April 4, 2001 re Wanaque substantive certification denial

DF-16 NJDCA Building Permits 2019 yearly summary

DF-17 New Jersey Planning Commission, Development and Redevelopment Plan adopted March 1, 2001 Policy map and pp. 190-191

DF-30 Borough Housing Element and Fair Share Plan prepared by Steven M. Lydon, PP AICP dated November 20, 2015

DF-32 Master Plan Reexamination

DF-43 Aerial photograph

DF-45 Borough Planning Board approval of new LG site

DS-11 Patricia A. Ruskan, P.E. resume

DS-13 Ruskan and Andrew Clark expert report on wetlands dated January 7, 2019

DS-14 Ruskan expert report on steep slopes dated January 7, 2019

DS-18 Art Bernard, PP resume

DS-19 Bernard expert report dated January 7, 2019

DS-20 COAH report dated December 1, 1995 Borough of Wood-Ridge

DS-21 COAH report dated September 10, 1997 Borough of Englewood Cliffs

DS-25 COAH fact sheet, executive summary, staff report and Resolution dated September 6, 1996 and October 2, 1996 for Borough of Fair Lawn

DS-26 COAH Pre-Mediation report dated July 27, 2006 for Borough of Atlantic Highlands

DS-27 COAH Pre-mediation report dated October 4, 2006 for Borough of Haddonfield

DS-28 Borough of Montvale Ordinance 2017-1436

DS-29 Borough of Montvale Phase I and II Overall Site Plan prepared by L2A Land Design dated March 2, 2018

DS-30 Township of South Brunswick, South Brunswick Planning Board and Princeton Orchards Assoc Settlement Agreement dated March 19, 1998

DS-31 Letter report dated May 14, 2015 from Art Bernard to Philip Caton

DS-32 Borough of Englewood Cliffs Overlay Zone Property lists prepared by Art Bernard

DS-33 Resume of Stuart Johnson

DS-34 Minno & Wasko letter dated January 7, 2019

DS-35A Minno & Wasko Conceptual plan A01

DS-35B Minno & Wasko Conceptual plan A02

DS-35C Minno & Wasko Conceptual plan A02.1

DS-35D Minno & Wasko Conceptual plan A03

DS-35E Minno & Wasko Conceptual plan A03.1

DS-35F Minno & Wasko Conceptual plan A04

DS-35G Minno & Wasko Conceptual plan A05

DS-35H Minno & Wasko Conceptual plan A06

DS-35I Minno & Wasko Conceptual plan A07

DS-35J Minno & Wasko Conceptual plan A08

DS-35K Minno & Wasko Conceptual plan A09

DS-35L Minno & Wasko Conceptual plan A010

DS-38 Jeffrey Otteau resume

DS-39 Otteau expert report dated January 7, 2019

DS-41 Mistretta Concept Plan (P-1)

DS-43 Mistretta Concept Plan (P-11)

DS-49 Aerial of Conceptual RDP Plan by Minno & Wasko dated October 8, 2019

DS-61 Indenture between Englewood Cliffs Board of Education and Borough

DS-67 Indenture between Censullo and Ciamprone
Indenture between Guenther and Trio Corporation
Indenture between Palisades Real Estate Co. and
Connolly/von der Lieth

The court reserved during trial on the admissibility of DS-24 and DS-66 and now finds those exhibits inadmissible.

The court heard testimony from Michael Mistretta, PP, LLA, of Harbor Consultants, Inc., Robert S. Powell, Jr., Ph. D., Nassau Capital Advisors, LLC, on behalf of the Borough; Art Bernard, PP, Art Bernard and Associates, L.L.C.; Stuart Johnson, AIA, Minno & Wasko; Patricia Ruskan, P.E., Paulus Sokoloski and Sartor; Jeffrey Otteau, the Otteau Group, on behalf of 800 Sylvan; and David N. Kinsey, Ph.D., F.A.I.C.P., P.P. on behalf of Fair Share Housing Center, and Special Master Mary Beth Lonergan.

The Borough called Michael Mistretta, PP, LLA. Mr. Mistretta is a licensed professional planner and landscape

architect. He is a principal of Harbor Consultants, Inc., Cranford, New Jersey. He has a Bachelor of Science in Environmental Planning and Design and Landscape Architecture from Rutgers University and an unspecified number of credits towards a Master's degree. His clients include the municipalities of Berkeley Heights, Scotch Plains, Mount Laurel, Hackensack, Roselle Park, Englewood Cliffs, Kenilworth are clients among others. He is a member of American Planning Association and Landscape Architecture Association. He has no experience in affordable housing prior to 2015. The bulk of his experience has been advising developers. He previously owned a construction business. Mr. Mistretta has previously been qualified as an expert in affordable housing. This court accepted Mr. Mistretta as an expert in professional planning.

Mr. Mistretta testified he prepared the Borough's Housing Element, Fair Share Plan (HEFSP) and vacant land assessment (VLA).

He testified the Borough has realistic development potential (RDP) of 77 and the Borough's Plan creates a realistic plan for development of 77 affordable units

He testified that in 1975 the Borough was not a developing municipality when it submitted a petition for substantive certification and Vacant Land Analysis.

Mr. Mistretta testified there are three distinct areas of the Borough running north-south: The Cliffs along the Hudson River; west of which is the commercial zone of which the B-2 Zone is dominant feature and third, west of the commercial zone is a series of single-family residential districts.

He testified the population of Englewood Cliffs was 5,403 in 2016. It peaked in 1970 at 5,938. Mr. Mistretta's report stated the Borough consists of 2.089 square miles and as of the 2010 census had a population of 5,281.

Mr. Mistretta acknowledged that in 1997 COAH denied Round 2 certification. The adjusted prior round RDP was determined to be 4, however, unmet need was to be addressed with overlay zone on Prentice Hall site (27 acres) now known as LG Headquarters with a minimum density of 6 units per acre as a condition of substantive certification. The Borough declined to adopt the overlay.

Mr. Mistretta testified that calculating the Borough's Fair Share number, in accordance with the March 8, 2018 decision of the Honorable Mary Jacobson, J.S.C. resulted in the following:

Rehabilitation obligation of	0
Prior Round (1987-1999)	219
Third Round (1999-2025)	365
Total Obligation	584

The Borough, he opined is not required to build 584 units because it exceeds the RDP of the Borough because the Borough lacks sufficient vacant and developable land to fully address the number generated by the fair share formula.

Mr. Mistretta testified the VLA is a snapshot in time, and his snapshot time frame was when he performed his VLA. He testified that he performed the analysis between February 2018 when he was retained and December 2018 when his report was completed. He acknowledged that although in 1997, COAH applied minimum lot size of .83 acres, he applied a smaller lot size of .7 acres. Mr. Mistretta testified he commenced his VLA by obtaining a list from tax assessor of vacant parcels. From that list, he identified three sites likely to redevelop:

- (1) the vacant portion of 800 Sylvan offered for development (Block 910, Lot 1),
- (2) the proposed redevelopment of the Borough complex (Block 514, Lots 4 & 5; Block 513, Lots 4 & 7). P-1C is the exhibit showing the 57 units proposed for this site;
- (3) the pending ZBA application (Block 205, Lots 1 & 4; Block 513, Lots 4 & 7). (Hereinafter Site A)

For these three properties, he assigned an RDP of 72 consisting of an RDP of 11 for the Borough Complex, 6 for ZBA and 55 for 800 Sylvan. P-13 in evidence details his analysis regarding this site.

Mr. Mistretta concluded after removing individual parcels and the Palisades Interstate Park and NJDOT properties there remained 53 Class One (Privately owned) properties, and 20 Class 15-C (Borough owned) properties in the vacant land analysis. Those properties included VLA sites:

(1) Sites 17-20 Block 303, Lots 34, 35, 36, 37; Block 306. Lot 10, a total area of .91 acres to which Mr. Mistretta assigned a density of 10 units per acre after reducing the area to an "unconstrained" area of .68 acres yielding in his opinion an RDP of 1.

(2) Sites 35-36, Block 601, Lots 14 and 15, a total area of 3.16 acres which Mr. Mistretta assigned a density of 9 units per acres after reducing the area to an "unconstrained" area of 1.27 acres yielding in his opinion and RDP of 2. Mr. Mistretta testified the properties were essentially landlocked and bisected by a stream in two areas. He further testified there was undisturbed forested land in a riparian corridor.

(3) Site 41, Block 603, Lot 20, a total lot area of 1.07 acres to which Mr. Mistretta assigned a density of 7 units per acre, finding no "constraints" yielding an RDP of 1. Mr. Mistretta testified a title search identified area of encroachment which reduced area to .83 acres

(4) Site 67, Block 1101, Lot 6 a total lot area of .73 acres to which Mr. Mistretta assigned a density of 7 units per acre, finding no "constraints" yielding an RDP of 1.

Mr. Mistretta testified he eliminated properties from the VLA if they had approvals. He then determined the appropriate densities for the developable portion of the sites. The end result was a total RDP of 77 units.

Not included in the Borough RDP were:

- (1) Sites 55-56 Block 802, Lots 7.01 and 7.02
- (2) Sites 64-65, Block 1009, Lots 15 and 16.

Mr. Mistretta opined that the Borough is eligible to seek rental bonus credits of 25% of RDP. The proposed 20 credits would, with the 57 units proposed in the municipal project, would satisfy the Borough's RDP.

Mr. Mistretta testimony regarding the unmet need included the proposed E. Palisades and Hudson Terrace mixed-use inclusionary overlay zones, and the B-3 Rehabilitation Area Mixed Use Inclusionary Overlay Zone which he projected to produce 95 units and credits toward the 507-unit unmet need. The Borough also proposed Mandatory Set-Aside Ordinance 18-14.

On cross examination Mr. Mistretta, was questioned on his choice of time for the VLA. In response to inquiry as to why the he did not use the date the declaratory judgment action was filed, or the third round period, he responded that there is no

instruction in the rules as to when the snapshot should occur. He conceded that he did not include in his VLA properties which had no development approvals in 2015, but subsequently obtained approvals. He further conceded if the Borough changed the zoning on a site since the filing of the declaratory judgment action, he would not have included that property in the VLA. He confirmed that had 800 Sylvan not offered its property for affordable housing, he would not have included it in the VLA.

Mr. Mistretta testified he "followed the rules as closely as he deemed possible" but conceded that in his opinion good planning trumped density, and "open space is important". Mr. Mistretta conceded he did not consider the COAH Borough of Wanaque decision when completing his report. Mr. Mistretta further conceded he should have determined whether Englewood Cliffs was a developing community in 1970s. He appeared not to have considered whether the Borough was in Planning Area 1 or Planning Area 5 in coming to a conclusion on this issue, and further appeared not to know that the classification was the defining criteria. Mr. Mistretta refused to concede on cross examination that had he had the photograph of the LG site as it appeared in 2015 (demolished except for parking lots) that he would have included the property in the VLA. He testified that a surface parking lot was a structure. He could not cite any provision of the rules which required a property to be vacant in the sense that the parking surface would have to

have been removed before the property could be considered vacant. He agreed that development approval does not appear in 5:93-4.2 as a basis for the exclusion of properties despite the fact that he cited such approvals as a reason to exclude multiple properties. Mr. Mistretta conceded that Site K-5, Block 1202, Lot 2, 980 Sylvan Avenue, a/k/a the Lighthouse site, was vacant in 2015 and was not subdivided. He testified he excluded it based upon a planning board resolution which approved an office building. He conceded the site would have been appropriate for residential development. He testified he would have included the site for RDP purposes if it had been vacant in 2018. He acknowledged that the application for development was filed in 2015 November, and that between March 2015 and November 2015 when the site plan was submitted there was nothing which precluded the site from being included in RDP. He further testified that he knew of nothing which would have barred the municipality from zoning the property residential and would have included it in RDP. He testified it was not included because the building has been constructed.

Regarding the 800 Sylvan site, and the concept plan he prepared in conjunction with calculating RDP for the site, he conceded he was not aware of any other New Jersey planner who prepares concept plans to calculate RDP. He further conceded that he sought to preserve the trees on the site, thereby reducing available acreage, while admitting there is nothing in the COAH

regulations which permitted such exclusion, stating without citing any rule or authority that he did so because it is a proper way to consider the site. Mr. Mistretta conceded there were alternate concept plans which would reduce reductions and increase the area available for affordable housing on the site. He acknowledged inconsistencies in his treatment of 800 Sylvan and the proposed Borough site with regard to buffers, setbacks and shared parking. Mr. Mistretta testified he did not reduce 800 Sylvan acreage for steep slopes but conceded he did reduce or eliminate other Borough sites on account of steep slopes. Mr. Mistretta acknowledged COAH rules say nothing about constructability in determining RDP. He opined, "If I assign an RDP to a site, and if you cannot construct a building on the site, it creates a false RDP." In Mr. Mistretta's view steep slopes should be subtracted from RDP in circumstances where the slope cannot accommodate the construction. Mr. Mistretta conceded if court were to find RDP were higher than could be satisfied by RDP sites he identified, the higher RDP could be satisfied by a site for family tax credit development and agreed such a site could be found.

During cross examination by Mr. Del Vecchio, Mr. Mistretta was shown certain title searches of certain Borough lots proposed to be part of the Borough 100% affordable housing project producing 77 units. DS-60, the Deed for Block 11A, Lots 25, 26, 27 and 28 was identified as such a document and the lots the same as in the

map proposed for municipal affordable housing units. Mr. Mistretta acknowledged the deed contained a restriction barring any construction of housing unit exceeding two-family houses and agreed such a restriction would affect availability. DA-61 was also shown to Mr. Mistretta, who conceded the property was also proposed as part of the Borough housing project and the deed between Board of Education and Borough contains a restriction which reverts the property to the Board of Education if it ceases to be used for public purposes. This was also conceded as a possible issue regarding availability. DS-62, a deed from Guenther to Trio Corporation, Lots 17 and 18 in Block 11A, was shown to Mr. Mistretta who again conceded it concerned property contemplated to be part of the Borough housing project. He acknowledged the deed prohibited erection of a public garage. Finally, DS-63, a Deed for Block 11A, Lots 19 and 20 was shown to Mr. Mistretta who again acknowledged it concerned property contemplated to be part of the Borough housing project and that the deed prohibited the erection of gas station, public garage or structure of any kind, in addition to prohibiting erection of any building within 15 feet of the front line. Mr. Mistretta conceded this was also an issue regarding the availability of the property for affordable housing.

Although the court accepted Mr. Mistretta as an expert in planning, his testimony demonstrated a lack of working knowledge of the relevant statutes, code and case law. His credentials and

experience are far overshadowed by the credentials and experience of the two other experts, whose testimony was heard by the court, as well as those of the Special Master. Because of the inconsistencies of his testimony as set forth above, his failure to apply code definitions and standards in his analysis and his interpretation and/or failure to cite relevant court decisions in support of his conclusions, the court is compelled to reject those findings and conclusions. Additionally, the court refers to the DF3-31, prepared by Dr. Kinsey, comparing his conclusions with the conclusions of Mr. Mistretta; the conclusions of 800 Sylvan's expert, Mr. Bernard, and those of Special Master Lonergan, all of which are discussed in greater detail below, which when considered in conjunction with Mr. Mistretta's unsupported "constraint" reductions and elimination of sites clearly show Mr. Mistretta to be the outlier. The court accords Mr. Mistretta's testimony little if any weight. Since his testimony is the only basis of support for the Borough's HEFSP, the court finds based on his testimony and the testimony of the other witnesses, discussed below that the Borough has not met its burden to show that its HEFSP properly calculated RDP, and the properly calculated RDP is not satisfied by the Borough's HEFSP, therefore, the Borough is found to be constitutionally non-compliant with the Mount Laurel doctrine.

Plaintiff called its second and final witness, Dr. Robert S. Powell, Jr. Dr. Powell holds a Bachelor of Arts degree from the

University of North Carolina, Chapel Hill and a Master's Degree and Ph.D. from Princeton University. Dr. Powell was qualified as an expert in real estate finance, tax credits and economic feasibility related to affordable housing. Of note, Dr. Powell testified as an expert in the trial presided over by Judge Jacobson resulting in her March 2015 decision. Dr. Powell testified he was retained by the Borough to evaluate the financial feasibility and regulatory likelihood that a tax credit funded 100% affordable housing project could be funded and built. Dr. Powell opined as to the proposed 100% affordable municipal project that:

1. The Borough's proposed 57-unit 100% affordable housing project is financially feasible
2. The Borough is an exceptionally strong and competitive contender for 9% Low Income Housing Tax Credits
3. If Borough does not receive 9% tax credits it is extremely likely that project will obtain 4% tax credit. In fact, as to the third point of his opinion, Dr. Powell testified the Borough is entitled to 4% tax credit funding as of right. The difference between the two is the amount of shortfall the Borough would be required to fund.

Dr. Powell testified he had no knowledge of cost of demolition on the municipal site and those costs as well as the costs of rebuilding the police station, the community center, or the cost of infrastructure, including roads and sewers, were not

reflected in his model. He further testified he relied on the budgets provided by the municipality for costs of rebuilding. Dr. Powell also testified that the Borough's success in obtaining tax credits on this project would not preclude an award for another qualified project in the Borough. Dr. Powell testified with 9% tax credits; the project would generate \$284,996 net operating income. The project would cost \$15,447,258 with the caveat above as to what costs are not reflected in the model.

Tax credit syndication would cover \$10,901,906 of the \$15 million costs. With 9% tax credits the loan amount required would be \$3,636,863. If the Borough succeeded in obtaining only 4% tax credits the loan remains the same at \$3,636,863, but the tax credits amount to only \$4,463,894. There is a gap of \$6,438,012 resulting in a funding shortfall of about \$7 million, again not including demolition or rebuilding costs of the police department or community center.

The court finds Dr. Powell's testimony to be credible to the extent of the information provided to him by the Borough.

Following Dr. Powell's testimony, the Borough rested.

Fair Share Housing Center called David North Kinsey; Ph.D. Dr. Kinsey's impressive list of credentials were reviewed as contained in Exhibit DF-1. Dr. Kinsey also testified in the trial before Judge Jacobson. Dr. Kinsey is a licensed

professional planner in New Jersey, a Member of American Institute of Certified Planners, and a Fellow of the College of Fellows of American Institute of Certified Planners of which there are currently fewer than 12 planners in New Jersey so designated. It is the profession's highest recognition. Dr. Kinsey has an undergraduate degree in Government-Architecture from Dartmouth University and a Master's and Ph.D. from Princeton in Public Affairs and Urban Planning and Public and International Affairs. In addition to his consulting firm, Kinsey and Hand in Princeton, he is a Visiting Lecturer of Public and International Affairs at the Woodrow Wilson School of Public and International Affairs at Princeton University. The court accepted Dr. Kinsey as an expert in planning, housing planning, and affordable housing planning.

As Dr. Kinsey noted, this court, in accepting the methodology set forth in Judge Jacobson's decision, adjudicated the Boroughs Gap Present need and Prospective Need (capped) at 365 units. This when combined with the Borough's Prior Round Obligation of 219 units resulted in a total new construction obligation, 1987-2025 of 584 units. Dr. Kinsey noted that no existing affordable housing has been built in the Borough since 1980, therefore the Borough has no credits against its fair share housing obligations.

Dr. Kinsey testified the Borough's Housing Element and Fair Share Plan (HEFSP) dated December 10, 2018, did not satisfy the Borough's constitutional Fair Share obligation.

Dr. Kinsey testified the compliance standards are found in the Mount Laurel Doctrine, Mount Laurel IV and V, the Fair Housing Act, applicable rules adopted by the New Jersey Council on Affordable Housing (COAH), N.J.A.C. 5:93 (Second Round Rules) as updated or not specifically invalidated provisions of N.J.A.C. 5:97 (second iteration of Third Round Rules), the Fair Housing Act, appellate decisions and COAH decisions.

Dr. Kinsey testified the Borough's 1997 and 2019 HEFSP plans demonstrate exclusionary housing patterns. In 1990, 96.3 percent of the houses were single-family homes, of which 1,792 were detached. In 2000, 1,918 or 97.4% of Englewood Cliffs' housing was comprised of single-family detached houses. In 1990 there were 62 multi-family houses. By 2000, the number had decreased to 40 multi-family units.

Dr. Kinsey testified the procedure for determination of the Borough's fair share obligation included inventorying the vacant, underutilized, likely to redevelop and missed opportunity sites; to exclude sites or portions of sites from the inventory based upon COAH-prescribed criteria; to determine the appropriate density for each site; and to calculate the RDP or 20% of the net developable acreage multiplied by density.

Dr. Kinsey testified the Borough's inventory did not identify underutilized sites, including just three parcels deemed likely to redevelop, and failed to identify missed opportunity sites. He cited 5:93-4.1(c), testifying the significance of provision is a recognition of the dynamic quality of development and redevelopment over time. Dr. Kinsey testified that Mount Laurel II, 92 N.J. 158 (1983) speaks to the key issue of what to do as property becomes available.

Citing N.J.A.C. 5:93-4.2(c) Dr. Kinsey testified there are six categories of excludable sites. He testified the first, agricultural lands, do not apply here. The second, environmentally sensitive lands, including wetlands and flood hazard areas and steep slopes, apply only if municipality has ordinance to ensure uniform treatment of all residential properties, for reasons of fairness and notice. He noted Englewood Cliffs does not have steep slope ordinance, resulting in no bar to steep slope areas for purposes of RDP. The third, historic and architecturally important sites, are not in issue in the Borough. Fourth, active recreational lands, are also not applicable in Englewood Cliffs as are the fifth exclusion, conservation and parklands. The sixth and final exclusion, individual sites that Council determines are not suitable, suitability being defined as a site that is adjacent to compatible land uses, has access to appropriate streets and is

consistent with the environmental policies delineated in N.J.A.C. 5:93-4.

Dr. Kinsey testified there are four sets of criteria for sites - available, suitable, developable and approvable. Other than suitability, the three others are not relevant for purposes of calculating the RDP.

Dr. Kinsey testified the next step is a determination of what density to apply to the net developable area. The criteria for determining density is consists of two factors: consideration of the character of the surrounding area and the need to provide low- and moderate-income housing. The minimum density is six units per acre.

Dr. Kinsey testified exclusions were taken by the Borough which were not excludable under the rules. Specifically: (1) Steep slopes (2) exclusion of site approved for development but not yet developed (3) exclusion of small properties - the COAH rule 4.2(c) limits exclusion of properties to those too small to accommodate 5 units, or a site of less than 0.83 acres at the minimum prescribed density. Dr. Kinsey testified in different parts of the state, higher densities are appropriate.

Dr. Kinsey noted Mr. Mistretta excluded parcels less than .72 acres. He testified that are two additional contiguous parcels, Sites 55 and 56 should be included for RDP purposes. Dr. Kinsey testified the Borough's plan showed an older

photograph of the property with a large house in the center, but a more recent photograph shows the house had been demolished.

Dr. Kinsey further found exclusions taken by Mr. Mistretta on the 800 Sylvan site improperly reduced the 18.7-acre gross site. Dr. Kinsey testified he had never, in the history of Rule 4.2, seen anything that approximates this type of analysis which resulted in a lower RDP. He further testified the Borough's approach was very unusual and not consistent with COAH rules and not accepted standard practice. Dr. Kinsey testified COAH had never required a conceptual site plan and observed Mr. Mistretta used a conceptual site plan for this site but not for other potential sites. He further testified that wetlands were improperly excluded and noted 800 Sylvan has a letter of interpretation which delineates and characterizes the wetlands which are less than one acre, and which may be filled under COAH rules. He testified also relevant to the wetlands was Mr. Mistretta's exclusion of buffer and transition areas to the wetlands which is not permitted. Mistretta also identified "mature growth of forest and vegetation" as areas of exclusion which is not permitted even though trees may ultimately be preserved. Further unpaved land characterized by Mr. Mistretta as "undisturbed land" is not properly excludable. Dr. Kinsey testified that the net impact of Mr. Mistretta's unauthorized exclusions was to reduce the site to a net of 9.14 acres. Dr.

Kinsey also opined Mr. Mistretta asserted, incorrectly, that existing and future uses of remaining building on 800 Sylvan is incompatible with any residential use. Further, Dr. Kinsey opined Mr. Mistretta ignored the efficient structured shared parking approach proposed by 800 Sylvan, incorrectly claimed site has "unique environmental characteristics" of which he testified there are none, and incorrectly claimed that the site's freshwater wetlands and wetland transition areas were identified by DEP as providing some of the most highly diverse and critical habitats and species in New Jersey, a claim he testified is unsubstantiated in any documentation.

In Dr. Kinsey's opinion, Mr. Mistretta failed to consider adequately the character of the site and surrounding area which is a classic suburban office park or campus with adjacent wooded open space.

Dr. Kinsey opined Mr. Mistretta inappropriately, prematurely, and incorrectly claimed the developer's concept plan does not satisfy open space and recreation needs, and testified these considerations are premature and inappropriate and should be reserved for the site plan application.

Dr. Kinsey testified Mr. Mistretta incorrectly claimed the developer proposed building heights of "approximately 5 stories and 6 to 7 stories," which he found significantly out of character with surrounding properties, when in fact there is a

height restriction as a result of an agreement between Scenic Hudson and developer. Dr. Kinsey opined that preserving the view shed is important and that the view shed should be considered in determining the appropriate density for the site. Dr. Kinsey testified that Mr. Mistretta inappropriately complained that residents of 800 Sylvan would need to walk or drive one mile to nearest delicatessen and 3 miles to Shop Rite in Englewood. Further, he testified Mr. Mistretta's statements that 800 Sylvan is hardly the best place to locate an isolated, multi-family residential project are inappropriate because when a builder's remedy is granted the burden shifts to the Borough to show the site is not appropriate, and it must be kept in mind that the best site may not be available. Dr. Kinsey testified the COAH rules provide consideration for the character of the surrounding area and the need to provide low-and moderate-income housing and nothing else.

Dr. Kinsey referenced a COAH decision concerning the Borough of Wanaque for the proposition that even if a site is developed it may be appropriate to assign an RDP to a site.

Dr. Kinsey opined that the Borough failed to include underutilized sites including Site K-7, Block 908 Lot 7 known as the North Cliff Elementary School, with a net area for RDP purposes of 5.2 acres. He further testified the Borough plan failed to include missed opportunity sites, including K-4, Block

207 Lot 6, 111 Sylvan Avenue (a/k/a new LG site hereinafter Site B) with a net area of 27.03 acres; K-5 (hereinafter Site 72) Block 1202 Lot 2, 980 Sylvan Avenue (a/k/a Lighthouse) with a net area of 3 acres, noting the site was vacant when the Borough filed its declaratory Judgment action; and K-6 (hereinafter Site C), Block 1202, lot 2.01 1000 Sylvan Avenue (a/k/a current LG site) with 2.75 net acres which is expected to be vacated when the new LG headquarters is completed. These missed opportunity sites resulted, according to Dr. Kinsey's testimony, in between 67 and 197 units depending upon the density assigned to the new LG site.

With respect to the new LG site, Dr. Kinsey testified that in March 2016, the Borough Planning Board adopted an amendment to Master Plan Land Use Element for new B-5 zone for the new LG site. This site was the subject of a direction by COAH in 1997 that the Borough adopt an inclusionary overlay zone, which the Borough refused to do, resulting in the loss of immunity. Dr. Kinsey noted that the Planning Board, in its resolution, characterized the site as "vacant and underutilized". The Planning Board approved a site plan with bulk and height variances.

Dr. Kinsey opined that LG site was available between the Appellate Division decision of October 15, 2015 regarding approvals to the site, reversing the Law Division and April

2016, when the Planning Board granted new approvals. He testified that Google map pictures show the site completely demolished on May 6, 2015. The site was vacant between October 2015 and April 2016. As previously noted, the Borough filed its Declaratory Judgment action on July 1, 2015. Slide 27, he testified showed the new the LG headquarters under construction as of June 7, 2017.

Dr. Kinsey testified as to other Google Earth pictures of the site. Against the images in those photographs, Dr. Kinsey testified that in 1997 COAH directed the Borough to enact an overlay zone. In January 1998, the Borough refused to comply. As of September 2005, the building was actively in use. Dr. Kinsey noted the Borough's refusal was documented in an appeal to the Appellate Division. In April 2014, Slide 24 of Dr. Kinsey's power point shows the building more than fifty percent demolished. In February 2013, the Board of Adjustment adopted a resolution memorializing approval of site plan with height and bulk variances for 143.8 feet high (8 stories) where 35 is permitted. In March 10, 2015, our Supreme Court decided Mount Laurel IV. The photograph dated May 6, 2015, shows the building 100% demolished. Dr. Kinsey testified at this point lot is underutilized if not vacant. On October 5, 2015, the Appellate Division in Jacoby v Englewood Cliffs Board of Adjustment, 442 N.J. Super. 450 (App. Div. 2015) reversed the trial court and

invalidated the height variance. Dr. Kinsey testified in his opinion, LG could not have obtained a building permit at this time, which interval continued until the Board passed new approvals. Dr. Kinsey testified that the Borough submitted its Housing Element and Fair Share Plan on November 30, 2015, in conjunction with Mt. Laurel IV and its declaratory judgment action. On that date in November 2015, the LG property did not have complete approvals for development and property was essentially vacant. Dr. Kinsey concluded on that basis that the property should have been included in the VLA. In March 2016, the Planning Board adopted an amendment to Master Plan Land Use Element for new B-5 zone for new LG site and characterized the site as "vacant and underutilized."

Dr. Kinsey opined that the property demonstrated the importance of an overlay zone permitting residential development at first opportunity as without an overlay zone it was not possible for developer to construct residential development.

Dr. Kinsey opined the Borough's Plan should be reviewed considering the 2000 census, a housing element prepared and submitted to COAH. He urged the court, that were the court were to find Borough avoided using the Prentice Hall site for affordable housing, for purposes of the RDP calculation this was a substantial land resource which should have been zoned to provide that in the event the land became available it would be

available for affordable housing. Dr. Kinsey opined that a portion of the Prentice Hall remains developable. He testified the rules permit development because it is part of a site which is unused and defined in rules as vacant.

Dr. Kinsey also testified as to P-7 which he identified as a COAH document from 1997 which consists of fact sheet prepared by staff and recommended denial of certification. He testified that the compliance report, which is part of the document lists 9 parcels totaling 19.2 acres. He testified that at the time of the report at least two sites (site 4 and 1) were not developed but had been since.

Dr. Kinsey addressed and disputed Mr. Mistretta's testimony regarding the Borough's status and when it would have been aware it had a fair share obligation. Dr. Kinsey testified that Englewood Cliffs would have been aware of its fair share housing obligation in the fall of 1986 when COAH issued a document detailing the obligations of all municipalities which although it was labeled "draft" was supported. The 219 units assigned to the Borough was promulgated in 1994. Dr. Kinsey was not aware of any affordable housing credits available to the Borough to set against its obligation.

Dr. Kinsey testified the Borough has only 48 parcels classified as vacant totaling 17 acres. This means there is insufficient land capacity which triggers RDP. He testified the

standards are different for the RDP as opposed to unmet need. Municipalities must satisfy the RDP. For the unmet need, the town must address as realistically as possible, but RDP must be satisfied.

Dr. Kinsey testified the significance of 5:93-4.1(c) is its recognitions of the dynamic quality of development and redevelopment over time. The purpose of the RDP is to try to determine the capacity of the municipality in a manner which is consistent with sound planning. Dr. Kinsey testified the RDP is an approximation, a rough estimate, and once a municipality has determined what its capacity is, it can use a broad range of options which include subsidizing market rate housing for use as affordable housing. The RDP is not necessarily site specific and does not require site plans because it is a rough estimate. A municipality need not satisfy its RDP on all the sites which generate the RDP. To satisfy the RDP a municipality may rely on a rental bonus but testified that the Borough had none.

Dr. Kinsey testified that land with approvals and developed land are appropriate for RDP calculation. He also noted that the definition of vacant land is broader than that use in the tax records utilized by Mr. Mistretta, and is defined as land that is underutilized, likely to redevelop and missed opportunity sites (Sites where activity has taken place since

the beginning of the gap period and the zoning left in place which had no inclusionary component).

Dr. Kinsey reviewed Mr. Mistretta's treatment of the 800 Sylvan Site which was not included in the Borough's RDP. The site consists of a single lot of 18.43 acres. Dr. Kinsey found the Borough's approach was very unusual and not consistent with COAH rules and not accepted standard practice. He testified COAH never required a conceptual site plan and pointed out that Mr. Mistretta used a conceptual site plan for the 800 Sylvan site but not for other potential sites. Dr. Kinsey opined that Mr. Mistretta improperly excluded wetlands. He noted 800 Sylvan has a letter of interpretation, so wetlands are delineated and characterized. The total wetland area is less than one acre, and such wetlands may be filled under COAH rules.

Dr. Kinsey opined the Borough acted appropriately in including 53 privately owned vacant lots totaling 24.97 acres and the 20 Borough owned Class 15C developed and undeveloped sites.

Dr. Kinsey criticized Mr. Mistretta's report for not identifying any underutilized sites, or failing to state that there were none, simply failing to address the issue at all.

Dr. Kinsey referenced the 1997 COAH report to illustrate COAH listed properties which had approvals and sites consisting of less than .83 acres, the COAH threshold at the time were

subsequently developed. He cited Rule 4.2(c)(2) which states, "Any vacant contiguous parcels of land in private ownership of a size which would accommodate less than five dwelling units as per the COAH standard below".

Dr. Kinsey identified Site K-7 Block 908 Lot 7 portion of the North Cliff Elementary School, 700 Floyd Street as such a site. Dr. Kinsey determined a net area of underutilized area a net area of 5.2 acres.

Dr. Kinsey testified the Borough missed at least three opportunities for the development of affordable housing since it petitioned COAH for substantive certification in 1995 at which time it had an obligation of 219 affordable units. Dr. Kinsey identified three sites:

K-4 Block 207 Lot 6 111 Sylvan Avenue (new LG site)

K-5 Block 1201 Lot 2 980 Sylvan Avenue vacant in 2015 developed by Lighthouse EC, LLC

K-6 Block 1202 Lot 2.01 (existing LG site)

Dr. Kinsey testified that the RDP for these three sites was between 67 and 197 units. The range reflects the COAH minimum density of 6 in 1995 and the 30 units per acre proposed by Dr. Kinsey. Dr. Kinsey opined that 30 units per acre is reasonable when one looks at densities in the adjoining community of Fort Lee, as well as Elmwood Park (34.8 units per acre, Teaneck (50.3, 50.9 and 72.3 units per acre).

Dr. Kinsey identified Slide 23 of his report as depicting 111 Sylvan Avenue (Block 207 Lot 6) in 2015 when the Borough's declaratory judgment action was filed. The site, consisting of 27.03 acres was vacant or underutilized.

Dr. Kinsey testified the second missed opportunity site, was K-5 (site 72) in his power point, Block 1202, Lot 2 known as 980 Sylvan Avenue. Dr. Kinsey testified the site was included in the Borough's 2005 housing plan and the Borough indicated the site was developable. He testified Slide 28 shows a Google Earth picture of the site in 2015 and it is wooded and undeveloped. The site has now been developed with office building but would have been available for affordable housing.

Dr. Kinsey noted the Borough indicated the site was not included in its VLA because there was a subdivision. Dr. Kinsey testified ultimately there was no subdivision.

Dr. Kinsey testified the third missed opportunity site is the current LG site, 1000 Sylvan (Site C). Dr. Kinsey recommends site for inclusionary overlay at 20 units per acre. He opined the site is likely to become available because LG moving to new site. He further opined that both sites 980 and 1000 would be good sites for affordable housing. He testified 980 has some wetlands which are excludable, and the exclusion would result in a net 3 acres.

Dr. Kinsey testified the total RDP for the three missed opportunity is between 67 and 197, 67 representing 1997 densities and 197 representing current densities he recommends.

Dr. Kinsey testified in his opinion 30 units per acre is appropriate and that density would also have been appropriate in 2010. Dr. Kinsey cited an article by Tim Evans of NJ Future, *Built-out But Still Growing*, in which Evans analyzes official data of the Department of Community Affairs and opines that statistics show multi-family units are growing percentage of building permits issued. Dr. Kinsey also referenced New Jersey Construction Reporter reports building activity in the state and found in 2017 16,000 multi-family permits were issued, as compared to 9000 two- and one-family permits. Dr. Kinsey also referenced an excerpt of New Jersey State Development and Redevelopment Commission which has determined the Housing Policy objective for Planning Area 1, the Metropolitan Area in which Englewood Cliffs is located, to be “. . . to provide a full range of housing choices. . . .” Dr. Kinsey concluded residential densities are increasing in parts of the state as more multi-family development takes place and those densities are encouraged by the state in the development and redevelopment plan. His testimony included recommendations of 30 units per acre for all sites bordering Sylvan Avenue. He further recommended: (1) 8-10 units per acre for the properties commonly

known as Sarah Hill Lane; (2) 12 units per acres for 2 Kim Hunter Road, (3) 12 units per acre for 552 Summit Street; (4) 10 units per acre for 575-577 Floyd; (5) 10 units per acre for 41-45 Laurie Drive; (6) 12 units per acre for 98 Roberts Road; (7) 15.7 units per acre for 20-32 Sylvan Avenue and 4 Bayview Ave; (8) 28 units per acre for the Lions Club (municipal 100% affordable project); (8) 30 units per acre for 800 Sylvan; (9) A range of between 6 and 30 for 111 Sylvan Avenue (New LG) - Assigned density between 6 and 30; (9) 30 units per acre to 1000 Sylvan (current LG); (10) 30 units per acre to 980 Sylvan (Lighthouse site); (11) 30 units per acre to North Cliff Elementary School; (12) 12 units per acre to 700 Floyd.

Dr. Kinsey concluded that the Borough's calculation of its RDP is inaccurate, insufficient and not supported by COAH rules. He opined the Borough's RDP ranges between 239 and 358 units and its unmet need is very large, ranging from between 162 and 345 units. He testified the potential for addressing it through the overlay zones proposed by the Borough was small. This was due in part to the scattered nature of small lots and many ownerships which would work against any assemblage in the short term. Dr. Kinsey noted the Borough proposed to address its 19% unmet need through three inclusionary mixed-use overlay zones at average density of 17.5 units per acre in significantly developed areas. He also questioned the omission of certain

sites from the overlay zone, including Charlotte Place and Sylvan Avenue and 330-340 Sylvan Avenue, the former site of a Nissan Car dealer which is permanently closed. Dr. Kinsey further opined that densities in overlay zones needed to be increased to 20 units per acre. He further opined the Borough should expand its inclusionary mixed-use overlay zones to additional developed non-residential areas in the Sylvan Avenue corridor.

Dr. Kinsey also questioned whether the proposed municipal site is available, which he defined as free from encumbrances, meaning the deeds to the property have no restrictions. He opined if the deeds had encumbrances or restrictions the property would not be "available" as required by COAH rules which require sites for 100% affordable units to be suitable, available, developable and approvable. Dr. Kinsey noted the Borough's 2018 Plan referred to, but did not commit and provide required construction schedule, which is required to begin within two years of court approval of the plan N.J.A.C. 5:93-5.5(a)4. Dr. Kinsey also testified the Borough's claim to 20 rental bonus credits in 2018 violates the intent of 2010 Appellate Division decision of Judge Skillman that invalidated the Third Round, 2008 COAH rule which purportedly authorized rental bonus credits against the Prior Round Obligation for units not yet build. Citing In the Matter of the Adoption of

N.J.A.C. 5:96 and 5:97 by the NJ Council on Affordable Housing,
416 N.J. Super 416 (App. Div. 2010). Dr. Kinsey testified that a
bonus credit in 2019 cannot logically incentivize the
construction after 2019 of rental affordable housing that should
have been built in the 1990s to address the Borough's prior
round obligation.

Although the Borough may be entitled to 57 credits for its
municipally sponsored project, Dr. Kinsey opined that was the
case only because Borough has committed to fund any short fall.

Dr. Kinsey also opined the Borough's plan should include a
second 100% affordable housing project by a developer in
response to a request for proposals yielding 45 affordable
units.

On cross-examination Dr. Kinsey was questioned regarding
the basis for his proposal that the minimum lot size be .5 acres
as opposed to the .83 acres last used by COAH and the .7 acres
utilized by Mr. Mistretta. He conceded there is no COAH
regulation requiring a minimum lot size of .5 acres. When
questioned regarding his position that without a steep slope
ordinance the Borough was not entitled to take exclusions based
on steep slopes, he testified that whether or not a builder
could build on a site was not relevant to his calculation of the
RDP. When confronted with an apparently contradictory opinion
given with regard to University Heights LLC v. Borough of

Franklin Lakes, a February 2, 2000 report prepared by Dr. Kinsey, in which he stated, "In addition I concur with the Borough's exclusion of certain sites that are predominantly constrained by steep slopes, even though the Borough does not have an adopted steep slopes protection ordinance applicable to all development", Dr. Kinsey pointed to page 7 and 8 of the report where it indicated the Borough was preparing and submitting maps showing areas of steep slopes in excess of 20%, together with a list of vacant sites with such slopes, and more detailed individual maps of selected sites that are significantly constrained by such slopes, none of which had been provided by the Borough of Englewood Cliffs.

Dr. Kinsey testified he assigned a greater density to certain properties than Mr. Mistretta because of the Borough's failure to build any affordable housing and its clear pattern of exclusion.

Dr. Kinsey admitted that there were no court decisions on point which ruled less weight could be assigned to surrounding areas in determining density based upon the need for affordable housing. In response to the question of whether assigning a density of 12 units per acre on a property which was not developable to 12 units per acre was punitive, Dr. Kinsey responded negatively. It was his opinion that the units could be built elsewhere and that there was a large menu of compliance

mechanisms, including market to affordable. Dr. Kinsey reiterated on cross examination that considerations of recreation, tree preservation and other "planning" considerations were not relevant to the determination of RDP, but rather issues for site plan.

With regard to 800 Sylvan in particular, he noted there were already in place height restrictions, and there were recreation facilities within walking distance of the site. Dr. Kinsey further testified that Mr. Mistretta limited the developable area of 800 Sylvan to disturbed areas, which was not a proper exclusion and indirectly excluded the treed portion of the property. Dr. Kinsey disagreed that some future change in the use of the Unilever site would make the residential development unsuitable. Dr. Kinsey opined that footnote 15 of Mount Laurel II, which speaks to the benefits of Mount Laurel not being offset by damage to legitimate zoning and planning objectives to be inapplicable in that it referred to a builder's remedy and the 1983 decision pre-dated COAH rules.

Dr. Kinsey conceded there is no COAH rule which supports assigning RDP to sites as "missed opportunities." However, Dr. Kinsey was adamant that riparian corridors were not excludable because the Second-round rules permitted such exclusions only if adopted by the legislature with appropriate mapping, neither of which had transpired.

Dr. Kinsey also cited footnote 21 of Mount Laurel II as support for his opinion that missed opportunity site be identified. Footnote 21 reads, in part:

Developed municipalities shall be subject to the Mount Laurel obligation - that includes the central cities and the built-up suburbs. The most significant question in such cases will ordinarily be whether there is any land available for development, and if not, what kind of remedy is appropriate to assure that as land becomes available a realistic opportunity exists for the construction of lower income housing assuming it is otherwise suitable for that purpose.

Dr. Kinsey noted Mt. Laurel II predates Rule 5:93.

Dr. Kinsey was of the opinion that municipalities which did not file their HEFSP within the five-month deadline set by the Supreme Court should not benefit from the delay. He also opined that Englewood Cliffs should not benefit from failing to enact the overlay zone for the Prentice Hall property. Dr. Kinsey testified that in his capacity as special master he has not attributed missed opportunity in Second-Round and observed in the First-Round RDP did not exist.

With regard to the North Cliff school site, Dr. Kinsey testified on cross examination that he did not investigate whether the area is surplus or available for sale. He testified currently Englewood Cliffs had less than 2000 households. He did not know how many children. He admitted if the court accepted his RDP of 358 there would be an increase of the number

of households and if 269 affordable housing units were developed, given the requirement for family rental housing, some of those were likely to have school age children, and some of those children would attend public school. Dr. Kinsey did not know the present capacity of the North Cliffs School. The court finds it has insufficient information upon which to make a determination regarding North Cliff Elementary School.

Dr. Kinsey testified a certain decision known as the Borough of Wanaque was a basis for including the former Prentice Hall for RDP calculation. He testified the decision concerned Wanaque's application for a VLA. COAH determined that Wanaque's RDP was based in part on the Powder Hill Industrial site and outside the designated center in the Highlands. COAH initially denied certification, following which Wanaque re-petitioned COAH. Before COAH certified Wanaque, Wanaque re-zoned the Powder Hill site for residential 1080 units. The Wanaque's ordinance had an extremely low set aside, and when COAH learned of the re-zoning it recalculated the Borough's RDP and asked the Borough to accept as a condition of its conditional denial that Powder Mill be rezoned at density it had been approved and the set aside be increased to 20% and also increased the inclusionary density of other sites. In 2001 the actual substantive certification was granted. It secured protection for 10 years.

Dr. Kinsey conceded that with respect to 111 Sylvan Avenue and 980 Sylvan, in 2015 after Borough filed its DJ action FSHC could have, but did not, move for scarce resources restraints.

Dr. Kinsey testified he did not object to the concept of overlay zone proposed by Borough which proposes to increase density with a mixed-use plan.

Cross examination by Mr. Del Vecchio on behalf of 800 Sylvan followed. Dr. Kinsey testified he was aware of projects which were mixed-use and used to satisfy affordable housing obligations and in particular cited one which included a substantial amount of affordable housing. He testified there was no reason why site amenities and access could not be shared, noting the RSI allows a universal approach to parking when residential uses are mixed with other uses.

With regard to 800 Sylvan specifically, Dr. Kinsey testified he calculated the net acreage as 18.7 acres. He testified he found no land to exclude therefore gross acreage was the same as net acreage. Dr. Kinsey testified he then multiplied 18.7 by his proposed density of 30 units per acre.

Dr. Kinsey testified he was not aware of any analysis by COAH or anyone else that ascertains the steep slopes to be not developable. US Quadrangle maps are the source designated by the COAH rule.

Dr. Kinsey testified that the full body of the former COAH rules have to be understood and applied in relationship to each other. He testified it was important to remember that Mount Laurel III was decided in the context of a builder's remedy suit. The Supreme Court used the words guide or guidelines. The rules he testified are a starting point. He noted Mount Laurel II decided in 1983, preceded the adoption of the first and second round rules in 1987 and 1993. The COAH rules do not require a municipality to develop every site. He noted that a mechanism of compliance, rental bonuses do not provide housing. Mount Laurel IV he testified, ended a 16-year gap. In Dr. Kinsey's opinion the prior second round rules and otherwise not invalidated third round rules should be used as a guide. Dr. Kinsey also refuted testimony of Mr. Mistretta regarding recreation which he said did not have to be located exclusively on site but could be adjacent or nearby. Similarly, he testified there are no COAH regulations which deal with the protection of trees. He noted that the trees which constituted the buffer along Floyd Street had risen vertically significantly and was somewhat permeable. He noted that the repurposing of the site for residential housing eliminated the need to buffer residential use from a commercial one.

When queried as to whether COAH ever approved a density of 30 units per acre, Dr. Kinsey responded that East/West Venture in Fort Lee was closer to 90 units per acre.

The court finds Dr. Kinsey to be a credible expert witness with impeccable credentials and experience. The court accords great weight to his testimony.

800 Sylvan next called Patricia Ruskan. Ms. Ruskan holds a degree in civil engineering from Rutgers University and is a licensed civil engineer in New Jersey. The court accepted Ms. Ruskan based on her education and experience as an expert in civil engineering. Ms. Ruskan was one of the experts who testified in LG's site and variance application and in 800 Sylvan's failed application before the Englewood Cliffs Planning Board.

Ms. Ruskan testified the 800 Sylvan site has slopes in excess of 15% across the entire site, both naturally occurring and man-made. She testified the same was true of the LG site and the Board in that application did not discuss any property issues pertaining to steep slopes and there were no expert reports regarding same. Ms. Ruskan further testified the proposed and approved new LG design contemplates steep slopes in excess of 20% and no concerns were raised regarding. She testified her review of the ordinances of Englewood Cliffs revealed no ordinance which regulated steep slopes.

Ms. Ruskan identified DS-13 as having been prepared by herself. The document reviewed two Harbor Consultant concept plans - one for 800 Sylvan and the other for the proposed municipal site. She testified she also reviewed DS-41 and DS-43. She identified DS-41 as the Harbor Consultants municipal complex site plan and DS-43 as the conceptual plan of 800 Sylvan showing proposed residential development on the north side.

Ms. Ruskan testified that with regard to 800 Sylvan most of the development seemed to be on paved or developed areas and none in wetlands or wetland transition areas. She was not aware of any prohibition against development in steep slope or wetland areas. The plan showed 274 units.

Ms. Ruskan testified there were a number of concerns with the proposed municipal site, including parking circulation, type of parking, lack of refuse disposal, inadequate drop-off areas, use of parking in a public street and a paper street. Ms. Ruskan further noted minimal setbacks, noting the setback from Hudson Terrace was 8 feet. She testified the separation between residential and non-residential was less than 25 feet from Borough Hall to the proposed residential development. The distance between residential and the police station was between 60-65 feet. She testified there was no subdivision between commercial and noncommercial use and no delineation of parking areas for residential versus non-residential uses. In contrast,

she noted the proposed distance between structures in the 800 Sylvan concept plan was in excess of 200 feet and the setback from Floyd Street was also 200 feet. She noted the parking was not treated in a like manner with the 800 Sylvan treatment resulting in more area needed. Ms. Ruskan also testified the concept plan prepared by Mr. Mistretta for 800 Sylvan did not make sense because there was no planning reason to split access between residential and commercial and the current plan was working and functional.

With regard to the proposed municipal site, Ms. Ruskan observed there would be no emergency vehicle access if cars were parked, the proposed "head-in" parking on Hudson Terrace was not good planning. She observed the concept plan provided no refuse collection areas and many of the proposed residential structures did not front on parking areas or streets.

The court finds Ms. Ruskan to be a credible expert witness and accords her testimony great weight.

800 Sylvan next called Stuart Johnson. Mr. Johnson has a B.S. in Architecture and is a registered architect in New York and New Jersey. He testified he specializes in multi-family design. He currently is a principal at Minno & Wasko Architects. He testified he has fifteen years of professional design and land planning assessing potential yields for residential or mixed-use developments. The court accepted Mr.

Johnson as an expert in Architecture and Land Planning. Mr. Johnson identified DS-49 as a Google Earth aerial. He testified it accurately depicts the 800 Sylvan property which consists of approximately 28 acres, of which the Unilever building occupies about 8 acres. The property has frontage on Sylvan, Hollywood and Floyd Avenues. The site is relatively developed, with office buildings and parking structures. Primary use across Floyd is a school with outdoor recreation and few adjacent single-family homes. There is some topography. The site slopes from west to east and north to south.

Mr. Johnson identified DS-34 and DS-35 and documents and drawing prepared to show the maximum development potential for the site which he found to be 835 units.

Describing what he called an illustrative concept plan he testified it showed two buildings, Building A to the west, and Building B to the east. Building A consisted of 546 units with an internal parking garage and courtyards. Building B proposed 289 units, consisting of four stories over one level of parking. He testified the building would appear as a 5-story building from Sylvan Avenue. He also described a three-level parking deck behind the Unilever building which would be perceived as two-stories from Floyd Street because of grading.

The parking deck measures 33 feet from grade to the top of the deck on the east and 23 feet on the west. It is proposed to

be located between 60-70 feet from its closest corner to Floyd Street. It was proposed to be wrapped in an articulated residential façade. There was additional surface parking proposed around the building. The plan proposed shared access aisles with the commercial use, which Mr. Johnson testified was not unusual. Access aisles are shared in terms of site access and drive.

Proposed Building B is 50 feet from the lobby floor to the highest level of the roof deck and the rear of the building. Mr. Johnson testified the parking was RSIS compliant. He testified that this plan avoided the isolated wetlands on site and no permitting was needed.

DS-35F A04 was identified as an illustrative concept plan. The plan proposes 600 units, of which 396 would be located in Building A, and 204 in Building B. Parking was a combination of structure and surface parking. Proposed building A steps with the topography from west to east. Part of the proposed building is four stories at grade, the other part is four stories over one level of basement parking in the west.

This plan also contemplated a three-level parking structure behind the Unilever building. No wetland permitting was required as Mr. Johnson testified it avoided two areas one in corner of Building B and the other in the wooded wet buffer. He testified the nearest office and parking adjacent was MSNBC

Building A was proposed to be located between 120 and 180 feet to Sylvan and Floyd Streets. Building B is proposed to be located more than 120 feet from Floyd Street and more than 185 feet from Sylvan Avenue.

The plan proposed to spread 20% inclusionary apartments between Building A and B. Inclusionary and non-inclusionary units would all look alike.

The 20% set aside resulted in 167 affordable units of 835; or 120 of 600.

Mr. Johnson next identified DS35C A02.1. He testified this represents a 600 multi-family concept plan. The biggest difference between this plan and the previous two was that Building B has a leg of the building extend toward Sylvan over a wetland and would require wetland permits. Building A is the same is the same as in the previous plan. In this proposed development Building A would generate 37 affordable units and Building B 230 units. Mr. Johnson testified both 35C. F and G all propose to keep the 466 parking spaces for Unilever exclusive to Unilever.

Mr. Johnson testified DS35B is 600-unit concept plan. This plan is different in that instead of erecting a parking deck, a parking deck is proposed to be constructed inside Building A, of which the first two floors would be dedicated to Unilever for a total of 430 spaces for Unilever, including surface parking. He

noted the parking structure, but not the parking is shared. He testified the plan remains RSIS compliant and contemplates 1200 spaces for residential uses.

Mr. Johnson identified DS-35D A03 as a street view accurately depicting and shown to scale of what would be visible looking north on Sylvan with red dotted line showing intersection of Hollywood; red dash indicating four levels of residence over one level of parking and shows it to be perceived beneath existing trees. He testified the Unilever Building would be taller.

Mr. Johnson testified identifying (1)DS-35E A03.1 as an illustrative aerial perspective view looking west showing the proposed buildings and comparative to the CNBC building which is 50 feet tall at the roof line. He testified existing trees would block much of building; (2) DS-35H A06 identified as a Site Cross Section show building cross section for north to south and height of 50 feet. He testified Section 2 showed Building A as perceived to be a 5-level building from east and 4 stories at grade from the west. He proposed additional vegetation buffer which he testified would screen more of the building; (3) DS-35I A07 was identified as an Illustrative image board showing exterior fenestration and articulated roof line.

He testified the level of finish would be of a luxury quality, masonry brick veneer and all four sides of building

would be finished. (4) DS-50 Aerial Mr. Johnson testified showed the massing and scale of the building and opined they are comparable to adjacent buildings. (5) DS-35J A08 Mr. Johnson testified showed the approximate scale and level of finish of proposed club room area, private event room with kitchen and state of the arts fitness center. (6) DS-35K A09 Mr. Johnson testified depicted the proposed lobby lounge, work cube areas, and seating area with WIFI; (7) DS-35L A010 he testified showed active and passive outdoor recreation areas. Mr. Johnson testified each building would have pool, outdoor grilling, seating, all of which were in addition to level lawn areas. He testified there would be pedestrian access to Floyd Street and a baseball field which was a 5 to 10-minute walk.

Mr. Johnson testified that the proposed parking complies with international standards and the plans provided sufficient light and air.

On cross-examination Mr. Johnson was firm in asserting that in his architectural opinion 835 units could be constructed on site with RSIS compliant parking. He testified on re-direct that while the actual fit and finishes have not been selected the actual spaces have been incorporated into the plan, including the fitness center, lobby, outdoor passive and active recreation, the pools and community rooms.

The court finds Mr. Johnson to be a credible expert witness and affords his testimony great weight. Based upon his testimony and the testimony of Mr. Bernard, the court finds that the proposed 800 Sylvan site could accommodate a maximum of 835 rental units with the described amenities, including 167 units of low-and moderate-income units.

Art Bernard was next called by 800 Sylvan. Mr. Bernard holds a BA in Education from Lafayette College and a Master's in City and Regional Planning from Rutgers University. He is a licensed professional planner in New Jersey and has been so engaged since 1974. He testified he developed an expertise in Mt. Laurel because much of his career has coincided with Mr. Laurel, starting in 1983 before Judge Serpentelli. Mr. Bernard testified he was instrumental in the creation of the Coalition for Affordable Housing. He was hired by COAH in 1986 and remained with COAH until 1994 when he left as its Executive Director. He testified he wrote the first round (1997-June 30, 1993) and second round regulations adopted June 6, 1994. He also wrote the COAH Handbook. He testified the purpose of the handbook was to answer questions about how to put together the housing element. Mr. Bernard's other COAH responsibilities included supervision of review of all the housing elements, and dispute resolution of Fair Housing Act. He testified COAH acted as a quasi-judicial body and people could make motions and then

there were comments and then the Board would make decisions which were summarized in a digest book. Mr. Bernard was also liaison to the State Planning Commission and testified in State legislature. He left COAH in September 1994 as Second Round Rules were adopted in June 1994. Since leaving COAH, Mr. Bernard testified he has become a consultant assisting municipalities. He testified he has represented about 27 municipalities and scores of private sector clients. For each of the 27 municipalities, he has done affordable housing work including preparation of housing element plans. He has drafted land use ordinances and has also critiqued housing elements. Currently, about 70% of his work is private. In addition to affordable housing, he has also done planning work which does not involve affordable housing. He has represented several builder's remedy plaintiffs in court. He has represented many builders as objectors in COAH process and in DJ actions. He has represented builders in mediation before COAH and the Court and in obtaining variances. Mr. Bernard testified he has been accepted as an expert in 11 vicinages. Has been appointed as a Special Master in Cinnaminson, Edgewater Park, Franklin Lakes, Old Bridge, Little Falls, among others. He was an expert in both the recent Mercer County and Middlesex case Mount Laurel matters. Post Mt. Laurel IV he testified, he has been involved in advising courts as to the compliance

standards - and has advised them to use second round rules, N.J.A.C. 5:93. He testified the Supreme Court left door open to use some 5:94 rules, but the rule most used is the development fee rule. He teaches seminars and testified he often appears on behalf of ICLE and New Jersey Planning Association and New Jersey Builders Association.

The court accepted Mr. Bernard as an expert in field of Professional Planning with particular expertise on Affordable Housing Compliance and Mount Laurel issues.

Mr. Bernard testified he reviewed the Borough's Housing Element, Judge Jacobson's opinion, COAH Rules, COAH handbook, some data of towns with VLA, also the American Community survey to get a feel for the Borough because some of information was not in the Borough's Housing Element.

He testified that DS-19 is his response to the Borough's December 18, 2018 Housing Element and Fair Share Plan. He testified Englewood Cliffs is in Region 1 which includes Bergen, Passaic and Sussex counties. He testified that one unit detached houses are 53.5% of the housing stock in New Jersey, 39% in Region 1 and 96% in Englewood Cliffs. He testified single family detached homes are the least likely to be rented (7.8 % statewide while 25% of townhomes are rented, and the majority of multi-family homes are rented.

He testified the median income for the Borough was \$131,936 as opposed to the State median of \$73,702 and Bergen County median of \$88,487. Englewood Cliffs has 74.9% households earning \$75,000 or more which is substantially higher than Bergen County (56.8%) and the state (49.3%).

Mr. Bernard testified that data from the United States Census American Community survey shows in terms of income, only 14.9% of White, non-Hispanics earn less than \$20,000 compared to 8.1% of Asians, 28.8% of African Americans and 25.4% of Hispanics. The wealthiest include white-non-Hispanics of which 52.5% earn \$75,000 or more, compared to 66.7% of Asians, 31.2% African Americans and 32.4% Hispanic. He testified the same data shows whites and Asians are much less likely to rent than African Americans and Hispanics and there are none renting in Englewood Cliffs. By contrast, in Housing Region 1 70.74% of African American population and 70.48% of Hispanics rent Statewide 61.06% African Americans rent and 64.51 of Hispanics rent.

Statewide 13.5 % of population is African American but in Englewood Cliffs only 1.4%. Similarly, Hispanics are 19.8% of the population in New Jersey, but only 4.9% in of the population of Englewood Cliffs. Mr. Bernard testified that he believed the data provides a starting point to think about how land use

decisions have had a disparate impact on African Americans and Latinos.

Mr. Bernard testified that the housing stock tells you Englewood Cliffs is exclusionary and cited testimony that in the 35 years since Mt. Laurel II was decided no Mt. Laurel housing has been built in Englewood Cliffs.

Mr. Bernard noted that the Mercer County Fair Share trial presided over by Judge Jacobson created a methodology and using that methodology in Englewood Cliffs there would be a present need of 0; a 1987-1999 need of 219; and a Third-Round obligation of 365 for total obligation of 584 units.

Mr. Bernard testified he was present during Mr. Mistretta's testimony when he said it was a developed community and did not have an affordable housing obligation. Mr. Bernard testified Mt. Laurel I was limited to developing communities. He testified Mt. Laurel II in 1983 changed fair share allocations by focusing on concept of a state plan and allocated obligations to all municipalities in growth areas, removing the developing community criteria. He testified Englewood Cliffs received an allocation at that time. He noted Englewood Cliffs did not receive substantive certification in First-Round. He testified Englewood Cliffs did petition for certification in the Second-Round was declined to pass an ordinance placing an overlay zone on the LG site, formerly Prentice Hall, and certification was

denied. Mr. Bernard testified Englewood Cliffs current Housing Element and Fair Share plan does not meet its constitutional obligation. He noted the Borough was seeking a VLA. He testified COAH provides standards for VLAs. Since the Second-Round rules were adopted those are the rules courts have used including after Mt. Laurel IV. Mr. Bernard testified referring to 5:93-4.1 that the first step in addressing a request for VLA is to determine the capacity for vacant sites. Citing 4.2(d) he testified, "the Council shall review the existing land use map and Inventory to determine which sites are most likely to develop for low- and moderate-income housing". He testified all vacant sites are presumed to fall into this category. In addition, the rule provided the Council may determine that other sites that are devoted to a specific use which includes relatively low-density development.

Once a list of vacant sites and sites with low density use are identified, he testified the regulations provide for elimination of sites or portions thereof for wetlands, flood zones, slopes in excess of 15% (if and only if there is an ordinance in place regulating development on those slopes), land locked properties, open space, farming, etc. Following the eliminations, he testified the list is a more realistic inventory of possibilities. He absolutely denied that there is

any rule or decision which allows municipalities to deduct areas on account of trees, or areas not previously developed.

He testified Section 4.2(e)(2)(ii) refers to steep slopes. In the case of slopes in excess of 15% municipality may regulate inclusionary development provided the ordinance also regulates non-inclusionary developments in a consistent manner. Mr. Bernard testified he wrote this Rule. He testified that part of the reason for the rule was COAH wanted to see the best sites first. The rule also gave COAH the right to exclude sites in whole or in part when excessive slopes threaten the viability of an inclusionary development.

Mr. Bernard testified the elimination of steep slopes by the Borough was clearly improper. Such an interpretation would allow a municipality to disturb steep slopes for any other use than affordable housing. He opined the logic has no place in an exclusionary zoning case. He further noted that there is no statewide standard to prevent development on steep slopes in the absence of an ordinance.

Mr. Bernard testified the next step was to apply a density to the sites which remain in the inventory, citing Rule 5:93-4.2(f). He testified the rule has two criteria to determine density: the character of the development surrounding each site and the need to provide housing for low- and moderate-income households.

Mr. Bernard testified that the need for low- and moderate-income housing is very high, and New Jersey is land poor. Judge Jacobson found New Jersey is in need of affordable housing. He testified the need has been exacerbated by the removal by the Highland Council of land from Region 1 for development. Region 1 need has been determined to be 38,000 units. He noted again that Englewood Cliffs has contributed nothing. He testified these considerations have bearing on the assignment of density. He testified the 800 Sylvan property has infrastructure; it is not in the Highlands. The areas which can accommodate high density housing are limited and where density can be accommodated, he opined it should be built to meet the constitutional mandate.

Mr. Bernard agreed that character of the surrounding area counts and that in single family areas density is likely to be lower than in a mixed-use areas.

Mr. Bernard testified that once the developable portion of the property is ascertained, it is multiplied by a density and it is assumed that 20% of the units will be affordable which is the yield or RDP for the site.

Mr. Bernard testified RDP is an important number as it becomes a planning number for municipality which then must create a plan to accommodate the RDP. He testified that all sites which contribute to RDP need not be used. He testified that the Borough's allocation is 584 units and RDP is less than

that, there is unmet portion of need and there needs to be a plan for that.

Mr. Bernard testified that Rule 5:93-4.2(h) addresses this issue and requires an examination of the municipal land use map for areas which may develop or redevelop. Examples include but are not limited to a private club owned by its members, publicly owned land.

Mr. Bernard testified that the part of the Rule which states that COAH "may require" means what is discretionary is the approach that may be taken. Mr. Bernard specifically testified that there was no discretion about whether the unmet need would be addressed. He testified that when the rule was written COAH did not know that most of the suburban office space would become obsolete. He testified 800 Sylvan is such a site because the owners of 800 Sylvan have offered it for affordable housing. He testified 800 Sylvan is a really large site in a community which has built no affordable housing. He noted all parties agree it is suitable, and the needs of low- and moderate-income housing are more important than what the community wants to do.

Mr. Bernard opined that municipalities which have large obligations, and which refuse to impose overlays should not be permitted the same flexibility for vacant or low-density sites. They should not be allowed to simply disregard the overlay.

Mr. Bernard stated the Rule states some sites which are vacant or low density are more likely to be developed than others. He testified COAH has a track record on these sites and if they are zoned for affordable housing, they will yield affordable zoning. Additionally, with the rental bonus the community could receive a credit. He distinguished these sites from developed sites which he testified COAH doesn't have a track record and you don't know which ones will redevelop. However, a developed site, where builder comes forward and says they will build, is likely to get built. Mr. Bernard testified that there was no basis in the rules or case law for the distinction drawn by Mr. Mistretta between properties where the owner expresses an interest in building affordable housing and those where the owner does not. Mr. Bernard testified that between 1983 and 2000, COAH was trying to implement the rule as written. He testified that was the case in Englewood Cliffs, Wood Ridge and Fair Lawn. He testified after 2000, COAH did very little. According to Mr. Bernard, his research showed that of the 33 municipalities COAH granted substantive certification many had no plan to address unmet need, and others enacted only a development fee ordinance. He opined that during that period around 2006 COAH did not implement the rule. COAH was forced to deal with the issue of developers coming forward with sites partially developed, giving as examples two K. Hovanian sites

and the Bancroft School in Haddonfield. He testified since that time COAH began to say when a developer comes forward with a developed site and they say they want to build affordable housing you include the site in the RDP. However, he testified, COAH makes a distinction between vacant and low-density sites and developed sites - it has nothing to do with who wants to build what, or whether an owner offers a site for affordable housing.

Mr. Bernard testified that his thinking on these sites has changed over time. Between 1994 and 2006, he was including developed sites in overlay zones. After 2006, he began treating developed sites as Ms. Lonergan, the Special Master treated them in her report, that is including them in the RDP.

He testified because 800 Sylvan was a developed site and not a low-density site as were the Hovnanian and Bancroft sites, accordingly it was his opinion that 800 Sylvan should be included in the unmet need and rezoned for affordable housing. He testified the standard under COAH for unmet need overlay zones is a site that is developed and could redevelop, done on site by site basis. He testified that the goal is to meet the entire unmet need.

Mr. Bernard testified he has different view from Mr. Mistretta and Dr. Kinsey. He testified that the vacant sites in the municipality have an RDP of 13.2. The RDP of the municipal

site is 11.4 affordable units. The RDP for the LG site is 136.5 affordable units. The total corrected RDP is 161.1 affordable units.

Citing N.J.A.C. 5:93-4.2(h) he testified that the increment between the Borough's RDP and its fair share of 584 units, referred to as unmet need, must be addressed with a plan that promotes redevelopment. He testified the rule placed on COAH, (now the court) not the municipality the ultimate responsibility to determine how these sites would be rezoned to address the unmet need. In his opinion sites such as 800 Sylvan and 20-32 Sylvan Avenue/Bayview Avenue are clearly covered.

Mr. Bernard testified that Englewood Cliffs exclusionary practices included squandering opportunities for low- and moderate-income housing. He cited the Prentice Hall, now LG site where the Borough refused to impose an overlay zone and as a result the Prentice Hall site was redeveloped with no affordable housing component. He testified in other towns, the court or COAH had revisited the RDP under such circumstances and increased it to account for the loss of units. He recommended that the court attribute RDP to the LG site.

Mr. Bernard testified regarding the smaller sites, all of which he noted are in single-family areas. He testified that the character of the surrounding area caused concern regarding the issue of height. He testified the rules call for a minimum

density of 6 units per acre. He testified he determined density of 10 units per acre was appropriate for small scattered sites which are all very similar. He noted that between experts testifying in this matter, the main disagreement is exclusion of sites. He noted Ms. Lonergan and Mr. Mistretta used 10 units per acre. He further observed Ms. Lonergan identified two sites which he had not. By Mr. Bernard's calculation the RDP for these sites was 11.4 units. Ms. Lonergan calculated 16.2 RDP for these sites. Mr. Bernard testified he would agree with Ms. Lonergan's number of 16.2. He testified assuming the municipal site could accommodate 57 units, the RDP should be 11.4, or 20% of 57.

Mr. Bernard testified that the Cioffi site (Site A) has a use variance application pending. The RDP proposed by Mr. Mistretta was density of 15 and based on that an RDP of 6. Mr. Bernard did not know what density the applicant was requesting for the site, but testified whatever density was awarded should be considered in determining density for this site.

With regard to the former Prentice Hall site, now known as the new LG site, he testified the site consists of 27.3 acres, and basically has no constraints. He noted that Borough has approved a massive structure of 4 stories over 2 stories of parking.

Mr. Bernard testified 800 Sylvan has demonstrated 30 units per acre would be appropriate and opined it was appropriate to apply the same density to Prentice Hall, but because it is irregular in shape a density of 25 is appropriate with an RDP of 136.

With regard to the new LG site Mr. Bernard emphasized that whether the site is vacant or not is irrelevant. He testified in first and second rounds the credits were given more liberally because COAH had not adopted rules. He noted the Second Round also gave municipalities a substantial credit for building a substantial amount of their first-round obligation. He testified the site should generate an RDP. He was dismissive of the Borough's argument that to impose an RDP for the site was not equitable because housing cannot be realistically developed there. Essentially, Mr. Bernard argued the situation was created by the Borough and it should not be permitted to benefit from its self-created problem. He opined that if the Borough could not find a suitable way to build there are areas along Sylvan Avenue which could be appropriate overlay zones. He noted that even with approvals, portions of the LG site will remain vacant. He cited Dr. Kinsey who opined that portions of the property should contribute to the RDP. He disputed the Borough's argument that if the site was included in the RDP it should be at a density of 6 units per acre because he testified

COAH did not have the benefit of knowing the town would permit four stories over two stories of parking on the site.

He acknowledged that with regard to 800 Sylvan, Mr. Mistretta, Ms. Lonergan and Dr. Kinsey included the site in RDP, but continued to maintain that because it was neither vacant nor undeveloped it should be included in the unmet need.

He noted that the State Plan for Area 1 promotes growth, higher densities, redevelopment and redevelopment of non-residential settings into housing. He noted 800 Sylvan has sewers and water. He observed the site is between the CNBC building which is four stories and about 66 feet high at its peak on the north side and the Unilever building which is three stories. He noted the main land use to the west is a school and a wooded area owned by the school. He opined it is good planning to have high density housing near school. Further, he noted there is recreation at the school and a major recreation area nearby with tennis courts, ball fields and batting cages. Across 9W (Sylvan Avenue) there are hiking trails, a boat launch and a bird sanctuary.

He testified the site also has significant access on Floyd Street; 9W is a state highway which also connects to Palisades Interstate Parkway and the New Jersey Turnpike. He opined it was a "great" site for multi-family housing.

He testified that assuming arguendo that 800 Sylvan was an RDP site, it was significant because the character of the area shows the site is appropriate for large housing buildings and mass of a large residential area would be in character. The height is consistent with the CNBC building. Recreation, schools, and highway access are all consistent with high density development and consistent with concept plans developed by Mr. Johnson. Under COAH site has to be suitable. All experts agree site is suitable. The need in the Borough and region is also significant factor. He testified 800 Sylvan is by far largest site in Englewood Cliffs for affordable housing.

Mr. Bernard opined most of the 20 acres was developable with the possible exclusion of approximately one-quarter acre of wetlands. He testified there was no reason the site could not be a planned unit development. He testified that the plans submitted by the developer create an RDP of between 120 and 167 units. He noted the Minno & Wasko proposals call for buildings similar in height to the CNBC building and testified there was adequate space between the buildings and the Unilever building. He testified while referencing DS-35B, DS-35C, DS-35F, and DS-35G that all iterations of the plan, including those for separate parking and shared parking were realistic options for the site.

He testified that densities of both 30 units per acre and 43 units per acre would be reasonable based on need and the state plan. He found the proposed structures would be consistent with the surrounding area and testified an appropriate height would be the height of the CNBC building. He opined that either the 835-unit plan or the 600-unit plan could fit within the site parameters.

In reviewing DS-43, the concept plan of Mr. Mistretta, he testified he disagreed with Mr. Mistretta's concept plan proposing a very large separation between Unilever, the proposed housing and the parking area and Mr. Mistretta's elimination of over 200 feet of the site north of Unilever site reducing the site from 20 acres to 15.27 acres.

He testified there is no justification, from a planning point of view, supporting the property line Mr. Mistretta drew or the location of the parking. He testified the 200-foot separation is excessive, not based in any COAH rule or process, not necessary for light and air, nor to protect the health and safety of residents. Mr. Bernard testified he has been involved with a number of successful mixed-use developments citing Branchburg, Montvale and South Brunswick. South Brunswick he testified consists of commercial uses and apartments. The project fronts on Route 22 adjacent to some existing apartments which are being expanded. Separation between uses is 50 feet

minimum. He noted Mr. Johnson's (Minno & Wasko) plan was in excess of that.

In reviewing DS-29, he identified the old Mercedes Benz campus in Montvale which was redeveloped for residential and non-residential uses. In that project, commercial was located on the first level with housing on top. He testified the adjacent four-story retail and office was separated by a distance of about 60 feet. He noted the ordinance passed in conjunction with the settlement permitted the buildings to be within 50 feet.

Mr. Bernard disputed Mr. Mistretta's assertion that he did not deduct wetlands, steep slopes or other conditions permitted by COAH from his calculation of developable area which he characterized as "not exactly true". Mr. Bernard testified that in fact Mr. Mistretta did deduct those areas because his concept plan shown no development on steep slopes or wetlands. In addition, he excluded forested portions of the site and limited developments of site to areas which have been previously disturbed all without basis in COAH rules.

Mr. Bernard was also dismissive of Mr. Mistretta's criticism of 800 Sylvan's recreation plan which he testified has magnificent recreation potential. He testified that while recreation is usually a site plan issue, 800 Sylvan was proposing pools, hot tubs, fitness center, barbeque areas, court

yards, additional space for recreation, in addition to offsite recreation.

Mr. Bernard testified in contrast, the proposed municipal site shown in DS-41, the Mistretta concept all the housing was clustered along Hudson Street sharing site with Borough hall, fire department, recreation, police department. There were two areas near the street. There was no subdivision line separating residential from non-residential uses, and there appeared to be shared parking. He testified unlike the 800 Sylvan proposal, the uses at the proposed municipal site were quite different. He noted the municipal building would have activity at night when people are home. The vehicles drawn to the site in conjunction with that activity would make shared parking difficult. HE observed that neither the police nor fire departments run on a 9-5 schedule. He concluded as a result, everyone would be competing for the same parking.

Mr. Bernard described the proposed Borough 100% affordable site as a "fairly complicated site to develop." He noted the regulations call for construction to commence within 2 years of the action taken by this court. He observed that a large building has to be demolished and a police station has to be built. In conjunction with those projects, the housing has to go up and it has to be livable. He testified that it was not clear how that is going to happen. He noted usually there would

be a phasing plan which the Borough did not supply. He noted although the Borough has said it will pay for the development whatever it costs, if the units are more expensive, the project could lose tax credits.

Mr. Bernard noted that Mr. Mistretta had not treated the municipal site in a manner similar to the 800 Sylvan site. He observed the RSIS would require 114 spaces for the residential units and the site was "woefully under parked." He characterized the recreational spaces a "minimal" and "dangerous." He testified the traffic and noise associated with the police and fire stations were issues.

He testified the Borough plan had no realistic opportunity to meet the RDP. With regard to the mandatory set aside ordinance the municipality was advancing he testified he reviewed the New Jersey Construction reported and found that no multi-family housing unit applications had been received or approved in Englewood Cliffs over the past 10 years. He testified mandatory set-asides are totally discretionary with the municipality retaining the right to approve or disapprove any multifamily housing.

Mr. Bernard testified that deeds with restrictions go to availability of site. He testified he has concerns about the availability of the municipal site. He testified the Borough's plan does not address an RDP of 163. The most units the Borough

proposes is 77 giving them every benefit of doubt and including the rental bonus credits to which they were not entitled.

Mr. Bernard recommended the court require a phasing plan for the municipal site and a specific construction timetable.

Mr. Bernard highlighted the differences between Mr. Mistretta's calculation of 75 low and moderate units on the 800 Sylvan site and the calculation of Dr. Kinsey and the Special Master of 112 units and 109 units, respectively.

He noted that Dr. Kinsey and the Special Master also reduced size of site by imposing set back of 60 feet which he testified was unsupported by COAH regulations for purposes of calculating RDP. In Mr. Bernard's opinion setback is a site plan issue having nothing to do with calculating the RDP. He testified whether there is a subdivision line or not on the 800 Sylvan property, it had nothing to do with the calculation of the RDP.

Mr. Bernard testified that he was in agreement with both Dr. Kinsey and Ms. Lonergan as to the other properties which should be included for purposes of calculating the RDP. The main difference in the RDP numbers came from properties which were identified which he had not. The other variation was densities assigned to some of the properties.

Mr. Bernard noted the main disagreement between the non-Borough experts concerned lost opportunity. He noted in this regard Dr.

Kinsey alone included 980 Sylvan and 1000 Sylvan in this category, whereas both himself and Dr. Kinsey included the new LG site, formerly Prentice Hall as a lost opportunity.

Mr. Bernard testified that the Borough's plan is not constitutionally compliant. He noted the Borough's unmet need is 507. He testified the sum total of Borough's plan is 57 units at municipal site. The difference between 57 and 77 units, the Borough proposed to meet with an extra credit for the rentals. He noted COAH created an incentive to build rentals, giving an extra credit for a certain number of rentals. The maximum credit is 25% of RDP and the Borough seeks the rental bonus of 25% of 77 for 20 units. Citing Judge Skillman, who ruled when overturning COAH's second round rules, that towns which had not addressed their second-round obligations were not entitled to rental bonuses. Mr. Bernard noted the Borough's obligation consists of 219 units from Second Round. He noted before the Third Round can be addressed the Borough needs to address its Second-Round obligation which it has not in the 20 years since the 1987-1999 round expired. Mr. Bernard further testified that the denial of bonus credits is support by Third Round rules 4.1(a) or 4.13(a) which deal with crediting.

Mr. Bernard was shown DS-65 which he identified as 5:59-4.1(a). He testified the regulation was written as COAH was trying to adopt regulations as to growth share, not regional

share, and were overturned, but the rule makes clear that credits are applied to second round, not to growth share which was the third round rules which were overturned. In conclusion Mr. Bernard testified the Second Round was not done in timely fashion, as a result of which the Borough is entitled to no rental bonus credit. Dr. Kinsey and Mr. Bernard agreed on this issue.

Mr. Bernard opined that the obvious route to constitutional compliance for the Borough would be to rezone the 800 Sylvan site citing, its large size and suitability, and the fact that it is the only site which a developer has said it wants to build affordable housing.

Mr. Bernard testified that if the RDP is 163 units and unmet need is 421 units, which he recommended, he doesn't see anything fundamentally wrong with overlay zones, but opined they are more aspirational than realistic. Mr. Bernard noted that the COAH rules were written for municipalities with immunity, not municipalities such as Englewood Cliffs which has lost its immunity. He noted that 800 Sylvan has 20 acres and has cared about the process enough to pursue it for more than 2 years.

Mr. Bernard testified compliance techniques are implemented after the housing obligation is established. He testified it is an adjustment process involving how a municipality addresses its

constitutional obligation when the obligation is a poor fit for the amount of land in the community.

On cross examination Mr. Bernard agreed that he considers himself a professional planner and housing advocate. He testified he was very pleased to think that some of his reports had helped overturn the third-round rules. He acknowledged that presently 70% of his work was for builders and 30% for municipalities. He testified he represented municipalities with regard to declaratory judgment actions following Mount Laurel IV and that most of his town settled their cases and most completed within the original five-month time frame.

He reiterated that he wrote the COAH rules, testifying he wrote "every word" with a lot of input. He agreed that a cornerstone of Mount Laurel is sound planning. He reiterated his position that without a steep slope ordinance it was improper to exclude steep slopes.

Mr. Bernard opined that 980 Sylvan, 20-32 Sylvan and 100 Sylvan sites should not be included in the calculation of the RDP because they were developed or approved with/for office buildings. He testified that assigning an RDP to a developed or developing site, specifically citing 111 Sylvan (Site C) and attempting to address the RDP with an overlay is a "futile gesture" because it is unlikely the site would be redeveloped noting the site is not vacant or low density. Similarly, he

argued, 800 Sylvan is not vacant or low density. For that reason, it should not be assigned an RDP. The difference between 111 Sylvan and 800 Sylvan according to Mr. Bernard was that 111 represented a "squandered opportunity". COAH had previously conditioned substantive certification on the former Prentice Hall site on the enactment of an overlay zone for 6 units per acre. With regard to 111, the Borough willfully failed to comply.

Mr. Bernard testified compliance matters. Towns which comply should get all the benefits and towns which do not should have to comply. In his opinion, Englewood Cliffs exposure to builder's remedy lawsuits between 1997 to 2007 was not enough. In response to the question whether assigning an RDP of 136 units to 111 Sylvan was not the same as assigning more prospective need; Mr. Bernard answered no. He testified that the prospective need remains the same, but the challenge will be to find an alternate site for the units. He opined that in this case, where 800 Sylvan is available, there are office vacancies, there is infrastructure, there is an opportunity to address squandered opportunity with more rigorous approach to unmet need. He testified the court should use the powers it has to require more significant overlay zoning in places like 800 Sylvan Avenue. He conceded squandered opportunity is not in explicitly in the rules but testified there is a concept in

rules that where there is a large unmet need it should be addressed through overlay zoning as the goal is to address the entire obligation. He testified there are limited possibilities in terms of vacant land but there are a lot of opportunities on Sylvan Avenue.

Mr. Bernard cited the Borough of Wanaque as an example of why the court might assign RDP to 111 Sylvan. In 1996 Wanaque petitioned for substantive certification and sought a VLA for lack of developable land. COAH said initial RDP was 98 because a site known as the Powder Hill site was zoned industrial. The RDP was based on 6 units per acre. Before substantive certification was granted, COAH learned Powder Hill was rezoned residential and the Borough permitted 1100 units of which only a few were affordable. As a result, COAH increased the RDP.

Mr. Bernard also cited Wanaque as an example of COAH imposing an RDP on a site which had obtained recent approvals. On cross examination, P-176 a letter from Mr. Bernard to the Honorable Jonathan N. Harris, J.S.C. (retired) in the matter of University Heights v. Franklin Lakes was shown to him to demonstrate in the past Mr. Bernard had taken a different position with regard to sites with approvals and subdivisions, meaning that they were excluded.

Also, when confronted with correspondence regarding the availability of a golf course in the same municipality, he

testified he originally believed the site was available but became convinced it should not be included in the RDP because it would not be available pursuant to the terms of a lease for the next six years.

He also acknowledged when shown P-179, his supplemental certification in opposition to cross motion for immunity, that he believed 800 Sylvan should be included in the RDP. He also acknowledged statements to the effect there was no valid reason under the regulations as applied by COAH and the courts, for the Borough to exclude the 800 Sylvan site from its realistic development potential or its housing element and fair share plan. When asked to address the conflict in his testimony, to wit why he now believed that 800 Sylvan should be included in the unmet need, he testified that in reviewing the rules and the court holdings, he has concluded that whether a site is included or not in the RDP has nothing to do with whether a builder comes forward seeking to build affordable housing but instead whether the sites were low density. He testified that since 2003 there were many cases involving VLAs.

The court has reviewed the entire certification and finds it substantially consistent with Mr. Bernard's testimony and report. The court notes the certification addressed a certification filed by Stephen M. Lydon, AICP, PP on behalf of the Borough in which Mr. Lydon opined the 800 Sylvan property

should not be included in the RDP calculation. Mr. Bernard's certification continues stating:

Also, since it is not disputed that the Borough has a large housing obligation and claims to have a realistic development potential of only nine (9) affordable units it would be appropriate for the court to order rezoning of the 800 Sylvan site to make a substantial contribution of affordable housing.

Mr. Bernard was also shown P-176 correspondence from July 21, 2000 with regard to discussion regarding Block 2605 Lot 1. He agreed that the letter stated the site in question could be treated two ways pursuant to COAH's rules, meaning as part of RDP or as a redevelopment site. He also testified that since the letter was written the Rule, 5:93-4.2(h) changed. He further testified that in his opinion, the site referred to in the letter was a "gray area" and there was no builder offering to construct affordable housing on the site and he did not believe anything was lost as a result of giving the municipality the option.

He was shown P-182, his certification in the Cherry Hill case from November 2011. In it he wrote, "In most cases COAH has declined to require overlay zones, even when an active developer was participating in the process and offering to build the affordable housing." Mr. Bernard testified the letter reflects his understanding of what COAH was doing at the time.

Mr. Bernard testified in response to questioning that if a municipality calculated an RDP for a vacant or low intensity use site, the regulation gives the municipality flexibility as to how to address the RDP. He testified that 800 Sylvan site did not represent a gray area. As a developed site he testified the municipality does not have the option of not including the site.

With regard to a 30 unit per acre density assigned to 800 Sylvan, Mr. Bernard testified that he does not recall any sites similar to 800 Sylvan which were before COAH involving a density issue.

Mr. Bernard testified that given the loss of immunity in this case, in the end it didn't matter whether sites were assigned RDP or unmet need.

Upon being shown P-185, Mr. Bernard identified his report and testified COAH was not following its own rule.

Upon cross-examination by Joshua Bauers, Esq. of FSHC, Mr. Bernard was asked if the fact that the COAH summary fact sheet marked DF-10 showed the Lighthouse site, Block 1202, Lot 2, as having no developable area on account of wetlands and buffers; and the fact that evidence showed the site has been developed as an office building changed his opinion as to whether the site should be included in the RDP. Mr. Bernard testified it did and it would be consistent with his recommendation in the Roseland matter that the site be included in the RDP.

Further on cross, Mr. Bernard opined that Mr. Mistretta had basically ignored all of COAH's rules as to what could be excluded and testified that the COAH rules incorporate sound planning.

Mr. Bernard was shown DF-10 in which document COAH listed sites 1 and 4 as "subdivision." He testified that subdivisions are different than a land use approval as the latter could refer to a variance or site plan.

Mr. Bernard testified nothing in rules anticipated Third Round rules would not be passed.

At the conclusion of his testimony, Mr. Bernard resume and report, DS-18 and DS-19 were marked into evidence.

The court finds Mr. Bernard to be a credible witness with immense experience and knowledge. The court accords great weight to his testimony.

Plaintiff next called Jeffrey G. Otteau, principal of the Otteau Group. Mr. Otteau is a real estate appraiser in New York, New Jersey and Pennsylvania. He has been engaged in real estate analysis since 1976. He is a state certified general Real Estate Appraiser, the highest level of certification available in New Jersey and United States. He is an accredited member of American Society of Appraisers, designated member of the National Association of Independent Fee Appraisers, has been

previously qualified as an expert, and was so qualified in Judge Jacobson's trial.

The main focus of his work is valuation, market study and feasibility. The court accepted Mr. Otteau as expert in the field real estate analysis, economic feasibility and property evaluation

His report focused on two elements of the HEFSP for Englewood Cliffs. He reviewed and analyzed Dr. Powell's feasibility calculations and also analyzed the Borough's three inclusionary housing overlay zones: two existing, and one proposed, to consider whether they present an opportunity for the construction of 95 affordable units. He also reviewed and analyzed the Borough's proposed 100% affordable project.

With regard to the last he noted the Lions Club and police station and Community Center buildings have to be demolished. Site work is required. Infrastructure of roads and utilities need to be installed and storm water management addressed. He testified the concept plan did not detail storm water management. Referring to his PowerPoint presentation, Mr. Otteau examined the report of Dr. Powell concluding Dr. Powell had failed to account for demolition, site work and reconstruction of the demolished building in his calculations. He further found the \$7.1 shortfall to be understated.

Mr. Otteau testified 9% tax credits are oversubscribed, and 4% tax credits are the more realistic opportunity for project. He further testified the permanent mortgage loan to be overestimated by \$368,000.

Mr. Otteau opined that the value of the project fully built and occupied was \$4 million.

He testified the final calculation is to project what percentage of that value would a bank be willing to lend to a project like this in this location, and testified it would be 73% of 80% available financing and would be no more than \$3.3 million, or \$368,000 less than the Powell projection indicating an additional shortfall over and above the \$3.7 shortfall. If a lower ratio of 73% was used, the gap would increase.

Mr. Otteau testified there is nothing unique in the calculation specific to 100% affordable. The value of the property is determined by the net income the property will generate. There are rental thresholds prescribed for affordable housing but those are inclusive of utilities. He testified utilities should not be ignored because all multi-family developments incur utility costs.

Mr. Otteau further testified that supplemental costs of total \$5.9 million had not been calculated by Dr. Powell. Mr. Otteau opined that 250,000 square feet of building had to be demolished, the cost of which would be \$152,000. He noted the

proposed police building would cost approximately \$3.8 million. With regard to the police building, he testified the building would cost more than a non-police building because it had special requirements including reinforced construction, security and communications. He noted the Powell report contained no costs for a temporary facility for the police during the demolition and construction. The proposed community center he projected at \$460,000. Site development would cost an additional \$1,140,000. He testified that these costs result in an additional \$5,939,000 in costs, not included in Dr. Powell's report, which he opined should have been because they increase shortfall.

The funding gap as a result would increase for 4% tax credits to \$13,014,591 and for 9%, \$5,939,029.

He testified that tax credit syndication in the amount of \$4.4 and costs would increase the funding gap to \$15 million.

Mr. Otteau testified with regard to the feasibility of the three overlay zones. He testified that the Borough's map indicates all three zones comprise 36.52 acres. Mr. Otteau found the total area to be closer to 34.5 acres. He testified the tax records indicate the total area is 2 acres less.

He testified the three overlay zones are intended to create one leg of feasibility for affordable housing meaning 95 units. With a 20% set aside and a density ranging between 15 and 20

units per acre, the total housing yield would have to be 475 units to achieve that goal. Mr. Otteau testified that the zoning would only make it permissible. To be feasible, it would have to be profitable. He testified the land acquisition costs for the three areas based upon Englewood Cliffs assessments which were 94.75% of sales meant the equalization ratio total would be \$170,363,926. He further testified that the properties, averaging .39 acres in size, were owned by 58 different persons or entities further complicating acquisition and assemblage. He noted as a result of a new assessment to sales ratio the equalization value increased by five percent. He testified in reviewing recent sales, every property had sold in excess of the equalized value. He testified that the acquisition of the .6-acre municipal site by the Borough for \$1.9 million demonstrates that acquiring property in the Borough is very expensive. Mr. Otteau testified that considering acquisition and demolition, the cost per unit in the overlay zones would be \$289,000. He testified that market prices for land for construction of multi-unit housing range between \$35,000 and \$80,000. He testified finished apartments are selling in the range of \$250,000, so the cost of \$289,000 for each unit indicates the units would not be profitable.

The court finds Mr. Otteau's testimony regarding tax credits not as persuasive as the testimony given by Dr. Powell.

However, the court finds his testimony regarding acquisition, demolition, and per unit costs credible and gives that testimony great weight.

Plaintiff recalled Mr. Mistretta in rebuttal. Essentially Mr. Mistretta testified that he had heard the testimony of Dr. Kinsey, Mr. Bernard, Ms. Ruskan and Mr. Johnson and his opinions had not changed. He also testified that even if there were restrictions on the municipal site due to easements the project could be built without impacting the easements.

Mr. Mistretta did not explain how DS-62 which contains a restriction prohibiting gas stations, public garages, factories or any maintenance of noxious trade or nuisance and also prohibiting erection of any garage or incidental outbuilding on less than two adjoin lots costing less than \$1000 would not prohibit construction of the three unit residential building shown on the Borough plan, which is not a garage or outbuilding and cost more than \$1000.

Plaintiff also recalled Dr. Robert Powell, Jr. Dr. Powell testified he was familiar with the Otteau Group report and had opportunity to review the trial testimony of Mr. Otteau. Dr. Powell testified he did not agree with Mr. Otteau's calculation of the \$368,000 short fall because the estimated loan amount in report from almost a year ago was based on assumption that the developer would take advantage of one of

several loan programs developed for programs like these. Dr. Powell testified it was highly unlikely a developer would go to a private bank for financing but instead utilize a state housing program or HUD program. Dr. Powell testified those programs do not use loan to value ratios, but instead focus on whether the income is sufficient to cover the debt service. Dr. Powell testified as a result of the loan rates having fallen since his report, there would be no permanent mortgage shortfall.

The Special Master, Mary Beth Lonergan testified as the final witness. Ms. Lonergan holds a BA in Urban Studies from the University of Pennsylvania and is a Certified Professional Planner, having been a licensed planner since 1988. She was employed in various capacities by COAH between 1998 and 2003. From 2003 to present she has been associated with Clark Caton and Hintz. She has been appointed on 45 separate occasions in Superior Court matters and has served between 40 and 50 municipalities as their affordable housing planner.

The Special Master's report dated August 14, 2019 was marked DF-5 in Evidence Master's Report.

Ms. Lonergan testified the Borough plan does not properly calculate RDP and recommended that court find plan constitutionally non-compliant, which the court so finds. As noted in the previous testimony, Ms. Lonergan testified the Borough had petitioned COAH for second round certification in

1995 asking to reduce pre-credited need of 219 to 4 with unmet need of 215. COAH had conditioned certification on an overlay of the Prentice Hall site, referred to here as the new LG site. The Borough refused to enact the overlay zone and COAH denied substantive certification.

The Borough prepared its initial Third Round HEFSP in January 2006. The Appellate Division invalidated key elements of the Third-Round rules in January 2007 and ordered COAH to adopt rules addressing the deficiencies noted by the court. Those revisions were issued in 2008. The Borough petitioned COAH for Third-Round substantive certification in March 2009 with its 2008 HEFSP. COAH approved the Borough's development fee ordinance, but the Third-Round rules were overturned by Judge Skillman in his 2010 Appellate decision prior to the Borough receiving substantive certification.

As noted by Ms. Lonergan, following our Supreme Court's decision in March 2015, the Borough filed a declaratory judgment action and submitted a Plan Summary in November of that year. In January 2016, Ms. Lonergan issued her initial Master's report noting the Borough's continued request for a VLA. FSHC objected to the Borough's proposed VLA, unmet need mechanisms and other Borough compliance mechanisms. In November 2017, 800 Sylvan advised the Borough of its interest in offering a 20+ acre portion of their 28+ acre property for inclusionary development

proposing 600 homes of which 15% rental set-aside or 20% sale set aside would be affordable. 800 Sylvan subsequently intervened and ultimately was successful in filing a builder's remedy lawsuit.

This court approved the expenditure of the Borough's trust funds for the purchase of 476 Hudson Terrace for the purpose of construction of a 100% affordable project.

Ms. Lonergan filed a second report in August 2019. Between the filing of her second report and the commencement of trial, the court entered several orders as set forth previously, including revoking the Borough's immunity and holding absent a steep slope ordinance, the court would not consider steep slope adjustments to the VLA. Following those rulings and the testimony at trial, Ms. Lonergan filed a revised report on December 19, 2019.

Ms. Lonergan testified in accordance with her report that she endeavored to use Second Round COAH regulations to the greatest extent practicable in the court of her review. She also testified that the guidance of the Court Mount Laurel II was significant in her determinations.

Ms. Lonergan noted that this court accepted the methodology and 20% cap as determined by the Honorable Mary C. Jacobson, A.J.S.C., In the Matter of the Application of the Municipality of Princeton, MER-L-1550-15, Law Division, Mercer County, March

29, 2018. As a result, the Borough's total combined Prior Round and Third Round Fair Share obligation was 584 affordable housing units consisting of 219 Prior Round and 365 Third Round.

The Special Master noted that the Borough calculated its RDP as 77 units with an unmet need of 507. Mr. Bernard on behalf of 800 Sylvan calculated the Borough's RDP to be between 161 and 334 units the difference depending upon the inclusion of both the Prentice-Hall/Future LG and 800 Sylvan Avenue sites in the RDP analysis and the densities assigned. Dr. Kinsey stated RDP was at least 227 and could be up to 357, again depending upon the inclusion of the Prentice-Hall/Future LG but also additionally including 1000 Sylvan, Current LG and the North Cliff Elementary School site.

In Table 1 of the December 18, 2019 revision of the August 14, 2019 report, the Special Master listed the 15 sites suggested by all parties. The revised report corrected acreage by adding in acreage previously deducted for steep slopes as a result of this court's ruling that absent a steep slope ordinance, the Borough was not entitled to steep slope deductions. The sites include the following:

Site 17-20

Block 303, Lots 35, 36, 37 and 44. Wood Road/Bolz Street. Total acreage 0.91 RDP 1.8

Site 21-23

Block 303. Sara Hill Lane Total acreage 0.67 RDP of 1.3

Site 29-31

Block 513, 514 Lots 4.7 and 4.5 Municipal site Total acreage
2.03 RDP 11.4

Site 35

Block 601 Lot 14 Kim Hunter Road Total acreage 0.95 RDP 1.1

Site 36

Block 601 Lot 15 Kim Hunter Road Total acreage 1.78
RDP 2.1

Site 37

Block 601 Lot 16 Kim Hunter Road Total acreage 1.39
No RDP assigned because of lack of street access.

Site 41

Block 603 Lot 20 Summit Avenue Total acreage 1.04 RDP 2.1

Site 55-56

Block 802 Lots 7.01 and 7.02 575-577 Floyd Street Total acreage
1.43 RDP 2.9

Site 64-65

Block 1009 Lots 15 and 16 41-45 Laurie Drive
Total acreage 0.69 RDP 1.4

Site 67

Block 1101 Lot 6 Roberts Road Total acreage 0.73 RDP 1.5

Site 72

Block 1202 Lot 2 980 Sylvan Total acreage 5.81 RDP 12

Site A

Blocks 201 and 205 Lot 10-14 1, 4 20-32 Sylvan Avenue and 4
Bayview Avenue Total acreage 1.90 RDP 7.6

Site B

Block 207 Lot 6 Prentice Hall (Future LG) Total acreage 27.03

Site C

Block 1202 Lot 2.01 1000 Sylvan Avenue (Current LG) Total
acreage 5.30

Site D

Block 910 Lot 1 800 Sylvan Total acreage 20+/- RDP 110.6

Site Undesignated

Block 908 Lot 7 North Cliff Elementary School

The Special Master agreed with Dr. Kinsey that Sites 35 and 36 should be included in the RDP but disagrees with Mr. Bernard that Lot 16 should be included on account of lack of common ownership and lack of street access. The court finds the analysis of the Special Master to be reasonable and compelling and will exclude Lot 16 from the RDP calculation.

The Special Master also disagreed with Mr. Bernard and Dr. Kinsey with regard to Sites B and C in terms of assigning RDP and with Dr. Kinsey with regard to the North Cliff Elementary School.

The Special Master recommended that the RDP for the Borough be set at 155.8 and rounded up to 156.

The Special Master addressed the Borough's proposed unmet need mechanisms which include the East Palisades Avenue Overlay zone, the Hudson Terrace Overlay zone, the B-3 Rehabilitation area Overlay zone, mandatory set-aside and a development fee ordinance previously adopted but which the Borough proposed to amend to increase the fee from 1% to the maximum permitted 1.5%. Endorsing the proposed overlay zones, the Special Master found the proposed overlays to be similar to those utilized in other municipalities in Bergen County and across the state. The

Special Master noted that the Borough did not propose the permitted height/story limitations in the overlay zones and wrote, "[w]hile the overlay zoning would not likely lead to dramatic residential inclusionary redevelopment in the short term, the addition of residential uses in previously commercial districts will create an opportunity for affordable housing where none existed before, especially if upper story office usage falls off. The Borough's proposed overlay zones require additional analyses. Although I agree with Dr. Kinsey that the density within the overlays should be set at 20 dwelling units per acre, I would like to hear additional testimony from the Borough's Planner, Mr. Mistretta, as to the reasonableness of the 10% area requirement associated with the increase to the 20 unit overlay density."¹ The Special Master went on to note that it was essential that the overlay zones permit either three floors for residential use or two floors for residential use over one floor for commercial use. The Special Master discounted Mr. Otteau's reservations regarding the overlay zones, testifying that he missed the point because in her opinion there did not have to be wholesale acquisition and assemblage because the second-floor unit of a commercial building could become a rental unit.

¹ To the extent additional testimony is sought outside the trial record, this request is denied.

Finally, the Special Master recommended a 20% affordable housing set aside as part of the mandatory affordable set aside ordinance which the court so orders.

The Special Master noted 980 Sylvan, also known as Lighthouse. She referenced COAH's 1997 report which had included site in RDP analysis, but zeroed out the site as being completely wet as a result of wetland mapping produced by municipality. Clearly, since the site had been developed with an office building a portion of the site was not wet, and the site was developable.

Ms. Lonergan disagreed that the 1000 Sylvan (current LG site) a 5.3-acre site with 3.93 developable acres, should be included in the RDP, including it instead for unmet need. Ms. Lonergan also testified the new LG site should not be included for purposes of calculating RDP. She did not disagree, when on cross examination, it was posited that she was treating the current LG site differently from 800 Sylvan because 800 stepped forward and offered site for affordable housing. She testified the triggering mechanism was a "change in use" and the use had not changed.

The Special Master disagreed with Mr. Bernard calling the unmet need a goal. She disputed the requirement of showing a one-for-one crediting of unmet need in overlay zones.

The Special Master noted that the Borough's plan for the proposed overlay zones was deficient in failing to propose story and height limits. Nonetheless, she endorsed the Borough's proposal.

The Special Master found the Borough's proposed 100% site to be suitable, approvable, developable provided the sites were available. The Special Master recommended that the court find the site meets COAH's site suitability criteria subject to resolution of the title issues. The Special Master opined that the concerns and the reservations raised in the Otteau Group report did not rise to a level of disqualifying the Borough's plan.

The Special Master also recommended a rental bonus credit based upon the fact that the Borough's proposed 100% affordable housing development was not part of a previous substantive certification.

As noted by the Special Master the Borough failed to submit an Affordable Housing Ordinance and Affirmative Marketing Plan, the Borough failed to provide a complete compilation of the Borough's housing inventory and what it did provide was a skewed assessment of the housing stock. The Borough misrepresented the percentage of housing occupied by large families despite data showing 484% of the households in the community are made up of 1 or 2 people rather than households

with 3 people or 4 or more. The Borough's plan also failed to provide data on the number of bedrooms and failed to state that 97.36% of all housing units within the Borough are single-family detached residences and less than 3% of the Borough's housing consists of multi-family units. The Borough further failed to correlate the number of rental units and average rents to affordability. Finally, the HEFSP did not include a projection of the Borough's housing stock for the next ten years, not did it provide an analysis of existing and probable future employment characteristics.

The Special Master could not cite to any rule which required 800 Sylvan to be placed in the RDP category as opposed to unmet need. The Special Master appeared to discount the issue as moot as she testified in response to 800 Sylvan's counsel's questioning that his client would likely be awarded a builder's remedy for site specific relief. The Special Master testified that her guidance came from Mount Laurel II, not the COAH rules and discounted Mr. Bernard's change of opinion stating he only recently broke ranks with the practice of virtually all other planners. She noted in her experience towns have included the vast majority of sites offered. The Special Master conceded that she would treat the current LG site differently from 800 Sylvan because 800 Sylvan offered its property for inclusionary development.

In its decision of 2015, our Supreme Court acknowledged that COAH's rules governing the last round of municipal housing obligations expired in 1999. In light of the failure of COAH to promulgate Third Round rules, the Court directed that the judicial processes authorized were to reflect as closely as possible the FHA's processes and provide the means for a town transitioned from COAH's jurisdiction to judicial actions to demonstrate that its housing plan satisfies Mount Laurel obligations. In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), p. 2.

In crafting the judicial process, Justice LaVecchia noted that approximately 200 towns never subjected themselves to COAH's jurisdiction, choosing instead to remain open to civil actions in the courts. *Id.* 22. Although the Borough sought substantive certification in Round 2, when confronted with COAH's condition of rezoning the Prentice Hall office site for affordable housing to address unmet need, it refused and subsequently was denied substantive certification in 1997. The Borough petitioned COAH for Third-Round substantive certification in March 2009 with its 2008 HEFSP. COAH approved the Borough's development fee ordinance, but the Third-Round rules were overturned by Judge Skillman in his 2010 Appellate

decision prior to the Borough receiving substantive certification.

Between 1997 when the Borough refused to enact the overlay zone on the new LG site and the filing of this action, the Borough was not proactive in addressing its constitutional obligation. In the years in between, the community became more exclusive, reducing the number of multi-family housing units to less than three percent. When redevelopable sites became available no portions of those sites were allocated or set aside for affordable housing.

Although the Supreme Court recognized that COAH had ceased to function in 2015, COAH's demise was a long process which extended from at least from its failure to adopt Third Round Rules in 2004. According to Mr. Bernard, its moribund state is demonstrated by the fact that between 2004 and 2007 COAH processed only four petitions for substantive certification through the granting of substantive certification.

The Court wrote, that previous methodologies employed in the First and Second-Round Rules should be used to establish present and prospective statewide and regional affordable housing need. This has been accomplished by the decision of Judge Jacobson In the Matter of Princeton, which methodology this court adopted.

Secondly, the court wrote that many aspects of the two earlier versions of Third Round Rules were found valid by the appellate courts. In upholding those rules, the appellate courts highlighted COAH's discretion in the rule-making process. "Judges may confidently utilize similar discretion when assessing a town's plan, if persuaded that the techniques proposed by a town will promote for that municipality and region the constitutional goal of creating the realistic opportunity for producing its fair share of the present and prospective need for low-and moderate income housing.

The Court noted that beyond the general admonitions contained in its decision,

the courts should endeavor to secure, whenever possible, prompt voluntary compliance from municipalities in view of the lengthy delay in achieving satisfaction of towns' Third Round obligations. If that goal cannot be accomplished, with good faith effort and reasonable speed and the town is determined to be constitutionally noncompliant, then the court may authorize exclusionary zoning actions seeking a builder's remedy to proceed against the towns . . .

In light of the demise of COAH, this court is persuaded that the discretion extended to the trial courts charged with administering the COAH rules dictates a return to those Rules as written and properly adopted. This court finds that its discretion allows it to reject the practices of planners or even

actions of COAH itself where such practices and actions are contrary to the clear intent of COAH rules.

The court is persuaded by the testimony of Mr. Bernard. Accordingly, the court cites N.J.A.C. 5:93-4.2(c) and (e) for the criteria for elimination of sites or portions of sites. Three of the four experts who testified before this court agreed on the criteria and to a large extent the sites includable for calculation of the realistic development potential. The court agrees that 5:93-4.2 does not permit the exclusion of properties with approvals from the VLA

The court accepts the sites contained in the Special Master's revised report in Table 6 Overall Comparison of Revised RDP Recommendations - All Parties and Master - with the exception of sites A, B, C, D and the North Cliffs Elementary School as comprising the sites contributing to the RDP which the court finds to be 173.6 rounded up to 174. The court finds if Site A were to have an RDP it would be 6 and if Site D, 800 Sylvan, were to have an RDP it would be 167, making the Borough's total RDP 347² units if those sites were included in the RDP. The court, however, finds for reasons set forth hereinafter that sites A, C and D should be designated as part of the unmet need and rezoned for affordable housing. The court

² The court notes Mr. Bernard initially declined to include Site 72 in the RDP calculation, but reconsidered at trial. All three non-Borough experts agree the site should be included in the RDP.

includes Site B, (Future LG) for 136 units for purposes of calculating RDP for reasons set forth in both Dr. Kinsey's and Mr. Bernard's reports and testimony. In addition, the court reiterates that this site was designated by COAH as an overlay zone which the Borough refused to accept. Rule 5:93-1.3 defines "Overlay zone" as

Overlay zone means a zones area of a municipality in which low- and moderate-income housing may be built as a matter of right in addition to another use. In approving such a zone, the Council may allow the existing use to continue and expand as a conforming use but provide that when the prior use on the site is changes, the site shall produce low and moderate income housing or a development fee.

The Special Master interpreted this to mean when the use changed from office to something else. On that basis she declined to assign RDP to the site. The court agrees that the "triggering mechanism" is change, but that the change is not limited to a change in the type of use. The court finds the Master's interpretation to be at odds with the entire definition which provides the (existing) use may continue *and expand* but when it does so, the site *shall* produce low and moderate income housing. (emphasis provided).

The site drastically changed and was in fact vacant. As testified by Dr. Kinsey the Borough submitted its Housing Element and Fair Share Plan on November 30, 2015, in conjunction with Mt. Laurel IV and its declaratory judgment action. On that

date in November 2015, the LG property did not have complete approvals for development and property was essentially vacant. Dr. Kinsey concluded on that basis that the property should have been included in the VLA. In March 2016, the Planning Board adopted an amendment to Master Plan Land Use Element for new B-5 zone for new LG site and characterized the site as "vacant and underutilized."

Dr. Kinsey opined that the property demonstrated the importance of an overlay zone permitting residential development at first opportunity. The court agrees.

The court accepts Dr. Kinsey's reasoning and conclusions regarding the new LG site and finds the site should be included for RDP purposes at 136 units. The court finds including the new LG site for purposes of calculating the RDP is lawful, fair and reasonable. The purpose in doing so is not to punish the municipality. Requiring a municipality to meet its constitutional Mount Laurel obligation is not punishment. The purpose is not to reward a recalcitrant municipality with a clear pattern of exclusionary behavior with less than its share of affordable housing. The Borough has sought to use this Mount Laurel litigation as a sword to continue its exclusionary practices instead of the shield for which it was intended. With regard to the LG site the Borough's recalcitrance is most clearly demonstrated by its loss of immunity when it failed to

implement the overlay zone on this property as proposed by COAH as a condition of compliance. In that the Special Master and Mr. Mistretta did not include the site for RDP purposes, the court considers the opinion of Mr. Bernard who recommended a density of 25. Dr. Kinsey recommended a density of between 6 and 30. The court finds, pursuant to N.J.A.C. 5:93-4.2(f) considering the character of the area surrounding the site and the need to provide housing for low and moderate income households, that the need for low and moderate income housing weighs heavily with the court, particularly in light of the Borough's failure to provide a single unit of housing within the past 40 years. The court finds 25 units per acre is the appropriate density to assign to the net acreage of 27.03 acres, resulting in an RDP of 136.

The 25 units per acre, as opposed to the 30 proposed for 800 Sylvan is justified by the irregular shape of the property. The court finds that the Borough's refusal to rezone the property for inclusionary zoning in 1997, together with the fact that the property was vacant during the "snapshot" period selected by Mr. Mistretta, warrant inclusion for RDP purposes. The refusal to rezone for inclusionary zoning had the subsequent redevelopment as a four-story office building informs the court's decision regarding overlay zoning with regard to 800 Sylvan. The court must ensure that history will not repeat

itself in the form of another squandered opportunity for inclusionary development.

The court disagrees with the Special Master that a municipality which continues to avoid its constitutional obligation retains the right to determine where that obligation will be constructed - particularly here where the Borough has refused to include 800 Sylvan despite admitting the property is suitable, available, developable and approvable. On cross examination the Special Master testified that if a suitable site goes into RDP the town can decline to rezone the site if town has a suitable alternative. She did not dispute defense counsel's statement that even if a town is seeking a VLA, it is permissible for the town to disregard the site. The Special Master testified a vacant site is attributed an RDP, so the protected class is not harmed, "but this process we are in since 2015 is a voluntary process. The town has the right in this process until something happens to negate the voluntary process. Municipality has right to address RDP as it sees fit". The Special Master testified that 800 Sylvan was claiming that site specific relief is warranted if someone raises their hand no matter what the municipality wants. She noted there have been 300 plus or minus settlements. The vast majority have offered sites. When asked if there was a similar rule for unmet need, and whether the Special Master's interpretation meant a town can

shift RDP to a site while still satisfying less than its full constitutional obligation, the Special Master essentially said yes. It was the Master's opinion that she and the majority of masters agree that once the site has been assigned an RDP, it should not be double counted by having overlay zone in addition.

The Special Master noted Rule 5:93-4(h) does not include the word "maximum" and contains no quantification.

Rule 5:93-4(h) provides:

If the RDP described in (f) above is less than the precredited need minus the rehabilitation component, the Council shall review the existing municipal land use map for areas that may develop or redevelop. Examples of such areas include, but are not limited to: a private club owned by its members; publicly owned land; downtown mixed use areas; high density residential areas surrounding the downtown; areas with a large aging housing stock appropriate for accessory apartments; and properties that may be subdivided and support additional development. After such an analysis, the Council may require at least any combination of the following in an effort to address the housing obligation:

1. Zoning amendments that permit apartments or accessory apartments;
2. Overlay zoning requiring inclusionary development or the imposition of a development fee consistent with N.J.A.C. 5:93-8. In approving an overlay zone, the Council may allow the existing use to continue and expand as a conforming use, but provide that where the prior use on the site is changed, the site shall produce low and moderate income housing or a development fee; or
3. Zoning amendments that impose a development fee consistent with N.J.A.C. 5:93-8.

The Special Master testified that nowhere in the regulation did she see a requirement that municipalities must maximize the number of units, meaning the court would be compelled to require overlay zoning.

The court finds first, that it is unclear whether the Borough has proposed suitable alternatives to the 800 Sylvan site. Title and planning issues cloud the availability and suitability of the proposed municipal 100% affordable site. Simply, the Borough has failed to meet its burden of showing the proposed site to be available and suitable. More disturbingly, the Borough presented this property to the court and petitioned for release of Housing Trust funds for its purchase, knowing or it should have known, there were title encumbrance issues. Even at trial, the Borough failed to disclose the title issues, same being brought to the court's attention by the intervenor. The overlay zones proposed by the Borough are aspirational at best. The Special Master notes that the proposals are deficient in that they fail to include proposed height and story allowances. The court has concerns based upon the testimony of Mr. Otteau that notwithstanding the discounting of his opinion by the Special Master that assemblage costs will derail significant construction of low- and moderate- income housing in the Borough proposed overlay zones.

Second, this is not a settlement. The Borough has lost its immunity, this court finding it failed to act in good faith. The Borough declined to settle. The Special Master is correct that municipalities were invited to file declaratory judgment actions to resolve their Mount Laurel obligations within a five-month window. Four and one-half years later the Borough has determined to try this matter. By deferring the decision concerning its constitutional Mount Laurel obligation to the court, the Borough abandoned its ability to engage in voluntary measures, opting instead for the court to order compliance. The duty of the court is to compel the Borough to comply with its constitutional obligations. As Judge Serpentelli wrote in J.W. Field Co., "if a municipality chooses not to voluntarily comply, it brings upon itself the potential that multiple builders will force it to comply. The choice is the municipality's."

The court reads Rule 5:93-4(h) as giving the court the authority in the place of the COAH to use the full panoply of options. The court does not read the rule to say if an RDP is assigned to a site, that site may not be overlaid to accomplish the ultimate purpose of having low- and moderate-income units actually built. Rule 5:93-4(h) does not say "minimal" or what is acceptable to the Borough. As our Supreme Court stated in Footnote 26 of Mount Laurel II:

In determining whether the removal of barriers, without more, will suffice, or whether affirmative devices are necessary, the trial court will undoubtedly consider the realities of the situation. It is often difficult for a court to assure itself that the municipally generated barriers to lower income housing have truly been removed. For example, provision of a relatively small area where low cost multi-family housing could be built - the most common technique used to zone for lower income housing - ordinarily does not result in such housing actually being built. This is true because when land available for multifamily housing is made artificially scarce by zoning, that land will almost surely be preempted by more profitable high-cost apartments and townhouses. . . Also communities that desire to keep out lower income housing have many means at their disposal in the complex local housing approval process to make it likely that the housing built in zones presumably "available" for lower income housing is not in fact low cost. In many cases, the only way for courts to ensure that municipalities with fair share obligations do not, directly or indirectly, hinder the construction of lower income housing is to require affirmative measures encouraging the construction of such housing.

Mount Laurel I made it clear that municipalities had to do more than simply refrain from adopting "regulations or policies which thwart or preclude" a realistic opportunity to build lower income housing; additionally, its obligation was "affirmatively to plan and provide, by its land use regulations, the reasonable opportunity ..."for such housing. (internal citations omitted)

The court has considered the realities of the situation in the Borough of Englewood Cliffs. The uncontroverted reality is a community becoming increasingly more exclusive and which has failed to build a single unit of affordable housing. The court finds that by rejecting the 800 Sylvan site, the Borough has signaled its intent to continue its exclusionary practices. It

is clear to the court that without affirmative measures the Borough's failure to comply with its constitutional obligations will continue. More opportunities, most particularly 800 Sylvan will be squandered as the Borough continues to fail to take affirmative measure which will result in the construction of low- and moderate-income housing. Moreover, despite the Special Master's inference that Mr. Bernard's change of philosophy regarding the interpretation of the rule has to do with his mercenary interests, the court finds his re-examination of the rule and its intent to be logical and consistent with the wording of the rule. The court affords Mr. Bernard's opinion great weight. It is seldom that the author of regulations, albeit with input from many others, is available to explain to the court the rationale behind the rules and commentary. What Special Master's do in crafting settlements and what courts find in approving those settlements during Fairness Hearings is different from a trial where the court must closely examine the facts and the law, find the facts and apply the law. Here the facts are largely uncontested. In settled cases, municipalities have acknowledged to a greater or lesser extent their constitutional obligation. While the guidance of planners and Special Masters is of significance, it is the court which must determine the law. Rather than parse through what COAH did or didn't do in the throes of its demise, or what Special Masters

have done in attempting to navigate the troubled waters between the constitutional mandate and the constituent demands of their respective municipal assignments where political concerns speak loudly, the clearest path for the court is to follow the rules and the case law. If the rules are to be changed, the legislature should undertake those changes. Here, the Special Master proposed an original RDP of 143 to the hue and outcry of FSHC and 800 Sylvan decrying what they characterized as a very low number. Despite this, the Borough proposed to build just 57 100% affordable housing units, proposing an RDP of 77 with the balance in rental bonus credits to which the court finds it is not entitled. The Special Master has now recommended an increase of the RDP to 156 which the court has declined to accept for the reasons contained herein. The Borough has opted not to pursue a negotiated resolution and sought determination of the facts and issues by this court. The court finds the Borough's plan to be constitutionally non-compliant as agreed by all experts who testified on the subject, save that of the Borough.

The court pursuant to N.J.A.C. 5:93-4.2(f) balances the need for low- and moderate-income housing, the size of the Borough's obligation and the need for housing within the region with the character of the site and the surrounding area. As set forth in Judge Jacobson's decision, the need is large,

calculated to be 38,228 low- and moderate-income units. As noted by Mr. Bernard the region in which the Borough is located includes land regulated by the Highlands which severely limits land which will be available to accommodate higher density housing.

In concluding sites A (20-32 Sylvan Avenue), C (1000 Sylvan current LG), and D (800 Sylvan) are sites to be designated to meet the unmet need, the court cites N.J.A.C. 5:93-4.2(h) which provides that if the RDP is less than the municipal calculated need, minus credits, pursuant to N.J.A.C. 5:93-3.4, the Council shall review the existing municipal land use map for areas that may develop or redevelop. The rule further provides that after such analysis, the Council may require at least any combination of the following in an effort to address the housing obligation: zoning amendments that permit apartments or accessory apartments, overlay zoning requiring inclusionary development or the imposition of a development fee consistent with N.J.A.C. 5:93-8; in approving an overlay zone the Council may allow the existing use to continue and expand as a conforming use but provide that where the prior use on the site is changed, the site shall produce low and moderate income housing or a development fee; or zoning amendments that include a development fee.

As noted by Mr. Bernard in his report, COAH explained the intent of the Rule at N.J.R. 5770: The language is intended to give the Council discretion in the appropriate method(s) to capture the contribution toward affordable housing. Mr. Bernard further noted, citing the 2001 COAH handbook that COAH considered the entire unmet need as a goal to be met. Unmet need is described in N.J.A.C. 5:97-5.3(a):

All components designed to address unmet need as a part of a municipality's prior round certification or judgment of compliance shall continue in full force (for example, overlay zoning shall be retained). Any affordable housing units created thereunder shall be credited toward unmet need until such time as the municipality has provided for its entire unmet need. During the Council's review of the municipality's petition for substantive certification, the Council shall review the municipality's mechanisms to address unmet need and may require the municipality to amend or add additional mechanisms in accordance with (b) below.

The court is likewise persuaded by Mr. Bernard's argument that 5:93-4.2(d), the RDP includes only vacant sites and sites that are devoted to a specific use which involves relatively low-density development. Mr. Bernard noted that to interpret the section to include redeveloping sites N.J.A.C. 5:93-4.2(g) allows a municipality to satisfy its RDP without zoning specific sites included in the RDP calculation if the municipality can address its entire RDP through other means. It would also permit a municipality to exclude a developed site, offered for

inclusionary development, from its response to its unmet need. This, as Mr. Bernard points out in his report "creates perverse incentives". If an owner of a developed property comes forward and offers its property for inclusionary redevelopment, that property is included in the RDP and the municipality would be free not to rezone it for inclusionary development. If the owner withholds the property, the property is not included in the RDP and COAH or the court may require the site to be rezoned for affordable housing. Mr. Bernard opines, and the court finds that this interpretation of the rule actually diminishes the extent to which municipalities satisfy their constitutional housing obligations. A municipality with one significant developed but potentially redevelopable site can attempt to "low-ball" the RDP of that site and then formulate a plan to address its artificially small RDP without utilizing that site. It could then refuse to utilize the site to meet either its artificially small RDP or its much larger unmet need. This leaves the municipality with a large unmet need and with a site that is indisputably suitable for inclusionary development but not rezoned for that purpose. For these reasons the court finds the developed sites, listed above, to include 800 Sylvan, should be unmet need sites and directs they be rezoned for affordable housing with the densities set forth in this opinion. The court notes that the Special Master in her revised report also

recommended that the court include 1000 Sylvan for an additional unmet need overlay zone. The court accepts this recommendation.

For the reasons set forth in Dr. Kinsey's, Mr. Bernard's and Special Master Lonergan's report, the court rejects the calculations of Mr. Mistretta in determining developable areas. Those experts agree, and the court finds Mr. Mistretta failed to follow the process set forth in N.J.A.C. 5:93-4.2 for determining developable area. The court finds the developable areas for sites to be as set forth in Table 1 of the Special Master's revised report on pages 14 and 15.

The court finds 800 Sylvan to be available, suitable, developable and approvable. The court finds the 800 Sylvan proposes a substantial amount of affordable housing. 800 Sylvan has also proved, together with FSHC, that the Borough's HEPFA is constitutionally non-compliant.

The court accepts the Special Master's recommendation as to densities as set forth in her report on page 38, Revised Table 5 Master's 156 Unit RDP Recommendation, subject to two caveats: (1) an increase on site A (20-32 Sylvan Avenue) if the Zoning Board recommends a density higher than 20 units per acre. (2) Sites 35-36 the court finds 10 units per acre is the appropriate density although the court recognizes the Special Master's comments that the "riparian corridor" will likely reduce the practical density to 6 units per acre. The court accepts these

recommendations, subject to the two caveats based on the need for housing balanced against the character of the existing neighborhoods where the sites are located.

With regard to the proposed 100% affordable municipal site. The court finds that the Borough failed to disclose the encumbrances on title in its application for release of Housing Trust Fund funds to purchase the property, failed to disclose the title issues in presenting its HEFSP, and failed to meet its burden of presenting the court with a constitutionally compliant HEFSP. The court has serious reservations about the viability of the project which, in addition to the title issues include possible underestimation of utility allowances, the proximity of the proposed 57 units to the police and fire stations, the proximity of the buildings to Hudson Terrace, the insufficiency of parking and circulations of vehicle and pedestrian traffic, failure to include demolition costs, the potential under estimation of costs of new police, fire and community center and the failure to provide a phasing program and construction timetable, which the court orders, on or before April 16, 2020. The court further orders the Borough to provide, on or before April 16, 2020, title assurance that the lots comprising the properties on which the proposed 100% affordable project is to be built are free from encumbrance as would prevent the development. In the event such assurance is not provided to the

satisfaction of the court, a hearing will be held on a date to be determined regarding whether the Housing Trust funds expended for the purchase of the property should be refunded to the Fund.

The court disagrees with the Special Master on the issue of bonus credits for the rental units of the proposed 100% affordable municipal project and will not award bonus credits. The court agrees with Mr. Bernard and Dr. Kinsey that no basis exists upon which bonus credits should be awarded. The court rejects the basis proposed by the Special Master, that being these units were not previously proposed by the Borough. No units were previously proposed by the Borough. No units were built in the Borough. As Judge Skillman wrote In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 416 N.J. Super. 462 (App. Div. 2010):

The rationale under which the validity of rental bonus credits have been upheld, even though they decrease the total number of affordable housing units that are created, is to encourage the construction of more rental housing. This salutary objective is not served by allowing a municipality to claim a rental bonus credit for a planned affordable rental unit that still has not been constructed more than a decade after the expiration of the prior round periods for which a municipality has unmet affordable housing obligations.

To parse Judge Skillman's decision by stating, as the Special Master does, that the units for which the Borough seeks bonus credits were not previously proposed is a grotesque contortion of Judge Skillman's logic. Proposed but not built is

not quantitatively different from never proposed and never built.

The court directs the Borough to revise its zoning ordinances in accordance with this decision within ninety (90) days of this date. To assist the Borough the court will continue the appointment of Special Master Lonergan and in addition appoint Brian T. Campion, Esq., Kelly Kelly Marotta & Tuchman, LLC, Special Counsel and Administrator, at Borough's expense, to assist enacting and implementing the requirements of the new regulations, compliant HEFSP, zoning, use, height, story and densities for the proposed Borough overlay zones, the use of affirmative devises and other activities designed to conform to the Mount Laurel obligation as defined by the court. At the end of the ninety day period, on April 16, 2020, the court will hold a hearing on notice to all parties at which time the Special Master will inform the court under oath, subject to cross examination whether in her opinion the ordinance(s) conform with the trial court's judgment. In the event the Special Master is unable to so testify the court will consider voiding all zoning ordinances of the Borough.

In the interim, the Builder's remedy portion of the trial shall proceed as previously scheduled on January 22, 2020.

The appropriate order has been entered.

January, 17, 2020

Christine Farrington
Christine Farrington, J.S.C., ret'd, t/a

FILED

FEB 17 2020

: SUPERIOR COURT OF NEW JERSEY
 CHRISTINE A. FARRINGTON,
 J.S.C.
 IN THE MATTER OF THE : LAW DIVISION: BERGEN COUNTY
 BOROUGH OF ENGLEWOOD : DOCKET NO. BER-L-6119-15
 CLIFFS : CIVIL ACTION
 : ORDER
 :

This matter having come before the court for trial on January 22, 2020 and February 5, 2020; and

The court having heard the testimony of witnesses, arguments of counsel and considered the legal submissions of all parties, and for reasons set forth in the attached Decision and for good cause shown;

IT IS on this 12th day of February, 2020,

ORDERED:

The court having found previously found the Borough of Englewood Cliffs to be constitutionally non-compliant, the court grants 800 Sylvan Avenue, LLC a builder's remedy having found that the proposed plans meet the sound planning criteria and there are no environmental or other constraints which would prohibit the remedy for reasons set forth in the decision filed this date;

The court further finds proposed Plan A to be the plan which best meets sound planning criteria;

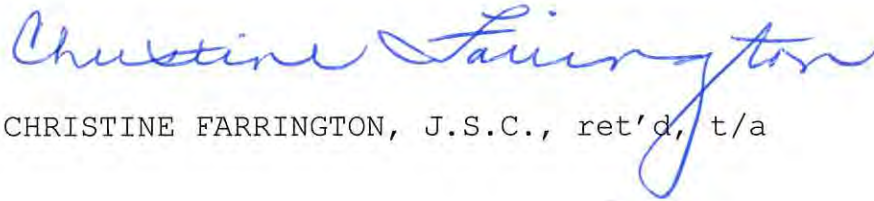
The court further grants 800 Sylvan Avenue LLC's motion to conform its pleadings;

The court further directs the Borough of Englewood Cliffs to reserve capacity for all utilities and sewer capacity for all sites designated for Mount Laurel housing, including but not limited to 800 Sylvan Avenue, all properties designated for rezoning, the overlay zones and proposed municipal site;

The court finds the restriction against parking contained in a prior resolution pertaining to an application before the

Planning Board for this site not to require a quiet title action is addressed by the court in the attached decision

The court has deferred the issue of the appointment of a special hearing officer to assume the function of the joint land use board pending submissions by the parties;



CHRISTINE FARRINGTON, J.S.C., ret'd, t/a

NOT TO BE PUBLISHED WITHOUT THE APPROVAL OF THE COMMITTEE ON

OPINIONS

IN THE MATTER OF THE BOROUGH OF ENGLEWOOD CLIFFS	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY DOCKET NO. BER-L-6119-15 CIVIL ACTION
--	---	---

FILED

FEB 12 2020

DECISION

Trial: January 24 and February 5, 2020

**CHRISTINE A. FARRINGTON,
J.S.C.**

Decided: February 12, 2020

Honorable Christine Farrington, J.S.C., ret'd, t/a

Thomas J. Trautner, Jr., Esq. and Marie Mathews, Esq., Chiesa, Shahinian & Giantomasi; Jeffrey R. Surenian, Esq., Jeffrey R. Surenian & Associates; Albert H. Wunsch, III, Law Office of Albert H. Wunsch appearing on behalf of plaintiff, Borough of Englewood Cliffs.

Christopher Martin, Esq., Morrison & Mahoney appearing on behalf of the Borough of Englewood Cliffs Planning Board

Antimo A. DelVecchio, Esq., and Daniel Steinhagen, Esq., Beattie Padovano; and Thomas F. Carroll, III, Esq., Hill Wallach appearing on behalf of Defendant- Intervenor 800 Sylvan Avenue, LLC.

Joshua Bauers, Esq., appearing on behalf of Fair Share Housing Center.

Special Master, Mary Beth Lonergan, PP

This matter comes before the court for a determination whether Defendant-Intervenor, 800 Sylvan Avenue LLC is entitled to a builder's remedy. The court previous revoked the Borough's

immunity and found that the Borough's Housing Element and Fair Share Plan was constitutionally non-compliant.

The following exhibits were marked into evidence:

DS1	Current conditions (previously DS 49)
DS12	Andrew Clark resume
DS15	Letter of Interpretation
DS37	Concept Plans AO3 and AO4
DS51	Concept plans
DS71	Photographs
DS72	Photographs
DS73	State Development Plan
DS68	Townhome designs
DS69	Townhome concepts
DS70	Building rear elevation
DS74	Concept Site Plan A revision date February 4, 2020

Defendant-Intervenor filed two builder remedy plans, here referred to as Plan A and Plan B. The plans call for 600 units and 617 units respectively, with full 20% set aside and the appropriate bedroom mix and affordability categories. The distinguishing factor between the two plans is Plan A calls for intrusion into the front yard where parking, but not residences, are prohibited as a result of a restriction contained in a Planning Board resolution. The intrusion would result in a

smaller parking structure near Hollywood Avenue and Floyd Street.

The Borough opposes any residential development on the 800 Sylvan site.

800 Sylvan called Stuart Johnson. Mr. Johnson previously testified on the issue of constitutional non-compliance and was accepted as an expert in architecture and land planning. Mr. Johnson described the site as currently existing, as he had previously.

He testified the site slopes west to east and north to south. It has frontage on Sylvan Avenue, Hollywood Avenue and Floyd Street. Adjacent to the property are commercial and office properties. The Borough Board of Education property is located to the west. There are approximately five residential houses on Floyd and Hollywood which are a minimum of 80 feet from the property line. The park adjacent to Floyd Street has tennis courts and batting cages. The property is in close proximity to a state park. The plan proposes the southwest corner of the site will continue as it presently exists, an office building leased by Unilever.

Mr. Johnson identified DS-51 as redevelopment plan for 600 dwelling units, of which 20% or 120 units would be affordable. Of the 600, 80 units would be attached for sale three-bedroom townhomes. The plan proposes 520 rental units in two buildings.

Mr. Johnson testified the townhomes offer a diversity of housing on site and provides a true transition of scale and mass to residences along Floyd Street. He testified the townhouses would also help buffer the multi-family units.

A 1 ½ level parking deck with 122 structured spaces was proposed to be located on the remaining eight acres on which the Unilever building is located in addition to adjacent 308 surface parking spaces. He testified the proposed parking would be more than sufficient for current and future uses. Mr. Johnson testified currently Unilever has 250 employees of which 60% utilize parking.

Additional on grade parking was proposed at front of the Unilever building which intrudes into the restricted area. Mr. Johnson noted that location of the surface parking at this location was consistent with surface parking at the adjacent CNBC site which has a setback of 74 feet. He noted further south on Sylvan Avenue existing surface parking is closer to the right of way. Mr. Johnson testified the compensating benefit from the proposed front surface parking was the reduction of the height of the parking deck at the rear of the property.

The height of the parking deck proposed is 1 ½ stories (25 feet at the Hollywood portion) with sloping from west to east and the highest point along Floyd is 13 feet.

He testified if front yard parking was disallowed the parking garage would have to be increased one story to 2 ½ stories. The resulting height would be increased to 24 ½ feet along Floyd Street and 33 feet facing Hollywood. Mr. Johnson testified the closest distance to Floyd Street from the parking garage was more than 65 feet plus an additional 20 feet to the curb line. The distance from parking deck to an existing structure on Floyd Street would be approximately 145 feet. The closest distance of deck is 145 feet from property line at Hollywood and closest distance to a house on Hollywood is about 205 feet.

The existing structures on Hollywood and Floyd are approximately 35 feet tall and therefore taller than the proposed parking deck in Plan A.

Mr. Johnson testified the approximate height of the R&D building is about 55 feet. The deck and building appear comparable in height because of the sloping nature of the property.

He testified proposed Building A is approximately 90 feet from the R&D building which exceeded requirements for fire code, light and air.

Mr. Johnson described DS-36 A02 page 2 as showing 342 parking spaces on ground floor. Above the parking are 315 residential units on four levels with three open area court

yards which facing east were proposed. Seventy-two of the units will be affordable be distributed throughout building. Exterior and finishes were proposed to be the same for all units. All units will share the same building entry. Unit doors will be side by side and the affordable units indistinguishable from the market rate units. The proposed structure parking will include 342 spaces which would be screened with articulated windows. Amenities would include a club room for private event and dining room, gaming space, pool and barbeque areas and areas of passive and active recreation. In addition to the structure parking 194 surface parking spaces are proposed.

Mr. Johnson testified DS-36-A01 represents the ground floor plan. He indicated where the restriction fell, part way along the drive aisle. The restriction applies to parking only and does not prohibit residential use within the restriction. He testified approximately 50-60 parking spaces are proposed in the location.

Mr. Johnson testified the ground level parking would have punched windows making it comparable in design to the upper story residential floors.

Mr. Johnson testified the parking supply for building A is 1.7 parking spaces to unit ratio. He testified 1.7 was chosen as opposed to the RSIS which requires 1.8 depending on the number of bedrooms. He testified in his experience there is a

decline in auto ownership and in a building with a significant number of one-bedroom units, many households would have a single vehicle. He testified the proximity of the New Jersey Transit bus route was also a factor in his determination. He testified 1.7 spaces per unit would meet market demand and testified there could be additional parking provided under Building A if required.

Mr. Johnson identified DS-36 A02 as the Building B conceptual which proposes 205 apartment units, of which 157 would be market rate and 48 would be affordable units. He testified Building B is predominately a four-story building at grade. There is a small portion of the building which is 3-story at grade and a small portion which is 5-story as building steps with grading. The plan proposes three-story parking garage with the entrance located at southern end of the building. The main entrance proposed a U-shaped area drop off area. There is proposed a center courtyard at grade with pool, barbeque area and sunbathing deck. Mr. Johnson testified the four-story portion of building is about 50 feet in height, a small portion is 60 feet in height and the three-story portion is 40 feet in height. Building B also proposed 1.7 parking spaces per unit.

Mr. Johnson testified the plan did not envision any sharing of parking between the Unilever use and residential use.

He testified there is shared entry and arrival sequence, but no shared direct access to the Unilever facility.

Mr. Johnson also testified as to the townhouse component. He testified the townhouse provided diversification to the residential project and transitional scale from the apartment buildings to existing residential and Board of Education uses.

He testified the townhouses would help define the street scape along Floyd Street and provide buffering from the apartment buildings.

The proposed eighty townhouses were designed as an enclave and were proposed to have separate and dedicated access, landscaped boulevard ingress and egress off Floyd Street. He testified from a vehicular standpoint the only connection to the rest of the project would be an emergency gate.

Mr. Johnson testified the townhouses were proposed to be attached in clusters of three, four, five and six with one cluster of seven. The buildings were proposed as three stories with 2 car garages and driveway spaces. The townhouses would be 2800-3000 square feet per unit with pitched roofs, 42 feet high from finished first floor level to roof.

He testified the proposed parking for the townhomes was RSIS compliant at 2.5 parking spaces per unit, and more if the driveway parking was included. He testified guest parking spaces were also provided.

Mr. Johnson testified that DS-37 was concept Plan B which is an alternate plan in which proposed parking does not intrude into the deed restricted area.

He testified DS-37 Concept Plan B depicts 617 units of which 124 were affordable housing units. Building A and B comparable to Concept A. Plan B also proposes 80 for sale townhomes. In Plan B, Building A has 17 more units. The building also continues to intrude into the restricted area but is not violative of the restriction because the intruding portion of the building contains only residences and no parking. The parking proposed in Plan A, but lost in Plan B is replaced by 81 spaces in a partial basement in Building A. The height, scale and massing of the building all remain the same.

Mr. Johnson also testified the parking for the Unilever facility had to be modified to respect the parking restriction, by elimination of the parking in front of the building and increasing the proposed parking deck by one story. He testified that residential building footprint, setback everything else remained the same, the height of the parking deck increased by 11 feet making the maximum exposure of the deck to Floyd Street 24 ½ feet measured from adjacent grade and 33 feet measured from adjacent grade on Hollywood Avenue.

Mr. Johnson identified DS-35I as Illustrative theme demonstrating exterior architecture for multi-unit buildings consisting of masonry brick veneer and residential windows.

Mr. Johnson identified DS-35J as an Illustrative illustration of amenities, showing the club amenity room, private event room, fitness room.

DS-35K was identified as an Illustrative illustration of the interior showing among other aspects the lobby lounge and work cube areas.

DS-35L was identified as an Illustrative illustration of the outdoor amenities, barbeque facilities, courtyard and pool.

DS-68 was identified as showing the front elevation of the three story proposed townhomes. Mr. Johnson testified the scale and typical elevations match product type being proposed and were proposed to be articulated horizontally and vertically with faux dormers on the roof.

DS-69 was identified by Mr. Johnson as showing a grouping of four townhouses with masonry brick veneer.

DS-70 was identified as showing the rear elevation illustration of a grouping of 5 townhomes.

Mr. Johnson testified the roofs would be pitched and would have private decks 10 feet deep.

He testified all affordable units would be provided in the rental component.

In cross-examination by Mr. Bauers of FSHC, Mr. Johnson testified that the 120 affordable units would be located Building A (72 units) and Building B (48 units) on a pro-rate share basis. All of the proposed affordable housing would be rentals. Mr. Johnson testified 24 one-bedrooms, 72 two-bedrooms and 24 three-bedroom units were proposed.

He testified whether the court found Plan A or Plan B to be acceptable, all affordable units would be rentals. He testified there would be an additional four affordable units if Plan B were chosen. He testified at least 13% of the units would be very low-income units and the breakdown of bedrooms would be FSHA compliant.

Patricia Ruskan, P.E. was called by 800 Sylvan. Ms. Ruskan was previously accepted by the court as an expert in Civil Engineering. Ms. Ruskan identified DS-35A as an aerial view of site. She testified she had visited the site the previous week and took photographs which she identified as the photographs in DS-71.

The photographs showed the existing conditions of the property along Floyd Street near Hollywood Avenue, Allison Drive and from the school property. Generally, the photographs showed a sparse buffer consisting a small deciduous trees with a small number of evergreens.

Other photographs showed the cul-de-sac toward the municipal recreation area and a "tot" lot at the park. Ms. Ruskan testified the pictures confirmed her earlier testimony that the trees had elevated canopies and provided little buffering. She testified she was familiar with the landscape plans of 800 Sylvan LLC which provided better landscape options including 8-10-foot evergreen trees. She testified the walk from Allison Road to the tot lot took approximately 4 ½ minutes. Based on that she testified she considered the recreational area to be a nearby amenity.

Ms. Ruskan testified she had previously prepared an exhibit which showed building and parking setbacks for buildings along Sylvan Avenue. Ms. Ruskan identified DS-72 as setbacks which exist today. She testified 700 Sylvan is located 135 feet from building to right of way and closest its closest surface parking is 65 feet away. The CNBC building is 60 feet from the right of way and surface parking is 75 feet from right of way.

Ms. Ruskan testified there are also numerous properties along Sylvan Avenue where the buildings and parking are closer - 15 feet, 28 feet, 86 feet, "as you look further south things get much closer." She testified the new LG building is 69 feet from Sylvan Avenue.

Ms. Ruskan testified the LG north parking structure is 4 stories in height with the south wing one level of parking running south to north with three levels above.

Ms. Ruskan testified LG had steep slopes greater than 15% that were developed and were constructed upon with no issues raised.

With regard to the wetlands on the 800 Sylvan site she testified wetlands would not be a problem for development proposed. She testified the total acreage of wetlands is very small totaling .271 acres in six areas.

Ms. Ruskan testified the storm water management requirements could be met and that she had advanced storm water management as part of the wetlands management permit submitted on December 2019.

She testified the existing impervious coverage on site is as per DS-35A 51.5% and 64.2% was proposed. She opined the project could be constructed with sound engineering design.

On cross-examination by Mr. Reagan, attorney for the Special Master, Ms. Ruskan testified she would recommend a sidewalk on Floyd Street to intersect with the connector in the proposed project to Floyd Street.

Plaintiff next called Andrew Clark who was accepted by the court as an expert in Wetlands Science.

Mr. Clark testified he had co-authored the letter report previously marked as DS-15 which speaks to an Letter of Interpretation verifying wetlands location on a subject property and which he says validated the delineation his company found in field.

He testified a permit application was filed in December 2019 for a Fresh Water General Permit Number 6 for filling of the isolated wetlands on the site. He testified a general permit is supposed to be an easy permit to obtain, the main criteria for such a permit is that the wetlands are isolated which he testified the subjects are. He testified the wetlands for which a permit is sought cannot exceed one acre, provide habitat for threatened or endangered species and cannot be an EPA priority. He testified none of these criteria apply to the subject wetlands and he did not foresee any issues with the issuance of a GP6 permit.

800 Sylvan next called Art Bernard who the court accepted an expert in professional planning with expertise in Affordable Housing. Mr. Bernard testified he had reviewed the developers proposed builders remedy plans. He testified the standard to grant builder's remedies was established by the Supreme Court and entitles 800 Sylvan to the remedy where there are no environmental or other substantial planning concerns such that the plan is not contrary to sound land use planning. Mr.

Bernard testified both proposed plans were consistent with sound planning and there were no environmental concerns. He testified he believed Plan A to be a better plan primarily because parking deck is substantially lower with modest encroachment into restricted area. He testified there is a balancing test which attempts to balance an appropriate response which promotes general welfare and addresses needs of New Jersey citizens. He testified the need for affordable housing is very important and it is the only land use of which he is aware which is a constitutional obligation.

He testified affordable housing is particularly significant in Englewood Cliffs because in all the time New Jersey has mandated affordable housing, the Borough has not provided a single unit.

Mr. Bernard testified it was established in Phase I of the trial that 96% of Borough's housing stock is single-family detached homes. The demographics of population show there are much lower percentage of lower income households, African Americans and Latinos in Englewood Cliffs because of the housing stock.

He testified the State Plan is significant because it is a document adopted by State Planning Commission. He testified the Borough lies in Planning Area I which is designated as the area where much of the State's growth is to take place.

Mr. Bernard testified that the 800 Sylvan site does not have environmental concerns that he is aware of which were not addressed by Ms. Ruskan or Mr. Clark. He testified the site is sewerred and has water.

Regarding access Mr. Bernard testified the site has access from Floyd Street and Hollywood Avenue, with Floyd street having 30 feet of cartway. He testified Sylvan Avenue is a state highway with traffic controls. There is a bus stop in front of site. He testified Sylvan Avenue ties into Palisades Interstate Parkway.

He testified the site has access to regional employment, shopping, transportation.

He testified to the west there are schools and recreation facilities, to the east there is Sylvan Avenue and beyond that hiking, a boat launch, and bird sanctuary.

Mr. Bernard testified the proposed density of 30 units per acre was consistent with sound planning practices and the State Plan endorses higher densities.

He testified Judge Jacobson has determined the regional need which exceeds 38,000 affordable housing units and the ability to satisfy that need is limited by the restrictions of the Highlands Region of which Englewood Cliffs is not part.

He testified he was present during the first phase of the trial and was aware the Borough had taken position that site is

too isolated to support density. Mr. Bernard testified the site is not in downtown area, but few of the housing units in Englewood Cliffs were.

He testified the proposed townhomes provided a good transition. He testified no buffer was required between residential buildings and the proposed townhomes did not need to be screened as they will be very attractive.

When shown DS-36 Mr. Bernard testified that the locations of the driveways internal to the site was a good plan because it would allow for uninterrupted landscaping. He testified the developer was more than willing to extend the sidewalk to the municipal park. He testified the proposed building setbacks met or exceeded those existing along Sylvan Avenue.

He testified Plan A in which the proposed parking deck would be one story less was the better plan.

He testified the proposed buildings would not generate noise or emissions, and would not deprive each other, the Unilever building or the CNBC building of air or light and the setbacks were appropriate.

Mr. Bernard found the recreational amenities to be adequate for proposed Buildings A and B in conjunction with the nearby municipal amenities and state park.

Mr. Bernard noted that the townhomes did not have private recreational facilities. He testified data from Rutgers

University shows that expensive townhomes do not generate school age children.

He testified he was present during Mr. Johnson's testimony. Regarding his testimony on bedroom and income distribution he testified the affordable units would be dispersed throughout the apartments. He testified the developer would comply with all requirements to include income mix, marketing and units for very low-income families.

He testified the site is relatively constraint free, the height and mass of the apartment buildings are compatible with adjacent office uses; the townhouse use is an appropriate transitional use between the school and the few existing single-family homes and apartments.

Upon cross-examination by Mr. Bauers, Mr. Bernard testified the development would comply with the Uniform Housing Affordability Controls (UHAC) regulations with the appropriate bedroom and income mix. He testified the phasing requirement would be complied with and affirmative marketing would be undertaken. The deed restrictions would comply with the regulations.

On cross examination by Mr. Reagan, Mr. Bernard agreed that access to Floyd Street through the townhomes development would be shorter and could be located between the buildings and CNBC.

He testified the rents for the units would cover the amenities and the affordable units would not be charged for their use.

When the trial continued February 5, 800 Sylvan recalled Mr. Johnson in conjunction with concerns expressed by the Special Master relative to recreation on the proposed site plans. Mr. Johnson identified DS-74 as the Concept Site Plan for Plan A which he testified was last revised on February 4, 2020. He testified the sheet did not change Concept A plan previously submitted as to site metrics, location or footprints, all of which remained the same. He testified the revised sheet highlighted outside recreation areas.

He testified Building A had three open air courtyards. The central courtyard has a pool and deck area of approximately 2800 square feet with seating areas for sunbathing, barbequing, outdoor seating and dining. It includes a natural gas fireplace and would be adjacent to interior Club Room, gaming room and private dining. He testified inside there would be golf and soccer stimulators. There would be direct connectivity between outdoor and indoor recreation. He identified a toddler play area, adjacent to an indoor play area, geared to children 2-7 years of age and a passive play/fitness area with artificial turf approximately 40'X 50', or 2000 square feet, and suitable for light ball play volleyball, bocce, outdoor movie

screenings, and outdoor yoga. An indoor area was proposed to be 500 square feet and geared to children 1-6. He testified each residential unit on the courtyard has private patio area screened with hedges. These private areas were netted out of the public recreational areas.

Mr. Johnson testified Building B has a courtyard behind the main entry. The plan proposes 8500 square feet of internal recreation for Building B in addition to the open-air courtyard and 2800 square foot pool area.

He testified to the west of Building B a multi-purpose recreation area of approximately 8800 square feet was proposed, inclusive of a toddler playground area. The multi-purpose recreation area was proposed to be 160 feet long and 30-70 feet wide.

He testified the revised drawing showed the proposed sidewalk extending to the multi-purpose recreation area. He testified the sidewalk was further proposed to be extended out to Floyd Street for access to Borough recreation areas. He testified the developer also proposed a sidewalk along Floyd Street and extending behind the CNBC building

Mr. Johnson testified the proposal for both Building A and Building B included a hotel style lobby with charging ports, wifi, workspaces and fireplace.

He testified the club room would also include a fireplace, wifi and direct access to outdoor areas. The private event room was proposed to be between 800-900 square feet. Both buildings would also have state of the art fitness centers of 1500-2000 square feet. He testified the proposed amenities are above market standards.

On cross-examination by Mr. Bauers, Mr. Johnson testified that the residents of both buildings would have cross access, including to the pools. The residents of the townhouses would have access to outdoor areas.

He reaffirmed that the plan for integrating the affordable housing units was to spread them throughout the two buildings on a pro-rata share meaning there would be more units in Building A than Building B.

In response to cross-examination by Mr. Trautner on behalf of the Borough, Mr. Johnson testified that the calculations used in designing the recreation spaces were based in part on bedroom distribution. He testified for one-bedroom units the occupancy would typically be one or two persons. He testified there was no calculation made for school age children.

800 Sylvan rested and the court called Special Master Mary Beth Lonergan to testify.

Ms. Lonergan testified that the Supreme Court in Mt. Laurel II, South Burlington County N.A.A.C.P. v. Township of Mount

Laurel, 92 N.J. 158 (1983) ruled a builder's remedy should be granted unless because of environmental or some other reasons it would be against sound planning. She testified the revised plans proposed by 800 Sylvan meet the sound planning criteria and there were no environmental or other reasons which dictated against the granting of the remedy.

Ms. Lonergan noted, as did Mr. Bernard, that 800 Sylvan's site is in Planning Area I which is the preferred location for inclusionary and redevelopment sites pursuant to the State Development Plan

Ms. Lonergan recommended that water and sewer capacity should be reserved for this inclusionary development and other affordable sites in the Borough and the court so orders.

Ms. Lonergan testified that she is comfortable with the site access and urged the Borough to support 800 Sylvan's proposal to apply to NJDOT for a left turn lane from northbound Sylvan Avenue into the site.

Ms. Lonergan testified that she supports the introduction of single-family attached townhouses as they will make the overall development of the site more feasible. She further endorsed that townhouse use as a transitional use, agreeing that they would help buffer the massing of the apartments from the single-family homes.

Ms. Lonergan testified the height and massing of proposed Building A and Building B were consistent with surrounding area massing.

She testified that removal of the front yard parking restriction would result in a lower rear parking deck structure and that proposed structure would be below the tree line and effectively buffered from the single-family homes on Hollywood Avenue. The Special Master testified it made sense for the court to remove the restriction which is in keeping with appropriate buffering and landscaping.

Ms. Lonergan testified she appreciated the Floyd Street pedestrian and bicycle access and stated the enhanced access from the site to the Borough park was an important component to her finding that the proposed active and passive recreation was sufficient for the site.

Ms. Lonergan endorsed the developer's plan that the affordable units would be fully integrated on every floor without identification from halls or exterior doorways.

She testified as to the UHAC standard and state law and agreed that the actual income breakdown by very low or moderate income could be worked out with FSHC and herself and the developer on a later date.

She testified that she supported the proposed building setbacks between the Unilever building and proposed residential

apartments. She further supported the potential emergency access between residential complex and Unilever stating this issue is appropriate for determination at site plan review, as was the full sidewalk plan, landscaping and buffering.

Ms. Lonergan testified that as a result of the plan revisions testified to by Mr. Johnson relative to active and passive recreation spaces, she had no concerns regarding open space and recreation of a substantial planning nature and testified 800 Sylvan had adequately addressed recreation. She opined that Dr. Kinsey's finding regarding a Wall Township application which concerned a very isolated site, and referred to by Mr. Mistretta, did not have application in this matter. She testified that she had searched for nationwide standards, and did not find anything specific for this site, as the national standards are geared to what a municipality should be providing to its residents as a whole. She testified it is common for a town to reserve land for open space. However, she testified because this is an important inclusionary development site for the Borough, and one of a very few sites which may be developed, she did not think the focus should be on green fields or a 30% open space requirement. She testified she concluded from Mr. Johnson's testimony that the proposed development would have approximately 1 ½ acres for active and passive recreation.

She testified that important to making the determination that 800 Sylvan has addressed active and passive recreation appropriately was consideration of the location of the site which is directly across the street from school area, and a short distance from the only Borough owned play area not associated with a school.

Ms. Lonergan concluded that the 800 Sylvan site does address sound land use planning concerns and she saw no environmental or other substantial planning concerns that should prohibit 800 Sylvan from being awarded a builder's remedy.

On cross examination by Mr. Bauers the Special Master testified that the most recent version of UHAC was adopted in 2004. The State Fair Housing Act was amended in 2008 and increased the amount of very low-income housing to 13% of all affordable units. Very low income means at or below 30% of the median income.

On cross examination by Mr. Trautner regarding the applicability of the Wall Township case and Dr. Kinsey, the Special Master referred to Dr. Kinsey's report from 2005, pages 18 and 19, and read two paragraphs into the record in which Dr. Kinsey commented on that the apartments proposed were isolated from safe access to offsite recreation.

Essentially for the reasons testified to by Special Master Lonergan and supported by the other expert witnesses produced by

800 Sylvan, particularly Mr. Bernard, and undisputed by the Borough and the Planning Board which produced no witnesses to the contrary, the court finds 800 Sylvan Avenue LLC is entitled to a builder's remedy. As noted by Ms. Lonergan, our Supreme Court in Mount Laurel II wrote at page 330:

As previously explained, builder's remedies will no longer be "rare" and will be granted as a matter of course where (i) the plaintiff-developer will provide a substantial amount of lower income housing, and (ii) the proposed project accords with sound land use planning. . .

The court finds that 800 Sylvan proposes to provide a substantial amount of lower income housing and the proposed project accords with sound land use planning.

The court further finds, based upon the unrefuted testimony of the Special Master and Mr. Bernard that Plan A, which includes an area of front yard parking with the concomitant result of reducing the height of the proposed parking deck, is the plan which best meets sound land use planning criteria.

800 Sylvan Avenue LLC the conclusion of its case moved to conform its pleadings to remove the parking restriction which may prohibit the front yard parking called for in DS-36 from being constructed.

800 Sylvan argued that the restriction was imposed by the planning board as a condition related to the construction of an office building on the site. 800 Sylvan further argued that

circumstances had changed by virtue of the proposed project and that the Borough had permitted front yard parking on various other sites on Sylvan Avenue.

The Borough and the Planning Board objected.

This court previously addressed the issue of the restriction in a prerogative writ action on February 22, 2019, 800 Sylvan Avenue LLC v. Planning Board of Englewood Cliffs, BER-L-9088-17, wherein the court found on page 28-30 that the restriction was imposed by the Planning Board as a condition of approval for a prior approval on the property and contained in the prior approving resolution. The court found 800 Sylvan was entitled to apply to the Board to reconsider the previously imposed restriction which could be modified by the Planning Board. 800 Sylvan argues the restriction is not analogous to the restriction in Soussa v. Denville Twp. Planning Bd., 238 N.J. Super. 66 (App. Div. 1990), citing an unpublished Appellate Division case in which the Appellate Division found an approval, which included a condition of no further improvements to increase lot coverage or disturbance of the "Crest Line," in a resolution which was recorded not to be analogous to Soussa, but only a notice to future owners that they would be prohibited from future development which would increase lot coverage or disturbed area without first seeking approval from the zoning board. The Borough argues that the restriction is analogous to

the one in Soussa and 800 Sylvan is required to bring an action to quiet title. In Soussa, in return for approval granting for major subdivision approval for nine building lots, the Soussas agreed that a remaining 20.22-acre tract of land would be unavailable for future subdivision and development on that tract would be limited to a single one-family residence. The Soussas executed a new deed with the restrictive covenant which conveyed the property from the Soussas as grantors to themselves as grantees. Subsequently, the Soussas filed an application for subdivision which the Board declined to hear based upon the deed restriction. The court in Soussa found that although an applicant is free to make a new application to a board which had previously denied the application and such is not barred by res judicata, the restriction in the deed in Soussa read the restriction was required so "that there be adequate protection afforded the township and the general public. . ." The court found that language intended to make the public of the Township a third-party beneficiary of the covenant in the deed and the Township was entitled to maintain an action to enforce it and was a necessary party to any action to lift the restriction.

The court has no evidence before it that the parking restriction was other than that contained in a prior resolution of approval which was recorded. There is to the court's knowledge no separate deed and no language which would suffice

to make the Borough a third-party beneficiary of any covenant in a such a deed. Accordingly, the court finds the restriction does not require an action to quiet title and could be modified by the joint land use board and therefore the court, or the Special Hearing Officer should one be appointed.

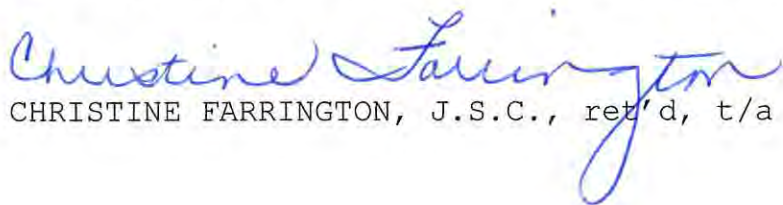
The court grants 800 Sylvan LLC's motion to conform its pleadings.

800 Sylvan joined by FSHC made request for the appointment of a special hearing officer to undertake the role of the joint land use board alleging the board has been compromised and has demonstrated it is opposed to affordable housing being constructed in the Borough.

The Borough and Planning Board opposed.

The court has granted all parties the opportunity to brief the issues and will address the application by separate order.

The appropriate order has been entered.


CHRISTINE FARRINGTON, J.S.C., ret'd, t/a

FILED

APR 17 2020

: SUPERIOR COURT ~~CHRISTINE A. FARRINGTON,~~
 : **J.S.C.**
 IN THE MATTER OF THE : LAW DIVISION: BERGEN COUNTY
 BOROUGH OF ENGLEWOOD : DOCKET NO. BER-L-6119-15
 CLIFFS : CIVIL ACTION
 : ORDER
 :

This matter having come before the court pursuant to provisions contained in the orders of the court dated January 17, 2020 and February 25, 2020 which required the Borough of Englewood Cliff to adopt ordinances as directed on or before April 16, 2020; and the court having scheduled a hearing on April 21, 2020 to receive the testimony of the Special Master regarding the Borough's compliance which for the reasons which follow has been rendered moot.

The Borough of Englewood Cliffs having refused to abide by the orders of the court so advising the court by various correspondence from its counsel as well as having passed Resolution 20-70 on March 11, 2020 stating, "The Borough is not willing to rezone the sites the Court has ordered it to rezone, enable the developers to argue that they have vested rights merely by filing a development application and thwart the Borough's ability to meaningfully secure appellate court review of rulings with which it disagrees for reasons the Appellate

Division might very well find compelling[;]" and the Special Master, Mary Beth Lonergan having affirmed to the court that the Borough refuses to comply; and for good cause shown;

IT IS on this 17th day of April, 2020,

ORDERED:

1. The court reserves the right to address the Borough's contempt of the orders of the court on a later date. However, in the face of the Borough's deliberate failure to comply the orders of the court, particularly, but not limited to its failure to adopt the ordinances as directed "under protest," thereby preserving its rights on appeal, there are consequences. The court now voids the zoning ordinances of the Borough and appoints by separate order of the Honorable Bonnie J. Mizdol, A.J.S.C, the Hon. Maurice J. Gallipoli, (ret) as Special Hearing Officer for purposes of reviewing and making recommendations to this court as to the site plan proposal of the Intervenor-Defendant/Counterclaimant 800 Sylvan Avenue (hereinafter the Builder) in accord with the procedures set forth in Cranford Development Associates. LLC. et al's v. the Borough of Cranford et als., 445 N.J. Super. 220 (App. Div. 2016). The Planning Board and its experts, including its engineer and the Borough Planner shall be permitted to participate in the hearing as directed by the Special Hearing Officer and further elucidated

in this order. However, the participation of the Planning Board or the failure of the Planning Board members to participate or constitute a quorum shall not delay, thwart or otherwise impede the hearing. The Special Master and Ms. London shall assist the Special Hearing Officer and shall provide an initial procedural memorandum to all parties. The Planning Board members shall be provided copies of the Builder's plans and supporting documents.

The Special Hearing Officer shall undertake the following specific tasks in the review, evaluation and recommendation as the Builder's site plan application:

A. Conduct a hearing on public notice as to all aspects of the Builder's site plan application for the purpose of rendering a recommendation to the Court as to whether the Court should enter an order and judgment approving, denying, or approving with conditions the Builder's site plan application.

B. The Builder's site plan application shall be deemed a fully conforming "as of right" application in accordance with proposed zoning regulations the Builder shall submit with its site plan submission, which shall be deemed to be the standards applicable to the Builder's proposed site plan. The Builder is encouraged to incorporate existing Borough standards for similar types of housing as is reasonably practicable. The Special Master may make such recommendations as to the proposed zoning regulations as she deems appropriate for the protection of the public

health, safety and welfare and in furtherance of sound land use planning principles. The Special Hearing Officer shall review the site plan application and shall grant preliminary and final site plan approval, with or without conditions, unless the Special Hearing Officer concludes that the site plan application is clearly contrary to sound land use planning principles or environmental concerns. Compliance with Residential Site Improvement Standards ("RSIS") shall be dispositive as to all residential design elements governed by the RSIS.

C. The Builder may elect to include nonresidential components as part of its site plan proposal before the Special Hearing Officer, but only on notice to and with the consent of the Borough, Fair Share Housing Center, the Special Master and the Special Hearing Officer. Upon approval by the Court, the nonresidential components may be included in such relief as may be granted by this Court upon recommendation of the Special Hearing Officer.

D. Thirteen (13) sets of the Builder site plans, reports and supporting documentation shall be filed with the following persons at least sixty (60) days prior to the hearing date scheduled before the Special Hearing Officer:

Honorable Maurice J. Gallipoli, J.S.C., ret'd, Special Hearing Officer;

Mary Beth Lonergan, P.P., Special Master;

Leslie London, Esq., Special Counsel and Administrator

Thomas Trautner, Esq., Borough attorney;

Jeffrey R. Surenian, Esq. Borough attorney;

Albert Wunsch, III, Esq., Borough attorney

Christopher E. Martin, Esq., Planning Board Attorney;

Michael Mistretta, P.P., Borough Planner;

Borough Engineer

Planning Board Engineer

Borough Construction Official

Borough Clerk

Joshua Bauers, Esq. of Fair Share Housing Center shall be copied on all submissions to the Special Hearing Officer, which submission may be accomplished electronically.

In addition, eleven (11) sets of the Builders' site plans, reports and supporting documentation shall be filed with the Borough Planning Department for distribution to other experts and officers of the Borough as the Borough deems appropriate. In the event the Borough requests additional submission sets of plans, such requests shall be directed to the Special Master,

who will determine what, if any additional submissions of Builder's site plans are to be submitted to the Borough.

E. The Builder shall post a professional review escrow fee for the review of the Builder's site plan application as required by the Borough Ordinance with the initial submission. Any supplemental escrow request by the Borough shall include the basis for the additional escrow request and be directed to the Builder and Special Master. The Special Master shall resolve any and all disputes as to supplemental escrow requests.

F. The Borough shall conduct a substantive review of the Builder's submission, and may engage the Planning Board, Borough staff and other Borough professionals in the review of the Builder's submission as the Borough deems appropriate. All responsive reports, requests for additional information and comments by the Borough shall be filed with the Special Hearing Officer, Special Master and applicable Builder at least thirty (30) days prior to the hearing date. The Builder may be asked to submit additional information, reports or studies by the Borough, with such requests being made at least thirty (30) days prior to the hearing date. Such request should be made promptly upon determination by the Borough, and any objection to such additional submission shall be resolved by the Special Master.

In no event shall the submission of such additional information delay the hearing date. Any supplemental Borough review submission shall be filed with the Special Hearing Officer, Special Master and applicable Builder no later than (14) days prior to the hearing date. The Special Master shall serve as the nonbinding arbiter of any disputes relating to the submissions and reports on Builder's site plans.

G. Public notice of the hearing before the Special Hearing Officer shall be provided in accordance with N.J.S.A. 40:55D-12, which notice shall be provided by the Builder. All documents, reports, plans and other data in support of the Builder's submission shall be on file with the Borough Planning Office and the Office of the Municipal Clerk at the Borough Municipal Building at least ten (10) days prior to the hearing date. The Builder may respond to Borough reports and comments at the hearing date, in accord with customary Planning Board practice.

H. The Special Hearing Officer shall conduct the proceedings in accord with the requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-10. The Builder shall present such expert testimony as it deems necessary to demonstrate that the Builder's proposal meets sound land use planning principles and satisfies applicable environmental regulations. The Builder shall present its testimony and evidence in support of its site

plan, which may be subjected to cross-examination. Following completion of the Builder's testimony and evidence, the Borough may present its response and testimony regarding the Builder's site plan, which also may be subjected to cross-examination. The public and all interested parties shall be allowed to comment on and/or present evidence and testimony either for or against the Builder's site plan upon the conclusion of the Borough's presentation. The Special Master shall participate in all hearings before the Special Hearing Officer and shall provide such planning review and testimony as may be deemed necessary by the Special Hearing Officer. The Builder shall identify all other Federal, State and ancillary governmental permits and approvals that are required for the Builder's project, and the satisfaction of these ancillary permit requirements shall be a condition of any order approving the Builder's application.

In the event the Special Hearing Officer requires additional expertise by separate expert review of the Builder's site plan, the Special Hearing Officer may engage such additional experts as the Special Hearing Officer deems appropriate, upon notice and consultation with the Court and all parties.

I. All hearings conducted by the Special Hearing Officer shall be in the Superior Court of New Jersey in Hackensack during

regular court hours, at a courtroom designated by the Court. The Builder shall secure a transcript of each hearing on an expedited basis, to be paid for by the Builder, and shall distribute copies of the hearing transcripts to the Borough, the Special Hearing Officer, Special Master and Ms. London.

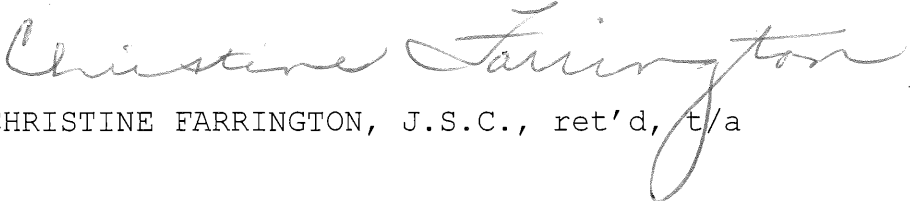
J. All costs for the Special Hearing Officer, and any expert retained on behalf of the Special Hearing Officer, shall be equally shared between the Builder and the Borough. All costs associated with the Special Master and Ms. London shall continue to be borne by the Borough.

K. Upon conclusion of the hearing, the Special Hearing Officer shall provide the Court, the Borough and the Builder with its recommendation as to whether the Builder site plan should be approved, denied, or approved with conditions in the form of a resolution. Any comments or objections to the Special Hearing Officer's recommendations set forth in the resolution shall be filed with the Court no later than ten (10) days from the date of the recommendation. The Special Hearing Officer shall set forth such findings of fact and conclusions necessary to appropriately summarize the evidence presented, so as to enable the Court to enter judgment. The Court's order as to the site plan shall be considered a preliminary and final site plan

approval for purposes of filing an application for a building permit.

The court continues and expands the scarce resource provisions of the February 25, 2020 order with regard to all utilities and sewer capacities to include land, finding land to be a scarce resource. All zoning, land use, and development ordinances of the Borough of Englewood Cliffs, including site plan and subdivision ordinances, are hereby suspended and rendered ineffectual relating to any and all future land use, construction, or development efforts in the municipalities. Such ordinances shall be treated as advisory only and shall serve as commentary to serve the Special Hearing Officer. Until further order of this court 1) no development applications shall be reviewed by the municipalities' boards of adjustment or planning boards and 2) no building or other land use permits shall be issued by any officer, agent, or employee of the defendant municipalities, except (a) those necessary to implement inclusionary housing; and (b) those for renovations of existing one- and two-family houses. Said ordinances, however, shall continue in full force and effect for all uses and structures that currently exist (meaning that there is a valid certificate of occupancy or building permit in effect) in order to prevent the illegal use of land and structures. Uses and structures that have been approved by a local construction official, zoning

officer, board of adjustment, or planning board but have not yet commenced operation or begun construction are prohibited from commencing operation or beginning construction until reviewed and approved by the Special Hearing Officer for compliance with this judgment.



CHRISTINE FARRINGTON, J.S.C., ret'd, t/a

Prepared by the Court:

IN THE MATTER OF THE APPLICATION
OF THE BOROUGH OF ENGLEWOOD
CLIFFS

FILED
APR 17 2020
BONNIE J. MIZDOL, A.J.S.C.
SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY: LAW DIVISION
DOCKET NO. BER-L-6119-15

ORDER

This matter having come before the court upon its own motion for the following purposes:

WHEREAS, the court has entered an order finding the Borough's Housing Element and Fair Share Plan constitutionally non-compliant;

WHEREAS, the court has entered an order compelling the Borough to revise its ordinances to comply with the decision and order of the court entered on January 17, 2020 within 120 days;

WHEREAS, the 120 days have expired as of April 16, 2020 and the Borough having failed to revise said ordinances;

WHEREAS, the Special Master has filed an certification on April 17, 2020 in which she attests to the failure of the Borough to comply;

WHEREAS, the court has determined to appoint a Special Hearing Officer to hear and recommend to the court approval, denial or approval with conditions of 800 Sylvan Avenue's builder's remedy site plan; a

Accordingly, for the above reasons and other good cause shown,

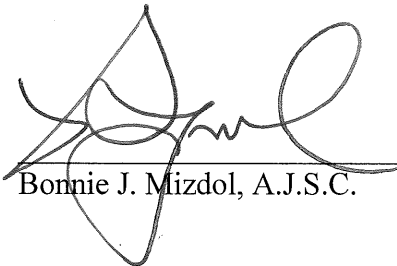
IT IS on this ^{17th} day of April, 2020

ORDERED:

Honorable Maurice J. Gallipoli, J.S.C., ret'd is hereby appointed Special Hearing Officer . Judge Gallipoli shall be compensated at the rate of \$525 per hour.

The fees charged by Judge Gallipoli, will be paid as per the April 17th, 2020 order of the Honorable Christine Farrington, J.S.C., ret'd, t/a;

Judge Gallipoli's monthly invoices shall be submitted to Special Master Lonergan who shall include Judge Gallipoli's invoices in her monthly invoices to the Borough and 800 Sylvan Avenue for payment which they shall share equally. If the Borough and/or Defendant/Intervener contests any charges, they shall notify Special Master Lonergan and attempt to resolve the disagreement; failing to do so, either party may bring the dispute to Judge Farrington for resolution.



Bonnie J. Mizdol, A.J.S.C.

FILED

JUN 08 2020

CHRISTINE A. FARRINGTON,
J.S.C.

IN THE MATTER OF THE
APPLICATION OF ENGLEWOOD
CLIFFS, COUNTY OF BERGEN

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:
BERGEN COUNTY

DOCKET NO. BER-L-6119-15

CIVIL ACTION

ORDER

This matter having come before the Court on May 22, 2020 on the application of Movant Fair Share Housing Center, through its counsel, Joshua D. Bauers, Esq., for an Order In Aid of Litigant's Rights, requiring the Borough of Englewood Cliffs (the "Borough") to move forward with the municipal site, and the Court having considered all filed written submissions and heard and considered the oral argument of all counsel, and for good cause shown;

IT IS on this 8th day of June, 2020 ORDERED:

1. The Court reserves the right to address Fair Share Housing Center's Motion In Aid of Litigant's Rights against the Borough of Englewood Cliffs on a later date for the reasons set forth herein.
2. In light of the fact that the Borough has refused to adopt a compliant plan and the necessary implementing ordinances by April 16, 2020 as Ordered by this Court, the Court hereby finds that prior to the Court making such a determination concerning whether to Order the specific 100% municipally sponsored affordable housing development proposed by the Borough in its 2019 adopted housing element and fair share plan, or Order the Borough to replenish the Affordable Housing Trust Fund ("Trust Fund") of all sums expended from the Trust Fund for the Borough site and Order any future use of the Trust Fund, there is a need for the preparation of a compliant plan to address this Court's January 17, 2020 decision and issues raised therein with respect to the municipal site, and including, but not limited to, 100% Affordable Housing sites and Inclusionary Zoning sites.
3. Consequently, in furtherance of the need for a compliant plan to address this Court's January 17, 2020 Order, the Special Master and Special Counsel/Administrator("Special Master/

Counsel") are hereby directed to proceed to develop and prepare the component parts of a compliant plan addressing this Court's January 17, 2020 decision, including but not limited to 100% Affordable Housing sites and Inclusionary Zoning sites.

4. In preparation of a compliant plan, Special Master/Counsel shall:
 - a. Determine the feasibility and use of the municipal site (both fiscally and physically) for inclusion in a compliant plan, and in addition to such use, when compared to other possible 100% affordable housing sites in the Borough. As part of this determination, the Special Master/Counsel shall demonstrate to the Court whether the deed restrictions or other clouds on the Borough proposed 100% affordable housing site prohibit development of some or all of such site.
 - b. Simultaneously with title research/clearing title on the municipally proposed site, the Special Master/Counsel shall also prepare a Request for Qualifications ("RFQ") for the selection of one or more experienced 100% affordable housing developers for the possible development of 100% affordable housing on other suitable site(s) in the Borough, in addition to the possible use of the municipally proposed site.
 - c. As part of the RFQ, the Special Master/Counsel shall develop site suitability criteria and include potential access to the Trust Fund (current/future) for affordable housing production, to the extent warranted, as well as to include a commitment for the Court's ordering of any HMFA required Low Income Housing Tax Credit ("LIHTC") documents such as but not limited to a municipal payment in-lieu of taxes ("PILOT"), site plan/subdivision approval, Resolution of Need, etc. Regarding development approvals, it is anticipated that such applications will be heard by the Special Hearing Officer appointed by the Honorable Bonnie J. Mizdol, A.J.S.C on April 17, 2020.
 - d. With a recommendation from the Special Master/Counsel, this Court shall select one or more experienced 100% affordable housing developer(s).
 - e. Once selected, the experienced 100% affordable housing developer(s) shall proceed to get a suitable site under contract, prepare a pro forma, construction schedule, address site suitability, prepare a site plan/LIHTC 9% tax

credit funding application for submission to NJ HMFA for the 2021 LIHTC round, among other necessary development steps not listed herein but to be determined by the Special Master/Counsel.

- f. The Special Master/Counsel shall be permitted to plan for senior and/or special needs 100% affordable housing to the extent that an initial LIHTC application is made for a family affordable rental development (not age-restricted). If a second 100% LIHTC application is contemplated by this Court, the second 100% LIHTC application may be filed in any tax credit cycle including the senior and/or special needs cycle.
- g. Regarding Inclusionary Development sites, the Special Master/Counsel shall prepare a Request for Proposal ("RFP") for the selection of one or more suitable sites for the possible development of inclusionary development(s) with a minimum affordable housing set-aside of 20% on site(s) in the Borough, in addition to the possible use of Borough site(s) for 100% affordable development.
- h. The Special Master/Counsel may propose the rezoning of lands in the Borough to encourage the future production of inclusionary development to the extent warranted to address this Court's January 17, 2020 decision.
- i. The Special Master/Counsel are permitted to consult with representatives from 800 Sylvan, FSHC, and/or the Borough's professionals such as attorneys, planners, engineers and any other parties and professionals they deem necessary and such individuals shall cooperate with the Special Master/Counsel in this regard.
- j. The Special Master/Counsel are permitted to utilize proposed Borough documents "as is" or as are required to be modified to address issues such as Affirmative Marketing Plans, Fair Share Ordinances, Development Fee Ordinance, etc.
- k. After consultation with, and agreement by, the Site A property owner/counsel, the Special Master/Counsel may allow the site plan application to proceed ahead before the Borough's Land Use Board or may develop an inclusionary zoning ordinance for Court approval and for site plan action by the Special Hearing Officer appointed on April 17, 2020 by Judge Mizdol.
- l. The Special Master/Counsel shall issue an RFP for the selection of an experienced Affordable Housing

Administrative Agent to be approved by the Court with a recommendation from the Special Master/Counsel.

- m. By mid-July 2020, the Special Master/Counsel shall develop a schedule for commencement and completion of the above ordered tasks with the understanding that this Court requires the ultimate plan components to be zoned, affordable housing developers selected, spending plan, affirmative marketing plan, Administrative Agent Contract, etc., to be submitted to this Court for action prior to December 31, 2020.

_____/s/Christine A. Farrington ____

Hon. Christine A. Farrington, J.S.C.

EXHIBIT B - CONSENT ORDER

Fair Share Housing Center

510 Park Boulevard
Cherry Hill, New Jersey 08002
P: 856-665-5444
F: 856-663-8182

Attorneys for Fair Share Housing Center
By: Joshua D. Bauers, Esq. (174532015)
joshbauers@fairsharehousing.org

**In the Matter of the Application
of the Borough of Englewood
Cliffs, County of Bergen.**

SUPERIOR COURT OF NEW JERSEY
Law Division, Bergen County
Docket No. BER-L-6119-15

CIVIL ACTION

CONSENT ORDER

This matter having been brought before the Court on the joint application of the parties, the Borough of Englewood Cliffs ("the Borough"), through its counsels, Jeffrey R. Surenian, Esq., of Surenian Edwards & Nolan, LLC, Thomas J. Trautner, Esq., of Chiesa Shahinian and Giantomasi, PC, and Albert S. Wunsch, III, Esq. and the Defendant-Intervenor, and Fair Share Housing Center (FSHC), through its counsel, Joshua D. Bauers, Esq., and the parties having agreed to settlement of this matter, and jointly requested consideration of that settlement by the Court;

And the Court having consulted with the Court-Appointed Master, Mary Beth Lonergan, P.P., A.I.C.P., who recommends to the Court the entry of this Order;

And counsel for the Borough and FSHC having consented to the entry of the within Order and for good cause shown;

IT IS on this _____ day of _____,

2020 ORDERED as follows:

1. The Court finds that the settlement agreement between the Borough of Englewood Cliffs and FSHC has apparent merit and thus shall conduct a fairness/compliance hearing concerning the settlement between the Borough of Englewood Cliffs and FSHC jointly with a fairness/compliance hearing on the settlement between the Borough of Englewood Cliffs and 800 Sylvan on December _____, 2020 at _____ a.m./p.m., which date may be adjourned to a later date in December as needed by the court. The Borough of Englewood Cliffs shall prepare a written notice to be published at least 30 days prior to the date for the fairness/compliance hearing in accordance with the principles outlined in Morris Cty. Fair Housing Council v. Boonton Twp., 197 N.J. Super. 359 (Law Div. 1984). The hearing shall also allow for the public to comment on the proposed housing element and fair share plan (hereinafter "affordable housing plan") inclusive of any ordinances and/or development standards to be implemented by the Court in accordance with the terms of the settlement agreement and to implement the settlement in accordance with the procedures previously established by the Court in orders entered on April 17, 2020 and June 8, 2020. If the court approves the settlement agreement, affordable housing plan and any implementing ordinances and/or

development standards necessary to implement the affordable housing plan, the parties anticipate that at the conclusion of said hearing the Court will enter a Final Judgment of Compliance and Repose ("JOR"), which may contain conditions the Court deems necessary to implement the attached settlement agreement and the settlement agreement with 800 Sylvan. The JOR is a final judgment, which would provide immunity from exclusionary zoning suits through July 1, 2025, other than litigation to enforce the terms of this agreement and the agreement between the Borough and 800 Sylvan and to implement the settlement in accordance with procedures previously established by the Court in orders entered on April 17, 2020 and June 8, 2020.

2. The Borough of Englewood Cliffs' temporary immunity from exclusionary zoning litigation which was revoked in an order dated August 27, 2019 is hereby restored effective September 29, 2020 subject to the limitations and conditions in the Borough's settlement agreement with Fair Share Housing Center dated October 7, 2020 and pending the fairness and compliance hearing to evaluate the settlement agreement.
3. Prior to the entry of a JOR, the provisions of all prior orders and decisions in this matter shall remain in full force and effect, other than that nothing contained herein shall alter the provisions of the October 7, 2020 settlement agreement between FSHC and the Borough, the limitations set forth herein and the settlement agreement between 800 Sylvan and the Borough or the

consent order implementing such settlement. The provisions of the prior orders and decisions that shall remain in full force and effect subject to the limitations set forth above include but are not limited to, the April 17, 2020 order invalidating the Borough's zoning ordinances, the appointment of a special hearing officer, and the imposition of scarce resource restraint.

4. If the Court approves the settlement and enters a final JOR following the fairness and compliance hearings, those orders shall be modified as set forth in the settlement.
5. If the Court does not approve the settlement and/or does not enter a final judgment of compliance and repose, the parties shall be restored to the status quo ante prior to the entry of this order.
6. Copies of this order shall be served through eCourts. Counsel for FSHC shall forward a copy of this Order to the Court's Special Master within five (5) days of receipt.

Hon. Christine A. Farrington, J.S.C.

The undersigned, on behalf of their respective clients, represent that their clients have consented to the entry of this Order and that they are authorized to execute it on their behalf:

CHIESA SHAHINIAN & GIANTOMASI, PC
Co-counsel for Borough of
Englewood Cliffs

SURENIAN EDWARDS & NOLAN, LLC
Co-counsel for the Borough of
Englewood Cliffs

By: _____
Thomas J. Trautner, Esq.

By: _____
Jeffrey R. Surenian, Esq.

Dated: October __, 2020

Dated: October ____, 2020

**LAW OFFICES OF ALBERT S. WUNSCH,
III, ESQ.**
Co-counsel for Borough of
Englewood Cliffs

FAIR SHARE HOUSING CENTER

By: _____
Adam M. Gordon, Esq.

By: _____
Albert S. Wunsch, III, Esq.

Date: October ____, 2020

Dated: October ____, 2020

800 Sylvan Avenue, LLC consents to the entry of this Order, which implements a settlement agreement between the Borough of Englewood Cliffs and Fair Share Housing Center, but its agreement to the entry of this Order is not intended to modify, alter, amend or impact the terms of the settlement agreement between 800 Sylvan Avenue, LLC and the Borough of Englewood Cliffs or the separate Consent Order implementing that agreement.

HILL WALLACK, LLP
Co-counsel for 800 Sylvan
Avenue, LLC

BEATTIE PADOVANO, LLC
Co-Counsel for 800 Sylvan
Avenue, LLC

By: _____
Thomas F. Carroll, III, Esq.

By: _____
Antimo A. Del Vecchio, Esq.

Dated October ____, 2020

Date: October ____, 2020

Exhibit C
Hudson Terrace 60 to 65 Unit 100% Affordable Housing Project
Site A
Block 514, Lot 5 & Lot 4, Block 513, Lot 7 &
A portion of the vacated Clendinen Place r.o.w.

Description	Design Standard
Min. Lot Area	
Min. Lot Width	
Min Lot Frontage	
Floor Area Ratio	
Principal Building Setback – Hudson Terrace	20 feet
Principal Building Setback – New Street	20 feet
Principal Building Setback – Clendinen Place	5 feet
Principal Building Setback Min Side & Rear Yard – privately owned properties	10 feet
Principal Building Setback Min Side & Rear Yard – publicly owned properties	5 feet
Accessory building setbacks shall be the same as the principal building setbacks	
Max. Building Coverage	75%
Max. Lot Impervious Coverage	85%
Max. Principal Building Height (stories & feet)	4 stories & 48 feet
Max. Accessory Building Height (stories & feet)	1 story & 12 feet
Min. Number of Off-Street Parking Spaces	1.0 parking space for a one bedroom unit; 1.2 parking spaces for a two bedroom unit; 1.4 parking spaces for a three bedroom unit
Min. setback of any parking or driveway from any privately owned property	5 feet
Min. setback of parking or driveway from any publicly owned property	5 feet
Parking is prohibited in the front yard of New Street and Hudson Terrace	
Site B – Community Center Property	
Max. Principal Building Height (stories & feet)	3 stories & 36 feet
Principal Building Setback – Hudson Terrace & Kahn Terrace	15 feet
All other bulk requirements on Site B to be prepared as part of the Ordinance	

- Lion's Club RDP Site
- East Palisades Avenue Overlay
- Hudson Terrace Overlay
- Previously Proposed Rehabilitation Plan Area

EXHIBIT D - Hudson Terrace Overlay, East Palisades Overlay & the B-3 Zone District Overlay

**City of Englewood
Bergen County**



East Palisades Avenue Overlay

Previously Proposed Rehabilitation Plan Area

RDP Site

Hudson Terrace Overlay



HARBOR CONSULTANTS
ENGINEERS, PLANNERS & SURVEYORS
320 NORTH AVENUE EAST
CRANFORD, NJ 07016
Tel (908) 276-2715 FAX (908) 709-1738

Exhibit E – 2020 Income Limits

Prepared by Affordable Housing Professionals of New Jersey (AHPNJ) - April 24, 2020
2020 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE

Income limits not officially adopted by the State of New Jersey. Contact your municipality to see if applicable in your jurisdiction. Additional information about AHPNJ income limits is posted on AHPNJ.org

		1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8+ Person	Max Increase		Regional Asset Limit****
												Rents**	Sales***	
Region 1 Bergen, Hudson, Passaic and Sussex	Median	\$67,166	\$71,964	\$76,761	\$86,357	\$95,952	\$99,790	\$103,628	\$111,304	\$118,980	\$126,656			
	Moderate	\$53,733	\$57,571	\$61,409	\$69,085	\$76,761	\$79,832	\$82,902	\$89,043	\$95,184	\$101,325			
	Low	\$33,583	\$35,982	\$38,381	\$43,178	\$47,976	\$49,895	\$51,814	\$55,652	\$59,490	\$63,328	1.9%	0.84%	\$185,539
	Very Low	\$20,150	\$21,589	\$23,028	\$25,907	\$28,786	\$29,937	\$31,088	\$33,391	\$35,694	\$37,997			
Region 2 Essex, Morris, Union and Warren	Median	\$73,857	\$79,132	\$84,408	\$94,959	\$105,510	\$109,730	\$113,951	\$122,391	\$130,832	\$139,273			
	Moderate	\$59,085	\$63,306	\$67,526	\$75,967	\$84,408	\$87,784	\$91,160	\$97,913	\$104,666	\$111,418			
	Low	\$36,928	\$39,566	\$42,204	\$47,479	\$52,755	\$54,865	\$56,975	\$61,196	\$65,416	\$69,636	1.9%	4.71%	\$202,419
	Very Low	\$22,157	\$23,740	\$25,322	\$28,488	\$31,653	\$32,919	\$34,185	\$36,717	\$39,250	\$41,782			
Region 3 Hunterdon, Middlesex and Somerset	Median	\$83,650	\$89,625	\$95,600	\$107,550	\$119,500	\$124,280	\$129,060	\$138,620	\$148,180	\$157,740			
	Moderate	\$66,920	\$71,700	\$76,480	\$86,040	\$95,600	\$99,424	\$103,248	\$110,896	\$118,544	\$126,192			
	Low	\$41,825	\$44,813	\$47,800	\$53,775	\$59,750	\$62,140	\$64,530	\$69,310	\$74,090	\$78,870	1.9%	1.01%	\$227,546
	Very Low	\$25,095	\$26,888	\$28,680	\$32,265	\$35,850	\$37,284	\$38,718	\$41,586	\$44,454	\$47,322			
Region 4 Mercer, Monmouth and Ocean	Median	\$76,469	\$81,931	\$87,393	\$98,317	\$109,242	\$113,611	\$117,981	\$126,720	\$135,460	\$144,199			
	Moderate	\$61,175	\$65,545	\$69,915	\$78,654	\$87,393	\$90,889	\$94,385	\$101,376	\$108,368	\$115,359			
	Low	\$38,235	\$40,966	\$43,697	\$49,159	\$54,621	\$56,806	\$58,990	\$63,360	\$67,730	\$72,099	1.9%	5.96%	\$205,486
	Very Low	\$22,941	\$24,579	\$26,218	\$29,495	\$32,772	\$34,083	\$35,394	\$38,016	\$40,638	\$43,260			
Region 5 Burlington, Camden and Gloucester	Median	\$67,620	\$72,450	\$77,280	\$86,940	\$96,600	\$100,464	\$104,328	\$112,056	\$119,784	\$127,512			
	Moderate	\$54,096	\$57,960	\$61,824	\$69,552	\$77,280	\$80,371	\$83,462	\$89,645	\$95,827	\$102,010			
	Low	\$33,810	\$36,225	\$38,640	\$43,470	\$48,300	\$50,232	\$52,164	\$56,028	\$59,892	\$63,756	1.9%	7.21%	\$179,028
	Very Low	\$20,286	\$21,735	\$23,184	\$26,082	\$28,980	\$30,139	\$31,298	\$33,617	\$35,935	\$38,254			
Region 6 Atlantic, Cape May, Cumberland, and Salem	Median	\$57,458	\$61,562	\$65,666	\$73,874	\$82,083	\$85,366	\$88,649	\$95,216	\$101,782	\$108,349			
	Moderate	\$45,966	\$49,250	\$52,533	\$59,100	\$65,666	\$68,293	\$70,919	\$76,173	\$81,426	\$86,679			
	Low	\$28,729	\$30,781	\$32,833	\$36,937	\$41,041	\$42,683	\$44,325	\$47,608	\$50,891	\$54,175	1.9%	6.97%	\$153,730
	Very Low	\$17,237	\$18,469	\$19,700	\$22,162	\$24,625	\$25,610	\$26,595	\$28,565	\$30,535	\$32,505			

Moderate income is between 80 and 50 percent of the median income. Low income is 50 percent or less of median income. Very low income is 30 percent or less of median income.

* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:80-26.4(a).

**This column is used for calculating the pricing for rent increases for units (as previously calculated under N.J.A.C. 5:97-9.3 (Consumer price Index for All Urban Consumers (CPI-U). Regions by expenditure category and commodity and service group). Landlords who did not increase rents in 2015, 2016, 2017, 2018 or 2019 because of the lack of authority to do so, may increase rent by up to the applicable combined percentage including 2020 or 9.0% whichever is less in accordance with N.J.A.C. 5:97-9.3(c). In no case can rent for any particular apartment be increased more than one time per year.

*** This column is used for calculating the pricing for resale increases for units (as previously calculated under N.J.A.C. 5:97-9.3). The price of owner-occupied low and moderate income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

Low income tax credit developments may increase based on the low income tax credit regulations.

**** The Regional Asset Limit is used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3.

APPENDIX K

for Sisters of Peace; John W. McDermott, Esq., Harwood Lloyd for CFI (Cioffi Property), Eileen Swan for New Jersey conservation Foundation, Joshua Laird, Director, Palisades Interstate Parkway and Hemnant Mehta, submitting on his papers through counsel Karl J. Norgaard, Norgaard, O'Boyle & Hanlon;

And it appearing to the court that the Borough adopted a Housing Element and Fair Share Plan dated December 10, 2018, Amended November 13, 2020 (the "Plan");

And the court having set a date of December 17, 2020 for a Fairness and Compliance Hearing to entertain approval of the Plan and the Settlement Agreements between the Borough and Fair Share Housing Center and 800 Sylvan Avenue LLC, and to determine whether said Plan and Settlement Agreements are fair, reasonable and adequately protects the interest of low and moderate income households;

And the Borough having provided proper publication and service of the actual Notice of Fairness and Compliance Hearing and;

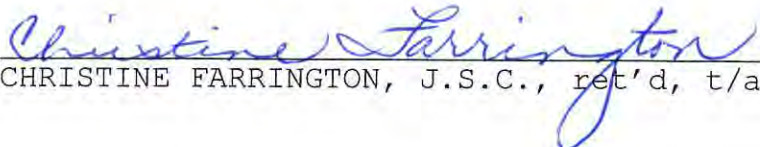
And the court having appointed Special Mary Beth Lonergan, PP and the Special Master having submitted a Master's Report to the court dated December 13, 2020 and the court having considered the testimony and exhibits entered into evidence at said Hearing;

IT IS HEREBY ORDERED AND ADJUDGED THIS 22nd DAY OF DECEMBER, 2020 as follows:

1. For the reasons set forth on the record this date and subject to the conditions set forth, the court finds and determines that the Housing Element and Fair Share Plan, Compliance Plan and the Settlement Agreements between Fair Share Housing Center and the Borough and 800 Sylvan Avenue LLC and the Borough (incorporated herein and attached hereto) are fair, reasonable and adequately protect the interests of low and moderate income households, and the court hereby approves the Plan, the terms and conditions of which are hereby incorporated by reference.
2. The court further approves the Borough's Spending Plan, Affirmative Marketing Plan, and the implementing ordinances and resolutions subject to the exceptions noted on the record.
3. The court further finds the Plan proposed by 800 Sylvan in furtherance of its Builder's Remedy to be fair and reasonable to the protected class. The court so finds for the sole purpose of eliminating any need for a further compliance and/or fairness hearing with regard to that plan in the event the Borough reneges on or fails to abide by the terms of the settlement agreements.

4. The court hereby grants the Borough a Judgment of Compliance and Repose which will afford the Borough, among other things, protection from any builder remedy lawsuits brought pursuant to the "Mount Laurel Doctrine" until July 1, 2025, provided the Borough complies with the outstanding conditions as set forth in the Special Master's report which is incorporated herein, as modified by her testimony, and the court's opinion on the record of December 22, 2020, by December 31, 2020. Specifically, the court excepts conditions 3, 4, 5, 15 and Ordinance 20-21 (P-9 in Evidence) and Ordinance 20-13 (P-15 in Evidence). Those excepted items shall be completed within a reasonable time with the supervision of Special Master Mary Beth Lonergan and Special Counsel/Administrator Leslie London, Esq.
5. The opinion of the court, on the record this date, commencing at approximately 10:30 a.m. is incorporated herein.

A copy of this Judgment shall be served upon all counsel of record and the court appointed Special Master via eCourts.


CHRISTINE FARRINGTON, J.S.C., ret'd, t/a

APPENDIX L

Vacant Land Adjustment
for the
Borough of Englewood Cliffs



Borough of Englewood Cliffs
Bergen County, New Jersey

December 10, 2018
Amended June 16, 2025

Prepared by



HARBOR CONSULTANTS
ENGINEERS, SURVEYORS, AND PLANNERS
320 NORTH AVENUE EAST
CRANFORD, NJ 07106
TEL (908) 276-2715 FAX (908) 709-1738

The original of this report was signed and
sealed in accordance with N.J.S.A. 45:14A-12.

Michael Mistretta, CLA, PP
#00575900

TABLE OF CONTENTS

I. Introduction.....

II. Land Inventory by Ownership Class.....

III. Refined Methodology

IV. Vacant and “Developable” Parcels

V. Developed and Approved Sites Determined to Contribute to the Borough RDP

VI. “Likely to Redevelop” Properties.....

VII. Summary

VIII. Reference List.....

IX. Exhibits.....

 A. Class 1 Vacant and Class 15C Public Exempt Parcel Inventory

 B. Vacant Land Adjustment Analysis Spreadsheet

I. Introduction

On March 20, 2024, Governor Murphy signed into law Bill A4/S50 (P.L. 2024, c.2), which amended the Fair Housing Act, N.J.S.A. 52:27D-302 et. seq. (“Amended FHA”), abolished the Council on Affordable Housing (“COAH”), and established new guidelines and methodology for determining and regulating the affordable housing obligations of New Jersey municipalities for the fourth 10-year-round (July, 2025 – July, 2035). As required by P.L. 2024, c.2, “With consideration of the calculations contained in the relevant report published by the [Department of Community Affairs], for each 10-year round of affordable housing obligations beginning with the fourth round, a municipality shall determine its present and prospective fair share obligation for affordable housing in accordance with the formulas established in sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) by resolution, which shall describe the basis for the municipality’s determination and bind the municipality to adopt a housing element and fair share plan pursuant to paragraph (2) of this subsection based on this determination as may be adjusted by the program... For the fourth round of affordable housing obligations, this determination of present and prospective fair share obligation shall be made by binding resolution no later than January 31, 2025. After adoption of this binding resolution, the municipality shall file an action regarding the resolution with the program no later than 48 hours following adoption.”

In accordance with the requirements of P.L. 2024, c.2, the Municipal Council of the Borough of Englewood Cliffs adopted Resolution #25-27 on January 28, 2025, which accepted the Department of Community Affairs (“DCA”) calculations of the Borough’s fair share obligations and committed to its fair share of 0 units present need and 329 units prospective need “subject to any vacant land and/or durational adjustments it may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA.” On January 30, 2025, the Borough filed a Declaratory Judgment Action with the Court and Affordable Housing Dispute Resolution Program.

Similarly to the Third Round, P.L. 2024, c.2 grants municipalities the ability to adjust their prospective need obligations for the Fourth Round based on a lack of vacant land. The process for preparing a vacant land adjustment (“VLA”) for the Fourth Round follows the methodology established in the Municipal Adjustments Subchapter of COAH’s Prior Round Substantive Rules (N.J.A.C. 5:93-4.2), with some minor differences as specified in P.L. 2024, c.2 and explained further in this report. The application of the methodology for vacant land adjustments from COAH’s Prior Round Substantive Rules in the Fourth Round is affirmed by language in N.J.S.A. 52:27D-311.m.: “All parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by statute, including but not limited to P.L.2024, c.2 (C.52:27D-304.1 et al.), or binding court decisions.”

The premise of a vacant land adjustment is that in instances where a municipality has exhausted all of its land and is still unable to provide a realistic opportunity for addressing its state-mandated affordable housing obligations, the municipality can satisfy its prospective need obligation through a combination of a realistic development potential (“RDP”) calculation (which is lower than the Township’s prospective need) and unmet need mechanisms addressing the remaining credit deficit from the municipality’s prospective need. Per COAH’s Prior Round Substantive Rules, “Where a municipality attempts to demonstrate that it does not have the capacity to address the housing obligation calculated by the Council, the municipality shall identify sites that are realistic for inclusionary development in order to calculate the realistic development potential (RDP) of the community, in accordance with N.J.A.C.5:93-4.2. Where the RDP is less than the precredited need

minus the rehabilitation component the municipality shall provide a response toward the obligation not addressed by the RDP. Examples of such a requirement include, but are not necessarily limited to, a redevelopment ordinance, an ordinance permitting apartments in developed areas of the municipality and a mandatory development fee ordinance” (N.J.A.C. 5:93-4.2).

Before detailing the procedure for extrapolating the RDP for Englewood Cliffs, it is useful to understand the purpose of the exercise. The RDP establishes the number of affordable units a municipality could theoretically and realistically generate through traditional inclusionary zoning, if it were to rezone every vacant and underutilized parcel at a minimum density of six units per acre (as established by N.J.A.C. 5:93-4.2(f)) with a 20 percent set-aside and in a manner that would comport with sound planning. However, while P.L. 2024, c.2 did not formally increase the minimum density to be used in the calculation of the Fourth Round RDP, the minimum density established in the Prior Round by N.J.A.C. 5:93-4.2(f) was established with the condition that the “Council shall consider the character of the area surrounding each site and the need to provide housing for low and moderate income households in establishing densities and set-asides for each site.” Therefore, it may be expected that the densities assigned for the Borough’s Fourth Round RDP calculation are to be tailored in a way that realistically reflects development trends in the Fourth Round rather than adhere to the Prior Round standard for minimum density.

In addition, if the owner or contract purchaser of a site offers to redevelop a site that is currently developed, this site could also contribute to the RDP under the principles established in the *Cherry Hill* case¹. A municipality need not rezone the sites that contribute to the RDP; rather, once the RDP is established, the municipality has the full range of compliance strategies available to satisfy it. However, as specified by new language for the Fourth Round, “Any municipality that receives an adjustment of its prospective need obligations for the fourth round or subsequent rounds based on a lack of vacant land shall, as part of the process of adopting and implementing its housing element and fair share plan, identify sufficient parcels likely to redevelop during the current round of obligations to address at least 25 percent of the prospective need obligation that has been adjusted and adopt realistic zoning that allows for such adjusted obligation, or demonstrate why the municipality is unable to do so.

The extrapolation of the RDP is essentially a three-step process as established by Prior Round regulations with minor modifications per P.L. 2024, c.2. Step 1 requires a determination of the number of vacant and underutilized parcels, as well as any additional site that may contribute to the RDP based on the *Cherry Hill* case. Step 2 requires a determination of what sites or portions of sites should be removed from the vacant land inventory based upon the updated criteria provided in N.J.S.A. 52:27D-310.1 and detailed further in Section IV. of this report. Step 3 requires a determination of the RDP that could be generated from the sites or portions of sites that remain after removal of site or portions thereof through the Step 2 analysis. Step 3 requires a determination of an appropriate density for each site, which then provides the RDP that the site could theoretically generate – calculated by the total number of units that the site could reasonably accommodate, multiplied by 20 percent.

The Borough of Englewood Cliffs conducted a VLA for the Third Round, which was adopted as part of the Borough’s Housing Element and Fair Share Plan on December 10, 2018. The Borough’s Third Round VLA serves as a precedent for the preparation of the Borough’s Fourth Round VLA, and in accordance with the regulatory procedures for municipal adjustments in the Fourth Round provided

¹ *Fair Share Housing Center v. Cherry Hill*, 173 N.J. 393 (2002)

by P.L. 2024, c.2 and the provisions of the Borough's adopted Fourth Round affordable housing obligation resolution (Resolution #25-27), the Borough has prepared this VLA report to be included as part of its Fourth Round Housing Element and Fair Share Plan.

II. Land Inventory by Ownership Class

In order to identify and calculate the "developable" land adjustment for the Borough of Englewood Cliffs, an up-to-date inventory² of all Class 1 (Vacant Land), Class 3A (Farm Property - Regular), Class 3B (Farm Property - Qualified), and Borough-owned properties (predominantly Class 15C (Public Property) properties, but also may be inclusive of Class 15A (Public School Property), Class 15E (Cemeteries and Graveyards), and/or Class 15F (Other Exempt) properties owned by the Borough) was requested from the Borough's Tax Assessor. While other publicly-owned parcels include those lands owned by the State Department of Transportation (NJDOT) and Palisades Interstate Park Commission, these were not included as part of the inventory and analysis of publicly-owned properties.

The definitions of the property classifications included in the land inventory are provided in N.J.A.C. 18:12-2.2 as follows:

- Class 1: "Vacant Land" means land itself above and under water in its original, indestructible, immobile state. Vacant land is idle land, not actively used for agricultural or any other purpose; unused acreage; and is land in an approved subdivision actively on the market for sale or being held for sale.
- Class 3A: "Farm Property (Regular)" means:
 - 1. Land, together with improvements, where the use of the land and function of the buildings on that land are for agricultural or horticultural purposes, but which is not qualified for nor assessed under the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.;
 - 2. Improvements of the types and like listed in N.J.S.A. 54:4-23.11, including barns, sheds, silos, etc., which are located on land classified as Class 3B "Farm Property (Qualified)." However, such improvements shall not include "single-use agricultural or horticultural facilities" as defined in N.J.S.A. 54:4-23.12, which are considered personal property; and
 - 3. Farm houses and the lots or parcels of land on which they are situated. For definitions of agricultural use and horticultural use, see N.J.A.C. 18:15-1.1, adopted under the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.
- Class 3B: "Farm Property (Qualified)" means land that has qualified and is assessed under the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.
- Class 15A: "Public School Property" means real property owned by Federal, State, county, or local governments, or their agencies used for public education.
- Class 15C: "Public Property" means real property owned by Federal, State, county, or local governments, or their agencies and devoted to public uses.

² Vacant Properties list provided upon request from the Borough of Englewood Cliffs Tax Assessor, February 2025.

- Class 15E: "Cemeteries and Graveyards" means real property solely devoted to or held for use as a cemetery, graveyard, or burial ground.
- Class 15F: "Other Exempt" means real property exempt from taxation but not described in any of the foregoing classes.

The Class 1 and Borough-owned properties and their acreage were inventoried, totaled, and mapped on the accompanying spreadsheet (see *Exhibit A*) and map (see *Figure 1* below).

There are seventy (70) privately-owned vacant (Class 1) parcels for estimated total area of approximately 25.89 acres; and twenty-three (23) Borough-owned (Class 15C) properties owned by the Borough, for estimated total area of approximately 19.46 acres.

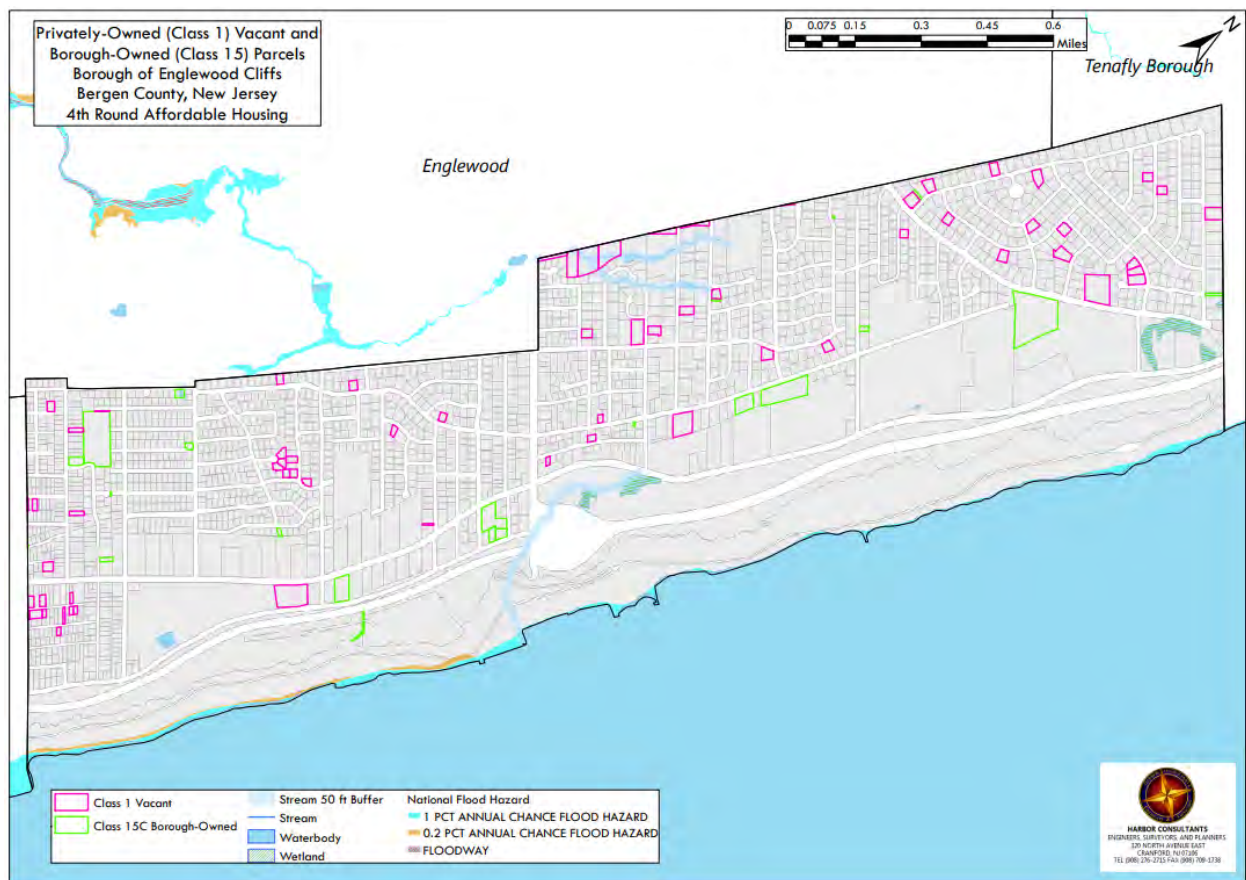


Figure 1: VLA Inventory Map

III. Refined Methodology

From this raw data collection, the inventoried properties were refined based on a parcel-by-parcel investigation and analysis that was guided by the granted exclusions in the New Jersey Fair Housing Act (N.J.S.A. 52:27D-310.1), as amended by P.L. 2024, c.2, and COAH Round 2 Substantive Rules (N.J.A.C. 5:93-4.2). A comprehensive spreadsheet of the Borough's vacant land inventory detailing the reason for inclusion/exclusion of each parcel from the Borough's RDP is provided in *Exhibit B* of this report.

The analysis was carried out through the intersection of (1) Borough Tax Assessor's parcel data to determine exact parcel size, configuration, and ownership; (2) publicly available GIS data from NJDEP and FEMA to overlay with zoning, wetlands and their buffers, and National Flood Hazard Zones; (3) publicly available topography data from NJGIN; (4) publicly available 2020 aerial ortho imagery from NJGIN and 2024 Google satellite imagery; and (5) property site visits to determine any existing developments or encumbrances on site.

To elaborate, those properties that exceed the below criteria, and cannot be excluded, all contribute towards the calculation of the RDP. Per N.J.S.A. 52:27D-310.1, "When computing a municipal adjustment regarding available land resources as part of the determination of a municipality's fair share of affordable housing, the municipality, in filing a housing element and fair share plan pursuant to subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), shall exclude from designating, and the process set forth pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) and section 13 of P.L.1985, c.222 (C.52:27D-313) shall confirm was correctly excluded, as vacant land:

- (a) any land that is owned by a local government entity that as of January 1, 1997, has adopted, prior to the institution of a lawsuit seeking a builder's remedy or prior to the filing of a petition for substantive certification of a housing element and fair share plan, a resolution authorizing an execution of agreement that the land be utilized for a public purpose other than housing;
- (b) any land listed on a master plan of a municipality as being dedicated, by easement or otherwise, for purposes of conservation, park lands or open space and which is owned, leased, licensed, or in any manner operated by a county, municipality or tax-exempt, nonprofit organization including a local board of education, or by more than one municipality by joint agreement pursuant to P.L.1964, c.185 (C.40:61-35.1 et seq.), for so long as the entity maintains such ownership, lease, license, or operational control of such land;
- (c) any vacant contiguous parcels of land in private ownership of a size which would accommodate fewer than five housing units based on appropriate standards pertaining to housing density;
- (d) historic and architecturally important sites listed on the State Register of Historic Places or National Register of Historic Places prior to the date of filing a housing element and fair share plan pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) or initiation of an action pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313);

- (e) agricultural lands when the development rights to these lands have been purchased or restricted by covenant;
- (f) sites designated for active recreation that are designated for recreational purposes in the municipal master plan; and
- (g) environmentally sensitive lands where development is prohibited by any State or federal agency, including, but not limited to, the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), for lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands-conforming municipalities.”

N.J.S.A. 52:27D-310.1 concludes as follows, that: “No municipality shall be required to utilize for affordable housing purposes land that is excluded from being designated as vacant land.”

Pursuant to N.J.A.C. 5:93-4.2(e), the standards for refining parcels from the RDP include the following:

1. Agricultural lands shall be excluded when the development rights to these lands have been purchased or restricted by covenant.
2. Environmentally sensitive lands shall be excluded as follows:
 - i. Within the areas of the State regulated by the Pinelands Commission, Division of Coastal Resources of the DEP and the Hackensack Meadowlands Development Commission of DCA, the Council shall adhere to the policies delineated in The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50; the Coastal Permit Program Rules, N.J.A.C. 7:7-1; Coastal Resource and Development Rules, N.J.A.C. 7:7E1; and the Zoning Regulations of the Hackensack Meadowlands District, N.J.A.C. 19:4.
 - ii. In areas of the State not regulated by the Pinelands Commission, the Division of Coastal Resources and the Hackensack Meadowlands Development Commission, municipalities may exclude as potential sites for low and moderate income housing: inland wetlands as delineated on the New Jersey Freshwater Wetlands Maps, or when unavailable, the U.S. Fish and Wildlife Service National Wetlands Inventory; or as delineated on-site by the U.S. Army Corps of Engineers or DEP, whichever agency has jurisdiction; when on-site delineation is required by the Council; flood hazard areas as defined in N.J.A.C. 7:13; and sites with slopes in excess of 15 percent, as determined from the U.S.G.S. Topographic Quadrangles, which render a site unsuitable for low and moderate income housing. In cases where part of a site is unsuitable for low and moderate income housing because of flood hazard areas or inland wetlands, the Council shall not permit low and moderate income housing to be constructed on that unsuitable part of the site; provided however, that this rule shall not prohibit construction of low and moderate income housing on the remainder of the site. In the case of slopes in excess of 15 percent, a municipality may regulate inclusionary development through a steep slope ordinance, provided the ordinance also regulates non-inclusionary developments in a consistent manner. The Council

- reserves the right to exclude sites in whole or in part when excessive slopes threaten the viability of an inclusionary development.
- iii. Where the Legislature adopts legislation that requires the mapping of other natural resources and provides a mechanism for their regulation, the Council shall include such resources in its criteria and guidelines for municipal adjustment.
3. Historic and architecturally important sites may be excluded as follows:
- i. Historic and architecturally important sites shall be excluded if such sites were listed on the State Register of Historic Places in accordance with N.J.A.C. 7.4 prior to the submission of the petition of substantive certification.
 - ii. Municipalities may apply to exempt a buffer area to protect sites listed on the State Register of Historic Places. The Council shall forward such request to the Office of New Jersey Heritage for a recommendation pertaining to the appropriateness and size of a buffer.
 - iii. Upon receipt of the Office of New Jersey Heritage's recommendation, the Council shall determine if any part of a site should be eliminated from the inventory described in (d) above.
 - iv. Within historic districts, a municipality may regulate low and moderate income housing to the same extent it regulates all other development.
4. Active recreational lands may be excluded as follows:
- i. Municipalities may reserve three percent of their total developed and developable acreage for active municipal recreation and exclude this acreage from consideration as potential sites for low and moderate income housing. However, all sites designated for active recreation must be designated for recreational purposes in the municipal master plan. In determining developable acreage, municipalities shall calculate their total vacant and undeveloped lands and deduct from that total number the lands excluded by the Council's rules regarding historic and architecturally important sites, agricultural lands and environmentally sensitive lands. Municipalities shall also exclude from this calculation of total vacant and undeveloped lands, those owned by nonprofit organizations, counties and the State or Federal government when such lands are precluded from development at the time of substantive certification. Municipalities shall submit appropriate documentation demonstrating that such active recreational lands are precluded from development. Existing active municipal recreation areas shall be subtracted from the three percent calculation of total developed and developable acreage to determine additional land that may be reserved for active municipal recreation.
 - ii. Sites designated for active recreation must be purchased and limited to active recreational purposes within one year of substantive certification. Sites that are not purchased and limited to active recreational purposes shall, if determined necessary by the Council, be zoned to permit inclusionary development.
5. Conservation, parklands and open space lands may be excluded as follows:
- i. Any land designated on a master plan of a municipality as being dedicated or which is dedicated by easement or otherwise for purposes of conservation, parklands or open space and which is owned, leased, licensed or in any other manner operated by a county, municipality or tax-exempt, nonprofit organization including a local

- board of education or by more than one municipality, by joint agreement pursuant to P.L. 1964,c.185 (N.J.S.A. 40:61-35.1 et seq.), for so long as the entity maintains such ownership, lease, license or operational control of such land.
- ii. If less than three percent of the municipality's total land area is designated for conservation, parklands or open space, the municipality may reserve up to three percent of its total land area for such purposes. However, the acquisition of such sites must be initiated by the municipality within one year of substantive certification. Sites that are not purchased and limited to conservation, parklands or open space within that time-frame, shall, if determined necessary by the Council, be zoned to permit inclusionary development.
 - iii. If sites designated for conservation, parklands or open space no longer serve those purposes and subsequently become available for residential or nonresidential development, these sites shall have an affordable housing obligation, if determined necessary by the Council.
6. Individual sites that the Council determines are not suitable for low and moderate income housing may also be eliminated from the inventory described in (d) above.

Additionally, the following factors were considered in undertaking the RDP analysis:

a. *Borough-owned Active and Passive Recreation and Open Space Sites*

Per these standards, the following analysis of Borough owned active recreation and open space/parkland was conducted to better understand the share of open space in relation to the total area of the Borough. Per N.J.A.C. 5:93-4.2(e)4.i., "Municipalities may reserve three percent of their total developed and developable acreage for active municipal recreation and exclude this acreage from consideration as potential sites for low and moderate income housing" as long "all sites designated for active recreation must be designated for recreational purposes in the municipal master plan"; and per N.J.A.C 5:93-4.2(e)4.i.-5.i. "if less than three percent of the municipality's total land area is designated for conservation, parklands or open space, the municipality may reserve up to three percent of its total land area for such purposes".

An analysis conducted in 2018 shows that the Borough has three (3) properties that serve as active recreation sites – Block 107, Lot 14 (Veteran and Fallen Heroes Park); Block 117, Lot 7 (Basketball and Handball courts on Van Nostrand Ave.); and Fred Witte Memorial Fields/Johnson Fields (Block 1201, Lot 7) – which total 11.22 acres in area. These sites all appear on the Borough Recreation and Open Space Plan map (See *Appendix*). Additionally, there are seven (7) Borough-owned passive open space parcels which are unimproved and undeveloped, and largely encumbered by environmental conditions – Block 125, Lot 1; Block 614, Lot 6; Block 806, Lots 4 and 6; Block 909, Lot 3; Block 1107, Lot 14; and Block 1302, Lot 1 – which have a total area of 4.13 acres. Some of these sites – Block 806, Lots 4 and 6, in particular – were earmarked in the 2001 Recreation and Open Space Element of the Master Plan, but have not yet been developed as active open space. If the opportunity presents itself in the future, the Borough may convert these from passive to active open space. The Borough is 3.39 square miles (2,130.5 +/- acres), and thus the active sites represent a total of 0.52% and the passive sites represent a total of 0.19% of the land area of the Borough. Overall, these sites comprise 0.71% of the Borough, which is significantly lower than the total 6% of allowed excludable area.

b. *Consideration of Environmentally Sensitive Land and the Laws that Regulate Them*

Round 2 rules, per N.J.A.C. 5:93-4.2(e)2.ii., identify that “flood hazard areas as defined in N.J.A.C. 7:13” are applicable. Per the most up-to-date Flood Hazard Area Control Act Rules 7:13-4.1, specific regulations regarding the treatment of all regulated water are defined, including the following:

“(a) A riparian zone is the land and vegetation within and adjacent to a regulated water. Riparian zones exist along both sides of every regulated water and include the regulated water itself, except as provided at N.J.A.C. 7:13-2.3(c)1. The extent of a riparian zone is determined in accordance with (b) through (h) below.

(b) The portion of the riparian zone located outside of a regulated water is measured landward from the top of bank.

(c) The width of the riparian zone is as follows:

1. The width of the riparian zone along any regulated water designated as a Category One water, and all upstream tributaries situated within the same HUC-14 watershed, is 300 feet;

2. Except for the regulated waters listed at (c)1 above, the width of the riparian zone along the following regulated waters is 150 feet:

i. Any trout production water and all upstream waters (including tributaries);

ii. Any trout maintenance water and all upstream waters (including tributaries) located within one mile of a trout maintenance water (measured along the length of the regulated water); and

iii. Any segment of a water flowing through an area that contains a threatened or endangered species, and/or present or documented habitat for those species, which is critically dependent on the regulated water for survival, and all upstream waters (including tributaries) located within one mile of such habitat (measured along the length of the regulated water). A list of critically dependent species is available from the Department at the website set forth at N.J.A.C. 7:13-1.3; and

3. For all other regulated waters not identified in (c)1 or 2 above, the width of the riparian zone is 50 feet.”

State and Federal laws and regulations related to environmentally sensitive conditions have been updated or adopted since the inception of the Round 2 rules. These include the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.); Section 404 of the Federal Clean Water Act (33 U.S.C. §§ 1251 through 1375); Category One waterway constraints pursuant to N.J.A.C. 7:9B, 7:8, 7:13 and 7:15; flood hazard constraints as defined in N.J.A.C. 7:13. As State and Federal law, it is sensible that these same regulations would apply to vacant land to be developed with affordable housing, and thus have been applied as part of this analysis. It is interesting to note that as COAH fine-tuned its regulations in Round 3, it made many of these laws and regulations explicit - which was, at the very least, implicit in Round 2 - by excluding lands or portions of such that could not be developed because of additionally regulated encumbrances.

Additionally, many sites in the Borough are encumbered by the presence of steep slopes – sometimes in great excess of 15%. It is not essential that there be a steep slope ordinance for areas with steep slopes to be excluded to calculate the Borough’s RDP COAH recognized that steep slopes constitute an environmental feature worthy of protection. The Superior Court has approved settlements between municipalities and FSHC where the municipality has excluded vacant land from the inventory even though the municipality does not have a steep slopes ordinance. In addition,

COAH preserved its “right to exclude sites in whole or in part when excessive slopes threaten the viability of an inclusionary development” (N.J.A.C. 5:93-4.2 e.2.(ii)).

c. *Exclusion of Approved or Built Sites*

Given that the purpose of the RDP is to determine the number of affordable units that could *realistically* be generated through inclusionary rezonings, this report will not treat sites that have been approved for development or developed with new construction as contributing to the RDP. In particular, the Round 1 and Round 2 COAH regulations are not specific about privately-owned sites which have received approvals since the municipality’s “petition” – and in the case of the Third Round, since a Declaratory Judgement action was filed with the Court – and if these sites may be excluded as part of the Vacant Land Adjustment. However, as demonstrated by COAH’s handling of the Borough’s Round 2 petition, COAH practice is not to count a site that has been approved for development at the time that COAH staff is extrapolating the RDP for the municipality. A municipality cannot stop a landowner or developer from securing the right to develop their land, and a municipality would not create a realistic opportunity for the construction of any affordable housing by rezoning an approved site for an inclusionary project. Also, per N.J.A.C. 5:93-4.2(e)6, “Individual sites that the Council determines are not suitable for low and moderate income housing may also be eliminated from the inventory...”.

More specifically, the site known as Block 1 202, Lot 2 located at 922 Sylvan Avenue, was identified as a vacant site in earlier iterations of the Borough Vacant Land Adjustment. However, the owner secured approval to develop its site and the site is fully developed. Therefore, the site has been excluded from the RDP. The resolution for this Application – No. 255k – has been included as part of the *Appendix* to this report.

Block 303, Lots 35, 36, 37, and 44 located at 154, 150, and 146 Wood Road (35, 36 and 37) and 312 Bolz Street (44) were identified as vacant sites in the 2018 VLA. However, lots 35 and 36 are under construction to be single family homes. Lots 37 and 44 both have construction permits for R-5 buildings (Permits #24-404 and #24-290) which have been included in the *Appendix* of this report.

Block 1101, Lot 6 located at 197 Pershing Road was identified as a vacant site in the 2018 VLA. However, it has since been developed with a single-family home and will be removed.

IV. Vacant and “Developable” Parcels

The vacant and “developable” properties provided in the Borough’s land inventory which cannot be excluded due to the criteria specified above and per the New Jersey Fair Housing Act (N.J.S.A. 52:27D-310.1), as amended by P.L. 2024, c.2, and COAH Round 2 Substantive Rules (N.J.A.C. 5:93-4.2) are determined to have the potential for the development, and therefore are to be included in the Borough’s RDP. Englewood Cliffs does not have any vacant and “developable” parcels that will count towards their RDP.

V. Developed Sites Determined to Contribute to the Township RDP

This report identified three categories of sites that may generate an RDP under COAH’s Round 2 regulations and the Cherry Hill case: (i) vacant sites; (ii) underutilized sites; and (iii) developed sites

that may nonetheless generate an RDP depending upon the facts and circumstances surrounding the site.

The following sites in Table 1 below concern this third category. While not vacant or undeveloped, the owner of the site has indicated their desire to redevelop the property. The Borough has considered the site and determined an appropriate RDP to assign to the site based upon the premise that 20% of the residential units provided on the site would be the basis for the assignment of an RDP to each site.

Table 1: Developed and Approved Properties Determined to Generate an RDP Borough of Englewood Cliffs								
Block	Lot	Comments/Discussion	Owner	Gross Acreage	Net Developable Acreage	Density (du/ac)	Est. Total Units	RDP
201 & 205	10-14 & 1, 2, and 4	20-32 Sylvan Avenue & 4 Bayview Avenue; Cioffi Site	CFI Development, LLC	1.985	1.985	24.18	48	10
Total Units Based on Estimated Development Density							48	
Total RDP from Development								10

The proposal for the properties generating an RDP is for a three-story inclusionary mixed-use development consisting of 9,494 square feet of commercial space on the ground floor and forty-eight (48) apartments on the upper two floors. The residential portion of the development includes a twenty percent (20%) set aside that will create ten (10) affordable housing units. The site is located in the Downtown Tiers (Hudson Terrace, East Palisades and B-3 Zone) Inclusionary Housing Overlay -2 (IHO-2) Zone.

VI. “Likely to Redevelop” Properties

Per N.J.S.A. 52:27D-310.1, as amended by P.L. 2024, c.2, “Any municipality that receives an adjustment of its prospective need obligations for the fourth round or subsequent rounds based on a lack of vacant land shall, as part of the process of adopting and implementing its housing element and fair share plan, identify sufficient parcels likely to redevelop during the current round of obligations to address at least 25 percent of the prospective need obligation that has been adjusted and adopt realistic zoning that allows for such adjusted obligation, or demonstrate why the municipality is unable to do so.”

The Borough has identified the following areas as “likely to redevelop” during the Fourth Round, which are to be counted towards the Borough’s compliance with the requirements of N.J.S.A. 52:27D-310.1.

166 units (or up to 199 units for mixed-use projects) from the Southern Sylvan Avenue Overlay Zone D. The Borough will adopt a new Inclusionary Overlay Zone, known as Southern Sylvan Avenue Overlay Zone D, which consists of the area located along Sylvan Avenue, west of

Sherwood Avenue, and is only comprised of the existing B-2 Zoning District. The Overlay Zone shall apply to the following properties: Block 130, Lots 22-25, Block 313, Lots 1-3, Block 314, Lots 10-15, and Block 411, Lots 16-23. The unconstrained acreage of the Overlay Zone totals approximately 41.38 acres. Every property within the Overlay Zone may be redeveloped as a completely residential inclusionary project at a density of 20 units per acre with a 20 percent set aside, totaling to a maximum of 827 residential units, inclusive of 166 affordable units. Alternatively, the site can be redeveloped as a mixed commercial/residential project in which the residential component may be developed at a density of 24 units per acre with a 20% set aside, totaling to a maximum of 993 residential units, inclusive of 199 affordable units.



Figure 2 – Aerial Map of Southern Sylvan Ave Overlay Zone D

Given the Borough’s Fourth Round unmet need obligation of 316.5, the 166 units (or up to 199 units for mixed-use projects) from these properties more than satisfy the minimum 25% “likely to redevelop” requirement.

VII. Summary

Based on the Borough’s evaluation of its vacant land inventory and analysis of realistic development opportunities per P.L. 2024, c.2 and as described above, an RDP of 10 affordable units has been calculated for the Borough.

This analysis represents a realistic number of units based on a detailed and discerned parcel analysis that neither inflates nor deflates the amount of “developable” land in Englewood Cliffs.

Table 2 below depicts the final properties considered in the Borough RDP:

Table 2: RDP Summary Borough of Englewood Cliffs						
Sites “Likely to Redevelop” Contributing to the Borough’s RDP						
Block	Lot	Comments/Discussions	Net Developable Acreage	Density (du/ac)	Est. Total Units	RDP
201 & 205	10-14 & 1, 2, and 4	20-32 Sylvan Avenue & 4 Bayview Avenue; Cioffi Site	1.985	24.18	48	10
Total Units Based on Estimated Development Density					48	
Total RDP (20%)						10

Figure 3 below depicts all the sites which were included as part of the Borough’s RDP calculation.

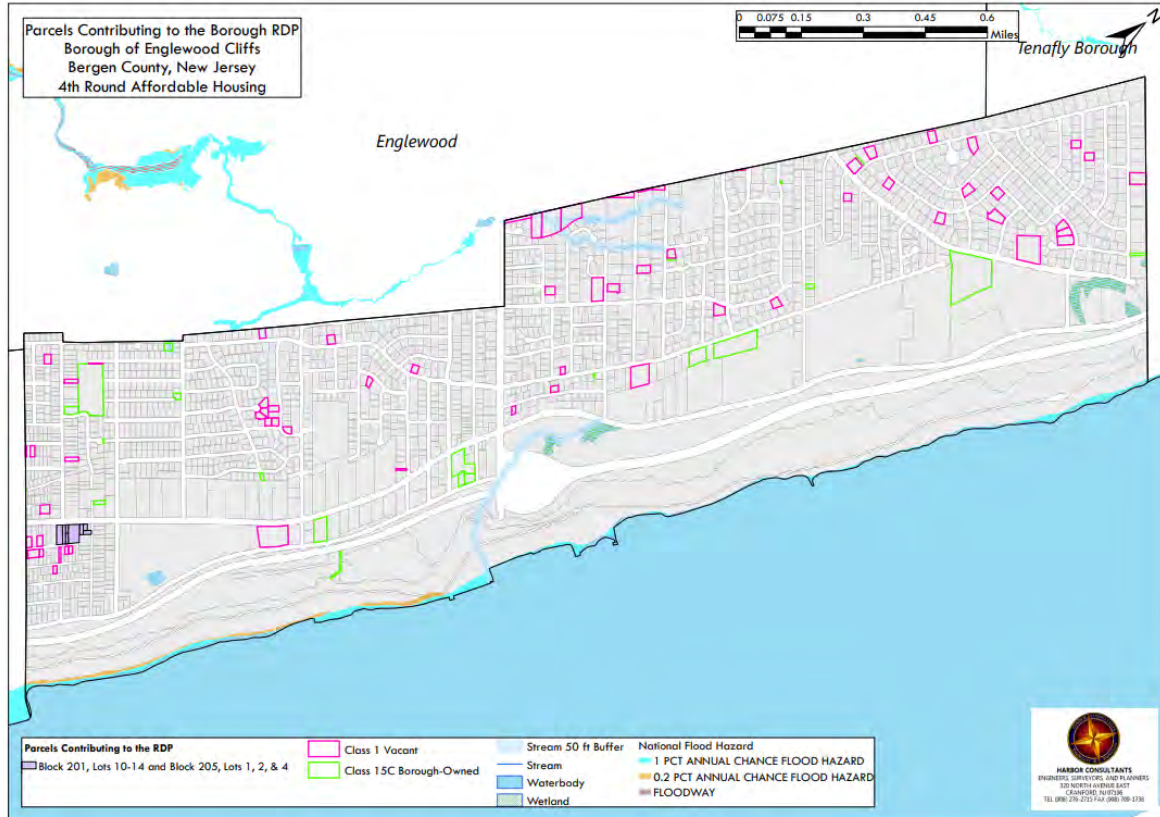


Figure 3: RDP Sites

VIII. Reference List

Borough of Englewood Cliffs Tax Assessor (2025). “Englewood Cliffs Class 1 Properties”.

Borough of Englewood Cliffs Tax Assessor (2025). “Englewood Cliffs 15C Properties”

N.J.A.C 18:12-2.2 Property Classifications with Definitions. Retrieved from:
<https://casetext.com/regulation/new-jersey-administrative-code/title-18-treasury-taxation/chapter-12-local-property-tax-general/subchapter-2-preparation-of-local-property-tax-list-and-duplicate/section-1812-22-property-classifications-with-definitions>

N.J.A.C. 7:9B Surface Water Quality Standards,
https://dep.nj.gov/wp-content/uploads/rules/rules/njac7_9b.pdf

N.J.A.C. 7:13 Flood Hazard Control Act Rules,
https://dep.nj.gov/wp-content/uploads/rules/rules/njac7_13.pdf

P.L. 2024, Chapter 2,
<https://pub.njleg.state.nj.us/Bills/2024/PL24/2 .PDF>

Substantive Rules of The New Jersey Council on Affordable Housing (2002). Chapter 93 Subchapter 4. COAH. <https://www.nj.gov/dca/divisions/lps/hss/statsandregs/593.pdf>

i. Mapping References

FEMA National Flood Hazard Layer. <http://fema.maps.arcgis.com/home/>

NOAA Data Access Viewer, “2014 USGS CMGP Lidar: Post Sandy”:
<https://coast.noaa.gov/dataviewer/#/lidar/search/>

New Jersey Geographic Information Network (NJGIN). Municipality Boundaries of New Jersey.
<https://njgin.nj.gov/njgin/edata/boundaries/index.html>

New Jersey Geographic Information Network (NJGIN). State Boundary of New Jersey.
<https://njgin.nj.gov/njgin/edata/boundaries/index.html>

New Jersey Geographic Information Network (NJGIN). Bergen County Parcels. <https://njogis-newjersey.opendata.arcgis.com/documents/7cdaf29fd4cb460ebbbace617e2aa220/about>

IX. EXHIBITS

EXHIBIT A



Block	Lot	Property Class	Location	Owner	Acres
101	20	15C	71 MC DERMOTT WAY	BORO OF ENGLEWOOD CLIFFS	0.25
103	2	1	14 ROSSETT ST	SHEHATI, ROSALYN ANGELIDIS	0.24
107	8	1	67 IRVING AVE	ROCK SOLID BUILT LLC	0.20
107	14	15C	IRVING AVE	BOROUGH OF ENGLEWOOD CLIFFS	0.38
111	12	15C	162 MIDDLESEX AVE	BOROUGH OF ENGLEWOOD CLIFFS	0.18
117	7	15C	WEST BAYVIEW AVE	BOROUGH OF ENGLEWOOD CLIFFS	4.62
117	8	1	35 HICKORY ST	LIASKOS, LEO	0.03
125	1	15C	DEBORAH TERR	BOROUGH OF ENGLEWOOD CLIFFS	0.01
127	11	1	27 IRVING AVE	DISTAULO, JOSEPH III	0.20
128	11	1	1 FIRST ST	HEGAZI, TAREK & GHADA ALY	0.04
128	13	1	4 FIRST ST.	4 FIRST LLC	0.18
129	15	15C	13 HENRY ST	BORO OF ENGLEWOOD CLIFFS	0.01
132	5	15C	5 W BAYVIEW AVE	BOROUGH OF ENGLEWOOD CLIFFS	0.17
134	10.01	1	12 THIRD ST	11 SEA HORSE LLC	0.11
134	10.02	1	14 THIRD ST	11 SEA HORSE LLC	0.11
201	1	1	2 FIFTH ST	2 FIFTH STREET ASSOCIATES LLC	0.25
201	6	1	8 FIFTH ST	R & A LLC	0.25
201	13	1	24B SYLVAN AVE	24-B SYLVAN AVE LLC	0.11
202	1	1	0 FIFTH ST	CHANG,JANELLE C. & YON HUI	0.06
202	2	1	4 FIFTH ST	FIFTH HORIZON ESTATE LLC	0.34
202	3	1	FIFTH ST	DOGALI (ETALS), ROBIN	0.11
202	8	1	17A SIXTH ST	GOLDVALLEYASSET, INC	0.11
202	10	1	4 SIXTH ST REAR	GOLDVALLEYASSET INC	0.11
202	11	1	21 FIFTH ST REAR	GOLDVALLEYASSET INC	0.11
203	8	1	16 SIXTH ST	KIM, HYUNJIN	0.11
207	6.01	1	SYLVAN AVE	LG ELECTRONICS NEW JERSEY LLC	2.94
301	6	1	300 CASTLE DR	BARSHISHAT, SIMA	0.24
303	35	1	154 WOOD RD	V & R DEVELOPERS INC	0.25
303	37	1	316 BOLZ ST	V & R INVESTORS LLC	0.22

Block	Lot	Property Class	Location	Owner	Acres
303	40.05	1	12 SARA HILL LA	CLIFFS HOLDING LLC	0.26
303	40.07	1	10 SARA HILL LA	CLIFFS HOLDING LLC	0.22
303	40.08	1	8 SARA HILL LA	CLIFF HOLDINGS LLC	0.22
303	44	1	312 BOLZ ST	V & R INVESTORS LLC	0.20
306	10	1	320 BOLZ ST	V & R INVESTORS LLC	0.19
312	9	15C	289 ARTHUR AVE	BORO OF ENGLEWOOD CLIFFS	0.10
401	7	1	336 CASTLE DR	V & R DEVELOPERS INC	0.28
406	2	1	365 MAURO RD	LI, SHUE-LEE C	0.20
411	14	1	30 SHERWOOD AVE	MORRISSEY, BRUCE C & DENISE C	0.06
412	3	15C	342 HUDSON TERR	BOROUGH OF ENGLEWOOD CLIFFS	1.15
505	10	1	384 CASTLE DR	NITZAN, NURIT & OHAYON, ILAN	0.21
513	4	15C	10 KAHN TERRACE	BOROUGH OF ENGLEWOOD CLIFFS	1.45
513	5	15C	488 HUDSON TERR	BOROUGH OF ENGLEWOOD CLIFFS	0.37
513	6	15C	482 HUDSON TERR	BOROUGH OF ENGLEWOOD CLIFFS	0.36
601	14	1	2 KIMHUNTER RD	KITTS,ROBERT & LAURIE	1.00
601	15	1	NEAR KARENS LANE	KITTS,ROBERT & LAURIE	1.66
601	13	1	471 PALISADE AVE	431 E PALISADE AVE REAL ESTATE LLC	0.30
601	16	1	NEAR KARENS LANE	SEEGER, CHRISTOPHER & YESENIA	1.11
602	2	1	143 DEMAREST AVE	NAZARIAN, NAZAR & ARTEMIS	0.30
602	9	1	202 PERSHING ROAD	HILLSBOROUGH HOLDINGS LLC	0.22
603	20.01	1	140 DEMAREST AVE	552 SUMMIT AVE ESTATES LLC	0.26
603	20.02	1	144 DEMAREST AVE	552 SUMMIT AVE ESTATES LLC	0.26
603	20.03	1	148 DEMAREST AVE	552 SUMMIT AVE ESTATES LLC	0.24
604	9	1	5 KIMHUNTER RD.	LAW, SINGWU DAVID	0.31

Block	Lot	Property Class	Location	Owner	Acres
614	4	1	530 FLOYD ST	HOMSANY, LAWRENCE	0.14
616	4	15C	553 FLOYD ST	BOROUGH OF ENGLEWOOD CLIFFS	0.02
616	25	1	24 CLIFTON TERR	DOOLY,DANIEL E.	0.18
617	2	1	3 CLIFTON TERRACE	CLIFTON TERR ACQUISITIONS	0.12
701	3	1	165 PERSHING RD	LEE, JOHN ENG & TAMMY YOUNG	0.40
701	9	1	203 PERSHING RD	BAER,LEWIS & LORRAINE	0.05
701	10	1	216 CHESTNUT ST	161 NORTH WOODLAND ST REAL EST LLC	0.11
703	1	1	2 MAPLE ST	2 MAPLE ST LLC	0.26
703	15	15C	5 CHESTNUT ST	BOROUGH OF ENGLEWOOD CLIFFS	0.08
707	6	1	29 BOOTH AVE	245 N WOODLAND STREET LLC	0.03
713	7	15C	243 LYNCREST RD	BOROUGH OF ENGLEWOOD CLIFFS	0.02
802	7.01	1	575 FLOYD ST	575 FLOYD ST LLC	0.62
802	7.02	1	577 FLOYD ST	577 FLOYD ST LLC	0.60
805	6	1	645 SUMMIT ST	188 FAIRVIEW AVENUE LLC	0.44
806	4	15C	FLOYD ST	BOROUGH OF ENGLEWOOD CLIFFS	0.97
806	6	15C	FLOYD ST	BOROUGH OF ENGLEWOOD CLIFFS	2.84
807	6	1	669 SUMMIT ST	A&I COMPANY LLC NJ	0.32
904	6	1	63 N VIRGINIA CT	REN,ZHEN&MARTELLO,RALPH CARLO	0.23
909	3	15C	111 HOLLYWOOD AVE	BOROUGH OF ENGLEWOOD CLIFFS	0.15
1001	27	1	50 ROBERTS RD	CASTLE HILL ENTERPRISES LLC	0.35
1001	35	1	14 ROBERTS RD	PIERRE,BRADLEY & NONNA	0.40
1001	37	15C	8 ROBERTS RD	BOROUGH OF ENGLEWOOD CLIFFS	0.10
1001	38	1	4 ROBERTS ROAD	JAIN, ANUJ & NEELIMA	0.49
1002	12	1	51 ROBERTS RD	YEN, VICTOR	0.44
1004	5	1	7 LYNN DRIVE	SINGH,CHARANJIT&HARVEEN KAUR	0.29
1005	1	1	33 STEPHEN DRIVE	33 STEPHEN DRIVE LLC	0.34
1006	4	1	27 LYNN DR	SHROFF, NIRAV & MARIYA	0.37
1008	1	1	47 LYNN DR	SUNSHINE DEVELOPERS LLC	0.35
1008	5	1	5 WILLOW DR	FRIDMAN, DAVID & NATALIE	0.77
1009	15	1	41 LAURIE DR	PALESTRONI, LUCIA	0.31
1009	16.01	1	45 LAURIE DR	PALESTRONI, LUCIA	0.42
1009	17.01	1	28 GERALDINE CT	PALESTRONI, LUCIA	0.48

Block	Lot	Property Class	Location	Owner	Acres
1009	29	1	78 JOHNSON AVE	UNITED WATER CO	2.29
1103	18	1	16 JEAN DRIVE	MONIQUE RLTY INC CO L&R SERVICES	0.28
1104	4	1	11 JEAN DR	KIM,CHONG SEUNG	0.28
1107	7	1	26 JANE DR	JHALANI,AMIT & VIJAY	0.69
1107	14	15C	52 JANE DR	BOROUGH OF ENGLEWOOD CLIFFS	0.14
1201	7	15C	JOHNSON AVE	BOROUGH OF ENGLEWOOD CLIFFS	5.98
1302	1	15C	HUDSON TERR	BOROUGH OF ENGLEWOOD CLIFFS	0.06
1302	3	15C	HUDSON TERR	BORO OF ENGLEWOOD CLIFFS	0.05
Total Acres:					45.36

EXHIBIT B

ENGLEWOOD CLIFFS

VL AND BOROUGH OWNED PROPERTIES
AS OF 2/10/2025

#	Block	Lot	Property Class	Location	Owner	Lot Size	Constrained Area	Unconstrained Area	Comments/Exclusion Discussion	Area Contributing to the RDP
1	101	20	15C	71 MC DERMOTT WAY	BORO OF ENGLEWOOD CLIFFS	0.25	0.00	0.25	Municipal 15C Property	0.0
2	103	2	1	14 ROSSETT ST	SHEHATI, ROSALYN ANGELIDIS	0.24	0.00	0.24	Single family home	0.0
3	107	8	1	67 IRVING AVE	ROCK SOLID BUILT LLC	0.20	0.00	0.20	Single family home	0.0
4	107	14	15C	IRVING AVE	BOROUGH OF ENGLEWOOD CLIFFS	0.38	0.00	0.38	Excluded in 3rd round - Municipal 15C Property - Developed as open space "Veterans and Fallen Heroes Park" - includes fenced in tot-lot and playground equipment. "The prperty is listed on "a master plan... as being dedicated...[for] open space and which is owned...by a.... Municipality" per N.J.S.A.52:27D-310.1(b). Accordingly, pursuant to the same statute, the Borough shall not "be required to utilize" this land "for affordable housing purposes. In addition, municipally owned active recreation space. Included on Brough Recreation and Open Space Plan (2021).	0.0
5	111	12	15C	162 MIDDLESEX AVE	BOROUGH OF ENGLEWOOD CLIFFS	0.18	0.18	0.00	Excluded in 3rd round - Municipal 15C Property - Topographic mapping shows steep slopes in excess of 15% on the site. Municipally owned passive open space (as part of 3% per N.J.A.C 5:93-4.2{ e}5.i.i.) to protect the environmentally sensitive nature of the site.	0.0
6	117	7	15C	WEST BAYVIEW AVE	BOROUGH OF ENGLEWOOD CLIFFS	4.62	1.25	3.37	Excluded in 3rd round - Municipal 15C Property - The parcel is listed on the master plan as dedicated for purposes of open space, which is owned and operated in any manner by a municipaplity. Accordingly, pursuant to the same statute, the Borough shall not "be required to utilize" this land "for affordable housing purposes. In addition, developed as open space with passive recreation (gazebo) and active recreation (basketball courts). Remainder of unimproved land on the site municipally owned passive open space. Topographic mapping (USGS) shows steep slopes in excess of 15% on approximately 1.25 acre portion of the site. Included on Borough Recreation and Open Space Plan (2001).	0.0
7	117	8	1	35 HICKORY ST	LIASKOS, LEO	0.03	0.00	0.00	Excluded in 3rd round - Narrow sliver lot - Lot dimensions are 6' x 180' in the RB Zone. Lot too small to create 5 dwelling units	0.0
8	125	1	15C	DEBORAH TERR	BOROUGH OF ENGLEWOOD CLIFFS	0.01	0.00	0.01	Municipal 15C property - Municipally owned unimproved and undeveloped sliver of vegetation between Deborah Terrace cul-de-sac and Ash Street R.O.W. Municipaplu owned passive open space.	0.0
9	127	11	1	27 IRVING AVE	DISTAULO, JOSEPH III	0.20	0.00	0.20	Single family home	0.0
10	128	11	1	1 FIRST ST	HEGAZI, TAREK & GHADA ALY	0.04	0.00	0.04	Excluded in 3rd round - Narrow sliver lot - 13 feet wide - nex to developed lots in the RB-1 Zone. Lot too small to create 5 dwelling units.	0.0
11	128	13	1	4 FIRST ST.	4 FIRST LLC	0.18	0.00	0.18	Single family home	0.0
12	129	15	15C	13 HENRY ST	BORO OF ENGLEWOOD CLIFFS	0.01	0.00	0.01	Municipal 15C Property - Lot too small to create 5 dwelling units.	0.0
13	132	5	15C	5 W BAYVIEW AVE	BOROUGH OF ENGLEWOOD CLIFFS	0.17	0.00	0.17	Excluded in 3rd round - Municipal 15C Property - Developed as "Englewood Cliffs Senior Citizen Community Center".	0.0
14	134	10.01	1	12 THIRD ST	11 SEA HORSE LLC	0.11	0.00	0.11	Even if combined with Block 134, Lot 10.02, Lot too small to create 5 dwelling units.	0.0

VL AND BOROUGH OWNED PROPERTIES
AS OF 2/10/2025

#	Block	Lot	Property Class	Location	Owner	Lot Size	Constrained Area	Unconstrained Area	Comments/Exclusion Discussion	Area Contributing to the RDP
15	134	10.02	1	14 THIRD ST	11 SEA HORSE LLC	0.11	0.00	0.11	Even if combined with Block 134, Lot 10.01, Lot too small to create 5 dwelling units.	0.0
16	201	1	1	2 FIFTH ST	2 FIFTH STREET ASSOCIATES LLC	0.25	0.00	0.25	Excluded in 3rd round - B-3 Zone. Lot too small to create 5 dwelling units.	0.0
17	201	6	1	8 FIFTH ST	R & A LLC	0.25	0.00	0.25	Excluded in 3rd round - B-3 Zone. Lot too small to create 5 dwelling units.	0.0
18	201	13	1	24B SYLVAN AVE	24-B SYLVAN AVE LLC	0.11	0.00	0.11	Excluded in 3rd round - B-3 Zone. Lot too small to create 5 dwelling units.	0.0
19	202	1	1	0 FIFTH ST	CHANG,JANELLE C. & YON HUI	0.06	0.00	0.06	Excluded in 3rd round - continuous with lots 2 and 3 in the RB-1 Zone, but under separate ownership. Lot 1 has shared ownership with Fort Lee parcel - block 7153, lot 17. lot too small to create 5 dwelling units.	0.0
20	202	2	1	4 FIFTH ST	FIFTH HORIZON ESTATE LLC	0.34	0.00	0.34	Excluded in 3rd round - Continuous with lots 1 and 3 in the RB-1 Zone, but under separate ownership. Lot 2 has shared ownership with parcel across the street - Block 201, lot 1, but cannot be combined because they are geographically separate. Lot too small to create 5 dwelling units.	0.0
21	202	3	1	FIFTH ST	DOGALI (ETALS), ROBIN	0.11	0.00	0.11	Excluded in 3rd round - Contiguous with lot 1 and in the RB-1 Zone; but under separate ownership. Lot too small to create 5 dwelling units.	0.0
22	202	8	1	17A SIXTH ST	GOLDVALLEYASSET, INC	0.11	0.00	0.11	Excluded in 3rd round - RB-1 Zone. Driveway to access adjacent lot 9, acts as flag lot with the parcel - 25 feet wide. Lot too small to create 5 dwelling units.	0.0
23	202	10	1	4 SIXTH ST REAR	GOLDVALLEYASSET INC	0.11	0.00	0.11	excluded in 3rd round - Contiguous parcels in the ZB-1 Zone and under similar ownership. Even combined with Block 202, Lot 11, lot too small to create 5 dwelling units.	0.0
24	202	11	1	21 FIFTH ST REAR	GOLDVALLEYASSET INC	0.11	0.00	0.11	Excluded in 3rd round - contiguous parcels in the RB-1 Zone and under similar ownership. Even combined with Block 202, Lot 10, lot too small to create 5 dwelling units.	0.0
25	203	8	1	16 SIXTH ST	KIM, HYUNJIN	0.11	0.00	0.11	Single family home	0.0
26	207	6.01	1	SYLVAN AVE	LG ELECTRONICS NEW JERSEY LLC	2.94			Part of the Northern Woods development from 3rd Round and 4th Round	5.0
27	301	6	1	300 CASTLE DR	BARSHISHAT, SIMA	0.24	0.00	0.24	Single family home	0.0
28	303	35	1	154 WOOD RD	V & R DEVELOPERS INC	0.25	0.00	0.25	Single family home construction	0.0
29	303	37	1	316 BOLZ ST	V & R INVESTORS LLC	0.22	0.00	0.22	Construction Permit for R-5 building	0.0
30	303	40.05	1	12 SARA HILL LA	CLIFFS HOLDING LLC	0.26	0.26	0.00	Excluded in 3rd round - contiguous parcels in the R-B Zone, and lots 40.05 and 40.07 share ownership, however 40.08 is owned separately. The lots are all located on a cul-de-sac adjacent to single family homes.	0.0
31	303	40.07	1	10 SARA HILL LA	CLIFFS HOLDING LLC	0.22	0.22	0.00	Excluded in 3rd round - contiguous parcels in the R-B Zone, and lots 40.05 and 40.07 share ownership, however 40.08 is owned separately. The lots are all located on a cul-de-sac adjacent to single family homes. Topographic mapping shows steep slopes in excess of 15% encumbering the entire site. Grade changes from 312 feet down to 290 feet on lots 40.05 and 40.07, which are approximately 100-115 feet long lots.	0.0
32	303	40.08	1	8 SARA HILL LA	CLIFF HOLDINGS LLC	0.22	0.22	0.00	excluded in 3rd round - contiguous parcels in the R-B Zone, and lots 40.05 and 40.07 share ownership, however 40.08 is owned separately. The lots are all located on a cul-de-sac adjacent to single family homes. Topographic mapping shows steep slopes in excess of 15% encumbering the entire site. Grade changes across lot 40.08 from west at 288 feet to 204 feet approximately 80 feet east, for slopes of approximately 20%.	0.0
33	303	44	1	312 BOLZ ST	V & R INVESTORS LLC	0.20	0.00	0.20	Construction Permit for R-5 building	0.0
34	306	10	1	320 BOLZ ST	V & R INVESTORS LLC	0.19	0.19	0.00	excluded in 3rd round - Corner lot along Bolz Street and Wood Avenue. Topographic mapping shows steep slopes on this site in excess of 15%. The grade changes from the center of the lot to the eastern corner over 40 feet from 318 to 324 feet, for slopes 15%. Even without excluding the sloped area, the lot is too small to create 5 dwelling units.	0.0

ENGLEWOOD CLIFFS

VL AND BOROUGH OWNED PROPERTIES
AS OF 2/10/2025

#	Block	Lot	Property Class	Location	Owner	Lot Size	Constrained Area	Unconstrained Area	Comments/Exclusion Discussion	Area Contributing to the RDP
35	312	9	15C	289 ARTHUR AVE	BORO OF ENGLEWOOD CLIFFS	0.10	0.00	0.10	Municipal 15C Property	0.0
36	401	7	1	336 CASTLE DR	V & R DEVELOPERS INC	0.28	0.00	0.28	Single family home	0.0
37	406	2	1	365 MAURO RD	LI, SHUE-LEE C	0.20	0.20	0.00	Excluded in 3rd round - R-B Zone. Topographic mapping shows steep slopes on this site in excess of 15%. Even without excluding encumbered area, the lot is too small to create 5 dwelling units.	0.0
38	411	14	1	30 SHERWOOD AVE	MORRISSEY, BRUCE C & DENISE C	0.06	0.06	0.00	Excluded in 3rd round - B-2 Zone. Narrow silver lot is 18 feet wide. Appears to serve as access from Sherwood Avenue to Block 411, Lot 15. Lot too small to create 5 dwelling units.	0.0
39	412	3	15C	342 HUDSON TERR	BOROUGH OF ENGLEWOOD CLIFFS	1.15	0.00	1.15	Excluded in 3rd round - Municipal 15C Property- Developed with "Department of Public Works" Facility Yard and Building.	0.0
40	505	10	1	384 CASTLE DR	NITZAN, NURIT & OHAYON, ILAN	0.21	0.00	0.21	Single family home	0.0
41	513	4	15C	10 KAHN TERRACE	BOROUGH OF ENGLEWOOD CLIFFS	1.45	0.00	1.45	Excluded in 3rd round - Municipal 15C Property - Developed as Englewood Cliffs Police and Fire Department Facilities.	0.0
42	513	5	15C	488 HUDSON TERR	BOROUGH OF ENGLEWOOD CLIFFS	0.37	0.00	0.37	Part of The Michaels Organization 100% AH development under construction and part of 3rd round HEFSP.	0.0
43	513	6	15C	482 HUDSON TERR	BOROUGH OF ENGLEWOOD CLIFFS	0.36	0.00	0.36	Excluded in 3rd round - Municipal 15C Property - Developed as Englewood Cliffs Police and Fire Department Facilities.	0.0
44	601	13	1	471 PALISADE AVE	431 E PALISADE AVE REAL ESTATE LLC	0.30	0.00	0.30	Excluded in 3rd round - Narrow silver lot on the municipal border. Common ownership with Block 1902, Lot 8 across municipal border n Englewood, developed as single family home. Lot too small to create 5 dwelling units.	0.0
45	601	14	1	2 KIMHUNTER RD	KITTS,ROBERT & LAURIE	1.00	0.17	0.83	Part of 3rd round RDP - Flat Rock Brook and tributary traverse through northern portion of lot 14 and then branch out through lot 15. With an additional 50 foot regulated beffer, it appears that over 80% of lot 15 is encumbered by the stream and associated riparian buffers, leaving 0.35	(1.0)*
46	601	15	1	NEAR KARENS LANE	KITTS,ROBERT & LAURIE	1.66	0.93	0.73	Part of 3rd round RDP - Flat Rock Brook and tributary traverse through northern portion of lot 14 and then branch out through lot 15. With an additional 50 foot regulated beffer, it appears that over 80% of lot 15 is encumbered by the stream and associated riparian buffers, leaving 0.35 split between the northern border with Englewood Cliffs and 0.23 acres along the southern border behind lot 7. Separately, Lot 14 has about 25% of its area encumbered.	(1.0)*
47	601	16	1	NEAR KARENS LANE	SEEGER, CHRISTOPHER & YESENIA	1.11			Excluded in 3rd round - flat rock brook and tributary traverse through southern propotion of the lot. With a minimum 50 foot regulated buffer it appears that about 65-70% of the lot is encumbered. This property was considered "landlocked" in COAH 1997 Compliance Report for the Borough.	0.0
48	602	2	1	143 DEMAREST AVE	NAZARIAN, NAZAR & ARTEMIS	0.30	0.00	0.30	Excluded in 3rd round - R-A Zone. Surrounded by single-family homes. Lot too small to create 5 dwelling units.	0.0
49	602	9	1	202 PERSHING ROAD	HILLSBOROUGH HOLDINGS LLC	0.22	0.00	0.22	Excluded in 3rd round - R-A Zone. Triangular sliver lot o the municipal border. Common ownership with Block 1902, Lot 1 across municipal border in Englewood, developed as a single family home. Lot too small to create 5 dwelling units.	0.0
50	603	20.01	1	140 DEMAREST AVE	552 SUMMIT AVE ESTATES LLC	0.26	0.00	0.26	Part of 3rd round RDP - Appears in 3rd round as lot 20. Site is currently vacant as of demolition in 2013 of home built in 1937. Adjacent to large single family home on Lot 21, under ownership of Seymour and Harriette Gluckow - who are former owners of this site and the home that was demolished around 2013. The site was sold, presumably to their children (based upon surname of current owner), for a sum of \$10 in February 2012.	(0.36)*

VL AND BOROUGH OWNED PROPERTIES
AS OF 2/10/2025

#	Block	Lot	Property Class	Location	Owner	Lot Size	Constrained Area	Unconstrained Area	Comments/Exclusion Discussion	Area Contributing to the RDP
51	603	20.02	1	144 DEMAREST AVE	552 SUMMIT AVE ESTATES LLC	0.26	0.00	0.26	Part of 3rd round RDP - Appears in 3rd round as lot 20. Site is currently vacant as of demolition in 2013 of home built in 1937. Adjacent to large single family home on Lot 21, under ownership of Seymour and Harriette Gluckow - who are former owners of this site and the home that was demolished around 2013. The site was sold, presumably to their children (based upon surname of current owner), for a sum of \$10 in February 2012.	(0.36)*
52	603	20.03	1	148 DEMAREST AVE	552 SUMMIT AVE ESTATES LLC	0.24	0.00	0.24	Part of 3rd round RDP - Appears in 3rd round as lot 20. Site is currently vacant as of demolition in 2013 of home built in 1937. Adjacent to large single family home on Lot 21, under ownership of Seymour and Harriette Gluckow - who are former owners of this site and the home that was demolished around 2013. The site was sold, presumably to their children (based upon surname of current owner), for a sum of \$10 in February 2012.	(0.34)*
53	604	9	1	5 KIMHUNTER RD.	LAW, SINGWU DAVID	0.31	0.00	0.31	Single family home	0.0
54	614	4	1	530 FLOYD ST	HOMSANY, LAWRENCE	0.14	0.00	0.14	Single family home	0.0
55	616	4	15C	553 FLOYD ST	BOROUGH OF ENGLEWOOD CLIFFS	0.02	0.00	0.02	Excluded in 3rd round - Municipal 15C Property. Landmark glacial erratic (10 foot tall, 32 ton rock) on site, known as Samson's Rock and appears on the "Historic Sites Inventory" in 2001 Master Plan. Additionally it is listed on the master plan as dedicated of purposes of open space, which is owned and operated in any manner by the Borough. Finally, municipally owned passive open space to protect the historic resource value of the site. Accordingly, pursuant to the same statute, the Borough shall not "be required to utilize" this land "for affordable housing purposes.	0.0
56	616	25	1	24 CLIFTON TERR	DOOLY, DANIEL E.	0.18	0.00	0.18	Excluded in 3rd round - R-B Zone. Surrounded by single family homes. Lot too small to create 5 dwelling units.	0.0
57	617	2	1	3 CLIFTON TERRACE	CLIFTON TERR ACQUISITIONS	0.12	0.00	0.12	Excluded in 3rd round - R-B Zone. Aerial imagery shows that this lot serves as parking for Jaein Nho, DD, PC Dentistry. Lot too small to create 5 dwelling units.	0.0
58	701	3	1	165 PERSHING RD	LEE, JOHN ENG & TAMMY YOUNG	0.40	0.00	0.40	Excluded in 3rd round - R-A Zone. Surrounded by single family homes. Lot too small to create 5 dwelling units.	0.0
59	701	9	1	203 PERSHING RD	BAER, LEWIS & LORRAINE	0.05	0.00	0.05	Excluded in 3rd round - R-A Zone. Narrow sliver lot on the municipal border- 13 feet wide. Partially contiguous with Block 701, Lot 10. Lot too small to create 5 dwelling units.	0.0
60	701	10	1	216 CHESTNUT ST	161 NORTH WOODLAND ST REAL EST LLC	0.11	0.00	0.11	Excluded in 3rd round - R-A Zone. Triangular sliver lot on the municipal border. Partially contiguous with Block 701, Lot 9. Lot too small to create 5 dwelling units.	0.0
61	703	1	1	2 MAPLE ST	2 MAPLE ST LLC	0.26	0.00	0.26	Single family home	0.0
62	703	15	15C	5 CHESTNUT ST	BOROUGH OF ENGLEWOOD CLIFFS	0.08	0.00	0.08	Excluded in 3rd round - Municipal 15C Property - Developed as Pumping Station, as identified in 2001 Borough Master Plan.	0.0
63	707	6	1	29 BOOTH AVE	245 N WOODLAND STREET LLC	0.03	0.00	0.03	Excluded in 3rd round - R-A Zone. Triangular sliver on the municipal border. Lot too small to create 5 dwelling units.	0.0
64	713	7	15C	243 LYNCREST RD	BOROUGH OF ENGLEWOOD CLIFFS	0.02	0.00	0.02	Excluded in 3rd round - Municipal 15C Property - Developed as Pumping Station, as identified in 2001 Borough Master Plan.	0.0
65	802	7.01	1	575 FLOYD ST	575 FLOYD ST LLC	0.62	0.30	0.31	Excluded in 3rd round - Recent subdivision in R-A Zone. Topographic mapping shows steep slopes in excess of 15% on the center/rear portion of the site, encumbering nearly half of the parcel. Lot too small to create 5 dwelling units.	0.0
66	802	7.02	1	577 FLOYD ST	577 FLOYD ST LLC	0.60	0.30	0.31	Excluded in 3rd round - Recent subdivision in R-A Zone. Topographic mapping shows steep slopes in excess of 15% on the center/rear portion of the site, encumbering nearly half of the parcel. Lot too small to create 5 dwelling units.	0.0

VL AND BOROUGH OWNED PROPERTIES
AS OF 2/10/2025

#	Block	Lot	Property Class	Location	Owner	Lot Size	Constrained Area	Unconstrained Area	Comments/Exclusion Discussion	Area Contributing to the RDP
67	805	6	1	645 SUMMIT ST	188 FAIRVIEW AVENUE LLC	0.44	0.00	0.44	Single family home	0.0
68	806	4	15C	FLOYD ST	BOROUGH OF ENGLEWOOD CLIFFS	0.97	0.00	0.97	15C	0.0
69	806	6	15C	FLOYD ST	BOROUGH OF ENGLEWOOD CLIFFS	2.84	0.00	2.84	15C	0.0
70	807	6	1	669 SUMMIT ST	A&I COMPANY LLC NJ	0.32	0.00	0.32	Single family home	0.0
71	904	6	1	63 N VIRGINIA CT	REN,ZHEN&MARTELLO,RALPH CARLO	0.23	0.00	0.23	Single family home	0.0
72	909	3	15C	111 HOLLYWOOD AVE	BOROUGH OF ENGLEWOOD CLIFFS	0.15	0.00	0.15	Excluded in 3rd round - Municipal 15C Property - Municipally owned passive open space. Developed as walking path to North Cliff Elementary School.	0.0
73	1001	27	1	50 ROBERTS RD	CASTLE HILL ENTERPRISES LLC	0.35	0.00	0.35	Lot too small to create 5 dwelling units.	0.0
74	1001	35	1	14 ROBERTS RD	PIERRE,BRADLEY & NONNA	0.40	0.00	0.40	Single family home	0.0
75	1001	37	15C	8 ROBERTS RD	BOROUGH OF ENGLEWOOD CLIFFS	0.10	0.00	0.10	Excluded in 3rd round - Municipal 15C Property - Developed as Pumping Station, as identified in 2001 Borough Master Plan.	0.0
76	1001	38	1	4 ROBERTS ROAD	JAIN, ANUJ & NEELIMA	0.49	0.00	0.49	Single family home	0.0
77	1002	12	1	51 ROBERTS RD	YEN, VICTOR	0.44	0.00	0.44	Excluded in 3rd round - Surrounded by single family homes. Lot too small to create 5 dwelling units.	0.0
78	1004	5	1	7 LYNN DRIVE	SINGH,CHARANJIT&HARVEEN KAUR	0.29	0.00	0.29	Excluded in 3rd round - Surrounded by single family homes. Lot too small to create 5 dwelling units.	0.0
79	1005	1	1	33 STEPHEN DRIVE	33 STEPHEN DRIVE LLC	0.34	0.00	0.34	Single family home	0.0
80	1006	4	1	27 LYNN DR	SHROFF, NIRAV & MARIYA	0.37	0.00	0.37	Single family home	0.0
81	1008	1	1	47 LYNN DR	SUNSHINE DEVELOPERS LLC	0.35	0.00	0.35	Lot too small to create 5 dwellings units.	0.0
82	1008	5	1	5 WILLOW DR	FRIDMAN, DAVID & NATALIE	0.77	0.00	0.77	Single family home	0.0
83	1009	15	1	41 LAURIE DR	PALESTRONI, LUCIA	0.31	0.00	0.31	Excluded in 3rd round - R-A Zone. Contiguous with Block 1009, Lot 16.01. Surrounded by single family homes. Even combined, lots are too small to create 5 dwelling units.	0.0
84	1009	16.01	1	45 LAURIE DR	PALESTRONI, LUCIA	0.42	0.00	0.42	Excluded in 3rd round - R-A Zone. Contiguous with Block 1009, Lot 15. Surrounded by single family homes. Even combined, lots are too small to create 5 dwelling units.	0.0
85	1009	17.01	1	28 GERALDINE CT	PALESTRONI, LUCIA	0.48	0.00	0.48	Single family home	0.0
86	1009	29	1	78 JOHNSON AVE	UNITED WATER CO	2.29	0.00	2.29	Excluded in 3rd round - Developed with municipal water storage tank.	0.0
87	1103	18	1	16 JEAN DRIVE	MONIQUE RLTY INC CO L&R SERVICES	0.28	0.00	0.28	Excluded in 3rd round - Surrounded by single family homes. Lot too small to create 5 dwelling units.	0.0
88	1104	4	1	11 JEAN DR	KIM,CHONG SEUNG	0.28	0.00	0.28	Excluded in 3rd round - Surrounded by single family homes. Lot too small to create 5 dwelling units.	0.0
89	1107	7	1	26 JANE DR	JHALANI,AMIT & VIJAY	0.69	0.00	0.69	Single family home construction	0.0
90	1107	14	15C	52 JANE DR	BOROUGH OF ENGLEWOOD CLIFFS	0.14	0.00	0.14	Excluded in 3rd round - Municipal 15C Property - Municipally owned passive open space. Developed as a walking path to St. Thomas Armenian Church.	0.0
91	1201	7	15C	JOHNSON AVE	BOROUGH OF ENGLEWOOD CLIFFS	5.98	0.00	5.98	Excluded in 3rd round - Municipal 15C Property - The parcel is listed on the master plan as dedicated for purposes of open space, which is owned and operated in any manner by a municipality. Developed as "Fred Witte Memorial Field/Johnson Field", active recreate site. Part of 3% of municipal owned active recreate space. Accordingly, pursuant to the same statute, the Borough shall not "be required to utilize" this land "for affordable housing purposes.	0.0
92	1302	1	15C	HUDSON TERR	BOROUGH OF ENGLEWOOD CLIFFS	0.06	0.00	0.06	Excluded in 3rd round - Municipal 15C Property - Municipally owned unimproved and undeveloped sliver of land along Alison Park Road near St. Michael's Novitate and Villa. Municipally owned passive open space to protect environmentally sensitive nature of the site. Additionally topographic mapping (USGS) shows steep slopes in excess of 15% on nearly the entire site.	0.0

ENGLEWOOD CLIFFS

VL AND BOROUGH OWNED PROPERTIES
AS OF 2/10/2025

#	Block	Lot	Property Class	Location	Owner	Lot Size	Constrained Area	Unconstrained Area	Comments/Exclusion Discussion	Area Contributing to the RDP
93	1302	3	15C	HUDSON TERR	BORO OF ENGLEWOOD CLIFFS	0.05	0.00	0.05	Excluded in 3rd round- Municipal 15C Property - Lot too small to create 5 dwelling units.	0.0
						37.26				
		* Part of 3rd Round RDP								

APPENDIX M



Submitted 6/18/2024

Borough of Englewood Cliffs, Bergen County
Trust Fund Balance from Inception (2006¹) to December 31, 2023

REVENUE SUMMARY	
Barrier Free Escrow	\$ 0.00
Development Fees - Residential	\$ 3,755,520.41
Development Fees - Nonresidential	\$ 2,395,785.55
Interest Earned	\$ 118,010.78
Other Income ²	\$ 171,525.24
Payments-in-Lieu of Construction	\$ 0.00
TOTAL	\$ 6,440,841.98
EXPENDITURE SUMMARY	
Administration	\$ 764,681.85
Affordability Assistance	\$ 0.00
Barrier Free Conversions	\$ 0.00
Housing Activity	\$ 2,016,383.01
Other Expenditures ³	\$ 215,525.86
TOTAL	\$ 2,996,590.72
TRUST FUND ACCOUNT BALANCE AS OF DECEMBER 31, 2023 \$ 3,444,251.26	

¹ Date COAH Approved Development Fee Ordinance: 10/18/2006; Date Borough Adopted Development Fee Ordinance: 12/20/2006.

² "Other Income" is inclusive of correcting account balances for housing activity and administrative expenditures.

³ "Other Expenditures" are inclusive of refunds for overpayment of development fees.

APPENDIX N

Borough of Englewood Cliffs, Bergen County – Project/Unit Monitoring – September 16, 2024										
Site / Program Name	Hudson Terrace/Michaels Development					800 Sylvan Avenue				
Project Type	100% Affordable Housing Development					Townhouse & Multi-Family Building				
Block & Lot / Street	Block: 513, Lots: 5 and 7 and Block: 514, Lots: 4 and 5					Block: 910 Lot:1				
Status	Under Construction					Under Construction				
Date	Ongoing					Settlement Agreement signed 10/8/20- Latest Amended Site Plan 4/26/24				
Length of Affordability Controls	Deed restricted min. 45 years					Deed restricted min. 30 years				
Administrative Agent						Triad Associates, 1301 West Forest Grove Road, Building #3 Vineland, NJ 08360, (856).690.9590 https://triadincorporated.com/ - resolution adopted 12/15/20				
Type of Units	100% Affordable - See Notes					Affordable Rental				
Total Affordable Units	65					90 - See Notes				
Units Notes	Per Developer's Agreement executed 3/15/2021, "in no event shall it deviate from the required unit mix of the Borough's Request For Proposals and the Settlement Agreement."					1BR: 18 Units, 2BR: 54 Units , 3BR: 18 Units Settlement Agreement 10/4/20 confirms: - 12 affordable units will be family very-low income units and the rest determined by Uniform Housing Affordability Controls (UHAC). - "Second round" regulations phasing formula: "The market rate units are to be 1- and 2-bedroom units. A total of 13% of the affordable units shall be affordable to families that are very low income, and 50% of the affordable units will be affordable to low income families, while 50% of the affordable units will be affordable to moderate income families."				
	# BR	# Units	% AMI	Tenant Pop.						
	1	1	20%	Special Needs						
	2	2	20%	Special Needs						
	3	2	20%	Special Needs						
	1	3	30%	Family						
	2	3	30%	Family						
	3	2	30%	Family						
	1	3	50%	Family						
	2	12	50%	Family						
	3	5	50%	Family						
	1	6	60%	Family						
	2	18	60%	Family						
	3	8	60%	Family						
	Total	65								
Income/Bedroom Distribution	Eff. Std.	BR 1	BR 2	BR 3	BR 4	Eff. Std.	BR 1	BR 2	BR 3	BR 4
Very-Low-Income	-	4	5	4	-	Per the Special Adjudicator, the income and bedroom distribution shall be determined by the Borough's Administrative Agent.				
Low-Income	-	3	12	5	-					
Moderate-Income	-	6	18	8	-					



6/18/2024 - Submitted by email to DCA Commissioner Jacquelyn A. Suarez (lpsmail@dca.nj.gov).
 9/16/2024 - Revised Submission emailed to DCA Commissioner Jacquelyn A. Suarez (lpsmail@dca.nj.gov) and DCA Acting Director of Local Planning Services Keith Henderson (keith.henderson@dca.nj.gov).

REVENUE SUMMARY	
Barrier Free Escrow	\$ 0.00
Development Fees - Residential	\$ 3,755,520.41
Development Fees - Nonresidential	\$ 2,395,785.55
Interest Earned	\$ 118,010.78
Other Income ²	\$ 171,525.24
Payments-in-Lieu of Construction	\$ 0.00
TOTAL	\$ 6,440,841.98
EXPENDITURE SUMMARY	
Administration	\$ 764,681.85
Affordability Assistance	\$ 0.00
Barrier Free Conversions	\$ 0.00
Housing Activity	\$ 2,016,383.01
Other Expenditures ³	\$ 215,525.86
TOTAL	\$ 2,996,590.72
AFFORDABLE HOUSING TRUST FUND ACCOUNT BALANCE AS OF DECEMBER 31, 2023 \$ 3,444,251.26	

¹ Date COAH Approved Development Fee Ordinance: 10/18/2006; Date Borough Adopted Development Fee Ordinance: 12/20/2006.

² "Other Income" is inclusive of correcting account balances for housing activity and administrative expenditures.

³ "Other Expenditures" are inclusive of refunds for overpayment of development fees.

APPENDIX O

Plan Summary

Municipality: BERGEN - ENGLEWOOD CLIFFS BORO (0216)
Plan Version: 4.0 PENDING - MONITORING

CATERINA SCANCARELLA

HOME

Reports

- Plan Summary
- Project
- Contact
- Trust Fund
- Spending Plan
- Documents

Plan Counts

PLAN HEADER

County
BERGEN

Municipality
ENGLEWOOD CLIFFS BORO

PLAN DETAIL

Round #
4.0

Current
YES

Monitored
YES

Docket #

Status
PENDING

Status Date

Status Posted Date

Status Posted By

Initial Filing Date
12/18/2024 17:05

Certification Date

Withdraw Date

Inactive Date

Flags

Waiver Text

PLAN SUBMISSION HISTORY

CONFIRMATION HISTORY

Accurate and Complete Date	Type	Confirmed By	Confirmed Date	Note	Reopen Reason
02/10/2025 15:29	PROJECT	SCANCARELLA, CATERINA	02/10/2025 15:29	UPDATED INFORMATION ON FEBRUARY 10, 2024.	
01/27/2025 12:44	TRUST FUND	SCANCARELLA, CATERINA	01/27/2025 12:44	AS NOTED ON THE ATTACHED BANK STATEMENT THE \$3,000.00 DIFFERENCE WAS AN INCORRECT DEPOSIT INTO THE ACCOUNT AND WAS WITHDRAWN ...	

Tips: Click Update button to update record or click Underline field to update the record detail. Click Plan Counts button to view Plan Count Summary.

Technology Group. All rights reserved.

APPENDIX P [RESERVED]

APPENDIX Q

BOROUGH OF ENGLEWOOD CLIFFS, BERGEN COUNTY

ORDINANCE No. 20-20

AN ORDINANCE TO ENACT SECTION 30-19B AND REPEAL SECTION 30-18 (AFFORDABLE HOUSING REGULATIONS) IN CHAPTER 30 (ZONING) OF THE ORDINANCES OF THE BOROUGH OF ENGLEWOOD CLIFFS.

WHEREAS, in accordance with In the Matter of the Adoption of N.J.A.C. 5:96 & 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”), the Borough of Englewood Cliffs filed an action for declaratory judgment requesting that the Court declare that Englewood Cliffs has complied with its constitutional obligation to provide a realistic opportunity for the development of housing that is affordable to low- and moderate-income families and individuals; and

WHEREAS, in order to carry out such Constitutional obligation, the Revised Ordinances of the Borough of Englewood Cliffs are to be amended to include provisions addressing Englewood Cliffs’s constitutional obligation to provide affordable housing in accordance with the New Jersey Fair Housing Act of 1985 and all applicable laws; and

WHEREAS, this Ordinance is intended to provide assurances that low- and moderate-income units (“affordable units”) are created with controls on affordability over time and that low- and moderate-income households shall occupy those units; and

WHEREAS, this Ordinance shall apply except where inconsistent with applicable law; and

WHEREAS, a draft Housing Element and Fair Share Plan has been prepared on behalf of the Borough; and

WHEREAS, this Ordinance implements and incorporates the aforementioned draft Housing Element and Fair Share Plan and addresses the requirements of the New Jersey Fair Housing Act of 1985, as amended, N.J.A.C. 5:93-1, et seq., as amended and supplemented, and N.J.A.C. 5:80-26.1, et seq. as amended and supplemented;

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Englewood Cliffs as follows:

SECTION 1. Chapter 30, Zoning, Section 19-B, Affordable Housing Regulations, is hereby enacted as follows:

Section 1. Purpose

- (a) This Ordinance is intended to assure that low- and moderate-income units (“affordable units”) are created with controls on affordability and that low- and moderate-income households shall occupy these units. This Ordinance is also intended to ensure that any site that benefits from a rezoning, variance, or redevelopment or rehabilitation plan approved by the Borough that results in any multi-family or single-family attached residential development, including the residential portion of a mixed-use project, in any zone within Englewood Cliffs, and proposed at a density of five (5) units per acre or greater produces

affordable housing at a set-aside rate of 20% regardless of whether the affordable units are for sale or for rent. This Ordinance shall apply except where inconsistent with applicable law. This requirement does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of the Borough of Englewood Cliffs to grant such rezoning, variance or other relief.

- (b) A Housing Element and Fair Share Plan has been prepared by the Borough's representatives which describes how Englewood Cliffs Borough shall address its affordable housing obligations.
- (c) On the first anniversary of the execution of the Settlement Agreement dated October 8, 2020, between the Borough of Englewood Cliffs and Fair Share Housing Center, and on every anniversary thereafter through the end of said Settlement Agreement, the Borough shall work with the Special Master so that the Special Master may provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website, with a copy or such posting provided to Fair Share Housing Center, using monitoring forms provided by FSHC.

Section 2. Definitions

The following terms when used in this Ordinance shall have the meanings given in this Section:

"Accessory apartment" means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

"Act" means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.) as has been subsequently amended.

"Adaptable" means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

"Administrative agent" means the entity responsible for the administration of affordable units in accordance with this ordinance, applicable COAH regulations and the Uniform Housing Affordability Controls (UHAC)(N.J.A.C. 5:80-26.1 et seq.)

"Affirmative marketing" means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

"Affordability average" means the average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

"Affordable" means, a sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:93-7.4, and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and

supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

“Affordable development” means a housing development all or a portion of which consists of restricted units.

“Affordable housing development” means a development included in the Borough’s Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

“Affordable housing program(s)” means any mechanism in the Borough’s Fair Share Plan prepared or implemented to address the Borough’s fair share obligation.

“Affordable unit” means a housing unit proposed or created pursuant to the Act, credited pursuant to applicable regulations, the FSHC Settlement Agreement, or an order of the Court.

“Agency” means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

“Age-restricted unit” means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80 percent of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

“Assisted living residence” means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

“Certified household” means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

“COAH” means the New Jersey Council on Affordable Housing.

“The Department” means the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

“DCA” means the State of New Jersey Department of Community Affairs.

“Deficient housing unit” means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

“Developer” means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed

development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

“Inclusionary development” means a development containing both affordable units and market rate units. Inclusionary developments must have a twenty (20) percent set aside of affordable units whether it is a rental or for-sale development. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

“Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the median household income.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Major system” means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

“Market-rate units” means housing not restricted to low- and moderate-income households that may sell or rent at any price.

“Median income” means the median income by household size for the applicable county, as adopted annually by the Court, COAH, or a successor entity.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

“Non-exempt sale” means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor’s deed to a class A beneficiary and the transfer of ownership by court order.

“Random selection process” means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

“Regional asset limit” means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by adopted

Regional Income Limits per the Borough’s annually updated income limits pursuant to the process established in the Borough’s Settlement Agreement with FSHC or published annually by AHPNJ, COAH or a successor entity.

“Rehabilitation” means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

“Rent” means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

“Restricted unit” means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

“UHAC” means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

“Very low-income household” means a household with a total gross annual household income equal to 30 percent or less of the median household income.

“Very low-income unit” means a restricted unit that is affordable to a very low-income household.

“Weatherization” means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

Section 3. Affordable Housing Programs

The Borough of Englewood Cliffs will use the following mechanisms to satisfy its affordable housing obligations:

(a) Phasing. Inclusionary developments shall be subject to the following schedule:

Minimum Percentage of Low- and Moderate-Income Units Completed	Maximum Percentage of Market-Rate Units Completed
0%	25%
10%	25% + 1 Unit
50%	50%
75%	75%
100%	90%

A unit is deemed completed when a permanent, as compared to a temporary, CO is issued for the unit.

(b) Fractional Units. If 20 percent of the total number of units in a development (or the set-aside, as applicable) results in a fraction or decimal, the developer shall be required to provide an additional affordable unit on site.

Example: an 8-unit development requiring an affordable housing set-aside of 1.6 units is proposed. The developer is required to provide two on-site affordable units.

- (c) Integration of Affordable Units. In inclusionary developments low- and moderate-income units shall be integrated with the market rate units to the greatest extent feasible.
- (d) Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.
- (e) The facade of an affordable housing dwelling shall be indistinguishable from those of market units in terms of the use of exterior materials, windows, doors, reveal, roof pitch, color, or other material. Affordable housing units shall have access to open space and site amenities comparable to that of market rate units.
- (f) For inclusionary developments with a single housing type, the affordable housing units shall have the same tenure as the market housing units.
- (g) Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by the New Jersey Department of Community Affairs for its Section 8 program. Affordable units shall utilize the same type of heating source as market units within the affordable development.

Section 4. New Construction

The following general guidelines apply to all newly constructed developments that contain low-and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

- a. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:
 - 1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units the extra unit shall be a low- income unit.
 - 2. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units. If there is only one affordable unit it must be a low income unit.
 - 3. At least thirteen percent (13%) of all affordable units in the Borough, within each bedroom distribution, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval as of July 1, 2008, shall be designated as very-low income units at 30% of the median income, with at least fifty percent (50%) of all very-low income units being available to families. Very-low income units shall be considered low-income units for the purposes of evaluating compliance with the required low/moderate income unit splits, bedroom distribution, and phasing requirements of this ordinance.

4. Affordable developments that are not age-restricted shall be structured such that:
 - i. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
 - ii. At least 30 percent of all low- and moderate-income units are two bedroom units;
 - iii. At least 20 percent of all low- and moderate-income units shall be three bedroom units; and
 - iv. The remaining units, if any, may be allocated among two and three bedroom units at the discretion of the developer.

5. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

b. Accessibility Requirements:

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.
2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - i. An adaptable toilet and bathing facility on the first floor;
 - ii. An adaptable kitchen on the first floor;
 - iii. An interior accessible route of travel on the first floor;
 - iv. An interior accessible route of travel shall not be required between stories within an individual unit;
 - v. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
 - vi. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the Borough of Englewood Cliffs has collected funds from the developer sufficient to make ten percent (10%) of the adaptable entrances in the development accessible:
 - a. Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - b. To this end, the builder of restricted units shall deposit funds within the Borough's Affordable Housing Trust Fund sufficient to install

accessible entrances in ten percent (10%) of the affordable units that have been constructed with adaptable entrances.

- c. The funds deposited under paragraph b. above shall be used by the Borough of Englewood Cliffs for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
- d. The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Borough.
- e. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's Affordable Housing Trust Fund and appropriately earmarked.
- f. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

c. Maximum Rents and Sales Prices

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC utilizing the regional income limits established pursuant to the calculation procedures as approved by the Court and detailed below:
 - i. Regional income limits shall be established for the Housing Region in which the Borough is located (Housing Region 1) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated number of households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total number of households from the most recent decennial Census in the Borough's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be eighty percent (80%) of the regional weighted average median income for a family of four. The income limit for a low income unit for a household of four shall be fifty percent (50%) of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be thirty percent (30%) of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

- ii. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph ii. above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
- 2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income.
- 3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.
 - a. At least thirteen percent (13%) of all low- and moderate-income dwelling units shall be affordable to households earning no more than 30 percent of median income, leaving 37 percent to be made affordable to low income households and 50 percent to be made affordable to moderate income households.
- 4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
- 5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
 - a. A studio shall be affordable to a one-person household;
 - b. A one-bedroom unit shall be affordable to a one and one-half person household;
 - c. A two-bedroom unit shall be affordable to a three-person household;
 - d. A three-bedroom unit shall be affordable to a four and one-half person household; and
 - e. A four-bedroom unit shall be affordable to a six-person household.
- 6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:

- a. A studio shall be affordable to a one-person household;
 - b. A one-bedroom unit shall be affordable to a one and one-half person household; and
 - c. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
9. The price of owner-occupied very low, low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
10. The rent of very-low, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.
11. Utilities. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

Section 5. Affirmative Marketing Requirements

- (a) The Borough of Englewood Cliffs (or Court) shall adopt an Affirmative Marketing Plan, subject to approval of the Court, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented. The Affirmative Marketing Plan shall include the following community and regional organizations, which must be notified when affordable units are available: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino

Action Network, East Orange NAACP, Newark NAACP, Bergen County NAACP, and Elizabeth NAACP.

- (b) In accordance with the requirements of N.J.S.A. 52:27D-321.3 et seq., L.2020, c.5, all available affordable units must be listed on the New Jersey Housing Resource Center website, njhrc.gov.
- (c) The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward Housing Region 1 and is required to be followed throughout the period of deed restriction.
- (d) The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 1, comprised of Bergen, Hudson, Passaic and Sussex Counties.
- (e) The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the Borough of Englewood Cliffs shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
- (f) In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (g) The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.
- (h) The affirmative marketing process for available affordable units shall begin at least four (4) months prior to the expected date of occupancy.
- (i) Applications for affordable housing shall be available in several locations, including, at a minimum, the Bergen County Administration Building, Hudson County Administration Building, Essex County Administration Building, Sussex County Administration Building, Bergen County Library Headquarters, Hudson County Library Headquarters, Essex County Library Headquarters, Sussex County Library Headquarters; and the developer's rental office. Applications shall be mailed to prospective applicants upon request
- (j) In addition to other affirmative marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units in Englewood Cliffs to the following entities: Fair Share Housing Center, the New Jersey State Conference of the

NAACP, the Latino Action Network, NORWESCAP, Supportive Housing Association, and the Central Jersey Housing Resource Center.

- (k) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Borough.

Section 6. Occupancy Standards

- (a) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
 - 1. Provide an occupant for each bedroom;
 - 2. Provide separate bedrooms for adults and children;
 - 3. Provide children of different sex with separate bedrooms; and
 - 4. Prevent more than two persons from occupying a single bedroom.
- (b) Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

Section 7. Control Periods for Restricted Ownership Units and Enforcement Mechanisms

- (a) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance until the Borough of Englewood Cliffs elects to release the unit from such requirements however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- (d) At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (e) The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.

- (f) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

Section 8. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

- (a) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- (b) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- (c) The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
- (d) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

Section 9. Buyer Income Eligibility

- (a) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income. Very low income units shall be reserved for households with a gross household income of less than 30 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a very low-income household, a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's certified monthly income.
- (c) Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Borough Council, and subject to the Court's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts

to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.

- (d) A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one (1) year.

Section 10. Limitations on indebtedness secured by ownership unit; subordination:

- (a) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the Administrative Agent shall determine in writing that the proposed indebtedness complies with the provisions of this section and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
- (b) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C.5:80-26.6(b).

Section 11. Capital Improvements

- (a) The owner of a restricted ownership unit may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
- (b) Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price of the air conditioning equipment, which shall be subject to ten (10-) year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

Section 12. Control Periods for Restricted Rental Units

- (a) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance until the Borough of Englewood Cliffs elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, et seq., as may be amended and supplemented, and prior to such an election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, et seq. as may be amended and supplemented, for at least 30 years.
- (b) Restricted rental units created as part of developments receiving 9% Low-Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period.
- (c) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Bergen. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- (d) A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
 - 1. Sublease or assignment of the lease of the unit;
 - 2. Sale or other voluntary transfer of the ownership of the unit; or
 - 3. The entry and enforcement of any judgment of foreclosure.

Section 13. Price Restrictions for Rental Units; Leases

- (a) A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- (b) No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- (c) Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.
- (d) No rent control or other pricing restriction shall be applicable to either the market-rate units or the affordable units in any development in which at least 20% of the total number of dwelling units are restricted rental units in compliance with this Article.

Section 14. Tenant Income Eligibility

- (a) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.
 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.
 3. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 3. The household is currently in substandard or overcrowded living conditions;
 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 5. The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- (c) The applicant shall file documentation sufficient to establish the existence of the circumstances in (b) 1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

Section 15. Administration

- (a) The position of Municipal Housing Liaison (MHL) for the Borough of Englewood Cliffs is established by this ordinance. The Borough shall make the actual appointment of the MHL by means of a resolution and to be approved by the Court
1. The MHL must be either a full-time or part-time employee of Englewood Cliffs.
 2. The person appointed as the MHL must be reported to the Court and thereafter posted on the Borough's website.
 3. The MHL must meet all the requirements for qualifications, including initial and periodic training, if such training is made available by COAH or the DCA.
 4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Englewood Cliffs, including the following responsibilities which may not be contracted out to the Administrative Agent:

- i. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
 - ii. The implementation of the Affirmative Marketing Plan and affordability controls.
 - iii. When applicable, supervising any contracting Administrative Agent.
 - iv. Monitoring the status of all restricted units in the Borough's Fair Share Plan;
 - v. Compiling, verifying and submitting annual reports as required;
 - vi. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
 - vii. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by the Affordable Housing Professionals of New Jersey (AHPNJ), if such continuing education opportunities are made available by COAH or the DCA.
- (b) The Borough of Englewood Cliffs shall designate by resolution of the Borough Council, subject to the approval of the Court, one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:93 and UHAC.
- (c) The Borough Administrative Agent shall monitor the designated Administrative Agent of the developer in the initial sales and rental transactions for very-low, low- and moderate-income dwellings in accordance with N.J.A.C. 5:80-26.14, as it may be amended or superseded. The developer's administrative agent shall have all of responsibilities as put forth in this rule. After the initial sales and rental transactions, the Borough Administrative Agent shall monitor the activities of the developer's or owner's Administrative Agent for any re-sales or re-rentals. If the person is the Borough's Administrative Agent, then he or she shall assume all of the duties and responsibilities set forth in N.J.A.C. 5:80-26.14 following the initial renting, sales and occupancy of low- and moderate-income dwellings. The affordability controls set forth in this Ordinance shall be administered and enforced by the Administrative Agent regardless of association. The primary responsibility of the Administrative Agent shall be to ensure that the restricted units are sold or rented, as applicable, only to very-low, low- and moderate-income households in accordance with the Fair Housing Act.
- (d) The Administrative Agent, whether the Borough's representative, developer's agent, or a delegated agent, shall have the responsibility to income qualify low and moderate-income households, to place income eligible households in low- and moderate-income units upon initial occupancy, to provide for the initial occupancy of low- and moderate-income units with income qualified households, to continue to qualify households for re-occupancy of units as they become vacant during the period of affordability controls, to assist with advertising and outreach to low- and moderate-income households, and to enforce the terms of the deed restriction and mortgage loan. All Administrative Agents shall provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements and landlord/tenant law.
- (c) Nothing herein shall preclude the Developer of the Municipally Sponsored Project or of any inclusionary project to ask the Borough to assent to the developer retaining its own administrative agent at its own expense and nothing shall prevent the Borough from granting its assent provided that the developer's Administrative Agent is a qualified and experienced

Administrative Agent approved in advance by the Borough and the Court, and reports periodically to the Borough's Municipal Housing Liaison as that Liaison may require.

- (d) The Municipal Housing Liaison shall supervise the work of the Administrative Agent(s) and shall coordinate his or her activities with the Borough Administrative Agent to ensure the accurate tracking of the progress of the occupancy of affordable housing in the municipality, answer inquiries regarding affordable housing from the public or direct same to the appropriate official or agency, and assist in the compliance with the affordable housing monitoring and reporting requirements of the Court and the Settlement Agreement.
- (g) In order to ensure an orderly transfer of control responsibility from one Administrative Agent to another Administrative Agent, or other transfer, the requirements as set forth in N.J.A.C. 5:80-26.17 shall apply as are necessary before or during the transition. The Administrative Agent's enforcement responsibility for implementing such practices and procedures shall not be delegated or otherwise transferred to any other party, except to a successor administrative agent.

The Borough Administrative Agent shall keep records of the affirmative marketing activities undertaken in accordance with the affirmative marketing plan established by any developer's Administrative Agent. The records shall include, but not be limited to, the following:

1. Electronic reporting of affordable housing activity; any required paper forms;
 2. Copies of any press releases, brochures, flyers, print advertisements and application forms used in the affirmative marketing program.
 3. The income and demographic characteristics of each household applying for and occupying income-restricted housing.
 4. An evaluation of any necessary adjustments required to the affirmative marketing program as communicated by the Administrative Agent.
- (h) An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
 - (i) The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, and shall have authority to take all actions necessary and appropriate to carry out its responsibilities, which includes:
 1. Records retention.
 2. Resales and re-rentals.
 - i. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental;
 - ii. Instituting and maintaining an effective means of communicating information to very low-, low-, or moderate-income households regarding the availability of restricted units for resale or re-rental.
 3. Processing requests from unit owners

- i. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to refinance or take out home equity loans during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Ordinance;
 - ii. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;
 - iii. Notifying the Borough of an owner's intent to sell a restricted unit; and
 - iv. Making determinations on requests by owners of restricted units for hardship waivers.
4. Enforcement
- i. Securing annually from the municipality a list of all affordable ownership units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
 - ii. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
 - iii. Posting annually in all rental properties, including two-family homes, a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;
 - iv. Sending annual mailings to all owners of affordable dwelling units reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
 - v. Establishing a program for diverting unlawful rent payments to the Borough's Affordable Housing Trust Fund; and
 - vi. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Court, setting forth procedures for administering the affordability controls.
 - vii. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Affordable Housing Professionals of New Jersey (AHPNJ).;

Section 16. Enforcement of Affordable Housing Regulations

- (a) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- (b) After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer

or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - i. A fine of not more than \$10,000.00 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - ii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Englewood Cliffs Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - iii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.

2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
 - i. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
 - ii. The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such

balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

- iii. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- iv. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- v. Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- vi. The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

Section 17. Annual And Periodic Monitoring of The Implementation of The Borough's Affordable Housing Plan

- (a) On the first anniversary of the execution of this Agreement, and every anniversary thereafter through the end of this Agreement, the Borough agrees to work with the Special Master so that the Special Master may provide annual reporting of the status of all affordable housing activity within the municipality through the posting on the municipal website, with a copy of such posting provided to Fair Share Housing Center, using monitoring forms provided by FSHC.
- (b) On the first anniversary of the Court's approval of the Spending Plan, and on every anniversary of that date thereafter through July 1, 2025, the Borough agrees to work with the Special Master so that the Special Master may provide annual reporting of trust fund activity to Fair Share Housing Center and for posting by the Borough on the municipal

website, using monitoring forms provided by FSHC. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

(c) The Fair Housing Act includes two provisions regarding action to be taken by the Borough during its ten-year repose period. The Borough agrees to comply with those provisions as follows:

1. For the midpoint realistic opportunity review required pursuant to N.J.S.A. 52:27D-313, which has passed without the Borough preparing a report, the Borough shall work with the court-appointed Special Master so that the Special Master may prepare a midpoint report as part of the second annual reporting required in paragraph (a), above. The Borough shall post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of the Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced, and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.
2. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of the Settlement Agreement dated October 8, 2020, between the Borough of Englewood Cliffs and Fair Share Housing Center, and every third year thereafter, the Borough shall work with the Special Master so that the Special Master may provide to the Borough to post on its municipal website, with a copy provided to Fair Share Housing Center, a status monitoring report as to its satisfaction of its very low income requirements, including the family very low income requirements referred to in the Settlement Agreement. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of the Settlement Agreement.
3. In addition to the foregoing postings, the Borough may also elect to file copies of its reports with COAH or its successor agency at the State level.

Section 18. Appeals

Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed with the Superior Court of New Jersey, Bergen County.

Section 19. Repealer

The remainder of all other sections and subsections of the aforementioned ordinance not specifically amended by this Ordinance shall remain in full force and effect.

Section 20. Inconsistent Ordinances

All other Ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed as to such inconsistency.

Section 21. Severability

If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

Section 22. Effective Date

This ordinance shall take effect at such time as the Court enters a final Judgment of Compliance and Repose ("JOR") approving the Housing Element and Fair Share Plan the Borough placed on file on November 13, 2020, which final JOR may have conditions the Court deems necessary to implement the settlement agreement dated October 08, 2020 between the Borough of Englewood Cliffs and Fair Share Housing Center , following a duly-noticed fairness and compliance hearing.

APPENDIX R

AN ORDINANCE TO AMEND CHAPTER 30 (ZONING) IN PART 19A (MANDATORY INCLUSION OF AND SET-ASIDE FOR AFFORDABLE HOUSING) OF THE CODE OF THE BOROUGH OF ENGLEWOOD CLIFFS

WHEREAS, the Borough of Englewood Cliffs is to submit a Fourth Round Housing Plan with the amended affordable housing bill per bill A4/S50 establishing new guidelines for determining and regulating the affordable housing obligations of New Jersey municipalities for the fourth 10-year round as mandated by the Mount Laurel Doctrine and New Jersey Fair Housing Act.

WHEREAS, in support of the Borough's Fourth Round affordable housing plan, necessary ordinances are to be prepared to guide the development of affordable housing within the Borough and to be in compliance the state's amended affordable housing bill per bill A4/S50, and all applicable and current Uniform Housing Affordability Housing Controls (UHAC).

WHEREAS, certain further amendments to the Affordable Housing Ordinance are required to be in compliance with the amended affordable housing bill per bill A4/S50 establishing new guidelines for determining and regulating the affordable housing obligations of New Jersey municipalities for the fourth 10-year round as mandated by the Mount Laurel Doctrine and New Jersey Fair Housing Act; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Englewood Cliffs as follows:

PART 19A MANDATORY INCLUSION OF AND SET-ASIDE FOR AFFORDABLE HOUSING

§ 30-19A.1 Set-Aside Percentages.

If the Borough and/or the Planning Board permits the construction of multi-family or single-family attached residential development, the developer shall be required to set aside an appropriate percentage of the residential units for low and moderate income households. The appropriate percentages are as follows:

- a. For projects in which the low and moderate units are to be offered for sale, the set-aside percentage shall be no less than 20%.
- b. For projects in which the low and moderate income units are to be offered for rent, the set-aside percentage shall be no less than 20%.
- c. As set forth in Section 30-18 of the Borough Code and as amended by State laws and regulations, all affordable housing units shall comply with the Uniform Housing Affordability Controls and all applicable affordable housing laws and regulations, including but not limited to, requirements regarding bedroom distribution and income distribution.

§ 30-19A.2 Applicability and Non-Applicability.

- a. **The** provisions for a required percentage of units to be set aside for low and/or moderate income households shall not apply to developments containing four or less dwelling units.

- b. The set aside percentage requirements shall apply to any multi-family or single-family attached residential development, including the residential portion of a mixed-use project, that consists of five or more new residential units, whether permitted by zoning, a zoning amendment, a variance granted by the Borough's Planning Board or Zoning Board, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation.
- c. For any such development for which the Borough's land use ordinances (for example, a zoning ordinance or an adopted Redevelopment Plan) already permitted residential development as of the effective date of this Chapter, the set-aside percentage requirements shall apply if the Borough permits an increase in approvable and developable gross residential density.
- d. Nothing in this paragraph precludes the Borough and/or its Planning Board or Zoning Board from imposing an affordable housing set-aside percentage in a development not required to have a set-aside, consistent with N.J.S.A. 52:27D-311(h) and other applicable law.
- e. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.
- f. Where a project proposes demolition of existing dwelling units and construction of new dwelling units on the same site, or a project proposes to expand an existing building with residential units, the provisions of this section shall apply only if the net number of newly created dwelling units is five or more.
- g. All subdivision and site plan approvals of qualifying residential developments shall be conditioned upon compliance with the provisions of this section.

§ 30-19A.3 Set-Aside Rates for Certain Developments Resulting in Five Dwelling Units or More.

[Pursuant to a settlement agreement entered into between the Borough and the Fair Share Housing Center dated October 8, 2020 and conditioned upon approval from the Superior Court of the State of New Jersey. Borough document labeled Ord. No. 20-19.]

- a. Purpose. This section is intended to ensure that any site that benefits from a rezoning, variance or redevelopment plan approved by the Borough or a Borough Land Use Board that results in multi-family residential development of five (5) dwelling units or more produces affordable housing at a set-aside rate of 20% for both for-sale affordable units and rental affordable units. This section shall apply except where inconsistent with applicable law. This requirement does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of the Borough of Englewood Cliffs to grant such rezoning, variance or other relief. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement.
- b. Mandatory Set-Aside Ordinance. If the Borough or a Borough Land Use Board permits the construction of multi-family or single-family attached residential development, the Borough or the Borough's Land Use Board shall require that an appropriate percentage of the residential units be set aside for low- and moderate-income households. This requirement shall apply beginning with the effective date of this section to any multi-family or single-family attached residential development, including the residential portion of a mixed-use project, which consists of five (5) or more new residential units, whether permitted by a zoning amendment, a variance granted by the Borough's Land Use Board, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation. For any such development for which the Borough's land

use ordinances (e.g. zoning or an adopted Redevelopment Plan) already permitted residential development as of the effective date of this section, this requirement shall only apply if the Borough permits an increase in gross residential density. Nothing in this paragraph precludes the Borough or the Borough's Land Use Board from imposing an affordable housing set-aside in a development not required to have a set-aside pursuant to this paragraph consistent with N.J.S.A. 52:27D-311(h) and other applicable law. For inclusionary projects in which the low and moderate units are to be offered for for-sale or rental, the appropriate set-aside percentage is 20%. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project. This requirement does not apply to any sites or specific zones otherwise identified in the Borough's Settlement Agreement with FSHC dated October 8, 2020, or in the Borough's Housing Element and Fair Share Plan, both of which as may be approved by the Superior Court for which density and set-aside standards shall be governed by the specific standards set forth therein.

Furthermore, this section shall not apply to developments containing four (4) or less dwelling units. All subdivision and site plan approvals of qualifying residential developments shall be conditioned upon compliance with the provisions of this section. Where a developer demolishes existing dwelling units, and builds new dwelling units on the same site, or expands an existing building, the provisions of this section shall apply only if the net number of dwelling units is five (5) or more.

- c. Palisades Scenic Integrity Protection.
 1. As recognized in the Settlement Agreement between the Borough of Englewood Cliffs and Fair Share Housing Center dated October 8, 2020 (Docket No. BER-L-6119-15), paragraph 14.g., the preservation of the viewshed of the Palisades is a critically important aesthetic and scenic consideration. The Palisades Scenic Integrity Protection standards require the applicant to demonstrate that the proposed development would not adversely affect the scenic integrity of the Palisades Interstate Park and its surroundings and be visible above the tree canopy from vantage points east and south of the Palisades, specifically the George Washington Bridge center and the Cloisters Terrace and high point of Fort Tryon Park, Manhattan.
 2. The developer shall provide studies, reports and testimony demonstrating that any proposed development meets the height limitations for this zone and complies with the standards of this section.
 3. Notwithstanding any other requirement of the Borough Code, no application shall be deemed complete unless the developer has provided a copy of the application and plans to the Executive Director of the Palisades Interstate Park Commission.
 4. Additionally, applicant will demonstrate that the proposed development will avoid adversely affecting the scenic integrity of the Palisades Interstate Parkway.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistencies.

SECTION 3. If any portion of this ordinance shall be determined to be invalid, such determination shall not affect the validity of the remaining portions of said ordinance.

SECTION 4. This ordinance shall take effect upon final passage and publication in accordance with law and upon filing with the Union County Planning Board.

DRAFT

APPENDIX S

RESOLUTION OF THE BOROUGH OF ENGLEWOOD CLIFFS, COUNTY OF BERGEN, STATE OF NEW JERSEY ADOPTING AN AFFIRMATIVE MARKETING PLAN FOR THE BOROUGH OF ENGLEWOOD CLIFFS

WHEREAS, in accordance with applicable Council on Affordable Housing (“COAH”) regulations, the New Jersey Uniform Housing Affordability Controls (“UHAC”)(N.J.A.C. 5:80-26., et seq.), and as part of the Borough’s Declaratory Judgment action entitled “In the Matter of the Application of the Borough of Englewood Cliffs, County of Bergen, Docket No. BER-L-6119-15, which was filed on July 8, 2015 in response to Supreme Court decision In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (“Mount Laurel IV”), the Borough of Englewood Cliffs is required to adopt by resolution an Affirmative Marketing Plan to ensure that all affordable housing units created, including those created by rehabilitation, are affirmatively marketed to low and moderate income households, particularly those living and/or working within Housing Region 1, which encompasses the Borough of Englewood Cliffs.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Borough of Englewood Cliffs, County of Bergen, State of New Jersey, do hereby adopt the following Affirmative Marketing Plan:

Affirmative Marketing Plan

- A. All affordable housing units in the Borough of Englewood Cliffs shall be marketed in accordance with the provisions herein unless otherwise provided in N.J.A.C. 5:93-1, et seq.
- B. The Borough of Englewood Cliffs has a Third Round obligation. This Affirmative Marketing Plan shall apply to all developments that require an Affirmative Marketing Plan or will contain low and moderate income units, including those that are part of the Borough’s current Housing Element and Fair Share Plan, and those that may be constructed in future developments not contemplated in the Borough’s Housing Element and Fair Share Plan. This Affirmative Marketing Plan shall also apply to any rehabilitated rental units that are vacated and re-rented during the applicable period of controls for identified rehabilitated rental units.
- C. The Affirmative Marketing Plan shall be implemented by the Administrative Agent under contract to the Borough of Englewood Cliffs. All of the costs of advertising and affirmatively marketing affordable housing units shall be borne by the developer/seller/owner of the affordable unit(s).
- D. In implementing the Affirmative Marketing Plan, the Administrative Agent, acting on behalf of the Borough, shall undertake all of the following strategies:
 - 1. Publication of one advertisement in a newspaper of general circulation within the housing region.
 - 2. Broadcast of one advertisement by a radio or television station broadcasting throughout the housing region.

3. At least one additional regional marketing strategy using one of the other sources listed below.
- E. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer or sponsor of affordable housing. The Affirmative Marketing Plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward Housing Region 2 in which the Borough is located and covers the entire period of deed restriction for each restricted housing unit.
- F. The Affirmative Marketing Plan is a continuing program intended to be followed throughout the entire period of restrictions and shall meet the following requirements:
1. All newspaper articles, announcements and requests for application for low and moderate income units shall appear in the Englewood Cliffs Eagle and the Englewood Cliffs – East Hanover Weekly News.
 2. The primary marketing shall take the form of at least one press release and a paid display advertisement in the above newspapers once a week for four consecutive weeks. Additional advertising and publicity shall be on an “as needed” basis. The developer/owner shall disseminate all public service announcements and pay for display advertisements. The developer/owner shall provide proof of publication to the Administrative Agent. All press releases and advertisements shall be approved in advance by the Borough’s Administrative Agent.
 3. The advertisement shall include a description of the:
 - i. Location of the units;
 - ii. Direction of the units;
 - iii. Range of prices for the units;
 - v. Size, as measured in bedrooms, of units;
 - vi. Maximum income permitted to qualify for the units;
 - vii. Location of applications;
 - viii. Business hours when interested households may obtain an application; and
 - ix. Application fees.

4. Newspaper articles, announcements and information on where to request applications for low and moderate income housing shall appear at least once a week for four consecutive weeks in at least three locally oriented weekly newspapers within the region, one of which shall be circulated primarily in Bergen County and the other two of which shall be circulated primarily outside of Bergen County but within the housing region.
5. Four or more of the following regional cable television stations or regional radio stations shall be used during the first month of advertising. The developer must provide satisfactory proof of public dissemination:

Cable Television Stations

- i. 2 WCBS-TV - CBS Broadcasting Inc.
- ii. 3 KYW-TV - CBS Broadcasting Inc.
- iii. 4 WNBC - NBC Telemundo License Co. (General Electric)
- iv. 5 WNYW - Fox Television Stations, Inc. (News Corp.)
- v. 7 WABC-TV - American Broadcasting Companies, Inc (Walt Disney)
- vi. 9 WWOR-TV - Fox Television Stations, Inc. (News Corp.)
- vii. 11 WPIX - WPIX, Inc. (Tribune)
- viii. 13 WNET - Educational Broadcasting Corporation
- ix. 25 WNYE-TV - New York City Dept. of Info Technology & Telecommunications
- x. 31 WPXN-TV - Paxson Communications License Company, Llc
- xi. 41 WXTV - WXTV License Partnership, G.p. (Univision Communications Inc.)
- xii. 47 WNJU - NBC Telemundo License Co. (General Electric)
- xiii. 50 WNJN - New Jersey Public Broadcasting Authority
- xiv. 52 WNJT - New Jersey Public Broadcasting Authority
- xv. 54 WTBY-TV - Trinity Broadcasting Of New York, Inc.
- xvi. 58 WNJB - New Jersey Public Broadcasting Authority

- xvii. 62 WRNN-TV - WRNN License Company, LLC
- xviii. 63 WMBC-TV - Mountain Broadcasting Corporation
- xix. 68 WFUT-TV - Univision New York LLC
- xx. 22 WMBQ-CA - Renard Communications Corp.
- xxi. 66 WFME-TV - Family Stations of New Jersey, Inc.
- xxii. 21 WLIW - Educational Broadcasting Corporation
- xxiii. 60 W60AI - Ventana Television, Inc

Regional Radio Stations (AM)

- i. WMCA 570
- ii. WFAN 660
- iii. WOR 710
- iv. WABC 770
- v. WCBS 880
- vi. WBBR 1130

Regional Radio Stations (FM)

- i. WFNY-FM 92.3
- ii. WPAT-FM 93.1
- iii. WNYC-FM 93.9
- iv. WFME 94.7
- v. WPLJ 95.5
- vi. WQXR-FM 96.3
- vii. WQHT 97.1
- viii. WSKQ-FM 97.9
- ix. WAWZ 99.1
- x. WBAI 99.5

- xi. WHTZ 100.3
- xii. WHUD 100.7
- xiii. WCBS-FM 101.1
- xiv. WQCD 101.9
- xv. WNEW 102.7
- xvi. WKTU 103.5
- xvii. WAXQ 104.3
- xviii. WWPR-FM 105.1
- xix. WLTW 106.7
- xx. WBLS 107.5

6. Applications, brochure(s), sign(s), and/or poster(s) used as part of the affirmative marketing program shall be available/posted in the following locations:

- i. Borough Municipal Building
482 Hudson Terrace, Englewood Cliffs, NJ 07632
- ii. Fort Lee Public Library
320 Main Street, Fort Lee, NJ 07024
- iii. Borough Website
<http://www.Englewoodcliffsnj.org>
- iv. Developer's Sales/Rental Office
- v. Bergen County Administration Building
53 Grant St, Fairview, NJ 07022

Applications shall be mailed by the Administrative Agent to the prospective applications upon request. Also, applications shall be made available at the developer's sales/rental office and shall be mailed to prospective applicants upon request.

7. The Administrative Agent shall develop, maintain and update a list of community contact person(s) and/or organization(s) in Essex, Bergen, Union, and Warren Counties that will aid in the affirmative marketing program with particular emphasis on contacts that will reach out to groups that are least likely to apply for housing within the region, including major regional employers (See Attachment A).

- i. Quarterly informational flyers and applications shall be sent to each of the following agencies for publication in their journals and for circulation among their members:

Bergen County Board of Realtors

Hudson County Board of Realtors

Passaic County Board of Realtors

Sussex County Board of Realtors

- ii. Quarterly informational circulars and applications shall be sent to the administrators of each of the following agencies in the counties of Bergen, Hudson, Passaic, and Sussex:

Welfare or Social Service Board

Rental Assistance Office (local office of DCA)

Office on Aging

Housing Authority Community

Action Agencies

Community Development Departments

- iii. Quarterly informational circulars and applications shall be sent to the chief personnel administrators of all the major employers within the region as listed on Attachment A in accordance with the Region 1 Affirmative Marketing Plan.

- iv. Quarterly informational circulars, applications, and copies of press releases and advertisements of the availability of low and moderate income housing shall be sent to the following additional community and regional organizations:

Fair Share Housing Center

New Jersey State Conference of NAACP

The Latino Action Network

East Orange NAACP

Newark NAACP Bergen

County NAACP

Elizabeth NAACP

Bergen County NAACP

Supportive Housing Association

New Jersey Housing Resource Center of the NJ HMFA

8. A random selection method to select occupants of low and moderate income housing will be used by the Administrative Agent in conformance with N.J.A.C. 5:80-26.16(l). The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 2 comprised of Essex, Bergen, Union, and Warren Counties.
9. The Administrative Agent shall administer the Affirmative Marketing Plan. The Administrative Agent has the responsibility to income qualify low and moderate income households; to place income eligible households in low and moderate income units upon initial occupancy; to provide for the initial occupancy of low and moderate income units with income qualified households; to continue to qualify households for re-occupancy of units as they become vacant during the period of affordability controls; to assist with outreach to low and moderate income households; and to enforce the terms of the deed restriction and mortgage loan as per N.J.A.C. 5:80-26.1, et seq.
10. The Administrative Agent shall provide or direct qualified low and moderate income applicants to counseling services on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements and landlord/tenant law and shall develop, maintain and update a list of entities and lenders willing and able to perform such services.
11. All developers/owners of low and moderate income housing units shall be required to undertake and pay the costs of the marketing of the affordable units in their respective developments, subject to the direction and supervision of the Administrative Agent.
12. The implementation of the Affirmative Marketing Plan for a development that includes affordable housing shall commence at least 120 days before the issuance of either a temporary or permanent certificate of occupancy. The implementation of the Affirmative Marketing Plan shall continue until all low income housing units are initially occupied and for as long as affordable units exist that remain deed restricted and for which the occupancy or re-occupancy of units continues to be necessary.

13. The Administrative Agent shall provide the Affordable Housing Liaison with the information required to comply with monitoring and reporting requirements pursuant to N.J.A.C.5:80-26-1, et seq. and the Order granting the Borough a Final Judgment of Compliance and Repose.

Lisette Duffy, R.M.C.
Municipal Clerk

Mario M. Kranjac
Mayor

Attachment A

Employer Outreach: Names of employers throughout the housing region that can be contacted to post advertisements and distribute flyers regarding available affordable housing

Hudson County

United Parcel Service Inc. NY Corp	492 County Ave, Secaucus
USPS	80 County Road, Jersey City
Liz Claiborne Inc	1 Claiborne Ave, North Bergen
Credit Suisse First Boston LLC	1 Pershing Plz Jersey City
HealthCare Staffing and Consult	26 Journal Square, Jersey City
Ritter Sysco Food Service	20 Theodore Conrad Dr. Jersey City
Jersey City Medical Center Inc.	50 Grand St, Secaucus
Marsh USA Inc.	121 River St, Hoboken
National Retail Systems Inc.	2820 16th St North Bergen
Community Corrections Corp	Lincoln Hwy Kearny
Marine Personnel & Provisioning Inc.	1200 Harbor Blvd Weehawken
Port Authority of NY and NJ	241 Erie St. Jersey City and 120 Academy St. Jersey City
Christ Hospital Health Service	176 Palisade Ave, Jersey City
Bayonne Hospital	29th Street and Ave E, Bayonne
Salson Logistics Inc.	2100 88th St.and 7373 West Side Ave, North Bergen, NJ
National Financial Service	1000 Plaza, Jersey City
Fleet NJ Company Development Corp.	10 Exchange Place, Jersey City
Maidenform Inc	154 Ave E, Bayonne
Lord Abbett & Company	90 Hudson City, Jersey City
Liberty Health Plan Inc.	50 Baldwin Ave Jersey City
Port Imperial Ferry Corp.	Pershing Rd Secaucus
Hudson News	1305 Paterson Plank Rd, North Bergen
Palisades General Hospital	7600 River Rd North Bergen, NJ
Equiserve Inc.	525 Washington Blvd Jersey city
Ciricorp Data Systems Incorporated	1919 Park Ave Secaucus
Meadowlands Hospital Medical Center	Meadowlands Pkwy Secaucus
Retailers & Manufacturers Dist Marking Serv.	50 Metro Way Secaucus
Dynamic Delivery Corp	125 Pennsylvania Ave Kearny, NJ
Bowne Business Communications Inc.	215 County Ave Secaucus
North Hudson Community Action Corp.	5301 Broadway West New York 07093
Goya Foods Inc.	100 Seaview Dr. Secaucus
Cristi Cleaning Service	204 Paterson Plank Rd Union, NJ

Bergen County

Hackensack University Medical Center	30 Prospect Ave, Hackensack, NJ 07601
Professional Employer Group Service	2050 Center Ave Ste 336 Fort Lee
County of Bergen, NJ	1 Bergen County Plaza Hackensack, NJ 07601

Society of the Valley Hospital	223 N Van Dien Ave Ridgewood
NJ Sports & Expo Authority	50 State Highway 120 East Rutherford
Merck-Medco Managed Care LLC	100 Parsons Pond Dr. Franklin Lakes 07417
Quest Diagnostics Incorporated	1 Malcolm Ave Teterboro ,NJ 07608
AT&T	15 E Midland Ave Paramus
Englewood Hospital and Medical Center	350 Engle St. Englewood
Aramark Svcs Management of NJ Inc	50 Route 120 East Rutherford
Holy Name Hospital	718 Teaneck Road Teaneck
Doherty Enterprises Inc	7 Pearl Ct Allendale
Bergen Regional Medical Center	230 East Ridgewood Ave Paramus
Inserra supermarkets, Inc.	20 Ridge Rd Mahwah
Howmedica Osteonics Corp	59 Route 17 Allendale
Becton Dickinson & Company Corp	1 Becton Dr. Franklin Lakes
Pearson Education, Inc.	1 Lake St. Upper Saddle River

Passaic County

D&E Pharmaceutical Co.	206 Macoprin Rd Bloomingdale, NJ 07403
Acme Markets	467 AllWood Rd Clifton, NJ 07012
St. Mary's Hospital	350 Boulevard Passaic, NJ 07055
Merry Maids	14 Riverside Square Mall, Bloomingdale, NJ 07403
Health Center at Bloomingdale	255 Union Ave Bloomingdale, NJ 07403
Sommers Plastic Product Co. Inc.	31 Styertowne Rd Clifton, NJ 07012
St. Joseph's Hospital	703 Main St. Paterson, NJ 07503
BAE Systems	164 Totowa Rd, Wayne, NJ 07470
Drake Bakeries Inc	75 Demarest Dr, Wayne, NJ 07470
Toys R Us National Headquarters	1 Geoffrey Way, Wayne, NJ 07470
GAF Materials Corporation	1361 Alps Rd, Wayne, NJ 07470
Valley National Bank Headquarters	1455 Valley Road Wayne, New Jersey 07470

Sussex County

Selective Insurance	40 Wantage Ave, Branchville, NJ
Andover Subacute and Rehab Center	99 Mulford Rd Bldg 2, Andover, NJ
Mountain Creek Resorts	200 State Rt 94, Vernon, NJ
County of Sussex	One Spring Street, Newton, NJ 07860
Newton Memorial Hospital Inc.	175 High St, Newton, NJ
Vernon Township Board of Education	539 State Rt 515, Vernon, NJ

F.O. Phoenix (Econo-Pak)
Hopatcong Board of Education
Saint Clare's Hospital
Ames Rubber Corp

1 Wiebel Plz, Sussex, NJ
2 Windsor Ave, Hopatcong, NJ
20 Walnut St, Sussex, NJ
19 Ames Blvd, Hamburg, NJ

APPENDIX T

BOROUGH OF ENGLEWOOD CLIFFS, BERGEN COUNTY

ORDINANCE No. 20-18

AN ORDINANCE AMENDING CHAPTER 30, "ZONING", SECTION 19 ENTITLED, "AFFORDABLE HOUSING DEVELOPMENT FEE" OF THE BOROUGH CODE BY REPEALING AND REPLACING EXISTING SECTIONS IN THEIR ENTIRETY.

Chapter 30, Section 19 of the Borough Code entitled "Affordable Housing Development Fee" is hereby amended as follows:

SECTION I. Existing Sections of Chapter 30, Section 19 entitled "Affordable Housing Development Fee" are hereby repealed and replaced in their entirety with the following new Sections 30-19.1 through 30-19.10 to be entitled "Affordable Housing Development Fees" which shall read as follows:

30-19. AFFORDABLE HOUSING DEVELOPMENT FEES

30-19.1 Purpose

- a) In *Holmdel Builder's Association v. Holmdel Borough*, 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 Court approved spending plan may retain fees collected from non-residential development.
- c) This ordinance 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. 5:93-8.

30-19.2 Basic requirements

- a) This ordinance shall not be effective until approved by the Court pursuant to N.J.A.C. 5:93-8.1(b). Nothing herein shall impact that currently the Borough has a development fee ordinance previously approved by COAH and this ordinance, upon approval, shall supersede the development fee ordinance approved by COAH.
- b) The Borough of Englewood Cliffs shall not spend development fees until the Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:93-8.9. Nothing

herein shall impact that currently the Borough has a Spending Plan previously approved by COAH and, upon approval by the Court of a new Spending Plan, that newly approved Spending Plan shall supersede the Spending Plan previously approved by COAH.

30-19.3 Definitions

- a) The following terms, as used in this ordinance, shall have the following meanings:
- i. *“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.
 - ii. *“Court”* or *“Court approved entity”* means the entity that has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State pursuant to the Supreme Court decision issued in Mount Laurel IV on March 10, 2015.
 - iii. *“Development fee”* means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:93-8.
 - iv. *“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.
 - v. *“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 (C.54:1-35a through C.54:1-35c).
 - vi. *“Green building strategies”* means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

30-19.4 Residential Development Fees

- a) Imposed fees
- i. Within all zoning district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half (1.5) percent of the equalized assessed value for residential development provided no increased density is permitted.
 - ii. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of six (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 one and a half percent of the equalized assessed value on the first two units; and the specified higher percentage up to six 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
- i. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
 - ii. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building 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 building permit is issued.
 - iii. 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.
 - iv. Developers of residential structures demolished and replaced as a result of a fire, flood or natural disaster shall be exempt from paying a development fee.

30-19.5 Non-Residential Development Fees

- a) Imposed fees
- i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
 - ii. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.

- iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-half (2.5) 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 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.

As to any non-residential development, in the event of any conflict with the requirements of the ordinance previously approved by COAH, this ordinance and the Non-residential Development Fee Act ("NRDFA"), the NRDFA shall control.

b) Eligible exactions, ineligible exactions and exemptions for non-residential development

- i. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.
- iii. Non-residential developments shall be exempt from the payment of nonresidential 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.
- iv. A developer of a non-residential development exempted from the nonresidential 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.
- v. 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 nonresidential development fees under these circumstances may be enforceable by the Borough of Englewood Cliffs as a lien against the real property of the owner.

30-19.6 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 zoning officer and other construction official responsible for coordinating with the State Construction Office for the issuance of a building permit.
- 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 as per the instructions

provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

- c) The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- d) Within ninety (90) days of receipt of that notice, the municipal 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 notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- f) Within ten (10) business days of a request for the scheduling of a final inspection, the municipal 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 Borough of Englewood Cliffs fail to determine or notify the developer of the amount of the development fee within ten (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 (C.40:55D-8.6).
- h) Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- i) Appeal of development fees
 - i. A developer may challenge residential development fees imposed by filing a challenge with the 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 Borough of Englewood Cliffs. 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, R.S.54:48-1 et seq., within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
 - ii. 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 forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Borough of Englewood Cliffs. 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, R.S.54:48-1 et seq., within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

30-19.7 Affordable Housing Trust Fund

- a) A Development Fee Ordinance creating a dedicated revenue source for affordable housing was adopted by the Borough on December 23, 2008, by way of Ordinance No. 30-2008; and subsequently amended on July 6, 2010, by Ordinance No. 10-2010. Said Development Fee Ordinance established the Borough's Affordable Housing Trust Fund. All development fees and interest generated by the fees are deposited in a separate interest-bearing Affordable Housing Trust Fund at TD Bank, located at 457 Sylvan Ave, in Englewood Cliffs Borough, for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:93-8.16 as described in the sections that follow and the account is to be maintained by the Chief Financial Officer.
- 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:
 - i. Payments in lieu of on-site construction of affordable units;
 - ii. Developer contributed funds to make ten (10) percent of the adaptable entrances in a townhouse or other multistory attached development accessible;
 - iii. Rental income from municipally operated units;
 - iv. Repayments from affordable housing program loans;
 - v. Recapture funds;
 - vi. Proceeds from the sale of affordable units; and
 - vii. Any other funds collected in connection with the Borough of Englewood Cliffs' affordable housing program.
- c) The Borough of Englewood Cliffs shall provide the Court with written authorization, in the form of a three-party escrow agreement between the municipality, TD Bank and a Court approved entity to permit the Court to direct the disbursement of the funds as provided for in N.J.A.C. 5:93-8.19 and 8.20.
 - (1) In the event of a failure by the Borough of Englewood Cliffs to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan; or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs (DCA), Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Borough of Englewood Cliffs, or, if not practicable, then within the County or the Housing Region.

(a) Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.

d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.

30-19.8 Use of Funds

a) The expenditure of all funds shall conform to a spending plan previously approved by COAH, and a new Spending Plan approved by the Court.

b) The Court previously approved the Borough's right to use trust fund to purchase a 1.9 million dollar parcel to be added to land the Borough controlled for a 100 percent set-aside. That expense and related costs shall be a permissible use of trust fund money.

c) Funds shall not be expended to reimburse the Borough of Englewood Cliffs for past housing activities.

d) At least thirty (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 municipal 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 thirty (30) percent or less of median income by region.

i. 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.

ii. Affordability assistance to households earning thirty (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 thirty (30) percent or less of median income.

iii. 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.

iv. The 30 percent requirement may be satisfied as set forth in the Borough's Spending Plan.

- d) The Borough of Englewood Cliffs 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. 5:93-8.16.
- 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 negotiate a settlement with FSHC and any developer, to prepare a Housing Element and Fair Share Plan, and to implement a Housing Element and Fair Share Plan. Administrative funds may be used to retain an administrative agent, for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Administrative funds may be used to pay the fees of the Master and Special Counsel appointed by the Court to assist in formulating and implementing settlement(s), formulating a housing element and fair share plan, reviewing and making recommendations to the Court in conjunction with the Borough's efforts to secure approval of settlements and its housing element and fair share plan. Administrative fees may also be used to pay for the expense of the Special Hearing Officer in conjunction with duties the Court assigns to him. Administrative fees may be used for any other purpose permitted by COAH regulations. Legal or other fees related to litigation opposing affordable housing sites or objecting to COAH's regulations and/or any Court action are not eligible uses of the affordable housing trust fund.

30-19.9 Monitoring

- a) On the first anniversary of the Court's approval of the Spending Plan, and on every anniversary of that date thereafter through July 1, 2025, the Borough of Englewood Cliffs agrees to work with the Special Master so that the Special Master shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, Council on Affordable Housing or Local Government Services or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and for posting by the Borough on the municipal website, using monitoring forms provided by FSHC developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the sources and amount of funds collected and the amounts and purposes for which any funds have been expended.

30-19.10 Ongoing Collection of Fees

- a) The ability for the Borough of Englewood Cliffs to impose, collect and expend development fees shall expire with its substantive certification or judgment of compliance unless the Borough of Englewood Cliffs has filed an adopted Housing Element and Fair Share Plan with the Court, has petitioned for substantive certification or a judgment of compliance, and has received the Court's approval of its development fee ordinance. If the Borough of Englewood Cliffs fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification or any judgment of compliance, 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 (C.52:27D-320). The Borough of Englewood Cliffs shall not impose a residential development fee on a development that

receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall the Borough of Englewood Cliffs retroactively impose a development fee on such a development.

SECTION II. If any provision of this ordinance is held invalid by a court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated and shall remain in full force and effect.

SECTION III. All ordinances and parts of ordinances which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency

Effective Date

This ordinance shall take effect at such time as the Court enters a final Judgment of Compliance and Repose (“JOR”) approving the Housing Element and Fair Share Plan the Borough placed on file on November 13, 2020, which final JOR may have conditions the Court deems necessary to implement the settlement agreement dated October 08, 2020 between the Borough of Englewood Cliffs and Fair Share Housing Center , following a duly-noticed fairness and compliance hearing..

APPENDIX U

**BOROUGH OF ENGLEWOOD CLIFFS
BERGEN COUNTY, NEW JERSEY**

RESOLUTION 25-30

**RESOLUTION OF THE COUNCIL OF THE BOROUGH OF ENGLEWOOD
CLIFFS, APPOINTING TRIAD ASSOCIATES AS THE BOROUGH OF
ENGLEWOOD CLIFFS' ADMINISTRATIVE AGENT**

WHEREAS, The Borough of Englewood Cliffs' Housing Element and Fair Share Plan promotes an affordable housing program pursuant to the Fair Housing Act (N.J.S.A. 52:27D-301, et. seq.), applicable Council on Affordable Housing ("COAH") regulations and Uniform Housing Affordability Controls ("UHAC") regulations; and

WHEREAS, the Borough is required to appoint an Administrative Agent to administer Englewood Cliffs' affordable housing program and to help enforce the requirements of applicable COAH and UHAC regulations, the Borough's affordable housing ordinance, and the Settlement Agreement between the Borough and Fair Share Housing Center ("FSHC"); and

WHEREAS, the Borough has chosen to appoint Triad Associates as its Administrative Agent; and

WHEREAS a copy of the proposal of Triad Associates to serve as Administrative Agent is attached hereto as Exhibit A.

NOW THEREFORE BE IT RESOLVED, by the Council of the Borough of Englewood Cliffs, in the County of Bergen, and the State of New Jersey, that Triad Associates is hereby appointed by the Council of the Borough of Englewood Cliffs to serve as the Borough's Administrative Agent to run the Borough's affordable housing program.

I do hereby certify the foregoing is a true copy of a resolution approved by the Mayor and Council at a meeting held on February 12, 2025

Laura Borchers RMC, CMR
Borough Clerk

Members	Motion	Second	Ayes	Nays	Abstain	Absent
Drimones			X			
Kim						X
Biegacz	X		X			
Liang		X	X			
Patel			X			
Koutroubas			X			
Mayor Park						

APPENDIX V [RESERVED]

APPENDIX W

**BOROUGH OF ENGLEWOOD CLIFFS
FOURTH ROUND AFFORDABLE HOUSING TRUST FUND SPENDING PLAN**

I. INTRODUCTION

The Borough of Englewood Cliffs' affordable housing trust fund was first established through the adoption of the Borough's Development Fee Ordinance. On October 18, 2006, COAH approved the Borough's proposed development fee ordinance ("DFO"). The Borough adopted the DFO as Ordinance 2006-25 on December 20, 2006, which was later amended by Ordinance 2009-08, approved by COAH on April 13, 2009 and adopted June 10, 2009. As part of the Borough's Third Round compliance, the Development Fee Ordinance was once again amended and was adopted via Ordinance No. 20-18. The Court approved the amended Development Fee Ordinance via the Final JOR issued on December 22, 2020.

As part of the Third Round, a Spending Plan was prepared to be adopted as part of the Borough's Third Round Housing Element and Fair Share Plan ("HEFSP") detailing how the Borough of Englewood Cliffs intended to spend its affordable housing trust fund revenues pursuant to N.J.S.A. 52:27D-329.2 and in alignment with the housing programs outlined in the HEFSP. During the course of the Third Round, the Borough prepared an HEFSP, which was adopted by the Planning Board on January 7, 2019. On December 22, 2020, a Declaratory Judgment of Compliance and Repose ("JOR") was granted, which approved the Borough's Third Round HEFSP and associated appendices, including the Borough's Third Round Spending Plan.

Using the approved amended Spending Plan from the Third Round as a basis, the Borough has prepared this Spending Plan for the Fourth Round period in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) and the Fair Housing Act (N.J.S.A. 52:27D-301). This Spending Plan is submitted to the Superior Court of New Jersey for approval as an appendix to the Borough's Fourth Round Housing Element and Fair Share Plan.

Per the Borough's affordable housing trust fund bank statement ending in May 2024, the Borough had a balance of \$2,707,952.55 in its affordable housing trust fund. 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 at Investors Bank, for the purposes of affordable housing. These funds shall be spent in accordance with N.J.S.A. 52:27D-329.2 as described in the sections that follow.

1. REVENUES FOR CERTIFICATION PERIOD

To calculate a projection of revenue anticipated through the Fourth Round period (July 1, 2025 - June 30, 2035), the Borough has 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. Projects which have had fees imposed upon them per Redevelopment Agreements.
 3. Future development that is likely to occur based on historical rates of development.
- (b) Payment in lieu (PIL):
- (c) Other funding sources:
- The funds listed as “Other Income” in Table 1 of this Spending Plan include reimbursements from overpayments of administrative expenses and/or reconciliations of errors within the trust fund account ledger.
- (d) Projected interest:
- Interest on the projected revenue in the municipal affordable housing trust fund based on an annual percentage yield (APY) of 2.90%.¹

2. REVENUE PROJECTION

One of the primary sources of revenue for the Borough’s affordable housing trust fund is through development fees. Development fees are issued as a percentage of the equalized assessed value for residential and non-residential development, with this percentage differing based on the type of development. The collected payments of residential and non-residential development fees are then deposited into the Borough’s affordable housing trust fund and are to be used and expensed in accordance with N.J.S.A. 52:27D-329.2.

Per § 30-19.4 of the Englewood Cliffs Borough Code, residential development fees are issued as follows:

- a. *“Imposed fees.*
 1. *Within all zoning district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half (1.5%) percent of the equalized assessed value for residential development provided no increased density is permitted.*
 2. *When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a “d” variance) has been permitted, developers may be required to pay a development fee of six (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 one and a half (1 1/2%) percent of

¹ 2.90% is the current APY as per the Borough’s Affordable Housing Trust Fund December 31, 2024, bank statement with TD Bank.

the equalized assessed value on the first two units; and the specified higher percentage up to six 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. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
 2. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building 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 building permit is issued.
 3. 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.
 4. Developers of residential structures demolished and replaced as a result of a fire, flood or natural disaster shall be exempt from paying a development fee.”

Per § 30-19.5 of the Englewood Cliffs Borough Code, non-residential development fees are issued as follows:

- 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 two and one-half (2.5%) 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 two and one-half (2.5%) 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 two and one-half (2.5%) 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 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.

As to any non-residential development, in the event of any conflict with the requirements of the ordinance previously approved by COAH, this ordinance and the Non-residential Development Fee Act (“NRDFA”), the NRDFA shall control.

- 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 two and a half (2.5%) percent development fee, unless otherwise exempted below.*
 2. *Non-residential developments shall be exempt from the payment of nonresidential 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.*
 3. *A developer of a non-residential development exempted from the nonresidential 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.*
 4. *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 nonresidential development fees under these circumstances may be enforceable by the Borough of Englewood Cliffs as a lien against the real property of the owner."*

Given that this Spending Plan has been prepared at the start of the ten-year Fourth Round period, and assuming the variability of development trends over the next decade, the projection of revenue in the Borough's affordable housing trust fund during the Fourth Round is simplified by combining the income from residential development fees, non-residential development fees, and fees from Redevelopment Agreements over the last five years to calculate an annual development fee income average. This annual development fee income average is then redistributed over the forthcoming ten-year Fourth Round period.

Per the Borough's Affordable Housing Monitoring System (AHMS), which is used to report the Borough's trust fund transactions to the DCA, over the five-year period of May 2019 to May 2024, the Borough collected approximately \$2,865,727.41 in residential development fees, non-residential development fees, and fees from Redevelopment Agreements.² Therefore, on average, the Borough collected approximately \$573,145.48 per year, or approximately \$47,762.12 per month, from development fees and fees from Redevelopment Agreements. Based on a conservative assumption that development occurs at a similar rate over the next decade, a total of \$5,731,454.82 in revenue from development fees and fees from Redevelopment Agreements is expected to be collected from July 1, 2025 to June 30, 2035.

Additionally, based on an annual percentage yield of 2.90%, the Borough may receive approximately \$1,791,447.58 in revenue collected from interest over the Fourth Round.

² Between May 2019 and May 2024, the Borough had a balance of \$2,707,952.55 in its affordable housing trust fund via the AHMS, which consisted of approximately \$2,865,727.41 in income from development fees, \$128,896.63 in interest and \$286,671.49 in expenditures.

Therefore, for the period of July 1, 2025 through June 30, 2035, the Borough of Englewood Cliffs estimates to collect a total revenue of \$5,731,454.82 from development fees and Redevelopment Agreement fees, and approximately \$1,791,447.58 in account interest on existing funds (assuming a 2.90% APY). These revenue sources sum to a total of approximately \$7,522,902.40 in potential affordable housing trust fund account revenue during the Fourth Round.

Furthermore, all revenue from the affordable housing trust fund collected during the Third Round period shall be allocated as provided in the adopted Third Round Spending Plan. This Fourth Round Spending Plan therefore only provides an allocation of funds projected to be collected during the Fourth Round, as the remaining revenue within the affordable housing trust fund has been set aside to be spent as outlined in the adopted Third Round Spending Plan. Should any change in circumstances necessitate the allocation of funds as detailed in the Third Round Spending Plan to be modified, the Borough reserves the right to amend the Fourth Round Spending Plan to address any adjustments to the apportionment of existing trust fund monies.

DRAFT

Spending Plan

TABLE 1: PROJECTED REVENUES AFFORDABILITY HOUSING TRUST FUND JULY 1, 2025 – JUNE 30, 2035
ENGLEWOOD CLIFFS, BERGEN COUNTY, NEW JERSEY

SOURCE OF FUNDS	REVENUES PRIOR TO START OF FOURTH ROUND	PROJECTED REVENUES – AFFORDABLE HOUSING TRUST FUND – JULY 1, 2025 THROUGH JUNE 30, 2035												
		REVENUES AS OF MAY 2024	JUL 1, 2025 – DEC 31, 2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	JAN 1 - JUNE 30 2035	FOURTH ROUND TOTAL REVENUE
1) Income from Residential Development Fees, Non-Residential Development Fees, and Redevelopment Agreement Fees	\$2,865,727.41	\$286,572.74	\$573,145.48	\$573,145.48	\$573,145.48	\$573,145.48	\$573,145.48	\$573,145.48	\$573,145.48	\$573,145.48	\$573,145.48	\$573,145.48	\$286,572.74	\$5,731,454.80
2) Payments in Lieu of Construction	—	—	—	—	—	—	—	—	—	—	—	—	—	—
3) Other Income (a)	—	—	—	—	—	—	—	—	—	—	—	—	—	—
4) Interest on Existing (d)	\$128,896.63	\$89,572.38	\$179,144.76	\$179,144.76	\$179,144.76	\$179,144.76	\$179,144.76	\$179,144.76	\$179,144.76	\$179,144.76	\$179,144.76	\$179,144.76	\$89,572.38	\$1,791,447.58 (c)
Total	\$2,994,624.04 (b)	\$376,145.12	\$752,290.24	\$752,290.24	\$752,290.24	\$752,290.24	\$752,290.24	\$752,290.24	\$752,290.24	\$752,290.24	\$752,290.24	\$752,290.24	\$376,145.12	\$7,522,902.40

(a) "Other Income" includes reimbursements from overpayments of administrative expenses and/or reconciliations of errors within the trust fund account ledger.
 (b) As of May 31, 2024, the Borough reported a total of \$2,994,624.04 in revenue in its affordable housing trust fund via the AHMS, which consisted of approximately \$2,865,727.41 in development fees and \$128,896.63 in interest.
 (c) Interest over the ten-year Fourth Round period is calculated based on an APY of 2.90%
 (d) A 10-year interest projection divided evenly across the 4th round was utilized to predict the total 4th round interest revenue for the Township. The interest collected is not likely to be constant for each year.

3. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Borough of Englewood Cliffs:

(a) Collection of Development Fee revenues:

Collection of development fee revenues shall be consistent with the Borough of Englewood Cliffs' Development Fee Ordinance for both residential and non-residential developments in accordance with P.L. 2024, c.2 and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

Pursuant to a development approval by the Board having jurisdiction, the Borough Clerk will notify the construction official of the approval. At the time of construction permit application, the construction official will notify the tax assessor and request an initial calculation of the equalized assessed value (EAV) of the proposed development and the resulting fee to be posted. One-half of the fee will be due at the time of issuance of the first building permit. For non-residential development only, the developer will be provided a copy of Form N – RDF "State of New Jersey Non-Residential Development Certification/Exemption". This form will be used by the tax assessor to verify exemptions and to prepare estimated and final assessments.

At the time of request for the final inspection, the construction official will notify the tax assessor and request confirmation of, or modification of, the initial (EAV) as the case may be. The final (EAV) will be provided to the developer within ten (10) days of the request for final inspection. Payment of the fee will then become a condition of issuance of the certificate of occupancy.

4. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

(a) **Fourth Round Projects**

i. **Rehabilitation Projects (N.J.S.A. 52:27D-329.2)**

The Borough's Fourth Round present need (rehabilitation) obligation is zero (0). While the Borough is not required to provide any units towards its Rehabilitation obligation during the Fourth Round, the Borough may elect to facilitate the rehabilitation of units through participation in a rehabilitation program to be credited towards any future present need obligation, and shall amend the Spending Plan to reflect funding of such program.

ii. **Costs Associated with the New Construction of Affordable Units (N.J.S.A. 52:27D-329.2)**

The Borough will dedicate funding towards the new construction of affordable units during the Fourth Round period for projects set forth in the

Borough's 2025 HEFSP or projects proposed while the Fourth Round progresses. Funds for the construction of new affordable units will be allocated on a project-by-project basis as a project realistically moves forward. Additional funding towards the project(s) will likely be sought through and be the subject of a 9-percent NJHMFA tax credit application or other funding source.

Total Fourth Round Projects Expenditure: \$3,761,451.20

(b) Affordability Assistance (N.J.S.A. 52:27D-329.2)

The Borough of Englewood Cliffs is required to spend a minimum of 30 percent of development fee revenue to render units more affordable and at least one-third of that amount must be dedicated to very-low income households or to create very-low income units (i.e. households earning less than 30 percent of the regional median income). The actual affordability assistance minimums are calculated on an ongoing basis based on actual revenues.

TABLE 2: PROJECTED MINIMUM AFFORDABILITY ASSISTANCE REQUIREMENTS ENGLEWOOD CLIFFS, BERGEN COUNTY, NEW JERSEY		
Development fees and fees from Redevelopment Agreements projected through the Fourth Round (7/1/2025 - 6/30/2035)		\$5,731,454.80
Interest projected through the Fourth Round (7/1/2025 - 6/30/2035)	+	\$1,791,447.58
Total	=	\$7,522,902.40
PROJECTED MINIMUM FOURTH ROUND AFFORDABILITY ASSISTANCE REQUIREMENT (7/1/2025 - 6/30/2035)	x 0.30 =	\$2,256,870.72
PROJECTED MINIMUM FOURTH ROUND VERY LOW-INCOME AFFORDABILITY ASSISTANCE REQUIREMENT (7/1/2025 - 6/30/2035)	÷ 3 =	\$752,290.24

The Borough will dedicate at least \$2,256,870.72 from its municipal affordable housing trust fund to render units more affordable. Of this amount, \$752,290.24 will be utilized to encourage private sector provision of very low-income units through the offering of a subsidy for the development of said units. The Borough reserves the right to use even more of its affordability assistance funds to help subsidize low and/or very low-income units. In addition, the Borough will utilize such funds for any emergency repairs of older affordable units in the Borough, should that be necessary.

The Borough will dedicate Affordability Assistance funding from the affordable housing trust fund to render the units constructed in municipally sponsored 100% affordable projects to be more affordable; to provide a first month's rent and program for rental units; and to provide a down payment assistance program for for-sale units, as follows.

- i. Creation of very low-income units in municipally sponsored 100% affordable projects;
- ii. Supportive/Special Needs Assistance Direct Subsidy to create new units within the Borough with a 30-year deed restriction requirement;
- iii. Additional affordability assistance:
 - a. Rental Units:
 - i. One or two month’s rent assistance program;
 - ii. Reimbursement for qualified moving expenses, up to \$1,000;
 - b. For-Sale Units:
 - i. Down payment assistance up to \$15,000 per unit;
 - ii. Emergency Repairs.

An Affordability Assistance Manual will be prepared by the Borough’s Administrative Agent.

Total Affordability Assistance Expenditures: \$2,256,870.72

(c) **Administrative Expenses (N.J.S.A. 52:27D-329.2)**

The Borough of Englewood Cliffs may use development fee revenue for related administrative costs up to a 20 percent limitation pending funding availability after programmatic and statutory affordability assistance expenditures. The actual administrative expense maximum is calculated on an ongoing basis based on actual revenues.

TABLE 3: PROJECTED MAXIMUM ADMINISTRATIVE EXPENSE REQUIREMENTS ENGLEWOOD CLIFFS, BERGEN COUNTY, NEW JERSEY		
Development fees and fees from Redevelopment Agreements projected through the Fourth Round (7/1/2025 - 6/30/2035)		\$5,731,454.80
Interest projected through the Fourth Round (7/1/2025 - 6/30/2035)	+	\$1,791,447.58
Total	=	\$7,522,902.40
PROJECTED FOURTH ROUND MAXIMUM ADMINISTRATIVE EXPENDITURES (7/1/2025 - 6/30/2035)	x 0.20 =	\$1,504,580.48

The Borough projects that no more than \$1,504,580.48 will be available from the affordable housing trust fund to be used for administrative purposes during the Fourth Round (July 1, 2025 – June 30, 2035). However, administrative expenses are limited to 20% of what is actually collected; therefore, the projected 20% cap of \$1,504,580.48 may only be expended in a total amount equaling 20% or less of the total revenue from development fees, Redevelopment Agreement fees, and interest at the time of expense.

Projected administrative expenditures, subject to the 20 percent cap, are as follows:

- 1) Personnel wages, salaries, and benefits for administering affordable housing activities;
- 2) Consulting fees for the preparation of Housing Element/Fair Share Plans, assisting other affordable housing activities including, but not limited to, professional planner and professional engineer consultant fees;
- 3) Fees for other consulting activity as may be found necessary supportive of affordable housing provision, including office supplies;
- 4) Legal fees; and
- 3) Fees for the administration of Affordability Assistance programs by qualified entities retained by the Borough of Englewood Cliffs.

Total Administrative Expenditure: \$1,504,580.48

5. EXPENDITURE SCHEDULE

Upon approval by the Court, the Borough acknowledges that the expenditures of funds contemplated herein shall constitute the “commitment” for expenditure required pursuant to N.J.S.A. 52:27D-329.2, with the ten-year time period contemplated therein commencing in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563).

Where applicable, the funding schedule below parallels the proposed strategies presented thus far by the Borough, and is summarized as follows.

**TABLE 4: PROJECTED EXPENDITURE SCHEDULE AFFORDABLE HOUSING TRUST FUND JULY 1, 2025 – JUNE 30, 2035
ENGLEWOOD CLIFFS, BERGEN COUNTY, NEW JERSEY**

PROGRAM	NUMBER OF UNITS PROJECTED	PROJECTED EXPENDITURE SCHEDULE – AFFORDABLE HOUSING TRUST FUND – JULY 1, 2025 THROUGH JUNE 30, 2035												
		JULY 1 2025 – DEC 31 2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	JUNE 30, 2035	FOURTH ROUND TOTAL EXPENDITURES (a)	
Fourth Round Projects	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	\$3,761,451.20
Affordability Assistance		TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	\$2,256,870.72
Administration		TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	\$1,504,580.48
Total	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	\$7,522,902.40

(a) Expenditures are not shown on an annual basis for the purposes of this expenditure schedule due to the fact that the timing and amount of expenditures, and consequently the change in trust fund balance, will impact the amount of interest collected on the account. Given that the 30% minimum affordability assistance expenditure requirement and 20% maximum administrative expenditure requirement are based on actual revenue, the expenditure schedule has been simplified to show total expenditures over the Fourth Round period to avoid misrepresentation of the availability of funds to be expended on an annual basis. This Spending Plan shall be subject to future amendment to represent the actual funds collected and expended throughout the progression of the Fourth Round.

6. EXCESS OR SHORTFALL OF FUNDS

The Borough of Englewood Cliffs acknowledges that the actual revenue collected may be less than what is projected in this Spending Plan for a variety of reasons, including, but not limited to: (a) a moratorium on collection of development fees may be imposed by law; and (b) the actual amount of development in the Borough may be less than what is anticipated. Should there be a shortfall of funds, the Borough agrees that in no event shall it utilize more than 20% of the revenue collected from development fees, Redevelopment Agreement fees, and interest for administration.

The Borough intends to expend all current and future revenues toward the mechanisms, as described in this Spending Plan. In the event of an excess of funds, these would be dedicated toward supplementing any programs or projects within the regulatory limits as described herein. The Borough reserves the right to use the remainder first toward emerging mechanisms and for additional assistance where needed to support mechanisms included in the Borough's Housing Element and Fair Share Plan as needed, in accordance with the requirements set forth in P.L. 2024, c.2. Should there be a surplus beyond emerging mechanisms, et. al., the Borough reserves the right to use the remainder toward the next round of affordable housing, which will be addressed by an adopted Spending Plan in a timeframe that will satisfy the requirements of N.J.S.A 52:27D-329.2. The Borough reserves the right to submit an updated Spending Plan to reflect any change in circumstance of the mechanisms and funds detailed herein.

II. SUMMARY

The Borough of Englewood Cliffs intends to spend Affordable Housing Trust Fund revenues pursuant to N.J.S.A. 52:27D-329.2 and consistent with the housing programs outlined in the Housing Element and Fair Share Plan that evolves from the Borough's ongoing compliance efforts.

The Borough recognizes that the projections in this Spending Plan are generated from a baseline assumption that development over the last five years will continue at a similar rate over the ten-year Fourth Round period, and the Borough therefore reserves the right to amend the contents of this Spending Plan to reflect a change in the Borough's development climate, Fourth Round HEFSP, Development Fee Ordinance, and/or any circumstance impacting the projections detailed herein.

Regarding the Fourth Round period, the Borough projects approximately \$7,522,902.40 to be collected from development fees, Redevelopment Agreement fees, and interest on existing funds from July 1, 2025 through June 30, 2035. Of this projected \$7,522,902.40 to be collected during the Fourth Round, the Borough shall dedicate a minimum of 30% (or \$2,256,870.72) to render units more affordable and no more than 20% (or \$1,504,580.48) to cover administrative costs. The remainder (\$3,761,451.20) is intended to be used toward Fourth Round projects (which includes both rehabilitation projects and new construction of affordable units), which will be allocated on a project-by-project basis as the specificity of these projects becomes more apparent over the Fourth Round period. The Borough anticipates that the balance of revenues collected less expenses from July 1, 2025 to June 30, 2035 will be as close to zero dollars (\$0) as possible whereas any excess funds would be dedicated toward supplementing any programs or projects within the limits as described herein, toward emerging mechanisms pursuant to N.J.S.A. 52:27D-329.2, or reserved

toward compliance with the next round of affordable housing in accordance with the Fair Housing Act.

TABLE 5: FOURTH ROUND SPENDING PLAN SUMMARY ENGLEWOOD CLIFFS, BERGEN COUNTY, NEW JERSEY	
PROJECTED REVENUE 7/1/2025 – 6/30/2035	
Development fees and Redevelopment Agreement Fees	+ \$5,731,454.80
Interest on existing funds	+ \$1,791,447.58
TOTAL PROJECTED REVENUE 7/1/2025 – 6/30/2035	= \$7,522,902.40
PROJECTED EXPENDITURES 7/1/2025 – 6/30/2035	
Funds towards Fourth Round Projects (new construction/rehabilitation)	- \$3,761,451.20
Affordability assistance	- \$2,256,870.72
Administration	- \$1,504,580.48
TOTAL PROJECTED EXPENDITURES 7/1/2025 – 6/30/2035	= \$7,522,902.40
REMAINING BALANCE	= \$0

APPENDIX X [RESERVED]

APPENDIX Y

§ 30-5.15 DOWNTOWN TIERS (SOUTHERN SYLVAN AVENUE OVERLAY ZONES C AND SYLVAN AVENUE D) INCLUSIONARY HOUSING OVERLAY - 4 (IHO-4) ZONES.

[DRAFT]

§ 30-5.15.1 Purpose.

- a. This section establishes the Downtown Tiers (Southern Sylvan Avenue Overlay Zone C and Sylvan Avenue Overlay Zone D - 4 (IHO-4) Zone, which shall be applied, as shown in the attached tables as Attachment A to this section and shown in the attached map as Attachment B, in two (2) distinct districts:^[1]
 1. Southern Sylvan Avenue Overlay Zone C, the area located along Sylvan Avenue, to the east of Palisades Avenue - which is comprised of the existing B-4 Zoning District in the northern portion and the existing R-B Zoning District in the northern portion. It is bounded by Sylvan Avenue (US Route 9W) and Demarest Avenue. The Overlay shall apply to the following properties, specifically: Block 617, Lot 6, and Lots 13-17.
 2. Sylvan Avenue Overlay Zone D, the area located along Sylvan Avenue, west of Sherwood Avenue - which is only comprised of the existing B-2 Zoning District. The Overlay shall apply to the following properties, specifically: Block 130, Lots 22-25, Block 313, Lots 1-3, Block 314, Lots 10-15, and Block 411, Lots 16-23.

[1] *Attachments on file in the Borough offices.*

- b. The Downtown Tiers (Southern Sylvan Avenue Overlay Zones C and Sylvan Avenue Overlay D) Inclusionary Housing Overlay - 4 (IHO-4) Zone districts shall permit both mixed commercial and residential development or sole-use multi-family residential development meeting the use, bulk, and design standards contained hereinafter provided that at least 20% of all residential units created pursuant to the overlay zone standards shall be set aside for low- and moderate-income households as provided for elsewhere in this section.
- c. The underlying zone districts' regulatory provisions shall remain in force. Any existing development on a parcel within the Downtown Tiers (Southern Sylvan Avenue Overlay Zones C and Sylvan Avenue Overlay D) Inclusionary Housing Overlay - 4 (IHO-4) Zone that is compliant with the requirements of the underlying zoning may continue or expand as it would have prior to the adoption of this overlay zone. Any developer or property owner that wishes to develop or use a property in a manner consistent with the existing, underlying zoning may do so and not be subject to the requirements of the overlay zone.
- d. Notwithstanding the foregoing, every site within the areas identified above may be redeveloped as a completely residential inclusionary project at a density of 20 units per acre with a 20 percent set aside. Alternatively, the site can be redeveloped as a mixed commercial/residential project in which the residential component may be developed at a density of 24 units per acre with a 20% set aside. The affordable units shall not be age-restricted.
- e. Definitions. The following terms, as used in this section, shall have the following meanings:

AVERAGE FINISHED GRADE

Shall mean the average finished grade of a building or structure measured at intervals of ten (10) feet along each exterior wall of the building or structure, i.e. the sum of the results of such finished grade measurements, divided by the number of such measurements.

BUILDING COVERAGE

Shall mean that portion of a lot covered by the largest floor area of all structures, both principal and accessory.

BUILDING HEIGHT, ACCESSORY BUILDING OR STRUCTURE

Shall mean the measurement from the average finished grade to the midpoint of the roof for pitched roofs and the highest point of the roof deck for flat roofs, for any accessory buildings or structures.

BUILDING HEIGHT, MULTI-FAMILY DWELLING, TOWNHOUSE OR STACKED TOWNHOUSE

Shall mean the measurement of the vertical distance from the Average Finished Grade to the highest point of the roof deck which intersects the building's exterior walls.

DWELLING, MULTI-FAMILY

Shall mean a building containing three (3) or more dwelling units, including units that are located one over another, where entranceways, hallways, basements, attics, storage areas, heating systems, yards and similar services in the building may be individual, shared in common, or in combination.

ELEVATION ABOVE MEAN SEA LEVEL

Shall be defined as a measure of the vertical distance of a location in reference to the mean sea level (MSL) based on the National Geodetic Vertical Datum of 1929 (see the NOAA, National Geodetic Survey website:
<https://www.ngs.noaa.gov/datums/vertical/national-geodetic-vertical-datum-1929.shtml>)

MULTI-FAMILY FLOOR AREA RATIO

Shall mean the area of all floors of multi-family buildings, including spaces within multi-family buildings used for off-street parking or loading.

STORY

Shall mean the portion of a building included between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between the floor and the ceiling or roof next above it.

§ 30-5.15.2 Permitted Uses.

- a. Principal uses. The following uses shall be permitted on any property within the Downtown Tiers (Southern Sylvan Avenue Overlay Zones C and Sylvan Avenue Overlay D) Inclusionary Housing Overlay -4 (IHO-4) Zone provided the following:
 1. Multi-family Residential Development.
 2. Mixed Commercial/Multi-Family Residential Development in structures combining retail business establishments or personal service establishments on the ground floor and containing a multi-family residential use above with no residential dwelling units located on the ground floor.
 3. Non-residential uses within mixed commercial/residential structure shall be enumerated pursuant to Borough Code §§ **30-5.4**, **30-5.5**, **30-5.6**, and **30-5.7** in the B-4 and R-B Zones for Overlay Zone C and B-2 Zone for Overlay D.
 4. All uses enumerated in the underlying zoning.
- b. Accessory uses and structures. The following accessory uses and structures shall be permitted:
 1. Amenities ancillary to multi-family residential and mixed commercial/residential developments, such as lobbies, fitness centers, storage areas for the residents of the multi-family buildings, and common area meeting rooms for the residents of the building.
 2. Active and passive outdoor recreation areas.
 3. Common indoor open space areas.
 4. Parking spaces, driveways, structured multi-level parking garages provided that any structured parking is enclosed with the same building materials and finishes used for the main portion of the mixed commercial/residential or multi-family residential building.
 5. Refuse and recycling building and/or structure.
 6. Roof decks including furnishings, screening, landscaping shade structures and facilities.
 7. Stationary generators.
 8. Fences and walls.
 9. Signage.
 10. HVAC equipment and utility cabinets/controllers.
 11. Temporary construction trailers, temporary sales trailer, and/or temporary sales office through final project Certificate of Occupancy.
 12. Any use or structure that is customarily incidental and subordinate to the principal use of land or building located on the same lot.

§ 30-5.15.3 Area and Bulk Requirements.

- a. Minimum Gross Lot area: 0.2 acre (8,712 sq. ft.) for all overlay sections, Sylvan Avenue Overlay C and Sylvan Avenue Overlay D Zone District.
- b. Maximum Density.
 1. Multi-Family Residential Development: 20 units/acre.
 2. Mixed Commercial/Residential Development: 24 units/acre.
- c. Minimum lot width: 50 feet.

- d. Maximum Height.
 - 1. Principal Buildings. The maximum building height shall be the lower elevation of 3 stories and 36 feet or XXX feet elevation [TBD and inserted in the final version of the ordinance] above mean sea level, including a parapet for the Southern Sylvan Avenue Overlay Area C, or XXX feet elevation [TBD and inserted in the final version of the ordinance] above mean sea level, including a parapet for the Sylvan Avenue Overlay D Zone District Area.
 - 2. Parapets. Parapets shall measure a maximum of four (4) feet above a roof level and shall be stepped back a minimum of 4 feet from the roof's edge.
 - 3. Accessory Buildings. No accessory building or accessory structure shall exceed sixteen (16) feet in height.
 - 4. Rooftop Appurtenances:
 - a) Rooftop equipment and appurtenances, including elevators, elevator overrides, air conditioning equipment, egress stair towers and similar structures ("Rooftop Appurtenances"), shall be permitted to exceed the maximum building height permitted herein subject to the following requirements.
 - b) Rooftop Appurtenances shall not occupy more than 20% of the total area of the roof level. No more than 5% of the total roof area may be occupied by equipment or structures measuring up to 10 feet in height and the remaining 15% of the total roof area may be occupied by equipment or structures measuring up to 5 feet in height.
 - c) All Rooftop Appurtenances not otherwise shielded by a parapet shall be screened or otherwise visually mitigated such that they are not visible from eye-level of a person standing on adjacent public streets.
- e. Maximum impervious coverage: Eighty percent (80%) of total lot area.
- f. Maximum building coverage: Sixty percent (60%) of total lot area.
- g. Minimum building setbacks.
 - 1. Front Yard Setback: 20 feet.
 - 2. Side Yard Setback (Single): 10 feet.
 - 3. Side Yard Setback (Corner Side): 15 feet.
 - 4. Side Yard Setback (Combined): 20 feet or 25 feet (w/corner side).
 - 5. Rear Yard Setback: 20% of lot depth.
- h. The preceding standards shall apply to Downtown Tiers (Southern Sylvan Avenue Overlay Zones C and Sylvan Avenue Overlay D) Inclusionary Housing Overlay - 4 (IHO-4) Zone. All other provisions and standards of the Borough of Englewood Cliffs Code shall apply to any development in the Downtown Tiers (Southern Sylvan Avenue Overlay Zones C and Sylvan Avenue D) Inclusionary Housing Overlay — 4 (IHO-4) Zone unless the provision or standard is in conflict with the provisions or standards herein, in which case the provisions and standards herein shall apply.

§ 30-5.15.4 Affordable Housing Requirements.

- a. Affordable units provided shall conform to the requirements of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq. ("FHA"); applicable regulations of the New Jersey Council on Affordable Housing ("COAH"); applicable requirements of the Courts of the State of New Jersey; and the regulations of the New Jersey Housing and Mortgage Finance Agency ("NJHMFA") including the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC") with the exception that in lieu of 10% of affordable units in rental projects being required to be affordable to households earning at or below 35% of the regional median household income by household size, (N.J.A.C. 5:80-26.3(d), 13% of all affordable units in rental or for-sale projects shall be required to be affordable to households earning at or below 30% of the regional median household income by household size ("very low income"), in conformance with N.J.S.A. 52:27D-329.1 (L.2008, c.46, s.7) and all other applicable law. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and - 311b and all other applicable law. If the required number of affordable units is an odd number, the additional unit must be a low-income unit. Example: the developer must construct 7 affordable units: 4 must be low-income units and 3 must be moderate income units subject to the limitations set forth herein.
- b. All affordable units shall comply with the Borough's pending Affordable Housing Ordinance to be approved by the Court and the Uniform Housing Affordability Controls.
- c. There shall be a set-aside of at least 20% of the total units as affordable units. In the event that 20% of the total number of residential units does not equal a full integer, the fractional number of units shall be rounded upward to provide one additional whole unit (e.g. 20% of 53 units = 10.6 units, round up to 11 units).
- d. The developer shall have an obligation to deed restrict the Affordable Units as very-low-, low-, or moderate-income affordable units for a period of at least thirty (30) years, until such time and under conditions as the Borough elects to release the deed restriction, so that the Borough may count the Affordable Units against its affordable housing obligation. The deed restrictions shall be recorded with the County Clerk, and a copy of the recorded deed shall be forwarded to the Borough Municipal Housing Liaison and Administrative Agent. Any sale of the property or units shall not affect the length or terms of the deed restriction.
- e. The bedroom distribution of the affordable units shall be in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.3.
- f. The income distribution of the affordable units shall be in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.3, and shall also provide for a 13% set-aside of very-low income units as part of the income distribution per paragraph a above.
- g. The inclusionary development will be designed to integrate the low- and moderate-income units with the market units. Affordable housing units shall be integrated within inclusionary housing buildings containing market rate units.
- h. Non-residential development as part of any mixed commercial/residential development shall be subject to the provisions of Borough Code § **30-19.5**.
- i. The developer of any affordable units shall be responsible for retaining a qualified Administrative Agent at the developer's sole expense acceptable to the Borough or utilizing the Administrative Agent appointed by the Borough.

§ 30-5.15.5 Off-Street Parking and Parking Design Requirements.

- a. All off-street parking areas shall conform to the provisions of Borough Code § **30-10.1**.
- b. The minimum parking requirement shall be 1.7 spaces per dwelling unit.
- c. Off-street parking may be located in surface parking areas and/or within a building as established herein.
- d. Tandem spaces (where one parking space is located directly behind or in front of another parking space) where each space comprising the tandem is to be designated for use by a single unit, each space comprising the tandem shall each be counted as a separate and distinct space with each being credited towards compliance with the RSIS parking requirement.

§ 30-5.15.6 Buffer and General Landscaping Requirements.

- a. Buffer requirements shall be as stated under the provisions of Borough Code § **30-7.10**.
- b. A landscape plan prepared by a landscape architect licensed in the State of New Jersey shall be submitted and shall include details for all decorative features. The plan shall identify proposed trees, shrubs, ground cover, and other landscaping elements. When existing natural growth is proposed to remain, the applicant shall include in the plans the proposed methods to protect existing trees and growth during and after construction.
- c. Any development that fronts the Palisades Interstate Parkway shall specifically provide adequate screening along any setback from the Palisades Interstate Parkway so as to protect its scenic quality and take other mitigating actions to protect the view from the Palisades Interstate Parkway.

§ 30-5.15.7 Building and Architectural Standards.

- a. The preservation of the viewshed of the Palisades is a critically important aesthetic and scenic design consideration. The applicant shall demonstrate that the proposed development would not adversely affect the scenic integrity of the Palisades Interstate Park and its surroundings when viewed from vantage points east and south of the Palisades, specifically the George Washington Bridge center and the Cloisters Terrace and high point of Fort Tryon Park, Manhattan.
- b. Buildings shall be designed with each of a building's facade being of similar importance and shall have a base, middle and top. Building facades may be articulated both horizontally and vertically. Architectural devices such as providing stringcourses, cornices and sub-corniced, raised parapets, and/or horizontally differentiating surface treatments maybe be used to aid articulation and transitions. Bay windows and projections at each facade may also be used to create varied articulation in the design.
- c. Upper level facades shall be articulated to provide architectural interest. Frontages shall have at least one window appropriately proportioned per structural bay. Building designs may utilize various types of materials and material changes for facade articulation. The intent of this required articulation is to create interesting and varied building facades such that the building facades do not read as uniform or continuous slabs along the streetscape.

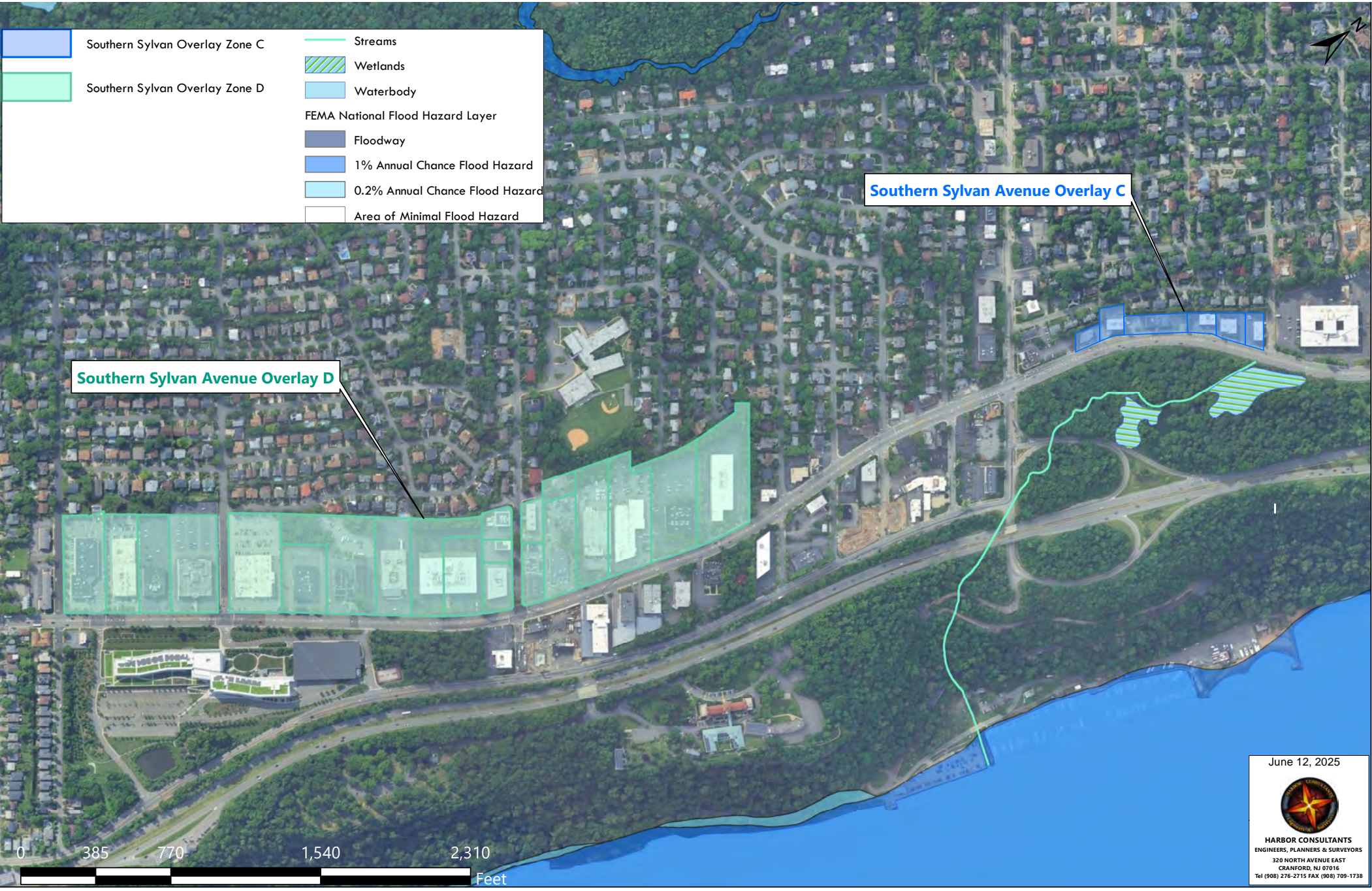
- d. Exterior facade materials may consist of, but not limited to, masonry brick veneer, manufactured cast stone veneer, precast sills and bands, fiber cement siding panels, accent composite metal panels, composite wood panels and similar materials. Exterior materials may further include windows, PVC trim, and architectural metal canopies.
- e. Windows shall be double-glazed and vinyl- or metal-cased in all residential portions of the building. Differentiated glazing treatment and building materials may be used at the lobby entrance and other feature areas.
- f. All mechanical equipment shall be set back a minimum of 10 feet from the edge of any roof or raised parapet. If equipment is not screened by a parapet, it shall be otherwise screened such that it is not visible from eye-level on adjacent public streets.
- g. Elevator overrides, egress stair towers, and/or rooftop projections (excluding mechanical equipment) measuring greater than 5 feet in height shall be clad with materials which do not contrast with the materials used on the upper level of the building facade.
- h. A solid wall of not less than two feet in height above floor level shall be provided along all exterior facades, except where necessary to allow driveways or other access points.

§ 30-5.15.8 Refuse and Recycling Requirements.

- a. Adequate facilities shall be provided for the handling of garbage, recycling, and other refuse by providing and maintaining a screened enclosure, a separate building, or an interior area within the multi-family dwelling where all trash and refuse containers shall be stored while awaiting pickup.
- b. A refuse and recycling building that is appropriately sized for the development shall be provided at a minimum of 5 square feet for unit.

§ 30-5.15.9 Palisades Scenic Integrity Protection.

- a. The Preservation of the viewshed of the Palisades is a critically important aesthetic and scenic consideration. The Palisades Scenic Integrity Protection standards require the applicant to demonstrate that the proposed development would not adversely affect the scenic integrity of the Palisades Interstate Park and its surroundings when viewed from vantage points east and south of the Palisades, specifically the George Washington Bridge center and the Cloisters Terrace and high point of Fort Tryon Park, Manhattan.
- b. The developer shall provide studies, reports and testimony demonstrating that any proposed development meets the height limitations for this overlay zone and complies with the standards of this section.
- c. Notwithstanding any other requirement of the Borough Code, no application shall be deemed complete unless the developer has provided a copy of the application and plans to the Executive Director of the Palisades Interstate Park Commission.
- d. Additionally, Applicant will demonstrate that the proposed development will avoid adversely affecting the scenic integrity of the Palisades Interstate Parkway.



June 12, 2025



HARBOR CONSULTANTS
 ENGINEERS, PLANNERS & SURVEYORS
 320 NORTH AVENUE EAST
 CRANFORD, NJ 07016
 Tel: (908) 276-2715 FAX: (908) 709-1738

APPENDIX Z

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.

ATTORNEYS AT LAW

WWW.PRICEMEESE.COM

TICE CORPORATE CENTER
50 TICE BOULEVARD
SUITE 380
WOODCLIFF LAKE, NJ 07677
PHONE: 201-391-3737
FAX: 201-391-9360

115 EAST STEVENS AVENUE
SUITE 109
VALHALLA, NEW YORK 10595

89 HEADQUARTERS PLAZA NORTH
SUITE 1446
MORRISTOWN, NJ 07960

PLEASE RESPOND TO WOODCLIFF LAKE OFFICE

June 6, 2025

VIA E-MAIL ONLY

Michael Mistretta, P.P.
Harbor Consultants
320 N Avenue East
Cranford, NJ 07016

Re: IMO Application of the Borough of Englewood Cliffs, County of Bergen, BER-L-775-25

Dear Mr. Mistretta:

As you are aware, this office represents Scenic Hudson, Inc. (“Scenic Hudson”) and the Natural Resources Defense Council (“NRDC”) (collectively the “Conservation Groups”) with respect to the above captioned matter. As you are aware, the Conservation Groups have demonstrated a strong commitment to protecting and preserving the Palisades as an outstanding national historic and natural landmark from development by taking action in the Borough of Englewood Cliffs to protect the park, its associated parkway and its viewshed. The Palisades of the Hudson is a National Historic Landmark and National Natural Landmark and that the Palisades Interstate Parkway is a designated Scenic By-Way. The Palisades Interstate Park Commission (“PIPC”) was founded in 1900 by then-Governors Theodore Roosevelt and Foster Voorhees with a mandate to protect and preserve the Palisades. For decades, the PIPC and the Conservation Groups have worked to ensure preservation of the Palisades. Furthermore, the Conservation Groups also strongly support the need for fair and equitable housing in the Borough and throughout the State of New Jersey.

These goals are not mutually exclusive. As the New Jersey Supreme Court stated in Mount Laurel II, “we emphasize here that our concern for protection of the environment is a strong one and that we intend nothing in this opinion to result in environmentally harmful consequences.” So. Burlington County NAACP v. Mount Laurel Twp, 92 N.J. 158, footnote 68 (1983) (“Mount Laurel II”). Thus, while the Conservation Groups strongly support the need for affordable housing, such re-zoning must not harm the scenic integrity of the Palisades.

To that end, the Conversation Groups have reviewed the forty-three (43) acre area you indicated was under consideration for multi-family zoning and requested that Saratoga Associates prepare a map

showing acceptable above sea level (“ASL”) height limits for development in this area. This map is attached as Exhibit “A.” With the exception of three (3) lots in the northern portion of the zone¹ (“Highly Visible Areas”), each of the requested ASL limits should permit the development of a 36’ tall building. With respect to the Highly Visible Areas, an acceptable ASL would only permit a 19’ to 35’ structure. This visibility is due to a change in topography and also the lack of tree cover in the area of Sisters of St. Joseph of Peace property located directly to the east.

Given the change in topography, we would recommend that the ordinance adopted a separate height limit for each lot. To that end, this office has prepared the following table:

Saratoga Map Parcel Id #	Block	Lot	ASL Maximum
1	130	22	411’
2	130	23	407’
3	130	24	411’
4	130	25	408’
5	130	28	394’
6	314	10	406’
7	314	11	398’
8	314	12	389’
9	314	13	379’
10	314	14	372’
11	314	15	367’
12	313	3	291’
13	313	2	336’
14	313	1	380’
15	411	23	378’
16	411	22	390’
17	411	21	385’
18	411	19	395’
19	411	18	406’
20	411	17	398’
21	411	16	395’
22	411	15	387’
23 ²	411	14	384’

In order to help ensure maintaining the scenic integrity of the Palisades and surrounding area, the Conservation Groups respectfully request that the “Palisades Scenic Integrity Protection” that was used in the last affordable housing round, be used here. This language is attached as Exhibit “B”. Furthermore, and with respect to the Highly Visible Areas, the impacts for development here are similar to development on the nearby Sisters of St. Joseph of Peace Property. To the extent that the Borough wishes to permit development at heights above the requested ASL limits for these locations, the Conservation Groups respectfully request that, in addition to the standard “Palisades Scenic Integrity Protection Language” used in the last affordable housing round, additional protective measures, similar to those used for the Sisters of

¹ Block 411, Lots 18, 19 and 21.

² This very small parcel is located to the west of Block 411, Lot 15. Due to its small size, it is not numbered on the attached Exhibit “A.”

Michael Mistretta, P.P.

June 6, 2025

Page 3

St. Joseph of Peace Property, be adopted for these areas. This should include, but not necessarily be limited to, height requirements for rooftop appurtenances (Section 30-5.16.3(E)(4) of the Borough Code) and buffer and general landscaping requirements (Section 30-5.16.6 of the Borough Code).

Lastly, you had also requested that the Conservation Groups review the ASL requirements for the Northern Sylvan Avenue Corridor Inclusionary Overlay – A (“OL-A”) zone. In our estimation, the below ASL maximum heights would protect the Palisades viewshed while also allowing for reasonable development within the parameters set forth in the OL-A zone ordinance.

Block	Lot	ASL Maximum
910	1	455'
1201	8	460'
1201	9.01	470'
1201	9.03	475'
1201	9.04	482'

Thank you for your time and attention to this matter. Please feel free to contact my office, should you have any questions with respect to the above.

Sincerely,

PRICE MEESE SHULMAN & D'ARMINIO, P.C.

By: Edward W. Purcell
Edward W. Purcell, Esq.

cc:

Clients (via e-mail)

Robert A. Ferraro, Esq., Englewood Cliffs Borough Attorney (via e-mail)

Joshua Laird, Executive Director of PIPC (via e-mail)

Exhibit A

Potential Development Visibility Analysis

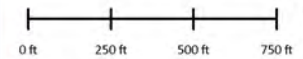
Borough of Englewood Cliffs, NJ

Legend

- Study Area Parcels
- Study Area Parcels (max ASL elevation <36' above existing grade)
- Current Borough Zoning Districts

Map ID	Max Building Height above Existing Grade (1)	Max Building Height above ASL(2)
01	36'	411'
02	36"	407'
03	36'	411'
04	36'	408'
05	36'	394'
06	36'	406'
07	36'	398'
08	36'	389'
09	36'	379'
10	36'	372'
11	36'	367'
12	36'	291'
13	36'	336'
14	36'	380'
15	36'	378'
16	36'	390'
17	19'	385'
18	26'	395'
19	35'	406'
20	36'	398'
21	36'	395'
22	36'	387'
23	36'	384'

(1) Existing high point on parcel
 (2) Above sea level



SARATOGA ASSOCIATES



Exhibit B

- a. Preservation of the viewshed of the Palisades is a critically important aesthetic and scenic consideration. The Palisades Scenic Integrity Protection standards require the applicant to demonstrate that the proposed development would not adversely affect the scenic integrity of the Palisades Interstate Park and its surroundings and be visible above the tree canopy from vantage points east and south of the Palisades, specifically the George Washington Bridge center and the Cloisters Terrace and high point of Fort Tryon Park, Manhattan.
- b. The developer shall provide studies, reports and testimony demonstrating that any proposed development meets the height limitations for this overlay zone and complies with the standards of this section.
- c. Notwithstanding any other requirement of the Borough Code, no application shall be deemed complete unless the developer has provided a copy of the application and plans to the Executive Director of the Palisades Interstate Park Commission.
- d. Additionally, applicant will demonstrate that the proposed development will avoid adversely affecting the scenic integrity of the Palisades Interstate Parkway

APPENDIX AA



May 15, 2025

Hon. Mayor Mark Park and Members of the Borough Council
Borough of Englewood Cliffs
482 Hudson Terrace
Englewood Cliffs, NJ 07632

Dear Mayor Park and Members of the Borough Council,

As the proud custodian of a nationally significant historic and natural resource within the Englewood Cliffs community, the Palisades Interstate Park Commission is following with great interest how the Borough will respond to New Jersey's new affordable housing law (P.L. 2024, c. 2) that Governor Murphy signed into law in 2024. We are particularly interested in understanding how the Borough intends to meet its prospective need obligation of 329 units during the current affordable housing round.

This letter is intended to convey our concern that the Borough, to meet this ambitious new target, may consider a waiver or change to current building height limits in a manner that adversely impacts protected views of Palisades Interstate Park and the Palisades Interstate Parkway. While the Park Commission is generally supportive of affordable housing goals across the State, we would strongly object to easing height restrictions in Englewood Cliffs to the detriment of the Park, which is a designated National Historic Landmark and National Natural Landmark, as well as the Parkway, which is a National Historic Landmark and both a National and State Scenic Byway.

As you know, most of the land in the Borough of Englewood Cliffs immediately west of Palisades Interstate Park and the Palisades Interstate Parkway is zoned B-2, Limited Business District. Under Chapter 30 of the Englewood Cliffs Municipal Code, the maximum building height in a B-2 district is 35 feet. At this height, any new structures are generally hidden from view from sensitive locations with views towards Palisades Interstate Park and the Palisades Interstate Parkway.

This is an important standard that serves to protect one of Englewood Cliffs' and the State of New Jersey's most historic and best utilized public resources. In fact, even the October 8, 2020 Settlement Agreement between the Borough of Englewood Cliffs and the Fair Share Housing Center, which settled the Borough's obligation in the last affordable housing round, established conservative building height limits that were intended to protect the Palisades viewshed.

James E. Hanson II
PRESIDENT

D. Bryce O'Brien II
VICE PRESIDENT

David H. Mortimer
SECRETARY

Hon. Paul Tomasko
TREASURER

Jeannette Redden
Rose Marie Manger, Esq.
Kevin B. Tremble
Jennifer Cunningham
Philip H. White

Joshua R. Laird
EXECUTIVE DIRECTOR

**PALISADES INTERSTATE
PARK COMMISSION
ADMINISTRATION BUILDING**
3006 Seven Lakes Drive
P.O. Box 427
Bear Mountain, NY 10911-0427
(845) 786-2701

By sharing our concern now, we hope to encourage the Borough to formulate an affordable housing plan that preserves existing height limits in areas where taller structures could impact Park views. The Palisades Interstate Park Commission has a long history of advocacy for the land under its jurisdiction. It was, after all, the protection of vistas to and from the Palisades that helped inspire the States of New Jersey and New York to create the Commission 125 years ago.

To that end, we would welcome an opportunity to meet and discuss how best to avoid any conflict between Englewood Cliff's important affordable housing targets and the continued protection of the Palisades. Please do not hesitate to contact me at jlaird@pipc.org, or at (845) 786-7911.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joshua Laird", with a stylized flourish at the end.

Joshua Laird

cc:

Members of Englewood Cliffs Planning Board
Members of the Palisades Interstate Park Commission