

# HOUSING ELEMENT AND FAIR SHARE HOUSING PLAN

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## BOROUGH OF ENGLEWOOD CLIFFS MASTER PLAN

*Englewood Cliffs, County of Bergen, New Jersey*

*December 10, 2018*

Prepared by

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**EXHIBITS**

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- EXHIBIT A.** Concept Plan for 100% Affordable Rental Project Through Redevelopment of Borough Complex.
- EXHIBIT B.** Map of Proposed Sites for Unmet Need Strategies.

**APPENDICES**

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- APPENDIX A.**
  - 1. Vacant Land Analysis with Attached Exhibits, dated December 10, 2018.
  - 2. RDP Analysis of the 800 Sylvan Site (Block 910, Lot 1), dated December 10, 2018.
- APPENDIX B.** Borough of Englewood Cliffs 2018-2025 Spending Plan.
- APPENDIX C.** Mandatory Set-Aside Ordinance No. 18-14, October 20, 2018.
- APPENDIX D.** Borough Development Fee Ordinance 2006-25, adopted December 20, 2006 and approved by COAH October 18, 2006; amended as Ordinance 2009-08, adopted June 10, 2009 and approved by COAH on April 13, 2009.
- APPENDIX E.** Resolution No. 18-222 of “Intent to Bond or Budget for any Funding Shortfall”, dated October 16, 2018.
- APPENDIX F.** Pro Forma for a Municipally-Sponsored Project for up to 57-Units.

## 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 addresses the Borough's compliance with the Municipal Land Use Law ("MLUL"), relevant Council on Affordable Housing ("COAH") regulations from Round 2, relevant Uniform Housing Affordability Controls ("UHAC") regulations, and other applicable law. The Master Plan Housing Element will examine the Borough's demographics, and employment characteristics, population and demographic characteristics of the Borough of Englewood Cliffs, along with the housing stock and historic trends throughout the decades. A Housing Plan according to the Municipal Land Use Law C.40:55D-28b(3) must include, but is not limited to, residential standards and proposals for the construction and improvement of housing. 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;
- A projection of the municipality's housing stock, including the probable future construction of low and moderate 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 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; and
- A consideration of the lands most appropriate for the 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.

The Fair Share Plan will address the plan to meet the Borough of Englewood Cliffs' Fair Share Housing Obligation. The Fair Share Plan is part of the Borough of Englewood Cliffs' efforts to secure a Judgement of Compliance and Repose ("JOR") from the Court in the Declaratory Judgement 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 in Bergen County on July 8, 2015, and will include the projects and strategies to address Englewood Cliffs' affordable housing obligations.

## II. 2018 THIRD ROUND HOUSING ELEMENT

### A. OVERVIEW

This 2018 Housing Element and Fair Share Plan was prepared in response to the New Jersey Supreme Court Decision decided on March 10, 2015, In re Adoption of N.J.A.C. 5:96 & 5:97 by the N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”), and has been prepared in accordance with the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-28b(3) to address the fair share obligations as determined by Judge Christine Farrington. The Housing Element and Fair Share Plan has also been prepared to comply with all requirements of the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), and COAH Round 2 regulations (N.J.A.C. 5:93-1, et seq.).

#### a. *Statewide Affordable Housing History*

The affordable housing or Mount Laurel doctrine, started with the 1975 decision by the N.J. Supreme Court involving the Township of Mount Laurel (So. Burl. Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, 67 N.J. 151 (1975) or “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 Mount Laurel I decision prohibits municipalities from using zoning powers to prevent the potential for the development of affordable housing.

Displeased with progress under its earlier decision, in 1983, the NJ Supreme Court released a second Mount Laurel decision (So. Burlington Ct. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983) or “Mount Laurel II”). Because the Legislature had not enacted laws to implement the holding in Mount Laurel I, the Court in Mount Laurel II fashioned a judicial, or what is commonly referred to as a “Builder’s remedy”. That remedy created a special process by which builders could file suit for the opportunity to construct housing at much higher densities than a municipality otherwise would allow. In essence, Builder’s Remedy lawsuits seek to force towns to meet their affordable housing obligations.

Responding to the builder’s remedy litigation generated by the *Mount Laurel II* decision and the high fair share obligations generated by the AMG Realty Co. v. Warren Tp., 207 N.J.Super. 388 (Law 1984) decision, the State Legislature passed the Fair Housing Act (hereinafter “FHA”) in 1985, which the Supreme Court upheld in (Hills Dev. Co. v. Bernards Twp., 103 N.J. 1 (1986) or “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 municipalities to meet its obligation. The FHA included a process for municipalities to obtain 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 address the number generated by the formula to adjust their fair share 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, as adjusted.

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 labelled the difference between the number generated by the formula and the RDP as the "unmet need." In contrast to the Round 1 regulations where COAH imposed no obligation on land-poor municipalities above their fair share, as adjusted, COAH imposed an obligation on land-poor municipalities above the adjusted fair share. Said another way, while COAH forgave the unmet need in Round 1, it imposed an obligation on municipalities for the unmet need in Round 2. However, COAH gave itself the discretion to impose or not impose an unmet need obligation. It was not mandatory. In this regard, N.J.A.C. 5:93-4.2 (h) provides that COAH "may" require a land-poor municipality to adopt a development fee ordinance, and overlay ordinance and other ordinances to address the so-called unmet need.

Third Round regulations were supposed to be adopted 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 portions of COAH's 2004 Third Round rules, but invalidated other aspects of them. 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 compliant regulations, 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 in response to the new Third Round rules.

On October 8, 2010, the Appellate Division concluded that COAH's revised 2008 regulations suffered from many of the same deficiencies as the first set of Third Round rules, and it invalidated substantial portions of the 2008 Third Round regulations again. See In re Adoption of N.J.A.C. 5:96 & 5:97, 416 N.J. Super. 462 (App. Div. 2010). The decision was appealed to the New Jersey Supreme Court, which invalidated the second version of the Round 3 regulations and directed COAH to use a methodology for determining prospective affordable housing needs similar to the methodologies used in the prior rounds.

During this same time period, Governor Christie initiated a series of steps to abolish or reduce the role of COAH. During this time period the Legislature introduced a Bill, which would have radically transformed the affordable housing world. The S-1 Bill in its initial form was supported by Governor

Christie. By the time it went through the Assembly, however, a very different bill passed and the Governor conditionally vetoed the Bill.

Frustrated with the lack of movement by COAH to adopt updated Third Round rules, 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.

In response to COAH's failure to adopt round 3 regulations, on March 10, 2015, 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.

While the Supreme Court in the 2015 case declined to adopt a specific methodology or formula to calculate the third round affordable housing obligations of the municipalities and instead left that determination to the 15 Mount Laurel Judges (one in each vicinage), it did provide some guidance. The Court also treated 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 in the same way that the 1985 FHA treated municipalities that had been in builder's remedy litigation at that time and had thereafter secured a transfer of their case from the court to COAH. Such municipalities secured enormous protections from developers seeking to dictate how the municipalities satisfied their obligations.

In accordance with the MLUL, COAH's Round 2 regulations and the rulings of Judge Farrington, the Borough hereby presents this Housing Element and Fair Share Plan to the Court for review and approval by the Courts. In presenting its plan at this stage, it is important to emphasize that there is much controversy over the Borough's RDP. Although the Borough sought to obtain a determination by the Court on its RDP so it could plan to address the RDP the Court deemed appropriate, the Court declined to proceed in phases with Phase 1 being the phase where the Court defines the Borough's obligations. Consequently, this plan is based upon the Borough's best judgment as to what its RDP is. If the RDP changes as a result of the litigation, the Borough reserves all rights to revisit how it satisfies the RDP the Court assigns because the magnitude of the RDP determines the Borough's judgment as to what is the best plan for the community. In any event, the Borough is committed to comply voluntarily and, if the RDP should change, the Borough emphasizes its commitment to comply in a manner the Borough deems to be in the best interest of the community and asserts that it has the right to fashion a cure it deems appropriate.

## **B. SUMMARY OF ENGLEWOOD CLIFFS' AFFORDABLE HOUSING HISTORY**

The Borough of Englewood Cliffs has prepared a number of Housing Elements and Fair Share Plans over the years to address its affordable housing obligation. The Borough participated in the process established by the first round rules by adopting a HEFSP which was dated March 1989 and revised in May 1989.

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 the Council on Affordable Housing (COAH), and petitioned for substantive certification based on its second round plan on March 2, 1995.

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 an obligation in excess of its adjusted obligation for the so-called "unmet need" of 215 units. 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. Since such zoning theoretically would have generated maximum of 30 affordable units, COAH clearly never intended to require the Borough to come anywhere close to addressing the full unmet need. The Borough refused to adopt the overlay zone on the Prentice Hall site.

In 1997, as a result of the Borough's refusal to adopt 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.

After COAH adopted the second iteration of COAH's third round regulations in 2008, and despite the history of uncertainty and litigation generated by the third round rules, the Borough proceeded to prepare its third round HEFSP which is dated January 31, 2006. A public hearing was convened on December 19, 2008 at which time the Planning Board adopted this HEFSP. The Borough of Englewood Cliffs petitioned COAH for substantive certification for this plan on March 11, 2009. Englewood Cliffs received a completeness determination on April 2, 2009; however, this plan did not receive substantive certification from COAH before these rules were challenged. A development fee ordinance creating dedicated revenue source for affordable housing was determined to be compliant and COAH provided a resolution dated October 18, 2006, which was adopted by the municipality on December 20, 2006. As part of its March 11, 2009 petition for substantive certification, the Borough included a Spending Plan submitted for COAH's approval, and on April 7, 2011, COAH approved Englewood Cliffs' spending plan by Resolution. The Borough remained under COAH's jurisdiction until it filed a Declaratory Judgment Action on July 8, 2015, in response to the Supreme Court's Mount Laurel IV decision.

### **C. CONSIDERATION OF PROPOSALS OF DEVELOPERS THAT HAVE EXPRESSED A COMMITMENT TO PROVIDE AFFORDABLE HOUSING**

Pursuant to the Municipal Land Use Law C.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." 800 Sylvan Avenue, LLC ("Sylvan") has expressed such a commitment. Sylvan sent a letter to the Borough on December 17, 2017, and more recently submitted a Concept Plan in the ongoing litigation. The initial proposal was for a 600-unit project, and the more recent proposal has not made any reductions to the proposed number of units.

In considering how best to address its affordable housing responsibilities, the Borough has considered Sylvan's proposal as required by N.J.S.A. 40:55D-28b(3). The Borough finds that Sylvan has proposed a gross overdevelopment of the property it controls and that it would be not be sound planning to rezone the Sylvan site according to the proposed conditions that the developer demands. Simply put, the developer has presented a proposal that maximizes the use of the property, through the reduction in existing setbacks and increase in both existing building footprints

and height, in an apparent effort to maximize profits in utter disregard of principles of sound planning. It seems that no serious thought has been given to the notion that people will have to live in the community, and that any reasonable use of the site should take into account basic fundamentals including, but not limited to, the following: (1) It makes no sense to propose a zero lot line between a facility that is primarily a research and development facility and a residential project, which are very different uses that require separation; (2) It makes no planning sense to provide for the parking of an existing research and development facility on an adjacent residential lot; and (3) It makes no sense to create a project where an estimated 1,300 citizens will live, and fail to provide for the need of these residents with recreation facilities and other basic necessities. Sylvan Avenue is characterized as a State highway and is developed as predominantly as an office corridor, with little to no commercial or retail options within a half-mile radius. 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.

It does not appear that the plan was created to fashion an attractive place for people to live, but rather it appears that the plan was created for leverage. The Supreme Court addressed circumstances where developers pressed for maximum profit: “Zoning does not require that land be used for maximum profitability, and on occasion the goals of zoning may require something less.” Mount Laurel II, 92 N.J. at 274.

The Supreme Court also emphasized the importance of sound planning: “The Constitution of the State of New Jersey does not require bad planning...There is nothing in our Constitution that says that we cannot satisfy our constitutional obligation to provide lower income housing and, at the same time, plan the future of the state intelligently. Mount Laurel II at 238. Sylvan has designed a project that violates sound planning, not advances it. In stark contrast, the Borough’s plan focuses on sound planning. Instead of zoning for 600 units where 90 units would be affordable rental units and there would be 510 market units, the Borough has selected a site where all the units would be affordable and developed in accordance with sound planning. It is also appropriate for any municipality to identify areas where nonresidential and residential belong. 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.

For all these reasons, while the Borough has considered Sylvan’s proposal, it ultimately has rejected it. To be sure, a 100 percent affordable project creates substantial fiscal risks to the community. It is indeed possible that it would have to bond for several million dollars. However, the role of the government is to fashion a plan it deems to be in its own best interest and the plan presented does just that. Moreover, if the Borough needs to revise its plans based upon the Court’s rulings, it is prepared to take appropriate measures to control its “zoning destiny”- another goal the Supreme Court deemed worthy. Mount Laurel II at 214.

## D. HOUSING, DEMOGRAPHIC AND EMPLOYMENT INFORMATION

The following detailed Housing, Demographic, and Employment background information regarding Englewood Cliffs helps to describe and create an inventory of characteristics in the Borough of Englewood Cliffs that directly apply to current and future housing demand in the town and region. This analysis will include population demographics, housing characteristics, regional comparison, and recent trends.

The Borough of Englewood Cliffs is located in eastern Bergen County, and has a population of 5,281 in a geographic land area of 2.089 square miles, per 2010 Census data. 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 a number of 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. A number of regionally important interstate and state highways merge at the foot of the George Washington Bridge to the South of 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.

### a. 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 provides 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	201.5%
1970	5,938	103.8%
1980	5,698	-4.0%
1990	5,634	-1.1%
2000	5,322	-5.5%
2010	5,281	-0.77%
2016	5,403	2.3%

*Source: U.S. Bureau of the Census, Decennial Censuses American Community Survey 2012-2016 5-yr Estimate*

**Population**

Englewood Cliffs is a developed municipality. According to U.S. Census, 5,281 residents lived in Englewood Cliffs in 2010. 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 353 residents, or 5.5%. More recently, the 2012-2016 5-Year American Community Survey estimates that the Borough's population is 5,403, which represents an increase of 2.1% from the 2010 Census.

<b>Table 2: Population 1980-2010            Borough of Englewood Cliffs and Bergen County</b>				
	<b>Englewood Cliffs</b>	<b>% Change</b>	<b>Bergen County</b>	<b>% Change</b>
<b>1980</b>	5,698	-	845,385	-
<b>1990</b>	5,634	-1.1%	825,380	-2.4%
<b>2000</b>	5,322	-5.5%	884,118	7.1%
<b>2010</b>	5,281	-0.77%	905,116	2.4%

*Source: U.S. Bureau of the Census, 1990-2010 Decennial Censuses*

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 under 10%, and recent ACS estimates show that population could be experience modest increases again.

When compared to Bergen County as a whole, the Borough has experienced similar fluctuations. 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 that people aged 0 to 19 comprising 22.9%, people aged 20-39 comprising 16%, people aged 40-59 comprising 29.5%, and people aged 60 or over comprising 31.4%. Thus, over 60% of the population are aged 40 or older.

AGE COHORT	All	Female	Male
<b>Total 2010 Census Population</b>	5,281	2,726	2,555
<b>Under 5 years</b>	252	119	133
<b>5 to 9 years</b>	354	155	199
<b>10 to 14 years</b>	339	161	178
<b>15 to 19 years</b>	266	101	165
<b>20 to 24 years</b>	171	86	85
<b>25 to 29 years</b>	213	111	102
<b>30 to 34 years</b>	189	93	96
<b>35 to 39 years</b>	275	152	123
<b>40 to 44 years</b>	379	203	176
<b>45 to 49 years</b>	413	207	206
<b>50 to 54 years</b>	413	230	183
<b>55 to 59 years</b>	355	188	167
<b>60 to 64 years</b>	390	231	159
<b>65 years and over</b>	1,272	689	583
<b>Median age (years)</b>	47.2	49.3	45.7

Likewise, the data shows that the percentage of younger school children is larger than that of young professionals, which could be inferred as families that have waited to have children. Additionally, the median age in Englewood Cliffs is 47.2. Overall, it is clear that Englewood Cliffs has a significant aging population.

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 of children ages 5 to 17 in Englewood Cliffs from 1990 to 2010 – from 14.8% to 15% to 16.7%, respectively. Similarly, the number of over-65 year olds has increased from 16.5% to 22% to 24.1%. Most noticeably, the number of 18 to 24 year olds and 25 to 34 year olds has been steadily decreasing in Englewood Cliffs since 1990.

Age	1990				2000				2010			
	Englewood Cliffs		Bergen County		Englewood Cliffs		Bergen County		Englewood Cliffs		Bergen County	
	#	%	#	%	#	%	#	%	#	%	#	%
<b>Under 5</b>	267	4.7	48,940	5.9	304	5.7	28,208	3.2	252	4.8	50,281	5.5
<b>5 to 17</b>	834	14.8	119,428	14.5	797	15.0	147,691	16.7	886	16.7	154,124	17.0
<b>18 to 24</b>	469	8.3	73,934	9.0	301	5.7	58,728	6.6	244	4.6	67,253	7.4
<b>25 to 34</b>	614	10.9	135,888	16.5	510	9.6	117,992	13.3	402	7.6	104,847	12.0
<b>35 to 44</b>	747	13.3	129,469	15.7	764	14.4	152,636	17.3	654	12.3	129,334	14.3
<b>45 to 54</b>	826	14.7	99,687	12.1	753	14.1	129,190	14.6	826	15.6	147,648	16.3
<b>55 to 64</b>	945	16.8	91,675	11.1	722	13.6	87,698	9.9	745	14.1	114,526	12.7
<b>65 &amp; Over</b>	932	16.5	126,359	15.3	1,171	22.0	134,820	15.2	1,272	24.1	137,103	15.1
<b>Total</b>	5,634	100	825,380	100	22,732	100	884,118	100	5,281	100	905,116	100

*Source: U.S. Decennial Censuses, 1990, 2000, and 2010*

Comparatively, Bergen County has also seen a steady increase in the 5 to 17 age cohort and decline in the 25 to 34 age cohorts; however, the over-65 age cohort has remained steady around 15% for the county as a whole. Additionally, the County has experienced an increase in the 45 to 54 age cohort since 1990 from 12.1% to 16.3%. Overall, decreases in the 25 to 34 age cohort at both the Borough and County level suggest that this area has had a difficult time attracting younger professionals and young families.

**Race**

Table 5 shows the racial breakdown of the population according to responses from the 2010 Decennial Census. Over 97% of the population responded as “One Race,” with 56.4% responding as white. The next largest racial group in Englewood Cliffs is Asian at 43.6%, which is more largely comprised of a Korean population that is a subcategory showing a response rate of 20.3%.

The other 2.2% of respondents identified as “Two or More Races,” with the largest subgroup in that category being “White; Asian” with 60 respondents comprising 1.1%.

**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 1990-2010, Table 6 below shows that the Average Household Size in Englewood Cliffs decreased from 3.03 to 2.87 from 1990 to 2010, which may be connected to the steady decrease in household population in the same time period. Bergen County as a whole experienced a steady average household size of 2.64 from 1990 to 2000, which has negligibly increased to 2.66 in 2010. 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 2.54 in 1990, a decline of 23 percent.

Table 5: Population by Race, 2010 Borough of Englewood Cliffs		
	#	%
<b>One Race</b>	5,165	97.8
White	2,976	56.4
Black or African American	110	2.1
American Indian/Alaska Native	4	0.1
Asian	2,304	43.6
Asian Indian	300	5.7
Chinese	472	8.9
Filipino	39	0.7
Japanese	54	1.0
Korean	1,072	20.3
Vietnamese	7	0.1
Other Asian	90	1.7
Native Hawaiian/Other Pacific Islander	0	0.0
Some Other Race	41	0.8
<b>Two or More Races</b>	116	2.2
White; American Indian and Alaska Native	3	0.1
White; Asian	60	1.1
White; Black or African American	5	0.1
White; Some Other Race	10	0.2
<b>Total population</b>	5,281	100.0

*Source: U.S. Census, 2010*

	1990			2000			2010		
	HH Population	Occupied Housing Units	Avg HH Size	HH Population	Occupied Housing Units	Avg HH Size	HH Population	Occupied Housing Units	Avg HH Size
<b>Englewood Cliffs</b>	5,549	1,833	3.03	5,322	1,818	2.90	5,238	1,824	2.87
<b>Bergen County</b>	816,230	308,880	2.64	872,769	330,817	2.64	894,694	335,730	2.66

*Source: U.S. Census, 2010*

Household Size	Number of Households	Percent
<b>1 Person</b>	188	10.6
<b>2 Persons</b>	675	37.9
<b>3 Persons</b>	242	13.6
<b>4 Persons or More</b>	678	38.0
<b>Total Occupied Housing Units</b>	1,783	100

*Source: 2012-2016, American Community Survey 5-Year Estimates*

Englewood Cliff's household size has slowly and marginally declined between 1960 and 2010, as depicted in Table 6. Table 7 shows that household sizes in occupied housing units was highest for units with 4 persons or more in Englewood Cliffs at 38%, closely followed by 2 persons or more at 37.9%. These household sizes correlate to the average household size, and the typical land use of residential units in the Borough.

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 are

\$61,997 and \$131,936 and are both higher than Bergen County's \$44,978 and \$88,487.

In addition to a higher per capita income, fewer Englewood Cliffs residents are living below the poverty level than both County and State residents as a whole. Based on the 2012-2016 American Community Survey (*Table 8*) 3.8% of Englewood Cliffs residents compared to 7.5% of Bergen County residents are living below the poverty level.

The U.S. Census of Housing in 2009 established a median household income of \$102,222 for the community's region. Based upon this standard, the income of low and moderate households would represent 80 percent or less of this number, or \$81,777. With the exception of adjustments for family size, and using a rule of thumb of two times income for sales housing and one-quarter yearly income for rental housing, this would produce a housing cost level of \$163,554 for sales housing and \$1,703 for rental housing.

**Table 8: Income Characteristics – 2012-2016 ACS,  
Borough of Englewood Cliffs and Bergen County**

	Borough of Englewood Cliffs	Bergen County	State of New Jersey
<b>Median Household Income</b>	\$131,936	\$88,487	\$101,634
<b>Median Family Income</b>	\$146,636	\$107,465	\$90,575
<b>Per Capita Income</b>	\$61,997	\$44,978	\$37,538
<b>Percent of Persons Below Poverty Level</b>	3.8%	7.5%	10.9%

*Source: Selected Economic Characteristics, 2012-2016 American Community Survey 5-Year Estimates*

The income limits in Table 9 were produced by the Affordable Housing Professionals of New Jersey in 2017 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 9: Affordable Housing Professionals of New Jersey  
2017, Affordable Housing Regional Income Limits  
Region 1 - Bergen County, New Jersey**

Household Size	Moderate Income	Low Income	Very Low Income
<b>1 Person</b>	\$48,217	\$30,136	\$18,081
<b>1.5 Persons*</b>	\$51,661	\$32,288	\$19,373
<b>2 Persons</b>	\$55,105	\$34,441	\$20,664
<b>3 Persons</b>	\$61,993	\$38,746	\$23,248
<b>4 Persons</b>	\$68,882	\$43,051	\$25,831
<b>4.5 Persons*</b>	\$71,637	\$44,773	\$26,864
<b>5 Persons</b>	\$74,392	\$46,495	\$27,897
<b>6 Persons</b>	\$79,903	\$49,939	\$29,963
<b>7 Persons</b>	\$85,413	\$53,383	\$32,030
<b>8 Persons</b>	\$90,924	\$56,827	\$34,096

*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)

**b. Analysis of Housing Characteristics**

This section of the Housing Element provides an inventory of the community's housing stock. COAH's regulations require the municipal housing inventory to identify the number of year-round and seasonal units, housing age, housing conditions, purchase or rental value, occupancy characteristics and type, number of units affordable to low and moderate income households, and substandard housing units capable of being rehabilitated. Each of these items is identified in this section of the report. To supplement and update the information provided by the U.S. Census, information from the N.J. Department of Community Affairs ("DCA") Construction Reporter was reviewed.

*Age of Housing*

Englewood Cliffs is a developed community. Population spikes in from the 1950s to 1970 were caused by a large increase in the number of houses being built from 1940 to 1969. From 1940 to 1959, 471 houses were built and then, from 1960 to 1969, 689 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 1970s and 1980s, with an additional 461 units built through 1989. Table 10 demonstrates that an estimate of 406 housing units in total were built from 1990 to present day.

The percentage of housing constructed prior to 1950 is 45.1%. Housing constructed prior to 1950 totals 1,279 dwelling units. 7.9% of the housing stock was constructed after 2000. While most of this housing is considered to provide safe and sanitary conditions, there is some evidence, detailed herein, that a small percentage of dwellings in Englewood Cliffs may contain substandard conditions.

Year Housing Unit Built	Borough of Englewood Cliffs	
	Number of Units	Percent
2014 or later	8	0.4%
2010 – 2013	20	1.0%
2000 – 2009	279	14.5%
1990 – 1999	104	5.4%
1980 – 1989	212	11.0%
1970 – 1979	193	10.0%
1960 – 1969	660	34.2%
1950 – 1959	324	16.8%
1940 – 1949	39	2.0%
1939 or earlier	91	4.7%
<b>Total</b>	<b>1,930</b>	<b>100%</b>

*Source: 2012-2016 American Community Survey 5-Year Estimates*

**Table 11: Residential Building Permits, 1990-2017  
Borough of Englewood Cliffs**

Year	Residential Building Permits
2005-2009	123
2010	9
2011	8
2012	8
2013	14
2014	12
2015	32
2016	38
2017	22
2018 (YTD)*	13
<b>Total</b>	<b>279</b>

*Source: New Jersey Department of Labor and Workforce Development*  
\*As of September 2018

The number of residential building permits since the early 2000s has slowed. In tandem with Table 10 above, the number of residential building permits shows that while 14.5% 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 1% was built. From 2005 to 2009, 123 building permits were issued, and thus averaged at 24.6 per year. From 2010 to September of 2018, 156 permits have been issued, representing an average of 17.3 per year. This demonstrates a decline in the construction of home; 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 23.4 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 12 shows the housing size by the number of rooms. In general, Englewood Cliffs has a larger number of housing with more rooms, with 60.5% of housing having 4 or more rooms. Overall, the share of units with 2 rooms or less comprises 21.9% of the housing stock. It can be inferred that 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.

**Table 12: Housing Size by Number of Rooms – 2009-2013 ACS,  
Borough of Englewood Cliffs**

Number of Rooms	Borough of Englewood Cliffs	
	Number of Units	Percent
1 Room	37	16.8%
2 Rooms	95	5.1%
3 Rooms	607	32.4%
4 Rooms	608	32.5%
5 Rooms or More	525	28%
<b>Total</b>	<b>1,872</b>	<b>100%</b>

*Source: 2012-2016 American Community Survey 5-Year Estimates*  
*Note: Percentages May Not Add Due to Rounding*

The vast majority of housing in Englewood Cliffs is owner-occupied. Only slightly more than 10% of housing in Englewood Cliffs is renter occupied. Table 13 indicates if housing is occupied or not

and if occupied whether the units is owned by the occupant or rented. This table also indicates how many units are vacant and available either for purchase or rent.

	Total	Owner Occupied	Renter Occupied
<b>Total Housing Units</b>	1,924	1,633	191
<b>Vacant Units</b>	100	-	-
<b>Vacancy Rate</b>	5.2%	1.4%	1.0%

*Source: Source: U.S. Census, 2010*

The total vacancy rate in the Borough is 5.2%, based on the 2010 census which reported that 100 units were vacant out of 1,924 total units.

Table 14 shows the value of owner occupied housing reported by the 2012-2016 American Community Survey. Based on the data provided, the majority of the housing in Englewood Cliffs, 47.8%, is valued between above \$1,000,000. Indeed, 90.2% is valued at \$500,000 or above. Contrastingly, the majority of housing in Bergen County is valued between \$300,000 and \$499,999. Overall, housing values in the county are more evenly distributed than that of Englewood Cliffs, but over 75% of the housing is valued between \$300,000 and \$999,999 – which is still significant.

Housing Value	Borough of Englewood Cliffs		Bergen County	
	Number of Units	Percent	Number of Units	Percent
<b>Under \$50,000</b>	26	1.7%	4,053	1.9%
<b>\$50,000 to \$99,999</b>	14	0.9%	2,202	1.0%
<b>\$100,000 to \$149,999</b>	21	1.3%	3,204	1.5%
<b>\$150,000 to \$199,999</b>	8	0.5%	5,339	2.4%
<b>\$200,000 to \$299,999</b>	17	1.1%	24,234	11.1%
<b>\$300,000 to \$499,999</b>	88	5.6%	94,342	43.3%
<b>\$500,000 to \$999,999</b>	662	42.4%	69,350	31.8%
<b>\$1,000,000 or more</b>	747	47.8%	15,317	7.0%
<b>Total</b>	1,562	100%	218,041	100%

*Source: Value of Owner-occupied housing units, 2012-2016 American Community Survey 5-Year Estimates*

Table 15 depicts that the majority of rent levels in Englewood Cliffs were found to be between \$3,000 and \$3,499, with 42.1% of the 221 total rental units reported falling in that range. The next significant rent level was \$3,500 or more, with 24.4% estimated in that range. Finally, 4.5%

of rental units were estimated to have a rent between \$500 and \$999, while 15.4% was between \$1,500 and \$2,499.

Rent	Number of Units	Percent
Less than \$500	0	0.0%
\$500 to \$999	10	4.5%
\$1,000 to \$1,499	0	0.0%
\$1,500 to \$1,999	17	7.7%
\$2,000 to \$2,499	17	7.7%
\$2,500 to \$2,999	0	0.0%
\$3,000 to \$3,499	93	42.1%
\$3,500 or more	54	24.4%
No cash rent	22	9.9%
<b>Total</b>	<b>221</b>	<b>100%</b>

*Source: Contract Rent for Renter-occupied housing units, 2012-2016 American Community Survey 5-Year Estimates*

**c. Analysis of Employment Characteristics**

Economic data regarding Englewood Cliffs, retrieved from City-data.com, reports that the estimated Median Household Income in 2016 was \$139,683, an increase of over 30% from 2000 (Table 16). However, based on the CPI Inflation Calculator from the Bureau of Labor Statistics, an income of \$81,599 in 2000 would have the buying power of \$119,241 in 2017, which demonstrates that while incomes have increased since 2000, they have not kept pace with inflation.

Description	Amount
Estimated Median Household Income in 2016	\$139,683
Estimated Median Household Income in 2000	\$106,478
Estimated Per Capita Income in 2016	\$64,175
Estimated Median House or Condo Value in 2016	\$1,000,000+
Estimated Median House or Condo Value in 2000	\$504,800
Mean Price of All Housing Units in 2016	\$574,060
Mean Price of Detached Houses in 2016	\$629,892
Mean Price of Townhouses/Other Attached Units in 2016	\$518,544
Mean Price of Two Unit Structures in 2016	\$475,872
Mean Price of 3-4 Unit Structures in 2016	\$424,356
Mean Price of 5 or more Unit Structures in 2016	\$260,813
Median Gross Rent in 2016	\$3,398

*Source: City-Data.com*

For population 25 years and over	
High school or less	20.4%
Some College	13.8%
Bachelor's Degree or Higher	64.1%
Graduate or Professional Degree	29.9%
Unemployed	3.4%
Mean Travel Time to Work (Commute)	32.6 min.

*Source: City-Data.com*

The Borough of Englewood Cliffs is highly educated, with over 64% of residents over the age of 25 attaining a Bachelor's degree or higher, and almost 30% having a graduate or professional degree. The average commute time is 32.2 minutes, indicating that many of the residents commute to work outside of the Borough.

Finally, Table 18 shows the most common industries and occupations for residents in the Borough. In general, the most common industries for Borough residents to be occupied in are “Educational, Health Care, and Social Services”, “Professional, Scientific, and Management”, and “Finance, Insurance, and Real Estate”.

<b>Table 18: Most Common Industries and Occupations Borough of Englewood Cliffs</b>	
<b>Educational, Health Care, and Social Services</b>	19.5%
<b>Professional, Scientific, and Management</b>	17.1%
<b>Finance, Insurance, and Real Estate</b>	13.6%
<b>Wholesale Trade</b>	9.7%
<b>Arts, Entertainment, Recreation, and Food Services</b>	8.2%
<b>Public Administration</b>	7.8%
<b>Retail Trade</b>	6.0%
<b>Other Services, except Public Administration</b>	5.8%
<b>Manufacturing</b>	4.6%
<b>Construction</b>	3.1%
<b>Information and Communication</b>	2.9%
<b>Transportation, Warehousing, and Utilities</b>	1.7%
<i>Source: 2009-2013 American Community Survey-5 Year Estimates</i>	

III. 2018 THIRD ROUND FAIR SHARE PLAN

A. THE FAIR SHARE OBLIGATION

a. *Application of a Fair Share Formula*

The Borough has a zero unit rehab obligation; a 219 unit prior round obligation and a 365 unit Round 3 obligation based upon the fair share methodology approved by Judge Mary C. Jacobson in her decision, date March 8, 2018. The following chart illustrates the numbers for the Prior Round and for Round 3.

Table A: Fair Share Obligations	
Rehabilitation Obligation:	0
Prior Round Obligation (1987-1999):	219
Third Round Obligation (1999-2025)*:	365
<b>Total Obligation:</b>	<b>584</b>

There is controversy over the Borough’s RDP and the Borough sought to obtain a determination on the RDP so it could plan to address the RDP the Court deemed appropriate. Since the Court declined to proceed as sought by the Borough, this plan is based upon the Borough’s best judgment as to what its RDP is. If the RDP changes as a result of the litigation, the Borough reserves all rights to revisit how it satisfies the RDP the Court assigns because the magnitude of the RDP determines the Borough’s judgment as to what is the best plan for the community.

b. *The 20 Percent Cap*

In Round 2, COAH adopted regulations designed to cap a municipality’s “**new construction**” obligation to 20 percent of the municipality’s “**occupied housing stock**” as of the beginning of the housing cycle:

*5:93-2.16 Twenty-percent (20%) cap*

*(a) A cap of 20 percent of the estimated 1993 occupied housing stock (community capacity) cannot be exceeded by a municipality’s need for **new construction**. The need for new construction is the precredited need minus the reductions, prior-cycle credits, and the rehabilitation components...*

*[Emphasis added].*

COAH explained the rationale for the 20 percent cap standard in the rest of N.J.A.C. 5:93-2.16(a), which reads as follows:

*...This [20 percent cap] is based on the premise that if the affordable housing was provided as a 20-percent set-aside of inclusionary housing, and if the planned affordable housing was more than 20 percent of existing units, then the new affordable housing and accompanying market units would exceed the number of existing housing units in the community.*

*[N.J.A.C. 5:93-2.16(a) (emphasis added).]*

According to David N. Kinsey, F.A.I.C.P., FSHC expert, the “**occupied housing stock**” of the Borough in 2015, when Round 3 began, is 1,826. Applying the requirements of N.J.A.C. 5:93-2.16(a) would cap the Borough’s 584 obligation at 362.2, rounded down to 362. The Court denied the motion. Therefore, this affordable housing plan will use the 584 number that would result if there was no 20 percent reduction.

## 1. The Vacant Land Adjustment Process

Under the FHA, the Legislature required COAH to adopt “criteria and guidelines” to permit a “Municipal determination of its present and prospective fair share. . .”. N.J.S.A. 52:27D-307 c. (1) In other words, COAH needed to establish a fair share formula. If a municipality lacked sufficient vacant and developable land to fully address the number generated by the formula, the Legislature required COAH to adopt “criteria and guidelines” to adjust the municipality’s fair share:

*(2) Municipal adjustment of the present and prospective fair share based upon available vacant and developable land, infrastructure considerations or environmental or historic preservation factors and adjustments shall be made whenever. . .(f) Vacant and developable land is not available in the municipality.*

*[N.J.S.A. 52:27D-307 c. (1)]*

COAH described the process as follows:

*The term “fair share” is not defined in the Act on in COAH regulations, however, the provisions of the Fair Housing Act make it clear what the term means. N.J.S.A. 52:27D-307 (c) (1) requires COAH to “adopt criteria and guidelines:”*

*for municipal determination of its present and prospective fair share of the housing need in a given region. Municipal fair share shall be determined after crediting on a one-to-one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households;*

*Additionally, N.J.S.A. 27D-307 (c)(2) provides that the ultimate fair share number is arrived at after taking any allowable adjustments as well. These provisions make it apparent that the term “fair share” as used in the Fair Housing Act and consequently as used in COAH regulations and as COAH consistently has applied means that obligation arrived at after a municipality takes any credits or adjustments to which it may be entitled.*

*COAH opinion In The Matter of The Township of Parsippany-Troy Hills, County of Morris ; Docket No. COAH 54-203, April 24, 1989*

In Rounds 1 and 2, COAH adopted regulations to establish protocols to enable land-poor municipalities to determine their fair share, as adjusted. The adjusted number is referred to by many names: “the adjusted number”, the “realistic development potential” or the “RDP”. In Round

2, however, COAH adopted regulations to give itself the discretionary power to impose an obligation on a land-poor municipality beyond its adjusted number:

*(h) 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.*

*[N.J.A.C. 5:93-4.2 (h) (emphasis added)]*

The regulation cited empowers COAH to impose an obligation for the portion of the municipality's new construction obligation known as the "unmet need", which is the difference between the new construction obligation generated by various fair share formula and the RDP.

Based upon the plain language and intent of the FHA, the Borough brought a motion contending that the legislature never intended to empower COAH to impose an obligation on a municipality beyond its fair share and that it did intend the fair share of land-poor municipalities to be their adjusted fair share.

In response, on December 7, 2018, Judge Farrington ruled that "the court declines to accept the Borough's challenge or invitation to revisit and re-interpret the intention of the legislature and its actions in 1985, following Judge Serpentelli's decision in AMG vs. Warren Tp., 207 N.J. Super. 388 (1984)..." On December 7, 2018, the Court also ruled that "The Borough must address the unmet need portion of the Borough's fair share obligation, as the term is used in COAH's second round regulations, in the Borough's fair housing plan."

In view of the above, this affordable housing plan will identify the Borough's realistic development potential and address its unmet need in accordance with N.J.A.C. 5:93-4.2 (h) .

As to the Borough's realistic development potential, the Borough's professionals have prepared two reports, dated December 10, 2018, incorporated by reference, to determine the Borough's RDP. The first report, entitled "Vacant Land Adjustment for the Borough of Englewood Cliffs", examines the RDP for all sites other than the 800 Sylvan Avenue site and concludes that the RDP for those sites is 22.

The second report, entitled “RDP Analysis of 800 Sylvan Avenue”, responds to the written request by 800 Sylvan Avenue, LLC, dated November 17, 2017 to take into account its site for purposes of extrapolating the Borough’s RDP: “My understanding is that the Borough has been directed to provide an inventory of available land to the Court-appointed Master, Mary Beth Lonergan, P.P., A.I.C.P., by no later than November 30, 2017. We request that my client’s property, as described above, be considered by the Borough and by Ms. Lonergan as part of the inventory of available land.” On March 19, 2018, the Court entered an order providing as follows:

1. The Borough shall prepare a report setting forth its RDP for the Sylvan site by March 26, 2018.
2. Sylvan and FSHC shall have 10 days from receipt of the report on the Sylvan site to provide the complete basis for its challenge to the RDP proposed by the Borough and the Borough shall have 10 days from receipt of the Sylvan and FSHC submissions to respond.

The central issue for purposes of calculating an RDP is the RDP attributable to the 800 Sylvan site. To put it in perspective, the RDP without the Sylvan site, according to the Borough’s calculation is 22. If Sylvan’s contention that the site can reasonably accommodate 600 units is accurate, the RDP would climb to from 22 to 142: that is a 6 fold increase in the RDP.

The Borough has completed its analysis of the RDP attributable to the 800 Sylvan site and concluded that the RDP is 55, as detailed in the report concerning same. Thus, the Borough’s total RDP is 77.

## **B. COMPLIANCE WITH ADJUSTED FAIR SHARE**

### **a. The COAH Parameters on Addressing an Adjusted Fair Share**

To fashion a plan to comply with an adjusted RDP, COAH regulations establish a series of limitations that must be taken into account:

#### **1. Rental Obligation**

COAH’s Second Round Rules (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 77, at least twenty (20) rental units are required.

#### **2. Age-Restricted Cap**

COAH’s Round 2 regulations permit a total of no more than 25 percent of the new construction obligation (with certain caveats that are not applicable to Englewood Cliffs) to be satisfied with age-restricted housing. Based upon this, up to nineteen (19) age-restricted housing units are permitted.

#### **3. 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 now have an obligation to provide at least thirteen percent (13%) of the new affordable units built to satisfy the Third Round obligation to be reserved for very

low income households: defined as households earning thirty percent (30%) or less of median income).<sup>1</sup> The Fair Housing Act states that the thirteen percent (13%) threshold only has to be maintained Borough wide. Accordingly, COAH regulations do not require that 13 percent of each housing project be devoted to very low income households. To ensure that enough very low income units are produced, the Borough will require 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. The Borough’s proposed Affordable Housing Ordinance will require this in all rental or for-sale projects.

**4. Rental Bonus Credits**

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, or up to twenty (20) credits.

**b. Satisfaction of the Borough’s RDP**

The Borough has an RDP of seventy-seven (77), which the Borough proposes to satisfy as follows:

TABLE B. Satisfaction of RDP <i>Borough of Englewood Cliffs, Bergen County, NJ</i>					
BOROUGH RDP		77			
	Proposed Units	L	M	VL	Total
<i>Proposed Affordable Housing Sites</i>					
<i>100% Affordable Site</i>	57	22	27	8	57
<b>Municipally Sponsored Project Using Lion’s Club Site and Borough Complex</b> <i>(Approx. 2.03 +/- acres - Block 514, Lots 4 &amp; 5; Block 513, Lots 4 &amp; 7)</i>	57	22	27	8	57 (FR)
<i>Other</i>					
<b>Bonuses</b> <i>(25% of the RDP, or maximum 20)</i>			20		20 BC
<b>TOTAL CREDITS AND UNITS</b>		<b>77</b>			
(FR) = Family Rental      (BC) = Bonus Credit					

<sup>1</sup> Although the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26.1, et seq., requires ten percent (10%) of all affordable rental units to be affordable to households earning thirty-five percent (35%) or less of median income, the subsequent changes to the Fair Housing Act, which supersede UHAC regarding this requirement, now require that thirteen percent (13%) is the proper percent for very low income units produced, and that thirty percent (30%), not thirty five percent (35%) is the proper threshold for very low income affordability.

**c. Detailed Summary of RDP Satisfaction**

1. The Borough will construct fifty-seven (57) units from a new construction, 100% affordable redevelopment project as follows (see *Exhibit A*).

**a. Municipally Sponsored Project Using Lion's Club Site and Borough Complex**

474 Hudson Terrace (Block 514, Lot 5); 476 Hudson Terrace (Block 513, Lot 7) and its associated parking lot at 4 Clendenin Place (Block 514, Lot 4); 488 Hudson Terrace (Block 513, Lot 5).

- The Borough of Englewood Cliffs owns buildings and structures on Borough owned lands that are currently underutilized and appear to meet the criteria for redevelopment. The Borough's plan includes the redevelopment of the existing Borough-owned buildings and site improvements in order to consolidate services and utilize the lands in a more efficient manner.
- The Concept Plan provided in *Exhibit A* presents a potential layout of the proposed units, and the Borough acknowledges that it is only conceptual in nature at this point. The Borough reserves the right to further refine and amend this plan as the redevelopment process moves forward provided that any refinement and/or amendment to the plan will result in a minimum of 57 affordable housing units on the property.

**i. Criteria for Compliance Through a Municipally Sponsored Project**

The 57-unit project constitutes a "municipally sponsored project". Under COAH regulations, all sites for inclusionary projects, including a site for a municipally sponsored project, must qualify as available, approvable, developable and suitable. N.J.A.C. 5:93-5.6 (b). In addition, the municipality must provide the following documentation:

1. *The* municipality shall demonstrate that it has control or has the ability to control the site(s). Control may be in the form of outright ownership or an option on the property;
2. An administrative mechanism shall be submitted for the development indicating who will income qualify applicants and administer the units once they are occupied. The municipality may contract with an outside agency to provide these functions, provided a written agreement between the administrative agency and the municipality is submitted to the Council.
3. The municipality shall submit detailed information demonstrating that it has adequate funding capabilities. The documentation shall include:
  - i. A pro-forma statement for the project; and

- ii. Evidence that the municipality has adequate and stable funding. If State or Federal funds will be used, the municipality shall provide documentation indicating the funding available to the municipality and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved. As outside funds become available, the municipality may reduce its reliance on municipal resources; and
- iii. A construction schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The construction schedule shall provide for construction to begin within two years of substantive certification. The municipality shall indicate the entity responsible for monitoring the construction and overall development activity.

**ii. Satisfaction of Criteria for Compliance Through A Municipally Sponsored Project**

**1. The Site for the Municipally Sponsored Project is Available, Approvable, Developable, and Suitable**

The proposed 57-unit, 100% affordable project complies with N.J.A.C. 5:93-5.5 that requires all new construction sites to be available, approvable, developable, and suitable. This consistency is demonstrated as follows:

- a. There are no known encumbrances that would prohibit or otherwise impact the development of the property in general. The Borough is currently the owner of the land (474 Hudson Terrace - Block 514, Lot 5; 476 Hudson Terrace - Block 513, Lot 7, and its associated parking lot at 4 Clendenin Place - Block 514, Lot 4; 488 Hudson Terrace - Block 513, Lot 5) upon which the 57-unit project is planned.
- b. The site has access to appropriate streets and is adjacent to compatible land uses. In terms of setting, the property is located as a corner lot between New Street and Clendenin Place with frontage along Hudson Terrace. The site is abutted largely by commercial and office uses to the north, west, and south, and by a wooded buffer that separate Hudson Terrace from the Palisades Interstate Parkway to the east. The site is located on

Hudson Terrace, which is currently an improved two-lane collector roadway that travels north to south.

- c. The subject site will be rezoned to permit the project and will be made conforming.
- d. There is adequate sewer and water capacity, as defined under N.J.A.C. 5:93-1.3, to serve the site.
- e. It is anticipated that the site can be developed consistent with the Residential Site Improvement Standards.
- f. The site location is consistent with the adopted State Development and Redevelopment Plan. It is located in Planning Area 1 where development is encouraged.
- g. Per NJDEP mapping, there are no freshwater wetlands located on any portion of the site.
- h. Per FEMA floodplain mapping, there is no floodplain on the site.
- i. There are no slopes in excess of 15 percent on any portion of the site.
- j. Per NJDEP mapping, the site is not covered by critical habitat.
- k. Per NJDEP mapping, the site is not located within 300 feet of a currently designated Category One waterbody.
- l. Per NJDEP, the site is not a Known Contaminated Site.

## **2. Site Control**

The Borough controls all the property upon which it proposes to cause to be constructed a municipally sponsored project.

## **3. An Administrative Mechanism**

The Borough will issue an RFP for the project that will require any developer of the project to establish an administrative mechanism to ensure that all applicants for the project are properly income qualified. Any source of tax credits would require the same safeguards.

## **4. Proforma**

The Borough previously supplied the Court a pro forma for a project of up to 40 units based upon two assumptions: that the developer would secure 4 percent tax credits and 9 percent tax credits. Now that the project has expanded to 57 units, we have prepared new pro formas attached hereto based upon the identical assumptions (*see Appendix F*).

**5. A Resolution of Intent to Bond If Necessary**

The Borough previously supplied the Court a pro forma for a resolution of intent to bond for a 40-unit project (*see Appendix E*). Now that the Borough is expanding the project to allow for 57 units, it will adopt an updated resolution of intent to bond.

**6. Construction Schedule**

The Borough previously supplied the Court with a construction schedule for a 40 units project. The Borough relies on that same schedule, attached hereto for a 57-unit project.

2. **20 rental bonus credits.** At least 25 percent of the Borough’s RDP must be satisfied with rental housing. 25 percent of 77 equals 19.25. That means there must be at least 20 rental units to satisfy an RDP of 77. All 20 are eligible for a rental bonus. Since all 57 units in the municipally sponsored project will be family rental units, the Borough has at least 20 units eligible for a rental bonus.

**C. THE UNMET NEED**

As noted, in Round 2, COAH adopted regulations to require a municipality to satisfy an obligation in excess of its adjusted present and prospective fair share. Specifically, COAH adopted N.J.A.C. 5:93-4.2 (h) quoted above, to establish standards by which COAH, in its exclusive discretion, might impose an obligation on municipalities for the so-called “unmet need”. Applying those standards, the Borough proposes to address its unmet need as follows:

**a. Overlay Zones**

The Borough proposes the following overlay zones:

Table C. Addressing the Unmet Need		
Unmet Need	507	
	Proposed Units	Total
<i>E. Palisades Avenue Mixed-Use, Inclusionary Overlay Zone (20% set-aside for for-sale, 15% set-aside for rental)</i>		
<b>Inclusionary Overlay District on E. Palisades Ave.</b> <i>(Approximately 9.97 +/- acres at an average density of 15-20 units/acre)</i>	26	26 <sup>(1)</sup>
<i>Hudson Terrace Mixed-Use, Inclusionary Overlay Zone (20% set-aside for for-sale, 15% set-aside for rental)</i>		
<b>Inclusionary Overlay District on Hudson Terrace</b> <i>(Approximately 16.2 +/- acres at an average density of 15-20 units/acre)</i>	43	43 <sup>(1)</sup>
<i>B-3 Rehabilitation Area Mixed-Use, Inclusionary Overlay Zone (20% set-aside for for-sale, 15% set-aside for rental)</i>		
<b>B-3 Zone Rehabilitation Area</b> <i>(Approximately 9.95 +/- acres at average of 15-20 units/acre)</i>	26	26 <sup>(1)</sup>
<b>TOTAL CREDITS AND UNITS</b>	<b>95</b>	
<small>(1) This calculation represents a 15% set-aside, based upon an average estimated 17.5 units/acre based upon proposed permitted densities and density bonuses.</small>		

**b. Detailed Summary of Unmet Need**

**1. 26 units from the E. Palisades Avenue Mixed-Use, Inclusionary Overlay Zone**

To create future opportunities for affordable housing, the Borough will enact an amendment to the zoning code for the area located along E. Palisades Avenue, west of Sylvan Avenue – which is largely comprised of the B-1 zoning district and a portion of the B-4 zoning district (see *Exhibit B*). The Overlay Rezoned Area includes a total of approximately 9.97 acres of existing developed sites that are unconstrained. These sites which are proposed to allow for inclusionary affordable housing as a permitted use at an average density of 15-20 units per acre, with a 20 percent affordable set-aside, which will produce an estimated 26 affordable units.

The Borough envisions that the East Palisades Overlay District will allow for residential uses as part of mixed-use structures combining retail or service businesses on the ground floor, with housing (apartments and vertical duplexes) on the upper floors. The character of the existing B-1 and B-4 zoning districts are entirely commercial or commercially-related uses, and therefore the Overlay intends to preserve the commercial character while providing an opportunity for complementary residential uses at appropriate densities that will provide a set-aside, as well as sufficient open space, amenities, parking, and other sound planning strategies. These districts are directly bordered by the R-B residential zone district to both the north and south, which will also benefit from the proposed mixed-use character of the area.

Additionally, the average density is proposed as a component of the overlay that is awarded based upon density bonuses for the provision of open space on site:

1. The maximum density for residential uses shall be fifteen (15) dwelling units per acre;
2. A density bonus may be granted up to twenty (20) residential units per acre total on the site provided that the mixed-use development includes an open public space area or plaza that is a minimum of 10% of the total lot area; and:
  - a. The open public open space area or plaza shall be provided on the property; shall front on and/or extend from the right-of-way frontage; shall be located outside of the public right-of-way; shall be safely and properly connected to the public sidewalk and streetscape; and shall provide for a sitting area where the public, patrons of the commercial/retail area, and/or residents of the building can gather.
  - b. The open public areas or plazas shall include benches, planters, fountains, decorative lighting, landscaping, and other streetscape furniture. All open public spaces shall be approved by the Planning Board.
  - c. The open public areas or plaza shall be improved and maintained by the property owner or association in perpetuity pursuant to provisions to be included in a developer's agreement or board resolution.

**2. 43 units from the Hudson Terrace Mixed-Use, Inclusionary Overlay Zone**

Similar to the E. Palisades Overlay Zone, to create future opportunities for affordable housing, the Borough will enact an amendment to the zoning code for the area located along Sylvan Avenue, to the south of Palisades Avenue – which is comprised of the B-4 zoning district in the northern portion and B-2 zoning district in the southern portion (see Exhibit B). The Overlay Rezoned Area includes a total of approximately 16.2 acres of existing developed sites that are unconstrained. These sites which are proposed to allow for inclusionary affordable housing as a permitted use at an average density of 15-20 units per acre, with a 20 percent affordable set-aside for for-sale units and a 15 percent affordable set-aside for rental units, which will produce an estimated 43 affordable units.

The Borough envisions that the Hudson Terrace Overlay District will allow for residential uses as sole uses on the site; or as part of mixed-use structures - combining retail or service businesses on the ground floor, with housing (apartments and vertical duplexes) on the upper floors. The character of the existing B-1 and B-4 zoning districts are entirely commercial or commercially-related uses along a State right-of-way amongst larger sites; and therefore the Overlay intends to provide the ability for existing uses to continue to be permitted, to include commercial and residential components in a mixed-use structure, or to allow for entirely multifamily residential structures with amenities. This will allow for the area to evolve and grow with new uses, while preserving the commercial character of this corridor. A key goal of this overlay is to incorporate sufficient open space, amenities, parking, and other sound planning strategies.

The average density is proposed as a component of the overlay that is awarded based upon density bonuses for the provision of mixed-use character on site:

1. The maximum density for residential uses shall be fifteen (15) dwelling units per acre;
  2. A density bonus may be granted up to twenty (20) residential units per acre total on the site provided that the development includes a ground-floor/first floor commercial or retail component with residential uses above.
- 3. 26 units from the B-3 Rehabilitation Area Mixed-Use, Inclusionary Overlay Zone**

In July 2017, Maser Consulting prepared a Rehabilitation Plan for the Borough of Englewood Cliffs for the properties located within the B-3 Zone District, at the southern portion of the Borough. As noted by this Plan, the Borough Council adopted a resolution dated June 14, 2017, referring the study of the B-3 Zone to the Borough's Combined Planning Board and requesting that the Combined Planning Board conduct a public hearing and make recommendations. However, the Plan was never adopted and therefore never enacted by the Borough.

The Plan details that this Study Area is developed as a commercial corridor, with a mixture of new and old structures housing a variety of retail and office uses. Several buildings are underutilized and/or in disrepair. The street running through the area (Sylvan Avenue) is a State road, leaving the Borough with limited ability to modify the right-of-way. The Plan notes that the criteria present to qualify the area in need of rehabilitation, including pedestrian safety along Sylvan Avenue and the prevalence of pre-existing non-conformities throughout the Study Area.

While the Study Area was never formally adopted, the properties present an opportunity for an Overlay Area similar to those proposed for East Palisades Avenue and Hudson Terrace. The Overlay Rezoned Area includes a total of approximately 9.95 acres of existing developed sites that are unconstrained. These sites which are proposed to allow for inclusionary affordable housing as a permitted use at an average density of 15-20 units per acre, with a 20 percent affordable set-aside for for-sale units and a 15 percent affordable set-aside for rental units, which will produce an estimated 26 affordable units.

The Borough envisions that the B-3 Overlay District will allow for residential uses as part of mixed-use structures combining retail or service businesses on the ground floor, with housing (apartments and vertical duplexes) on the upper floors. The character of the existing zoning district is entirely commercial or commercially-related uses, and therefore the Overlay intends to preserve the commercial character of these smaller sites, while providing an opportunity for complementary residential uses at appropriate densities that will provide a set-aside, as well as sufficient open space, amenities, parking, and other sound planning strategies. The B-3 district is directly bordered by the R-B residential zone district to the northwest, and by the RB-1 zone to the southwest and the east, which will also benefit from the proposed mixed-use character of the area. Mixed-use development regulations can likewise incorporate traffic calming techniques that will help to make the area safer and assist existing or new residents living along this corridor.

Additionally, the average density is proposed as a component of the overlay that is awarded based upon density bonuses for the provision of open space on site:

1. The maximum density for residential uses shall be fifteen (15) dwelling units per acre.
2. A density bonus may be granted up to twenty (20) residential units per acre total on the site provided that the development includes an open public space area or plaza that is a minimum of 10% of the total lot area; and:
  - a. The open public open space area or plaza shall be provided on the property; shall front on and/or extend from the right-of-way frontage; shall be located outside of the public right-of-way; shall be safely and properly connected to the public sidewalk and streetscape; and shall provide for a sitting area where the public, patrons of the commercial/retail area, and/or residents of the building can gather.
  - b. The open public areas or plazas shall include benches, planters, fountains, decorative lighting, landscaping, and other streetscape furniture. All open public spaces shall be approved by the Planning Board.
  - c. The open public areas or plaza shall be improved and maintained by the property owner or association in perpetuity pursuant to provisions to be included in a developer's agreement or board resolution.
4. **Additional Measures: Mandatory Set-Aside Ordinance to Capture Additional Affordable Housing**

Although not specified in N.J.A.C. 5:93-4.2 (h) and although never required by the Court, the Borough adopted Ordinance No. 18-14, dated October 20, 2018, requiring a Mandatory Set-Aside for any site that benefits from a rezoning, variance, or redevelopment plan approved by the Borough which results in multi-family residential development of five (5) dwelling units or more to produce affordable housing at a set-aside rate of 20% for for-sale affordable units and at a set-aside rate of 15% for rental affordable units. The adoption of the MSO does not give any developer the right to any such rezoning, variance, redevelopment

designation or other relief, or establish any obligation on the part of Borough or its boards to grant such rezoning, variance, redevelopment designation or other relief (See Appendix C).

**5. 20-32 Sylvan Avenue & 4 Bayview Avenue  
Block 205, Lots 1 and 4; Block 201, Lots 10-14**

An application was submitted to the Borough's Combined Land Use Board for a use variance, with a cover letter dated September 26, 2019. On October 18, 2018, Maser Consulting conducted its Completeness Review, and deemed the application incomplete as Applicant did not provide certain items required by the Application Checklist and the Borough's Site Plan Standards as detailed in Section 30-9.4 of the Borough Ordinance. Depending upon facts and circumstances beyond the purview of this analysis, the application may be subject to the Borough's mandatory set-aside ordinance that was adopted on October 20, 2018. In such an event, the site would generate affordable housing over and above that needed to achieve a 77 RDP.

Nothing herein is intended to prevent the Borough's Combined Land Use Board from reviewing and adjudicating the application as it deems fit.

**D. AFFORDABLE HOUSING ORDINANCE AND AFFIRMATIVE MARKETING PLAN**

The Borough will amend its Affordable Housing Ordinance and prepare a new Affirmative Marketing Plan that is applicable to all new and existing affordable housing units created within Englewood Cliffs, and will be introduced and adopted at a later date. The Borough will submit to the Court Master for input and upon the Master being satisfied with the updated version of these documents, the Borough will adopt same. The Borough will enter into a contract with as a qualified affordable housing administrator to act as the Administrative Agent to manage the affordability controls and the affirmative marketing plan for all affordable housing units in the Borough.

**E. DEVELOPMENT FEE ORDINANCE AND SPENDING PLAN**

The Borough adopted a development fee ordinance ("DFO") as Ordinance 2006-25 on December 20, 2006 and COAH approved that ordinance on October 18, 2006, which was later amended by Ordinance 2009-08, adopted June 10, 2009 and approved by COAH on April 13, 2009. That fee ordinance imposes a fee of 1 percent of equalized assessed value ("EAV") on residential developments. However, under COAH regulations, the Borough could increase that fee to 1.5 percent of EAV. The Borough shall amend its DFO to increase the fee on residential development to the 1.5 percent rate.

As to the fee on non-residential development, that fee is controlled by the Nonresidential Development Fee Act, which sets the fee for nonresidential development at 2.5 percent of EAV. The Borough will continue to collect those fees and apply the fees in accordance with COAH standards to the projects in its plan and as detailed in an updated Spending Plan.

The Borough also has a Spending Plan that COAH has approved by Resolution on April 7, 2011. The Borough has updated its Spending Plan as requested by the Master and submitted the updated Spending Plan to the Court in September of 2018. The Borough will further amend the Spending Plan to account for a 57-unit project, as deemed necessary by the Court Master (*see Appendix B*).

**IV. EXHIBITS**

**EXHIBIT A:**  
CONCEPT PLAN FOR 100% AFFORDABLE RENTAL PROJECT THROUGH REDEVELOPMENT OF  
BOROUGH COMPLEX

**PARKING CALCULATION**

EXISTING SURFACE SPACES:

MUNICIPAL COMPLEX 77  
RESIDENTIAL 0

PROPOSED SURFACE SPACES:  
(INCLUDING ON-STREET)

86\*  
114  
2.0 PER UNIT  
57 X 2 = 114

TOTAL SPACES: 200

**PROPOSED BUILDING AREA**

RESIDENTIAL APARTMENT UNITS, 3-STORY - 57 UNITS  
NEW POLICE DEPARTMENT, 2-STORY 12,200 SF, (EXISTING 11,500 SF)  
NEW COMMUNITY CENTER, 1-STORY 2,300 SF, (EXISTING 2,275 SF)

HARBOR CONSULTANTS INC.

Engineering, Planning & Surveying

340 NORTH AVE. EAST  
CRANFORD, NJ 07016

**CONCEPTUAL DESIGN  
NOT FOR CONSTRUCTION**

Rev	Date	Description
1		
2		
3		

**KEY PLAN**



N.T.S.



**PROJECT**

**ENGLEWOOD CLIFFS MUNICIPAL COMPLEX**  
SYLVAN AVENUE

**SEAL**

This drawing shall be used for landscape information only. This drawing shall not be reproduced, published, used on other projects, used for additions or modification to the project, or used for completion of the project by others. It is a violation of the law for any person, unless acting under the direction of a licensed landscape architect, to alter an item in any way.



**CONCEPTUAL SITE PLAN**

JOB No. Harbor EC	DRAWING No. <b>L-1</b>
DATE 12/04/2018	
SCALE 1" = 30'-0"	SHEET No. 1 OF XX



**EXHIBIT B:**  
MAP OF PROPOSED SITES FOR UNMET NEED STRATEGIES

- Lion's Club RDP Site
- East Palisades Avenue Overlay
- Hudson Terrace Overlay
- Previously Proposed Rehabilitation Plan Area

**City of Englewood  
Bergen County**

**GROSS AREA OF ALL UNMET NEED SITES  
ENGLEWOOD CLIFFS, BERGEN COUNTY, NEW JERSEY**

PROJECT	LOT AREA
<b>SYLVAN AVENUE, B-3 REHABILITATION AREA PROPERTIES</b>	<b>9.96</b>
<b>HUDSON TERRACE OVERLAY</b>	<b>16.59</b>
<b>EAST PALISADES AVENUE OVERLAY</b>	<b>9.97</b>
<b>TOTAL AREA</b>	<b>36.52</b>



**East Palisades Avenue Overlay**

**Previously Proposed Rehabilitation Plan Area**

**RDP Site**

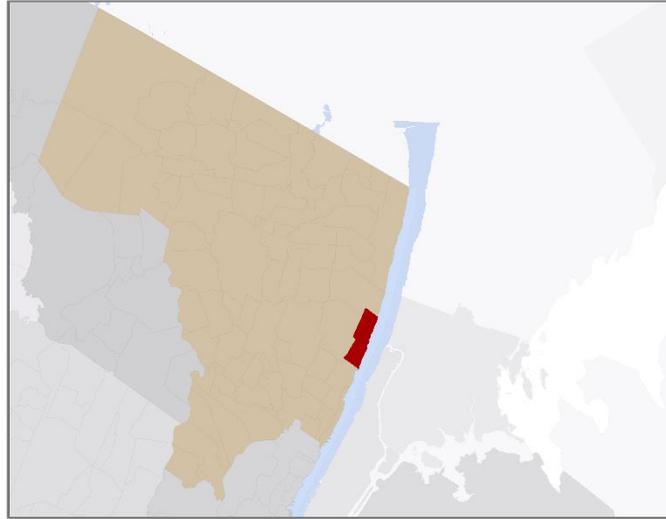
**Hudson Terrace Overlay**

**HARBOR CONSULTANTS**  
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320 NORTH AVENUE EAST  
CRANFORD, NJ 07016  
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## V. APPENDICES

**APPENDIX A.1:**  
VACANT LAND ANALYSIS WITH ATTACHED EXHIBITS, DATED DECEMBER 10, 2018

**Vacant Land Adjustment  
for the  
Borough of Englewood Cliffs**



**Borough of Englewood Cliffs  
Bergen County, New Jersey**

*December 10, 2018*

Prepared by



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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

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**UNDER SEPARATE COVER**

Mapping of all Inventory Sites

RDP Analysis of 800 Sylvan Avenue Site

## I. INTRODUCTION

This report has been prepared to determine the Realistic Development Potential (or “RDP”) for the Borough of Englewood Cliffs for the purpose of determining the municipality’s fair share obligation to provide affordable housing pursuant to the constitutional obligations espoused by *Mount Laurel I* and its progeny. At the time this report was prepared, the Borough of Englewood Cliffs was subject to the jurisdiction of the Superior Court of New Jersey, having filed a Declaratory Judgment action with the court in 2015, in the wake of the New Jersey Supreme Court’s 2015 decision commonly referred to as *Mount Laurel IV*.

By way of background, in 1975, the New Jersey Supreme Court decided *South Burlington County NAACP v. Mount Laurel*, 67 N.J. 151 (1975) (or “*Mount Laurel I*”).

In 1983, the Court decided *South Burlington County NAACP v. Mount Laurel*, 92 N.J. 158 (1983) (or “*Mount Laurel II*”), which generated a flood of builder’s remedy lawsuits and which was the basis for an opinion authored by Judge Serpentelli to determine the fair share obligations of municipalities. That opinion, entitled *AMG Realty Co. v. Warren Tp.*, 207 N.J. Super. 388 (Law 1984), generated very substantial fair share obligations, but also gave land poor municipalities an opportunity to adjust their fair share obligations.

In 1985, in response to builder’s remedy litigation generated by the *Mount Laurel II* decision and the high fair share obligations generated by the *AMG* decision, the Legislature enacted the New Jersey Fair Housing Act (or “FHA”), N.J.S.A. 52:27D-301, *et seq.* Pursuant to N.J.S.A. 52:27D-307 c 1, the Legislature charged COAH with adopting criteria and guidelines to permit a determination of the present and prospective regional need, i.e., to establish a fair share formula. Pursuant to N.J.S.A. 52:27D-307 c 2, the Legislature charged COAH with adopting criteria and guidelines to enable municipalities to obtain an adjustment of their present and prospective regional need if they lacked sufficient vacant and developable land, in accordance with N.J.S.A. 52:27D-307 c 2.

In 1986, COAH adopted regulations for Round 1, and in 1994, COAH adopted regulations for Round 2 that established standards by which (a) every municipality could ascertain the obligations generated by a fair share formula and (b) land-poor municipalities could ascertain their right to an adjustment to the number generated by the fair share formula.

Pursuant to the applicable formulas and the rulings of Judge Farrington, the Borough currently has an obligation of 584: 219 from the prior rounds and 365 for Round 3. It has a zero rehab obligation.

As noted, COAH regulations enable a municipality to obtain an adjustment to the number generated by the various formula – the 584. To obtain a vacant land adjustment pursuant to the standards set forth in COAH’s Round 2 regulations, a municipality must submit an inventory of all vacant parcels by lot and block that identifies acreage and the owners of each lot. N.J.A.C. 5:93-4.2(b). This regulation also permits municipalities to review and eliminate vacant lots as sites for the realistic development of affordable housing based on other factors permitted by the regulation. N.J.A.C. 5:93-4.2(c) and (e).

The goal of the exercise described in this report is to develop the “Realistic Development Potential” (or “RDP”) for Englewood Cliffs to ascertain what Englewood Cliffs’ appropriate adjusted fair share obligation should be. Shirley Bishop, P.P., the former Executive Director of COAH from 1994 to

June 2002, explained the vacant land adjustment process as follows: “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. That means that the development of all sites that contribute to the RDP should be able to generate the number of affordable units the sites contribute if the sites are developed in accordance with sound planning.” (*see Appendix A, p.6*). Ms. Bishop’s explanation of the vacant land adjustment process provides a useful way to understand the purpose of the process and the reason for each step in the process.

In addition to take into account vacant and underutilized sites to extrapolate an RDP, if the owner or contract purchaser of a site offers to redevelop a site that is currently developed, the site could conceivably generate an RDP under the principles established in the *Fair Share Housing Center v. Cherry Hill*, 173 N.J. 393 (2002) (or “*Cherry Hill*”).

The calculation of the RDP is essentially a three-step process under Round 1 and Round 2 regulations. 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, creating the municipality’s vacant land inventory. Step 2 requires a determination of the portions of the sites identified in Step 1 should be removed from the vacant land inventory based upon criteria the COAH established in its Round 2 regulations. Step 3 requires a determination of an appropriate density for the portions of the sites that remain to determine the carrying capacity for each site. 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”. N.J.A.C. 5:93-4.2(e).

An issue that has arisen with respect to how to make this determination involves how to deal with approved sites. Shirley Bishop points out that a “snapshot in time” policy to extrapolate the RDP existed at COAH when she served as its Executive Director during the Second Round and is still in existence today.” (*see Appendix A, p.5*). In fact, Ms. Bishop relied on the Borough of Englewood Cliffs’ Second Round submission in her report and confirmed that it was appropriate for the Borough to remove certain parcels from its RDP calculations based on an approval which had been granted for one of the sites. See Exhibit E, p.5. I have similarly removed certain sites from my calculation of the Borough’s RDP. If a site has been developed or approved for development at the point the RDP is determined, it makes no sense to assign an RDP for the site because rezoning the site for inclusionary zoning would not create the realistic opportunity for the construction of any affordable housing.

The vacant land analysis provided by this report is consistent with COAH’s evaluation of Englewood Cliffs’ Round 2 Petition for Substantive Certification in this respect. In its Round 2 submission, the Borough had identified Block 127, Lot 1 as a vacant site, but removed it from its inventory as the site had been recently subdivided for commercial and residential development. Similarly, in Round 2, the Borough had identified Block 308, Lots 9-17 and Block 310, Lots 1-10 as a vacant parcel. This site was the subject of mediation and was ultimately eliminated because it had obtained final subdivision approval.

As described by Ms. Bishop, the development of all sites that contribute to the RDP should be able to generate the number of affordable units the sites contribute if the sites are developed in accordance with sound planning. (*see Appendix A, p.6*). 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.

In addition, portions of sites with slopes in excess of fifteen percent will be excluded as permitted by N.J.A.C. 5:93-4.2. This regulation vested COAH with the right to exclude sites in whole or in part when excessive slopes threaten the viability of an inclusionary development. It also provides municipalities with the discretion to adopt steep slope ordinances to regulate inclusionary development so long as such an ordinance does not discriminate between inclusionary developments and non-inclusionary developments. However, this regulation does not mandate adoption of a steep slope ordinance in order to exclude a site or portion of a site for purposes of vacant land analysis, as compared to the regulations regarding the collection of development fees. Accordingly, consistent with the notions of sound planning, portions of sites with slopes in excess of fifteen percent are excluded as indicated in this report.

This report will provide an analysis of the RDP for all vacant sites within the Borough of Englewood Cliffs but does not detail the basis for the RDP for the site located at 800 Sylvan Avenue (Block 910, Lot 1). The 800 Sylvan Avenue site is a developed site. On November 17, 2017, more than two years after the Borough had filed its Declaratory Judgment action, a developer wrote to the Borough's attorney and asked the Borough to take the site into account in extrapolating its RDP. A separate report, entitled "RDP Analysis of 800 Sylvan Avenue," will do exactly what Sylvan requested and identify an RDP for the 800 Sylvan site. The appropriate RDP for the 800 Sylvan Avenue site is currently in dispute.

To put the calculation of the Borough's RDP as provided in this report into perspective, when COAH ascertained the Borough's RDP in 1997, it concluded that the Borough was entitled to adjust its obligation at that time down to 4 based upon the assumption that the appropriate density for purposes of extrapolating the RDP was 6 units per acre. Pursuant to the standards for obtaining a vacant land adjustment, the Borough is entitled to adjust this 584 obligation down to 77: 22 for all eligible sites other than the 800 Sylvan site and 55 for the 800 Sylvan Avenue site, as detailed in an independent report. Measured against COAH standards as illustrated by its actions concerning Englewood Cliffs and other municipalities, this 77 RDP is conservative.

## **II. MUNICIPAL RIGHT TO CHOOSE HOW TO SATISFY RDP**

It cannot be overemphasized that the purpose of the RDP calculation is merely to determine the number for which a municipality must plan given the principle that the municipality has an obligation to create a *realistic* opportunity for satisfaction of a *realistic* development potential. However, once the RDP is established, the municipality has every right to decide how it will create a realistic opportunity for satisfaction of its realistic development potential:

*The municipality may address its RDP 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 RDP if the municipality can devise an acceptable means of addressing its RDP. The RDP shall not vary with the strategy and implementation techniques employed by the municipality.*

*[N.J.A.C. 5:93-4.2 (g)]*

As explained in the report on the RDP for the 800 Sylvan site, the principle that a municipality must be able to decide how it will comply once it knows its RDP is as fundamental as it is important. At the outset, 800 Sylvan made clear that it wants its site to be considered for purposes of calculating an RDP and the Borough has made clear that it will decide the best plan for the community in accordance with COAH regulations. As detailed in the Housing Element and Fair Share Plan, the Borough considered the proposal of Sylvan to provide affordable housing and concluded that it was in the best interest of the community that the municipality comply in some other way. See Housing Element, pg. 5. The plan submitted in conjunction with this report reflects the judgment of the citizens of Englewood Cliffs that the best plan for the community is one that complies without the Sylvan site even though the cost of complying without Sylvan is substantial.

### III. LAND INVENTORY BY OWNERSHIP CLASS

In order to identify and calculate the “developable” land adjustment for the Borough of Englewood Cliffs, this office used up-to-date tax assessor data<sup>1</sup> to inventory all privately-owned vacant (classified as Class 1 properties - vacant or unimproved properties) and Borough-owned (classified as 15C properties - exempted to and owned by the Borough). 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. There are no agricultural lands in the Borough of Englewood Cliffs, and therefore there was no analysis conducted for this class of properties. The inventory is identified on the accompanying table (*Exhibit D*).

The two classes of ownership of land are more commonly classified by tax category as “Class 1” and “15C”, which are defined by the New Jersey Administrative Code 18:12-2.2<sup>2</sup>. Class 1 is “Vacant Land” which “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 15 properties fall in a range of categories A-F: A - “Public School”, B- “Other School”, C - “Public”, D - “Church and Charitable Property”, E- “Cemeteries and Graveyards”, and F - “Other”. These definitions provide a semblance of their classification and how these parcels function within a municipality. Class 1 vacant and 15C Exempt parcels and their acreage were inventoried, totaled, and mapped on the following page. Map 1 (*Exhibit A*) shows the inventoried Class 1 and 15C coded in green and purple, respectively<sup>3</sup>.

There are fifty-three (53) privately-owned vacant (Class 1) parcels for estimated total area of approximately 24.97 acres; and twenty (20) Borough-owned (Class 15C) properties, for an estimated total area of approximately 19.84 acres.

<sup>1</sup> Vacant Properties list provided upon request from the Borough of Englewood Cliffs Tax Assessor.

<sup>2</sup> New Jersey Administrative Code Title 18, Chapter 12.

<http://www.njactb.org/News%20PDFs/NJAC%2018%2012%20LPT%20General%20Total.pdf>

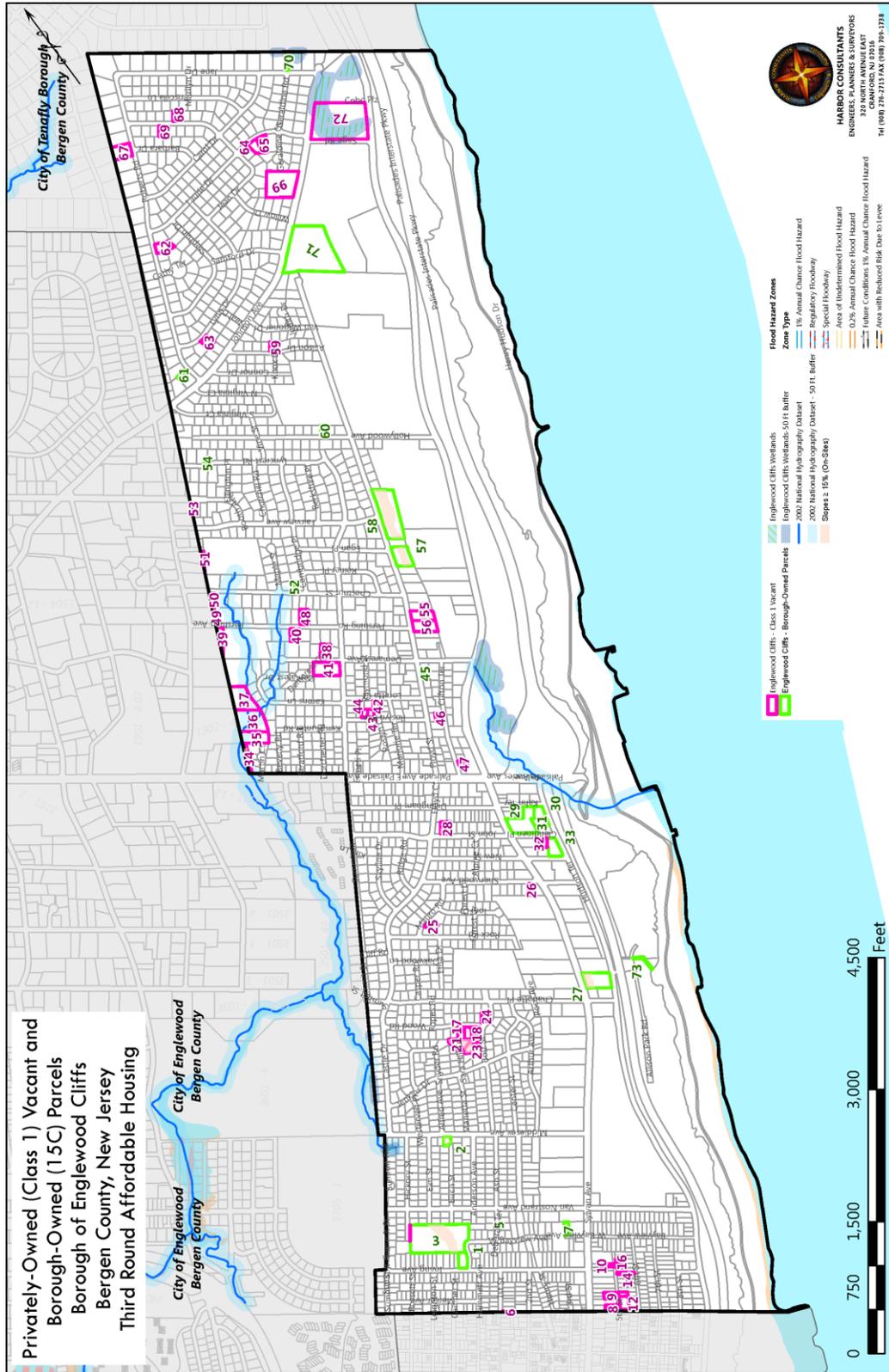


Figure 1: Parcel Inventory – Privately-Owned (Class 1) Vacant and Borough-Owned (15C) Sites

#### **IV. LIMITATIONS TO “DEVELOPABLE” LAND AND OTHER CRITERIA**

An analysis of the Borough-owned properties determined that none were eligible as developable land, and thus all have been excluded.

In addition, municipally-owned parcels have a range of reasons for their protection, including codified set aside from residential development, historic lands, sensitivity to wetlands and flood zones, steep slopes, public parks and fields, storm water management basins, along with many others. Often, these properties have become municipally-owned to promote a public good.

Generally, the Borough is a fully developed municipality with very few parcels that are vacant. Many of the parcels that are vacant, while undeveloped, remain as such precisely because they are undevelopable, being heavily impacted by steep slopes, wetlands, and other encumbrances. 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.

#### **V. REFINED METHODOLOGY**

From this raw data collection, the inventoried privately-owned 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) and COAH Round 2 Substantive Rules (N.J.A.C. 5:93-4.2(e)). For example, the New Jersey Fair Housing Act (“FHA”) calls for the exclusion of certain land that is “listed on a master plan of a municipality as being dedicated, by easement or otherwise, for purposes of conservation, park lands or open space...”, per N.J.S.A. 52:27D-310.1(b). COAH’s Round 2 regulations call for the exclusion of parcels from the vacant land inventory based on agricultural, environmentally sensitive, historic, recreational, conversational/open space lands, per N.J.A.C. 5:93-4.2(e)1-5.

Other logical standards that showed discretion in parcel size and shape, characteristics of the surrounding development, and utility or transportation infrastructure were used to filter out land that would not be suitable for future development or housing, pursuant to N.J.A.C. 5:93-4.2(e)6. The exclusion based in N.J.A.C. 5:93-4.2(e)6 is consistent with the COAH requirement that all inclusionary sites must qualify as available, approvable, developable and suitable. N.J.A.C. 5:93-5.3 (b). The N.J.A.C. 5:93-4.2(e) 6 exclusion is also consistent with the purpose of the adjustment process; to determine how much affordable housing could reasonably be generated in accordance with sound planning principles by rezoning appropriate sites with a traditional 20 percent set aside.

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 GIS data from NOAA Data Access Viewer, “2014 USGS CMGP Lidar: Post Sandy; (4) publicly available GIS data from NJDEP 2015 orthophotographic aerial imagery; and (5) property site visits to determine any existing developments or encumbrances on site.

Per N.J.S.A. 52:27D-310.1, the factors that call for exclusion from the vacant land inventory include the following:

- (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 if current standards of the council were applied 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 submission of the petition of substantive certification;

(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.

N.J.S.A. 52:27D-310.1 concludes as follows: "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 limiting lands that contribute to 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.



- 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. Deed restrictions show that these properties have historically been set-aside as 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*

As explained in the introduction, 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 1202, 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.

VI. DENSITY ASSUMPTIONS FOR PURPOSES OF EXTRAPOLATING AN RDP

In Mount Laurel IV, the Supreme Court urged trial judges to use methodologies from prior rounds when they devised their own fair share methodologies:

*First, as we said in In re Adoption of N.J.A.C. 5:96 & 5:97, supra, previous methodologies employed in the First and Second Round Rules should be used to establish present and prospective statewide and regional affordable housing need. 215 N.J. at 620, 74 A.3d 893. The parties should demonstrate to the court computations of housing need and municipal obligations based on those methodologies.*

*[Mount Laurel IV at 30]*

Similarly, in Judge Jacobson's fair share methodology opinion, she notes FSHC's contention that trial judges are strictly bound by the prior round regulations to the extent practical:

*On the other hand, FSHC's theme was adherence as much as possible to past COAH practice, especially to the model developed in the Second Round. Where that was not possible due to changes in data availability, Dr. Kinsey proposed approaches that he claimed were close to COAH practice or consistent with principles endorsed by COAH in the past. The NJBA, relying on their primary expert, Mr. Art Bernard, former Executive Director of COAH, generally supported Dr. Kinsey's model, with a few notable variation, the most prominent being Mr. Bernard's rejection of Dr. Kinsey's filtering model as a secondary source adjustment.*

*[Judge Jacobson Decision at 19].*

Given the emphasis on prior round methodologies, it is important to note that COAH generally assumed low densities for purposes of extrapolating an RDP much closer to the 6 unit per acre density referenced in its regulations than the 30 per acre proposed by Sylvan. Indeed, when COAH calculated the RDP for the Borough in 1997 and adjusted its obligation to 4, it assumed a density of 6 units per acre:

*As described, the Borough had "listed in its inventory all vacant parcels in the municipality by lot and block with corresponding acreage and ownership. The borough then eliminated all parcels with an area less than 0.833 acre. This was based on the rationale that a minimum lot size of 0.833 acre would be required to produce at least one low or moderate income unit at six units per acre and a 20 percent set-aside." COAH then reviewed the sites and found that six units per acre was the appropriate density to calculate the RDP for all of the sites, stating: "Applying a density of six units per acre yields a total of 20 units and an RDP of four units. This density is consistent with N.J.A.C. 5:93-4.2(e)."*

*[COAH Compliance Report, dated September 10, 1997, Appendix B, page 4.]*

Moreover, when COAH directed the Borough to adopt an overlay zone on the Prentice Hall site, it required a density of 8 per acre. By its actions, COAH has clearly spoken about the densities it

deems appropriate not only generally, but also with a particular reference to Englewood Cliffs for purposes of calculating an RDP for the Borough.

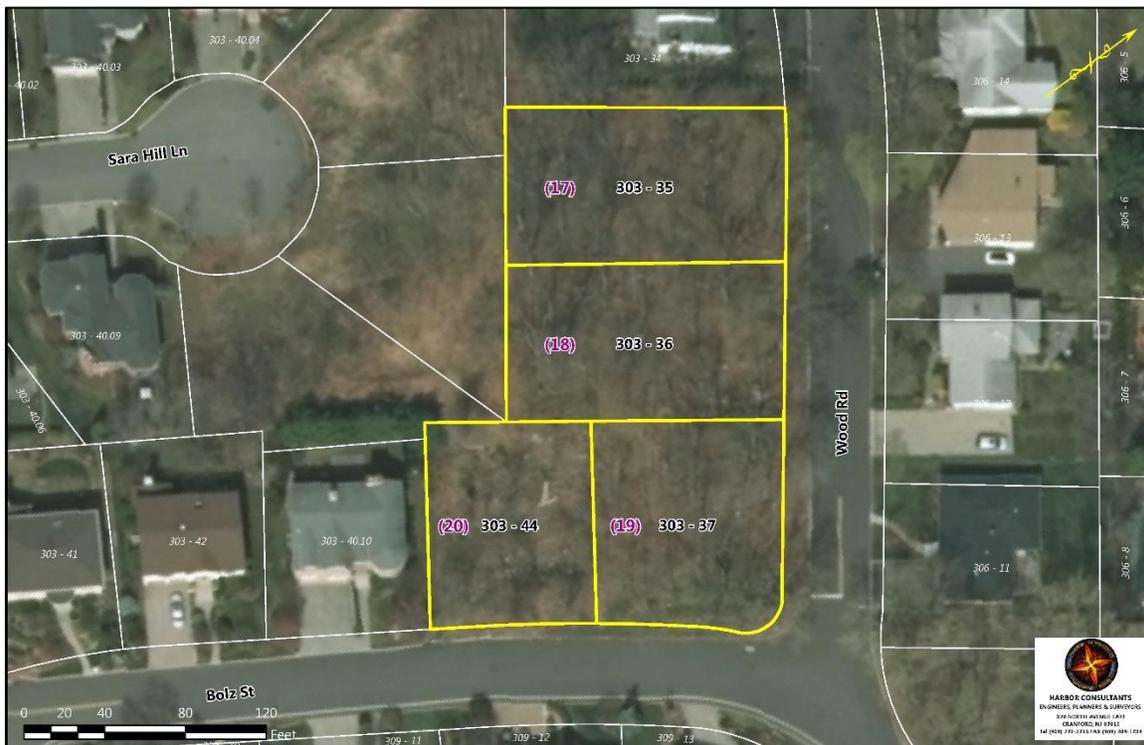
Measured against the densities that COAH, with its institutional knowledge, deemed appropriate for purposes of extrapolating the RDP for municipalities over which it presided generally and for Englewood Cliffs in particular, the densities that we have assumed for purposes of extrapolating an RDP for the Borough are very reasonable.

**VII. FINAL PARCEL ANALYSIS**

A large number of the privately-owned vacant sites in Englewood Cliffs have been rendered undevelopable based solely upon the fact that they are undersized lots that cannot accommodate at least five (5) dwelling units; while others have been excluded because of excessive environmental encumbrances. The following sites have been evaluated and determined to be have the potential for the development and are to be included in the Borough's RDP:

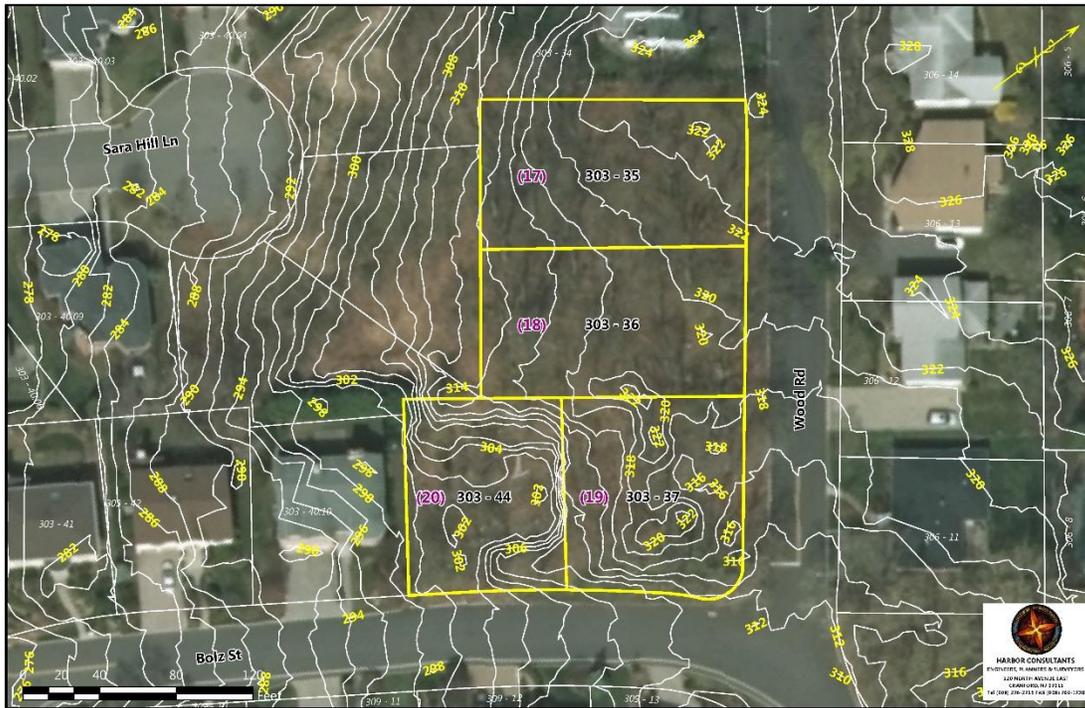
- (1) Block 303, Lots 35, 36, 37, and 44
- (2) Block 601, Lots 14 and 15
- (3) Block 603, Lot 20
- (4) Block 1101, Lot 6

**(1) Block 303, Lots 35, 36, 37, and 44**



Block 303, Lots 35, 36, 37, and 44 (listed on *Exhibit D* as #17-20) are located in the R-B zone, with frontage along Bolz Street (37 and 44) and Wood Road (35 and 36). Aerial mapping shows that these parcels are contiguous with one another and are held in common ownership. Topographic

mapping of 2-foot contours retrieved from 2014 USGS CMGP Lidar provides environmental conditions on the site. In particular, Lots 37 and 44 have steep slope conditions as depicted below:



Contiguous with Block 303, Lots 35, 36, & 44, and under similar ownership. Per N.J.A.C. 5:93-4.2(e)2.ii., topographic mapping of Lots 37 and 44 shows steep slopes in excess of 15% on the site that encumber large portions of the site. Lot 37 has a grade change from the southern property line with Lot 44 from 310 to 320 at the center of the site (50 feet), for slopes of ~20%. The grade changes at the rear of Lot 44, from the northwest portion at the property edge from 314 feet to 302 at the center of the site (50 feet) for slopes of ~24%. The eastern corner along Bolz Street has a grade change towards the center from 310 to 302 feet over 44 feet, for a slope of ~18%. Lot 44 has a remaining acreage of 0.07 acres. The remaining 0.18 acres from Lots 37 and 44 combined with the 0.50 acres from Lots 35 and 36 for a total of 0.68 acres as inclusion in RDP analysis. Google Streetview Imagery likewise provides evidence of the steep slope conditions along Bolz Street:

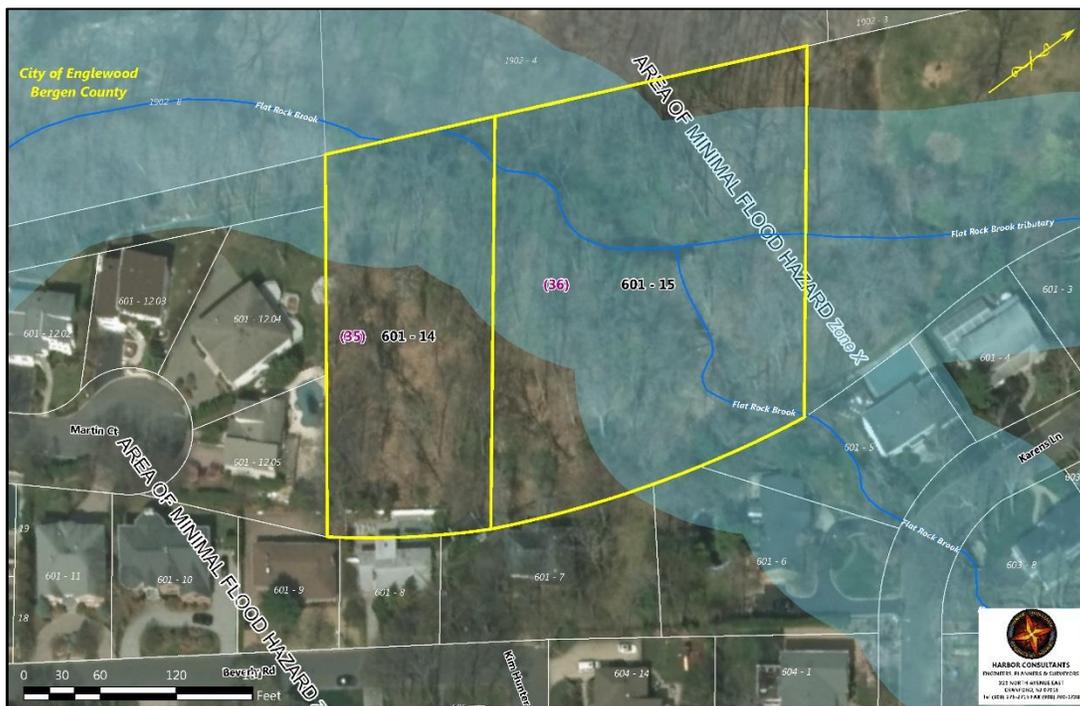


The property is surrounded entirely by single-family homes, which create the overwhelming development characteristic of the area. Per N.J.A.C. 5:93-4.2(f), “The Council shall consider the character of the area surrounding each site and the need to provide housing for low and moderate income households in establishing densities and set-asides for each site, or part thereof, remaining in the inventory”. It is still undetermined if there are any other environmental constraints on the property. Although COAH assumed a density of six per acre to extrapolate an RDP for Englewood Cliffs, the Borough is using a density of ten (10) units/acre to extrapolate an RDP for the site. Applying a density of 10 per acre to the 0.68 acre site yields **7 total units**. The affordable set-aside of 20% for this property would yield **1 unit** towards the RDP.

**(2) Block 601, Lots 14 and 15**

Block 601, Lots 14 and 15 (listed on *Exhibit D* as #35 and #36) are located in the R-A Zone. These lots are contiguous with the adjacent parcel under the same ownership – Block 601, Lot 7 – which is developed with a single-family home. 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 buffer per the most up-to-date Flood Hazard Area Control Act Rules N.J.A.C. 7:13-4.1, 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 approximately 25% of its area encumbered. The 0.23 acre remaining on the adjacent portion of Lot 15 can be combined with 1.04 acres of remaining area of Lot 14 for a total of 1.27 acres included in the RDP.

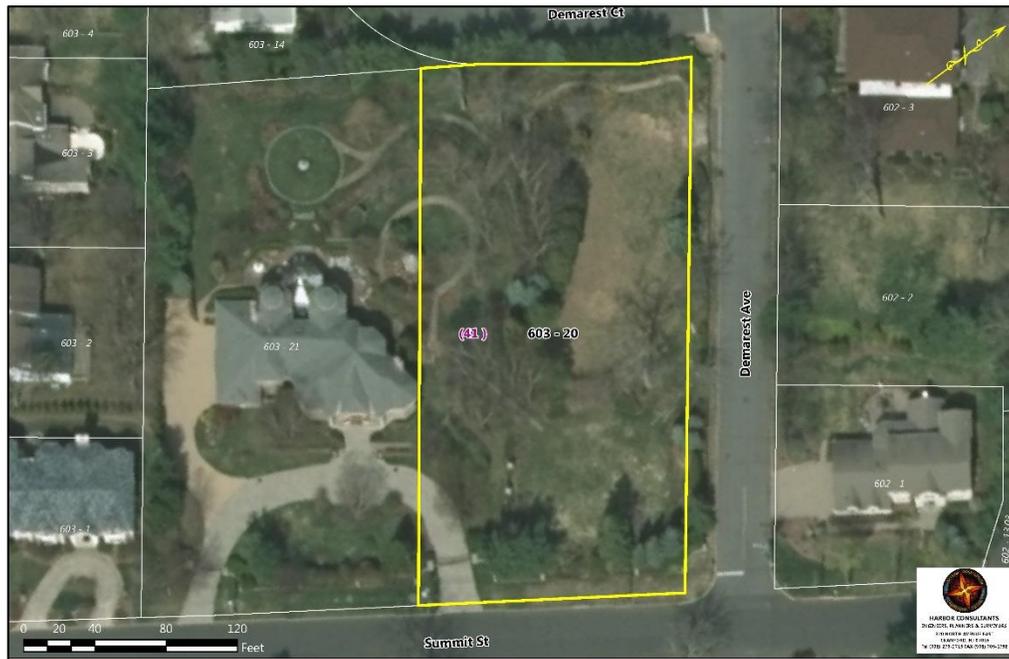
In its past determination, COAH considered whether both parcels should generate an RDP and concluded that they should not. Nevertheless, for the purpose of this analysis, we have assumed the site will generate an RDP of 2, and reserve the right to revisit whether the site should generate any RDP should that be necessary.



The property is surrounded entirely by single-family homes, which create the overwhelming development characteristic of the area. Per 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”. It is still undetermined if there are any other environmental constraints on the property. Although COAH assumed a density of six per acre to extrapolate an RDP for Englewood Cliffs, the Borough is using a density of nine (9) units/acre to extrapolate an RDP for the site. Applying a density of 9 per acre to the 1.27 acre site yields **11 total units**. The affordable set-aside of 20% for this property would yield **2 units** towards the RDP.

**(3) Block 603, Lot 20**

Block 603, Lot 20 (listed on *Exhibit D* as #41) is a property located at the corner of Summit Street and Demarest Avenue in the R-A Zone district. Demarest Avenue is a 30-foot R.O.W., while Summit Street is an approximately 34-foot R.O.W. Both streets are approximately 30-foot R.O.Ws. The parcel is a single lot comprised of a total of 1.07 acres, per Tax Assessor records. The property is surrounded entirely by single-family homes, which create the overwhelming development characteristic of the area. Property records show that the site is currently vacant since demolition in 2013 of the former home, built in 1937. This site is directly adjacent to large single-family home on Lot 21, under ownership of Seymour and Harriette Gluckow - who are former owners of Lot 20 and the home that was demolished around 2013. The site was sold, presumably to their children or family members (based on a common surname), for a sum of \$10 in February 2012.



It is still undetermined if there are any other environmental constraints on the property. Although COAH assumed a density of six per acre to extrapolate an RDP for Englewood Cliffs, the Borough is using a density of seven (7) units/acre to extrapolate an RDP for the site. Applying a density of 7 per acre to the 1.07 acre site yields **7 total units**. The affordable set-aside of 20% for this property would yield **1 unit** towards the RDP. Per 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”. Given the surrounding residential uses and the prevailing development character of the neighborhood, the assumption of lower densities is warranted.



**(4) Block 1101, Lot 6**



Block 1101, Lot 6 (listed on *Exhibit D* as #67) is a property located along Roberts Road in the R-A Zone district, and is directly adjacent to the municipal border with the City of Englewood. The parcel is a single lot comprised of a total of 0.73 acres, per Tax Assessor records. Property records show that the site has been vacant since 2005 when existing home was demolished.



Lot 6 is entirely surrounded by single-family homes, which create the overwhelming development characteristic of the area. The site is located at the intersection of Roberts Road and Barbara Drive. From curb to curb, Roberts Road is an approximately 30-foot wide R.O.W. Per 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”. It is still undetermined if there are any other environmental constraints on the property. Although COAH assumed a density of six per acre to extrapolate an RDP for Englewood Cliffs, the Borough is using a density of seven (7) units/acre to extrapolate an RDP for the site. Applying a density of 7 per acre to the 0.73 acre site yields **5 total units**. The affordable set-aside of 20% for this property would yield **1 unit** towards the RDP. Given the surrounding residential uses and the prevailing development character of the neighborhood, the assumption of lower densities is warranted.

Figure 2 (Exhibit B) depicts the sites which were included as part of the Borough RDP calculation.

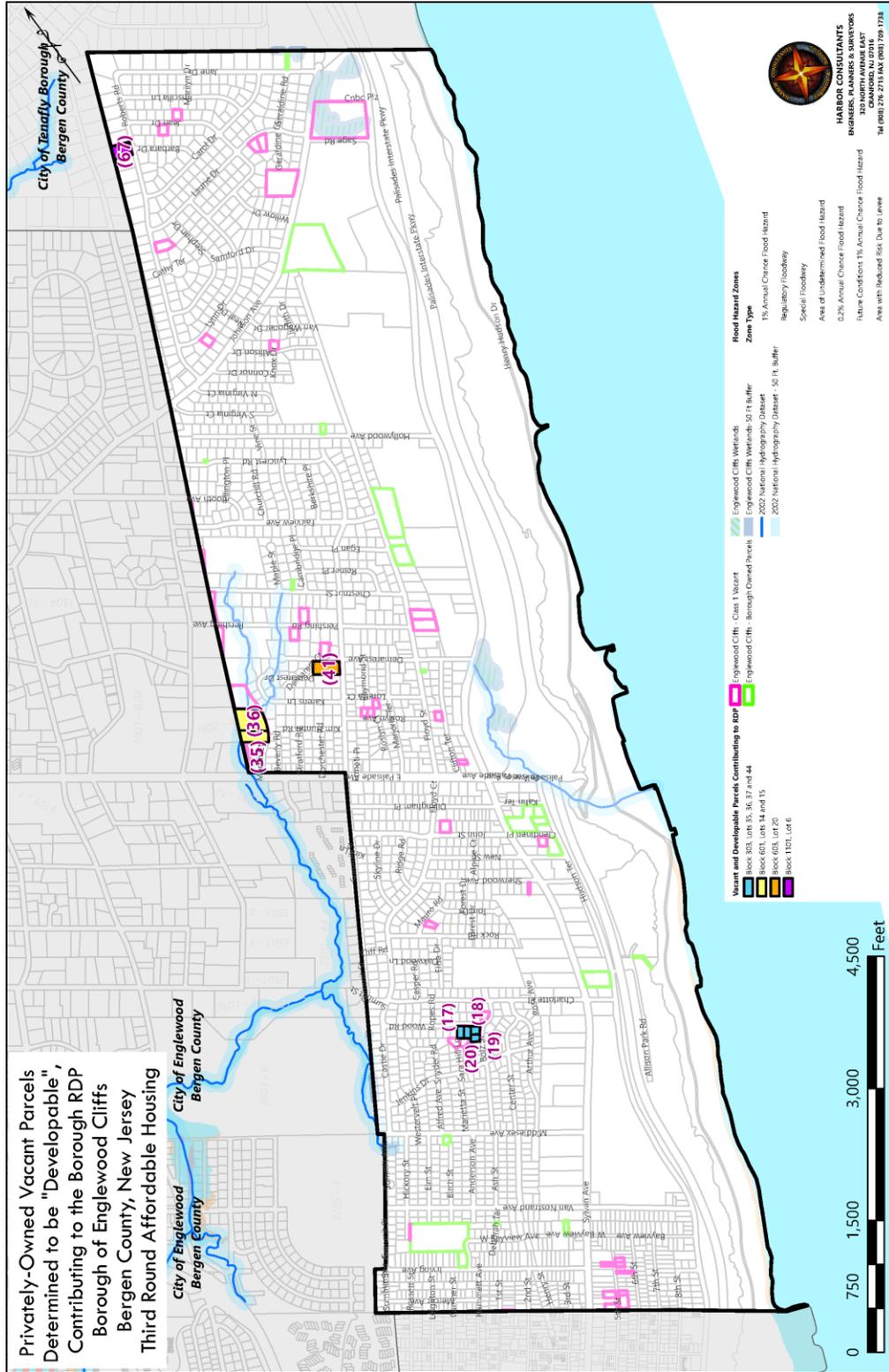


Figure 2: "Developable" Sites Contributing to the Borough RDP

Table 1 below depicts the final properties considered in the Borough RDP from Vacant Parcels. An appropriate density has been set for each property, and an estimate of the total number of affordable units yielded based on a set-aside of 20% have been calculated. At a total of 3.75 acres, the Vacant Land in Englewood Cliffs will yield a potential of 5 affordable units.

Table 1: Vacant Land Analysis - Developable Parcels Borough of Englewood Cliffs									
#	Block	Lot	Comments/Discussion	Zone	Total Area	Un-constrained Area	Density	Total Units	RDP
17-20	303	35, 36, 37, & 44	Per <u>N.J.A.C. 5:93-4.2(e)2.ii.</u> , topographic mapping of Lots 37 and 44 shows steep slopes in excess of 15% that encumber large portions of the site. The remaining 0.18 acres from Lots 37 and 44 can be combined with 0.50 acres from Lots 35 and 36.	R-B	0.91	0.68	10	7	1
35 & 36	601	14 & 15	These lots are contiguous and under the same ownership with the adjacent home on Block 601, Lot 7. 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 buffer per the most up-to-date Flood Hazard Area Control Act Rules <u>N.J.A.C. 7:13-4.1</u> , 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 approximately 25% of its area encumbered. The 0.23 acre remaining on the adjacent portion of Lot 15 can be combined with 1.04 acres of remaining area of Lot 14 for a total of 1.27 acres included in the RDP.	R-A	3.16	1.27	9	11	2
41	603	20	Vacant and undeveloped site that has remained so since the demolition of home built in 1937 completed in 2013. Adjacent to large single-family home on Lot 21, which is 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 or family (based on property records and surname of current owner), for a sum of \$10 in February 2012.	R-A	1.07	1.07	7	8	1
67	1101	6	Vacant and undeveloped site that is located on the municipal border with City of Englewood and surrounded by existing single-family homes. The site has been vacant since 2005 when former home was demolished.	R-A	0.73	0.73	7	5	1
<b>Land Contributing Toward the RDP</b>						<b>3.75 ac</b>			
<b>RDP (20% Set-aside)</b>									<b>5</b>

**VIII. DEVELOPED PROPERTIES DETERMINED TO GENERATE AN RDP UNDER PRINCIPLES EMBODIED IN CHERRY HILL CASE**

At the outset, 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 2 concern this third category. While not vacant or undeveloped, the owners of the sites have indicated their desire to redevelop and the Borough has considered the sites and determined an appropriate RDP to assign to the site based upon the premise that 20% of the units on each site would be the basis for the assignment of an RDP to each site.

Table 2. Developed Properties Determined to Generate an RDP <i>Borough of Englewood Cliffs</i>									
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	
<b>Total Units Based on Estimated Development Density</b>							<b>361</b>		
<b>Total RDP (20%)</b>									<b>72</b>

(a) See report detailing the *800 Sylvan Site* Under Separate Cover.

Figure 3 (*Exhibit C*), below, depicts the all of the developed sites that have been determined to contribute to the Borough RDP.



Figure 3: Developed Sites Determined to Contribute to the Borough RDP

**IX. CONCLUSION**

The following table represents the culmination of detailed analysis, coupled with realistic development opportunities - by means of public and private development - that have been presented to and considered by the Borough.

<b>Table 2: Borough of Englewood Cliffs RDP Vacant Land Adjustment</b>	
<b>Land/Site Source</b>	<b>Total Units</b>
<b>Table 1: Yield from Vacant Sites</b>	<b>5</b>
<b>Table 2: Yield from Developed Sites Determined to Generate an RDP</b>	<b>72</b>
<b>Englewood Cliffs Borough RDP</b>	<b>77</b>

Based on the analysis, an RDP of 77 affordable units has been calculated through this Vacant Land Analysis.

The analysis above 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. The raw Tax Assessor data has been compiled into a spreadsheet (*Exhibit D*) analyzing each of the privately-owned and Borough-owned vacant properties within the Borough. This spreadsheet showing full detail of all sites in the Borough considered through the Vacant Land Adjustment by Block and Lot (*Exhibit D*), along with full-page maps of Figures 1-3 (*Exhibits A-C*), are attached as exhibits to this VLA.

**X. Reference List**

Borough of Englewood Cliffs Tax Assessor (2017). "Englewood Cliffs Class 1 Properties".

Borough of Englewood Cliffs Tax Assessor (2017). "Englewood Cliffs 15C Properties".

New Jersey Department of Treasury (2006). New Jersey Administrative Code Title 18, Chapter 12. - Local Property Tax: General. pp. 5-6. Retrieved from:  
<http://www.njactb.org/News%20PDFs/NJAC%2018%2012%20LPT%20General%20Total.pdf>

N. J. A. C. 7:9B Surface Water Quality Standards,  
[http://www.nj.gov/dep/rules/rules/njac7\\_9b.pdf](http://www.nj.gov/dep/rules/rules/njac7_9b.pdf)

Substantive Rules of The New Jersey Council on Affordable Housing (1999). Chapter 93 Subchapter 4. COAH. <http://www.nj.gov/dca/services/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.state.nj.us/NJ\\_NJGINExplorer/jviewer.jsp?pg=DataDownloads](https://njgin.state.nj.us/NJ_NJGINExplorer/jviewer.jsp?pg=DataDownloads)

New Jersey Geographic Information Network (NJGIN). State Boundary of New Jersey.  
[https://njgin.state.nj.us/NJ\\_NJGINExplorer/jviewer.jsp?pg=DataDownloads](https://njgin.state.nj.us/NJ_NJGINExplorer/jviewer.jsp?pg=DataDownloads)

New Jersey Geographic Information Network (NJGIN). Bergen County Parcels.  
<https://njgin.state.nj.us/>

**XI. EXHIBITS**

**EXHIBIT A.**

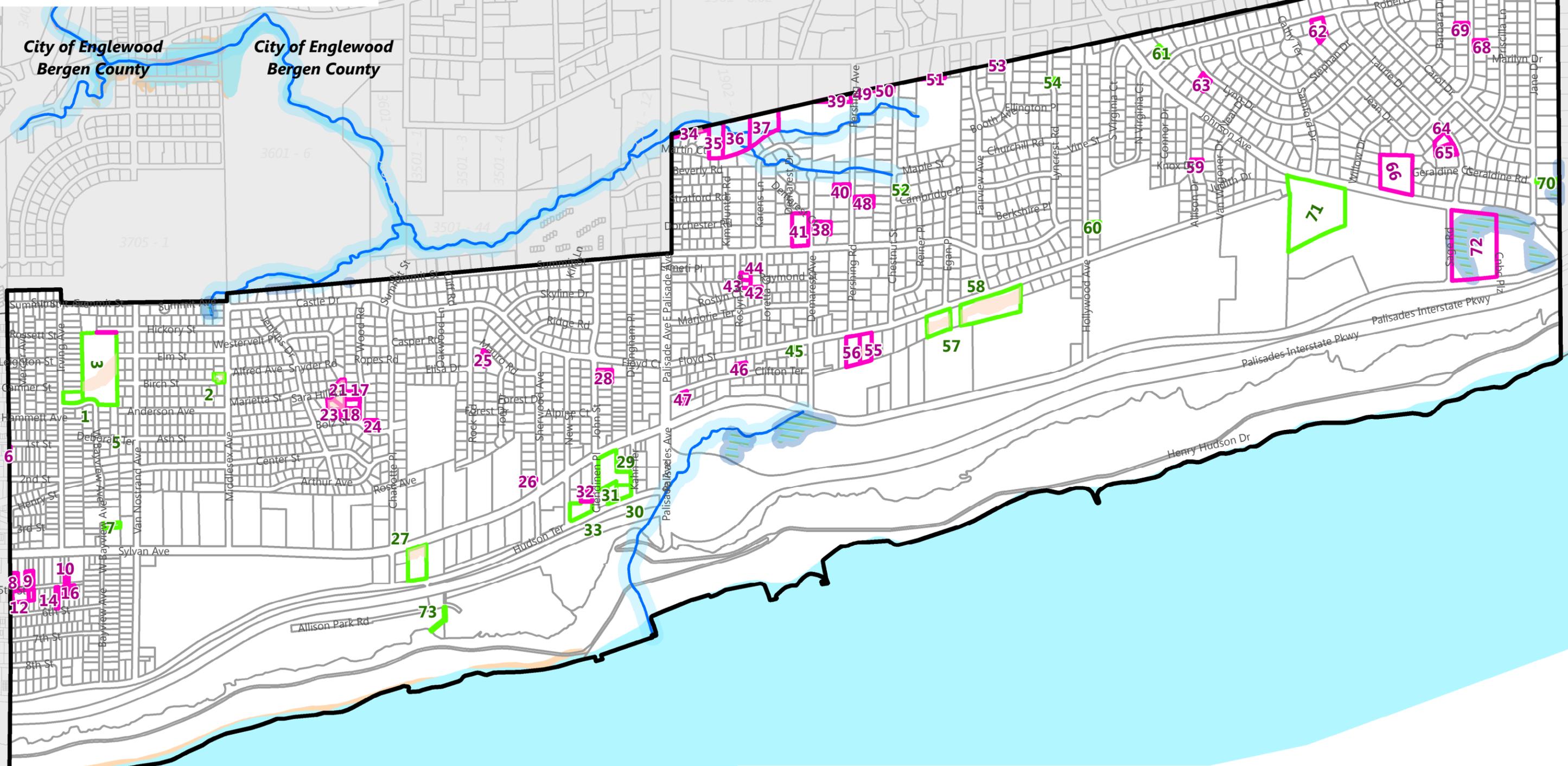
**FIGURE 1 – CLASS 1 VACANT AND 15C PUBLIC EXEMPT PARCEL INVENTORY**

**Privately-Owned (Class 1) Vacant and Borough-Owned (15C) Parcels  
Borough of Englewood Cliffs  
Bergen County, New Jersey  
Third Round Affordable Housing**

**City of Tenafly Borough  
Bergen County**

**City of Englewood  
Bergen County**

**City of Englewood  
Bergen County**



Englewood Cliffs - Class 1 Vacant	Englewood Cliffs Wetlands	<b>Flood Hazard Zones</b>
Englewood Cliffs - Borough-Owned Parcels	Englewood Cliffs Wetlands-50 Ft Buffer	<b>Zone Type</b>
	2002 National Hydrography Dataset	1% Annual Chance Flood Hazard
	2002 National Hydrography Dataset - 50 Ft. Buffer	Regulatory Floodway
	Slopes ≥ 15% (On-Sites)	Special Floodway
		Area of Undetermined Flood Hazard
		0.2% Annual Chance Flood Hazard
		Future Conditions 1% Annual Chance Flood Hazard
		Area with Reduced Risk Due to Levee



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**EXHIBIT B.**

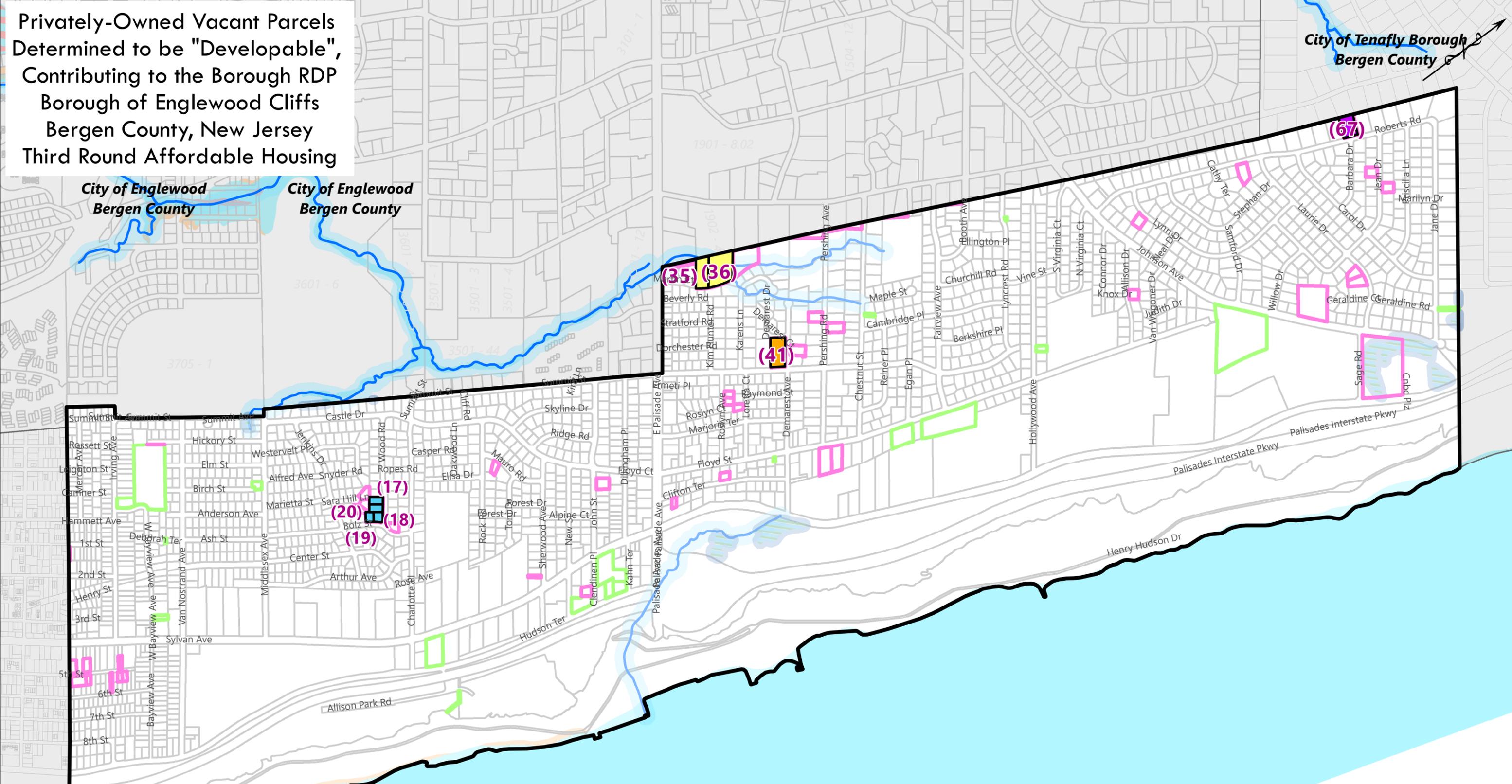
**FIGURE 2 – “DEVELOPABLE” PARCELS CONTRIBUTING TO RDP**

**Privately-Owned Vacant Parcels  
Determined to be "Developable",  
Contributing to the Borough RDP  
Borough of Englewood Cliffs  
Bergen County, New Jersey  
Third Round Affordable Housing**

**City of Tenafly Borough  
Bergen County**

**City of Englewood  
Bergen County**

**City of Englewood  
Bergen County**



- Vacant and Developable Parcels Contributing to RDP**
- Block 303, Lots 35, 36, 37 and 44
  - Block 601, Lots 14 and 15
  - Block 603, Lot 20
  - Block 1101, Lot 6

- Englewood Cliffs - Class 1 Vacant
- Englewood Cliffs - Borough Owned Parcels

- Englewood Cliffs Wetlands
- Englewood Cliffs Wetlands-50 Ft Buffer
- 2002 National Hydrography Dataset
- 2002 National Hydrography Dataset - 50 Ft. Buffer

**Flood Hazard Zones  
Zone Type**

- 1% Annual Chance Flood Hazard
- Regulatory Floodway
- Special Floodway
- Area of Undetermined Flood Hazard
- 0.2% Annual Chance Flood Hazard
- Future Conditions 1% Annual Chance Flood Hazard
- Area with Reduced Risk Due to Levee



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**EXHIBIT C.**

**DEVELOPED SITES DETERMINED TO CONTRIBUTE TO THE BOROUGH RDP**

**Developed Sites Determined to Contribute  
to the Borough RDP  
Borough of Englewood Cliffs  
Bergen County, New Jersey**

**City of Tenafly Borough  
Bergen County**

**City of Englewood  
Bergen County**

**Vacant Portion of 800 Sylvan Avenue  
Offered for Development  
(Block 910, Lot 1)**

**Pending ZBA Application – 30-unit Mixed-Use  
Project with Set-Aside  
(Block 205, Lots 1 & 4; Block 201, Lots 10-14)**

**Redevelopment of Borough Complex  
(Block 514, Lots 4 & 5; Block 513, Lots 4 & 7)**



- Redevelopment of Borough Complex
- Pending Land Use Board Application
- Vacant Portion of Block 910, Lot 1
- Block 910, Lot 1



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**EXHIBIT D.**

**VACANT LAND ADJUSTMENT ANALYSIS SPREADSHEET**

**Borough of Englewood Cliffs  
Vacant Land Adjustment Analysis**

#	Class	Block	Lot	Address	Owner	Lot Size	Constrained Area	Un-constrained	Density Applied (units per ac)	Comments/Exclusion Discussion	Units Produced at Density	Units Contributing to the RDP
1	15C	107	14	IRVING AVE	Borough of Englewood Cliffs	0.40	0.0	0.40	N/A	Municipal 15C Property - Developed as open space "Veterans and Fallen Heroes Park" - includes fenced in tot-lot and playground equipment. The property is listed on " a master plan...as being dedicated...[for] open space and which is owned...by a... municipality..." per <u>N.J.S.A.52:27D-310.1(b)</u> . 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 (as part of 3% per <u>N.J.A.C 5:93-4.2(e)4.i.</u> ). Included on Borough Recreation and Open Space Plan (2001). Excluded from RDP analysis.	0.0	0.0
2	15C	111	12	162 MIDDLESEX AVE	Borough of Englewood Cliffs	0.17	0.17	0.0	N/A	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 <u>N.J.A.C 5:93-4.2(e)5.i.</u> ) to protect the environmentally sensitive nature of the site. Excluded from RDP analysis.	0.0	0.0
3	15C	117	7	W. BAYVIEW AVE	Borough of Englewood Cliffs	4.73	1.25	3.48	N/A	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 the Borough per <u>N.J.S.A.52:27D-310.1(b)</u> . 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 (as part of 3% per <u>N.J.A.C. 5:93-4.2(e)5.i.</u> ). 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). Excluded from RDP analysis.	0.0	0.0
4	1	117	8	35 HICKORY ST	LIASKOS, LEO	0.03	0.0	0.0	6.0	Narrow sliver lot - Lot dimensions are 6' x 180' in the RB Zone. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	0.18	0.0
5	15C	125	1	DEBORAH TERR	Borough of Englewood Cliffs	0.01	0.0	0.01	N/A	Municipal 15C Property - Municipally owned unimproved and undeveloped sliver of vegetation between Deborah Terrace cul-de-sac and Ash Street R.O.W. Municipally owned passive open space (as part of 3% per <u>N.J.A.C. 5:93-4.2(e)5.i.</u> ). Excluded from RDP analysis.	0.0	0.0
6	1	128	11	1 FIRST ST	HEGAZI, TAREK & GHADA ALY	0.04	0.0	0.04	6.0	Narrow sliver lot - 13 feet wide - next to developed lots in the RB-1 Zone. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	0.24	0.0
7	15C	132	5	5 W. BAYVIEW AVE	Borough of Englewood Cliffs	0.18	0.0	0.18	N/A	Municipal 15C Property - Developed as "Englewood Cliffs Senior Citizen Community Center" per <u>N.J.S.A. 52:27D-310.1(a)</u> . Excluded from RDP analysis.	0.0	0.0
8	1	201	1	2 FIFTH ST	2 FIFTH STREET ASSOCIATES LLC	0.23	0.0	0.23	12.0	B-3 Zone. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	2.76	0.0
9	1	201	6	8 FIFTH ST	R & A LLC	0.24	0.0	0.24	12.0	B-3 Zone. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	2.88	0.0

#	Class	Block	Lot	Address	Owner	Lot Size	Constrained Area	Un-constrained	Density Applied (units per ac)	Comments/Exclusion Discussion	Units Produced at Density	Units Contributing to the RDP		
10	1	201	13	24B SYLVAN AVE	24-B SYLVAN AVE LLC	0.12	0.0	0.12	12.0	B-3 Zone. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	1.44	0.0		
11	1	202	1	0 FIFTH ST	CHANG, JANELLE C. & YON HUI	0.05	0.0	0.05	12.0	Contiguous 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 (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	0.60	0.0		
12	1	202	2	4 FIFTH ST	4 FIFTH STREET ASSOCIATES LLC	0.35	0.0	0.35	12.0	Contiguous 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 (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	4.20	0.0		
13	1	202	3	FIFTH ST	DOGALI (ETALS), ROBIN	0.11	0.0	0.11	12.0	Contiguous with Lots 1 and 1 in the RB-1 Zone; but under separate ownership. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	1.32	0.0		
14	1	202	8	17A SIXTH ST	RADCLIFFE, JAME E	0.11	0.0	0.11	8.0	RB-1 Zone. Driveway to Access adjacent Lot 9, acts almost as flag lot with the parcel - 25 feet wide. (See <u>N.J.S.A. 52:27D-310.1</u> ). Lot too small to create 5 dwelling units. Excluded from RDP analysis.	0.88	0.0		
15	1	202	10	4 SIXTH ST REAR	GOLDVALLEYASSET INC	0.11	0.0	0.11	12.0	Contiguous parcels in the RB-1 Zone, and under similar ownership. Even combined, Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	2.76	0.0		
16	1	202	11	21 FIFTH ST REAR	GOLDVALLEYASSET INC	0.12	0.0	0.12	12.0					
17	1	303	35	154 WOOD RD	OAK CLIFF ESTATES, INC	0.25	0.0	0.25	10.0	R-B Zone. Contiguous parcels include Block 303, Lots 35, 36, 37, & 44, and under similar ownership. However, topographic mapping of Lots 37 and 44 shows steep slopes in excess of 15% on the site that encumber portions. Remaining area of Lots 35 and 36 is 0.50 acres.	6.80	1.0		
18	1	303	36	150 WOOD RD	OAK CLIFF ESTATES, INC	0.25	0.0	0.25						
19	1	303	37	146 WOOD RD	OAK CLIFF ESTATES, INC	0.22	0.11	0.11		Contiguous with Block 303, Lots 35, 36, & 44, and under similar ownership. Per <u>N.J.A.C. 5:93-4.2(e)2.ii.</u> , topographic mapping of Lots 37 and 44 shows steep slopes in excess of 15% on the site that encumber large portions of the site. Lot 37 has a grade change from the southern property line with Lot 44 from 310 to 320 at the center of the site (50 feet), for slopes of ~20%. The grade changes at the rear of Lot 44, from the northwest portion at the property edge from 314 feet to 302 at the center of the site (50 feet) for slopes of ~24%. The eastern corner along Bolz Street has a grade change towards the center from 310 to 302 feet over 44 feet, for a slope of ~18%. Lot 44 has a remaining acreage of 0.07 acres. Remaining 0.18 acres from Lots 37 and 44 combined with lots 35 and 36 for inclusion in RDP analysis.				
20	1	303	44	312 BOLZ ST	OAK CLIFF ESTATES, INC	0.19	0.12	0.07						

#	Class	Block	Lot	Address	Owner	Lot Size	Constrained Area	Un-constrained	Density Applied (units per ac)	Comments/Exclusion Discussion	Units Produced at Density	Units Contributing to the RDP
21	1	303	40.05	12 SARA HILL LA	CLIFFS HOLDING LLC	0.21	0.21	0.0	8.0	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. The grade changes across Lot 40.08 from west at 288 feet to 304 feet approximately 80 feet east, for slopes of approximately 20%. Per <u>N.J.A.C. 5:93-4.2(e)2.ii.</u> , excluded from RDP analysis.	0.00	0.0
22	1	303	40.07	10 SARA HILL LA	CLIFFS HOLDING LLC	0.22	0.22	0.0	8.0			
23	1	303	40.08	8 SARA HILL LA	THE RM FAMILY LP	0.22	0.22	0.0	8.0			
24	1	306	10	320 BOLZ ST	OAK CLIFF ESTATES, INC	0.20	0.09	0.11	8.0	R-B Zone. 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 (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	0.88	0.0
25	1	406	2	365 MAURO RD	MAURO, JOSEPHINE % J. PETROLINO	0.17	0.17	0.08	8.0	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 (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	0.6	0.0
26	1	411	14	30 SHERWOOD AVE	MORRISSEY, BRUCE C.	0.06	0.06	0.0	6.0	B-2 Zone. Narrow sliver lot that 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 (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	0.00	0.0
27	15C	412	3	342 HUDSON TERR	Borough of Englewood Cliffs	1.17	0.0	1.17	N/A	Municipal 15C Property - Developed with "Department of Public Works" Facility Yard and Building per <u>N.J.S.A. 52:27D-310.1(a)</u> .. Excluded from RDP analysis.	0.0	0.0
28	1	507	21	45 JOHN ST	KM3 LLC	0.36	0.0	0.36	8.0	R-B Zone. Home recently built on the site. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	2.88	0.0
29	15C	513	4	10 KAHN TERR	Borough of Englewood Cliffs	0.36	0.0	0.36	N/A	Municipal 15C Property - Developed as Englewood Cliffs Police and Fire Department facilities; Ambulance Building; and Borough Hall per <u>N.J.S.A. 52:27D-310.1(a)</u> .. Excluded from RDP analysis.	0.0	0.0
30	15C	513	5	488 HUDSON TERR	Borough of Englewood Cliffs	0.32	0.0	0.32	N/A			
31	15C	513	6	482 HUDSON TERR	Borough of Englewood Cliffs	1.48	0.0	1.48	N/A			
32	1	514	4	4 CLENDINEN PL	DOWA LINE AMERICA CO.LTD.	0.23	0.0	0.23	6.0	B-4 Zone. Serves as necessary parking for DOW-A Line America business across the ROW. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	1.38	0.0

#	Class	Block	Lot	Address	Owner	Lot Size	Constrained Area	Un-constrained	Density Applied (units per ac)	Comments/Exclusion Discussion	Units Produced at Density	Units Contributing to the RDP
33	15C	514	5	474 HUDSON TERR	Borough of Englewood Cliffs	0.61	0.0	0.61	0.0	Municipal 15C Property - The site is currently developed. Notwithstanding the foregoing, the Borough once considered the site for affordable housing when it faced a relatively modest RDP. However, circumstances appear to have changed greatly from when the Borough considered this site for affordable housing and the Borough needs to reconsider how it will address an RDP that will be greater than it faced when it considered using the site. If the Borough still elects to utilize the site after recalibrating its RDP, the site will generate an RDP of 20 percent of the total units constructed.	0.0	0.0
34	1	601	13	471 PALISADE AVE	GILBERT, JENNIFER	0.30	0.0	0.3	7.0	R-A Zone. Narrow sliver lot that is on the municipal border. Common ownership with Block 1902, Lot 8 across municipal border in Englewood, developed as a single family home. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	2.10	0.0
35	1	601	14	2 KIMHUNTER RD	KITTS, ROBERT & LAURIE	1.38	0.34	1.04	9.0	R-A Zone. These lots are contiguous with the adjacent parcel under the same ownership – Block 601, Lot 7 - which is developed with a single-family home. 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 buffer per the most up-to-date Flood Hazard Area Control Act Rules <u>N.J.A.C. 7:13-4.1</u> , 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 approximately 25% of its area encumbered. The 0.23 acre remaining on the adjacent portion of Lot 15 can be combined with 1.04 acres of remaining area of Lot 14 for a total of 1.27 acres included in the RDP. These combined portions have been included in the RDP analysis.	11.43	2.0
36	1	601	15	NEAR KARENS LANE	KITTS, ROBERT & LAURIE	1.78	1.55	0.23	9.0			
37	1	601	16	NEAR KARENS LANE	ANTOINE, CLAREL	1.39	0.9	0.46	7.0	Contiguous parcels with Block 601, Lots 14 and 15, but under separate ownership in the R-A zone. The owner has property across the municipal border into Englewood (Block 1902, Lot 3), of which this appears to be part of their residential backyard area. Additionally, Flat Rock Brook and tributary traverse through southern portion of the Lot. With a minimum 50 foot regulated buffer per <u>N.J.A.C. 7:13-4.1</u> , it appears that approximately 65-70% of the lot is encumbered. Additionally, this property was considered "landlocked" in COAH 1997 Compliance Report for the Borough. Excluded from RDP analysis.	3.22	0.0
38	1	602	2	143 DEMAREST AVE	NAZARIAN, NAZAR & ARTEMIS	0.37	0.0	0.37	7.0	R-A Zone. Surrounded by single-family homes. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	2.59	0.0
39	1	602	9	202 PERSHING RD	101 NORTH WOODLAND LLC %ARGENT VENT	0.32	0.0	0.32	7.0	R-A Zone. Triangular sliver lot on the municipal border. Common ownership with Block 1902, Lot 1 across municipal border in Englewood, developed as a single family home. (See <u>N.J.S.A. 52:27D-310.1</u> ) Lot too small to create 5 dwelling units. Excluded from RDP analysis.	2.24	0.0
40	1	602	12.02	164 PERSHING RD	RAMA, RENE, LEOVINA & JENNIFER	0.34	0.0	0.34	7.0	Recent Subdivision in the R-A Zone. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	2.38	0.0

#	Class	Block	Lot	Address	Owner	Lot Size	Constrained Area	Un-constrained	Density Applied (units per ac)	Comments/Exclusion Discussion	Units Produced at Density	Units Contributing to the RDP
41	1	603	20	552 SUMMIT ST	GLUCKOW, MICHELLE & GARY	1.07	0.0	1.07	7.0	R-A Zone. 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. Included in RDP analysis.	7.49	1.0
42	1	611	5.02	30 LORETTA CT	FARKOUH (TRSTE/ETC), RAYMOND	0.17	0.0	0.17	8.0	Recent Subdivision in the R-B Zone. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	1.36	0.0
43	1	611	10.01	29 ROSLYN AVE	FARKOUH (TRSTE), MARTHA	0.17	0.0	0.17	8.0	Recent Subdivision in the R-B Zone. Even combined, site is too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	2.72	0.0
44	1	611	10.02	33 ROSLYN AVE	FARKOUH (TRSTE), MARTHA	0.17	0.0	0.17	8.0			
45	15C	616	4	553 FLOYD ST	Borough of Englewood Cliffs	0.02	0.0	0.02	N/A	Municipal 15C Property. Landmark glacial erratic (ten 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 for purposes of open space, which is owned and operated in any manner by the Borough. N.J.S.A.52:27D-310.1(b). Finally, municipally owned passive open space (as part of 3% per <u>N.J.A.C 5:93-4.2(e)5.i.</u> ) to protect the historic resource value of the site. Accordingly, pursuant to <u>N.J.S.A. 52:27D-310.1 (b)</u> , the Borough shall not "be required to utilize" this land "for affordable housing purposes". Excluded from RDP analysis.	0.0	0.0
46	1	616	25	24 CLIFTON TERR	DOOLY, DANIEL E.	0.19	0.0	0.19	8.0	R-B Zone. Surrounded by single-family homes. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	1.52	0.0
47	1	617	2	3 CLIFTON TERR	CLIFTON TERR ACQUISITIONS	0.11	0.0	0.11	8.0	R-B Zone. Aerial imagery shows that this lot serves as parking for the business (Jaein Nho, DD, PC Dentistry, on adjacent property Block 617, Lot 1. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	0.88	0.0
48	1	701	3	165 PERSHING RD	LEE, JOHN ENG & TAMMY YOUNG	0.40	0.0	0.4	7.0	R-A Zone. Surrounded by single-family homes. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	2.80	0.0
49	1	701	9	203 PERSHING RD	BAER, LEWIS & LORRAINE	0.09	0.0	0.09	6.0	R-A Zone. Narrow sliver lot on the municipal border - 13 feet wide. Partially contiguous with Block 701, Lot 10. Common ownership with Block 1807, Lot 3 across municipal border in Englewood, developed as a single family home. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	0.54	0.0
50	1	701	10	216 CHESTNUT ST	KATZ, STEVEN & MARGARET	0.17	0.0	0.17	7.0	R-A Zone. Triangular sliver lot on the municipal border. Partially contiguous with Block 701, Lot 9. Common ownership with Block 1807, Lot 1.01 across municipal border in Englewood, developed as a single family home. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	1.19	0.0

#	Class	Block	Lot	Address	Owner	Lot Size	Constrained Area	Un-constrained	Density Applied (units per ac)	Comments/Exclusion Discussion	Units Produced at Density	Units Contributing to the RDP
51	1	702	1	45 EGAN PL	BREMER, HERMAN & MARLENE	0.11	0.0	0.11	6.0	R-A Zone. Triangular sliver lot on the municipal border. Common ownership with Block 1806, Lot 1 across municipal border in Englewood, developed as a single family home. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	0.66	0.0
52	15C	703	15	5 CHESTNUT ST	Borough of Englewood Cliffs	0.07	0.0	0.07	N/A	Municipal 15C Property - Developed as Pumping Station, as identified in 2001 Borough Master Plan per <u>N.J.S.A. 52:27D-310.1(a)</u> . Excluded from RDP analysis.	0.0	0.0
53	1	707	6	29 BOOTH AVE	WOLF, GILBERT & HELEN	0.04	0.0	0.04	6.0	R-A Zone. Triangular sliver lot on the municipal border. Common ownership with Block 1804, Lot 1 across municipal border in Englewood, developed as a single family home. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	0.24	0.0
54	15C	713	7	243 LYNCREST ST	Borough of Englewood Cliffs	0.03	0.0	0.03	N/A	Municipal 15C Property - Developed as Pumping Station, as identified in 2001 Borough Master Plan per <u>N.J.S.A. 52:27D-310.1(a)</u> . Excluded from RDP analysis.	0.0	0.0
55	1	802	7.01	575 FLOYD ST	SENATORE CLIFFS DEVELOPMENT LLC	0.62	0.3	0.31	7.0	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 (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	4.34	0.0
56	1	802	7.02	577 FLOYD ST	SENATORE CLIFFS DEVELOPMENT LLC	0.62	0.3	0.31	7.0	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 (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.		
57	15C	806	4	FLOYD ST	Borough of Englewood Cliffs	0.94	0.0	0.94	N/A	Municipal 15C Property - The parcel is listed on the master plan as dedicated for purposes of open space, which owned and operated in any manner by a nonprofit organization. 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 unimproved and undeveloped passive open space (as part of 3% per <u>N.J.A.C 5:93-4.2(e)5.i.</u> ). Included in 2001 Master Plan Reexamination and Open Space Element. Excluded from RDP analysis.	0.0	0.0
58	15C	806	6	FLOYD ST	Borough of Englewood Cliffs	2.75	0.0	2.75	N/A	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 the municipality. 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 unimproved and undeveloped passive open space (as part of 3% per <u>N.J.A.C 5:93-4.2(e)5.i.</u> ). Included in 2001 Master Plan Reexamination and Open Space Element. Excluded from RDP analysis.	0.0	0.0
59	1	902	13	17 ALLISON DR	JARI DEVELOPMT LLC % LUPPINO DEV.	0.23	0.0	0.23	7.0	R-A Zone. Surrounded by single-family homes. Lot too small to create 5 dwelling units (See <u>N.J.S.A. 52:27D-310.1</u> ). Excluded from RDP analysis.	1.61	0.0

#	Class	Block	Lot	Address	Owner	Lot Size	Constrained Area	Un-constrained	Density Applied (units per ac)	Comments/Exclusion Discussion	Units Produced at Density	Units Contributing to the RDP
60	15C	909	3	111 HOLLYWOOD AVE	Borough of Englewood Cliffs	0.15	0.0	0.15	N/A	Municipal 15C Property - Municipally owned passive open space (as part of 3% per N.J.A.C 5:93-4.2(e)5.i.). Developed as walking path to North Cliff Elementary School. Excluded from RDP analysis.	0.0	0.0
61	15C	1001	37	8 ROBERTS ROAD	Borough of Englewood Cliffs	0.1	0.0	0.1	N/A	Municipal 15C Property - Developed as Pumping Station, as identified in 2001 Borough Master Plan per N.J.S.A. 52:27D-310.1(a). . Excluded from RDP analysis.	0.0	0.0
62	1	1002	12	51 ROBERTS RD	YEN, VICTOR	0.46	0.0	0.46	7.0	R-A Zone. Surrounded by single-family homes. Lot too small to create 5 dwelling units (See N.J.S.A. 52:27D-310.1). Excluded from RDP analysis.	3.22	0.0
63	1	1004	5	7 LYNN DRIVE	SINGH, CHARANJIT&HARVEEN KAUR	0.30	0.0	0.3	7.0	R-A Zone. Surrounded by single-family homes. Lot too small to create 5 dwelling units (See N.J.S.A. 52:27D-310.1). Excluded from RDP analysis.	2.10	0.0
64	1	1009	15	41 LAURIE DR	PALESTRONI, LUCIA	0.32	0.0	0.32	7.0	Contiguous parcels in the R-A Zone, and under common ownership with adjacent property Block 1009, Lot 17, which is developed with a single family home. Surrounded entirely by single-family homes. Even combined, Lots are too small to create 5 dwelling units (See N.J.S.A. 52:27D-310.1). Excluded from RDP analysis.	4.83	0.0
65	1	1009	16	45 LAURIE DR	PALESTRONI, LUCIA	0.37	0.0	0.37	7.0			0.0
66	1	1009	29	78 JOHNSON AVE.	UNITED WATER CO.	2.30	0.0	2.3	N/A	Developed with municipal water storage tank. Excluded from RDP analysis.	0.0	0.0
67	1	1101	6	98 ROBERTS RD	INTERNAT LOGISTICS & EXPORT SER LLC	0.73	0.0	0.73	7.0	Single lot in the R-A Zone on the border with Englewood and surrounded by existing single-family homes. Vacant since 2005 when existing home was demolished. Included in RDP analysis.	5.11	1.0
68	1	1103	18	16 JEAN DRIVE	MONIQUE RLTY INC CO L&R SERVICES	0.27	0.0	0.27	7.0	R-A Zone. Surrounded by single-family homes. Lot too small to create 5 dwelling units (See N.J.S.A. 52:27D-310.1). Excluded from RDP analysis.	1.89	0.0
69	1	1104	4	11 JEAN DR	YAMANI, AMIR & GHAEMI, MARJAN	0.28	0.0	0.28	7.0	R-A Zone. Surrounded by single-family homes. Lot too small to create 5 dwelling units (See N.J.S.A. 52:27D-310.1). Excluded from RDP analysis.	1.96	0.0
70	15C	1107	14	52 JANE DR	Borough of Englewood Cliffs	0.15	0.0	0.15	N/A	Municipal 15C Property - Municipally owned passive open space (as part of 3% per N.J.A.C 5:93-4.2(e)5.i.). Developed as walking path to St. Thomas Armenian Church. Excluded from RDP analysis.	0.0	0.0

#	Class	Block	Lot	Address	Owner	Lot Size	Constrained Area	Un-constrained	Density Applied (units per ac)	Comments/Exclusion Discussion	Units Produced at Density	Units Contributing to the RDP
71	15C	1201	7	JOHNSON AVE	Borough of Englewood Cliffs	6.09	0.0	6.09	N/A	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. <u>N.J.S.A. 52:27D-310.1 (b)</u> . Developed as "Fred Witte Memorial Field/Johnson Field", active recreation site. Municipally owned active recreation space (as part of 3% per <u>N.J.A.C 5:93-4.2(e)4.i.</u> ). Accordingly, pursuant to <u>N.J.S.A. 52:27D-310.1 (b)</u> , the Borough shall not "be required to utilize" this land "for affordable housing purposes". Included on Borough Recreation and Open Space Plan (2001).	0.0	0.0
72	1	1202	2	922 SYLVAN AVE	ALFIERO & LUCIA PALESTRONI (FOUNDAT	5.81	3.77	2.04	N/A - Approved and Developed	B-2 Zone. Environmental encumbrances including wooded wetlands and associated transition areas on site accounting for approximately 3.77 acres. Aerial imagery shows that a ditch or stream is in the proximity of the wetlands. Site has approval per Resolution for App. No. 255K dated February 11, 2016, and construction is underway for office building on the property with development only in the 1.64 acres of unencumbered areas along Sylvan Avenue. Excluded from RDP analysis.	0.00	0.0
73	15C	1302	1	HUDSON TERR	Borough of Englewood Cliffs	0.11	0.0	0.11	N/A	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 (as part of 3% per <u>N.J.A.C 5:93-4.2(e)5.i.</u> ) to protect environmentally sensitive nature of the site. Additionally, topographic mapping (USGS) shows steep slopes in excess of 15% on nearly the entire site. Excluded from RDP analysis.	0.0	0.0

**Land Contributing Toward the RDP (acres)      3.750**

**RDP (based on 20% set-aside)      5.000**

**XII. APPENDICES**

**APPENDIX A.**

**REPORT ON ROSELAND BOROUGH VLA – EVALUATION OF THE COURT MASTER, SHIRLEY  
BISHOP, AUGUST 13, 2018**

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# SHIRLEY M. BISHOP, P.P., LLC

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REPORT ON THE ROSELAND BOROUGH

VACANT LAND ADJUSTMENT

EVALUATION OF THE COURT MASTER

Prepared by:

Shirley M. Bishop, P.P.



August 13, 2018

## **I. PROFESSIONAL EXPERIENCE**

I have a Master's Degree in City and Regional Planning from The Bloustein School at Rutgers University, which honored me as the Alumnus of the Year in 1996 and named me to the Bloustein School Hall of Fame in 2013.

I am a licensed professional planner with over 35 years of experience in the affordable housing field in both the public and private sector. I have represented both municipalities and developers. Currently, I represent 20 municipal clients of which 16 are under the jurisdiction of the Court. Of the 16, 11 have settlement agreements and/or Judgments of Compliance and Repose. I also serve as a Court Master in five municipalities. Of my current 15 municipal clients, 11 were/are the focus of Vacant Land Adjustments (VLA). Of the Court Master towns, three have/are involved with VLAs.

In addition, I was one of the original staff members of the Council on Affordable Housing (COAH) in 1986 and, more importantly, served as Executive Director of COAH from 1994 through June 2002, which coincides with the implementation of the Second Round regulations, N.J.A.C. 5:93 et seq. The Second Round regulations are the regulations typically used to prepare and review a VLA, to determine a Realistic Development Potential (RDP), and to decide how a municipality should address any remaining "unmet need".

Due to my extensive background as the Executive Director of COAH for eight years, as well as my 35 years of experience as both a Court Master and an affordable housing planner, I am extremely knowledgeable regarding all aspects of VLAs, either through my actual preparation of VLAs, or the review of same as a Court Master.

During my tenure as Executive Director of COAH, the COAH Board granted Substantive Certification to 245 municipal plans of which 58 were the recipients of VLAs as seen in Exhibit A. A copy of my resume is in Exhibit B

## **II. BACKGROUND**

In May of 2017, Joseph Layton, P.P., AICP and Daniel N. Bloch, P.P., AICP prepared a Vacant Land Analysis for the Borough of Roseland, which was released to the Court Master and all parties in the Borough's Declaratory Judgment Action, which was filed in July of 2015 in response to the Supreme Court's Mount Laurel IV decision. In February of 2015, Art Bernard, P.P. issued a report on behalf of intervenor/developer Rebuilding Green Services ("RGS"). On May 18, 2018 Joseph Layton, P.P. AICP and Daniel Bloch, P.P., AICP issued a report addressing the issues raised by Mr. Bernard. On June 19, 2018, Mr. Bernard issued a supplemental report, which was followed by a report issued by Fair Share Housing Center ("FSHC") on June 21, 2018. On July 2, 2018, the Borough responded to both Mr. Bernard and FSHC. On July 10, 2018, the Court Master, Elizabeth McManus, P.P., AICP submitted an Evaluation of Roseland Borough's VLA, in which she asked the Borough to revise its Vacant Land Analysis and address her issues and concerns. I have thoroughly reviewed all of the above reports, and I am submitting this Report to explain some of the changes the Borough has made to its Vacant Land Analysis. The Borough's revised Vacant Land Analysis will be submitted simultaneously with this Report.

### III. ACCEPTED CALCULATIONS

In her July 10, 2018 report, the Court Master accepted the Borough's RDP calculations for the following sites:

**Block 34, Lot 4.** The Court Master agreed with the Borough that the steep slopes portion of this site should not be included in the RDP calculation, but accidentally miscalculated the remaining developable acreage to be 4.6 acres, when there are actually only 3.86 acres that are developable on this site. This results in an RDP of 6 for the site, not 7.36 as indicated in the Court Master's report. The Borough has corrected this miscalculation in its revised Vacant Land Analysis. See July 10, 2018 Court Master's report at Pages 2-4.

**Block 12, Lots 2 through 22.3.** The Court Master agreed with the Borough that no RDP should be generated for this site (the "Fernwood Site") as it was acquired by the Borough for active recreation purposes, and the Borough is still below the 3% land preserved for active recreation limit. Id. at Pages 4-5. The Court Master also agreed with the Borough that County controlled lands should not be subject to the 3% limitation. Id. at Page 4.

**Block 51, Lot 3.** The Court Master agreed with the Borough that no RDP should be generated for this site because of the small size of the site and its location within a single family neighborhood. Id. at Page 5. In addition, it has recently been developed with a single family home.

**Block 13, Lot 54.** The Court Master agreed with the Borough that the site should not generate any RDP because it is owned by a neighboring municipality, has limited access and has water pump facilities on-site. Ibid.

**Block 12, Lot 200.** The Court Master agreed with the Borough that no RDP should be assigned to this site due to the Borough's documented purpose of acquiring the site for active recreation purposes, which is still below 3% in the Borough. Id. at Pages 5-6. She also indicated that the site should not generate an RDP "due to its lack of suitability pursuant to N.J.A.C. 5:93-4.2(e)6 for residential development due to the lack of access, site configuration and presence of the fiber optic cable." Id. at Page 6.

**Block 12, Lot 3.** The Borough accepts the Court Master's determination that this site has 6.9 developable acres, not 5.95 acres, and has adjusted the RDP accordingly.

### IV. SITES/ISSUES IN CONTENTION

As to the remaining sites in question regarding the establishment of an RDP, the Borough has the following comments regarding how to address the Court Master's issues and concerns:

#### **A. Open Space Acquisition:**

After FSHC accused the Borough of purchasing open space since it received Round Two substantive certification to frustrate the provision of affordable housing, the Court Master asked that any such open space sites should be identified and that the Borough should indicate how the RDP should be adjusted as a result. The bottom line is that other than the Fernwood site, (Block 12 , Lots 22 through 22.3) which is discussed above and was properly excluded from generating an RDP as it will be used for active recreation and the Borough is well under the 3% active recreation cap, no other such open space sites have been acquired by the Borough since it received Round Two Substantive Certification. Accordingly, there is no increase in the Borough's RDP. Indeed, the Borough, which was one of the few Essex County towns that received both First and Second Round substantive certification, is/was lacking active recreational use sites, as is documented in the Borough's revised VLA.

Roseland has/will follow the requirements outlined in N.J.A.C. 5:93- 4.2(e)4. and 5. regarding the Fernwood site, which is the one and only tract of land that was purchased for active recreation. COAH regulations clearly permit a municipality to reserve a total of three percent (3%) of its developed and developable acreage for active municipal recreation, and exclude this acreage from consideration as a potential site for low and moderate income housing, N.J.A.C. 5:93 – 4.2(e)4.i. The Fernwood site was purchased in 2014, and will be limited to active recreational purposes within one year of Roseland's receiving a Judgment of Compliance and Repose.

There is no COAH regulation that **requires** a municipality with a VLA to utilize available land that comes on the market **only** for affordable housing. That would be inconsistent with COAH's regulation of permitting up to three percent (3%) for active recreation and three percent (3%) for passive recreation.

On a more common sense and practical level, even more active recreation will be needed in the future for the additional families with children that are expected to reside in Roseland because of the various new affordable housing family developments that will be part of the Borough's Round Three Affordable Housing Plan.

Indeed, COAH and Mount Laurel jurisprudence, have always encouraged the construction of affordable housing to work hand in hand with sound land use planning to ensure that a balance is always maintained between the constitutional mandate to provide affordable housing and the equally important principle that the rules of sound land use planning are also followed. Permitting a municipality to reserve three percent (3%) of its developed and developable acreage for active recreation uses contributes to the physical health and well-being of a municipality's residents, which of course includes a municipality's low and moderate income households.

**To reiterate and conclude, since there has been no additional open space acquisition since the Second Round substantive certification other than the Fernwood site; and since the Fernwood site does not generate an RDP, there is no need to adjust the Borough's RDP.**

**B. K&K/Bobst Site (Block 12, Lot 24.5):**

Since the Borough is settling with K&K on its site, the Borough has set the density in its updated Vacant Land Analysis to calculate the RDP for the site at 10.7 units per acre, instead of the Court Master's recommended density of 12 units per acre, since 10.7 units per acre is the density that has been agreed upon in principal between the Borough and K&K. A written settlement agreement that includes this density is currently being negotiated between K&K and the Borough. Courts have approved settlements using an RDP based upon the number of affordable units that a site generates. Therefore, it is not credible to dispute that the RDP for the K&K site should be project based. If the Borough settles with Bobst, that project will also be set at 10.7 units per acre, so the entire site should be set at 10.7 units per acre.

**C. Rebuilding Green (Block 12, Lots 14 Through 16):**

After further evaluation, the Borough accepts eight acres as the number of developable acres for the Rebuilding Green Services (RGS) site, but I must respectfully disagree with the Court Master's proposed 12 du/acre. I believe that a density of 8 du/acre is appropriate for the following principled reasons.

The Court Master notes in her June 10, 2018 report on Page 7 that Lot 16 (which is part of the RGS site), and is approximately two acres, was included in the Borough's 1988 vacant land adjustment at 6 du/acre. The remainder of the roughly eight acres of developable land is part of the same tract that RGS is proposing for development and that COAH deemed could reasonably be developed at a density of 6 du/acre. Thus, the COAH standards that RGS's expert professes to follow calls for densities of 6 du/acre. Under the circumstances, the 8 du/acre density the Borough accepts for purposes of generating an RDP for this site is generous. However, the 12 du/acre the Master recommends is double the density that COAH deemed appropriate and is thus excessive.

First and most importantly, we must give great weight to, and seriously consider, COAH's previous decision regarding the RDP density to be calculated on a portion of this site. The Supreme Court made it clear in Mount Laurel III that a Court was to "conform wherever possible to the decisions, criteria, and guidelines of the Council" COAH. Mount Laurel III at 63. Moreover, the Supreme Court stated in Mount Laurel IV that a Court's role "is not to become a replacement agency for COAH" and that "it is not the Court's province to create an alternate form of statewide administrative decision making for any unresolved policy details of replacement Third Round Rules..." Mount Laurel IV at 29.

Here, COAH made the "decision" that the calculation of the RDP density on a portion of the RGS site should be set at 6 du/acre. Since the rest of the site is part of the same tract in the Borough and which RGS is proposing as one site, there is a strong argument that the RDP density for the entire 8 acre site should be set at 6 du/acre.

Indeed, COAH logically set the density at 6 du/acre because the RGS site has single family neighborhoods on the west and north sides, and a school to the South. While there is a Townhouse development to the northeast of the site, the Court Master cites a density of 10 du/acre for the

Townhouse development, but then inexplicably sets the density for the RGS site at 12 du/acre. See Court Master’s July 10, 2018 Report at Page 7. COAH was following its own Second Round regulation that in order for a site to be considered “suitable” for the development of affordable housing, it has to be compatible with surrounding land uses. See the definition of “suitable” in N.J.A.C. 5:93-1.3. The 12 du/acre for the RGS site is too dense for the neighborhood in which it is located and is not compatible with surrounding land uses.

A modest increase in density from six to eight perhaps could be justified. However, doubling the density COAH itself deemed appropriate from six to twelve is excessive.

**D. JMF Site (Block 21, Lots 22 and 22.01):**

Originally, JMF proposed a 160-unit residential development complex with 32 affordable units. However, on June 7, 2018, JMF proposed 108 market rate units, a six-unit ARC building and 20 units of affordable family rental apartments. I agree with the lower density proposed by JMF since there are single family homes to the south and vacant land to the east. Because of the adjacent single family neighborhood, and for consistency with the settlement in principal on the K&K/Bobst site, I believe that the density for the JMF site should be set at 10.7 du/acre, not the 12 du/acre recommended by the Court Master.

**E. Sites From Previous Vacant Land Adjustments**

In Roseland’s 1995 VLA, the Borough excluded two sites that were not in the RDP because the review in 1995 indicated that the sites had environmental or other constraints that precluded residential development. Now, years later, both RGS and FSHC are stating that these sites should generate a new RDP in the 2018 vacant land inventory. I respectfully and strongly disagree for the following reasons.

***A VLA Must Be Prepared As A “Snapshot In Time”***

As to revisiting sites from prior rounds, COAH has always interpreted a VLA as a “snapshot in time”. In other words, what is in existence when the VLA is undertaken. Not to do so would contradict the accepted “snapshot in time” policy of COAH that existed when I was Executive Director of COAH during the Second Round and is still in existence today. In a Report issued by COAH on September 10, 1997 for the Borough of Englewood Cliffs, COAH used the “snapshot in time” approach while reviewing the Borough’s Vacant Land Analysis, and actually eliminated sites from the RDP that only had approvals for development: “The borough provided documentation showing that site #1 had been recently subdivided for commercial and residential development and was thus eliminated from the inventory.” See COAH Compliance Report for the Borough of Englewood Cliffs, dated September 10, 1997 at Page 3, which is attached hereto as Exhibit C.

In addition, in a very recent case, entitled In the Matter of the Application of the Township of Mahwah, Docket No. BER-L6281-15, the Honorable Christine A. Farrington, J.S.C. wrote: “Mr.

Rahenkamp admitted that the VLA is a snapshot in time...”, thereby reaffirming the current applicability of the “snapshot in time” approach. See Preliminary Judgment of Compliance, dated July 10, 2018, attached hereto as Exhibit D. Creigh Rahenkamp, P.P, is a planner in New Jersey who traditionally represents developers who intervene and file objections to a settlement agreement and/or a Housing Element and Fair Share Plan.

Here, at this moment in time, both sites are developed and are not vacant. Therefore, they cannot be included in the Borough’s vacant land inventory. It is really as simple as that, and is just plain common sense.

***A Site Should Not Be Included In a VLA If Rezoning the Site Would Not Create the Realistic Opportunity For the Production Of Affordable Housing***

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. That means that the development of all sites that contribute to the RDP should be able to generate the number of affordable units the sites contribute if the sites are developed in accordance with sound planning. Rezoning an approved or developed site for inclusionary zoning will not generate a realistic opportunity for any affordable housing. Therefore, such sites should not generate an RDP.

***Including The Two Sites In The RDP Would Unfairly Penalize Roseland For Having Complied In The Past***

If the two already developed sites are included, Roseland is being penalized for complying in Rounds 1 and 2. If Roseland had never complied in the past, this would not even be an issue, as both sites are developed and are not vacant at this point in time. Indeed, COAH issued “Questions & Answers, dated March 1996/Revised through June 1999,” to guide municipalities in the implementation of COAH’s Prior Round regulations. An examination of the following Question and Answer reinforces the principle that land poor municipalities should not suffer a prejudice for having previously complied:

**N.J.A.C. 5:93-4.2 Lack of Land**

**How do you calculate realistic development potential (RDP) for a municipality that has eligible reductions from a first round certification and is now requesting a vacant land adjustment for the second round?**

**Response:** The municipality identifies sites that are realistic for inclusionary development and an appropriate density is assigned to these sites in order to calculate RDP. After the RDP is determined, then all eligible credits and reductions that occurred from the first round may be used to address the RDP. To do otherwise would increase the obligation of a town that was certified the first round while rewarding the town that did not petition the first round. This procedure treats all municipalities in the same manner.

In addition, N.J.A.C. 5:93-4.2(f) states that a “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.”

[June 1999 New Jersey Council on Affordable Housing “Questions and Answers”, which is attached hereto as Exhibit E.]

Since the Courts are supposed to be following COAH’s policies and not substituting their own views for the public policies of COAH in prior rounds, and since COAH’s policy is only to include “**sites that are realistic for inclusionary development**” to extrapolate an RDP on approved or developed sites should not contribute to the RDP. Rezoning such sites for inclusionary development would not create a realistic opportunity for any affordable housing.

***The Two Sites Should Not Be Included In The RDP Because They Are Not “Available”***

Additionally, including sites that were not in a previous RDP would be contrary to one of the COAH criteria that sites must be “available”, meaning clear title and free of encumbrances that preclude the development of low and moderate income housing. See N.J.A.C. 5:93-1.3 (defining an available site). See also N.J.A.C. 5:93-4.2(e)6 (calling for the exclusion of sites that are not suitable for inclusionary development). Clearly, these sites are encumbered as they have structures on the sites. Therefore, they should not generate an RDP.

For all of the above reasons, these two sites should be excluded from generating any RDP.

**F. Mack-Cali Recent Third Site (Block 30, Lot 1)**

This site at 65 Livingston Avenue was recently purchased by Mack-Cali and Roseland was unaware of the purchase. Mack-Cali has submitted a proposal to the Borough to construct 165 apartments, which would consist of 132 market rate apartments and 33 affordable family rental units (20% set-aside). The project would also deliver 15,600 square feet of non-residential retail development. The proposed 165-unit project on 9.22 acre site would generate an on-site density of 17.9 du/acre. While no agreement has been signed with Mack-Cali at this time, since the site is located immediately adjacent to the other two Mack-Cali sites that are already being redeveloped with similar sized projects, the Borough is willing to calculate the RDP for this site at 17.9 du/acre. This is in line with the density of 18.5 units per acre for the proposed Mack-Cali project on 85 Livingston Avenue. As to the amount of the site that should be included in the RDP calculation, the Borough still believes that since this is a mixed-use project, the non-residential portion of the project should be excluded. However, in the interest of moving this process forward to a conclusion, Roseland will accept an RDP of 17.9 du/acre on the entire site.

**G. Harrison Avenue**

In its letter to the Court Master FSHC asked that this site be included in the RDP. However, the Court Master disagreed and did not recommend this site for inclusion in the RDP. Rather, the Court Master suggested considering it for addressing unmet need. Please take note, that once Roseland's RDP is established, Roseland will entertain a discussion on addressing unmet need.

## **Conclusion**

This Report is in support of the Borough of Roseland's Vacant Land Inventory, dated August 13, 2018. I believe that the sites, densities and set-asides as proposed by Roseland in this VLA are consistent with COAH's regulations and policies during the Second Round review of municipalities' requesting VLAs. In addition, the facts specific to the sites that Roseland is proposing to calculate its RDP have been carefully reviewed to ensure that they provide a realistic opportunity and are consistent with sound planning principles.

It is important to note that Roseland has historically complied with addressing its constitutional obligation and received both a First and Second Round Substantive Certification from COAH. In a continuing effort to demonstrate its commitment to comply, and to preserve its right to decide how its community will be planned and developed, Roseland filed a Declaratory Judgment action and entered the mediation process in good faith with the goal of securing a Final Judgment of Compliance and Repose for a third time. However, in order to meet that goal, a realistic RDP must first be determined.

The Borough relies on this Report, as well as the updated VLA prepared by Joseph Layton, P.P., A.I.C.P. and Daniel Bloch, P.P., A.I.C.P. in further support of its claim as to what the appropriate RDP should be for the Borough, and it is our hope that with these submissions we have addressed all of the Master's concerns, as set forth in her July 10, 2018 letter.

I thank you for your consideration and await a final determination as to the Borough of Roseland's RDP, which will assist Roseland in achieving and continuing its ultimate goal in this process.

**APPENDIX B.**

**COAH COMPLIANCE REPORT, DATED SEPTEMBER 10, 1997**

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7(a)



JUSTINE TODD WHITMAN  
Governor

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JANE M. KENNY  
Chairman  
SHIRLEY M. BISHOP, P.P.  
Executive Director

COAH SUMMARY FACT SHEET - 1987-1999

1. Municipality	<u>Borough of Englewood Cliffs</u>	2. Dates of	
County	<u>Bergen</u>	Petition	<u>02/25/95</u>
Region	<u>1</u>	COAH Report	<u>06/25/95</u>
Planning Area	<u>1</u>	Repetition	<u>05/15/96</u>
		2nd COAH Report	<u>08/16/96</u>
		Mediation Report	<u>12/19/96</u>
		Amendment	<u>05/21/97</u>
		Compliance Report	<u>09/10/97</u>
		Conditional Denial	<u>11/05/97</u>

3. Staff Reviewer Keith Henderson, P.P.

4. 1987-1999 Cumulative Obligation		
Precredited Need		<u>219</u>
New Construction Component	<u>219</u>	
Rehabilitation Component	<u>0</u>	
Vacant Land Adjustment		<u>-215</u>
Realistic Development Potential		<u>4</u>
5. Fair Share Plan		<u>4</u>
Municipal Construction	<u>4</u>	
Rental Bonus Credits	<u>1</u>	

Recommendation

DENY SUBSTANTIVE CERTIFICATION WITH ONE CONDITION



**EXECUTIVE SUMMARY**  
**ENGLEWOOD CLIFFS BOROUGH, BERGEN COUNTY**

**Region #1**

**Prepared by**

**Keith Henderson, P.P.**

**October 17, 1997**

Englewood Cliffs Borough petitioned the Council on Affordable Housing (COAH) for substantive certification on March 6, 1995 and requested a vacant land adjustment for its 215-unit precredited need obligation. During the 45-day objector period, there was one objection to the plan. Mediation resulted in an agreement. Thereafter, the realistic development potential (RDP) for Englewood Cliffs was determined to be four units. The borough amended its plan to incorporate a municipal construction component and filed the amendment with COAH on March 21, 1997.

Englewood Cliffs proposed to satisfy its four-unit fair share obligation by constructing at least three rental units on a municipal site. Pursuant to N.J.A.C. 5:93-4.1(b), the borough must also capture opportunities for affordable housing to address its unmet need. On December 6, 1995, COAH approved a development fee ordinance which the borough adopted to address a portion of its unmet need. During a June 18, 1997 COAH staff site visit, a site known as the Prentice Hall site was identified as one which may redevelop and must therefore be the focus of overlay zoning pursuant to N.J.A.C. 5:93-4.2(g).

Englewood Cliffs has declined to adopt an overlay zone to address its 215-unit unmet need. Therefore, the COAH staff recommendation is to deny the Englewood Cliffs petition for substantive certification with one condition: Englewood Cliffs must adopt the overlay zone within 60 days of the COAH action. If Englewood Cliffs adopts the overlay zone within 60 days, COAH will grant substantive certification.

EXHIBIT A

**MEDIATION REPORT**  
**ENGLEWOOD CLIFFS BOROUGH/BERGEN COUNTY**  
**REGION #2**  
**Prepared by**  
**SEAN THOMPSON, PRINCIPAL PLANNER**

**INTRODUCTION**

This report summarizes the second mediation that occurred between the Borough of Englewood Cliffs, Bergen County, and the estate of Alfiero Palestroni, the owner and developer of three sites designated for inclusionary development in the borough's May 15, 1996 amended plan. The second mediation began and ended on December 13, 1996. The second mediation resulted in a settlement agreement between the parties.

**BACKGROUND**

Englewood Cliffs Borough's 1987-1999 cumulative precertified need is 219 units, all inclusionary. Due to the lack of vacant land the borough requested an adjustment pursuant to N.J.A.C. 5:93-4.2. The borough undertook an analysis and calculated its realistic development potential (RDP) to be four. Englewood Cliffs Borough, Bergen County, petitioned the Council on Affordable Housing (COAH) for substantive certification and published notice on March 6, 1995. There was one objector to the plan, Alfiero Palestroni. He objected to his sites not being included in the borough's plan. To move the process forward, mediation was concurrently scheduled with the review. COAH reviewed the plan and issued a report requesting additional information on June 25, 1995 that also recommended revisions to the borough's proposed vacant land adjustment. Englewood Cliffs provided COAH with the requested information and revised its vacant land adjustment accordingly.

The first mediation began on September 20, 1995 but due to inactivity and lack of progress, mediation was terminated on February 22, 1996. In the first Mediation Report COAH directed the borough to amend its plan, publish notice of the amendment and petition to address its nine-unit RDP. Subsequently, the borough amended its housing element and fair share plan to address a RDP of nine.

On May 15, 1996 the borough amended its housing element and fair share plan and published

**Englewood Cliffs Borough**  
**December 19, 1996**

notice on May 30, 1996. Mr. Palestroni was the only objector to the Englewood Cliffs plan. This time Mr. Palestroni's sites were included in the plan. However, Mr. Palestroni objected to his sites being included in the borough's amended plan. Shortly after filing his objections to the plan, Mr. Palestroni died. Mediation was delayed so that his estate could select a team for mediation.

On December 10, 1996 COAH issued a Report Reviewing Additional Information by Englewood Cliffs Borough (attached exhibit A). The report outlined Mr. Palestroni objections and the outstanding issues that had to be addressed for COAH to complete its review.

**OBJECTION**

Mr. Palestroni's estate now owns Block 308, Lots 9-17, Block 310, Lots 1-10 and Block 303, Lot 40 within the Englewood Cliffs Borough. Prior to Mr. Palestroni's death, Russell R. Huntington, Esq., submitted the following on behalf of his client:

1. It is unfair to burden one single land owner with a municipality's affordable housing obligation.
2. The sites are not suitable and a suitability analysis will demonstrate that they are not.
3. Block 308, Lots 9-17 is too small for six units per acre. In addition, there are long term management concerns with one affordable unit.
4. Block 310, Lots 1-10 have similar constraints as the above site.
5. Block 303, Lot 40 is again similar in constraints to the above two.
6. The borough has not provided for a density bonus and the sites are economically impractical.

**Englewood Cliffs Borough**  
**December 19, 1996**

**MEDIATION**

Mediation was held on December 13, 1996. The borough was represented by Mayor Joseph Parisi; Malcolm Kasler, P.P.; Terrence Corrison, Esq. and E. Carter Corrison, Esq. Mr. Palistrone's estate was represented by Richard Preiss, P.P., and Mr. Huntington.

During mediation, one fact was established that was relevant to the outcome of mediation. Mr. Palestroni's property located on Marrietta Street had received final approval of a major subdivision on December 13, 1973. Pursuant to N.J.A.C. 5:93-4.2 such lands may not be included in the RDP calculation.

An agreement was reached with Mr. Palestroni's representatives whereby his land would be deleted from consideration for addressing the borough's fair share obligation and the borough would substitute a new site.

**MEDIATED AGREEMENT**

At the end of mediation, the following agreement was reached:

The borough will amend its fair share plan and related ordinances to delete Residential Zone RC-Single Family-Two Family-Duplex affecting Block 310, Lots 1-10, Block 308, Lots 9-17 and Block 303, Lot 40.

There are no contested issues of fact. With the execution of this agreement, Mr. Palestroni's objections will be removed.

N.J.A.C. 5:91-7.4(a) requires that Englewood Cliffs Borough publish notice of an amended plan as a result of mediation within seven days **after** the Mediation Report is presented to COAH at a public hearing. The notice must be published in a newspaper of general circulation within the municipality and county no later than January 15, 1997. The notice must state that the housing element and fair share plan will be amended as a result of mediation with sites being removed- Block

**Englewood Cliffs Borough  
December 19, 1996**

310, Lots 1-10, Block 308, Lots 9-17 and Block 303, Lot 40 and a new site being included. The notice should state the address of the new site together with the block and lot. The notice should also state that any objections or comments to the mediated housing element and fair share plan must be filed with COAH and Englewood Cliffs Borough within 14 days of the date of the publication of notice. COAH's address should be included in the notice. Finally, the notice must state the place and time the Mediation Report will be available for public inspection. If there are no comments or objections to the Mediation Report, the Englewood Cliffs Borough Planning Board must then amend the adopted housing element at a public meeting and the governing body must forward the amendment to COAH.

*SEANENGL.WPD*

EXHIBIT B

**COAH COMPLIANCE REPORT  
ENGLEWOOD CLIFFS BOROUGH, BERGEN COUNTY  
Region #1**

**Prepared by  
Keith Henderson, Principal Planner.  
September 10, 1997**

**I. INTRODUCTION**

The Borough of Englewood Cliffs, Bergen County, adopted a housing element and fair share plan on February 25, 1995, to address its 12-year cumulative obligation. The borough's 1987-1999 cumulative precertified need is 219 units, all inclusionary. Englewood Cliffs petitioned COAH for substantive certification on March 6, 1995 and requested a vacant land adjustment. The 45-day objector period ended on April 19, 1995. There was one objection to the plan.

Mediation began on September 20, 1995 and concluded on February 22, 1996. The objector, Alfiero Palestro, owned two vacant sites in the borough and sought to have one of these properties, a 3.33 acre tract, included in the Englewood Cliffs fair share plan. The parties ultimately agreed to include the objector's property. The borough amended its plan and repeticioned COAH for substantive certification on May 31, 1996.

The Englewood Cliffs repetition prompted a new 45-day objector period and Mr. Palestro was again a sole objector to the plan. During the second mediation, it was established that the 3.33-acre Palestro property had received final subdivision approval on December 13, 1973 and, pursuant to N.J.A.C. 5:93-4.2, the property was deleted from the borough's vacant land inventory.

As a result of the second mediation, the realistic development potential (RDP) for Englewood Cliffs was set at four units. Thereafter, the borough planning board amended its plan to include an inclusionary site; the governing body endorsed the amended plan and filed the amendment with COAH for review and approval on March 21, 1997.

## II. HOUSING AND DEMOGRAPHIC ANALYSIS

The housing element submitted by Englewood Cliffs indicates that the borough had 5,634 residents in 1990. Growth in the borough occurred between 1950 and 1970 when the population increased from 966 to 5,938. Since 1970, the number of households in the borough has remained stable but population has decreased by approximately 300 residents due to smaller household sizes.

In 1990, there were 1,879 housing units in Englewood Cliffs. Over 89 percent of these were owner-occupied. The median value of owner-occupied homes was \$487,500 and the median contract rent was \$1,001 per month. Median family income in the borough was \$92,903.

A review of Englewood Cliffs Borough's housing element indicates that sufficient information was submitted regarding housing stock, demographic characteristics, employment characteristics and population trends to satisfy the requirements of N.J.A.C. 5:93-5.1(b)(1) through (4).

## III. CREDITS AND REDUCTIONS

Englewood Cliffs is not seeking any credits or reductions.

## IV. ADJUSTMENTS

The borough requested a vacant land adjustment pursuant to N.J.A.C. 5:93-4.2. To support its request for an adjustment, the borough undertook an analysis and calculated its RDP as four units.

The borough listed in its inventory all vacant parcels in the municipality by lot and block with corresponding acreage and ownership. The borough then eliminated all parcels with an area less than 0.833 acre. This was based on the rationale that a minimum lot size of 0.833 acre would be required to produce at least one low or moderate income unit at six units per acre and a 20 percent setback.

These sites would accommodate less than five units and therefore could not realistically provide affordable units. The borough also eliminated contiguous parcels in different ownership. This yielded nine lots with a total area of 19.26 acres as follows:

Site	Block	Lot	Area (Acres)	Status	Developable Acreage
1	127	20	1.13	Subdivision	0
2	303	40	1.46	Developable	1.46
3	303	43	0.91	Developable	0.91
4	308 310	9 to 17 1 to 10	3.33	Subdivision (Mediated Site)	0
5	601	14	0.96	Landlocked	0
6	601	15	1.75	Landlocked	0
7	601	16	1.51	Portion of Developed Site	0
8	602	7	2.20	Partial Wetlands	0.91
9	1202	2	6.01	Wetlands and Buffers	0
<b>Totals</b>			<b>19.26</b>		<b>3.28</b>

The borough provided documentation showing that site #1 had been recently subdivided for commercial and residential development and was thus eliminated from the inventory. As a result of mediation, Site #4, the Palestroni site, was eliminated because it had final subdivision approval. Sites #5, 6 and #7 were eliminated because they are the rear portions of improved properties in the City of Englewood. Sites #5 and #6 are also landlocked.

Site #9 and a portion of site #8 were eliminated due to wetland considerations. A report analyzing the impact of wetlands on these parcels was submitted by the borough engineer. The findings of this report were based upon freshwater wetlands quadrangle maps prepared by the New

Jersey Department of Environmental Protection (DEP).

Site #2 was one of the properties owned by Mr. Palestroni. While it was removed from the Englewood Cliffs fair share plan as an inclusionary development, it still represents available vacant land in the borough and is included in the RDP calculation. Sites #2 and #3 are located in the R-B Zone which permits single-family residential development on 7,000 square foot lots. The existing land uses surrounding these sites are single-family detached dwellings. COAH staff conducted a site visit to Englewood Cliffs and concluded that a density of six units per acre was appropriate to calculate the RDP for these sites.

Site #8 is located in the RA Zone which permits single-family residential development on 10,000 square foot lots. The surrounding land uses are single-family detached residences corresponding to the requirements of the zone. A density of six units per acre is also appropriate to calculate the RDP for this site. The revised vacant land analysis is illustrated in the following table:

Parcel	Block	Lot	Area (Acres)	Adjusted Acreage
2	303	40	1.46	1.46
3	303	43	0.91	0.91
8	602	7	2.2	0.91
Totals			4.57	3.28

Applying a density of six units per acre yields a total of 20 units and an RDP of four units. This density is consistent with N.J.A.C. 5:93-4.2(e).

The borough submitted a map of environmental constraints for two sites which illustrated the location of wetlands. The map was prepared in accordance with the provisions of N.J.A.C. 5:93-4.2(d). The submissions included an aerial photograph of the borough.

The proposed adjustments to the municipal need are summarized in the following table:

Requested Credits and Reductions	Units
Precredited Need	219
Prior Cycle Credits	0
Rehabilitation Credits Pursuant to <u>N.J.A.C. 5:93-3.4</u>	0
Reductions Pursuant to <u>N.J.A.C. 5:93-3.5</u>	0
Proposed Vacant Land Adjustment	-215
Calculated Need	4

#### V. PROPOSED FAIR SHARE PLAN

Englewood Cliffs proposes to satisfy its four-unit fair share obligation by constructing three or four rental units on a municipal site at the corner of Hudson Terrace and New Street (Block 514, Lot 5). The site is approximately 10,000 square feet and currently used as a municipal tennis court. The borough proposes to amend its zoning ordinance to permit up to four units on the site and then convey the property to the Bergen County Housing Authority to build the units. One of these units will qualify for a rental bonus credit pursuant to N.J.A.C. 5:93-5.14(d) yielding a total of four or five credits depending on the number of units the borough constructs on the site.

COAH staff conducted a site visit on April 4, 1997. The site is located in planning area 1. Sewer and water services are available and there are no environmental constraints on the site. The site is owned by the borough and it is approvable, developable and suitable pursuant to N.J.A.C. 5:93-1.3.

The plan submitted by the Borough of Englewood Cliffs is for municipal construction. Pursuant to N.J.A.C. 5:93-5.5, construction must begin within two years of substantive certification. Therefore, Englewood Cliffs must adhere to the following schedule:

- A request for proposals (RFP) by January 1998
- Project awarded by April 1998
- Applications for necessary permits and approvals to be in place by September 1998
- Construction to commence prior to October 1999
- Completion of project by April 2000

The borough has submitted a resolution of intent to bond for any shortfall in funding this municipal construction project.

**A. Rental Component**

Pursuant to N.J.A.C. 5:93-5.13(a), every municipality has an obligation to provide a realistic opportunity for rental units. For municipalities which receive an adjustment pursuant to N.J.A.C. 5:93-4.2, the rental obligation is equal to 25 percent of the RDP. Based on this formula, Englewood Cliffs Borough must provide one rental unit in its plan:

$$\text{Rental obligation} = .25 (\text{RDP})$$

$$\text{Rental obligation} = .25(4) = 1 \text{ unit}$$

The borough is proposing that all of the affordable units will be rentals. N.J.A.C. 5:93-5.14(d)(3) states that no rental bonus credits will be granted for rental units in excess of the rental obligation. Since the rental obligation in the borough is one unit, the borough will be eligible to receive one rental bonus credit.

**B. Age Restricted Component**

Pursuant to N.J.A.C. 5:93-5.12(a)(2), the borough may restrict a maximum of one unit of affordable housing for senior citizens in accordance with the following formula:

Senior citizen units =  $.25(\text{RDP} + \text{rehabilitation component} - \text{credits pursuant to N.J.A.C. 5:93-3.4})$   
- any units restricted to senior citizens in addressing the 1987-1993 obligation.

Senior citizen units =  $.25(4 + 0 - 0) - 0 = .25(4) = 1$  unit

Englewood Cliffs does not propose to age-restrict any units in its plan.

### C. Regional Contribution Agreements

Pursuant to N.J.A.C. 5:93-6.1, Englewood Cliffs may transfer up to two units of its affordable housing obligation via a regional contribution agreement (RCA) in accordance with the following formula:

RCA =  $.5 (\text{RDP} + \text{rehabilitation component} - \text{credits pursuant to N.J.A.C. 5:93-3.4})$  - any units transferred pursuant to previously approved RCA.

RCA =  $.5 (4 \text{ unit RDP} + 0 \text{ unit rehabilitation} - 0 \text{ credit pursuant to N.J.A.C. 5:93-3.4}) - 0 = .5(4) = 2$  units

Englewood Cliffs does not propose to transfer any of its obligation via an RCA at this time.

### VI. UNMET NEED

Pursuant to N.J.A.C. 5:93-4.1(b), the borough must also capture opportunities for affordable housing to address its unmet need. These strategies may include an accessory apartment program, overlay zoning and/or a development fee ordinance. Englewood Cliffs received approval of a development fee ordinance from COAH on December 6, 1995.

A site visit determined that there are no areas within the borough that contain a larger, aging housing stock that would be suitable for accessory apartments. Therefore, an accessory apartment program would not be viable in Englewood Cliffs.

Englewood Cliffs has conducted an analysis of existing land use patterns in the borough and has concluded that there are no pre-existing nonconforming uses that are likely to undergo redevelopment within the next six years. There are no high density residential areas or "downtown" areas that might support redevelopment. However, there are several office campus complexes located within the borough. One of these, known as the Prentice Hall site, may redevelop and must be the focus of overlay zoning pursuant to N.J.A.C. 5:93-4.2(g). COAH staff has been working with representatives from Englewood Cliffs on drafting an overlay zone ordinance which is consistent with N.J.A.C. 5:93-4.2(e). However, the borough has expressed reluctance to adopt such an ordinance. The borough must adopt the attached overlay zone in order to receive substantive certification.

Based on the analysis submitted by the borough, the adoption of the overlay zone and development fee ordinance are viable strategies for addressing unmet need.

## **VII. DEVELOPMENT FEES**

### **A. Development Fee Ordinance**

COAH approved Englewood Cliffs' development fee ordinance on December 6, 1995.

### **B. Spending Plan**

Englewood Cliffs submitted a spending plan that will be addressed in a separate COAH Report.

## **VIII. CONTROLS ON AFFORDABILITY**

Englewood Cliffs has submitted a draft affordable housing ordinance which contains provisions governing the rental and re-rental of affordable units to be constructed in the borough. The borough's affordability controls are in conformance with N.J.A.C. 5:93-9 et seq.

The borough has the option of contracting with an outside entity such as the Affordable Housing Management Service (AHMS) or utilizing the services of the sponsor of the municipal construction. If Englewood Cliffs decides to use AHMS or other such third party service, a resolution must be passed by the governing body stating its intent to contract for these services. The borough may also contract with an experienced private-sector administrative entity. The borough must designate the administrative entity when the development application for the municipal construction site is before the planning board for approval.

#### **IX. AFFIRMATIVE MARKETING**

Englewood Cliffs has submitted an outline of its affirmative marketing plan. The outline is in accordance with N.J.A.C. 5:93-11 et seq. and is readily convertible into ordinance form. This ordinance must be adopted by the borough within 45 days of the grant of substantive certification.

#### **X. FAIR SHARE ORDINANCE**

Englewood Cliffs has submitted a draft fair share ordinance as part of its proposed fair share plan. The ordinance includes regulations on low and moderate income unit split, rental stratification, bedroom distribution, controls on affordability and affirmative marketing.

#### **XI. RECOMMENDATION**

Englewood Cliffs seeks a vacant land adjustment which reduces its pre-credited need by 215 units to an RDP of four units. The redevelopment potential associated with the Prentice Hall site represents an opportunity to recapture a portion of this reduction. However, the borough is reluctant to adopt overly zoning on this site. COAH staff recommends denial of substantive certification with one condition: that, Englewood Cliffs adopt the attached overlay zone within 60 days of this denial. If Englewood Cliffs adopts the overlay zone within 60 days, the COAH will grant substantive certification.

**APPENDIX C.**

**BOROUGH OF ENGLEWOOD CLIFFS PLANNING BOARD RESOLUTION  
- APPLICATION NO. 255K**

**ORIGINAL**

**PLANNING BOARD  
BOROUGH OF ENGLEWOOD CLIFFS**

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**IN THE MATTER OF THE APPLICATION OF LIGHTHOUSE E.C. :  
LLC FOR SITE PLAN APPROVAL, VARIANCES AND WAIVERS : MEMORIALIZATION RESOLUTION  
RELATING TO LOT 2 IN BLOCK 1202, 980 SYLVAN AVENUE : APPLICATION NO. 255K**

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**WHEREAS, LIGHTHOUSE E.C., LLC, with offices at 707 Palsade Avenue, Englewood Cliffs, NJ, applied on or about November 2, 2015, to the Planning Board of the Borough of Englewood Cliffs for site plan approval with variances and waivers for the construction of a 31,833 +/- square foot, two-story office building with parking below, in the "B-2 Limited Business" Zone; and**

**WHEREAS, public hearings were conducted on January 14, 2016 and February 11, 2016, upon proper notice certified by applicant's proof of service to property owners within a 200-foot radius of the subject property and proof of publication in an official newspaper of the Borough; and**

**WHEREAS, John Schepisi, Esq., Schepisi & McLaughlin, P.A., 473 Sylvan Avenue, Englewood Cliffs, NJ 07632, represented applicant; and**

**WHEREAS, interdepartmental communications and advisory reports of municipal departments of agencies were received from:**

- **Bernard N. Mirandi, P.E., of Boswell McClave Engineering, 330 Philips Avenue, South Hackensack, NJ 07606, dated December 28, 2015;**
- **Denial of Application letter of Paul Renaud, Zoning Officer, dated November 3, 2015, denying the zoning permit application for reasons stated therein;**
- **Fire Chief George Drimones and Fire Official Joseph Cardullo, dated November 16, 2015; and**

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**WHEREAS**, admitted into evidence were the following documentary exhibits:

**Exhibit A-1** – Rendering of Sylvan Avenue approach to building;

**Exhibit A-2** – Colorized Site Plan and NJDOT Dimensions Exhibit prepared by Anthony Kuros, P.E., P.P., Neglia Engineering Associates, 34 Park Avenue, Lyndhurst, NJ 07071, dated September 30, 2015 with latest revision December 30, 2015;

**Exhibit A-3** – Entire set of both architectural and engineering plans, as follows:

- Architectural plans prepared by Raymond J. Virgona, R.A., Virgona + Virgona, 115 River Road, Suite 1031, Edgewater, NJ 07020, dated October 8, 2015, consisting of five sheets, as follows:

**Sheet A-1** – Elevations;

**Sheet A-2** – Elevations;

**Sheet A-3** – Ground Floor Plan;

**Sheet A-4** – First Floor Plan;

**Sheet A-5** – Second Floor Plan; and

- Engineering plans prepared by Neglia Engineering Associates, consisting of twenty one sheets, as follows:

**Sheet 1.00** – Cover Sheet/Key Map, dated October 5, 2015, prepared by Anthony Kuros, P.E., P.P.;

**Sheet 2.00** – Site Clearing and Tree Removal Plan, dated September 30, 2015, with latest revision October 5, 2015, prepared by Anthony Kuros, P.E., P.P.;

**Sheet 3.00** – Site Plan and NJDOT Dimensions Exhibit, dated September 30, 2015, with latest revision October 5, 2015 (**Exhibit A-2**), prepared by Anthony Kuros, P.E., P.P.;

**Sheet 4.00** – Grading and Drainage Plan, dated September 30, 2015, with latest revision October 5, 2015, prepared by Anthony Kuros, P.E., P.P.;

**Sheet 5.00** – Site Utility Plan, dated September 30, 2015, with latest revision October 5, 2015, prepared by Anthony Kuros, P.E., P.P.;

**Sheet 6.00** – Landscape Plan, Notes and Details, dated September 30, 2015, with latest revision October 5, 2015, prepared by Anthony Kuros, P.E., P.P.;

**Sheet 7.00** – Lighting Plan, dated September 30, 2015, with latest revision October 5, 2015, prepared by Anthony Kuros, P.E., P.P.;

**Sheet 8.00** – Soil Erosion and Sediment Control Plan, dated September 30, 2015, with latest revision October 5, 2015, prepared by Anthony Kuros, P.E., P.P.;

**Sheet 9.00** – Sanitary Sewer Profile and Construction Details, dated September 30, 2015, with latest revision October 5, 2015, prepared by Anthony Kuros, P.E., P.P.;

**Sheet 9.01** – Construction Details, dated September 30, 2015, with latest revision October 5, 2015, prepared by Anthony Kuros, P.E., P.P.;

**Sheet 9.02** – Construction Details, dated September 30, 2015, with latest revision October 5, 2015, prepared by Anthony Kuros, P.E., P.P.;

**Sheet 9.03** – Construction Details, dated September 30, 2015, with latest revision October 5, 2015, prepared by Anthony Kuros, P.E., P.P.;

**Sheet 9.04** – Construction Details, dated September 30, 2015, with latest revision October 5, 2015, prepared by Anthony Kuros, P.E., P.P.;

**Sheet 9.05** – Construction Details, dated September 30, 2015, with latest revision October 5, 2015, prepared by Anthony Kuros, P.E., P.P.;

**Sheet 9.06** – Construction Details, dated September 30, 2015, with latest revision October 5, 2015, prepared by Anthony Kuros, P.E., P.P.;

**Sheet 9.07** – Construction Details, dated September 30, 2015, with latest revision October 5, 2015, prepared by Anthony Kuros, P.E., P.P.;

**Sheet 10.00** – NJDOT Traffic Control Details, dated September 25, 2015, with latest revision October 5, 2015, prepared by Brian S. Piccirillo, P.E., and Anthony Kuros, P.E., P.P.;

**Sheet 10.01** – NJDOT Traffic Control Plans, dated September 25, 2015, with latest revision October 5, 2015, prepared by Brian S. Piccirillo, P.E., and Anthony Kuros, P.E., P.P.;

**Sheet 10.02** – NJDOT 500 FT Exhibit, dated September 25, 2015, with latest revision October 5, 2015, prepared by Brian S. Piccirillo, P.E., and Anthony Kuros, P.E., P.P.;

**Sheet 10.03** – NJDOT Signing and Striping Plan, dated September 25, 2015, with latest revision October 5, 2015, prepared by Brian S. Piccirillo, P.E., and Anthony Kuros, P.E., P.P.; and

**Sheet 1 of 1** – Intersection Sight Distance Exhibit, dated September 25, 2015, with latest revision October 5, 2015, prepared by Brian S. Piccirillo, P.E., and Anthony Kuros, P.E., P.P.; and

**Exhibit A-4** – Colorized Landscape Plan, Notes and Details, prepared by Heidi H. Cohen, L.L.A., P.P., C.P.I.A., of Neglia Engineering Associates, dated September 30, 2015 with latest revision January 18, 2016;

**Exhibit A-5** – Diagram of Monument Sign;

**Exhibit A-6** – Sheet A-6 entitled Proposed Building Signage prepared by Raymond J. Virgona, R.A., dated February 8, 2016; and

**WHEREAS**, admitted into evidence without exhibits references were the following:

- Application, dated November 2, 2015;
- Letter of Eric V. Timask, P.P., Supervising Planner, County of Bergen Department of Planning and Engineering, One Bergen County Plaza, 4<sup>TH</sup> Floor, Hackensack, NJ 07601, to Lighthouse, LLC, dated November 17, 2016;

- Memorandum of Ed Snieckus, Jr., PP, LLA and Tony Somers, MLA, ASLA, Burgis Associates, Inc., 25 Westwood Avenue, Westwood, NJ 07675, to Englewood Cliffs Planning Board, dated January 27, 2016;
- Engineering drawings prepared by Richard F. Dybus, P.L.S., of Neglia Engineering Associates, dated October 9, 2014, consisting of three sheets, as follows:
  - Sheet 1 of 3 -Boundary and Topographic Survey, revised September 17, 2015;
  - Sheet 2 of 3 - Tree Location Plan; and
  - Sheet 3 of 3 – Tree Location Table;
- Fact sheet containing property information, assessment data and sales history, undated;
- Redacted portions of ADS, Inc. drainage handbook, dated June 2009;
- Stormwater Maintenance Manual prepared by Anthony Kuros, P.E., P.P., dated October 5, 2015; and
- Drainage Calculation prepared by Anthony Kuros, P.E., P.P., dated September 30, 2015; and

**WHEREAS**, testimony in support of the application was given by Mark Virgona, R.A., Virgona + Virgona; by Anthony Kuros, P.E., P.P; Michael Kessel, Principal of Lighthouse, EC., LLC; and the following persons questioned the witnesses or commented on the application: Maria Villari, 45 Jane Drive; and Carol McMorrow, 7 Ridge Road; and

**WHEREAS**, the Planning Board did consider the testimony and evidence presented, the following are the findings of fact and conclusions of the Board:

**The Subject Property**

1. Block 1202, Lot 2 (the "Site") is a corner lot located in the B-2 Limited Business Zoning District, on the northeastern corner of the intersection of Sylvan Avenue and Sage Road, and extends the full block toward the west with frontage on Johnson Avenue. The Site is an undeveloped wooded lot with over 1,500 trees, 81,429 sf of wetlands and a State Open Water Way.

2. Applicant is seeking site plan approval with variances relating specifically to on-site parking, accessory to the construction of a 31,833± sf two-story office building. Improvements include stormwater management, landscaping, and lighting. Also proposed is realigned two-

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way ingress/egress access to Sylvan Avenue (Route U.S. 9W). Business offices, professional offices, governmental and corporate offices are permitted uses within the B-2 Zone.

#### Variations/Existing Nonconformities

3. The following variations are required:

- **Parking Space Size (Code §30-10.2.a.):** 9' x 19' is required. According to the Zoning Table depicted on Sheet No. 3.00, Applicant is proposing 9' x 19' parking spaces along the parking lot perimeter and 8.5' x 19' parking spaces beneath the building at the columns. In review of the Site Plan depicted on Sheet No. 3.00, Applicant depicts 9' x 18' parking spaces along the parking lot perimeter. Furthermore, Sheet No. 10.03 depicts 9' x 19' parking spaces along the parking lot perimeter. In any event, applicant requires a parking space size variance.
- **Drive Aisle Width (Code §30-10.2.b.):** 25' is required. Applicant is proposing 24' wide drive aisles along the parking lot perimeter.
- **Number of Parking Spaces (Code §30-10.3. [Schedule B]):** Applicant is proposing 122 parking spaces. The Code requirement is 160, calculated as follows: Business and Professional Office Use: 1 parking space for 200 square feet of gross floor area ("GFA"). Accordingly,  $31,833 \pm \text{sf} / 200 \text{sf} = 160 \text{ spaces.}^1$

#### Number of Parking Spaces

4. Applicant's site design engineer, Anthony Kurus, P.E., opined that the Institute of Transportation Engineers ("ITE") specification or standard for accommodating on-site parking is 2.8 spaces per 1,000 square feet of GFA. Kurus' firm, Neglia Engineering, also conducted a study of existing office buildings on State Highway 9W (Sylvan Avenue) in the Borough and the average was 1.8 spaces per 1,000 square feet GFA. Applicant is proposing 3.83 spaces per 1,000 GFA. As such, Kurus opined that the requested variance is in conformance with the intent and scheme of the zone plan and zoning ordinance of the municipality in that 4 spaces per 1,000 for office buildings is the norm; and this alone should be enough of a reason to grant the variance. Put another way, office buildings have simply not been built in the Borough on sites that provide the zoning standard of 5.33 spaces per 1,000 GFA.

<sup>1</sup> Further, parking spaces must be in conformance to the ADA Guidelines inclusive of striping and signage. Applicant is proposing five (5) barrier-free parking spaces, which conforms to the required number in ADA Accessibility Guidelines for Buildings and Facilities (ADAAG).

5. Notwithstanding the foregoing, the Board cannot simply disregard its own ordinance on the required number of parking spaces, even if the standard contained therein may be questionable or deficient when compared to the current standards of ITE or any other reputable source. Because variances cannot operate to change the zoning plan, variances of any sort cannot be regularly granted. The fact that variances have already been granted in the vicinity actually may work against the grant of another variance, if off-site parking has become a problem.

6. Instead, the issue is whether, in light of the ITE's lesser standard, topographic conditions on the Site cause a "hardship" in meeting the higher standard of the zoning ordinance? Applicant's proofs compel the conclusion that they do. There is the environmental constraint of freshwater wetlands removing from development 7,800 square feet on the northern boundary and 8,600 square feet along the westerly boundary, together with buffer requirements. Existing topographic conditions include slopes, which, when combined with wetlands constraints, confine development to only a portion of the property. The consequence is a design placing parking under the building and confining the total number of onsite spaces to 122. The Board concludes that this variance can and should be granted pursuant to N.J.S.A. 40:55D-70c(1)(a) and (b), and, due to the value of preserving freshwater wetlands in a suburban environment, the variance can and should also be granted pursuant to N.J.S.A. 40:55D-70c(1)(c).

7. The value of preserving freshwater wetlands in a suburban environment is also a basis for granting the variance N.J.S.A. 40:55D-70c(2) due to the fact that the benefits that will be bestowed upon the property and to the community at large by the granting of the deviation from the Zoning Ordinance outweigh any detriment to the municipality.

8. As to the negative criteria of the statute, the variance will not interfere with the intent and scheme of the Zone Plan or the Zoning Ordinance. The 122 parking spaces provided will adequately service the building. Fewer on-site spaces will also reduce the amount of impervious material on the site. Commensurate with approval, there shall be no parking of business related vehicles on adjoining residential streets, and signage shall be posted to that effect.

### Size of Parking Stalls and Aisle Widths

9. The norm for size of parking spaces is 8' x 18' with a 24' aisle. The ordinance requires 9' x 19' with a 25' aisle. Applicant's requests for a variance to permit the size of the stall to be reduced from 9' x 19' to 8.5 x 19' relates to parking under the building at column locations (which locations will be determined when the building plans are completed). Here, the ITE standard sanctions the smaller spaces.

10. The Board concludes that these variances are *di minimus* in nature and can be granted pursuant to N.J.S.A. 40:55D-70c(1) and (2). The variances are needed in order to develop this extremely difficult Site, made difficult due to the environmental constraints caused by the freshwater wetlands on the property and the limited access to public streets as noted from the Site Plan.

11. As to the negative criteria of the statute, smaller on-site spaces and aisles will reduce the amount of impervious material on the site. Further, these variances will not interfere with the intent and scheme of the Zone Plan or the Zoning Ordinance of the municipality and are, in fact, in conformity with almost every other building that has been built in Englewood Cliffs along 9W.

### Site Plan Considerations

12. **Fire safety.** In a letter from George Drimones, Fire Chief, and Joseph Cardullo, Fire Official, to the Planning Board dated November 16, 2015, the following items were noted:

The Fire Department objects to the use of the street number as 922. The Fire Department suggests that an even number should be used above 940 and below 1000 Sylvan Avenue.

Fire Department approval would be based upon a fully sprinklered building due to lack of fire department accessibility around the perimeter of the building.

A free standing FDC (Fire Department Sprinkler Connection) would be required to be located on the lawn off of Sylvan Avenue with its location based upon fire department approval.

Applicant has agreed to comply with these conditions and with the continuing oversight and approval of the fire officials of the Borough during the construction phase.

13. **Stormwater management.** Mr. Mirandi's review letter of December 28, 2015 makes several recommendations as to stormwater management, which applicant has accepted, and which will be subject to further oversight and approval by the engineering consultant for the Borough during the construction phase. Although applicant expressed its voluntary agreement to contribute to the Borough's capital fund for stormwater management, the Borough attorney has instructed the Board that it should be rejected unless and until an enabling ordinance is adopted by the governing body.

14. **Landscaping.** A total of 460 trees between 2" and 26" caliper are proposed to be removed from the Site. Tree removal and replacement shall be in accordance with the Borough's ordinances and be subject to the approval of Burgis Associates, Inc., the Borough's planning consultant. Applicant will submit to Burgis Associates, Inc. a revised landscape plan for expedited review and approval by Messrs. Snieckus and Somers of Burgis Associates, Inc. The revision shall include the following annotations:

- There shall be a 120-foot deep landscaped buffer along Johnson Avenue.
- Applicant has agreed to the continued oversight and approval of Burgis Associates, Inc. of any alterations in landscaping improvements during the construction phase.
- Trees shall be six (6) feet tall on planting, ten (10) feet on center.
- Applicant has agreed that plantings will be maintained by applicant, its successor and assigns in perpetuity, and that it will post a maintenance guarantee for said plantings for the first two years from planting, as provided in N.J.S.A. 40:55D-53(2).
- To the extent trees are to be planted in the Borough right-of-way (Johnson Avenue), applicant will be required to obtain the consent of the Borough Council.
- Fallen trees and debris within the site shall be cleaned up to the satisfaction of Burgis Associates, Inc.

15. **Traffic controls.** To the extent not addressed in the Site Plan revision of December 30, 2015 (Exhibit A-2), the following shall be incorporated into a revised Site Plan:

- The northbound left turn lane on Sylvan Avenue at the main driveway shall be made longer to facilitate northbound motorists slowing up just beyond the traffic signal at Sage Road. This will permit them to leave the through lane of traffic more rapidly and facilitate their braking, reducing the likelihood of a rear end accident. The lane is shown to be 75 feet in length with the three left turn

arrows spaced 25 feet apart. Subject to confirmation by the Borough engineer, a turning lane at least 125 feet long is recommended, with the three left arrows spaced 50 feet apart.

- Right turn arrows and lane use signs shall be added to the southbound right turn lane, since it is an exclusive lane.
- Subject to confirmation by the Borough engineer, the curb return on the southwest corner of the driveway shall be increased from the 13 feet shown on the plan to at least 20 feet, to facilitate motorists turning right out of the driveway.
- There is an 'old style' breakaway cable terminal on the north end of the existing guiderail that will become much more vulnerable now that the southbound deceleration lane is being constructed. Applicant shall contact the NJ Department of Transportation and arrange for the end treatment to be upgraded to current end treatment standards.

**16. Miscellaneous:**

- Site lighting shall be on automatic timers, with mandatory shut down of illumination on and after 10 o'clock p.m. However, as a safety feature, parking garage lighting shall be on sensors after 10:00 o'clock p.m., activated by pedestrian traffic.
- All lighting directly facing a neighboring property or public roadway shall be shielded.
- Applicant shall submit for engineering review proposed signage. As the proposed signage is stipulated to be Code compliant, the Board's consulting engineer shall be limited to evaluating the signage for Code compliance and determining that illumination shall not exceed a reasonable standard for lumens.
- The handicapped ramps located along Sylvan Avenue are proposed to be replaced. A design engineer's certification will be required prior to Certificate of Occupancy.
- All utility piping (sanitary, storm, domestic water, fire, water, and gas) will be connected in the existing mains located in Johnson Avenue.
- The installation of the proposed improvements shall comply with any and all applicable Federal, State and local requirements, including Section 9-22 of the Borough of Englewood Cliffs Zoning Ordinance. A note to this effect shall be added on a revised set of drawings.
- The New Jersey Department of Transportation shall review these drawings and applicant shall provide comments from the jurisdictional agency or a Letter of No Interest to the Building Department, as Sylvan Avenue is a State highway.

- Soil erosion control measures must be maintained throughout construction.
- Applicant has represented that the mechanicals, if roof-mounted, will not be visible from State Highway 9W, Sage Road or Johnson Avenue.
- A Final As-Built Survey is required to be submitted for review prior to the issuance of a Certificate of Occupancy.
- A Developer's Agreement shall be executed between the applicant and the Borough of Englewood Cliffs, setting forth customary protective procedures during the construction phase, including performance and maintenance guarantees.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Borough of Englewood Cliffs that this development application be approved, subject to the following conditions:

**CONDITIONS SPECIFIC TO THE APPLICATION**

A. There shall be no parking of business related vehicles on adjoining residential streets, and signage shall be posted to that effect.

B. The Fire Department requirements noted in Paragraph 12 above, shall be addressed, as well as what may be imposed pursuant to the continuing oversight and approval of the fire officials of the Borough during the construction phase.

C. Applicant shall comply with the Engineer's review letter of December 28, 2015 as to stormwater management, as well as further oversight and approval by the engineering consultant for the Borough during the construction phase.

D. Tree removal and replacement shall be in accordance with the Borough's ordinances and be subject to the approval of Burgis Associates, Inc., the Borough's planning consultant. Applicant will submit to Burgis Associates, Inc. a revised landscape plan for expedited review and approval by Messrs. Snieckus and Somers of Burgis Associates, Inc. The revision shall include the annotations identified in Paragraph 14 above.

E. Landscaping generally shall be subject to the continued oversight and approval of Burgis Associates, Inc., including any alterations in landscaping improvements during the construction phase.

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F. Traffic controls shall be installed by applicant consistent with Paragraph 15 above, and/or as may be altered during the construction phase for good cause and subject to the approval of the Board's consulting engineer.

G. Applicant shall comply with the itemized "Miscellaneous" requirements in Paragraph 16, unless altered during the construction phase for good cause and subject to the approval of the Board's consulting engineer.

**GENERAL CONDITIONS**

H. Applicant shall comply with all applicable federal, state, regional, county and local rules, regulations and requirements. In the event compliance with the requirements of any such governmental entity necessitates modifications to the Site Plan, applicant shall submit revised plans to the Zoning Officer and Construction Official for their review and approval. If deemed by him to be so substantial or different as to warrant further review by the Planning Board, such modification(s) shall be referred to the Planning Board for its formal review, and applicant shall be required to present same in compliance with the notice provisions of the Municipal Land Use Law.

I. All representations made by applicant or its agents shall be deemed conditions of this approval and any misrepresentations by applicant contrary to the representations made before the Board shall be deemed a violation of this approval.

J. The action of the Planning Board in approving this application shall not relieve the applicant of responsibility for any damages caused by this project, nor does the Planning Board of the Borough of Englewood Cliffs, or its reviewing professionals and agencies, accept any responsibility for design of the proposed improvement or for any damages that may be caused by this development.

K. This approval is subject to applicant obtaining a building permit and any other State, County or Borough approvals (including Borough Board of Health), if required.

L. All fees, costs, bonds and escrows shall be paid when due or becoming due. Any monies are to be paid within twenty (20) days of said request by the Board's Secretary.

**MOTION BY:           MR. CHINMAN**

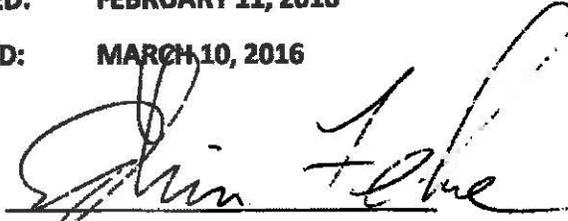
**SECONDED BY:       MS. O'SHEA**

**IN FAVOR:** MR. CHINMAN, MS. O'SHEA, MR. VILLARI, MR. TROVATO, MR. KILMARTIN, MS. ROSENBERG, MS. EASTWOOD, MR. KIM and COUNCILMAN PARK

**ABSTAINED:** NONE

**DATE APPLICATION APPROVED:** FEBRUARY 11, 2016

**DATE RESOLUTION APPROVED:** MARCH 10, 2016



**EDWIN FEHRE, CHAIRMAN  
PLANNING BOARD**

**Attest:**



**CATERINA SCANCARELLA  
PLANNING BOARD SECRETARY**

KATES NUSSMAN RAPONE  
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190 MOORE STREET  
SUITE 306  
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07601-7407

**APPENDIX D.**

**2001 RECREATION AND OPEN SPACE PLAN MAP**

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Englewood Cliffs  
 New Jersey  
 Recreation and  
 Open Space Plan



**Legend**

-  Borough Parkland
-  Palisades Interstate Park
-  Environmentally Sensitive Lands



1" = 1100'

This map utilizes GIS technology.  
 For planning purposes only.  
 Not intended for engineering applications.

**Kasler Associates, P.A.**  
 29 Pergamon Place  
 Hackensack, NJ 07601  
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<http://members.aol.com/kasler/>

**APPENDIX A.2.**

RDP ANALYSIS OF THE 800 SYLVAN SITE (BLOCK 910, LOT 1), DATED DECEMBER 10, 2018.

**RDP Analysis of 800 Sylvan Avenue  
Borough of Englewood Cliffs  
Bergen County, NJ**



Borough of Englewood Cliffs  
Bergen County, New Jersey

**December 10, 2018**

Prepared by



**HARBOR CONSULTANTS**  
ENGINEERS, SURVEYORS, AND PLANNERS  
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The original of this report was signed and  
sealed in accordance with N.J.S.A. 45:14A-12.

Michael Mistretta PP #0057590



## EXHIBITS

- Exhibit A. Aerial map of 800 Sylvan Surrounding Resources, Englewood Cliffs
- Exhibit B. Concept analysis of 800 Sylvan Avenue, prepared by Harbor Consultants, dated December 6, 2018
- Exhibit C. 800 sylvan 600-unit redlined concept plan on survey, prepared by Harbor Consultants, dated June 26, 2018
- Exhibit D. RDP analysis of 800 Sylvan Avenue – 274 unit concept plan, prepared by Harbor Consultants, dated August 15, 2018
- Exhibit E. Aerial view of 3D Rendering of 800 Sylvan Avenue, prepared by Harbor Consultants, dated August 15, 2018
- Exhibit F. Street view of 3D Rendering 800 Sylvan Avenue, prepared by Harbor Consultants, dated August 15, 2018
- Exhibit G. In the Matter of the Application of the Township of Mahwah, Plaintiff/Petitioner  
Docket No.:BER-L-6281-15, Preliminary Judgment of Compliance and Repose
- Exhibit H. Report on the Roseland Borough Vacant Land Adjustment, Evaluation of the Court Master, prepared by Shirley Bishop, P.P., dated August 13, 2018
- Exhibit I. Letter from David N. Kinsey, PhD, P.P. to Honorable Joseph P. Quinn, J.S.C., re Cove v. Wall Township, Docket No. L-051262-84 and Consolidated Cases (Mount Laurel II) Proposed Wall Township 2005 Housing Element and Fair Share Plan Amendment, dated December 1, 2005
- Exhibit J. Update Boundary & Topographic Survey and Alta/ACSM Land Title Survey for 800 Sylvan Avenue, prepared by Maser, latest revision May 11, 2017
- Exhibit K. Letter from Thomas F. Carroll, III to Anne Marie Rizzuto re In the Matter of the Application of the Borough of Englewood Cliffs; Docket No. BER-L-6119-15, dated November 17, 2017



## I. INTRODUCTION

At the outset, 800 Sylvan LLC (hereinafter "Sylvan") made clear that it wants its site to be considered for purposes of calculating an RDP and the Borough has made clear that it will decide the best plan for the community in accordance with COAH regulations. The plan submitted in conjunction with this report reflects the judgment of the citizens of Englewood Cliffs that the best plan for the community is to satisfy the RDP generated by the Sylvan site in some way other than rezoning that site as an inclusionary site. Clearly there is a price tag associated with complying via a 100 percent affordable project than through rezoning the site that generates the RDP. However, the Borough is committed to paying that price of roughly 12.6 million dollars if the developer of the municipally sponsored project cannot secure 9 percent tax credits.

To elaborate, a fundamental parameter to this litigation is a principle that has been at the heart of COAH's policies throughout its existence: namely, that once a determination is made as to a municipality's adjusted fair share, which COAH subsequently labeled its RDP, the municipality is free to decide how to satisfy it. Thus, in Round 2, COAH adopted the following regulation:

The municipality may address its RDP 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 RDP if the municipality can devise an acceptable means of addressing its RDP. The RDP shall not vary with the strategy and implementation techniques employed by the municipality.

[[N.J.A.C. 5:93-4.2 \(g\)](#)]

This COAH policy has remained unchanged for a quarter century and, indeed, COAH repeated this policy in response to the Supreme Court's request for its input in the Cherry Hill case:

After reviewing its vacant land adjustment rules, COAH concluded that the GSP property should be included in the Township's second-round plan and recalculation of the Township's RDP. However, it declined to speculate on whether or to what extent the GSP site was necessary to address the Township's RDP because "[t]he resolution of this issue requires Cherry Hill to calculate its second-round obligation and then create a plan to meet that obligation." It concluded that "[u]ntil this planning process occurs, the status of the [GSP] site and the appropriateness of any **\*414** development fee to be imposed on the development of the site cannot be determined."

[*Fair Share Housing Center v. Cherry Hill*, 173 N.J. 393 , 413-44(2002).]

The principle that a municipality must be able to decide how it will comply once it knows its RDP is as fundamental as it is important. Were it otherwise, no municipality that secured a vacant land adjustment would have any power to decide how it will comply if a developer approaches the municipality with a developed site after the court has determined the municipality's RDP and seeks to have its site rezoned to satisfy the RDP its site creates. If COAH's longstanding policies did not give the municipality the right to choose how to satisfy the RDP the site generates, the municipality would lose control of its zoning and destroy the primary incentive for any municipality to comply voluntarily: to preserve the right to choose the best plan for the community. It is unfair to strip a municipality of the power to decide how to satisfy its RDP that a common provision in the settlement

of land poor municipalities with FSHC is to give the municipality the right to choose how to satisfy any additional RDP that may arise as a result of a suitable site becoming available that was not available at the point of settlement.

Against the above backdrop, on November 17, 2017, the attorney for Sylvan wrote to the Borough's attorney and asked the Borough to take into account its site for purposes of extrapolating the Borough's RDP: "My understanding is that the Borough has been directed to provide an inventory of available land to the Court-appointed Master, Mary Beth Lonergan, P.P., A.I.C.P., by no later than November 30, 2017. **We request that my client's property, as described above, be considered by the Borough and by Ms. Lonergan as part of the inventory of available land.**" See Exhibit K.

On March 19, 2018, after Sylvan repeatedly took the position in Court that its site should generate an RDP, the Court entered an order providing as follows:

3. The Borough shall prepare a report setting forth its RDP for the Sylvan site by March 26, 2018.

4. Sylvan and FSHC shall have 10 days from receipt of the report on the Sylvan site to provide the complete basis for its challenge to the RDP proposed by the Borough and the Borough shall have 10 days from receipt of the Sylvan and FSHC submissions to respond.

Although the parties had disputed the form of order, there was no disagreement as to these provisions.

While the Court entered the March 19, 2018 order to establish an orderly mediation process and called for all document submitted in mediation to be held "in the strictest confidence", the mediation did not culminate in any agreement generally or any agreement as to the RDP generated by the Sylvan site in particular.

The RDP calculation for the Sylvan site played such a pivotal role because the Borough's RDP would spike from the 5 unit RDP it deemed appropriate to the minimum RDP of 125 Sylvan deemed appropriate if the Court indeed concludes that the Sylvan site can reasonably accommodate 600 units. That 5 to 125 spike is a 25 fold increase in RDP.

Whether the Sylvan site generates an RDP of 120 as Sylvan contends or 55 as the Borough contends is very significant. If the RDP is 55, the Borough's plan easily satisfies its RDP, the Court can therefore approve the Borough's plan and the Court can enter a Judgment of Compliance and Repose ("JOR") and bring the case to a conclusion quickly. If the RDP of the Sylvan site is 120, then the Borough has an obligation to make up the shortfall. Although the Borough is committed to do so, naturally it wants the most expeditious and least costly path to the entry of a JOR provided that the ultimate plan represents the Borough's view of sound land use planning.

On November 2, 2018, the Borough brought a motion seeking, in essence, a declaration that the Legislature never intended to authorize the imposition of an obligation in excess of a municipality's fair share and that the fair share of a land poor municipality is its adjusted fair share. Judge Farrington denied the motion stating, "the court declines to accept the Borough's challenge or

invitation to revisit and re-interpret the intention of the legislature and its actions in 1985, following Judge Serpentelli's decision in *AMG vs. Warren Tp.*, 207 N.J. Super. 388 (1984). . . ." In response to the Borough's motion, Sylvan and FSHC made cross motions. In response to Sylvan's cross motion, the Court ruled that the Borough has an unmet need obligation and that "[t]he Borough must address the unmet need portion of the Borough's fair share obligation, as the term is used in COAH's second round regulations, in the Borough's fair housing plan." The Court also denied FSHC's cross motion to rescind immunity. In addition, the Court denied, without prejudice, FSHC's cross motion to compel the Borough to address its unmet need by adopting an overlay ordinance on certain sites, including the Sylvan site.

The Court has made clear that the Borough cannot "exempt choices pieces of land from its affordable housing obligation" that become available for inclusionary development. By its actions, the Borough is making clear that it is not ignoring the availability of the Sylvan site. To the contrary, it is expending considerable public resources to quantify the RDP generated by the Sylvan site and to satisfy that RDP at a potential cost of over 12.5 million dollars in accordance with sound planning principles: \$7,075,562 if developer of project cannot secure tax credits plus 5,570,000 to demolish existing buildings and structures and to construct new ones equals \$12,645,562 The Borough has expressed its commitment to comply voluntarily and it is doing just that. However, it is complying in the manner it deems to be in the best interest of its community. COAH policy for 3 decades makes clear that this is the Borough's right to comply as it deems fit and no negative inference should be drawn from the manner in which the Borough chooses to comply voluntarily.

## II. THE REGULATORY FRAMEWORK AND THE EMPHASIS ON SOUND PLANNING

In N.J.A.C. 5:93-4.2, COAH sets forth its standards in its Round 2 regulations for municipalities to secure a vacant land adjustment. N.J.A.C. 5:93-4.2 (e) provides six bases to exclude sites from the vacant land inventory for purposes of extrapolating an RDP:

*(e) "Municipalities may present documentation that the Council shall use to eliminate a site or part of a site from the inventory of sites described in (d) above. Partial elimination of a site shall not necessarily eliminate an entire site as unsuitable. Municipalities may seek to eliminate sites from the inventory described in (d) using the criteria set forth in 1 through 6 below. Municipalities shall submit transparent overlays drawn to the same scale as the existing land use map depicting those sites which the municipality maintains are inappropriate for development."*

The second and sixth exclusion are particularly relevant to the Sylvan site:

*2.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."*

***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.***

Thus, site suitability plays a critical role in what sites contribute to the RDP.

N.J.A.C. 5:93-4.2 (f) provides the following guidance regarding how to calculate the RDP from any given site:

*(f) "The Council shall consider sites, or parts thereof, not specifically eliminated from the inventory described in (d) above, for inclusionary development. **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.** The minimum presumptive density shall*

*be six units per acre and the maximum presumptive set-aside shall be 20 percent. The density and set-aside of each site shall be summed to determine the RDP of each municipality.”*

The “character of the area surrounding each site” also plays an important role in the determination of the intensity of development for which a site is suitable. Consideration of the surrounding character of the area requires an understanding and respect for height, setbacks, neighboring uses, and other planning standards. Since the number of units a site can reasonably accommodate is the basis for the determination of the RDP the site will generate, it is critically important to consider the number of units for which a site is suitable. Thus, any municipality that would seek to comply through traditional inclusionary zoning where a percentage of the units are affordable for low and moderate income household, COAH required density information in order to be able to evaluate site suitability. Specifically, N.J.A.C 5:93-5.3(c)4 requires the municipality to identify “**the total number of housing units; the gross and net density of the proposed development**” for each site that a municipality proposes to rely upon to satisfy its obligations.

To determine (a) the number of units which a site can reasonably accommodate, and (b) whether individual sites or parts of individual sites “**are not suitable for low and moderate income housing**” (N.J.A.C. 5:93-4.2 (e)6), it is important to consider COAH’s site suitability criteria. In this regard, COAH requires all sites to be used to satisfy a “new construction” requirement to qualify as “available, suitable, developable and approvable as defined in N.J.A.C. 5:93-1.” N.J.A.C. 5:93-5.3. The regulations define these terms as follows:

“Approvable site” means a site that may be developed for low and moderate income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate income housing.

“Available site” means a site with clear title, free of encumbrances which preclude development for low and moderate income housing.

“Developable site” means a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable areawide water quality management plan (including the wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by DEP.

“Suitable site” means 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.

These criteria are so essential to a vacant land adjustment analysis because the whole point of the realistic development potential is to determine how many affordable units could realistically be generated in accordance with sound planning. Indeed, COAH’s former Executive Director made exactly that point:

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. That means that the development of all sites that

contribute to the RDP should be able to generate the number of affordable units the sites contribute if the sites are developed in accordance with sound planning.<sup>1</sup>

Thus, referring to its Round 2 regulations on vacant land adjustments, COAH stated in its 1999-2000 “Handbook” that, “It is important to understand that all sites that meet COAH criteria are used to determine the RDP of the municipality.”<sup>2</sup> Therefore, sound planning principles must be applied when evaluating each site that contributes to the RDP, lest the RDP analysis yield a number of units that could only be generated by violating the sound planning principles that the Mount Laurel doctrine has deemed essential: “The Constitution of the State of New Jersey does not require bad planning. . . . There is nothing in our Constitution that says that we cannot satisfy our constitutional obligation to provide lower income housing and, at the same time, plan the future of the state intelligently.” Mount Laurel II, 92 at 238. In this case, the unique environmental characteristics of the Sylvan site require careful attention to sound planning principles.

In considering the zoning standards necessary to ensure that sites are developed in accordance with sound planning, the Court’s warnings in the *Sartoga* case are particularly important:

*“In short, a planning board’s authority in reviewing an application for site plan or subdivision approval is limited to determining whether a development plan conforms with the zoning ordinance and the applicable provisions of the site plan or subdivision ordinance. A planning board has no authority to deny site plan approval based on its view that a use permitted under the \*583 zoning ordinance, such as, in this case, high density residential development, is inconsistent with principles of sound zoning.”*

*[Sartoga v. Borough of West Paterson, 346 N.J. Super. 569, 582-83 (App. Div. 2002)]*

The Appellate Division emphasized the importance of taking care in how municipalities zone in the first instance, and not to count on the Planning Board to fix any problems that might subsequently arise. The time to take into account the issues bearing on the suitability of the site is before rezoning the site or reaching a conclusion as to the appropriate carrying capacity of the site.

Since “**all sites that meet COAH criteria are used to determine the RDP of the municipality**”, according to COAH’s 2000 Handbook, it is important to take into account COAH’s criteria. Pursuant to N.J.A.C. 5:93-5.3, COAH regulations impose the following requirements on all sites used to address its obligations:

**“New construction; site criteria and general requirements”**

- (a) Municipalities may create new low and moderate income units within their borders by sponsoring their construction, with or without a non-profit corporation, or by zoning sites for inclusionary development.

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<sup>1</sup> Report on the Roseland Borough Vacant Land Adjustment, Evaluation of the Court Master, prepared by Shirley Bishop, P.P., dated August 13, 2018, p. 6

<sup>2</sup> Council on Affordable Housing, “The 1999-2000 COAH Handbook...Getting Through the Maze”, page 27.

**(b) Municipalities shall designate sites that are available, suitable, developable and approvable, as defined in N.J.A.C. 5:93-1.** In reviewing sites, the Council shall give priority to sites where infrastructure is currently or imminently available. All sites designated for low and moderate income housing shall be consistent with the applicable areawide water quality management plan (including the wastewater management plan) or be included in an amendment application filed prior to the grant of final substantive certification. If there is a denial by DEP or at the end of two years if there is no DEP determination, then COAH shall revisit the site and housing plan to determine if it provides a realistic opportunity.

(c) For each site designated for new construction of low and moderate income units, the municipality shall provide the following minimum documentation:

1. A general description of each site to be used for inclusionary development, including, but not limited to the following: acreage, current zoning, surrounding land uses, and street access. Maps shall be submitted showing the location of all sites.
2. A description of any environmental constraints including steep slopes, wetlands and flood plain areas. The municipality shall include calculations of the amount of acreage that is environmentally constrained and any remaining buildable acreage. Documentation shall include the appropriate wetland and flood plain maps required pursuant to N.J.A.C. 5:93-5.1.
3. Information shall be submitted regarding location, size and capacity of lines and facilities within the service area, as well as the status of the applicable areawide water quality management plan including the wastewater management plan. Documentation shall include maps showing the location of the sewer and water facilities; and
4. **For each site, the total number of housing units; the gross and net density of the proposed development;** the total number of low and moderate income units; and the number of low and moderate income units that will be for sale and for rent.

(d) Municipalities shall structure plans for new construction, conversion and gut rehabilitation (including new construction, conversion and gut rehabilitation that is part of an RCA that conform to the Council's rules pertaining to bedroom mix, age restriction, price stratification, rental housing, controls on affordability and affirmative marketing.

(e) Unless otherwise permitted, the Council shall not provide credit for housing that is restricted in occupancy to any specific group.

### **III. DESCRIPTION OF 800 SYLVAN AVENUE & SURROUNDING NEIGHBORHOOD**

#### **A. Description of 800 Sylvan Avenue**

800 Sylvan Avenue ("the Property") is identified as Lot 1 of Block 910 on the Borough of Englewood Cliffs Tax Maps. The Property contains 28.371 +/- acres, based on an Alta Land Title Survey included as Exhibit J, and is located in the B-2 Limited Business Zone District.

The Property is contiguous to developed properties with office and commercial uses along both the northern boundary line - currently occupied by CNBC (Block 1201, Lot 8) - and the southern

boundary line – currently occupied by Unilever (Block 808, Lot 9) and a gas station currently occupied by Exxon (Block 808, Lot 8). There are residential uses adjacent to the southwestern boundary line along Hollywood Avenue, with three (3) single-family homes on Block 808, Lots 6, 7, and 10.

The property is bounded by approximately 1,258 +/- linear feet of street frontage along Sylvan Avenue along the eastern boundary line. Across Sylvan Avenue and its wooded buffer to the east is the Palisades Interstate Parkway, Palisades Interstate Park, and ultimately, the Hudson River. The Property is bounded by Floyd Street to the west. Floyd Street serves as the transition between the commercial uses which front along Sylvan Avenue the residential uses to the west. All lands west of Floyd Street are located in the R – A Single Family Residential Zone District. The proximity of the surrounding single family residential zone is depicted in the map included in Exhibit A of this report.

The Property is fully developed in a campus-like setting with two- and three-story office, research and storage uses comprised of approximately 395,997 square feet, supported by surface parking lots, as depicted in the Alta Survey included as Exhibit J. The Property contains significant undeveloped steep slopes covered with forested woodlands along the Sylvan Avenue as depicted in Exhibit J. Forested freshwater wetlands with a fifty foot (50') transition area have been field delineated within the forested area along Floyd Street.

It is important to note that when the existing building and associated surface parking was planned and developed, the aforementioned forested woodlands which contain freshwater wetlands along Floyd Street and Sylvan Avenue were preserved.

#### ***B. B-2 District Zone and Land Use Regulations***

The following uses are permitted within the B-2 District:

30-5.5 Permitted in the B-2 District (Limited Business).

a. As principal permitted uses:

1. Business offices, professional offices, governmental and corporate offices.
2. Laboratory and research facilities.
3. Reserved.
4. House of worship.
5. Accessory parking areas on the same lot as the principal use.

b. As conditional uses:

1. Fraternal organizations.
2. Private clubs with social and recreational facilities which are accessory to a permitted use.

c. The following uses are specifically prohibited in this zone:

1. The operation of a taxi, limousine or livery service or other similar businesses and the parking and storage of said vehicles in connection with said business.

(Ord. # 9306, A V; Ord. No. 9802; Ord. #2000-10)

### **C. Existing Conditions of the B-2 District Zone**

The B-2 District in Englewood Cliffs is primarily comprised of office and other commercial uses. The limits of the district, which are depicted on Exhibit A, run along Sylvan Avenue/Route 9W between Demarest Avenue and the northern border of the Borough. This stretch of Sylvan Avenue/9W has been dubbed the “Trillion Dollar Mile” as it is the Headquarters of several companies including LG and Unilever. While office space has been struggling to survive throughout the state, along this portion of 9W, in Englewood Cliffs, office has remained strong, and is one of the State’s most sought after markets.<sup>3</sup>

In recent years, the Englewood Cliffs office market has continued to be competitive:

On March 10, 2016, the Planning Board of the Borough of Englewood Cliffs memorialized a resolution granting site plan approval to the application of Lighthouse E.C. to construct a 31,833 +/- square foot office building.

On April 25, 2016, the Planning Board of the Borough of Englewood Cliffs memorialized a resolution granting site plan approval to construct a 350,803 square foot building for LG’s new headquarters.

In April of 2018 the firm JLL announced that it was selected by Andalex as the exclusive leasing agent for the Sylvan Corporate Center which is located at 910, 920, 930, and 940 Sylvan Avenue. The Sylvan Corporate Center has recently acquired Barnet Products, Wenesco, and Katz & Associates as long-term tenants to the complex. Additionally, OwnBackup has signed an 11-year lease for approximately 30,000 square feet of 940 Sylvan Avenue, and will be occupying the entire first floor of that building.<sup>4</sup>

On August 9, 2018, the Planning Board of the Borough of Englewood Cliffs memorialized two resolutions approving the certification of a pre-existing non-conforming use of an automobile dealership to permit the sale of Alfa Romeo, Maserati, and other brands of vehicles at 330 and 340 Sylvan Avenue, respectively.

Englewood Cliffs has been able to maintain its status as a sought after market – and without the use of aggressive tax credits or other subsidies. By comparison, the rest of New Jersey has been struggling to maintain their existing corporate base and to attract new businesses. For example, even after three years after receiving \$40 million in tax credits to stay in New Jersey, Honeywell confirmed it will be moving its corporate headquarters to North Carolina.<sup>5</sup> This is only one example of numerous companies which are moving their headquarters from New Jersey to other states.

The recent Amazon HQ2 competition highlights the lengths that New Jersey and the rest of the country will go to in order to recruit corporations. New Jersey offered Amazon an incentive which included \$7 billion in tax breaks, inclusive of local and statewide incentives.<sup>6</sup>

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<sup>3</sup> <https://re-nj.com/jll-picked-to-market-lease-270000-sq-ft-office-campus-in-englewood-cliffs/>

<sup>4</sup> <https://www.globest.com/2018/11/12/cloud-backup-firm-leases-30k-sf-in-englewood-cliffs-sylvan-corporate-center/>

<sup>5</sup> <https://www.nj.com/news/2018/11/honeywell-plans-to-move-world-hq-out-of-nj.html>

<sup>6</sup> <https://www.njspotlight.com/stories/18/01/08/lawmakers-approve-massive-incentive-package-to-try-to-win-amazon-hq-for-newark/>

The New Jersey Economic Development Authority has been actively trying get companies to stay in and relocate to New Jersey through its Grow NJ Program. The State's efforts and incentives have helped attract companies such as JPMorgan Chase, RBC Capital Markets, and Jaguar Land Rover North America. However, this recruitment did not come without a price; according to a report by Mckinsey & Co., New Jersey has offered as much as \$162,000, inclusive of tax breaks, grants, loans, and other subsidies, which is more than double other states. By comparison, the same report stated that New Jersey's neighboring states paid the following amounts per job crated: Connecticut \$51,000; Pennsylvania \$35,000; New York \$28,000; Massachusetts \$22,000; and Virginia \$8,000. The national average was \$69,000.<sup>7</sup> These are only a few examples of the actions the rest of New Jersey has taken to in order to keep the office market alive; actions Englewood Cliffs has not had to take to retain and recruit businesses to the Borough.

#### **IV. RDP ANALYSIS OF 800 SYLVAN AVENUE**

In order to calculate the RDP of the 800 Sylvan Avenue site, an analysis was conducted of the existing conditions and uses, as well as the site plan requirements thereof. There is currently a 157,411 square foot building consisting of 29,629 square feet of office, 126,511 square feet of research and development space, and 1,271 square feet of storage located on the southern portion of Lot 1 of Block 910 which is occupied and operating.

I prepared a concept site plan for the site, which is included in Exhibit B of this report, to evaluate how much housing the site can reasonably accommodate and have concluded that the site can reasonably accommodate 274 units for the reasons set forth below.

At the outset, I needed to determine the portion of Block 910, Lot 1 which generates an RDP. Once the required area for the existing occupied and operating 157,411 square foot building was determined, a proposed subdivision line of Block 910, Lot 1 was drawn, yielding the remaining area to be analyzed for the RDP calculation of the site.

This Exhibit includes the proposed subdivision line to Block 910, Lot 1, as well as the site plan requirements of the existing use to remain on the southern portion of the site, and the estimated limit of disturbance on the northern portion of the site, in order to calculate an RDP.

The southern portion of the site which contains the operating office space, research and development space, and storage space is identified as "Proposed Lot 1" consisting of approximately 13.10 acres, and the northern portion of the site which generates an RDP is identified as "Proposed Lot 2" consisting of approximately 15.27 acres on Exhibit B. The remaining 15.27 acre Proposed Lot 2 was then evaluated to determine the estimated existing limit of disturbance. **I concluded that 9.14 +/- acre area of the site would be appropriate for redevelopment.**

##### **A. Site Plan Requirements for Proposed Lot 1**

Before assigning an RDP to a portion of Block 910, Lot 1 which consists of 28.37 +/- acres, the site plan requirements of the occupied and operating 157,411 square foot building - which does not generate an RDP - were examined. This examination was conducted to to determine how much space the existing uses would require to accommodate appropriate parking, circulation, and

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<sup>7</sup> Reseeding the Garden State's economic growth: A vision for New Jersey, prepared by McKinsey & Company, dated July 2017p. 19

setbacks, in order for the existing uses to continue to operate, while also appropriately buffering them from incompatible neighboring residential uses.

Currently, the parking which supports the existing operating facility which will remain, is located throughout Block 910, Lot 1. Therefore, a concept plan was prepared which reconfigured the site to allow for parking and circulation in order to permit its continued operation independently from the remainder of the property. The Englewood Cliffs zoning ordinance for the B-2 zone was reviewed in order to determine what a research and development facility and other permitted uses in the B-2 zone would need in order to continue to operate.

The Englewood Cliffs Land Use Ordinance defines Research and Development as:

*“Study, research, and experimentation in one or more scientific fields, such as life sciences or biomedical research, communications, chemistry, computer science, electronics, medicine and physics. Research and development also include the development of prototypes and the marketing of resultant products. Related activities include the manufacturing, mixing, fermentation, treatment, assembly, packaging, and servicing of products. Supporting services such as administrative offices, education facilities, libraries, and data services are other examples of related activities.”*

The southern portion of Block 910, Lot 1 is occupied by Unilever today, but we have no way of knowing if the space will later be occupied by a later tenant or who that next tenant would be. The zoning ordinance permits types of research and development facilities which could pose security and safety risks. The study, research, and experimentation in fields such as life sciences, biomedical research, chemistry, and medicine particularly pose a potential for hazardous materials and or byproducts – which should be kept separate from other facilities and uses. All of the permitted uses also include the potential for security risks where the operating facility would not welcome non-employees or approved vendors/services entering the premises.

Therefore, the existing uses located on Proposed Lot 1 are incompatible with the proposed residential uses to be developed on the remaining portion of the site. The incompatibility of these two uses requires buffers. Given the wide range of permitted uses on Proposed Lot 1, the principles of sound planning would not support the proposition that there should be shared parking or any other shared land uses between Proposed Lot 1 and 2, each lot must stand on its own, for now and in the future. The existing research and development facility has the potential for hazardous materials and/or byproducts which would be generated by the research and development facility – which should be kept separate from the residential use. This is not an example of a clean Class A office space.

Further, to quote Shirley Bishop, the former Executive Director of COAH, “COAH and Mount Laurel Jurisprudence, have always encouraged the construction of affordable housing to work hand in hand with sound land use planning to ensure that balance is always maintained between the constitutional mandate to provide affordable housing and the equally important principal that the rules of sound land use planning are also followed.”<sup>8</sup>

The table in Exhibit B entitled “Schedule of Bulk Requirements Zone B-2 Limited Business” demonstrates the current bulk requirements within the B-2 zone, as well as the proposed bulk

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<sup>8</sup>Report on the Roseland Borough Vacant Land Adjustment, Evaluation of the Court Master, prepared by Shirley Bishop, P.P., dated August 13, 2018, p.3

conditions of Proposed Lots 1 and 2. The proposed site plan for Proposed Lot 1 is a reconfiguration of the site which includes variances from the Borough Ordinance. These variances include reducing the required 120-foot buffer for a commercial use to a residential use to 60 feet to the proposed subdivision line demonstrated in Exhibit B.

Therefore, the area required for the continued operation of the occupied and operating 157,411 square foot building is approximately 13.10 +/- acres, leaving 15.27 +/- acres to be evaluated for an RDP calculation.

**B. RDP Calculation of Proposed Lot 2 (15.27 +/- acre portion of Block 910, Lot 1)**

Measured against the densities that COAH deemed appropriate, the densities used for purposes of extrapolating an RDP on the Sylvan site are extremely generous. In Englewood Cliffs, COAH required a density of 6 per acre on the Prentice Hall site. By comparison, the density being proposed for the Sylvan site by 800 Sylvan LLC is substantially greater depending upon what land area is used for calculating the RDP. Therefore, while Sylvan advocates for the maximum density to put the maximum pressure on the Borough to capitulate to its zoning demands, the correct yardstick to determine whether the Borough's RDP analysis is consistent with COAH policies is what COAH deemed appropriate. Since the Borough must comply with COAH policies on the unmet need despite its contention that the Legislature's policy should take precedent, it would be entirely reasonable to follow COAH precedent on how the RDP calculation is done. At the very least, the COAH practices highlight the reasonableness of the densities the Borough used for the RDP calculation.

At densities of 6 per acre, municipalities could address legitimate concerns of the public with open space, buffers, setbacks, building height, and similar issues. At the densities that Sylvan demands, there is a marked lack of sufficient attention to legitimate concerns of the public.

Judge Farrington ruling in the Mahwah case provides further support for the densities I have deemed appropriate for the Sylvan site. In July 2018, the Township of Mahwah obtained a Preliminary Judgment of Compliance and Repose. The Order entered by the Honorable Christine A. Farrington reveals that Mahwah, like Englewood Cliffs, had sought a vacant land adjustment. The Township's planner, Darlene A. Green, PP/AICP calculated the Township's RDP by using the municipality's vacant properties, deducting environmental constrained areas, and then multiplying by 8 units per acre, followed by a calculation of the 20% set aside: Mahwah's planner applied a density of 8 units per acre to calculate the Township's RDP. See Preliminary Judgment of Compliance of Repose, dated July 10, 2018, p. 5., attached as Exhibit G. An 8 unit density for calculating the municipality's RDP has also been accepted in other municipalities where she served as the planner. In addition, Mahwah's Special Master, Michael P. Bolan, AICP/PP, confirmed "The adjustment for insufficient vacant developable land was undertaken in accordance with COAH's Prior Round Rules, at N.J.A.C. 5:93-4.1 and 4.2." See Exhibit G, p. 10.

Further, Shirley Bishop, the former Executive Director of COAH from 1994 through June 2002, which coincides with the implementation of the Second Round Regulations has stated:

*"First and most importantly, we must give great weight to, and seriously consider, COAH's previous decision regarding the RDP density to be calculated on a portion of this site. The Supreme Court made it clear in Mount Laurel III that a Court was to "conform wherever possible to the decisions, criteria, and guidelines of the Council" COAH. Mount Laurel III at 63. Moreover, the Supreme Court stated in Mount Laurel*

*IV that a Court's role "is not to become a replacement agency for COAH" and that "it is not the Court's province to create an alternative form of statewide administrative decision making for any unresolved policy details of replacement of Third Round Rules..."<sup>9</sup>*

The removal of 13.10 +/- acres for the continued operation of the 157,411 square foot building, located on the southern portion of Block 910, Lot 1, left a remaining area of 15.27 +/- acres, which comprises Proposed Lot 2. Closer examination of the lands yielded that 9.14 +/- acres of Proposed Lot 2 should be evaluated for development.

This area includes 9.14 +/- acres which has already been developed with impervious surfaces including buildings, surface parking, and other structures. The remaining lands contain environmentally sensitive lands including freshwater wetlands, wetland transition areas, steep slopes, and mature groves of forested vegetation. First, approximately 1.7 acres were removed to account for wetlands and the associated wetland transition areas, then approximately 2 acres of forested area, not including the aforementioned wetlands were removed. Then approximately 2 acres of land which is interspersed throughout the forested area, which comprised the remaining unpaved area was removed. Sound planning should preserve these critical environmentally sensitive lands, as the previous commercial development preserved these areas.

Applying densities only to the disturbed portion of the site is consistent with one of the conditions included in the Preliminary Judgment of Compliance and Repose for the Township of Mahwah which stated:

*"[The Special Master's] recommendation was conditioned upon the compliance with the following conditions....3. The Mayor and Council shall adopt zoning ordinance amendments to rezone Block 21, Lots 21, 22 and 23...to permit a maximum density of 14 units **per disturbed/impervious acre** [emphasis added] with a maximum of 41 total residential units with a 20% set-aside for affordable housing."<sup>10</sup>*

**Therefore, it would be reasonable to limit the redevelopment of the remaining 15.27 acres of Proposed Lot 2 to the developable portion of the property, consisting of 9.14 +/- acres.**

We have examined how the site might be reasonably developed at the maximum reasonable density and concluded that it should not be permitted to construct more than 274 total residential units. Regardless of whether density is applied to this 9.14 portion of the site or to a larger portion, the Concept Plan for 274 units that we propose represents a density well above the densities that COAH has deemed appropriate and that Judge Farrington deemed appropriate in the Mahwah case. In this regard, if you apply the density to just the 9.14 acres, the density works out to 30 per acre. If you apply the density to the full 15.27 acres – even though developers cannot develop on wetlands and wetland buffers, the density would be roughly 18 units per acre. Densities of 18 to 30 units per acre far exceed the six per acre density COAH applied to the Borough and the 8 per acre density the Court applied to Mahwah. Therefore, the proposal to limit the development of the site to 274 units is very reasonable.

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<sup>9</sup> Report on the Roseland Borough Vacant Land Adjustment, Evaluation of the Court Master, prepared by Shirley Bishop, P.P., dated August 13, 2018, p.4

<sup>10</sup>In the Matter of the application of the Township of Mahwah, Plaintiff/Petitioner Docket No.:BER-L-6281-15, Preliminary Judgment of Compliance and Repose, p.13-14

Limiting the density to 18 units per acre for the entire 15.27 +/- acres or 30 units per acre to the previously disturbed 9.14 +/- acres is sound and smart planning which will result in a plan that provides for sufficient open space, buffers, and reasonable building setbacks and design standards. This methodology results in a viable plan that 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 proposed use.

Due to the importance of these environmentally sensitive areas it is worth repeating that even at the time of planning and developing the existing building and associated surface parking, that the original developer made the decision to preserve the forested woodlands which contain freshwater wetlands along Floyd Street and Sylvan Avenue.

Exhibit D is a concept plan depicting a two hundred and seventy four (274) unit project located within the previously developed portion of Proposed Lot 2. This concept provides for open space/passive recreation for the future residents, provides adequate parking, and preserves the existing forested areas on the eastern and western portions of the site. This concept plan is one of many possible configurations which would preserve the environmentally sensitive areas, provide adequate parking, create 274 residential units, and take into consideration quality of life issues for future residents by providing open space and passive recreation areas.

The need for adequate open space and recreation areas should not be glossed over as it relates to the quality of life for existing and future residents. To quote Shirley Bishop, the former executive director of COAH in Round 2, in her report on the Roseland Borough Vacant Land Adjustment:

*“On a more common sense and practical level, even more active recreation will be needed in the future for the additional families with children that are expected to reside in Roseland because of the various new affordable housing family developments that will be part of the Borough’s Round Three Affordable Housing Plan.”<sup>11</sup>*

Similarly, in Dr. David Kinsey’s Report to Honorable Joseph P. Quinn, Dr. Kinsey addresses the significant role open space plays to contributing to a resident’s quality of life:

*“It is this open green area, 250 feet wide between buildings, and free from motor vehicles, that gives these apartments its open feeling and presumably contributes significantly to making this complex a desirable place to live. Eliminating this open space would eliminate an important attribute and amenity of the apartment complex.”<sup>12</sup>*

While this statement referred to the potential removal of existing open space currently used by an existing development, to be replaced with a 32 unit project, Dr. Kinsey also addressed within the same report what the impact would be on the future residents of the same 32 unit project:

*“What is missing is appropriate consideration for the open space and recreation needs of future residents. What is missing is sound planning.”<sup>13</sup>*

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<sup>11</sup> Report on the Roseland Borough Vacant Land Adjustment Evaluation of the Court Master, prepared by Shirley Bishop, P.P., dated August 13, 2018. p. 3

<sup>12</sup> Letter from David N. Kinsey, Phd, P.P. to Honorable Joseph P. Quinn, J.S.C., dated December 1, 2005, p. 12

<sup>13</sup>Letter from David N. Kinsey, Phd, P.P. to Honorable Joseph P. Quinn, J.S.C., dated December 1, 2005, p. 20

Sound planning, which takes into consideration the impact of potential projects on the quality of life existing and future residents is critical to evaluating any project. It is for this same reason that the density of the site should be limited to the previously disturbed areas of the site, and that any project for this site should address the open space needs of future residents.

### ***C. Evaluation of 800 Sylvan's 600-unit Proposal***

It is my opinion that the 600-unit plan submitted by 800 Sylvan is not an example of sound planning principles, and instead is an example of overdevelopment of the property. The proposed 600-unit project which would leave little to no usable outdoor open space, require the clear cutting of 60 to 80 foot tall mature trees, and would require the filling in and destruction of freshwater wetlands and wetland transition areas, which have been identified by the Department of Environmental Protection as providing some of the most highly diverse and critical habitats for native plants and species in New Jersey.

Exhibit C shows the proposed 600 unit project which was submitted by defendant-intervenor 800 who seeks to redevelop 20 acres of Block 910, Lot 1 for inclusionary development at 30 units per acre on 20 acres which would yield 600 residential unit project. In order to generate 20 acres for redevelopment, the proposed subdivision line was placed on the northern building wall of the 157,411 square foot building which is set to remain on the southern portion of the property. This Exhibit includes mark-ups which highlight how this project is an example of overdevelopment which are summarized below:

First, there is not sufficient separation between the existing research and development facility which is set to remain and the proposed residential use. The plan for the proposed 600-unit residential project proposes a 0 foot setback line from the research and development facility to the proposed residential use. In addition to having no setback, there is no buffer between these two uses, and the proposed project even locates the parking to support the research and development facility within the residential use. Suggesting that it is appropriate for a research and development use which permits the study, research, and experimentation in fields such as life sciences, biomedical research, chemistry, and medicine, which pose a potential for hazardous materials and or byproducts, should not be buffered from proposed residential uses, and should even share a parking area is bad planning.

Second, the proposed project does not provide for sufficient open space for the 1,300 residents a 600-unit project would likely generate. The proposed project includes excessive building and asphalt surface parking lot coverage and the proposed building is only setback ten feet in the northern portion of the site in two locations. Further, the proposed project would involve the disturbance of steep slopes and mature forested vegetation. While some of the existing forested vegetation is to remain based on the 600-unit plan, it does not satisfy the open space needs of the future residents, needs which have been detailed by Dr. Kinsey in his reports for the Township of Wall's compliance plan. These areas are wooded and incredibly steep and do not lend themselves to function as a recreation area for future residents. These areas are wooded and incredibly steep and do not lend themselves to function as a recreation area for future residents. Similarly, the location of a school across the street from the 800 Sylvan site is irrelevant when evaluating adequate open space and recreation areas. Schools have become some of the most secure locations in municipalities, and are often times not available for use by anyone other than students during school hours, unless written permission is received from the principal. Therefore, it is my opinion that the school across the street cannot be used to address the open space and recreation needs of the future residents of 800 Sylvan Avenue.

The last summarized point of Exhibit C is height. The proposed project would include a range of heights due to the topography of the site. These heights range from as low as 50 feet and approximately 5 stories to as high as 66 feet and approximately 6 to 7 stories. This height is significantly out of character which the surrounding properties, including the existing research and development facility which is only 2 and 3 stories.

3D renderings included in Exhibits E and F of this report further demonstrate that overdevelopment occurs when the RDP is established on an area greater than the limits of the proposed development.

These 3D renderings show the 600 residential unit project which was generated based on the density of 30 units an acre over 20 acres, but is only concentrated in one area. Therefore, the developed area within the 3D renderings is actually constructed at a density significantly higher than 30 units per acre. These 3D renderings show overdevelopment which is substantially out of character with the surrounding area, including the existing 157,411 square foot building located on the southern portion of 800 Sylvan Avenue, and further emphasizes that at higher densities, the area evaluated for RDP purposed should not include areas which will not be and should not be developed.

These exhibits further demonstrate that site plan issues should be taken into consideration when examining a project of this magnitude. The 600-unit plan which is based on 30 units per acre over 20 acres, does not take into consideration that portions of the property are significantly encumbered by wetlands, wetland transition areas, and steep slopes which make portions of the property undevelopable. This plan also does not take into consideration other threshold planning issues which need to be taken into consideration, like open space, nearby commercial areas, and amenities, for large scale residential projects which result from an assigned density of 30 unit per acre.

In addition to the characteristics of Block 910, Lot 1, the surrounding neighborhood needs to be examined to determine if a proposed residential unit total is appropriate for the area. Exhibit B shows the location of the 800 Sylvan Avenue site as it relates to surrounding zones and the nearest commercial corridor for goods and services. The proposed project is virtually isolated from amenities and community resources within walking distance from the site, and thus, there needs to be some consideration for the potential residents, and their safety, needs, and quality of life.

## **V. CONCLUSION**

For all of the above sound planning principles, I believe my recommendation that for the purposes of calculating an RDP on the 800 Sylvan Avenue property, that the site can reasonably accommodate 274 residential units, which with a 20% set aside results in an RDP of 54.8, or 55 units.

**EXHIBIT A**

**AERIAL MAP OF 800 SYLVAN SURROUNDING RESOURCES, ENGLEWOOD CLIFFS**

City of Englewood  
Bergen County



0.5 mile buffer

0.25 mile buffer

Nearest Commercial Corridor



**HARBOR CONSULTANTS**  
ENGINEERS, PLANNERS & SURVEYORS  
320 NORTH AVENUE EAST  
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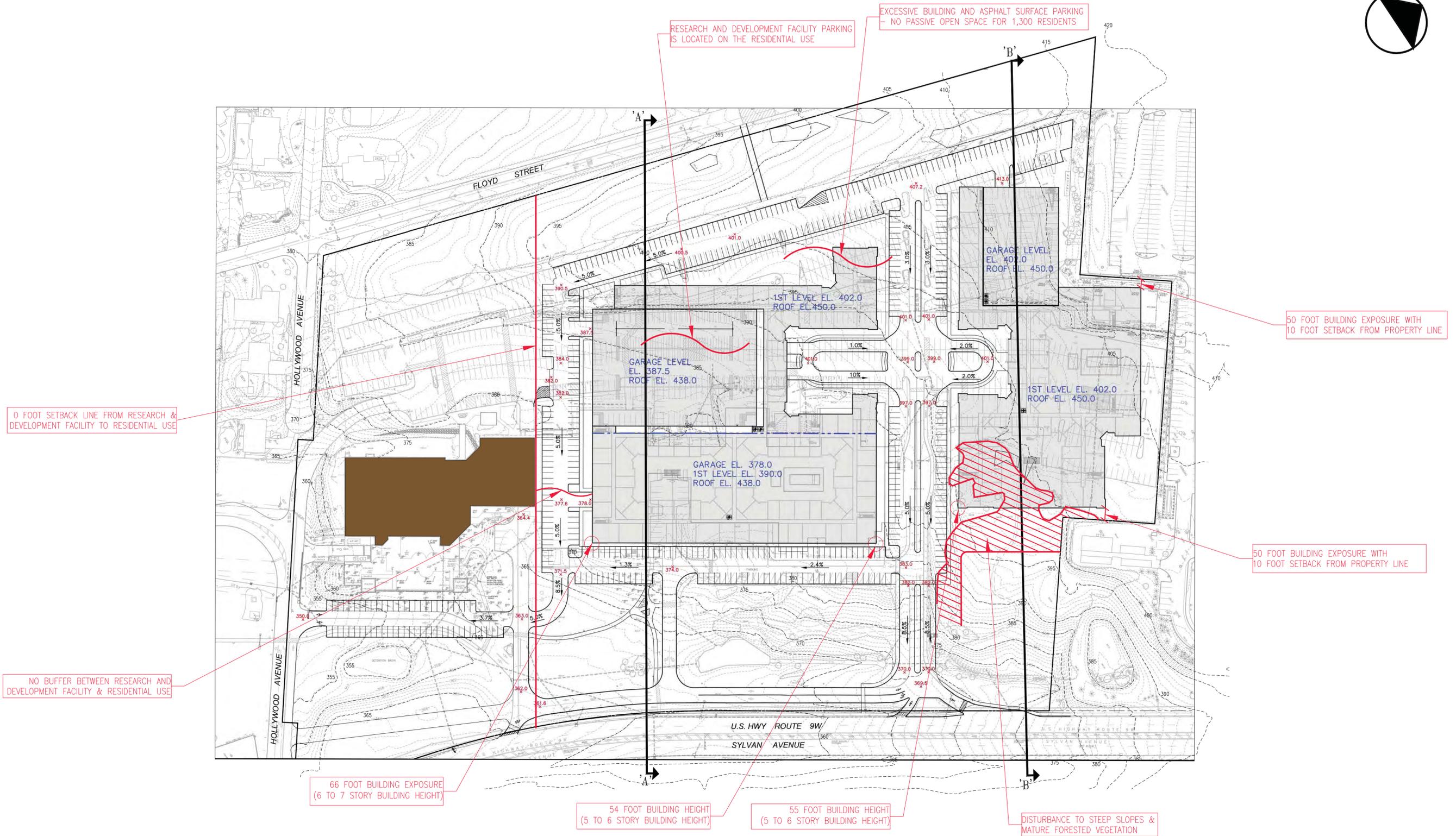
**EXHIBIT B**

**CONCEPT ANALYSIS OF 800 SYLVAN AVENUE, PREPARED BY HARBOR CONSULTANTS,  
DATED DECEMBER 6, 2018**



**EXHIBIT C**

**800 SYLVAN 600-UNIT REDLINED CONCEPT PLAN ON SURVEY, PREPARED BY HARBOR  
CONSULTANTS, DATED JUNE 26, 2018**



Harbor Consultants Inc.

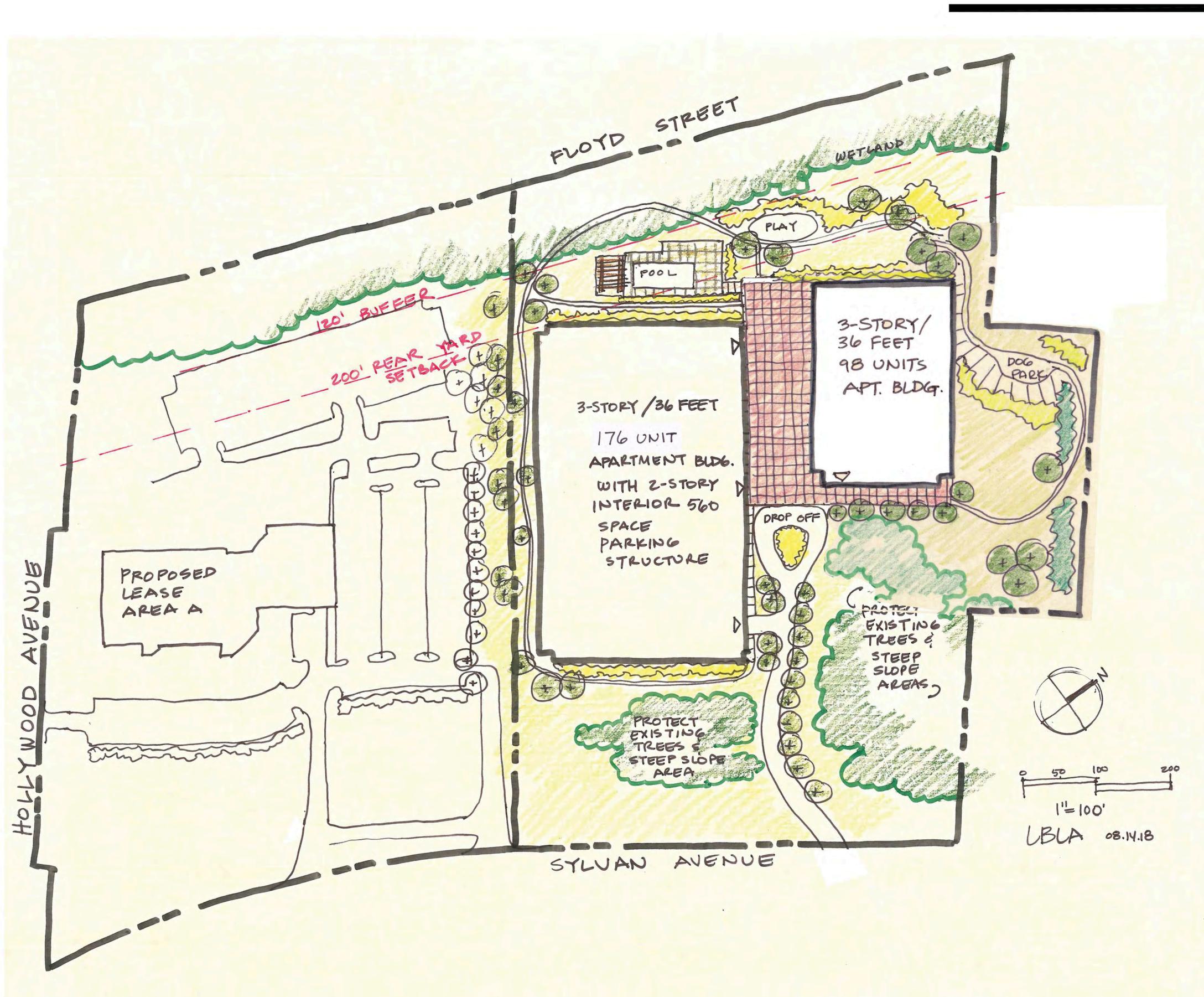
ENGINEERS, PLANNERS & SURVEYORS

800 SYLVAN AVENUE, BOROUGH OF ENGLEWOOD CLIFFS, NEW JERSEY

JUNE 26, 2018

**EXHIBIT D**

**RDP ANALYSIS OF 800 SYLVAN AVENUE – 274 UNIT CONCEPT PLAN, PREPARED BY  
HARBOR CONSULTANTS, DATED AUGUST 15, 2018**



UBLA 08.14.18

**EXHIBIT E**

**AERIAL VIEW OF 3D RENDERING OF 800 SYLVAN AVENUE, PREPARED BY HARBOR  
CONSULTANTS, DATED AUGUST 15, 2018**



Harbor Consultants Inc.

ENGINEERS, PLANNERS & SURVEYORS

AERIAL VIEW OF 800 SYLVAN AVENUE

BOROUGH OF ENGLEWOOD CLIFFS, NEW JERSEY

AUGUST 15, 2018

**EXHIBIT F**

**STREET VIEW OF 3D RENDERING 800 SYLVAN AVENUE, PREPARED BY HARBOR  
CONSULTANTS, DATED AUGUST 15, 2018**



Harbor Consultants Inc.

ENGINEERS, PLANNERS & SURVEYORS

STREET VIEW OF 800 SYLVAN AVENUE

BOROUGH OF ENGLEWOOD CLIFFS, NEW JERSEY

AUGUST 15, 2018

**EXHBIT G**

**IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF MAHWAH, PLAINTIFF/PETITIONER**  
**DOCKET NO.:BER-L-6281-15, PRELIMINARY JUDGMENT OF COMPLIANCE AND REPOSE**

FILED

JUL 10 2018

CHRISTINE A. FARRINGTON,  
J.S.C.

Prepared by the Court

In the Matter of the Application of the  
Township of Mahwah,  
Plaintiff/Petitioner

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY

DOCKET NO.: BER-L-6281-15

Civil Action

PRELIMINARY JUDGMENT OF  
COMPLIANCE AND REPOSE

This matter came before the court on July 10, 2018 for a hearing to determine the fairness of a settlement agreement (“Fairness Hearing”) between the Township of Mahwah and Fair Share Housing Center (FSHC) and Intervenors Crossroads Developer Associates and Garden Crossroads. The scope of the hearing also included a preliminary determination of the sufficiency of Mahwah’s Third Round Housing Element and Fair Share Plan. The court’s function at a Fairness Hearing is to determine whether the settlement between the Township of Mahwah, FSHC and Crossroad Developers Associates and Garden Crossroads, LLC and John Merrill is fair to the protected class in the context of meeting Mahwah’s constitutional requirement to provide affordable housing. According to New Jersey’s Constitution, municipalities must provide opportunities for the development of affordable housing for low and moderate income households, and that is the perspective from which the court must determine fairness, i.e. from the perspective of people with low and moderate income, and their opportunity to have affordable housing.

Present for the hearing were Michael P. Bolan, court appointed Special Master, Brian Chewcaskie, Esq., and Nylema Nabbie, Esq., Gittleman, Muhlstock and

Chewcaskie, LLP appearing on behalf of the Township and Joshua D. Bauers, on behalf of Fair Share Housing Commission. Also appearing were Robert Kasuba, Esq., Bisgaier Hoff, on behalf of Interveners, Crossroads Developer Associates and Garden Crossroads, LLC, and objector, Mahwah Town Center Redevelopers, LLC by their counsel, Bryan D. Plocker, Esq., Hutt and Shimanowitz, presenting testimony of their planner, J. Creigh Rahenkamp, NJPP.

Marked for identification and ultimately into evidence without objection were the following:

P-1 Crossroads Project Settlement Agreement

P-2 Letter dated May 14, 2018 memorializing Settlement between the Township and FSHC

P-3 Settlement Agreement Between the Township of Mahwah, John A. Merrill and Gary Montroy

P-4 Mahwah Township Resolution #257-18 dated May 31, 2018

P-5 Mahwah Township Resolution #163-18 dated March 12, 2018

P-6 Mahwah Township Resolution #258-18 dated May 31, 2018

P-7 Affidavit of Service of Nylema Nabbie, Esq.

P-8 Affidavit of Service of Carol Janelli

P-9 Notice of Motion to Approve the Township of Mahwah's Amended Spending Plan

P-10 Certification of Darlene A. Green, PP, AICP dated June 5, 2018

P-11 Certification of Tom Toronto dated June 5, 2018

P-12 2018 Affordable Housing Trust Fund Spending Plan, Township of Mahwah

P-13 Case Management Order of June 19, 20189

P-14 Letter from Nylema Nabbie, Esq., to all parties advising of adjourned date

P-15 Map of Affordable Housing Sites prepared by Maser Consulting

P-16 Map of Vacant Lands prepared by Maser Consulting

O-1 Review of Proposed Settlement Agreement Mahwah Township by J. Creigh  
Rahenkamp, NJPP

C-1 Report of Michael P. Bolan, AICP, PP

The Township of Mahwah by and through its attorney, Mr. Chewcaskie called Darlene A. Green, PP/AICP and the Township Planner to explain the basis for Mahwah's proposed Third Round Housing Element and Fair Share Plan. Ms. Green has a Bachelor of Arts in Architecture from Lehigh University and a Masters from Rutgers University in City and Regional Planning. Ms. Green is a senior associate planner with Maser Consulting, P.A. Ms. Green is licensed planner in State of New Jersey. Ms. Green has been a planner since 2007 and Mahwah's Planner since 2014. She has prepared or overseen 13 housing plans. In addition to the Township of Mahwah, Ms. Green plans for Demarest, Hillsdale, Northvale, and other towns in Bergen County. The court accepted Ms. Green as an expert in planning and affordable housing. Ms. Green testified regarding the Fair Share Agreement. Pursuant to the terms of the Agreement, the Township's obligations include a rehabilitation share of 7 units, prior round obligation of 350 and third round, including gap period present need and prospective of 830. Rehabilitation and third round numbers were generated by David N. Kinsey, Ph.D., PP, FAICP, New Jersey Low and Moderate Income Housing Obligations for 1999-2025 Calculated using the New Jersey COAH Prior Round (1987-1999) Methodology, July

2016. The Agreement stipulates that the Township does not accept the basis of the methodology nor the calculations proffered by Dr. Kinsey. Ms. Green testified and the Agreement provides the Township will meet its rehabilitation share with two homes completed by the Bergen County Home Improvement Program (BCHIP) in 2012, an additional two the Township intends to complete with assistance from BCHIP and three rehabilitations to be accomplished with at least \$30,000 from its affordable housing trust fund. The Prior Round Obligation of 350 units have been met with the units included in the Table of Prior Round Credits on Page 3 of the Agreement and P-15. The Township pursuant to the Agreement, and with consent of FSHC, is receiving credits for group homes. The Township has roughly 850 units of credit which have either been build or will be built. Under terms of settlement the gap need cannot be adjusted upward, but can be adjusted downward if there is a binding court determination in Region 1, or legislative action which reduces the number by 10%

Significant to the court's decision is the Township's participation in the Highlands Area which participation imposes further restrictions and conditions on development in the designated area. A significant portion of the Township in preservation area. The Fair Housing act requires a community in Highlands to have 20% set aside, which requirement the Township has agreed to codify in Township ordinances.

Ms. Green testified that Maser Consulting prepared a vacant land adjustment in 2015 to comply with the six month deadline set by the Supreme Court. P-16 is the vacant land inventory completed November 9, 2015. This first generation of vacant land analysis and was prepared under prior round rules. The Realistic Development Potential (RDP) was determined to be 37 units.

Thereafter, Ms. Green testified she participated in mediation sessions with the Special Master, and was directed by Mr. Bolan to add the Crossroads site as well as 440 Franklin Turnpike. Those additions added 163 units to the vacant land analysis. Ultimately, the RDP was calculated to be 250 units. The Township will satisfy its Third Round RDP of 250 as set forth in the Third Round RDP Table on page 3 of the Agreement.

Ms. Green testified that the Third Round Obligation of 830, minus the completed, on-the-ground credits allocated to the RDP and Unmet Need (585) resulted in a remaining unmet need of 245. Those units are addressed as set forth in the Third Round Unmet Need Table on Page 4 of the Agreement.

Ms. Green testified the RDP was calculated using the vacant properties, deducting environmental constrained areas, and then multiplying by 8 units per acre, followed by a calculation of the 20% set aside. Ms. Green admitted the rules permit higher and lower densities. She testified 8 units per acre density has been accepted in other municipalities where she serves as planner.

Ms. Green testified that the Mahwah MTCR site is proposed to be overlay zone for mixed uses. A total of 49 residential units would be permitted on the site generating 10 affordable residential units. The rezoning allocated 14 units to the acre and 30,000 square feet of non-residential space. Historically the Township had maximum of 14 units per acre. Ms. Green was not aware of any sites within the Township which had been developed with more than 14 units per acre.

Ms. Green testified that with regard to Crossroads, the Township was working on rezoning and amending the Master Plan amendment, to permit maximum of 800 residential units with 15% set aside.

One Fyke Road is also known as the Merrill property. Merrill would be rezoned for maximum of 42 units with a 20% set aside. The Merrill property is in the Highlands area.

Ms. Green testified that she is familiar with the tests set forth in the E.W. Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 336 (App. Div. 1996) (quoting N.J.S.A. 52:27D-311). In her opinion the settlement meets the requirements set forth in that case.

Mr. Plocker inquired on cross examination, the dates of construction of Society Hill I and II, Ramapo Brae, Norfolk, Franklin Heights and West Bergen Mental Health. It was established that all were constructed in or before 1995. Ms. Green testified that Madeline Rental and Senior units obtained their certificate of occupancy in 2016.

In response to questioning by Mr. Plocker, Ms. Green testified that Mahwah MTCR is not the contract purchaser for the entire tract on which their proposed project was to be built. She testified that fact figured into the Township's deliberations. Ms. Green noted that the site was not included in the RDP because it is not vacant. She stated no analysis was done specific to the MTCR site in setting the 14 unit per acre density. Ms. Green noted a chief difficulty of the site is the inability to accommodate on site the required number of parking spaces.

Ms. Green responded to questions regarding the Township's efforts to extend existing controls on affordable house. She testified the control expire at different times, and some have already expired. She testified the Township is engaging in outreach to

extend the controls on 20 additional units, having extended controls on 12 units to date. The Township would pay for the extension of controls by way of incentives.

Ms. Green testified the actual number for unmet need is 193.

Ms. Green testified that it is her understanding that group homes are eligible for credits. She further stated that she had dealt with New Concepts in other municipalities where she was planner and those units were accepted for credits.

Mr. Plocker called Creigh Rahenkamp, PP on behalf of the objector. Mr. Rahenkamp's report was marked into evidence as O-1 with an amended page 9. Mr. Rahenkamp holds a B.S. in Economics from the University of Pennsylvania and has done graduate work at the universities of Michigan, Wisconsin, Princeton, Temple and Georgetown. He has been a licensed planner in New Jersey since 1995. The court accepted him as an expert in planning and affordable housing without objection.

Mr. Rahenkamp testified that his client's property is 3.12 acres, adjacent to a train station and historically has had mixed uses, including retail. The property is located in the B-10 zone which permits commercial uses. He noted the proposed zoning ordinance would allow 30,000 square feet of commercial space and 40 residential units of which 4 would be affordable. Mr. Rahenkamp testified that the proposed development would fit within the same bulk requirements of the zone. It was his opinion that that the density of 14 units per acre was inappropriate in the location as train station locale densities are typically 30-40 units per acre. He further opined that the Township was engaging in "Magic Compliance" by setting the RDP low, and then generating credits by land which was "ignored." He testified that carry-overs should not be included in the RDP if previously constructed, as its not part of the statutory or regulatory framework. He stated

credits need to be applied in the era in which they occurred. He further opined that special needs housing could not be a compliance mechanism. Mr. Rahenkamp concluded that the unmet need was 208 units, but whether the court accepted his number or the Township's, the Settlement Agreement should not be approved because the unmet need must be addressed and is not forgiven. Mr. Rahenkamp testified MTCR and the Fyke property should be included in the vacant land adjustment and in doing so the RDP would increase. He further testified that the Township erred in using net as opposed to gross analysis of the VLA. As a result of the unmet need, and his perceived deficiencies in the Township's calculation, he opined that the Settlement Agreement was not fair to the protected class. On cross examination, Mr. Rahenkamp admitted that if his client was unable to assemble to total land package shown in the development plan the plan would change. He further admitted the proposed parking was not in compliance with B-10 zone requirements and the proposed parking included street parking which was prohibited on Franklin Turnpike. He admitted that his client did not seek to be included in the Settlement Agreement until December 2017, two years after the declaratory judgment action had been commenced. (The parties stipulated MTCR went into contract on 3.52 acres in Block 82, lots 1, 3, 17, 26, 29, and 30 on December 8, 2017)

Mr. Rahenkamp admitted that the VLA is a snapshot in time and was prepared prior to MTCR's participation and so the reason MTCR was not included therein.

With regard to the train station, Mr. Rahenkamp admitted NJ Transit does not own any land in the vicinity of the Mahwah Township train station, and there was no parking for the station. He admitted that transit villages is a planning concept which

generally includes mixed use, higher density, proximity to the train and significant commuter parking.

On cross examination it was unclear to the court whether Mr. Rahenkamp knew or acknowledged that part of MTCR's property was in a Highlands riparian and open water areas. Mr. Rahenkamp could not name any municipality with developments near train stations with densities of 30 units per acre.

He admitted on cross examination that MTCR was proposing 200 units on 3 ½ acres which would result in a density of 66. He admitted there were no developments in Mahwah which had densities higher than 15 units per acre.

The court appointed Master, Michael P. Bolan, AICP, PP testified. He has been practicing in New Jersey for almost 40 years. He graduated from the University of Virginia in 1972, B.A. Environmental Science, and holds a M.A. in Geography from Rutgers University, 1977. Mr. Bolan is a licensed professional planner in New Jersey, a member of the American Institute of Certified Planners and the American Planning Association. He is the court appointed master in twelve Bergen County municipalities as well as numerous others throughout the state. For the past thirty years he has been a private consultant providing planning services to municipalities, other public clients and the private sector.

Mr. Bolan testified he applied the East /West Venture criteria, because although in that case the plaintiff was a builder as opposed to a Township, the case provides a good framework to determine whether the interests of the protected class are adequately protected.

Mr. Bolan opined the Agreements provide for a substantial amount of affordable housing and meets criteria in East /West Venture.

Applying the five point test he found: 1. *The number of units being developed:* In this case, there are no affordable units being constructed by FSHC as the intervener/defendant. However, a result of the Settlement Agreement(s) is the plaintiff Township's adoption of zoning and other mechanisms to provide for affordable housing, and the Township's compliance with the constitutional obligation to provide its fair share of the regional need for low and moderate income housing. In addition, there is still some uncertainty concerning the methodology that might ultimately be used to establish affordable housing obligations, as the March 8, 2018 opinion concerning the fair share methodology from the Honorable Mary C. Jacobson, the Mercer County Assignment Judge, applies in a different Vicinage. Given that this Court's approval of a settlement is not an adjudication of the fair share obligation, the number of affordable housing units addressed in the settlement is reasonable and substantial. Mr. Bolan opined Township followed the former rules for vacant land adjustment and followed the prior round methodology as directed by the Supreme Court.

2. *The methodology by which the number of affordable units provided is derived.* The adjustment for insufficient vacant developable land was undertaken in accordance with COAH's Prior Round Rules, at N.J.A.C. 5:93-4.1 and 4.2. The methodology utilized in the Kinsey Report to calculate Third Round new construction obligations was designed to follow the Prior Round methodology used by COAH in 1994 to determine cumulative 1987-1999 fair share obligations as closely as possible, as directed by the Supreme Court in Mt. Laurel IV. Currently, there is no statewide agreed to methodology, and the FSHC

methodology has been utilized in over 200 settlements throughout the State. The FSHC has agreed to reductions from its published allocations of up to 40% in other vicinages, as opposed to the 35% incorporated here. Mr. Bolan concluded the methodology by which the number of affordable units provided is derived is valid and realistic.

3. ***Other contributions by the developer.*** This prong of the East/West Venture test originally applied to a plaintiff/developer. In this case the plaintiff/Township has agreed to the following:

- agreement to adopt a compliant Housing Element and Fair Share Plan and all implementing ordinances;
- agreement to adopt a mandatory set-aside ordinance;
- agreement to adopt inclusionary zoning;
- agreement to utilize a Township-owned property for affordable housing;
- agreement that 13% of affordable units shall be for very low income households;
- agreement that at least 25% of the Third Round Prospective Need shall be rental units;
- agreement that at least 50% of rental units shall be available to families;
- agreement that at least 50% of all affordable units addressing the Third Round Prospective Need shall be available to families;
- agreement to an age-restricted cap of 25% of affordable units;
- agreement that at least 50% of units shall be available to very low income and low income households;
- agreement to comply with the requirements of UHAC;
- agreement to adopt a spending plan; and,

- agreement to pay \$20,000 to FSHC for attorneys fees and costs
4. *Other components of the Agreement that contribute to the satisfaction of the constitutional obligation.* The Township further agrees to take the steps necessary to amend and implement its Housing Element and Fair Share Plan in accordance with the terms of the settlement agreement and the zoning contemplated by the Agreement. The Township has agreed to adopt inclusionary housing zones and to utilize a Township-owned property for affordable housing. The Township has further agreed to adopt an affordable housing set-aside ordinance. The Township has provided funding to write down the cost of affordable units, and is proposing additional funding to write down the cost of low income units.
5. *Other factors that may be relevant to the fairness of the settlement.* The Agreement provides for a continuing monitoring program throughout its ten-year duration, including annual and triennial reporting requirements. This program will ensure that the interests of lower income households in the future will be advanced through the Court's approval. Mr. Bolan noted the Township has been a consistently good provider of affordable housing throughout the years, as evidenced by the 585 completed credits for the Third Round Obligation and the 350 completed credits for the Prior Round outlined in the FSHC Settlement Agreement. Mr. Bolan testified and stated in his report that in his experience no municipality has provided more credits towards its unmet need. The process of obtaining the Court's approval of the Settlement Agreements, the scrutiny these documents have received as a result of the intervention by FSHC and a property owner, and the conditions contained in this report requiring the Township to adopt a

HEFSP and certain ordinance amendments will allow the Township to move forward in the satisfaction of its constitutional obligation. Lastly, the Court's approval of the settlement is subject to a final compliance hearing.

Mr. Bolan recommended that the Court approve the Settlement Agreements and grant the Township a preliminary Judgment of Compliance and Repose. He opined the Agreements are designed to implement the March 10, 2015 decision of the N.J. Supreme Court In Re N.J.A.C. 5:96 and 5:97, insofar as can be determined at this time. His recommendation was conditioned upon compliance with the following conditions to be addressed within 120 days of the Court's Order, except as noted for the Crossroads ordinance, after which a final compliance hearing will be held:

1. The Township Planning Board shall adopt and the Mayor and Council shall endorse a Housing Element and Fair Share Plan consistent with the terms of this Agreement.
2. On or before August 26, 2018, the Mayor and Council shall adopt zoning ordinance amendments for the Crossroads site, in accordance with the terms of the March 2018 Settlement Agreement, permitting a maximum of 800 units, of which a maximum of 216 units will be age-restricted, and requiring a 15% set-aside for affordable units, all of which will be rental units.
3. The Mayor and Council shall adopt zoning ordinance amendments to rezone Block 21, Lots 21, 22 and 23 (commonly known as 1 Fyke Road) to permit a maximum

of 14 units per disturbed/impervious acre with a maximum of 42 total residential units with a 20% set-aside for affordable housing.

4. The Mayor and Council shall adopt zoning ordinance amendments to rezone Block 82, Lots 1, 3 through 17, 26, 29 and 30 (Mahwah Town Center) to permit mixed-use development, including nonresidential uses and multi-family residential units at a maximum density of 14 units per acre, with a 20% set-aside for affordable housing.

5. The Township shall subdivide Block 56, Lot 74 (70 Island Road) for a municipally sponsored 15 unit 100% affordable development for family and/or special needs housing.

6. The Mayor and Council shall adopt the mandatory set-aside ordinance outlined in Paragraph 10 of the Agreement, in a form satisfactory to the FSHC and Special Master.

7. The Township shall address the requirements of N.J.A.C. 5:93-5.5 concerning municipally sponsored construction for the Madeline Corporation age-restricted project and the 70 Island Road site.

8. The Township should provide documentation concerning the units on which affordability controls have been extended. The Township should also provide a certified statement from the building inspector that the units meet all code standards.

9. The Township should provide documentation concerning the West Bergen Mental Healthcare and the two New Concepts for Living alternative living arrangements indicating that they are eligible for credit.

10. The Mayor and Council shall adopt an updated Affordable Housing Ordinance(s) incorporating all of the provisions of the Settlement Agreement, applicable provisions of UHAC and COAH rules, and any other provisions that result from the adopted Housing Element and Fair Share Plan.

11. The Mayor and Council shall endorse the Spending Plan.

12. The Mayor and Council shall prepare an Affirmative Marketing Plan incorporating the revisions outlined in the Agreement, and shall adopt a Resolution adopting the Township's Affirmative Marketing Plan.

13. The Township should provide additional information as to the Bergen County Home Improvement Program for rehabilitated units and the administrative procedures for the Township rehabilitation program.

14. The Mayor and Council shall adopt a Resolution appointing the Township's Administrative Agent to administer affordable units in accordance with the Uniform Housing Affordability Controls (UHAC, N.J.A.C. 5:80-26.1 et seq.), if it has not already done so.

15. The Mayor and Council shall appoint, if it has not already done so, a specific municipal employee as Municipal Housing Liaison responsible for administering the affordable housing program, including affordability controls, the Affirmative Marketing Plan, and monitoring and reporting.

The monitoring and reporting requirements identified in Paragraphs 19, 20 and 21 of the FSHC Settlement Agreement shall be continuing conditions of the Court's approval.

The court notes that the proper procedure for a fairness hearing has been followed in this matter to make sure that the interests of low and moderate income households have been safeguarded. See Morris Cty. Fair Hous. Council v. Booton Twp., 197 N.J. Super. 359, 371 (Law Div. 1984). Adequate public notice of the hearing was mailed to appropriate persons and published. All parties having an interest in the matter appeared on the adjourned date.

The courts notes that a municipality's affordable housing obligation is comprised of three components: 1) present need (rehabilitation); 2) prior round (1987-1999); and 3) third round prospective need which runs from July 1, 1999 to June 30, 2025. "A municipality may provide its fair share of affordable units by 'means of any technique or combination of techniques' which satisfy its Mount Laurel obligation." E.W. Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 336 (App. Div. 1996) (quoting N.J.S.A. 52:27D-311).

The Special Master's report and testimony notes that the parties to the Settlement Agreement have agreed the Borough's Present Need (rehabilitation share) Obligation is 7

units, the Prior Round Obligation is 350 and the Prospective Need is 830. These obligations were determined based upon a report prepared by David Kinsey, PP/Ph.D. on behalf of FSHC. Ms. Green provided testimony at the Fairness Hearing regarding the methods Mahwah is using to fully satisfy the present need and prior round obligations. She also testified that Mahwah has demonstrated that sufficient vacant land is not available to allow for development of all 234 third round units and that the realistic development potential for the Borough is 35 affordable units. Special Master Bolan agreed with the findings of Ms. Green.

The court is not here to act as the legislature or municipal planner and substitute its plan for where affordable housing units should be built for that of the municipality. See Morris Cty. Fair Hous. Council, supra, at 370. “[A] trial judge may approve a settlement [regarding a municipality’s Mount Laurel obligation]” after a ‘fairness’ hearing to the extent the judge is satisfied that the settlement adequately protects the interests of lower-income persons on whose behalf the affordable units proposed by the settlement are to be built.” E.W. Venture, supra at 328. The court must also consider whether the proposed settlement will result in the expedited construction of a significant number of low income housing units, Morris Cty. Fair Hous. Council, supra at 327. If the agreement is found to be fair, and the Borough fulfills its compliance obligations, then the court will order a judgment of repose.

The court holds, based upon the report and testimony of the Special Master, the testimony of the Township’s Planner, Darlene Green, the endorsement of the Settlement Agreement by Mr. Bauers on behalf of FSHC, and the exhibits marked into evidence, that the settlement agreement between the Township of Mahwah and Fair Share Housing

Center Settlement is fair to the protected class of low and moderate income persons. The court has considered the testimony of the objector and report and testimony of its expert, J. Creigh Rahenkamp. The court questions whether MTCR has standing to object, as it is not the contract purchaser of all the lots necessary to construct its proposed project. Mr. Rahenkamp admitted that the proposed project could not be constructed as represented if part of the assemblage failed. The court finds MTCR came to the table too late with too little. The court rejects MTCR's arguments urging the court refuse to approve the Settlement Agreements because it used the wrong methodology, failed to include MTCR in the VLA or included group homes as credits.

The court finds the Settlement Agreement provides for rezoning and other mechanisms which provide a realistic opportunity for achievement of the 35-unit RDP.

The Settlement Agreement between Mahwah and Fair Share Housing Center is fair because it will fully address the Borough's constitutional obligation to create a realistic opportunity for the construction of its fair share of affordable housing. The endorsement of the Settlement Agreement by the Special Master and FSHC speaks for itself. In coming to the conclusion that the Settlement Agreement is fair, the court has considered the criteria set forth in East/West Venture v. Borough of Fort Lee, *supra*, and agrees with and adopts the findings of the Special Master.

The Court approves the Settlement Agreements and grants the Township a preliminary Judgment of Compliance and Repose, as the Agreements are designed to implement the March 10, 2015 decision of the N.J. Supreme Court In Re N.J.A.C. 5:96 and 5:97, insofar as can be determined at this time. The recommended approval of the Township's Application for a Determination of Mount Laurel compliance is subject to the

following conditions, all of which should be addressed within 120 days of the Court's Order, except as noted for the Crossroads ordinance, after which a final compliance hearing will be held:

1. The Township Planning Board shall adopt and the Mayor and Council shall endorse a Housing Element and Fair Share Plan consistent with the terms of this Agreement.

2. On or before August 26, 2018, the Mayor and Council shall adopt zoning ordinance amendments for the Crossroads site, in accordance with the terms of the March 2018 Settlement Agreement, permitting a maximum of 800 units, of which a maximum of 216 units will be age-restricted, and requiring a 15% set-aside for affordable units, all of which will be rental units.

3. The Mayor and Council shall adopt zoning ordinance amendments to rezone Block 21, Lots 21, 22 and 23 (commonly known as 1 Fyke Road) to permit a maximum of 14 units per disturbed/impervious acre with a maximum of 42 total residential units with a 20% set-aside for affordable housing.

4. The Mayor and Council shall adopt zoning ordinance amendments to rezone Block 82, Lots 1, 3 through 17, 26, 29 and 30 (Mahwah Town Center(MTCR)) to permit mixed-use development, including nonresidential uses and multi-family residential units at a maximum density of 14 units per acre, with a 20% set-aside for affordable housing.

5. The Township shall subdivide Block 56, Lot 74 (70 Island Road) for a municipally sponsored 15 unit 100% affordable development for family and/or special needs housing.

6. The Mayor and Council shall adopt the mandatory set-aside ordinance outlined in Paragraph 10 of the Agreement, in a form satisfactory to the FSHC and Special Master.

7. The Township shall address the requirements of N.J.A.C. 5:93-5.5 concerning municipally sponsored construction for the Madeline Corporation age-restricted project and the 70 Island Road site.

8. The Township should provide documentation concerning the units on which affordability controls have been extended. The Township should also provide a certified statement from the building inspector that the units meet all code standards.

9. The Township should provide documentation concerning the West Bergen Mental Healthcare and the two New Concepts for Living alternative living arrangements indicating that they are eligible for credit.

10. The Mayor and Council shall adopt an updated Affordable Housing Ordinance(s) incorporating all of the provisions of the Settlement Agreement, applicable provisions of UHAC and COAH rules, and any other provisions that result from the adopted Housing Element and Fair Share Plan.

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12. The Mayor and Council shall prepare an Affirmative Marketing Plan incorporating the revisions outlined in the Agreement, and shall adopt a Resolution adopting the Township's Affirmative Marketing Plan.

13. The Township should provide additional information as to the Bergen County Home Improvement Program for rehabilitated units and the administrative procedures for the Township rehabilitation program.

14. The Mayor and Council shall adopt a Resolution appointing the Township's Administrative Agent to administer affordable units in accordance with the Uniform Housing Affordability Controls (UHAC, N.J.A.C. 5:80-26.1 et seq.), if it has not already done so.

15. The Mayor and Council shall appoint, if it has not already done so, a specific municipal employee as Municipal Housing Liaison responsible for administering the affordable housing program, including affordability controls, the Affirmative Marketing Plan, and monitoring and reporting.

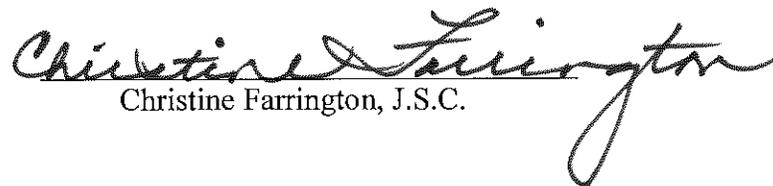
The monitoring and reporting requirements identified in Paragraphs 19, 20 and 21 of the FSHC Settlement Agreement shall be continuing conditions of the Court's approval.

If the Township of Mahwah fulfills the conditions of the settlement agreement, including the list of documents which need to be prepared and adopted by the Borough within 120 days of the court's order as set forth in the Settlement Agreement and the Special Master's report, the court will determine whether there has been compliance and make the appropriate determinations either by court order or a compliance hearing. See E.W. Venture v. Borough of Fort Lee, *supra*, at 328. At the time of the compliance hearing or entry of the compliance order, the court will determine if any of the enactments of the plan, ordinances and resolutions are ultra vires. *Id.* At 329.

The court extends immunity to November 12, 2018.

July 12, 2018

Opposed

  
Christine Farrington, J.S.C.

**EXHBIT H**

**REPORT ON THE ROSELAND BOROUGH VACANT LAND ADJUSTMENT, EVALUATION OF THE COURT  
MASTER, PREPARED BY SHIRLEY BISHOP, P.P., DATED AUGUST 13, 2018**

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REPORT ON THE ROSELAND BOROUGH

VACANT LAND ADJUSTMENT

EVALUATION OF THE COURT MASTER

Prepared by:

Shirley M. Bishop, P.P.



August 13, 2018

## **I. PROFESSIONAL EXPERIENCE**

I have a Master's Degree in City and Regional Planning from The Bloustein School at Rutgers University, which honored me as the Alumnus of the Year in 1996 and named me to the Bloustein School Hall of Fame in 2013.

I am a licensed professional planner with over 35 years of experience in the affordable housing field in both the public and private sector. I have represented both municipalities and developers. Currently, I represent 20 municipal clients of which 16 are under the jurisdiction of the Court. Of the 16, 11 have settlement agreements and/or Judgments of Compliance and Repose. I also serve as a Court Master in five municipalities. Of my current 15 municipal clients, 11 were/are the focus of Vacant Land Adjustments (VLA). Of the Court Master towns, three have/are involved with VLAs.

In addition, I was one of the original staff members of the Council on Affordable Housing (COAH) in 1986 and, more importantly, served as Executive Director of COAH from 1994 through June 2002, which coincides with the implementation of the Second Round regulations, N.J.A.C. 5:93 et seq. The Second Round regulations are the regulations typically used to prepare and review a VLA, to determine a Realistic Development Potential (RDP), and to decide how a municipality should address any remaining "unmet need".

Due to my extensive background as the Executive Director of COAH for eight years, as well as my 35 years of experience as both a Court Master and an affordable housing planner, I am extremely knowledgeable regarding all aspects of VLAs, either through my actual preparation of VLAs, or the review of same as a Court Master.

During my tenure as Executive Director of COAH, the COAH Board granted Substantive Certification to 245 municipal plans of which 58 were the recipients of VLAs as seen in Exhibit A. A copy of my resume is in Exhibit B

## **II. BACKGROUND**

In May of 2017, Joseph Layton, P.P., AICP and Daniel N. Bloch, P.P., AICP prepared a Vacant Land Analysis for the Borough of Roseland, which was released to the Court Master and all parties in the Borough's Declaratory Judgment Action, which was filed in July of 2015 in response to the Supreme Court's Mount Laurel IV decision. In February of 2015, Art Bernard, P.P. issued a report on behalf of intervenor/developer Rebuilding Green Services ("RGS"). On May 18, 2018 Joseph Layton, P.P. AICP and Daniel Bloch, P.P., AICP issued a report addressing the issues raised by Mr. Bernard. On June 19, 2018, Mr. Bernard issued a supplemental report, which was followed by a report issued by Fair Share Housing Center ("FSHC") on June 21, 2018. On July 2, 2018, the Borough responded to both Mr. Bernard and FSHC. On July 10, 2018, the Court Master, Elizabeth McManus, P.P., AICP submitted an Evaluation of Roseland Borough's VLA, in which she asked the Borough to revise its Vacant Land Analysis and address her issues and concerns. I have thoroughly reviewed all of the above reports, and I am submitting this Report to explain some of the changes the Borough has made to its Vacant Land Analysis. The Borough's revised Vacant Land Analysis will be submitted simultaneously with this Report.

### III. ACCEPTED CALCULATIONS

In her July 10, 2018 report, the Court Master accepted the Borough's RDP calculations for the following sites:

**Block 34, Lot 4.** The Court Master agreed with the Borough that the steep slopes portion of this site should not be included in the RDP calculation, but accidentally miscalculated the remaining developable acreage to be 4.6 acres, when there are actually only 3.86 acres that are developable on this site. This results in an RDP of 6 for the site, not 7.36 as indicated in the Court Master's report. The Borough has corrected this miscalculation in its revised Vacant Land Analysis. See July 10, 2018 Court Master's report at Pages 2-4.

**Block 12, Lots 2 through 22.3.** The Court Master agreed with the Borough that no RDP should be generated for this site (the "Fernwood Site") as it was acquired by the Borough for active recreation purposes, and the Borough is still below the 3% land preserved for active recreation limit. Id. at Pages 4-5. The Court Master also agreed with the Borough that County controlled lands should not be subject to the 3% limitation. Id. at Page 4.

**Block 51, Lot 3.** The Court Master agreed with the Borough that no RDP should be generated for this site because of the small size of the site and its location within a single family neighborhood. Id. at Page 5. In addition, it has recently been developed with a single family home.

**Block 13, Lot 54.** The Court Master agreed with the Borough that the site should not generate any RDP because it is owned by a neighboring municipality, has limited access and has water pump facilities on-site. Ibid.

**Block 12, Lot 200.** The Court Master agreed with the Borough that no RDP should be assigned to this site due to the Borough's documented purpose of acquiring the site for active recreation purposes, which is still below 3% in the Borough. Id. at Pages 5-6. She also indicated that the site should not generate an RDP "due to its lack of suitability pursuant to N.J.A.C. 5:93-4.2(e)6 for residential development due to the lack of access, site configuration and presence of the fiber optic cable." Id. at Page 6.

**Block 12, Lot 3.** The Borough accepts the Court Master's determination that this site has 6.9 developable acres, not 5.95 acres, and has adjusted the RDP accordingly.

### IV. SITES/ISSUES IN CONTENTION

As to the remaining sites in question regarding the establishment of an RDP, the Borough has the following comments regarding how to address the Court Master's issues and concerns:

#### **A. Open Space Acquisition:**

After FSHC accused the Borough of purchasing open space since it received Round Two substantive certification to frustrate the provision of affordable housing, the Court Master asked that any such open space sites should be identified and that the Borough should indicate how the RDP should be adjusted as a result. The bottom line is that other than the Fernwood site, (Block 12 , Lots 22 through 22.3) which is discussed above and was properly excluded from generating an RDP as it will be used for active recreation and the Borough is well under the 3% active recreation cap, no other such open space sites have been acquired by the Borough since it received Round Two Substantive Certification. Accordingly, there is no increase in the Borough's RDP. Indeed, the Borough, which was one of the few Essex County towns that received both First and Second Round substantive certification, is/was lacking active recreational use sites, as is documented in the Borough's revised VLA.

Roseland has/will follow the requirements outlined in N.J.A.C. 5:93- 4.2(e)4. and 5. regarding the Fernwood site, which is the one and only tract of land that was purchased for active recreation. COAH regulations clearly permit a municipality to reserve a total of three percent (3%) of its developed and developable acreage for active municipal recreation, and exclude this acreage from consideration as a potential site for low and moderate income housing, N.J.A.C. 5:93 – 4.2(e)4.i. The Fernwood site was purchased in 2014, and will be limited to active recreational purposes within one year of Roseland's receiving a Judgment of Compliance and Repose.

There is no COAH regulation that **requires** a municipality with a VLA to utilize available land that comes on the market **only** for affordable housing. That would be inconsistent with COAH's regulation of permitting up to three percent (3%) for active recreation and three percent (3%) for passive recreation.

On a more common sense and practical level, even more active recreation will be needed in the future for the additional families with children that are expected to reside in Roseland because of the various new affordable housing family developments that will be part of the Borough's Round Three Affordable Housing Plan.

Indeed, COAH and Mount Laurel jurisprudence, have always encouraged the construction of affordable housing to work hand in hand with sound land use planning to ensure that a balance is always maintained between the constitutional mandate to provide affordable housing and the equally important principle that the rules of sound land use planning are also followed. Permitting a municipality to reserve three percent (3%) of its developed and developable acreage for active recreation uses contributes to the physical health and well-being of a municipality's residents, which of course includes a municipality's low and moderate income households.

**To reiterate and conclude, since there has been no additional open space acquisition since the Second Round substantive certification other than the Fernwood site; and since the Fernwood site does not generate an RDP, there is no need to adjust the Borough's RDP.**

**B. K&K/Bobst Site (Block 12, Lot 24.5):**

Since the Borough is settling with K&K on its site, the Borough has set the density in its updated Vacant Land Analysis to calculate the RDP for the site at 10.7 units per acre, instead of the Court Master's recommended density of 12 units per acre, since 10.7 units per acre is the density that has been agreed upon in principal between the Borough and K&K. A written settlement agreement that includes this density is currently being negotiated between K&K and the Borough. Courts have approved settlements using an RDP based upon the number of affordable units that a site generates. Therefore, it is not credible to dispute that the RDP for the K&K site should be project based. If the Borough settles with Bobst, that project will also be set at 10.7 units per acre, so the entire site should be set at 10.7 units per acre.

**C. Rebuilding Green (Block 12, Lots 14 Through 16):**

After further evaluation, the Borough accepts eight acres as the number of developable acres for the Rebuilding Green Services (RGS) site, but I must respectfully disagree with the Court Master's proposed 12 du/acre. I believe that a density of 8 du/acre is appropriate for the following principled reasons.

The Court Master notes in her June 10, 2018 report on Page 7 that Lot 16 (which is part of the RGS site), and is approximately two acres, was included in the Borough's 1988 vacant land adjustment at 6 du/acre. The remainder of the roughly eight acres of developable land is part of the same tract that RGS is proposing for development and that COAH deemed could reasonably be developed at a density of 6 du/acre. Thus, the COAH standards that RGS's expert professes to follow calls for densities of 6 du/acre. Under the circumstances, the 8 du/acre density the Borough accepts for purposes of generating an RDP for this site is generous. However, the 12 du/acre the Master recommends is double the density that COAH deemed appropriate and is thus excessive.

First and most importantly, we must give great weight to, and seriously consider, COAH's previous decision regarding the RDP density to be calculated on a portion of this site. The Supreme Court made it clear in Mount Laurel III that a Court was to "conform wherever possible to the decisions, criteria, and guidelines of the Council" COAH. Mount Laurel III at 63. Moreover, the Supreme Court stated in Mount Laurel IV that a Court's role "is not to become a replacement agency for COAH" and that "it is not the Court's province to create an alternate form of statewide administrative decision making for any unresolved policy details of replacement Third Round Rules..." Mount Laurel IV at 29.

Here, COAH made the "decision" that the calculation of the RDP density on a portion of the RGS site should be set at 6 du/acre. Since the rest of the site is part of the same tract in the Borough and which RGS is proposing as one site, there is a strong argument that the RDP density for the entire 8 acre site should be set at 6 du/acre.

Indeed, COAH logically set the density at 6 du/acre because the RGS site has single family neighborhoods on the west and north sides, and a school to the South. While there is a Townhouse development to the northeast of the site, the Court Master cites a density of 10 du/acre for the

Townhouse development, but then inexplicably sets the density for the RGS site at 12 du/acre. See Court Master’s July 10, 2018 Report at Page 7. COAH was following its own Second Round regulation that in order for a site to be considered “suitable” for the development of affordable housing, it has to be compatible with surrounding land uses. See the definition of “suitable” in N.J.A.C. 5:93-1.3. The 12 du/acre for the RGS site is too dense for the neighborhood in which it is located and is not compatible with surrounding land uses.

A modest increase in density from six to eight perhaps could be justified. However, doubling the density COAH itself deemed appropriate from six to twelve is excessive.

**D. JMF Site (Block 21, Lots 22 and 22.01):**

Originally, JMF proposed a 160-unit residential development complex with 32 affordable units. However, on June 7, 2018, JMF proposed 108 market rate units, a six-unit ARC building and 20 units of affordable family rental apartments. I agree with the lower density proposed by JMF since there are single family homes to the south and vacant land to the east. Because of the adjacent single family neighborhood, and for consistency with the settlement in principal on the K&K/Bobst site, I believe that the density for the JMF site should be set at 10.7 du/acre, not the 12 du/acre recommended by the Court Master.

**E. Sites From Previous Vacant Land Adjustments**

In Roseland’s 1995 VLA, the Borough excluded two sites that were not in the RDP because the review in 1995 indicated that the sites had environmental or other constraints that precluded residential development. Now, years later, both RGS and FSHC are stating that these sites should generate a new RDP in the 2018 vacant land inventory. I respectfully and strongly disagree for the following reasons.

***A VLA Must Be Prepared As A “Snapshot In Time”***

As to revisiting sites from prior rounds, COAH has always interpreted a VLA as a “snapshot in time”. In other words, what is in existence when the VLA is undertaken. Not to do so would contradict the accepted “snapshot in time” policy of COAH that existed when I was Executive Director of COAH during the Second Round and is still in existence today. In a Report issued by COAH on September 10, 1997 for the Borough of Englewood Cliffs, COAH used the “snapshot in time” approach while reviewing the Borough’s Vacant Land Analysis, and actually eliminated sites from the RDP that only had approvals for development: “The borough provided documentation showing that site #1 had been recently subdivided for commercial and residential development and was thus eliminated from the inventory.” See COAH Compliance Report for the Borough of Englewood Cliffs, dated September 10, 1997 at Page 3, which is attached hereto as Exhibit C.

In addition, in a very recent case, entitled In the Matter of the Application of the Township of Mahwah, Docket No. BER-L6281-15, the Honorable Christine A. Farrington, J.S.C. wrote: “Mr.

Rahenkamp admitted that the VLA is a snapshot in time...”, thereby reaffirming the current applicability of the “snapshot in time” approach. See Preliminary Judgment of Compliance, dated July 10, 2018, attached hereto as Exhibit D. Creigh Rahenkamp, P.P, is a planner in New Jersey who traditionally represents developers who intervene and file objections to a settlement agreement and/or a Housing Element and Fair Share Plan.

Here, at this moment in time, both sites are developed and are not vacant. Therefore, they cannot be included in the Borough’s vacant land inventory. It is really as simple as that, and is just plain common sense.

***A Site Should Not Be Included In a VLA If Rezoning the Site Would Not Create the Realistic Opportunity For the Production Of Affordable Housing***

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. That means that the development of all sites that contribute to the RDP should be able to generate the number of affordable units the sites contribute if the sites are developed in accordance with sound planning. Rezoning an approved or developed site for inclusionary zoning will not generate a realistic opportunity for any affordable housing. Therefore, such sites should not generate an RDP.

***Including The Two Sites In The RDP Would Unfairly Penalize Roseland For Having Complied In The Past***

If the two already developed sites are included, Roseland is being penalized for complying in Rounds 1 and 2. If Roseland had never complied in the past, this would not even be an issue, as both sites are developed and are not vacant at this point in time. Indeed, COAH issued “Questions & Answers, dated March 1996/Revised through June 1999,” to guide municipalities in the implementation of COAH’s Prior Round regulations. An examination of the following Question and Answer reinforces the principle that land poor municipalities should not suffer a prejudice for having previously complied:

**N.J.A.C. 5:93-4.2 Lack of Land**

**How do you calculate realistic development potential (RDP) for a municipality that has eligible reductions from a first round certification and is now requesting a vacant land adjustment for the second round?**

**Response:** The municipality identifies sites that are realistic for inclusionary development and an appropriate density is assigned to these sites in order to calculate RDP. After the RDP is determined, then all eligible credits and reductions that occurred from the first round may be used to address the RDP. To do otherwise would increase the obligation of a town that was certified the first round while rewarding the town that did not petition the first round. This procedure treats all municipalities in the same manner.

In addition, N.J.A.C. 5:93-4.2(f) states that a “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.”

[June 1999 New Jersey Council on Affordable Housing “Questions and Answers”, which is attached hereto as Exhibit E.]

Since the Courts are supposed to be following COAH’s policies and not substituting their own views for the public policies of COAH in prior rounds, and since COAH’s policy is only to include “**sites that are realistic for inclusionary development**” to extrapolate an RDP on approved or developed sites should not contribute to the RDP. Rezoning such sites for inclusionary development would not create a realistic opportunity for any affordable housing.

***The Two Sites Should Not Be Included In The RDP Because They Are Not “Available”***

Additionally, including sites that were not in a previous RDP would be contrary to one of the COAH criteria that sites must be “available”, meaning clear title and free of encumbrances that preclude the development of low and moderate income housing. See N.J.A.C. 5:93-1.3 (defining an available site). See also N.J.A.C. 5:93-4.2(e)6 (calling for the exclusion of sites that are not suitable for inclusionary development). Clearly, these sites are encumbered as they have structures on the sites. Therefore, they should not generate an RDP.

For all of the above reasons, these two sites should be excluded from generating any RDP.

**F. Mack-Cali Recent Third Site (Block 30, Lot 1)**

This site at 65 Livingston Avenue was recently purchased by Mack-Cali and Roseland was unaware of the purchase. Mack-Cali has submitted a proposal to the Borough to construct 165 apartments, which would consist of 132 market rate apartments and 33 affordable family rental units (20% set-aside). The project would also deliver 15,600 square feet of non-residential retail development. The proposed 165-unit project on 9.22 acre site would generate an on-site density of 17.9 du/acre. While no agreement has been signed with Mack-Cali at this time, since the site is located immediately adjacent to the other two Mack-Cali sites that are already being redeveloped with similar sized projects, the Borough is willing to calculate the RDP for this site at 17.9 du/acre. This is in line with the density of 18.5 units per acre for the proposed Mack-Cali project on 85 Livingston Avenue. As to the amount of the site that should be included in the RDP calculation, the Borough still believes that since this is a mixed-use project, the non-residential portion of the project should be excluded. However, in the interest of moving this process forward to a conclusion, Roseland will accept an RDP of 17.9 du/acre on the entire site.

**G. Harrison Avenue**

In its letter to the Court Master FSHC asked that this site be included in the RDP. However, the Court Master disagreed and did not recommend this site for inclusion in the RDP. Rather, the Court Master suggested considering it for addressing unmet need. Please take note, that once Roseland's RDP is established, Roseland will entertain a discussion on addressing unmet need.

## **Conclusion**

This Report is in support of the Borough of Roseland's Vacant Land Inventory, dated August 13, 2018. I believe that the sites, densities and set-asides as proposed by Roseland in this VLA are consistent with COAH's regulations and policies during the Second Round review of municipalities' requesting VLAs. In addition, the facts specific to the sites that Roseland is proposing to calculate its RDP have been carefully reviewed to ensure that they provide a realistic opportunity and are consistent with sound planning principles.

It is important to note that Roseland has historically complied with addressing its constitutional obligation and received both a First and Second Round Substantive Certification from COAH. In a continuing effort to demonstrate its commitment to comply, and to preserve its right to decide how its community will be planned and developed, Roseland filed a Declaratory Judgment action and entered the mediation process in good faith with the goal of securing a Final Judgment of Compliance and Repose for a third time. However, in order to meet that goal, a realistic RDP must first be determined.

The Borough relies on this Report, as well as the updated VLA prepared by Joseph Layton, P.P., A.I.C.P. and Daniel Bloch, P.P., A.I.C.P. in further support of its claim as to what the appropriate RDP should be for the Borough, and it is our hope that with these submissions we have addressed all of the Master's concerns, as set forth in her July 10, 2018 letter.

I thank you for your consideration and await a final determination as to the Borough of Roseland's RDP, which will assist Roseland in achieving and continuing its ultimate goal in this process.

**EXHBIT I**

**LETTER FROM DAVID N. KINSEY, PHD, P.P. TO HONORABLE JOSEPH P. QUINN, J.S.C., RE COVE V.  
WALL TOWNSHIP, DOCKET NO. L-051262-84 AND CONSOLIDATED CASES (MOUNT LAUREL II)  
PROPOSED WALL TOWNSHIP 2005 HOUSING ELEMENT AND FAIR SHARE PLAN AMENDMENT,  
DATED DECEMBER 1, 2005**

Email david@kinseyhand.com

December 1, 2005

Hon. Joseph P. Quinn, J.S.C.  
Monmouth County Courthouse  
71 Monument Park, PO Box 1266  
Freehold, NJ 07728-1266

Re: Cove v. Wall Township, Docket No. L-051262-84 and Consolidated Cases (*Mount Laurel II*)  
Proposed Wall Township 2005 Housing Element and Fair Share Plan Amendment

Dear Judge Quinn:

As directed by the Scheduling Order entered October 25, 2005, this letter is my report as Special Master on the pending Motion of Wall Township ("Wall" or "Township") to Reaffirm Immunity and Amend the Housing Element and Fair Share Plan Amendment ("Amendment"). The Motion is scheduled to be heard on Monday, December 5, 2005 at 9:30 am. For the reasons detailed in this letter-report, I recommend that the Court approve the Amendment in part and reject the Amendment in part. Specifically, I recommend that the Court reject the Township's proposed Atlantic Avenue site for a 32 rental units low and moderate income housing project and instead approve the Township's contingency plan of four scattered-site rental single-family low and moderate income houses.

The Issue before the Court

The issue before the Court is whether the Township's proposal to acquire a 1.4 acre parcel on Atlantic Avenue in Wall and construct 32 units of municipally-sponsored family rental low and moderate housing complies with *Mount Laurel*, creates the requisite realistic

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opportunity for lower income housing construction under *Mount Laurel*, and complies with applicable New Jersey Council on Affordable Housing ("COAH") rules, and thereby satisfies the gap of four (4) rental family low and moderate income units in Wall's Court-approved Second Round (1993-1999) *Mount Laurel* compliance plan. The parcel to be acquired is an undeveloped portion of an existing, four-building garden apartment complex known as Atlantic Manor Apartments.

Atlantic Manor Associates ("Atlantic"), the owner of the parcel, opposes the Township's Motion. The Kamson Corporation manages the property.

#### Documents under Review

The Township's proposal is presented in ten documents under review:

- Amendment to the Master Plan Housing Element: Atlantic Avenue Site, Township of Wall, Monmouth County, New Jersey, prepared by Cheryl Bergailo, adopted by the Wall Township Planning Board, September 12, 2005
- Amendment to the Master Plan Housing Element, Township of Wall, Monmouth County, New Jersey, prepared by John D. Maczuga and Cheryl Bergailo, adopted by the Wall Township Planning Board, March 2005 (proposed scattered site single-family rental development program, incorporated by reference in the September 2005 Housing Element Amendment)
- Amendment to the Fair Share Compliance Plan: Atlantic Avenue Site, Township of Wall, Monmouth County, New Jersey, prepared by Cheryl Bergailo, adopted by the Wall Township Committee, September 14, 2005
- Amendment to the Affordable Housing Fair Share Compliance Plan, Township of Wall, Monmouth County, New Jersey, prepared by Cheryl Bergailo, adopted by the Wall Township Committee, July 13, 2005 (referenced in the Zahorsky Certification)
- Wall Township Committee Certified Resolution of Intent to Provide the Funds Necessary for the Satisfaction of the Township's Affordable Housing Obligations, adopted October 12, 2005
- Construction Timetable - 32- Unit Municipally-Sponsored Project, undated (received from Michael Jedziniak, Esq., October 24, 2005)

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- Letter from Jeffrey R. Surenian, Esq. to Hon. Joseph P. Quinn, J.S.C., November 18, 2005
- Certification of Cheryl Bergailo, PP, AICP, November 18, 2005
- Certification of Matt Zahorsky, PE, November 21, 2005
- Certification of Donna Rose, Monmouth Housing Alliance, November 18, 2005

The property owner's opposition is presented in five documents under review:

- Letter from Susan R. Rubright, Esq., to David N. Kinsey, November 4, 2005
- Site Evaluation for Fair Share Housing, Kamson Corp. Property - Atlantic Manor Apartments, Peter G. Steck, PP, AICP, November 5, 2005
- Letter from Robert Goldberg, CPM, SCGREAA, to Susan Rubright, November 7, 2005
- Letter from Susan R. Rubright, Esq., to David N. Kinsey, November 8, 2005, with natural gas line Right-of-Way Agreement
- Memorandum from Peter G. Steck, PP, AICP to Susan R. Rubright, Esq., November 27, 2005 (received December 1, 2005)

#### Standard of Review

I propose to evaluate the Amendment for compliance with the three applicable COAH rules:

- Siting criteria for new low and moderate income housing, N.J.A.C. 5:93-5.3
- Conformance with the *State Development and Redevelopment Plan*, N.J.A.C. 5:93-5.4
- Municipally-sponsored construction, N.J.A.C. 5:93-5.5

I also propose to evaluate the Amendment for compliance with *Mount Laurel II*. The first standard, whether the Township has created a realistic opportunity for lower income housing

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construction, is explicit in *Mount Laurel II*.<sup>1</sup> The second standard, whether the project is contrary to sound planning principles or represents a substantial environmental hazard, is explicit in the standards articulated in *Mount Laurel II* for evaluating the suitability of sites and projects proposed by plaintiffs.<sup>2</sup> Sites and projects proposed by municipalities should be held to the same planning and environmental standards as those proposed by plaintiffs.

#### Site and Project Description

The site is a 1.4 acre, irregular shaped portion of the 13.21 acres tract (Block 810, Lot 6) developed decades ago with 158 apartments in four, two-storied, U-shaped buildings known as Atlantic Manor Apartments, located on the south side of Atlantic Avenue, about 1,000 feet west of the Manasquan circle of Route 70 and County Road 524 (aka Atlantic Avenue), in Wall, New Jersey. Atlantic Avenue is a two-lane county road with no sidewalks. The Township proposes to acquire and subdivide this 1.4 acre development site, either through negotiations or by condemnation. The site is currently an open grassy field that provides open space for the existing apartments. The current density of the existing apartment complex is 12 units per acre, the maximum allowed under the current HD-12 zoning. Exhibit A depicts this site, the adjacent apartments, and nearby land uses.

The Township proposes to develop on this site a two story building with up to 32 rental units, all affordable to low and moderate income households, with a mix of one, two, and three bedroom units in compliance with COAH rules. The proposed units are not to be age-restricted, but are to be marketed to the general public. The proposed density of the submitted concept plan is 22.9 units per acre. The proposed zoning, however, would allow a density of up to 30 units per acre, in three story buildings, with up to 35 units in a structure, which could be up to 40

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<sup>1</sup> *Mount Laurel II* 92 N.J. 158, 220-222 (1983).

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feet high. The proposed zoning also would allow up to 85% of the site to be covered with impervious surfaces, e.g., buildings, parking lots, and driveways. The zoning for the site proposed by the Township in the Amendment does not require that any open space and recreation areas be provided. Exhibit B is the Township's concept plan for the Atlantic Avenue site.

Siting Criteria for New Low and Moderate Income Housing, N.J.A.C. 5:93-5.3

COAH Second Round (1993-1999) rules require that sites for new low and moderate income housing be "available, suitable, developable, and approvable", as COAH rules define those terms. Those terms establish a checklist of twelve site suitability criteria that can be used to evaluate any proposed inclusionary development site, as follows:

1. Has access to appropriate water infrastructure ("developable");
2. Has access to appropriate sewer infrastructure ("developable");
3. Is adjacent to compatible land uses ("suitable");
4. Has access to appropriate streets ("suitable");
5. Avoids historic sites ("suitable");
6. Avoids restricted agricultural lands ("suitable");
7. Avoids wetlands and transition areas ("suitable");
8. Avoids flood hazard areas ("suitable");
9. Avoids steep slopes (15% +) ("suitable");
10. Avoids designated recreation lands ("suitable");
11. Has clear title and is free of encumbrances ("available"); and
12. Meets the standards for applicable permits and approvals, e.g., Treatment Works Approval from NJDEP, RSIS, and CAFRA permit ("approvable").

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<sup>2</sup> *Mount Laurel II* 92 N.J. 158, 218, 279-280, 331 (1983).

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"Available"

The Township and Atlantic disagree whether the site is "available," which COAH defines as "a site with clear title, free of encumbrances which preclude development for low and moderate income housing."<sup>3</sup> Atlantic, through its planner Peter Steck, points to a 10 feet wide right-of-way agreement from 1966 for a natural gas line that serves the existing apartment complex that bisects the site as an encumbrance. Laterals also extend from this pipeline to the existing apartments. See Exhibit C, which depicts the existing apartments, the gas lines, and the Township's proposed site.

The Township Engineer, Matt Zahorsky, PE, responds that the natural gas line can be relocated or addressed through "design techniques," although it is curious that the Township prepared and submitted a concept plan that is not buildable without addressing the gas line's location. For example, instead of one building located in the middle of the site, as shown in Exhibit B, two smaller buildings could be located, leaving the natural gas line and its 10 feet wide right-of-way relatively undisturbed and perhaps used for parking, driveways, or open space. However, the Township's proposed zoning for the site also appropriately requires a 30 feet building setback from property lines. Or, the Township could acquire and relocate the right-of-way by eminent domain, as authorized for low and moderate income housing development by the state Fair Housing Act.<sup>4</sup> Moving the line or breaking up the building may reduce the yield of units at the site.

I conclude that the gas line and right-of-way could be relocated, if necessary. I conclude that the site is available, and that it can yield at least four units but the total yield may be less than the 32 units proposed by the Township.

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<sup>3</sup> N.J.A.C. 5:93-1.2.

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"Suitable"

The Township and Atlantic disagree whether the site is "suitable," which COAH defines 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 [as to wetlands, flood plans, steep slopes, historic sites, designated recreation lands, and restricted agricultural lands]."<sup>5</sup> The disagreement is whether the site and proposed use are compatible with adjacent land uses. I agree with the Township that the site complies with the other aspects of COAH's "suitable" criterion.

"Adjacent to Compatible Land Uses"

Atlantic, through its planner Peter Steck, argues that the Township's proposal is incompatible with the surrounding land uses because of its "excessive density", i.e. 23 units per acre in the concept plan and up to 30 units per acre under the proposed zoning. Atlantic asserts that the Township "proposes a density almost twice the normally permitted density with no compensating buffers or open space to protect the established surrounding residential units or serve the new residents of the rental project." Atlantic also submitted a letter from a real estate appraiser and property manager, Robert Goldberg, who opined that the Township's apartments would not be compatible with the existing apartments, but presented no reasons for his opinion.

The Township's September 2005 Housing Element Amendment does not assert that the site is adjacent to compatible land uses, rather, it describes the adjacent land uses (retail, farm-petting zoo, athletic club, and single-family housing, ignoring the immediately adjacent garden apartments) and indicates that "Infill development at higher densities is compatible with the

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<sup>4</sup> N.J.S.A. 52:27D-325.

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concepts in PA 1 [the Metropolitan Planning Area on the State Plan Policy Map, in which the site is located].” The Township, through its planning consultant Cheryl Bergailo, asserts that the project would be compatible with the Atlantic Manor Apartments complex and that the site is “adjacent to appropriate land uses.” Bergailo also opines that the Township can “through design and architectural controls ... enhance the compatibility of the proposed project with the adjacent multifamily use”, but offers no examples of how this might be accomplished.

COAH rules require that an inclusionary development site be “...adjacent to compatible land uses...”<sup>6</sup> without defining the term “compatible” or the phrase “compatible land uses.”

Harvey Moskowitz and Carl Lindbloom, two prominent New Jersey planning lexicographers and retired planners, offer this definition of “compatible land use”:

- “A use of land and/or building(s) that, in terms of development intensity, building coverage, design, bulk and occupancy, traffic generation, parking requirements, access and circulation, site improvements, and public facilities and service demands, is consistent with and similar to neighboring uses and does not adversely affect the quality of life of persons in surrounding or nearby buildings.”<sup>7</sup>

Also, prompted by the Legislature’s objective stated in 1973 in the Coastal Area Facility Review Act to “...encourage the development of compatible land uses...”,<sup>8</sup> New Jersey Department of Environmental Protection (“DEP”) rules have since 1980 defined compatibility of uses as: “Compatibility of uses is the ability for uses to exist together without aesthetic or

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<sup>5</sup> N.J.A.C. 5:93-1.2.

<sup>6</sup> N.J.A.C. 5:93-1.3.

<sup>7</sup> Harvey S. Moskowitz and Carl G. Lindbloom, *The Latest Illustrated Book of Development Definitions*. New Brunswick, N.J.: Center for Urban Policy Research, 2004, p. 86.

<sup>8</sup> N.J.S.A. 13:19-2.

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functional conflicts.”<sup>9</sup> According to a well-respected dictionary, “compatible” means “capable of existing or living together in harmony.”<sup>10</sup>

In my opinion, compatible land uses coexist or can coexist. I believe four factors should be considered in evaluating the compatibility or incompatibility of adjacent land uses, in addition to the Moskowitz-Lindbloom definition: (a) the nature of the uses, (b) the scale of the uses, (c) the off-site impacts generated by the uses, and (b) buffers that separate land uses and mitigate any adverse off-site impacts or aesthetic or functional conflicts.<sup>11</sup>

I now analyze the land use compatibility of the Township’s proposed site and project using both the Moskowitz-Lindbloom and DEP definitions and this four-factor approach.

At the outset it is important to recall the “adjacent ... land uses” to the proposed site, before analyzing whether they are “compatible.” These existing land uses adjacent to the Township’s proposed site are: (a) two story garden apartments, now at a density of 12 units per acre, but that will be at a density of 14 units per acre, if the Township’s proposal is approved and implemented, surrounding the site on three sides and (b) the grass parking area for a farm market, Atlantic Farms, with a petting farm and hayrides, across Atlantic Avenue to the north. Nearby, but not adjacent, land uses include a shopping center to the east (Circle Factory Outlet Center), an athletic club to the west (Sliton Swim Club), and a public bike path, on a former rail right-of-way, to the south, with single-family detached houses, developed post *Mount Laurel II*

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<sup>9</sup> N.J.A.C. 7:7E-8.13.(a). NJDEP Rules on Coastal Zone Management, rule on Buffers and Compatibility of Uses.

<sup>10</sup> *The Random House Dictionary of the English Language*, 2<sup>nd</sup> edition unabridged, 1987.

<sup>11</sup> I developed this four-factor approach to analyzing land use compatibility while serving as the *Mount Laurel* special master in Denville Township (Morris County) in 1985 and have used this approach since then as a Court-appointed special master in *Mount Laurel* litigation in other municipalities, as an expert in environmental litigation, and as a planner-expert for municipalities and builder-plaintiffs in *Mount Laurel* litigation and proceedings before COAH.. See Appendix M: David Kinsey Suitability Criteria, in Jeffrey R. Surenian, *Mount Laurel II and the Fair Housing Act*, Newark: NJICLE, 1987.

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without on-site affordable housing but with a Court-approved housing trust fund payment, to the south of the bike path.

I now proceed with my four-factor analysis.

First, the nature of the proposed use and about 80% of the adjacent uses is similar. Both are multi-family apartments. The grass parking area for the farm market across the County road is a dissimilar land use, but not a conflict.

Second, the scale of the proposed use and adjacent uses is identical. Both are two stories structures, although the proposed zoning would allow three story structures on the Township's site.

Third, the off-site impacts likely to be generated by the Township's proposal are traffic, stormwater, wastewater, and noise, and are likely to be similar to the off-site impacts currently generated by the existing apartment complex.

Fourth, whether the Township's proposal "provides buffers that separate land uses and mitigate any adverse off-site impacts or aesthetic or functional conflicts" is problematical. The Township's proposal provides no buffers, but I question whether any are needed. I conclude that separation of similar residential land uses is not needed, as the Township's proposed zoning provides for adequate separation through 30 feet side yard and 30 feet rear yard building setbacks, as well as a 10 feet setback from property lines for access drives and parking areas. I also conclude that there will be no adverse off-site impacts that need to be mitigated by buffers. Atlantic does not allege aesthetic conflicts that need a buffer, nor does Atlantic identify functional conflicts between the existing and proposed apartments. I conclude that no buffer is required simply because of the density of the proposed use. A three story structure, for

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example, would have a smaller footprint than a two story structure, leaving more open space that presumably could serve as a buffer.

However, whether the existing and proposed apartments can coexist is also problematical, for, as Atlantic points out, the Township's proposal "takes away established open space" from the existing apartments.

The Moskowitz-Lindbloom definition of "compatible land use" invites a comparison of the proposed use and the existing adjacent use in terms of nine evaluation factors. The Township's proposal is significantly different than the neighboring uses in terms of two of these factors: (a) development intensity and (b) building coverage. At a proposed maximum density of 30 units per acre, and a density of 23 units per acre on the submitted concept plan, the proposed density is 2.5 times the current 12 units per acre actual and maximum zoned density of the adjacent apartments. The actual building coverage of the existing apartments is only 11% of the site, with a total actual impervious coverage, including access drives, parking, swimming pool, and tennis court, of only 51% of the site. Consequently, the complex has a very open feeling with abundant open space, light, and air. The Township's proposed zoning for the Atlantic Avenue site only specifies a maximum impervious coverage, not a maximum building coverage, of 85% of the site, which is significantly more (42% more) than the 60% coverage of the site allowed in the existing HD-12 zone of the adjacent apartment complex and 67% more impervious coverage than actually exists at the adjacent fully developed site. The contrast is striking and not acknowledged by the Township.

In addition to these two stark dissimilarities between the proposed use and the adjacent existing use, the Moskowitz-Lindbloom definition of compatibility asks whether the proposed land use "does not adversely affect the quality of life of persons in surrounding or nearby

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buildings.” Moskowitz-Lindbloom defines “quality of life” as “The attributes or amenities that combine to make an area a desirable place to live.”<sup>12</sup>

As Atlantic argues compellingly, “The proposal by Wall Township essentially extracts one of the key amenities for the existing apartment complex...”, i.e., about 1.4 acres of grassy open space that constitutes the front lawn of this apartment complex. It is this open green area, 250 feet wide between buildings, and free from motor vehicles, that gives these apartments its open feeling and presumably contributes significantly to making this complex a desirable place to live. Eliminating this open space would eliminate an important attribute and amenity of the apartment complex.

In sum, the Township’s proposed apartments are not consistent with the existing adjacent apartments in terms of density or impervious coverage and would adversely affect the quality of life of persons in the adjacent and surrounding apartments. Consequently, I find that the Township’s proposal fails the Moskowitz-Lindbloom test of land use compatibility.

Furthermore, the Township’s argument that the adjacent land uses are “appropriate” misses the mark, as the COAH standard is that the site be “adjacent to compatible land uses.” The Township does not define “appropriate” in this context.

The Township also implies that site is compatible because “Infill development at higher densities is consistent with the concepts of PA1 [in the State Development and Redevelopment Plan].” Atlantic readily debunks this assertion and accurately calls the Township’s statement a misuse and misreading of the State Plan. First, the State Plan has “policy objectives,” not “concepts.” Second, the State Plan defines infill development as “development of new housing or other buildings on scattered vacant sites in a built up area.” The Atlantic Avenue site is not

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<sup>12</sup> Harvey S. Moskowitz and Carl G. Lindbloom, *The Latest Illustrated Book of Development Definitions*.

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vacant, nor is it a scattered site in a vacant area. Rather, it is the open space for an existing apartment complex.

"Developable"

Atlantic does not dispute that the site is "developable," in terms of access to sewer and water infrastructure. I concur.

"Approvable"

Atlantic indirectly questions whether the site is "approvable," i.e., whether it can comply with the Stormwater Management rules of the New Jersey Department of Environmental Protection ("DEP"),<sup>13</sup> as required by the State's Residential Site Improvement Standards ("RSIS") that are applicable to the Township's proposal.<sup>14</sup> These rules favor groundwater infiltration of stormwater and typically require surface drainage facilities.

The Zahorsky Certification indicates that "the need to properly drain the site does not preclude the development of the 32 unit project the Township proposes." I have no basis to challenge this conclusion of a licensed Professional Engineer and assume that the Township Engineer is mindful of RSIS and DEP requirements at this tight site. Whether the site is approvable for the full 32 proposed units may be problematical.

I conclude that the site is approvable.

Conformance with the *State Development and Redevelopment Plan*, N.J.A.C. 5:93-5.4

The site is located in the Metropolitan Planning Area (PA 1) in the current State Plan Policy Map of the *State Development and Redevelopment Plan*, which inclusionary development is encouraged and acceptable under COAH rules.

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New Brunswick, N.J.: Center for Urban Policy Research, 2004, p. 305.

<sup>13</sup> N.J.A.C. 7:8.

<sup>14</sup> N.J.A.C. 5:21-7.

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Municipally-Sponsored Construction, N.J.A.C. 5:93-5.5

The Township proposes to sponsor the development of the 32 units of low and moderate income rental housing at the Atlantic Avenue site together with a partner to be identified. COAH rules require that such municipally-sponsored projects satisfy four requirements.

First, the Township must control or have the ability to control the site. While the Township does not currently control the site, the Township intends to acquire the site either through negotiation or by condemnation. Under the state Fair Housing Act, the Township clearly has the explicit authority to "acquire ... through the exercise of eminent domain, real estate ... which the municipal governing body determines necessary or useful for the construction ... of low and moderate income housing..."<sup>15</sup> While the Township Committee has not yet adopted an explicit resolution making the required determination and authorizing acquisition of the site, the Amendment adopted by the Township Committee commits the Township to acquiring the site. Atlantic challenges the Township's ability to acquire the site based on the Local Redevelopment and Housing Law. I agree with the Township that that claim lacks merit, due to the municipality's explicit authority under the state Fair Housing Act to acquire the site. Atlantic's real estate appraiser opined that the Township's proposal will decrease the market value of the existing apartments. I agree with the Township that that claim is irrelevant to the current proceedings before this Court, as the Township has committed to acquire the site, regardless of the cost, and questions of value will be determined in separate condemnation proceedings. I find that the Township has the ability to control the site.

Second, the Township must have an administrative mechanism to construct and administer the housing. The Township proposes to negotiate an agreement with a local

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<sup>15</sup> N.J.S.A. 52:27D-325.

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nonprofit housing developer, the Monmouth Housing Alliance, to develop the property, or, if an agreement cannot be reached in three months of Court approval of the Amendment, then the Township proposes to issue a Request for Proposals to developers of affordable housing to attract a most likely private sector partner to what amounts to a joint venture to develop the proposed 32 units. The Township successfully used the Request for Proposals approach to develop the 110 units of family rental low and moderate income housing in the Mews at Collingwood project in northwest Wall. I find that the Township has an acceptable approach to complying with the administrative mechanism requirement.

Third, the Township must have a funding plan and evidence of adequate funding. The Township has submitted a detailed pro forma with a total development cost of \$5.95 million and a reasonable mix of anticipated sources of funds, with two-thirds of the funding anticipated from the State's Neighborhood Preservation Balanced Housing Fund and the remainder from the Monmouth County HOME program, the Federal Home Loan Bank, and mortgage financing. The Township Committee has also committed, by a Resolution adopted October 12, 2005, to fund any shortfall in the fund for this project. I find that the Township has an adequate funding plan and has provided evidence of adequate funding.

Fourth, the Township must submit a construction schedule that provides for construction to begin within two years of Court approval of the Amendment. The Township's submitted timetable calls for construction to begin within 21 months of Court approval. The Township is confident that its timetable is conservative, yet includes no time to prepare the Request for Proposals, if required, and no time to select a contractor. These activities could easily take two months. Also, the relocation of the gas lines, if required could take time. With these caveats, I

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find that the Township has submitted a generally acceptable schedule that demonstrates an understanding of the activities and timeframes needed to begin construction within two years.

#### Realistic Opportunity for Lower Income Housing Construction?

The Township has demonstrated that it has the ability to create a realistic opportunity for the actual construction of low and moderate income housing at the Atlantic Avenue site, but the Township has not demonstrated that the 32 units building can be built, given the gas lines and stormwater management issue. The Township has the authority to acquire the site. The Township has two reasonable alternatives for the mechanism to develop and administer the project. The Township has identified anticipated non-municipal sources to fund the project and has committed to providing municipal funding for any shortfall necessary to begin construction within two years. The Township has demonstrated experience at municipally-sponsored low and moderate income housing construction at the Mews at Collingwood Park project completed in the early 2000's.

#### Contrary to Sound Planning Principles?

Atlantic, through its planner, calls the Township's proposal "bad planning."

Atlantic charges that the proposal violates the 1999 Wall Master Plan, citing a provision that implies that minimum lot areas in High-Density Residential areas, such as the Atlantic property, should be increased to reduce the potential of subdivisions and overall additional population density. The Township counters by citing a particular goal or objective from the same Master Plan that promotes establishment of "appropriate population densities in concentrations that will contribute to the well-being of persons, neighborhoods, and the region, and the preservation of the environment." This begs the question of what is an appropriate density, and whether the density of 30 units per acre proposed for the Atlantic Avenue site is

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appropriate. The proposed density is the highest residential density proposed for a zone district in Wall, far exceeding the 20 units per acre density of the MLCC zone,<sup>16</sup> where an inclusionary assisted living residence was built with the Court's approval. Indeed, it is the highest density proposed by the Township for an inclusionary or affordable housing site in my 18 years of service as the Court's Special Master. In any case, while the Amendment is itself part of the Township's Master Plan (Housing Element), the proposed further increase in density in one of the Township's high density areas is clearly contrary to an explicit provision of the Land Use Plan of the Township's 1999 Master Plan.<sup>17</sup>

Atlantic charges that the Township's proposal concentrates households of modest means in one location, which is true and the unfortunate by-product of funding programs for 100% low and moderate income housing projects. The Township's response that its intent is to mix the affordable units into a market-rate complex so that the affordable units are not isolated is disingenuous, as the surrounding market-rate apartments will have no connection with the lower income units. The Township's project will have separate driveways. It is unlikely that residents of the Township's project will be allowed to use the existing complex's pool and tennis court. Either the Township or the Atlantic Manor complex might construct a perimeter fence around the Township site, to provide a sense of security and delineate the two different properties.

Atlantic charges that the Township proposes to take away its open space that is required by the Zoning Ordinance. to avoid excessive density on its comparatively large 15 acres site. Atlantic charges that the Township's proposal to remedy this loss is merely to increase its permitted density to 14 units per acre so that the existing apartments will still be a conforming

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<sup>16</sup> Wall Code, §140-305.

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use. The Township does not respond to the loss of open space allegation, but instead argues that "through careful design and planning, it can effectively integrate the project into to the community without an adverse impact."<sup>18</sup> I find that that the Township has failed to demonstrate how specifically it will do this. Instead, the Township's approach is more likely to separate its project from the adjacent apartments.

As Atlantic accurately points out, the Township's proposal has "no ... open space to ... serve the new residents of the rental project." The Township's proposed zoning for the site provides no open space or recreation areas requirements. Instead, the proposed zoning allows up to 85% impervious coverage, i.e., paving, sidewalks, and buildings, the highest of any residential or nonresidential zone in Wall, and, as the concept plan in the Amendment makes clear, leaves at most about 4,250 square feet (less than 0.1 acre) of undeveloped space by a refuse area to the rear of the site. The Township proposes a mix of bedroom types in its project that should attract families, including families with children, with 19% one bedroom units, 56% two bedroom units, and 25% three bedroom units. Yet, the Township has neither proposed nor required any on-site active and passive recreation areas for its 1.4 acre site for 32 family rental affordable units.

The Township's approach at the Atlantic Avenue site contrasts sharply with its open space and recreation areas requirements in its ML-7 zone, approved by the Court in 1998, which were applicable to the Township-sponsored, 110 units, 100% affordable, Mews at Collingwood Park project on an 18 acres site.<sup>19</sup> The zoning for that completed project required that active and passive recreational and open space areas be provided, and that a minimum of

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<sup>17</sup> Wall Township 1999 Master Plan, page 7-3.

<sup>18</sup> Surenian letter to the Court, November 18,, 2005, p. 5.

<sup>19</sup> <http://www.ingerman.com/mewsp.htm>; accessed November 30, 2005.

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one acre of active recreation area be provided for every 100 dwelling units or fractions thereof.<sup>20</sup>

Based on that standard, which is a "sound planning principle" for a family- and children-oriented 100% affordable housing development, the Township's Atlantic Avenue project, with 32 units, should have at least one-third acre (14,520 square feet) of active recreation area, particularly because it is isolated from any public parks or playground readily and safely accessible by public sidewalks.

The Township's Atlantic Avenue site is small, yet the Township proposes the highest density in the community at the highest allowable degree of impervious coverage with no required on-site open space and recreation areas. At most, the proposed zoning requires parking areas and access drives to be set back 10 feet from property lines, which will leave some narrow green strips of grass, but hardly desirable or usable open space for recreation. The proposed zoning requires a continuous evergreen buffer to screen the parking areas, and the building behind, from the public view from Atlantic Avenue and requires shade trees to provide cooling in parking areas and for buildings. What is missing is appropriate consideration for the open space and recreation needs of future residents. What is missing is sound planning.

Future low and moderate income households anywhere in Wall deserve the same consideration as the residents of the previous Township-sponsored affordable housing development, at the Mews at Collingwood Park, which has 3.4 times the number of units, at one-quarter the density of the Township's proposal for the Atlantic Avenue site.

Density, impervious coverage, and open space and recreation areas are important, interrelated planning issues at the Township's Atlantic Avenue site. That the Amendment does

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<sup>20</sup> Wall Code, §104-308.E.(5).

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not require or provide for appropriate on-site open space and recreation areas at the Township's Atlantic Avenue site renders the Amendment contrary to sound planning principles and *Mount Laurel*, in my opinion. To provide reasonable room for open space and recreation areas at this tight site, the Township needs to decrease the impervious coverage limit and either decrease the density or opt for three story construction, most likely with costly elevators, or both. Most likely these measures will decrease the yield of housing units at the Atlantic Avenue site and increase their per unit cost.

#### Conclusion on the Township's Atlantic Avenue Site Proposal

I conclude that Wall Township's proposal to develop 32 low and moderate income units at the 1.4 acre Atlantic Avenue site is contrary to sound planning principles, for the open space, recreation area, impervious coverage, and density reasons stated above, and recommend that the Court reject the Township's proposal. I note that the proposal also fails the Moskowitz-Lindbloom test of land use compatibility, but I am reluctant to recommend rejecting the proposal solely on that basis, as some change from the pattern of adjacent and surrounding land uses is often necessary in exclusionary New Jersey communities in order to develop inclusionary and affordable housing. In this case, the change proposed in density and coverage, comparing the adjacent land uses, is excessive and contrary to sound planning principles on on-site open space and recreation areas, which relate directly to impervious coverage limits and density.

#### Alternative to the Atlantic Avenue Proposal

The Amendment provides a contingency plan in the event the Court rejects the proposed Atlantic Avenue component of the Township's Plan, or the Township fails to reach an agreement with a partner to develop the project, or the developer fails to develop the site as contemplated by the Amendment. The contingency plan is the development of four scattered-

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site, single-family detached rental houses in partnership with the nonprofit Monmouth Housing Alliance, on Township-owned sites, as detailed in Wall's March 2005 Amendment to the Master Plan Housing Element and in the July 2005 Amendment to the Affordable Housing Fair Share Compliance Plan.

The Township successfully sponsored construction and sale of 12 units of scattered-site single-family housing on Township-owned sites in the 1990's, with the approval of the Court.

The March 2005 Amendment identifies and maps the four Township-owned sites, at 2918 Adams Street, 2805 Harrison Street, 1028 18<sup>th</sup> Avenue, and 805 Walling Avenue, all in northeastern Wall. All are truly infill sites, where one house would be built on a vacant lot in an existing neighborhood. The March 2005 Amendment demonstrates that all four sites are "available, suitable, developable, and approvable", as required by COAH rules. To implement the program, the Township has negotiated, but not yet executed, a generally acceptable Developer's Agreement with the Monmouth Housing Alliance, which is reproduced, executed by the Alliance, in the July 2005 Amendment. The Alliance would build the units and administer them as rentals for 30 years. The estimated cost of the project is \$717,115, or about \$180,000 per unit, according to the pro forma in the July 2005 Amendment, with an anticipated subsidy from the State Neighborhood Preservation Balanced Housing Fund of \$120,000, and the balance to be financed by a mortgage. The Township Committee adopted a Resolution committed to fund any shortfall in this program on April 13, 2005. The July 2005 Amendment included an acceptable construction schedule, which contemplates completing construction modular units within nine months of Court approval of the scattered-site component of the Amendment.

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I find that the Township's proposed scattered-site rental single-family program complies with all applicable COAH rules, creates a realistic opportunity for construction of these four units, and is not contrary to sound planning principles. This approach will plug the gap of four rental units in the Township's Plan within one year.

#### Conclusion on the 2005 Amendment

I recommend that the Court reject the Township's proposed Atlantic Avenue site and 32 units project and instead approve the Township's four units, scattered-site rental single-family contingency program.

I recommend that the Court direct the Township to execute within 15 days its Developer's Agreement the Monmouth Housing Alliance and begin implementing the scattered site program.

#### Recommendation on the Motion

The Court's Order for Extended Repose and Temporary Immunity, entered January 30, 2004, extended the Township's Second Round Judgment of Repose, in effect as a result of COAH's adoption of its Third Round Rules effective December 20, 2004, until December 20, 2005.

I see no reason for reaffirming the Township's immunity, as the Township is already shielded by the Court's Order for Extended Repose and Temporary Immunity through December 20, 2005. I am not aware of any challenge to that Order.

I recommend that the Court grant in part and deny in part the Township's motion that the Amendment be approved by the Court, in accordance with my conclusions above on the 2005 Amendment.

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I will gladly answer questions on this letter-report and recommendations before and at the hearing on December 5, 2005.

Respectfully submitted,

David N. Kinsey

cc: Jeffrey R. Surenian, Esq., Wall Township Special Counsel

Roger J. McLaughlin, Esq., Wall Township Attorney

Susan R. Rubright, Esq.

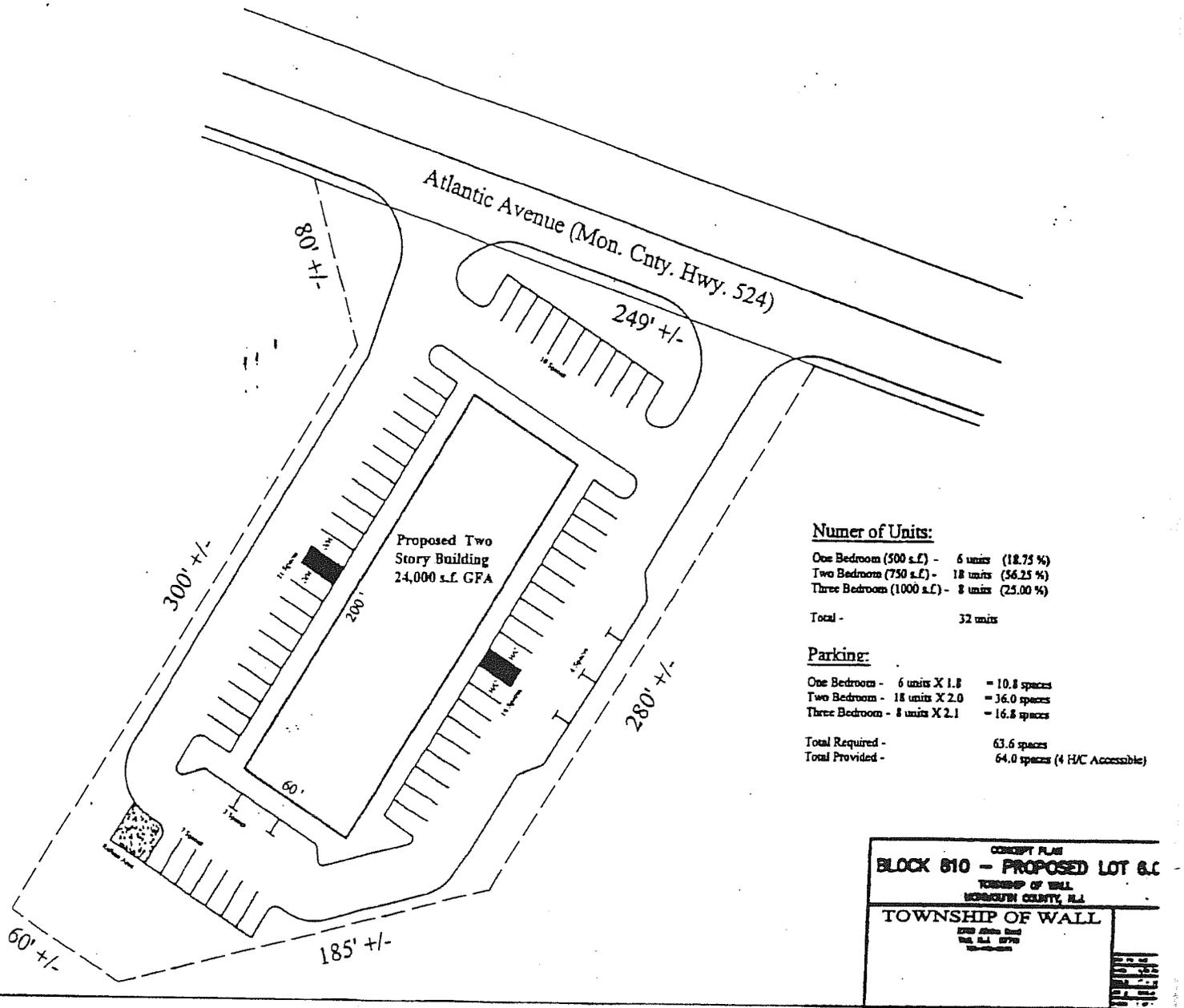
Exhibits

## EXHIBIT A: Atlantic Avenue Site in Wall, New Jersey



Note: The Township's proposed approximately 1.4 acre Atlantic Avenue site is outlined in white with a red star. The base image is from 2005, made available by Google Earth. Prepared by Kinsey & Hand, December 1, 2004, based on the site perimeter provided in the Township's concept plan, reproduced as Exhibit B.

# EXHIBIT B: Concept Plan for Atlantic Avenue Site



Source: Amendment to the Fair Share Compliance Plan: Atlantic Avenue Site, Township of Wall, Monmouth County, New Jersey, prepared by Cheryl Bergailo, adopted by the Wall Township Committee, September 14, 2005.



**EXHIBIT J**

**UPDATE BOUNDARY & TOPOGRAPHIC SURVEY AND ALTA/ACSM LAND TITLE SURVEY FOR  
800 SYLVAN AVENUE, PREPARED BY MASER, LATEST REVISION MAY 11, 2017**



**EXHBIT K**

**LETTER FROM THOMAS F. CARROLL, III TO ANNE MARIE RIZZUTO RE IN THE MATTER OF  
THE APPLICATION OF THE BOROUGH OF ENGLEWOOD CLIFFS; DOCKET NO. BER-L-6119-15,  
DATED NOVEMBER 17, 2017**



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Writer's Direct Dial: (609) 734-6336

November 17, 2017

VIA EMAIL AND REGULAR MAIL

Anne Marie Rizzuto, Esq.  
181 New Road, Suite 304  
Parsippany, NJ 07654

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

Dear Ms. Rizzuto:

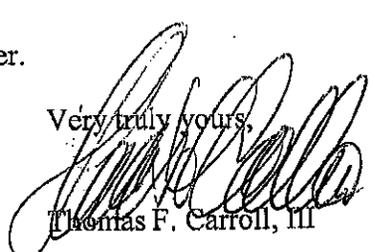
This office has been retained by 800 Sylvan Avenue, LLC, owner of Englewood Cliffs Borough property designated as Bock 910, Lot 1, with a street address of 800 Sylvan Avenue.

Our client wishes to propose a 20+/- acre portion of said property for inclusionary zoning designed to assist the Borough with satisfaction of its Mount Laurel obligations. The portion of the property proposed for inclusionary development is that portion north of the cross-hatched line depicted on the enclosed survey. My client is proposing a density of 30 dwelling units per acre, with 20% of the total units to be made affordable to low and moderate income households if a "for sale" project is developed, and with 15% of the total units to be made affordable to low and moderate income households if a rental project is developed.

My understanding is that the Borough has been directed to provide an inventory of available land to the Court-appointed Master, Mary Beth Lonergan, P.P., AICP, by no later than November 30, 2017. We request that my client's property, as described above, be considered by the Borough and by Ms. Lonergan as part of that inventory of available land. As you may know, there are existing structures on that land, which would be demolished to clear the land for the inclusionary development we propose. In this regard, we would be happy to provide any additional information you may require.

Thank you for your attention to this matter.

Very truly yours,



Thomas F. Carroll, III

Enclosure

c: Mary Beth Lonergan, P.P., AICP (via email and regular mail; w/enc.)  
Joshua D. Bauers, Esq. (via email and regular mail; w/enc.)



**APPENDIX B:**  
BOROUGH OF ENGLEWOOD CLIFFS 2018-2025 SPENDING PLAN

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**BOROUGH OF ENGLEWOOD CLIFFS  
THIRD ROUND AFFORDABLE HOUSING TRUST FUND SPENDING PLAN**

**I. INTRODUCTION**

The Borough of Englewood Cliffs, Bergen County first petitioned the Council on Affordable Housing (COAH) for substantive certification on March 6, 1995 and received prior approval to maintain an affordable housing trust fund on October 18, 2006. A development fee ordinance creating dedicated revenue source for affordable housing was approved by COAH on October 18, 2006 which was adopted by the municipality on December 20, 2006. Englewood Cliffs petitioned for third round substantive certification on March 11, 2009, which petition included a Spending Plan submitted for COAH's approval. On April 7, 2011, COAH approved Englewood Cliffs Borough's spending plan by Resolution. The ordinance establishes the Borough of Englewood Cliffs' affordable housing trust fund for which this spending plan is prepared. Any and all rights conferred by the Spending Plan approved by COAH on April 7, 2011 are preserved and are incorporated herein by reference.

This Spending Plan has been prepared 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 to expend all current and future affordable housing trust fund monies, as necessary, to finance the construction of a Borough Sponsored, 100% Affordable project(s).

As of August 2018, the Borough had a balance of approximately \$2,906,207.47 in the Affordable Housing Trust Fund. This includes a collection of \$260,141.59 and expenditure of \$110,960.20 in 2018 to date. 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 TD Bank, located at 457 Sylvan Ave, in Englewood Cliffs, 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.

On August 15, 2018, the Borough brought a motion seeking the Court's authorization to use 1.9 million to acquire a site adjacent to an existing municipally owned site, the Lions Club site, located at 476 Hudson Terrace (Block 513, Lot 7) and its associated parking lot at 4 Clendenin Place (Block 514, Lot 4) (hereinafter collectively "subject property"). On August 21, 2018, the Borough amended the Spending Plan COAH approved on April 7, 2011 in conjunction with the aforementioned motion to reflect that the then current balance in the trust fund was \$2,906,207.47 and that the Borough would be using 1.9 million of that fund in order to acquire the subject property. After reviewing the Borough's motion papers as well as those parties responding to it and after considering oral argument, the Master recommended that the Borough prepare a more comprehensive spending plan identifying anticipated fees through 2025 and otherwise updating the Spending Plan that COAH approved. The Court ordered that the Borough respond to this request. This amended Spending Plan represents the Borough's response to the direction of the Court based upon the recommendation of the Master.

**1. REVENUES FOR CERTIFICATION PERIOD**

To calculate a projection of revenue anticipated through the remaining third round prospective need period (2018-2025), 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. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
3. Future development that is likely to occur based on historical rates of development.

(b) Payment in lieu (PIL):

Currently, there are no actual or committed payments in lieu of construction from any developer, although such payments may be collected in the future.

(c) Other funding sources:

Funds from other sources have not been collected.

(d) Projected interest:

Interest on the projected revenue in the municipal Affordable Housing Trust Fund at the current average interest rate 0.50% simple interest.

**2. REVENUE PROJECTION**

The Borough of Englewood Cliffs, as reported by the New Jersey Department of Community Affairs (NJDC) Construction Code Reporter, issued eighteen (18) permits authorizing the new construction of 1 and 2 family housing units during 2016, as well as, building permits for 31,833 square feet of office space, 11,500 square feet of retail space, and 237,503 square feet of non-residential use as “signs, fences, utility & misc.” space. In the year prior, the Borough issued nineteen (19) permits authorizing the new construction of 1 and 2 family housing units during 2015, as well as, building permits for 13,019 square feet of office space.

The Borough anticipates issuing permits authorizing approximately one hundred (100) housing units over the balance of the prospective third round period. The permitting history and the rate of development are overwhelmingly comprised of single-family demolitions and rebuilds of single-family homes on the same lot. This estimated projection is based on the fact that, (i) the Borough is virtually a fully developed community, and (ii) the Borough issued, in the preceding 7-year period (2008-2014), permits authorizing the new

construction of 132 housing units. The projection of development fees realized from residential development requires the application of the Borough's equalization rate and establishment of an average equalized assessed value for housing. The Borough's equalization rate for 2017 was 97.31%<sup>1</sup> and the average residential assessment in the Borough is \$1,288,651. Dividing the average value of housing by the equalization rate yields the average equalized assessed value for housing, being thusly \$1,324,274.62 ( $\$1,288,651.63 / 0.9731$ ).

As this plan assumes the approximate development of an estimated 130 units over the remainder of the Third Round period, the Borough may potentially realize a development fee collection of approximately \$1,986,411.93 based on the multiplication of average equalized housing value of \$1,324,274.62 x 100 units x the residential development fee of 1.5% of equalized assessed value<sup>2</sup>.

The Borough may also receive nonresidential development fees pursuant to N.J.S.A. 40:55D-8.1 et. seq, under which a fee equal to (i) 2.5% of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots; or (ii) 2.5% of the increase in equalized assessed value, of the additions to existing structures to be used for non-residential purposes, is to be paid.

The Borough collected development fees for non-residential uses from 2007 to 2018 in the net amount of \$865,092.64. However, no non-residential development were collected between 2010 and 2015, and thus the average will be calculated based on only the years they were collected, or 6 years. Thus, the average non-residential development fees collected by the Borough represents \$144,182.11 per year. It is anticipated that the Borough will therefore collect approximately \$1,009,274.77 from 2019 to 2025. Any such funds will used to help fund (i) future municipally sponsored projects , (ii) Affordability Assistance, and (iii) Administrative costs.

Therefore, as of August 2018, the Borough had an amount of \$2,906,207.47 in the Affordable Housing Trust Fund. When adding the potential development fee collection amount of approximately \$1,986,411.93 in residential development fees, approximately \$1,009,274.77 in non-residential fees, and account interest of approximately \$14,531 on existing funds (assuming a 0.50% fixed interest rate), a potential total development fee revenue of approximately \$3,010,217.70 results. Combining the existing funds with the projected funds, the Borough projects a total of \$5,916,425.17 through 2025.

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<sup>1</sup> "Table of Equalized Valuations", New Jersey Department of the Treasury. 2017.

<sup>2</sup> The current residential fee is set at 1 percent of equalized assessed value. The Borough will entertain an amendment to its development fee ordinance to increase the residential fee to 1.5 percent of equalized assessed value and the projections of anticipated fees set forth herein are premised on that assumption.

TABLE 1: PROJECTED REVENUES HOUSING TRUST FUND ENGLEWOOD CLIFFS, BERGEN COUNTY, NEW JERSEY									
SOURCE OF FUNDS	PROJECTED REVENUES-HOUSING TRUST FUND - 2018 THROUGH 2025								
	2018	2019	2020	2021	2022	2023	2024	2025	Total
(a) Development fees (existing thru 8/2018):	\$2,906,207								\$2,906,207
1. Approved Development									
2. Development Pending Approval									
3. Projected Development	\$213,978	\$427,956	\$427,956	\$427,955	\$427,955	\$427,955	\$427,955	\$427,955	\$2,995,687
(b) Payments in Lieu of Construction									
(c) Other Funds									
(d) Interest on Existing *	\$1,817	\$1,817	\$1,817	\$1,816	\$1,816	\$1,816	\$1,816	\$1,816	\$14,531
<b>Total</b>	\$3,122,002	\$429,773	\$429,773	\$429,771	\$429,771	\$429,771	\$429,771	\$429,771	\$5,916,425
*Table assumes a 0.50% fixed interest rate									

The Borough of Englewood Cliffs estimates and projects a potential total of approximately \$1,986,411.93 in residential development fees, approximately \$1,009,274.77 in non-residential fees, and account interest of approximately \$14,531 on existing funds (assuming a 0.50% fixed interest rate), for a potential total development fee revenue of approximately \$3,010,217.70 between September, 2018 and June 30, 2025. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing.

**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 COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

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.

(b) Distribution of Development Fee revenues:

A general description of the distribution of revenues is provided below:

The Englewood Cliffs Housing Liaison forwards a requisition of affordability assistance and administrative costs (routine expenditures) and costs for municipally sponsored 100% affordable housing development (significant expenditures) to the Finance Department recommending the expenditure of development fee revenues as set forth in this spending plan. The Finance Department reviews the request for consistency with the spending plan.

Once a request is approved by the Finance Department, the request is presented to the Borough Council for approval. After receiving Borough Council approval, the Borough of Englewood Cliffs Administrator releases the requested revenue from the trust fund for the specific use.

**4. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS**

**(a) Costs Associated with the New Construction of Borough Sponsored, 100% Affordable Project(s) (N.J.A.C. 5:93-8.16(a))**

The Borough of Englewood Cliffs will dedicate \$2,980,405 towards the acquisition of land and the construction of units for a Borough Sponsored, 100% Affordable Project. The Borough intends to acquire a site located at 476 Hudson Terrace (Block 513, Lot 7) and its associated parking lot at 4 Clendenin Place (Block 514, Lot 4), which is adjacent to the the Borough owned parcel, Block 514, Lot 5, and portion of the Clendenin Place right-of-way, which the Borough plans to vacate. In combination, the contiguous land would provide for a 1.33 +/- acre tract of land, which could reasonably accommodate a 100% affordable multifamily building with flat-unit rentals containing between 36 to 40 units without offending sound land use principles and with consideration of the Borough's surrounding land uses, architectural standards and design features. The ultimate yield on the site could change as a result of discussions with developers seasoned in constructing 100 percent affordable projects and other factors.

The Borough is committed to acquiring additional land to the roughly 1.33 acres referenced above so that an application for a project of at least 52 family affordable units can be the subject of a 9 percent tax credit application.

The costs associated with a 100 percent affordable project shall include all costs associated with new construction, including, but not limited to, land costs, due diligence associated with site acquisition, soft costs associated with the acquisition of the property by the Borough including architect's fees, accounting, engineering and inspection costs, legal expenses, preparation of site plans, and development of the site(s). The Borough intends to expend all allocated funding towards the projected new construction mechanisms. The Borough will adopt a resolution of its intent to fund any shortfall in funding the construction of Borough Sponsored affordable housing project(s).

**New Construction Project(s) expenditure: \$2,980,405**

**(b) Affordability Assistance (N.J.A.C. 5:93-8.16(c))**

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.

Projected minimum Affordability Assistance requirement:

TABLE 2: PROJECTED MINIMUM AFFORDABILITY ASSISTANCE REQUIREMENTS ENGLEWOOD CLIFFS, BERGEN COUNTY, NEW JERSEY		
Actual Development Fees through 08/31/2018		\$2,906,207.47
Development fees projected 2018-2025	+	\$2,995,686.70
Interest projected 2018-2025	+	\$14,531.00
<b>Total</b>	=	\$5,916,425
30 percent requirement	x 0.30 =	\$1,774,928
Less Affordability assistance expenditures through 9/30/2018	-	\$0.00
<b>PROJECTED MINIMUM Affordability Assistance Requirement 9/1/2018 through 6/30/2025</b>	=	\$1,774,928
<b>PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement 9/1/2018 through 6/30/2025</b>	÷ 3 =	\$591,643

The Borough will dedicate at least \$1,774,928 from the Affordable Housing Trust Fund to render units more affordable. Of this amount, \$591,643 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.

It is anticipated that the Borough will utilize Affordability Assistance funds to help subsidize the development of low- and very-low income units within the new construction of the 100% affordable, Borough sponsored project(s). Additionally, examples of other forms of assistance that may be part of the Affordability Assistance program, and subsequent manual to be prepared, for this site and the Borough as a whole, are as follows:

- i. Creating new very-low income units;
- ii. First month's rental assistance; and
- iii. Security deposit assistance.

**Total Affordability Assistance Expenditure:** \$1,774,928

(c) **Administrative Expenses (N.J.A.C. 5:93-8.16(e))**

The Borough of Englewood Cliffs may use affordable housing trust fund 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.

The Borough projects that no more than \$1,161,092.00 will be available from the Affordable Housing Trust Fund to be used for administrative purposes. The Borough



TABLE 3: PROJECTED EXPENDITURE SCHEDULE 2018 - 2025 ENGLEWOOD CLIFFS, BERGEN COUNTY, NEW JERSEY											
Program <i>[Individually list programs and projects e.g. Rehab, Accessory Apartments, for-sale and rental municipally sponsored, etc].</i>	Number of Units Projected	Funds Expended and/or Dedicated	PROJECTED EXPENDITURE SCHEDULE 2015 - 2025								
		2018-2025	2018	2019	2020	2021	2022	2023	2024	2025	Total
<i>Borough Sponsored, 100% Affordable New Construction</i>	57	\$ 2,980,405		\$2,980,405							\$2,980,405
<b>Total Programs</b>		\$2,980,405	-	\$2,980,405		-	-	-	-	-	\$3,013,693
<b>Affordability Assistance</b>		\$1,774,928		\$ 253,562	\$253,561	\$253,561	\$253,561	\$253,561	\$253,561	\$253,561	\$1,774,928
<b>Administration</b>		\$1,161,092	\$110,961	\$150,019	\$150,019	\$150,019	\$150,019	\$150,019	\$150,018	\$150,018	\$1,161,092
<b>Total</b>		\$5,916,425	\$110,961	\$3,383,986	\$403,580	\$403,580	\$403,580	\$403,580	\$403,579	\$403,579	\$5,916,425

**6. EXCESS OR SHORTFALL OF FUNDS**

The Borough of Englewood Cliffs acknowledges that the actual amount of the Development Fees 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 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 Development Fees collected for administration and the Borough agrees to adopt a resolution of intent to fund bond if necessary to cover any shortfall.

The Borough intends to expend all current and future revenues toward the mechanisms, including the funding of and new construction projects, 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.

**II. SUMMARY**

The Borough of Englewood Cliffs intends to spend Affordable Housing Trust Fund revenues pursuant to N.J.A.C. 5:93-8.16 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 of Englewood Cliffs had a balance of \$2,906,207.47 as of August 2018 and anticipates an additional \$2,995,686.70 in revenues for the remainder of the third round prospective need period, or September 2018 to 2025, with interest in the amount of \$14,531 on existing funds, for a total of \$3,010,217.70. The Borough will dedicate \$2,980,405.00 towards the new construction of Borough Sponsored, 100% Affordable project(s), \$1,774,928.00 to render units more affordable, and no more than \$1,161,092 to cover administrative costs. The Borough anticipates that the balance of revenues collected less expenses from 2019 to 2025 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.

<b>TABLE 4: SPENDING PLAN SUMMARY ENGLEWOOD CLIFFS, BERGEN COUNTY, NEW JERSEY</b>	
Balance as of 08/31/2018	\$2,906,207.47
<b>PROJECTED REVENUE 10/1/2018 – 6/30/2025</b>	
Development fees	+ \$2,995,686.70
Payments in lieu of construction	+ \$00.00
Other funds	+ \$00.00
Interest on existing funds	+ \$14,531.00
<b>TOTAL ACTUAL AND PROJECTED REVENUE</b>	<b>= \$5,916,425.17</b>
<b>EXPENDITURES</b>	
Funds Used for Borough Sponsored New Construction	- \$2,980,405.00
Affordability Assistance	- \$1,774,928.00
Administration	- \$1,161,092.00
<b>TOTAL PROJECTED EXPENDITURES</b>	<b>= \$5,916,425.00</b>
<b>REMAINING BALANCE</b>	<b>= \$00.00</b>

**APPENDIX C:**  
MANDATORY SET-ASIDE ORDINANCE NO. 18-14, OCTOBER 20, 2018

	MOTION	SECOND	YES	NO	ABSTAIN	RECUSE	ABSENT
Aversa							
E. Park				✓			
Oh				✓			
McMorrow	✓			✓			
M. Park		✓		✓			
Woo				✓			
Mayor (TIE)				✓			

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

**ORDINANCE 18-14**

**AN ORDINANCE ESTABLISHING MANDATORY INCLUSION OF AFFORDABLE HOUSING THROUGH USE OF PERCENTAGE SET-ASIDES**

**WHEREAS**, the Mayor and Council of the Borough of Englewood Cliffs desires to ensure that any property that benefits from a rezoning, variance or redevelopment plan approved by the Borough and/or the Planning Board that results in multi-family residential development of five (5) or more dwelling units shall require inclusion of and mandatory set-aside for affordable housing units.

**NOW THEREFORE, BE IT ORDAINED**, by the Mayor and Borough Council of the Borough of Englewood Cliffs, County of Bergen, State of New Jersey, as follows:

**SECTION ONE.** There is hereby established in the Code of the Borough of Englewood Cliffs a new Chapter designated as Chapter 30-19A, entitled “**Mandatory Inclusion of and Set-Aside for Affordable Housing**”, as follows:

**30-19A. 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 twenty percent (20%) percent.
- 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 fifteen percent (15%) percent.
- c. As set forth in Chapter 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 (4) 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 (5) 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 (5) or more.

g. All subdivision and site plan approvals of qualifying residential developments shall be conditioned upon compliance with the provisions of this section.

**SECTION TWO.** All ordinances of the Borough of Englewood Cliffs which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency. The remainder of all other sections and subsections not specifically amended by this Ordinance shall remain in full force and effect.

**SECTION THREE.** If any section, subsection, sentence, clause or phrase of this Ordinance is found by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

**SECTION FOUR.** This Ordinance shall take effect immediately upon its passage and publication according to law.

**Introduced:** September 12, 2018  
**Adopted:** SEPTEMBER 26, 2018  
**Effective Date:** October 20, 2018

**SO ORDAINED.**

**Attest:** 

**Borough of Englewood Cliffs  
County of Bergen, State of New Jersey**

  
\_\_\_\_\_  
**Mayor Mario M. Kranjac**

\_\_\_\_\_  
**Lisette M. Duffy, RMC  
Borough Clerk**

**APPENDIX D:**

BOROUGH DEVELOPMENT FEE ORDINANCE 2006-25, ADOPTED DECEMBER 20, 2006 AND APPROVED BY COAH OCTOBER 18, 2006; AMENDED AS ORDINANCE 2009-08, ADOPTED JUNE 10, 2009 AND APPROVED BY COAH ON APRIL 13, 2009.

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

**ORDINANCE 2006-25**

**AN ORDINANCE PROVIDING FOR THE  
DEVELOPMENT FEES PURSUANT TO  
N.J.S.A. 52:27D-301 ET SEQ  
BOROUGH OF ENGLEWOOD CLIFFS  
COUNTY OF BERGEN, STATE OF NEW JERSEY**

**1. Purpose**

- a) In *Holmdel Builder's Association V. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, 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. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's rules. 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.

**2. Basic requirements**

- a) The Borough of Englewood Cliffs shall not spend development fees until COAH has approved a plan for spending such fees and the Borough of Englewood Cliffs has received third round substantive certification from COAH or a judgment of compliance.

**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. "COAH" means the New Jersey Council on Affordable Housing.
  - iii. "Development fee" means funds paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules.
  - iv. "Equalized assessed value" means the value of a property determined by the municipal tax assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of issuance of a building permit may be obtained utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the municipal tax assessor.

**4. Residential Development fees**

- a) Within all residential district(s), residential developers shall pay a fee of one percent of the equalized assessed value for residential development provided no increased density is permitted.
- b) 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 percent of the equalized assessed value for each additional unit that may be realized. In the event that zoning on a site has changed during the two year period preceding the filing of the "d" variance application, the base density for the purpose of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding filing of the "d" variance application.

**5. Non-residential Development fees**

- a) Within all non-residential district(s), non-residential developers shall pay a fee of two percent of the equalized assessed value for non-residential development.
- b) If an increase in floor area ratio is approved pursuant to N.J.S.A. 40:55D-70d(4), then the additional floor area realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of six percent of the equalized assessed value for non-residential development. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two-year period preceding the filing of the variance application.

**6. Eligible exactions, ineligible exactions and exemptions**

- a) Affordable housing developments shall be exempt from development fees. All other forms of new construction shall be subject to development fees unless exempted below.
- b) Developments that have received preliminary or final approval prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a substantial change in the approval.
- c) Development fees shall be imposed and collected when an existing structure is expanded or undergoes a change to a more intense use. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

**7. Collection of fees**

- a) Fifty percent of the development fee will be collected at the time of issuance of the building permit. The remaining portion will be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

8. Contested fees

- a) Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by *The Borough of Englewood Cliffs*. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.

9. Affordable Housing trust fund

- a) Upon approval by COAH and by the Division of Local Government Services, The Borough of Englewood Cliffs will invest development fee revenue and proceeds from the sale of units with extinguished controls into a cash management account, provided that the funds in the cash management account that comprise the deposits and income attributable to such deposits shall at all times be identifiable.
- b) Within seven days from the opening of the trust fund account, The Borough of Englewood Cliffs shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, Bank of America, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:94-6.16(b).
- c) No funds shall be expended from the affordable housing trust fund unless the expenditure conforms to a spending plan approved by COAH. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

10. Use of funds

- a) Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the municipal fair share. Such activities include, but are not limited to: rehabilitation, new construction, RCAs subject to the provisions of N.J.A.C. 5:94-4.4(d), ECHO housing, accessory apartment subsidies, purchase of land for affordable housing, improvement of land to be used for affordable housing, purchase of housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, or administration necessary for implementation of the Housing Element and Fair Share Plan. The expenditure of all funds shall conform to a spending plan approved by COAH.
- b) Funds shall not be expended to reimburse the Borough of Englewood Cliffs for past housing activities.
- c) After subtracting development fees collected to finance an RCA, a rehabilitation program or a new construction project that are necessary to address the Borough of Englewood Cliffs affordable housing obligation, at least 30 percent of the balance remaining 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 30 percent or less of median income by region.
  - i. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, and rental assistance.

- ii. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the third round municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income. The use of development fees in this manner shall entitle the Borough of Englewood Cliffs to bonus credits pursuant to N.J.A.C. 5:94-4.22.
- 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.
- 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. 5:94-7.
- e) No more than 20 percent of the revenues collected from development fees each year, exclusive of the fees used to fund an RCA, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Development fee administrative costs are calculated and may be expended at the end of each year or upon receipt of the fees.

#### 11. Monitoring

- a) The Borough of Englewood Cliffs shall complete and return to COAH all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, and funds from the sale of units with extinguished controls, and the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

#### 12. 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 unless the Borough of Englewood Cliffs has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. The Borough of Englewood Cliffs shall not impose a development fee on a development that receives preliminary or final approval after the expiration of its substantive certification, nor will the Borough of Englewood Cliffs retroactively impose a development fee on such a development. The Borough of Englewood Cliffs will not expend development fees after the expiration of its substantive certification



BOROUGH OF ENGLEWOOD CLIFFS  
BERGEN COUNTY, NEW JERSEY

JUL 22 2009

ORDINANCE 2009-08

COUNCIL ON AFFORDABLE HOUSING

AN ORDINANCE AMENDING ORDINANCE 2009-03  
PROVIDING FOR THE DEVELOPMENT FEES PURSUANT TO  
N.J.S.A. 52:27D-301 ET SEQ  
AND RESCINDING THOSE PORTIONS THEREOF THAT ARE  
INCONSISTENT WITH THIS ORDINANCE**1. Purpose**

- a) In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- b) Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
- c) This 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. 5:97-8.

**2. Basic requirements**

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

### 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.
  - i. **“COAH”** or the **“Council”** means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.
  - ii. **“Development fee”** means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.
  - iii. **“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.
  - iv. **“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).
  - v. **“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.

### 4. **Residential Development fees**

- a) Imposed fees
- i. Within the Borough of Englewood Cliffs’ district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one percent (1%) 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 percent (6%) 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. **Owner-occupied residential structures demolished and replaced as a result of a fire, flood or natural disaster shall be exempt from paying a development fee.**

## 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 a half percent (2.5%) 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.
- 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.
  - ii. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
  - iii. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
  - iv. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
  - 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 non-residential development fees under these circumstances may be enforceable by the Borough of Englewood Cliffs as a lien against the real property of the owner.

## **6. Collection procedures**

- a) Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official.
- 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 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 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 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 for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- i) Appeal of development fees
  - 1) 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 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
  - 2) A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by 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 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

**7. Affordable Housing trust fund**

- a) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- b) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  - 1. payments in lieu of on-site construction of affordable units;
  - 2. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
  - 3. rental income from municipally operated units;
  - 4. repayments from affordable housing program loans;
  - 5. recapture funds;
  - 6. proceeds from the sale of affordable units; and

7. any other funds collected in connection with Englewood Cliff]'s affordable housing program.
- c) Within seven days from the opening of the trust fund account, Borough of Englewood Cliffs shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, TD Bank and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
- d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

## **8. Use of funds**

- a) The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the Borough of Englewood Cliffs' fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.
- b) Funds shall not be expended to reimburse the Borough of Englewood Cliffs for past housing activities.
- c) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the 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 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 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
  - 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.
- 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. 5:96-18.
- e) No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

## **9. Monitoring**

- a) The Borough of Englewood Cliffs shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Borough of Englewood Cliffs' housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

**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 unless the Borough of Englewood Cliffs has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If the Borough of Englewood Cliffs fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (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. The Borough of Englewood Cliffs shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

BE IT FURTHER ORDAINED that this Ordinance shall become effective upon adoption and publication in accordance with law; and

BE IT FURTHER ORDAINED that all ordinances or parts of ordinances other than the Zoning Ordinance of the borough which are inconsistent with the provisions of this chapter are hereby repealed to the extent of such inconsistency; and

BE IT FURTHER ORDAINED should any part or provisions of this Ordinance be held Unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a Whole or any part thereof, other than the part held so unconstitutional or invalid.

This Ordinance shall take effect upon final adoption and publication according to law.

**CERTIFIED TO BE A TRUE AND  
CORRECT COPY OF AN ORDINANCE  
ADOPTED AT A MEETING OF THE  
MAYOR & COUNCIL HELD ON THE**

10<sup>th</sup> DAY OF June 2009

*Altonah E. Fiske*  
**MUNICIPAL CLERK**

## ESCROW AGREEMENT FOR HOUSING TRUST FUND

**NOTE:** *In order for COAH to execute a three-party escrow agreement, the municipality must submit three copies of the agreement, all with original signatures from the municipal representative and the bank representative.*

This Escrow Agreement made this 7<sup>th</sup> day of December, 2007 by and between the Council on Affordable Housing (COAH) and the Borough of Englewood Cliffs and TD Bank (the Bank).

**WHEREAS**, a municipality may impose, collect and spend development fees and establish an affordable housing trust fund that includes, development fees; payments from developers in lieu of constructing affordable units on-site; developer-contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible; rental income from municipally operated units; repayments from affordable housing program loans; recapture funds; proceeds from the sale of affordable units; and/or any other funds collected in connection with Englewood Cliffs's affordable housing program in accordance with P.L.2008, c.46 (C. 52:27D-329.1 et al) and the regulations of COAH at N.J.A.C. 5:97-8.1 et seq.; and

**WHEREAS**, on *October 18, 2006*, COAH approved the *the Borough of Englewood Cliffs* Development Fee Ordinance establishing standards for the collection, maintenance and expenditure of development fees consistent with COAH's rules and P.L.2008, c.46 (C. 52:27D-329.1 et al) and requiring that funds shall only be applied directly toward implementation of *the Borough of Englewood Cliffs's* COAH-certified Fair Share Plan or Court Judgment of Compliance; and

**WHEREAS**, on *December 20, 2006* the governing body of the Borough of Englewood Cliffs adopted Ordinance No. *2006-25*, the Development Fee Ordinance of *the Borough of Englewood Cliffs*, amending the Municipal Code; and

~~*[Select one of the following two statements which pertains to your municipality.]*~~

**WHEREAS**, COAH has not yet approved a spending plan for the Borough of Englewood Cliffs, *the Borough of Englewood Cliffs* acknowledges that no expenditure of development fees; payments from developers in lieu of constructing affordable units on-site; developer-contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible; rental income from municipally operated units; repayments from affordable housing program loans; recapture funds; proceeds from the sale of affordable units; and/or any other funds collected in connection with Englewood Cliffs's affordable housing program in accordance with P.L.2008, c.46 (C. 52:27D-329.1 et al) and the regulations of COAH at N.J.A.C. 5:97-8.1 et seq. may occur prior to COAH's approval of a spending plan; and

**WHEREAS**, the Development Fee Ordinance requires an interest-bearing housing trust fund to be established for the purpose of receiving collected development fees; payments from developers in lieu of constructing affordable units on-site; developer-contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible; rental income from municipally operated units; repayments from affordable housing program loans; recapture funds; proceeds from the sale of affordable units; and/or any other funds collected in connection with Englewood Cliffs's affordable housing program in accordance with P.L.2008, c.46 (C. 52:27D-329.1 et al) and the regulations of COAH at N.J.A.C. 5:97-8.1 et seq. and provides that no money shall be expended from the housing trust fund unless the expenditure conforms to the Development Fee Ordinance, a spending plan approved by COAH and the conditions set out at N.J.A.C. 5:97-8.7-8.9; and

**WHEREAS**, COAH's approval of the Development Fee Ordinance further requires *the Borough of Englewood Cliffs*, within seven days of opening the trust fund account authorized by the ordinance, to enter into an escrow agreement with COAH pursuant to N.J.A.C. 5:97-8.2(a) to enable COAH to monitor disbursement of collected development fees; payments from developers in lieu of constructing affordable units on-site; developer-contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible; rental income from municipally operated units; repayments from affordable housing program loans; recapture funds; proceeds from the sale of affordable units; and/or any other funds collected in connection with Englewood Cliffs's affordable housing program in accordance with P.L.2008, c.46 (C. 52:27D-329.1 et al) and the regulations of COAH at N.J.A.C. 5:97-8.1 et seq. and to direct the forfeiture of such funds after proper notice if their imposition, collection and/or expenditure are not in conformance with the terms of the approved Development Fee Ordinance, the conditions set out at N.J.A.C. 5:97-8.13(a), the spending plan approved by COAH, and P.L.2008, c.46 (C. 52:27D-329.1 et al); and

**WHEREAS**, the Development Fee Ordinance further provides that if COAH determines that the imposition, collection, and/or expenditure of development fees are not in conformance with the terms of the approved Development Fee Ordinance, approved spending plan, and P.L.2008, c.46 (C. 52:27D-329.1 et al), COAH may, after a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., revoke a Development Fee Ordinance approval and direct the transfer of funds including future collection of non-residential development fees to the New Jersey Affordable Housing Trust Fund.

**NOW THEREFORE**, COAH, *the Borough of Englewood Cliffs* and the Bank agree as follows:

1. Designation of Escrow Agent

COAH and *the Borough of Englewood Cliffs* hereby designate *TD Bank* (the Bank) as their escrow agent, upon terms and conditions set forth herein, for the purpose of (a) receiving development fees, payments from developers in lieu of constructing affordable units on-site; developer-contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible; rental income from municipally operated units; repayments from affordable housing program loans; recapture funds; proceeds from the sale of affordable units; and/or any other funds collected in

connection with Englewood Cliffs's affordable housing program in accordance with P.L.2008, c.46 (C. 52:27D-329.1 et al) and the regulations of COAH at N.J.A.C. 5:97-8.1 et seq. collected by *the Borough of Englewood Cliffs*, (b) holding such sums in the escrow account hereinafter described, and (c) disbursing the monies upon the direction of the *[insert title of municipal officer]* of *the Borough of Englewood Cliffs* consistent with the spending plan approved by COAH.

2. Escrow Account

*the Borough of Englewood Cliffs* shall deposit all development fees; payments from developers in lieu of constructing affordable units on-site; developer-contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible; rental income from municipally operated units; repayments from affordable housing program loans; recapture funds; proceeds from the sale of affordable units; and/or any other funds collected in connection with Englewood Cliffs's affordable housing program in accordance with P.L.2008, c.46 (C. 52:27D-329.1 et al) and the regulations of COAH at N.J.A.C. 5:97-8.1 et seq. with the escrow agent and said escrow agent shall establish a separate, interest bearing account to be known as *[insert name of account]* (the Account) and shall deposit therein such initial funds, as well as all subsequent development fees; payments from developers in lieu of constructing affordable units on-site; developer-contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible; rental income from municipally operated units; repayments from affordable housing program loans; recapture funds; proceeds from the sale of affordable units; and/or any other funds collected in connection with Englewood Cliffs's affordable housing program in accordance with P.L.2008, c.46 (C. 52:27D-329.1 et al) and the regulations of COAH at N.J.A.C. 5:97-8.1 et seq. received from *the Borough of Englewood Cliffs*. At no time shall the escrow agent commingle the funds deposited in the Account with any other funds or accounts held or maintained by the escrow agent, nor shall the escrow agent at any time set off any amount on deposit in the Account against (a) any indebtedness owed to the escrow agent by *the Borough of Englewood Cliffs* or any other party, (b) any other obligation owed to the escrow agent by *the Borough of Englewood Cliffs* or any other party, or (c) any claim which the escrow agent may have against *the Borough of Englewood Cliffs* or any other party.

3. Application of Amounts on Deposit

The funds in the Account shall only be used for eligible affordable housing activities of *the Borough of Englewood Cliffs* as set forth in a spending plan approved by COAH. The Bank shall disburse funds in the Account upon the direction of the *Chief Financial Officer* of *the Borough of Englewood Cliffs*, unless notified otherwise by COAH.

4. Cessation of Disbursements from Funds and Forfeiture of Funds to the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320)

COAH shall have the authority to halt disbursements by *the Borough of Englewood Cliffs* from the Account upon written notice to the Bank and to direct all remaining funds to the New Jersey Affordable Housing Trust Fund. COAH shall have such authority if it determines, after notice to *the Borough of Englewood Cliffs*, that the municipality is not in

compliance with all conditions set out in N.J.A.C. 5:97-8.13(a), the Spending Plan and the Development Fee Ordinance. Upon receipt of written notice to cease disbursements from the Account, the Bank shall immediately halt disbursements by *the Borough of Englewood Cliffs* until further written notice from COAH. The Bank shall allow the transfer of funds by COAH to the New Jersey Affordable Housing Trust Fund on behalf of *the Borough of Englewood Cliffs*. COAH shall provide the *Borough of Englewood Cliffs* municipal clerk and chief financial officer with copies of all written notices.

In the event that any of the following conditions, as set out in N.J.A.C. 5:97-8.13(a) occur, COAH shall be authorized on behalf of *the Borough of Englewood Cliffs* and consistent with its rules and P.L.2008, c.46 (C. 52:27D-329.1 et al), to transfer all development fees; payments from developers in lieu of constructing affordable units on-site; developer-contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible; rental income from municipally operated units; repayments from affordable housing program loans; recapture funds; proceeds from the sale of affordable units; and/or any other funds collected in connection with Englewood Cliffs's affordable housing program in accordance with P.L.2008, c.46 (C. 52:27D-329.1 et al) and the regulations of COAH at N.J.A.C. 5:97-8.1 et seq., to the New Jersey Affordable Housing Trust Fund :

- a. Failure to meet deadlines for information required by COAH in its review of a Housing Element and Fair Share Plan, development fee ordinance or plan for spending fees;
- b. Failure to address COAH's conditions for approval of a plan to spend development fees; payments from developers in lieu of constructing affordable units on-site; developer-contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible; rental income from municipally operated units; repayments from affordable housing program loans; recapture funds; proceeds from the sale of affordable units; and/or any other funds collected in connection with Englewood Cliffs's affordable housing program within the deadlines imposed by COAH;
- c. Failure to address COAH's conditions for substantive certification within deadlines imposed by COAH;
- d. Failure to submit accurate annual monitoring reports pursuant to N.J.A.C. 5:97-8.12(a) within the time limits imposed by COAH;
- e. Failure to implement the Spending Plan and expend the funds within the time schedules specified in the Spending Plan, including the requirement to spend the remaining trust fund balance pursuant to N.J.A.C. 5:97-8.10(a)8 and collected fees pursuant to P.L.2008, c.46 (C.52:27D-329.2(8.d) & C.52:27D-329.3(9.b)) within four years;
- f. Expenditure of development fees; payments from developers in lieu of constructing affordable units on-site; developer-contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible; rental income from municipally operated units; repayments from affordable housing program loans; recapture funds; proceeds from the sale of affordable units; and/or any other funds collected in connection with Englewood Cliffs's affordable housing program on activities not permitted by COAH;
- g. Revocation of certification; or

h. Other good cause demonstrating that the revenues are not being used for the approved purpose.

5. Standard of Care; Indemnification

The Bank shall use reasonable care and due diligence in the performance of all of its duties hereunder. *The Borough of Englewood Cliffs* shall indemnify COAH and hold it harmless from and against all liabilities, losses or damages incurred under COAH with respect to any action COAH may take under this escrow agreement with the exception of liabilities, losses or damages solely caused by negligent acts, omissions, errors or willful misconduct by COAH.

6. Records and Accounts

The Bank shall keep accurate financial records and accounts of all transactions relating to the Account, including but not limited to all deposits to the Account, disbursements from the Account and interest earned on the Account which shall be made available for inspection by COAH and *the Borough of Englewood Cliffs*, or their respective designees, at any reasonable time. *the Borough of Englewood Cliffs* shall provide COAH with reports on a quarterly basis, which set forth the amount, date and description of all activity from the Account as well as other information COAH may require to monitor the Account.

7. Notices

All notices, certificates or other communications hereunder shall be delivered by hand or mailed by certified mail to the parties at the following addresses:

a. If to COAH:                    Executive Director  
New Jersey Council on Affordable Housing  
101 South Broad Street  
PO Box 813  
Trenton, NJ 08625-0813

b. If to Municipality:        Municipal Clerk and Chief Financial Officer  
482 Hudson Terrace  
Englewood Cliffs, NJ 07632 \_\_\_\_\_  
\_\_\_\_\_

c. If to Bank:                    TD Bank  
457 Sylvan Avenue  
Englewood Cliffs, NJ 07632 \_\_\_\_\_

Any of the parties may hereby designate different or additional addresses by notice in writing given to the other parties.

8. Further Assistance

The parties hereto shall authorize, execute, acknowledge and deliver such further resolutions, assurances and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights and interests granted hereunder.

9. Agreement Subject to the Fair Housing Act

This agreement is subject to the Fair Housing Act, P.L.2008, c.46 (C. 52:27D-329.1 et al) and the rules of COAH set forth at N.J.A.C. 5:97-8.1 et seq., and nothing contained herein shall be interpreted to limit or restrict in any way the discretion and authority vested in COAH by the Act or rules.

10. Amendments

This agreement may not be amended, supplemented or modified except by a written instrument executed by all the parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement as of the date set forth above.

02/12/09  
Date

Deborah L. Fehre  
Deborah L. Fehre, on behalf of the Borough of Englewood Cliffs

4/1/09  
Date

Lucy Vandenberg  
Lucy Vandenberg, Executive Director  
on behalf of the New Jersey Council  
on Affordable Housing (COAH)

2/10/09  
Date

Daniel Rodriguez  
Daniel Rodriguez, on behalf of TD Bank

**RESOLUTION APPROVING DEVELOPMENT FEE ORDINANCE AMENDMENT  
ENGLEWOOD CLIFFS BOROUGH / BERGEN COUNTY**

WHEREAS, Englewood Cliffs Borough, Bergen County ("Englewood Cliffs" or "Borough"), was denied second round substantive certification of its Housing Element and Fair Share Plan on November 5, 1997; and

WHEREAS, the Borough's original development fee ordinance, which COAH approved on December 6, 1995, became null and void; and

WHEREAS, Englewood Cliffs submitted its petition to COAH for third round substantive certification on April 24, 2006, which included a draft development fee ordinance; and

WHEREAS, COAH approved Englewood Cliff's development fee ordinance on October 18, 2006, which the Borough adopted on October 20, 2006 as **Ordinance No. 2006-25** (attached herewith as Exhibit A); and

WHEREAS, on January 25, 2007, the New Jersey Superior Court, Appellate Division, In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing (and related cases), 390 N.J. Super. 1 (App. Div. 2007), affirmed in part, reversed in part, and remanded portions of the rules back to the Council for rulemaking;

WHEREAS, as a result of the Court decision, COAH proposed the repeal and replacement of its initial third round methodology and rules, N.J.A.C. 5:94 and N.J.A.C. 5:95, in the form of N.J.A.C. 5:96 and N.J.A.C. 5:97, which became effective on June 2, 2008; and

WHEREAS, COAH proposed additional amendments, which became effective on October 20, 2008; and

WHEREAS, the deadline to petition COAH pursuant to the revised third round rules was December 31, 2008; and

WHEREAS, Englewood Cliffs did not meet this deadline; and

WHEREAS, on February 11, 2009, COAH issued a letter to the Borough confirming that it was no longer under COAH's jurisdiction and instructing the Borough to cease collection and/or expenditures of residential development fees, repeal its Development Fee Ordinance, update its affordable housing trust fund, and deposit non-residential development fees into the Statewide Affordable Housing Trust Fund pursuant to the Statewide Non-residential Development Fee Act (C.40:55D-8.1 through 8.7); and

WHEREAS, Englewood Cliffs petitioned COAH with a third round Housing Element and Fair Share Plan pursuant to the revised rules on March 11, 2009, which included an adopted development fee ordinance, **Ordinance No. 2009-03** (attached herewith as Exhibit B); and

WHEREAS, **Ordinance No. 2009-03** replaces Englewood Cliffs' previously adopted ordinance, **Ordinance No. 2006-25**, and is based on COAH's model development fee ordinance; and

WHEREAS, pursuant to N.J.A.C. 5:97-8.3(c), Englewood Cliffs proposes to maintain its mandatory development fees of one percent (1%) of the equalized assessed value of residential developments within all zoning districts; and

WHEREAS, this fee also applies to the increase in the equalized assessed value when an existing residential structure undergoes a change to a more intense use, when a structure is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement; and

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

WHEREAS, if the zoning on a site has changed during the two-year period preceding the filing of the "d" variance application, the base density for the purpose of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding filing of the "d" variance application; and

WHEREAS, Englewood Cliffs has exempted developers of affordable housing from development fees, including inclusionary developments where the developer is providing for the construction of low- and moderate-income units elsewhere in the municipality and developments where the developer has made a payment in lieu of on-site construction of affordable units; and

WHEREAS, the exemption also applies to developers that have received preliminary and/or final site plan approval of a residential development prior to the adoption of the development fee ordinance, unless the developer seeks a substantial change in the application; and

WHEREAS, the ordinance applies mandatory development fees of two and one-half percent (2.5%) of the equalized assessed value of non-residential developments within all zoning districts; and

WHEREAS, this fee also applies to the increase in the equalized assessed value of an existing structure that is expanded and to the replacement of a demolished building; and

WHEREAS, in the case of expansion or replacement, the fee is based on the difference in equalized value of the pre-existing land and improvements and the equalized value of the newly improved or replaced structure; and

WHEREAS, the ordinance exempts from the non-residential development fee the following: an increase in equalized assessed value resulting from alterations, change in use within an existing footprint, reconstruction, renovations and repairs and the exemptions required pursuant to P.L.2008, c.46 (C. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption"; and

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

WHEREAS, the ordinance establishes a separate interest bearing housing trust fund for the purpose of depositing development fees collected in accordance with the ordinance and proceeds from the sale of units with extinguished controls; and

WHEREAS, the Borough of Englewood Cliffs has also established and executed a three-party escrow agreement between the Borough, the banking institution in which the funds are deposited and COAH; and

WHEREAS, the expenditure of funds must be consistent with a spending plan to be approved by COAH; and

WHEREAS, at least 30 percent of the development fees collected and interest earned shall be used for affordability assistance to low- and moderate-income households in affordable units included in the Borough's Fair Share Plan; and

WHEREAS, one-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region; and

WHEREAS, in case of non-conformance with COAH's rules, COAH may direct the manner in which the housing trust fund shall be expended; and

WHEREAS, the Borough of Englewood Cliffs will complete and return to COAH all monitoring forms, including the annual monitoring report related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls and any other funds collected in connection with Englewood Cliffs Borough's housing program, and the expenditure of revenues and implementation of the plan certified by COAH; and

WHEREAS, the Borough of Englewood Cliffs has completed its latest trust fund monitoring report to date; and

WHEREAS, COAH has reviewed the proposed development fee ordinance for compliance with N.J.A.C. 5:97-8 et seq. and P.L.2008, c.46 (C. 52:27D-329.2 and C. 40:55D-8.1-8.7) and has determined that the ordinance with the revisions outlined in the COAH Report dated April 13, 2009 (attached herewith as exhibit C), complies with all requirements set forth in these sections.

NOW, THEREFORE, BE IT RESOLVED that COAH hereby approves the Borough of Englewood Cliffs's amendment to its development fee ordinance subject to the following revision:

1. Revise **section 4.b)iii** to add the following: "*...Owner-occupied residential structures demolished and replaced as a result of a fire, flood or natural disaster shall be exempt from paying a development fee.*"

BE IT FURTHER RESOLVED that the provisions in the ordinance may commence upon the Borough of Englewood Cliffs' governing body adoption of the ordinance as revised per COAH's approval; and

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

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

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

Date: 4/13/09

Lucy Vandenberg  
Lucy Vandenberg, Executive Director  
Council on Affordable Housing

**APPENDIX E.**

RESOLUTION NO. 18-222 OF "INTENT TO BOND OR BUDGET FOR ANY FUNDING SHORTFALL",  
DATED OCTOBER 16, 2018.

	MOTION	SECOND	YES	NO	ABSTAIN	RECUSE	ABSENT
AVERSA			✓				
E. PARK			✓				
OH			✓				
<del>OSHER</del>			✓				
M. PARK		✓	✓				
WOO	✓		✓				
MAYOR (TIE)							

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

**RESOLUTION 18-222**

**RESOLUTION OF INTENT TO BUDGET AND/OR BOND  
FOR ANY FUNDING SHORTFALL, IF NECESSARY**

**WHEREAS**, the Borough of Englewood Cliffs desires to adopt this Resolution, agreeing to fund any shortfall of funds required for implementing municipally-sponsored construction of a affordable housing project. In the event that a shortfall of anticipated revenues occurs, the Borough will secure funding through the general operating budget and/or, the Affordable Housing Trust Fund and/or by bonding, if necessary; and,

**WHEREAS**, the Borough of Englewood Cliffs, Bergen County shall prepare a Housing Element and Fair Share Plan for review by the Court; and,

**WHEREAS**, the plan submitted to the Court will include a Municipally Sponsored 100% Affordable Housing Project for approximately thirty-six (36) to forty (40) affordable units (half low income and half moderate income) at 476 Hudson Terrace (Block 513, Lot 7) and its associated parking lot at 4 Clendenin Place (Block 514, Lot 4) (collectively, the "Premises"); and,

**WHEREAS**, the Borough of Englewood Cliffs anticipates that funding will come from the following sources to satisfy these obligations:

- o Developer(s) securing tax credits to develop approximately forty (40) units of family affordable housing; and
- o Borough of Englewood Cliffs Affordable Housing Trust Fund; and,

**WHEREAS**, in the event that the above funding sources prove inadequate to complete this project on the Premises, the Borough shall provide sufficient funding to address any shortfalls.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of Englewood Cliffs, Bergen County, State of New Jersey, that the Borough does hereby agree to appropriate funds and/or authorize the issuance of debt to fund any shortfall in the development of an affordable housing project on the Premises that may arise, whether due to inadequate funding from other sources or for any other reason; and,

**BE IT FURTHER RESOLVED** that, upon written notification by the Court after a finding that inadequate funding exists to complete the affordable housing project, the Borough agrees to appropriate funds or authorize the issuance of debt within ninety (90) days of written notification; and,

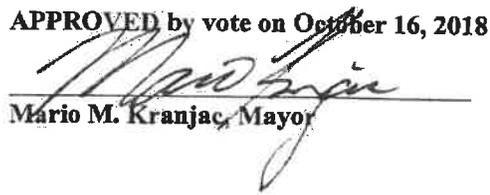
**BE IT FURTHER RESOLVED** that, the Borough of Englewood Cliffs may repay debt through future collections of development fees, as such funds become available.

ATTEST:



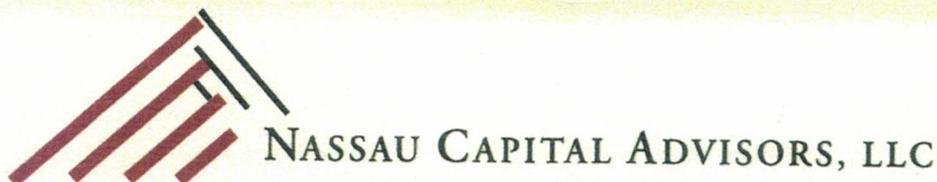
Lisette M. Duffy, RMC, Borough Clerk

APPROVED by vote on October 16, 2018



Mario M. Kranjac, Mayor

**APPENDIX F.**  
**PRO FORMA FOR A MUNICIPALLY-SPONSORED PROJECT FOR UP TO 57-UNITS**



NASSAU CAPITAL ADVISORS, LLC

December 10, 2018

Jeffrey R. Surenian, Esq.  
Jeffrey R. Surenian and Associates, LLC  
707 Union Avenue  
Brielle, NJ 08730

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

*Analysis of Proposed 57-Unit 100% Affordable Housing Project  
To be located at Borough Municipal Complex  
(474 Hudson Terrace – Block 514, Lot 5; 476 Hudson Terrace – Block 513, Lot 7;  
And associated parking lot at 4 Clendenin Place – Block 514, Lot 4; 488 Hudson  
Terrace – Block 513, Lot 5)*

Dear Mr. Surenian:

As you know, I have previously prepared an analysis for the Borough of Englewood Cliffs of the potential gap in financing if the developer of a 40-unit 100% affordable project fails to secure competitive 9% Low Income Housing Tax Credits and only secures 4% tax credits. I now understand that the Borough proposes a 57-unit 100 percent affordable family rental project and has requested that I conduct the same financial analysis. The purpose of this report is to provide that analysis. In addition, as explained below, we have evaluated the competitiveness of the 57-unit project for 9% tax credits in accordance with the tax credit application standards of the N.J. Housing and Mortgage Finance Agency, and have determined that the project would be very competitive.

Scope of this Report

We have prepared two alternative financial feasibility models of the project to determine the capital structure and sources of funds required for the project to be built. Both models assume the project obtains capital funds through the syndication of federal Low Income Housing Tax Credits (LIHTC), plus a long-term loan. With the utilization of LIHTC funds, the Borough is assured that 100% of these 57 units will be affordable to households with incomes ranging from 30% of median to 60% of median.

The attached financial models are organized into a series of inter-connected financial worksheets. Each worksheet in a model illustrates one or more of the key financial assumptions that are particular to this type of development, such as development costs (Executive Summary); rental income (Worksheets 3 and 4); and projected operating income and expenses (Worksheet 5). The data used in these models, in my professional experience, is consistent with similar affordable housing projects recently developed with LIHTC funding in northern New Jersey.

On the first page of each model (Executive Summary), the results of the various attached worksheets are brought together to illustrate the extent to which the tax credit proceeds and project loan amounts are sufficient to pay 100% of the project development costs.

*Summary of Findings*

**Option 1** assumes the project obtains 4% Low Income Housing Tax Credits in the amount of \$4,463,894, along with a loan of \$3,636,863. A third source of funds in this model is “Deferred Developer Fee.” As summarized at bottom of middle column on the Executive Summary, total Sources of Funds in this model are \$9,110,694.

In the upper portion of the middle column, the model itemizes the Use of Funds (Total Development Costs). Total Development Costs for the 4% tax credit model are shown as \$16,074,104.

After adjusting for \$112,152 in additional interest costs post-construction, the project is projected to have a shortfall of \$7,075,562 (or \$124,133 per unit).

**Option 2** assumes the project obtains a 9% LIHTC award. As indicated on the Executive Summary, the Total Development Budget for this model is \$16,447,258. However, the Sources of Funds is significantly increased with the higher proceeds from the 9% tax credits (\$10,901,906). The loan amount is the same as in Option 1. The result is that the project under Option 2 financing assumptions has sufficient sources to pay for all development costs.

*Availability of Low Income Housing Tax Credits*

The LIHTC program has been structured by Congress to provide generally a sufficient state-by-state allocation to fund all 4% tax credit applications which are able to satisfy the strict program guidelines and requirements of the funding. To that extent, therefore, the 4% tax credits are not “discretionary,” and virtually all qualifying applications receive approval.

This is not the case however for 9% tax credits. Funding allocations for 9% awards are much more limited. As a result, applications for 9% credits are extremely competitive. Many applications which meet all the minimum requirements of the program are not funded, or are forced apply and re-apply for several years before finally getting approval.

Notwithstanding the very competitive nature of the 9% tax credits, the subject Project proposed in Englewood Cliffs will be extremely competitive, based on our analysis and experience. We performed a detailed evaluation of the subject Project using the most recent scoring system developed for 9% tax credit applications by the N.J. Housing and Mortgage Finance Agency (HMFA).<sup>1</sup>

Attached to this report is our estimated ranking for the Project for purposes of determining eligibility for a 9% tax credit award, using the specific criteria set forth in HMFA’s 2019 QAP. Out of a possible 95 maximum points, we estimate the Englewood Cliffs Project will likely achieve the top score of 95. In that event, the likelihood of the Project getting a 9% allocation would depend on how many other applications achieved the top score. If the funding requested by such applications exceeded the funds

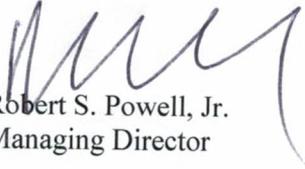
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<sup>1</sup> The scoring system is based on what is known as the Qualified Allocation Plan (“QAP”) which Congress requires each state to develop and update periodically, setting forth the state’s detailed program requirements and guidelines for qualifying tax credit projects. The scorecard we utilized for the Project is the latest HMFA version based on its 2019 QAP.

allocated for the application round, HMFA runs a “tie-breaking” exercise to narrow the field and select the winners. I would not speculate on the results of that process for the Project. There is clearly a fiscal exposure associated with relying upon 9% tax credits to fund a 100% affordable project. However, in my opinion, the Project will certainly be an exceptionally-strong and competitive contender for such funds.

Please let me know if you need any additional information. In the event the facts and circumstances concerning the Project change in the future, I reserve the right to submit supplemental analysis to this report.

Respectfully submitted,



Robert S. Powell, Jr.  
Managing Director

Attachments

**Robert S. Powell, Jr.**

Nassau Capital Advisors, LLC  
12 Vandeventer Avenue – PO Box 1475  
Princeton, NJ 08542  
Email: [rspowell@nassaucap.com](mailto:rspowell@nassaucap.com)  
Website: [www.nassaucap.com](http://www.nassaucap.com)

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### **Executive Profile**

For more than 30 years, Dr. Robert Powell has been a leader in real estate development and finance in the New Jersey-New York region, with a particular focus on the successful financing and development of mixed use downtown redevelopment projects.

Dr. Powell currently serves as **Managing Director of Nassau Capital Advisors, LLC**, which specializes in structuring and managing public and private financing strategies for real estate development clients throughout the region. Dr. Powell previously served as **President and CEO of DKM Properties Corp.** based in Lawrenceville, NJ, where he led the firm in the development, financing and management of more than 6,000,000 square feet of commercial, residential and industrial properties throughout the Northeast region. Dr. Powell began his career as the first **Executive Director of the New Jersey Economic Development Authority**, the public investment bank for the State of New Jersey, where he spearheaded the growth of the EDA into one of the nation's premiere public development corporations.

### **Skill Highlights**

Bob Powell has extensive experience (1) analyzing the financial feasibility of real estate development projects; (2) structuring debt and equity financing for market-rate housing projects as well as affordable housing; (3) advising public housing authorities, municipalities and state agencies as financial advisor on strategies to expand their portfolios of affordable housing with tax credits, HUD financing and similar financing strategies; and (4) advising municipalities undertaking inclusionary redevelopment projects in public-private partnerships on ways to structure such developments using available local, state and federal financial incentives.

### **Expert Witness Services – Financial Feasibility Analysis**

Dr. Powell provides expert witness testimony, technical reports, and related support services, in connection with litigation and arbitration matters involving the financial feasibility of commercial and residential real estate.

Such matters have included the analysis of the financial feasibility of proposed real estate projects, typically in connection with the consideration of a project by a municipal redevelopment agency, planning board or private lending institution.

Recent assignments have focused on a variety of real estate development matters, including:

- (1) *Affordable housing disputes*, including the feasibility of proposed “fair share” affordable housing plans crafted by municipalities to encourage the development of low and moderate income housing units;

- (2) *Commercial real estate contract disputes*, including the calculation of financial damages, including “lost profits” (if any) incurred by parties in cases in which a breach of contract has been alleged;
- (3) *The need for (and structure of) financial incentives for redevelopment projects*, including payments in lieu of taxes (PILOTs);
- (4) *The assessment of risk* that a proposed redevelopment project may not be financial feasible.

### **Credentials and Certifications**

Dr. Powell has been qualified as an expert witness on matters of real estate financial feasibility by state and federal courts throughout New Jersey in dozens of litigation and arbitration matters over the past 15 years.

Dr. Powell has a Master’s Degree and Ph.D. Degree from the Woodrow Wilson School of Public and International Affairs at Princeton University. He received his B.A. with honors in Political Science from the University of North Carolina, Chapel Hill. Dr. Powell is a licensed real estate broker in the State of New Jersey.

### **Representative Client Assignments**

Clients for whom such expert witness work has been provided include a variety of public and private agencies. Here is a partial list:

#### *Affordable Housing Analysis and Development:*

- *U.S. Department of Housing and Urban Development – 2016 – Created and ran training programs for HUD field offices in New York and New Jersey on Low Income Housing Tax Credit funding, RAD financing for public housing and FHA/HUD long term loan programs for affordable housing*
- *N.J. Department of Law and Public Safety/N.J. Department of Community Affairs – 2014-15 - provided financial advisory services regarding development of economic feasibility standards for inclusionary zoning plans in connection with proposed COAH 3<sup>rd</sup> Round regulations*
- *Hoboken, NJ Housing Authority – 2012-14 - Financial Advisor, recapitalizing of public housing units*
- *Asbury Park Housing Authority – 2014-Present - Financial Advisor, recapitalizing of public housing units*
- *Red Bank Housing Authority – 2015-Present - Financial Advisor, recapitalizing of public housing units*
- *Bergen County Housing Authority – 2015 – Financial Advisor, prepared financial plan to raise new capital for development of affordable housing*
- *New Jersey State League of Municipalities – 2015 - Report on Financial Constraints of Inclusionary Zoning*

*Public-Private Redevelopment Projects*

- *Princeton Downtown Redevelopment Project* – Principal and leader of private development team partnering with the Borough of Princeton on design and construction of mixed-use inclusionary redevelopment by Princeton Public Library; project won “Smart Growth” award from N.J. Future
- *Port Authority of NY and NJ* – Headed multi-disciplinary team preparing financial feasibility and engineering study for Port Authority of proposed Port Newark Warehouse Redevelopment project, Newark, NJ
- *Ewing Township, NJ and the Ewing Township Redevelopment Authority* – Financial advisor on Parkway Avenue Redevelopment Project, including 1,000 new residential units with affordable set aside

*Mt. Laurel Litigation – Expert Witness Services*

- Dr. Powell served as an expert witness for consortium of Mercer County municipalities in the matter of *Declaratory Judgment Actions pursuant to Mt. Laurel IV, Superior Court of New Jersey – Mercer County* – Hon. Mary C. Jacobson, A.J.S.C. presiding (expert reports and trial testimony) January – April, 2017
- Dr. Powell served as an expert witness for consortium of Region 4 municipalities (Mercer-Monmouth-Ocean Counties) in *Mt. Laurel Declaratory Judgment Proceedings, Superior Court of New Jersey – Ocean County* – Hon. Mark A. Trancone, J.S.C. (expert reports and testimony at pre-trial mediation) 2016

*Publications and Reports – Affordable Housing*

- *Demographic and Economic Constraints on the Inclusionary Zoning Strategy Utilized for the Production of Low and Moderate Income Housing in New Jersey*, a Report Prepared for the New Jersey State League of Municipalities, September 22, 2015
- *Demographic and Economic Constraints on the Inclusionary Zoning Strategy Utilized for the Production of Low and Moderate Income Housing in New Jersey – Region 4 (Monmouth-Ocean-Mercer Counties)*, a Report Prepared for a consortium of Region 4 municipalities, March 22, 2016
- *Demographic and Economic Constraints on the Inclusionary Zoning Strategy Utilized for the Production of Low and Moderate Income Housing in New Jersey – Region 4 (Monmouth-Ocean-Mercer Counties) – With Supplement for Mercer County*, a Report prepared for consortium of Mercer County municipalities, March 30, 2016

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

*Analysis of Proposed 57-Unit 100% Affordable Housing Project*  
*To be located at Borough Municipal Complex*

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**ATTACHMENT 1: 100% Affordable Housing Project Model**

***Assuming 4% Low Income Housing Tax Credits***

Englewood Cliffs, NJ  
 100% Affordable Housing Project Model  
 Assuming 4% Low Income Housing Tax Credits  
 12.10.18

4% Credits

Key Assumptions & Results		
Hard Costs per Rentable SF		\$185.00
Rentable SF		53,100
Loan Rate		5.500%
Loan Insurance plus servicing		0.00%
Loan Amortization		30
Tax Credit Syndication per \$		0.92
Construction Contingency		10.00%
Developer Fee (Non Acquisition)		15.00%
Operating Assumptions		
Number of Units		57
Weighted Average Rents (Net of Utility Allow)		1,032.19 PUPM
Operating Costs (Incl Pilot)		6,634 PUPY
Replacement Reserves		300 PUPY
Vacancy/Bad Debt		5.00%
Annual Revenue Increase		0.00%
Annual Expense Increase		2.00%
		3.00%
Net Operating Income		
Gross Potential Rental Income		706,020
Other Income		10,000
Vacancy		(35,801)
Effective Gross Income		680,219
Operating Expenses (Incl Pilot)		(378,153)
Replacement Reserves		(17,100)
Net Operating Income		284,966
Debt Service		(247,797)
Other		
Stabilized Cash Flow		37,169
PILLOT Rate		5.00%
PILLOT Per Unit		596.58

Permanent Uses of Funds	
Land Acquisition	0
Relocation	0
Hard Construction	9,823,500
Loan Payoff & Transaction Costs	982,350
Third Party/Professional Fees	0
A&E	350,000
Land Lease Payment	648,351
Organizational/Misc	0
Construction Interest Bridge & Perm	200,000
Bond Issuance Fees/Interest	411,399
Lender's Fees/Brokerage/Legal	580,942
Tax Credit Fees	190,000
Title & Recording	89,278
Initial Deposit to Replacement Reserves	190,000
Operating Reserves	57,000
Developer Fee	283,675
Debt Service Reserve	2,019,873
Other	247,797
Total Development Budget	16,074,104
Permanent Sources of Funds	
Loan	3,636,863
Tax Credit Syndication	4,463,894
Federal Home Loan Bank	0
Other	0
Deferred Developer Fee	1,009,936
Total	9,110,694
Minus: Post Construction Bridge Loan Interest	(112,152)
Surplus/(Shortfall)	(7,075,562)
Shortfall per Unit	(124,133)

Construction Sources/Uses	
Total Dev Cost	16,074,104
Construction Sources	
Permanent Loan	3,636,863
Def Dev Fee	0
TC Syndication	1,009,936
Reserve Transfer	2,485,142
Bridge Loan	0
Total	8,972,163
Surplus	16,074,104
At Bridge Loan Payoff	
Remaining Syndication	2,008,752
Bridge Loan	(8,972,163)
Bridge Int Post Construction	(112,152)
Surplus/(Funding Gap)	(7,075,562)
Tax Credit Syndication Pay In Schedule	
Closing	5.00%
30% Construction	20.00%
60% Construction	30.00%
90-days Stabilization	40.00%
IRS 8609	5.00%

12.10.18

4% Credits

**MAXIMUM LOAN SIZING ANALYSIS - 15 Year Stress**

<u>Operating Assumptions</u>		
Number of Units	57	
Weighted Average Rents	1,032.19	PUPM
Operating Costs	6,634	PUPY
Replacement Reserves	300	PUPY
Vacancy/Bad Debt	5.00%	
		of GPI
PIL/OT Increase	2.00%	
Mgt Fee Increase	2.00%	
Annual Revenue Increase	2.00%	
Annual Expense Increase	3.00%	
		Stress
Net Operating Income	Stabilized	Trended Yr 15
Gross Potential Rental Income	706,020	931,578
Other Income	10,000	13,195
Vacancy	(35,801)	(47,239)
Effective Gross Income	680,219	897,535
	0	0
	0	0
Other Operating Exp	(378,153)	(571,990)
Replacement Reserves	(17,100)	(17,100)
Net Operating Income	284,966	308,444

Maximum Loan is the lesser of Stabilized NOI with a 1.15 First Year Debt Service Coverage Ratio; OR Stress Trended NOI with 1.00 Debt Service Coverage in Year 15.

**Loan Amount**

**3,636,863**

<b>Stabilized Net Operating Income</b>	284,966
Loan Rate	5.500%
Insurance	0.00%
Amortization	30
Payments per Year	12
Debt Service Coverage YR 1	1.15
Available for Debt Service	247,797
Mortgage Constant	6.8135%

**Maximum Loan Amount**

**3,636,863**

Payment	247,797
<b>Trended Net Operating Income</b>	308,444
Loan Rate	5.500%
Insurance	0.00%
Amortization	30
Payments per Year	12
Debt Service Coverage YR15	1.00
Available for Debt Service	308,444
Mortgage Constant	6.8135%

**Maximum Loan Amount**

**4,526,978**

Payment	308,444
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**Englewood Cliffs NJ**  
**4% Affordable Housing Project 4% Credits**

Unit Mix & Rents	# of Units	sq ft	Maximum Rents	Utility Allowance	Net Rent
<b>1 Bdrm</b>					
30% of Median	4	600	576	107	469
50% of Median	4	600	960	107	853
60% of Median	3	600	1,152	107	1,045
<b>2 Bdrm</b>					
30% of Median	2	950	690	134	556
50% of Median	18	950	1,151	134	1,017
60% of Median	12	950	1,381	134	1,247
<b>3 Bdrm</b>					
30% of Median	2	1,150	798	166	632
50% of Median	9	1,150	1,330	166	1,164
60% of Median	3	1,150	1,596	166	1,430
	<b>57</b>	<b>53,100</b>			<b>\$1,032 weighted ave</b>

**Operating Expenses Per Unit**

Operations	6,038	Operations & PILOT	6,634
PILOT	597		
Replacement Reserves	300		

**PILOT Calculation**

PILOT Rate	5%
EGI	680,219
PILOT	34,011
Per Unit Per Yr	597

**Englewood Cliffs, NJ**

4% Credits

**INCOME LIMITS AND RENT CALCULATIONS**

Housing Expense/Income Ratio

30%

**Income Limits by Family Size - Bergen County, New Jersey 2018**

% of Median Inc	FAMILY SIZE							
	One	Two	Three	Four	Five	Six	Seven	Eight
20%	14,340	16,380	18,420	20,460	22,100	23,740	25,380	27,020
30%	21,510	24,570	27,630	30,690	33,150	35,610	38,070	40,530
35%	25,095	28,665	32,235	35,805	38,675	41,545	44,415	47,285
40%	28,680	32,760	36,840	40,920	44,200	47,480	50,760	54,040
50%	35,850	40,950	46,050	51,150	55,250	59,350	63,450	67,550
60%	43,020	49,140	55,260	61,380	66,300	71,220	76,140	81,060
80%	57,360	65,520	73,680	81,840	88,400	94,960	101,520	108,080
100%	71,700	81,900	92,100	102,300	110,500	118,700	126,900	135,100
120%	86,040	98,280	110,520	122,760	132,600	142,440	152,280	162,120

**INCOME LIMITS BY BEDROOM SIZE**

% Median	One Bedroom					Two Bedroom					Three Bedroom					Four Bedroom					Five Bedroom				
	Studio	One Bedroom	Two Bedroom	Three Bedroom	Four Bedroom	Five Bedroom	Studio	One Bedroom	Two Bedroom	Three Bedroom	Four Bedroom	Five Bedroom	Studio	One Bedroom	Two Bedroom	Three Bedroom	Four Bedroom	Five Bedroom	Studio	One Bedroom	Two Bedroom	Three Bedroom	Four Bedroom	Five Bedroom	
20%	14,340	15,360	18,420	21,280	23,740	26,200	14,340	15,360	18,420	21,280	23,740	26,200	14,340	15,360	18,420	21,280	23,740	26,200	14,340	15,360	18,420	21,280	23,740	26,200	
30%	21,510	23,040	27,630	31,920	35,610	39,300	21,510	23,040	27,630	31,920	35,610	39,300	21,510	23,040	27,630	31,920	35,610	39,300	21,510	23,040	27,630	31,920	35,610	39,300	
35%	25,095	26,880	32,235	37,240	41,545	45,850	25,095	26,880	32,235	37,240	41,545	45,850	25,095	26,880	32,235	37,240	41,545	45,850	25,095	26,880	32,235	37,240	41,545	45,850	
40%	28,680	30,720	36,840	42,560	47,480	52,400	28,680	30,720	36,840	42,560	47,480	52,400	28,680	30,720	36,840	42,560	47,480	52,400	28,680	30,720	36,840	42,560	47,480	52,400	
50%	35,850	38,400	46,050	53,200	59,350	65,500	35,850	38,400	46,050	53,200	59,350	65,500	35,850	38,400	46,050	53,200	59,350	65,500	35,850	38,400	46,050	53,200	59,350	65,500	
60%	43,020	46,080	55,260	63,840	71,220	78,600	43,020	46,080	55,260	63,840	71,220	78,600	43,020	46,080	55,260	63,840	71,220	78,600	43,020	46,080	55,260	63,840	71,220	78,600	
80%	57,360	61,440	73,680	85,120	94,960	104,800	57,360	61,440	73,680	85,120	94,960	104,800	57,360	61,440	73,680	85,120	94,960	104,800	57,360	61,440	73,680	85,120	94,960	104,800	
100%	71,700	76,800	92,100	106,400	118,700	131,000	71,700	76,800	92,100	106,400	118,700	131,000	71,700	76,800	92,100	106,400	118,700	131,000	71,700	76,800	92,100	106,400	118,700	131,000	
120%	86,040	92,160	110,520	127,680	142,440	157,200	86,040	92,160	110,520	127,680	142,440	157,200	86,040	92,160	110,520	127,680	142,440	157,200	86,040	92,160	110,520	127,680	142,440	157,200	

**MAXIMUM GROSS RENTS BY BEDROOM SIZE**

% of Median	One Bedroom					Two Bedroom					Three Bedroom					Four Bedroom					Five Bedroom				
	Studio	One Bedroom	Two Bedroom	Three Bedroom	Four Bedroom	Five Bedroom	Studio	One Bedroom	Two Bedroom	Three Bedroom	Four Bedroom	Five Bedroom	Studio	One Bedroom	Two Bedroom	Three Bedroom	Four Bedroom	Five Bedroom	Studio	One Bedroom	Two Bedroom	Three Bedroom	Four Bedroom	Five Bedroom	
20%	358	384	460	532	593	655	358	384	460	532	593	655	358	384	460	532	593	655	358	384	460	532	593	655	
30%	537	576	690	798	890	982	537	576	690	798	890	982	537	576	690	798	890	982	537	576	690	798	890	982	
35%	627	672	805	931	1,038	1,146	627	672	805	931	1,038	1,146	627	672	805	931	1,038	1,146	627	672	805	931	1,038	1,146	
40%	717	768	921	1,064	1,187	1,310	717	768	921	1,064	1,187	1,310	717	768	921	1,064	1,187	1,310	717	768	921	1,064	1,187	1,310	
50%	896	960	1,151	1,330	1,483	1,637	896	960	1,151	1,330	1,483	1,637	896	960	1,151	1,330	1,483	1,637	896	960	1,151	1,330	1,483	1,637	
60%	1,075	1,152	1,381	1,596	1,780	1,965	1,075	1,152	1,381	1,596	1,780	1,965	1,075	1,152	1,381	1,596	1,780	1,965	1,075	1,152	1,381	1,596	1,780	1,965	
80%	1,434	1,536	1,842	2,128	2,374	2,620	1,434	1,536	1,842	2,128	2,374	2,620	1,434	1,536	1,842	2,128	2,374	2,620	1,434	1,536	1,842	2,128	2,374	2,620	
100%	1,792	1,920	2,302	2,660	2,967	3,275	1,792	1,920	2,302	2,660	2,967	3,275	1,792	1,920	2,302	2,660	2,967	3,275	1,792	1,920	2,302	2,660	2,967	3,275	
120%	2,151	2,304	2,763	3,192	3,561	3,930	2,151	2,304	2,763	3,192	3,561	3,930	2,151	2,304	2,763	3,192	3,561	3,930	2,151	2,304	2,763	3,192	3,561	3,930	

Cash Flow Analysis - Development Period

	Budget	Closing	1	2	3	4	5	6	7	8	9	10	11	12
Acquisition	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Relocation	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hard Construction	9,823,500	0	818,625	818,625	818,625	818,625	818,625	818,625	818,625	818,625	818,625	818,625	818,625	818,625
Hard Construction Contingency	982,350	0	81,863	81,863	81,863	81,863	81,863	81,863	81,863	81,863	81,863	81,863	81,863	81,863
Loan Payoff	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Third Party/Professional Fees	350,000	0	0	0	0	0	0	0	0	0	0	0	0	0
A&E	648,351	453,846	16,209	16,209	16,209	16,209	16,209	16,209	16,209	16,209	16,209	16,209	16,209	16,209
Land Lease Payment	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Legal/Organizational/Misc	200,000	200,000	0	0	0	0	0	0	0	0	0	0	0	0
Bond Issuance Costs	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Loan Fees	590,942	590,942	0	0	0	0	0	0	0	0	0	0	0	0
Tax Credit Fees	190,000	190,000	0	0	0	0	0	0	0	0	0	0	0	0
Title & Recording	89,278	89,278	0	0	0	0	0	0	0	0	0	0	0	0
Non-Deferred Developer Fee	190,000	190,000	0	0	0	0	0	0	0	0	0	0	0	0
Tax & Insurance Reserve	1,009,936	100,994	75,745	75,745	75,745	75,745	75,745	75,745	75,745	75,745	75,745	75,745	75,745	75,745
Other Reserves	247,797	247,797	0	0	0	0	0	0	0	0	0	0	0	0
Operating Reserves	57,000	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	283,615	0	0	0	0	0	0	0	0	0	0	0	0	283,615
Bridge Loan Interest	211,371	0	0	2,347	6,579	10,829	11,361	15,631	19,919	24,224	24,224	27,258	31,604	37,384
Permanent Loan Interest	200,027	0	16,669	16,669	16,669	16,669	16,669	16,669	16,669	16,669	16,669	16,669	16,669	16,669
Bond Interest	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Totals</b>	<b>15,064,168</b>	<b>2,402,856</b>	<b>1,009,110</b>	<b>1,011,458</b>	<b>1,015,690</b>	<b>1,019,940</b>	<b>1,020,472</b>	<b>1,024,741</b>	<b>1,029,029</b>	<b>1,033,335</b>	<b>1,033,335</b>	<b>1,036,379</b>	<b>1,040,715</b>	<b>1,387,109</b>
<b>Sources of Funds</b>														
Carryover Balance			1,457,202	448,092	0	0	0	0	0	0	0	0	0	0
Loan	3,636,863	3,636,863	0	0	0	0	0	0	0	0	0	0	0	0
Tax Credit Syndication	4,463,894	223,195	0	0	0	0	892,779	0	0	0	1,339,168	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Reserve Transfer	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bridge Loan Draw	0	0	0	563,366	1,015,690	1,019,940	1,024,741	1,029,029	1,033,335	1,033,335	1,036,379	1,040,715	1,387,109	0
Balance	1,457,202	448,092	563,366	1,015,690	1,019,940	1,024,741	1,029,029	1,033,335	1,033,335	1,036,379	1,040,715	1,387,109	0	0
Cumulative Bridge Loan	0	0	0	563,366	1,579,056	2,598,996	2,726,689	3,751,430	4,780,459	5,813,794	5,813,794	6,544,339	7,585,053	8,972,183
Cumulative Perm Loan	3,636,863	3,636,863	3,636,863	3,636,863	3,636,863	3,636,863	3,636,863	3,636,863	3,636,863	3,636,863	3,636,863	3,636,863	3,636,863	3,636,863



Revenue Inc 2.00%  
Expense Inc 3.00%

Operating Pro Forma - Stress Assumptions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Gross Potential Rental Income	706,020	720,140	734,643	749,234	764,219	779,503	795,093	810,995	827,215	843,759	860,634	877,847	895,404	913,312	931,578
Other Income	10,000	10,200	10,404	10,612	10,824	11,041	11,262	11,487	11,717	11,951	12,190	12,434	12,682	12,936	13,195
Vacancy	(35,801)	(36,517)	(37,247)	(37,992)	(38,752)	(39,527)	(40,318)	(41,124)	(41,947)	(42,786)	(43,641)	(44,514)	(45,404)	(46,312)	(47,239)
Effective Gross Income	680,219	693,823	707,100	721,854	736,291	751,017	766,037	781,356	796,985	812,925	829,183	845,767	862,682	879,936	897,535
Property Mgt	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PILDT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Operating Expenses	(378,153)	(389,498)	(401,183)	(413,218)	(425,615)	(438,383)	(451,534)	(465,081)	(479,033)	(493,404)	(508,206)	(523,452)	(539,156)	(555,330)	(571,990)
Replacement Reserves	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)
Net Operating Income	284,966	287,226	289,417	291,536	293,576	295,534	297,403	299,177	300,852	302,421	303,877	305,215	306,426	307,505	308,444
Debt Service 1															
Principal	48,992	51,755	54,675	57,759	61,017	64,459	68,095	71,936	75,993	80,280	84,809	89,592	94,646	99,985	105,625
Interest	198,805	196,041	193,122	190,038	186,780	183,338	179,702	175,861	171,803	167,516	162,988	158,204	153,150	147,812	142,172
Insurance	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Debt Service 1	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797
Debt Service 2															
Principal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Interest	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Insurance	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Debt Service 2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Debt Service	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797
Property Management Incentive	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other BLT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Cash Flow	37,169	39,429	41,621	43,739	45,780	47,737	49,606	51,381	53,056	54,624	56,081	57,418	58,630	59,709	60,648
Debt Service Coverage	1.15	1.16	1.17	1.18	1.18	1.19	1.20	1.21	1.21	1.22	1.23	1.23	1.24	1.24	1.24

**Englewood Cliffs, NJ**

0

4% Credits

**Tax Credit Calculation**

	Total Costs	Rehab Eligible Basis %	Rehab Eligible Basis	Acquisition Eligible Basis
Land Acquisition	0	0.00%	0	0
Relocation	0	0.00%	0	0
Hard Construction	9,823,500	100.00%	9,823,500	0
Hard Construction Contingency	982,350	100.00%	982,350	0
Loan Payoff & Transaction Costs	0	0.00%	0	0
Third Party/Professional Fees	350,000	75.00%	262,500	0
A&E	0	0	0	0
	648,351	100.00%	648,351	0
Land Lease Payment	0	0.00%	0	0
Organizational/Misc	200,000	100.00%	200,000	0
Construction Interest Bridge & Perm	411,399	50.00%	205,699	0
Bond Issuance Fees/Interest	580,942	75.00%	435,707	0
Lender's Fees/Brokerage/Legal	190,000	50.00%	95,000	0
Tax Credit Fees	89,278	100.00%	89,278	0
Title & Recording	190,000	0.00%	0	0
Initial Deposit to Replacement Reserves	57,000	0.00%	0	0
Operating Reserves	283,615	0.00%	0	0
Developer Fee	2,019,873	100.00%	2,019,873	0
Debt Service Reserve	247,797	0.00%	0	0
Other	0	0.00%	0	0
<b>Total Development Budget</b>	<b>16,074,104</b>		<b>14,762,258</b>	<b>0</b>

Acquisition Basis 0  
 Rehab Basis 14,762,258

**Tax Credit Amount & Syndication Calculation**

Total Development Costs	16,074,104
<b>Eligible Basis - Acquisition</b>	0
DDA Bonus - Acquisition Credits	0%
<b>Eligible Basis - Acquisition Credits</b>	0

**Eligible Basis - Rehab**

Qualified Census Tract Bonus	14,762,258
<b>Adjusted Eligible Basis Limit - Rehab</b>	14,762,258

**Basis as Adjusted**

Applicable Fraction	100%
Qualified Basis	14,762,258
Tax Credit Percentage	3.32%
<b>Maximum Tax Credits Available</b>	<b>490,107</b>

**Net Syndication Calculation**

Annual Tax Credits	490,107
10 Year Credits	4,901,070
% Syndicated	99.00%
Credits Syndicated	4,852,059
Sale Value	0.92
Syndication	4,463,894

Syndication %

99.00%



NASSAU CAPITAL ADVISORS, LLC

Assuming 4% Low Income Housing Tax Credits  
12.10.18

Tax Exempt Bond Worksheet

NOT USED

Total Project Costs 16,074,104  
Minus:

Minus Loan Payoff	0
Minus Lease Payment RBHA	0
Minus Operating Reserves	(283,615)
Minus Initial Deposit to Rep Res	(57,000)
Minus Debt Service Reserve	(247,797)
Other	
Eligible Basis for Bond Calculation	15,485,693

Tax Exempt Bonds Required 55% 8,517,131

Bond Rate 2.00%

Bond Interest During Construction 12 Months 170,343

Bond Issuance Expenses

Agency Issuer Fee	2.50%	212,928
Application Fee		5,000
Bond Counsel Fee		75,000
Trustee Fee		10,000
Trustee Counsel		5,000
Underwriter Counsel		15,000
Other		2,500
Underwriter	1.00%	85,171
Total Issuance Costs		410,600

Bond Issuance Fees & Interest Carry 580,942

Englewood Cliffs, NJ

Loan Amortization Schedule

4% Credits

**ASSUMPTIONS**

Loan Amount	3,636,863
Interest Rate	5.5000%
Annual Servicing	0.00%
Amortization	30
Payments per year	12
Monthly Payment	20,650
Annual Payment	247,797
Annual Payment with Insurance	247,797

	Annual Payment	Annual Interest	Annual Principal	Principal Balance	Insurance	Total Debt Service
1	247,797	198,805	48,992	3,587,871	0	<b>247,797</b>
2	247,797	196,041	51,755	3,536,116	0	247,797
3	247,797	193,122	54,675	3,481,441	0	247,797
4	247,797	190,038	57,759	3,423,683	0	247,797
5	247,797	186,780	61,017	3,362,666	0	247,797
6	247,797	183,338	64,459	3,298,207	0	247,797
7	247,797	179,702	68,095	3,230,112	0	247,797
8	247,797	175,861	71,936	3,158,177	0	247,797
9	247,797	171,803	75,993	3,082,183	0	247,797
10	247,797	167,516	80,280	3,001,903	0	247,797
11	247,797	162,988	84,809	2,917,094	0	247,797
12	247,797	158,204	89,592	2,827,502	0	247,797
13	247,797	153,150	94,646	2,732,856	0	247,797
14	247,797	147,812	99,985	2,632,871	0	247,797
15	247,797	142,172	105,625	2,527,246	0	247,797
16	247,797	136,214	111,583	2,415,663	0	247,797
17	247,797	129,919	117,877	2,297,786	0	247,797
18	247,797	123,270	124,526	2,173,260	0	247,797
19	247,797	116,246	131,551	2,041,709	0	247,797
20	247,797	108,825	138,971	1,902,738	0	247,797
21	247,797	100,986	146,810	1,755,928	0	247,797
22	247,797	92,705	155,091	1,600,837	0	247,797
23	247,797	83,957	163,840	1,436,997	0	247,797
24	247,797	74,715	173,082	1,263,916	0	247,797
25	247,797	64,952	182,845	1,081,071	0	247,797
26	247,797	54,638	193,159	887,912	0	247,797
27	247,797	43,742	204,054	683,858	0	247,797
28	247,797	32,232	215,565	468,294	0	247,797
29	247,797	20,072	227,724	240,569	0	247,797
30	247,797	7,227	240,569	0	0	247,797
31	0	0	0	0	0	0
32	0	0	0	0	0	0
33	0	0	0	0	0	0
34	0	0	0	0	0	0
35	0	0	0	0	0	0

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

*Analysis of Proposed 57-Unit 100% Affordable Housing Project*  
*To be located at Borough Municipal Complex*

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**ATTACHMENT 2: 100% Affordable Housing Project Model**

***Assuming 9% Low Income Housing Tax Credits***

**Englewood Cliffs, NJ**  
**100% Affordable Housing Project Model**  
**Assuming 9% Low Income Housing Tax Credits**  
**12.10.18**

9% Credits

Key Assumptions & Results	
Hard Costs per Rentable SF	\$185.00
Rentable SF	53,100
Loan Rate	5.500%
Loan Insurance plus servicing	0.00%
Loan Amortization	30
Tax Credit Syndication per \$	0.92
Construction Contingency	10.00%
Developer Fee (Non Acquisition)	15.00%
Operating Assumptions	
Number of Units	57
Weighted Average Rents (Net of Utility Allow)	1,032.19 PUPM
Operating Costs (Incl Pilot)	6,634 PUPY
Replacement Reserves	300 PUPY
Vacancy/Bad Debt	5.00%
Annual Revenue Increase	0.00%
Annual Expense Increase	2.00%
	3.00%
Net Operating Income	
Gross Potential Rental Income	706,020
Other Income	10,000
Vacancy	(35,801)
Effective Gross Income	680,219
Operating Expenses (Incl Pilot)	(378,153)
Replacement Reserves	(17,100)
Net Operating Income	284,966
Debt Service	(247,797)
Other	
Stabilized Cash Flow	37,169
PILOT Rate	5.00%
PILOT Per Unit	596.68

Permanent Uses of Funds	
Land Acquisition	0
Relocation	0
Hard Construction	9,823,500
Loan Payoff & Transaction Costs	982,350
Third Party/Professional Fees	0
A&E	350,000
Land Lease Payment	648,351
Organizational/Misc	0
Construction Interest Bridge & Perm	318,497
Bond Issuance Fees/Interest	0
Lender's Fees/Brokerage/Legal	190,000
Tax Credit Fees	218,038
Title & Recording	190,000
Initial Deposit to Replacement Reserves	57,000
Operating Reserves	283,615
Developer Fee	1,938,110
Debt Service Reserve	247,797
Other	0
Total Development Budget	15,447,258
Permanent Sources of Funds	
Loan	3,636,863
Tax Credit Syndication	10,901,906
Federal Home Loan Bank	0
Other	0
Deferred Developer Fee	969,055
Total	15,507,824
Minus: Post Construction Bridge Loan Interest	(60,566)
Surplus/(Shortfall)	0
Shortfall per Unit	0

Construction Sources/Uses	
Total Dev Cost	15,447,258
Construction Sources	
Permanent Loan	3,636,863
Def Dev Fee	969,055
TC Syndication	5,996,048
Reserve Transfer	0
Bridge Loan	4,845,292
Total	15,447,258
Surplus	0
At Bridge Loan Payoff	
Remaining Syndication	4,905,858
Bridge Loan	(4,845,292)
Bridge Int Post Construction	(60,566)
Other	0
Surplus/(Funding Gap)	0
Tax Credit Syndication Pay In Schedule Closing	
30% Construction	5.00%
60% Construction	20.00%
90-days Stabilization	30.00%
IRS 8609	40.00%
	5.00%

**Englewood Cliffs, NJ 9% Tax Credit Model**

**MAXIMUM LOAN SIZING ANALYSIS - 15 Year Stress** 9% Credits

<i>Operating Assumptions</i>		
Number of Units	57	
Weighted Average Rents	1,032.19	PUPM
Operating Costs	6,634	PUPY
Replacement Reserves	300	PUPY
Vacancy/Bad Debt	5.00%	
PILOT Increase	2.00%	of GPI
Mgt Fee Increase	2.00%	
Annual Revenue Increase	2.00%	
Annual Expense Increase	3.00%	
Net Operating Income		Stress
	Stabilized	Trended Yr 15
Gross Potential Rental Income	706,020	931,578
Other Income	10,000	13,195
Vacancy	(35,801)	(47,239)
Effective Gross Income	680,219	897,535
	0	0
	0	0
Other Operating Exp	(378,153)	(571,990)
Replacement Reserves	(17,100)	(17,100)
Net Operating Income	284,966	308,444

Maximum Loan is the lesser of Stabilized NOI with a 1.15 First Year Debt Service Coverage Ratio; OR Stress Trended NOI with 1.00 Debt Service Coverage in Year 15.

**Loan Amount**

**3,636,863**

<b>Stabilized Net Operating Income</b>	284,966
Loan Rate	5.500%
Insurance	0.00%
Amortization	30
Payments per Year	12
Debt Service Coverage YR 1	1.15
Available for Debt Service	247,797
Mortgage Constant	6.8135%

**Maximum Loan Amount**

**3,636,863**

Payment	247,797
<b>Trended Net Operating Income</b>	308,444
Loan Rate	5.500%
Insurance	0.00%
Amortization	30
Payments per Year	12
Debt Service Coverage YR15	1.00
Available for Debt Service	308,444
Mortgage Constant	6.8135%

**Maximum Loan Amount**

**4,526,978**

Payment	308,444
---------	---------

**Englewood Cliffs, NJ 9% Tax Credit Model**

0

9% Credits

Unit Mix & Rents	# of Units	sq ft	Maximum Rents	Utility Allowance	Net Rent
<b>1 Bdrm</b>					
30% of Median	4	600	576	107	469
50% of Median	4	600	960	107	853
60% of Median	3	600	1,152	107	1,045
<b>2 Bdrm</b>					
30% of Median	2	950	690	134	556
50% of Median	18	950	1,151	134	1,017
60% of Median	12	950	1,381	134	1,247
<b>3 Bdrm</b>					
30% of Median	2	1,150	798	166	632
50% of Median	9	1,150	1,330	166	1,164
60% of Median	3	1,150	1,596	166	1,430
	57	53,100			\$1,032 weighted ave

**Operating Expenses Per Unit**

Operations	6,038	Operations & PILOT	6,634
PILOT	597		
Replacement Reserves	300		

**PILOT Calculation**

PILOT Rate	5%
EGI	680,219
PILOT	34,011
Per Unit Per Yr	597

**Englewood Cliffs, NJ 9% Tax Credit Model**

9% Credits

**INCOME LIMITS AND RENT CALCULATIONS**

Housing Expense/Income Ratio

30%

**Income Limits by Family Size - Bergen County, New Jersey 2018**

% of Median Inc	FAMILY SIZE							
	One	Two	Three	Four	Five	Six	Seven	Eight
20%	14,340	16,380	18,420	20,460	22,100	23,740	25,380	27,020
30%	21,510	24,570	27,630	30,690	33,150	35,610	38,070	40,530
35%	25,095	28,665	32,235	35,805	38,675	41,545	44,415	47,285
40%	28,680	32,760	36,840	40,920	44,200	47,480	50,760	54,040
50%	35,850	40,950	46,050	51,150	55,250	59,350	63,450	67,550
60%	43,020	49,140	55,260	61,380	66,300	71,220	76,140	81,060
80%	57,360	65,520	73,680	81,840	88,400	94,960	101,520	108,080
100%	71,700	81,900	92,100	102,300	110,500	118,700	126,900	135,100
120%	86,040	98,280	110,520	122,760	132,600	142,440	152,280	162,120

**INCOME LIMITS BY BEDROOM SIZE**

% Median	One					Two					Three					Four					Five									
	Studio	Bedroom	Bedroom	Bedroom	Bedroom	Studio	Bedroom	Bedroom	Bedroom	Bedroom	Studio	Bedroom	Bedroom	Bedroom	Bedroom	Studio	Bedroom	Bedroom	Bedroom	Bedroom	Studio	Bedroom	Bedroom	Bedroom	Bedroom	Studio	Bedroom	Bedroom	Bedroom	Bedroom
20%	14,340	15,360	18,420	21,280	23,740	14,340	15,360	18,420	21,280	23,740	14,340	15,360	18,420	21,280	23,740	14,340	15,360	18,420	21,280	23,740	14,340	15,360	18,420	21,280	23,740	14,340	15,360	18,420	21,280	23,740
30%	21,510	23,040	27,630	31,920	35,610	21,510	23,040	27,630	31,920	35,610	21,510	23,040	27,630	31,920	35,610	21,510	23,040	27,630	31,920	35,610	21,510	23,040	27,630	31,920	35,610	21,510	23,040	27,630	31,920	35,610
35%	25,095	26,880	32,235	37,240	41,545	25,095	26,880	32,235	37,240	41,545	25,095	26,880	32,235	37,240	41,545	25,095	26,880	32,235	37,240	41,545	25,095	26,880	32,235	37,240	41,545	25,095	26,880	32,235	37,240	41,545
40%	28,680	30,720	36,840	42,560	47,480	28,680	30,720	36,840	42,560	47,480	28,680	30,720	36,840	42,560	47,480	28,680	30,720	36,840	42,560	47,480	28,680	30,720	36,840	42,560	47,480	28,680	30,720	36,840	42,560	47,480
50%	35,850	38,400	46,050	53,200	59,350	35,850	38,400	46,050	53,200	59,350	35,850	38,400	46,050	53,200	59,350	35,850	38,400	46,050	53,200	59,350	35,850	38,400	46,050	53,200	59,350	35,850	38,400	46,050	53,200	59,350
60%	43,020	46,080	55,260	63,840	71,220	43,020	46,080	55,260	63,840	71,220	43,020	46,080	55,260	63,840	71,220	43,020	46,080	55,260	63,840	71,220	43,020	46,080	55,260	63,840	71,220	43,020	46,080	55,260	63,840	71,220
80%	57,360	61,440	73,680	85,120	94,960	57,360	61,440	73,680	85,120	94,960	57,360	61,440	73,680	85,120	94,960	57,360	61,440	73,680	85,120	94,960	57,360	61,440	73,680	85,120	94,960	57,360	61,440	73,680	85,120	94,960
100%	71,700	76,800	92,100	106,400	118,700	71,700	76,800	92,100	106,400	118,700	71,700	76,800	92,100	106,400	118,700	71,700	76,800	92,100	106,400	118,700	71,700	76,800	92,100	106,400	118,700	71,700	76,800	92,100	106,400	118,700
120%	86,040	92,160	110,520	127,680	142,440	86,040	92,160	110,520	127,680	142,440	86,040	92,160	110,520	127,680	142,440	86,040	92,160	110,520	127,680	142,440	86,040	92,160	110,520	127,680	142,440	86,040	92,160	110,520	127,680	142,440

**MAXIMUM GROSS RENTS BY BEDROOM SIZE**

% of Median	One					Two					Three					Four					Five									
	Studio	Bedroom	Bedroom	Bedroom	Bedroom	Studio	Bedroom	Bedroom	Bedroom	Bedroom	Studio	Bedroom	Bedroom	Bedroom	Bedroom	Studio	Bedroom	Bedroom	Bedroom	Bedroom	Studio	Bedroom	Bedroom	Bedroom	Bedroom	Studio	Bedroom	Bedroom	Bedroom	Bedroom
20%	358	384	460	532	593	358	384	460	532	593	358	384	460	532	593	358	384	460	532	593	358	384	460	532	593	358	384	460	532	593
30%	537	576	690	798	890	537	576	690	798	890	537	576	690	798	890	537	576	690	798	890	537	576	690	798	890	537	576	690	798	890
35%	627	672	805	931	1,038	627	672	805	931	1,038	627	672	805	931	1,038	627	672	805	931	1,038	627	672	805	931	1,038	627	672	805	931	1,038
40%	717	768	921	1,064	1,187	717	768	921	1,064	1,187	717	768	921	1,064	1,187	717	768	921	1,064	1,187	717	768	921	1,064	1,187	717	768	921	1,064	1,187
50%	896	960	1,151	1,330	1,483	896	960	1,151	1,330	1,483	896	960	1,151	1,330	1,483	896	960	1,151	1,330	1,483	896	960	1,151	1,330	1,483	896	960	1,151	1,330	1,483
60%	1,075	1,152	1,381	1,596	1,780	1,075	1,152	1,381	1,596	1,780	1,075	1,152	1,381	1,596	1,780	1,075	1,152	1,381	1,596	1,780	1,075	1,152	1,381	1,596	1,780	1,075	1,152	1,381	1,596	1,780
80%	1,434	1,536	1,842	2,128	2,374	1,434	1,536	1,842	2,128	2,374	1,434	1,536	1,842	2,128	2,374	1,434	1,536	1,842	2,128	2,374	1,434	1,536	1,842	2,128	2,374	1,434	1,536	1,842	2,128	2,374
100%	1,792	1,920	2,302	2,660	2,967	1,792	1,920	2,302	2,660	2,967	1,792	1,920	2,302	2,660	2,967	1,792	1,920	2,302	2,660	2,967	1,792	1,920	2,302	2,660	2,967	1,792	1,920	2,302	2,660	2,967
120%	2,151	2,304	2,763	3,192	3,561	2,151	2,304	2,763	3,192	3,561	2,151	2,304	2,763	3,192	3,561	2,151	2,304	2,763	3,192	3,561	2,151	2,304	2,763	3,192	3,561	2,151	2,304	2,763	3,192	3,561



Cash Flow Analysis - Development Period

	Budget		Closing												
	0	0	1	2	3	4	5	6	7	8	9	10	11	12	
Acquisition	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Relocation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Hard Construction	9,823,500	0	818,625	818,625	818,625	818,625	818,625	818,625	818,625	818,625	818,625	818,625	818,625	818,625	
Hard Construction Contingency	982,350	0	81,863	81,863	81,863	81,863	81,863	81,863	81,863	81,863	81,863	81,863	81,863	81,863	
Loan Payoff	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Third Party/Professional Fees	350,000	350,000	0	0	0	0	0	0	0	0	0	0	0	0	
AdE	648,351	453,846	16,209	16,209	16,209	16,209	16,209	16,209	16,209	16,209	16,209	16,209	16,209	16,209	
Land Lease Payment	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Legal/Organizational/Misc	200,000	200,000	0	0	0	0	0	0	0	0	0	0	0	0	
Bond Issuance Costs	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Loan Fees	190,000	190,000	0	0	0	0	0	0	0	0	0	0	0	0	
Tax Credit Fees	218,038	218,038	0	0	0	0	0	0	0	0	0	0	0	0	
Title & Recording	190,000	190,000	0	0	0	0	0	0	0	0	0	0	0	0	
Non-Deferred Developer Fee	969,055	96,906	72,679	72,679	72,679	72,679	72,679	72,679	72,679	72,679	72,679	72,679	72,679	72,679	
Tax & Insurance Reserve	247,797	247,797	0	0	0	0	0	0	0	0	0	0	0	0	
Other Reserves	57,000	0	0	0	0	0	0	0	0	0	0	0	0	0	
Operating Reserves	283,615	0	0	0	0	0	0	0	0	0	0	0	0	283,615	
Bridge Loan Interest	118,470	0	0	0	3,275	7,498	7,498	7,498	11,098	15,353	15,353	15,353	15,353	20,189	
Permanent Loan Interest	200,027	0	16,669	16,669	16,669	16,669	16,669	16,669	16,669	16,669	16,669	16,669	16,669	16,669	
Bond Interest	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
<b>Totals</b>	<b>14,478,203</b>	<b>1,946,586</b>	<b>1,006,044</b>	<b>1,006,044</b>	<b>1,009,320</b>	<b>1,013,543</b>	<b>1,013,543</b>	<b>1,013,543</b>	<b>1,017,142</b>	<b>1,021,398</b>	<b>1,021,398</b>	<b>1,021,398</b>	<b>1,021,398</b>	<b>1,366,848</b>	
<b>Sources of Funds</b>															
Carryover Balance			2,235,373	1,229,328	223,284	0	1,166,839	153,296	0	0	0	0	0	0	206,378
Loan	3,636,863	3,636,863	0	0	0	0	0	0	0	0	0	0	0	0	
Tax Credit Syndication	10,901,906	545,095	0	0	0	2,180,381	0	0	0	0	0	0	0	0	
Other	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Reserve Transfer	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Bridge Loan Draw	0	0	0	0	786,036	1,013,543	0	1,166,839	863,846	1,021,398	0	0	0	1,160,469	
Balance	2,235,373	1,229,328	223,284	0	786,036	1,013,543	1,166,839	153,296	0	0	0	0	0	0	
Cumulative Bridge Loan	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Cumulative Perm Loan	3,636,863	3,636,863	3,636,863	3,636,863	786,036	1,799,578	3,636,863	1,799,578	2,663,424	3,684,822	3,684,822	3,684,822	3,684,822	4,845,292	



Englewood Cliffs, NJ 9% Tax Credit Model

9% Credits

Revenue Inc 2.00%  
Expense Inc 3.00%

Operating Pro Forma - Stress Assumptions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Gross Potential Rental Income	706,020	720,140	734,643	749,234	764,219	779,603	795,093	810,995	827,215	843,799	860,634	877,847	895,404	913,312	931,678
Other Income	10,000	10,200	10,404	10,612	10,824	11,041	11,262	11,487	11,717	11,951	12,190	12,434	12,682	12,936	13,195
Vacancy	(35,801)	(36,517)	(37,247)	(37,992)	(38,752)	(39,527)	(40,318)	(41,124)	(41,947)	(42,786)	(43,641)	(44,514)	(45,404)	(46,312)	(47,239)
Effective Gross Income	660,219	683,823	707,700	721,854	736,291	751,017	766,037	781,358	796,985	812,925	829,183	845,767	862,682	879,986	897,535
Property Mgt	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
P.L.O.U.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Operating Expenses	(378,153)	(389,498)	(401,183)	(413,218)	(425,615)	(438,383)	(451,534)	(465,081)	(479,033)	(493,404)	(508,206)	(523,452)	(539,156)	(555,330)	(571,990)
Replacement Reserves	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)	(17,100)
Net Operating Income	284,966	287,226	289,417	291,536	293,576	295,534	297,403	299,177	300,852	302,421	303,877	305,215	306,426	307,505	308,444
Debt Service 1	48,992	51,755	54,675	57,759	61,017	64,459	68,095	71,936	75,993	80,280	84,809	89,592	94,646	99,985	105,625
Principal	198,805	196,041	193,122	190,038	186,780	183,338	179,702	175,861	171,803	167,516	162,988	158,204	153,150	147,812	142,172
Insurance	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Debt Service 1	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797
Debt Service 2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Principal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Interest	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Insurance	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Debt Service 2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Debt Service	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797	247,797
Property Management Incentive	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other B.L.T	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Net Cash Flow	37,169	39,429	41,621	43,739	45,780	47,737	49,606	51,381	53,066	54,624	56,081	57,418	58,630	59,709	60,648
Debt Service Coverage	1.15	1.16	1.17	1.18	1.18	1.19	1.20	1.21	1.21	1.22	1.23	1.23	1.24	1.24	1.24



**Englewood Cliffs, NJ 9% Tax Credit Model**

**0** **9% Credits**

**Tax Credit Calculation**

	Total Costs	Rehab Eligible Basis %	Rehab Eligible Basis	Acquisition Eligible Basis
Land Acquisition	0	0.00%	0	0
Relocation	0	0.00%	0	0
Hard Construction	9,823,500	100.00%	9,823,500	0
Hard Construction Contingency	982,350	100.00%	982,350	0
Loan Payoff & Transaction Costs	0	0.00%	0	0
Third Party/Professional Fees	350,000	75.00%	262,500	0
A&E	0	0	0	0
	648,351	100.00%	648,351	0
Land Lease Payment	0	0.00%	0	0
Organizational/Misc	200,000	100.00%	200,000	0
Construction Interest Bridge & Perm	318,497	50.00%	159,249	0
Bond Issuance Fees/Interest	0	75.00%	0	0
Lender's Fees/Brokerage/Legal	190,000	50.00%	95,000	0
Tax Credit Fees	218,038	100.00%	218,038	0
Title & Recording	190,000	0.00%	0	0
Initial Deposit to Replacement Reserves	57,000	0.00%	0	0
Operating Reserves	283,615	0.00%	0	0
Developer Fee	1,938,110	100.00%	1,938,110	0
Debt Service Reserve	247,797	0.00%	0	0
Other	0	0.00%	0	0
<b>Total Development Budget</b>	<b>15,447,258</b>		<b>14,327,098</b>	<b>0</b>

Acquisition Basis **0**  
 Rehab Basis **14,327,098**

**Tax Credit Amount & Syndication Calculation**

Total Development Costs	15,447,258
<b>Eligible Basis - Acquisition</b>	0
DDA Bonus - Acquisition Credits	0%
<b>Eligible Basis - Acquisition Credits</b>	0

<b>Eligible Basis - Rehab</b>	14,327,098
Qualified Census Tract Bonus	0%
<b>Adjusted Eligible Basis Limit - Rehab</b>	14,327,098

<b>Basis as Adjusted</b>	14,327,098
Applicable Fraction	100%
Qualified Basis	14,327,098
Tax Credit Percentage	9.00%
<b>Maximum Tax Credits Available</b>	1,289,439

<b>Net Syndication Calculation</b>	
Annual Tax Credits	1,196,959
10 Year Credits	11,969,594
% Syndicated	99.00%
Credits Syndicated	11,849,898
Sale Value	0.92
Syndication	10,901,906

Syndication % 99.00%



NASSAU CAPITAL ADVISORS, LLC

**Englewood Cliffs, NJ 9% Tax Credit Model**  
**9% Credits**

**Tax Exempt Bond Worksheet**

NOT USED

Total Project Costs 15,447,258  
 Minus:

Minus Loan Payoff	0
Minus Lease Payment RBHA	0
Minus Operating Reserves	(283,615)
Minus Initial Deposit to Rep Res	(57,000)
Minus Debt Service Reserve	(247,797)
Other	
Eligible Basis for Bond Calculation	14,858,847

Tax Exempt Bonds Required 55% 8,172,366

Bond Rate 2.00%

Bond Interest During Construction 12 Months 163,447

**Bond Issuance Expenses**

Agency Issuer Fee	2.50%	204,309
Application Fee		5,000
Bond Counsel Fee		75,000
Trustee Fee		10,000
Trustee Counsel		5,000
Underwriter Counsel		15,000
Other		2,500
Underwriter	1.00%	81,724
Total Issuance Costs		398,533

Bond Issuance Fees & Interest Carry 561,980



NASSAU CAPITAL ADVISORS, LLC

**Englewood Cliffs, NJ 9% Tax Credit Model**

**Loan Amortization Schedule**

9% Credits

ASSUMPTIONS	
Loan Amount	3,636,863
Interest Rate	5.5000%
Annual Servicing	0.00%
Amortization	30
Payments per year	12
Monthly Payment	20,650
Annual Payment	247,797
Annual Payment with Insurance	247,797

1	0.000%					Total Debt Service
	Annual Payment	Annual Interest	Annual Principal	Principal Balance	Insurance	
1	247,797	198,805	48,992	3,587,871	0	247,797
2	247,797	196,041	51,755	3,536,116	0	247,797
3	247,797	193,122	54,675	3,481,441	0	247,797
4	247,797	190,038	57,759	3,423,683	0	247,797
5	247,797	186,780	61,017	3,362,666	0	247,797
6	247,797	183,338	64,459	3,298,207	0	247,797
7	247,797	179,702	68,095	3,230,112	0	247,797
8	247,797	175,861	71,936	3,158,177	0	247,797
9	247,797	171,803	75,993	3,082,183	0	247,797
10	247,797	167,516	80,280	3,001,903	0	247,797
11	247,797	162,988	84,809	2,917,094	0	247,797
12	247,797	158,204	89,592	2,827,502	0	247,797
13	247,797	153,150	94,646	2,732,856	0	247,797
14	247,797	147,812	99,985	2,632,871	0	247,797
15	247,797	142,172	105,625	2,527,246	0	247,797
16	247,797	136,214	111,583	2,415,663	0	247,797
17	247,797	129,919	117,877	2,297,786	0	247,797
18	247,797	123,270	124,526	2,173,260	0	247,797
19	247,797	116,246	131,551	2,041,709	0	247,797
20	247,797	108,825	138,971	1,902,738	0	247,797
21	247,797	100,986	146,810	1,755,928	0	247,797
22	247,797	92,705	155,091	1,600,837	0	247,797
23	247,797	83,957	163,840	1,436,997	0	247,797
24	247,797	74,715	173,082	1,263,916	0	247,797
25	247,797	64,952	182,845	1,081,071	0	247,797
26	247,797	54,638	193,159	887,912	0	247,797
27	247,797	43,742	204,054	683,858	0	247,797
28	247,797	32,232	215,565	468,294	0	247,797
29	247,797	20,072	227,724	240,569	0	247,797
30	247,797	7,227	240,569	0	0	247,797
31	0	0	0	0	0	0
32	0	0	0	0	0	0
33	0	0	0	0	0	0
34	0	0	0	0	0	0
35	0	0	0	0	0	0

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

*Analysis of Proposed 57-Unit 100% Affordable Housing Project*  
*To be located at Borough Municipal Complex*

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**ATTACHMENT 3: 100% Affordable Housing Project Model**

***Projected HMFA Score Sheet for Englewood Cliffs 9% LIHTC Application***

Englewood Cliffs 100% Affordable Housing Project - 57 Units  
 Projected 9% Low Income Housing Tax Credit Score Sheet  
 NJ HMFPA Standards per 2019 QAP  
 12.10.18  
 Nassau Capital Advisors, LLC

PROJECT SCORING CRITERIA

	Maximum Points	Options	Self Score
1 One of Following 3 Options 1.) Extend Compliance period 45 years and NOT Targeted Urban Municipality 2.) TUM 3.) Convert to Homeownership	20	20 15 10	20
2 Utilize Public Housing Waiting Lists	2		2
3 One of Following Options 1.) Low Density % of large units	5	5	5
4 Municipal Support - 15 Year tax abatement with a rate of no more than 5% 15 Year tax abatement with rate of 5% to 10% 15 year tax abatement with more than 10%	5	5 4 3	5
5 Social Services - up to 3 free of Charge with 2 Points each One Two Three	6	2 2 2	2
6 Minority Participation Construction 15% must be MBE WBE	5	5	5
7 Located in a Ready to Grow Area 1.) Smart Growth Area or suitable for growth under State Strategic Plan 2.) Water & Waste Water Capacity AND a.) Area in need of rehab or redev; OR b.) Located in a previously designated center on State Plan Policy Map	2	2 2 2	2
8 Unit Amenities - 2 Points for Each Amenity up to 6 points security alarm washer dryer hookup with floor drain energy star appliances	6	2 2 2	2

**PROJECT SCORING CRITERIA**

	Maximum Points	Options	Self Score
min bedroom size of 100 sf		2	
Closet space		2	
Others - min size of kitchen cabs, closet space, patios, internet, etc.			
9 Project Amenities - 2 Points Each with Max of 4 Points	4		
1.) Playground		2	
2.) Community Room min of 1,600 sf		2	
3.) On Site Laundry		2	
4.) Community Gardens		2	
5.) unit size 1 bdrm 650; 2 bdrm 875 sf; 3 bdrm 1,100 sf		2	
6.) Smoke Free Community		2	
10 Community Policing or Public Safety Enhancements evening hour security guard, on site police station, camera in each building, others	2		
11 Location Advantages	6		
Within a half mile of the following:			
1.) full service grocery or supermarket		2	2
2.) Pharmacy		1	0
3.) Department or Retail Merchandise Store		2	2
4.) Bank or Credit Union		1	
5.) Restaurant - exclusive of fast food		1	
6.) indoor public recreation facilities such as, comm center, civic cntr or library		1	1
7.) Park or swimming pool		1	1
8.) Hospital		2	
9.) Medical Office		2	
10.) Public School		1	
11.) Post Office		2	
12.) Day Care		1	
13.) Police Fire station		2	
Negative Location Points	0		0
Within a mile of the following will have a max of 3 points deducted Landfill; Garbage Dump; Trash Incinerator; Oil Refinery; Nuclear Power Plant; Unremediated Superfund site			
Commitment Letter Syndicator or executed Partnership Agreement			3
12 specifying pricing and capital Contributions			3
13 Energy Efficiencies			4

**PROJECT SCORING CRITERIA**

	Maximum Points	Options	Self Score
Numerous options on Pages 50 & 51 to receive max of 4 points			
14 Additional Locational Points w Max of 8 Points	8		
1.) rehab of historic building		1	
2.) Located within one half mile of public Transportation		2	2
3.) Located within school district wherein 40% or more of the students are either meeting/exceeding expectations (Level 4) or other targets		2	2
4.) Outside TUM with Ranking of 283 or greater on most recent Municipal Revitalization Index as published by DCA		3	3
5.) Located outside a Targeted Urban Municipality and part of an affordable housing obligation		1	1
<b>15 thru 18 involve negative points based on poor performance in previous projects - will not apply</b>			
19 Tax Credit Experience	3		0
(1) GP with 50% or more interest that has successfully developed and operated at least 2 other LIHTC projects		3	3
2.) GP with at least 1 Other LIHTC project		3	3
Rent to Homeless or those with Risk of Institutionalization - one of below	5		
(1) 5% or 5 units Units rented to Homeless		3	3
(2) 5% or 5 Units whichever is greater to people leaving institutions or individuals with disabilities who are at risk of institutionalization		2	2
21 Income Targeting Effectively all at 50% or below	8		8
<b>22 and 23 Negative Points for issues with NJHMFA</b>			
24 Bonus Point	1		
1.) 20% set aside for Market Units		1	0
2.) 20% Underserved at 30% AMI		1	1
3.) Traditional NJHMFA bond financing		1	1
<b>Maximum Total Points</b>		<b>Projected Englewood Score</b>	
95		95	