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CRANFORD DEVELOPMENT ASSOCIATES, LLC, a limited liability company organized under the laws of the State of New Jersey, SAMUEL HEKEMIAN, PETER HEKEMIAN, JEFFREY HEKEMIAN and ANN KRIKORIAN as trustee for RICHARD HEKEMIAN and MARK HEKEMIAN,  
Plaintiffs,

vs.

TOWNSHIP OF CRANFORD, MAYOR AND COUNCIL OF THE TOWNSHIP OF CRANFORD and the PLANNING BOARD OF THE TOWNSHIP OF CRANFORD,  
Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY

DOCKET NO. UNN-L-3759-08

CIVIL ACTION – *MOUNT LAUREL*

**CERTIFICATION OF  
MICHAEL A. JEDZINIAK, ESQ. IN  
SUPPORT OF THE MOTION TO AMEND  
CRANFORD'S FINAL ROUND 3  
JUDGMENT OF COMPLIANCE AND  
REPOSE**

**MICHAEL A. JEDZINIAK, ESQ.**, of full age, does hereby certify as follows:

1. I am an attorney-at-law of the State of New Jersey and Counsel for Jeffrey R. Surenian and Associates, LLC, Special Mount Laurel Counsel for the Township of Cranford in this matter.
2. I am submitting this Certification in support to the Motion to Amend Third Round Final Judgement of Compliance and Repose in the above-captioned matter.
3. I am thoroughly familiar with the facts submitted herein.
4. On August 2, 2013, the Township appealed Judge Chrystal's decision to award a builder's remedy to CDA.

5. On April 26, 2016, the Appellate Division affirmed the CDA builder's remedy.
6. On August 12, 2016, the Supreme Court denied the Township petition for certification.
7. Thus, the validity of CDA's builder's remedy and the Township's potential right to reformulate its Fair Share Plan was uncertain until less than one year ago.
8. Since the Township anticipated that the purchase of the Birchwood site would lower the yield of affordable housing units from the site, the Township communicated this to the Master, in accordance with Paragraph 7 of the Judgment of Compliance and Repose ("JOR"), and discussed the need for a procedure to address this changed circumstance.
9. One of the important functions of a Mount Laurel Special Master is to facilitate and guide a municipality's efforts to address any changed circumstances and to fulfill the intent and purpose of the JOR. Accordingly, the JOR explicitly envisions that the Master will have a continuing role in the implementation of the judgment.
10. Therefore, the Township will continue to work with Ms. McKenzie until it secures approval of an amended Housing Element and Fair Share Plan and Round 3 Judgment of Compliance and Repose.
11. Attached hereto as Exhibit A is a true copy of an Order dated May 22, 2013 granting Township of Cranford Round 3 Final Judgment of Compliance and Repose.
12. Attached hereto as Exhibit B is a true copy of the Final Compliance Report issued by Special Master Elizabeth C. McKenzie, P.P., A.I.C.P. on March 29, 2013.
13. Attached hereto as Exhibit C is a true copy of the Township's Initial RDP and Crediting Analysis.

14. Attached hereto as Exhibit D is a true copy of Township Resolution 2017-236, dated June 13, 2017, adopting its amended Spending Plan and requesting judicial review and approval of same.

15. Attached hereto as Exhibit E is a true copy of Township Resolution 2017-200, dated July 10, 2017, adopting its Rehabilitation Program Manual.

16. Attached hereto as Exhibit F is a true copy of Township Resolution 2012-347, dated July 10, 2017, adopting its Affirmative Marketing Plan for both the owner occupancy and rental occupancy rehabilitation programs.

17. Attached hereto as Exhibit G is a true copy of Township of Cranford Resolution 2013-161, dated May 11, 2017, adopting Intent to Bond.

18. Attached hereto as Exhibit H is a true copy of Township Resolution 2017-198, dated May 10, 2017, retaining CGP&H.

19. Attached hereto as Exhibit I is a true copy of an Ordinance 2017-06, dated June 14, 2017, appointing CGP&H as the Administrative Agent for Cranford's Rehabilitation Program.

20. Attached hereto as Exhibit J is a true copy of Ordinance 2012-24, dated July 10, 2017, creating the position of Municipal Housing Liaison.

21. Attached hereto as Exhibit K is a true copy of Township Resolution 2017-199, dated July 10, 2017, appointing its Municipal Housing Liaison.

22. Attached hereto as Exhibit L is a true copy of Cranford's Affordable Housing Ordinance 2017-32, adopted on July 10, 2017.

23. Attached hereto as Exhibit M is a true copy of N.J.A.C. 5:91-13.1 through 13.6.

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



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**MICHAEL A. JEDZINIAK, ESQ.**

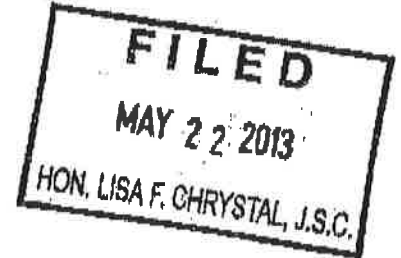
Date: July 14, 2017

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SUPERIOR COURT OF NEW JERSEY  
UNION COUNTY - LAW DIVISION  
DOCKET NOS. UNN-L-003759-08

CRANFORD DEVELOPMENT  
ASSOCIATES, LLC, a limited liability  
company organized under the laws of  
the State of New Jersey, SAMUEL  
HEKEMIAN, PETER HEKEMIAN,  
JEFFREY HEKEMIAN, and ANN  
KRIKORIAN as trustee for RICHARD  
HEKEMIAN and MARK HEKEMIAN,  
Plaintiffs,

Civil Action



**FINAL JUDGMENT OF COMPLIANCE**

vs.

TOWNSHIP OF CRANFORD, MAYOR  
AND COUNCIL OF THE TOWNSHIP  
OF CRANFORD and the PLANNING  
BOARD OF THE TOWNSHIP OF  
CRANFORD,  
Defendants.

This matter having come before the Court on the 22nd day of April 2013,  
in presence of Stephen Eisdorfer, Esq., counsel for Plaintiffs Cranford  
Development Associates LLC et al ("CDA"), Carl Rizzo, Esq. counsel for Plaintiff  
Lehigh Acquisition Corp. ("Lehigh"), Peter Wolfson, Esq., counsel for WP  
Cranford LLC, Philip Morin, Esq., counsel for Defendants Township of Cranford  
et al ("Defendants"), and Laura Smith-Denker, Esq., counsel for Objector Fair  
Share Housing Center, Inc. on the joint motion of CDA and the Defendants for  
entry of a Final Judgment of Compliance; and

The Court having determined that adequate notice of the hearing and the  
opportunity to submit written objections was given by publication and by mail

to entities and organizations in the Essex, Morris, Union, and Sussex housing region representing the interests of low and moderate income households; and

The Court having determined the claims by Lehigh Acquisition Corp. for a site specific builders remedy on the its property at 555 South Avenue in Cranford Township, formerly consolidated with the present action, were resolved by negotiated settlement approved by the Court by order entered on January 28, 2011, and that those claims were severed from the present action by Order entered on March 22, 2013; and

The Court having decided certain issues by orders granting partial summary judgment entered on March 20, 2009, and June 23, 2011; and

The Court having determined for reasons set forth in its oral opinion of July 29, 2011, to grant a site-specific builder's remedy to plaintiffs Cranford Development Associates et al on specified terms and to award other relief and having entered an order granting a site specific builder's remedy to plaintiffs on December 9, 2011; and

The Court having set conditions for the entry of a final judgment of compliance in its order of December 9, 2011; and

The Court having denied Defendants' motions for reconsideration of its Order of December 9, 2011, by oral opinion dated January 26, 2012; and for disqualification of the special master and new trial by order entered on December 17, 2012; and

The Court having previously ordered that Lehigh must appear at the hearing on April 22, 2013, and that it would be bound by the terms of any

judgment of compliance in this matter, even though its claims have been severed; and

The Court having reviewed the Housing Element and Fair Share Plan with supporting appendices adopted by the Planning Board of the Township of Cranford and approved the Township Committee of the Township of Cranford, dated April 3, 2013, and the Final Report submitted by Special Master Elizabeth McKenzie dated March 29, 2013; and

The Court having considered written objections submitted by John Hrebin, Elizabeth A. Sweeney, Kevin Campbell, Maria Anderson, Rita LaBrutto, Mark Smith, and the Fair Share Housing Center, Inc.; the oral testimony of Objectors Elizabeth A. Sweeney, Kevin Campbell, Maria Anderson, and Rita LaBrutto, and the arguments of counsel for Objector Fair Share Housing Center, Inc.; and

The Court having considered the oral comments of the Special Master McKenzie, the written responses of the various parties to the objections, and the arguments of the counsel; and

It further appearing to the Court that, for the reasons set forth in its oral opinion of April 22, 2013, a final judgment of compliance should be entered in favor of defendants,

It is on this \_\_\_\_ day of \_\_\_\_, 2013, hereby ORDERED and ADJUDGED as follows:

1. The Court DECLARES that Cranford Township's fair share housing obligation, which is its fair share of the unmet need for safe, decent housing



affordable to low and moderate income households for the Essex-Morris-Sussex-Union Housing Region, is comprised of an indigenous need of 55 units, and a prior round (i.e., pre-1999) need of 138 units, plus that portion of the third round (post-1999) need that can be satisfied on the available vacant developable land and imminently redevelopable land within the municipality (the so-called realistic development potential) of 5 units.

2. The Court DECLARES that the Housing Element and Fair Share Plan dated April 3, 2013, creates sufficient realistic opportunities for the provision of safe, decent housing affordable to low and moderate income households to satisfy Cranford Township's fair share housing obligation quantified in paragraph 1.

3. The Court DECLARES that, in addition to the housing obligation quantified in paragraph 1, Cranford Township may have an additional unmet third round housing obligation that has not yet been quantified. The Court further DECLARES that the Housing Element and Fair Share Plan dated April 3, 2013, creates realistic opportunities for the provision of safe, decent housing affordable to low and moderate income households that satisfies a portion of such additional obligation, if any.

4. The Court ORDERS Defendants to take the steps necessary to effectuate the Housing Element and Fair Share Plan set forth at pages 23 to 26 of the Final Report of the Special Master, which are attached as Exhibit A, and incorporated herein by reference. Except as otherwise specified in the Final Report of the Special Master, all actions required of the defendants, or any of

them, shall be taken within 45 days after the entry of this Judgment of Compliance.

- a) In implementation of its Housing Element and Fair Share Plan, Defendant Township of Cranford may elect to establish a locally administered and controlled Affordable Housing Trust Fund. If it is required to enter into an escrow agreement with the Council on Affordable Housing (COAH), it is ORDERED that, under any circumstances, the funds in the Affordable Housing Trust Fund shall be spent in Cranford for the benefit of its housing programs and shall not be available for appropriation by the State of New Jersey for any other purpose.
- b) Cranford Township may elect to reallocate credit for certain of the low and moderate income housing units provided for by its Housing Element and Fair Share Plan between its Prior Round and Third Round housing obligations: credit for 2 units in the Lehigh Acquisition project allocated in the Housing Element and Fair Share Plan to satisfaction of the Third Round housing obligation may be reallocated to satisfaction of the Second Round housing obligation; credit for 2 units in the CDA project allocated to the Second Round obligation may be reallocated to satisfaction of the Third Round housing obligation. This reallocation of credits shall not have any effect upon the site-specific builder's remedy granted to CDA.

- c) No later than 90 days after the entry of this Judgment of Compliance and every 90 days thereafter, the Special Master shall submit a report in writing to the Court and the parties as to the extent to which Defendants have taken the steps necessary to effectuate the Housing Element and Fair Share Plan set forth at pages 23 to 26 of the Final Report of the Special Master. She shall continue to submit such periodic reports until Defendants have taken all the steps necessary to effectuate the Housing Element and Fair Share Plan set forth at pages 23 to 26 of the Final Report of the Special Master.
- d) If Defendants fail to take the steps necessary to effectuate the Housing Element and Fair Share Plan set forth at pages 23 to 26 of the Final Report of the Special Master, any interested party may, upon written notice to all the parties to this litigation, apply to the Court for further relief or, alternatively, the Court may upon notice to all the parties, entertain such an application sua sponte.

5. The Court ORDERS Lehigh and CDA, and their successors and assigns, to take the steps required of them at pages 23 to 26 of the Final Report of the Special Master to facilitate construction of the low and moderate income housing units in their projects.

6. Except insofar they are expressly modified or vacated by this order, all prior orders entered by the Court in this matter shall remain in force.

7. Elizabeth McKenzie shall continue to serve as Special Master until further order of the Court. She shall consult with the parties as required to facilitate the implementation of this order.

8. The reasonable fees and expenses of the Special Master shall continue to be solely the responsibility of the defendants and shall be paid on timely basis.

9. The Court ORDERS that, upon the entry of this Judgment, the Township of Cranford is entitled to a period of repose from further exclusionary zoning litigation, in accordance with the terms set forth in *Southern Burlington County NAACP v. Mt. Laurel Township*, 92 N.J. 158 (1983). The period during which defendants are deemed to be in compliance with their obligations under the New Jersey Constitution and the Fair Housing Act of 1985 and entitled to repose from further exclusionary zoning litigation shall both continue until December 31, 2018, subject to their continuing compliance with all the terms of this Final Judgment of Compliance.

10. When Cranford Township's Third Round (post-1999) fair share housing obligation is formally quantified by the COAH or a lawfully designated successor entity, Defendants shall amend Cranford Township's Housing Element and Fair Share Plan to address any unmet need resulting from the assignment of a Third Round housing obligation in excess of the five unit realistic development potential (RDP) provided for in its Housing Element and Fair Share Plan. No later than one calendar year after the COAH or a lawfully designated successor entity has taken formal action quantifying Cranford Township's Third Round (post-1999) fair share housing obligation, Defendants

shall apply to the COAH (or its successor entity) or the Court, as may be authorized by law, for approval of such amended Housing Element and Fair Share Plan and shall diligently prosecute that application.

11. The Court retains jurisdiction of this matter for the limited purpose of enforcing this Final Judgment of Compliance and other orders entered in this matter.

12. Except as otherwise provided by the orders of this Court, each party shall bear its own costs and expenses. In accordance with the Court's order of June 23, 2011, CDA is not entitled to award of attorney fees or litigation expenses.



Hon. Lisa F. Chrystal, JSC

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**REPORT OF THE SPECIAL MASTER  
FINAL COMPLIANCE REPORT**

**in**

**Lehigh Acquisition Corp. v. Township of Cranford, et al., Docket No.:  
UNN-L-0140-08, and Cranford Development Associates, LLC, et al. v.  
Township of Cranford, et al., Docket No.: UNN-L-3759-08**

**Township of Cranford, Union County, New Jersey**

**Submitted to**

**The Honorable Lisa Chrystal, JSC**

**March 29, 2013**

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## INTRODUCTION

This report evaluates the extent to which Cranford Township's amended Housing Plan Element and Fair Share Plan, scheduled for adoption on April 3, 2013, addresses and satisfies the Township's known and anticipated fair share for low and moderate income housing.

It is the conclusion of this report that Cranford's 2013 Housing Plan Element and Fair Share Plan ("the Plan" or "the 2013 Plan") addresses in full the Township's prior round (1986-1999) fair share obligation and its rehabilitation obligation calculated based on year 2000 U.S. Census data and that the Township is eligible for a Judgment of Compliance and Repose.

The Township's capacity to accommodate new development to meet a third round obligation is severely limited, due to the lack of vacant and underdeveloped land remaining in the Township, and it is recommended that the Court approve an adjustment to the third round obligation based upon the Township's analysis of its Realistic Development Potential (RDP) for meeting a third round obligation. Approval of this adjustment would not eliminate any additional third round obligation the Township may have once new third round numbers have been assigned by COAH or a successor agency. If the third round obligation, once it is known, exceeds the Township's ability to satisfy the obligation with its currently proposed affordable housing programs, then the Township may have to further amend its Housing Element and Fair Share Plan to address the Unmet Need.

## SUMMARY OF PROCEEDINGS TO DATE

In January of 2008, Lehigh Acquisition Corp. (Lehigh) filed a Mount Laurel lawsuit against the Township of Cranford alleging that the Township had failed to comply with its constitutionally mandated affordable housing obligations.

The property proposed for a builder's remedy by Lehigh was a 5.05 acre former Class II railroad property located at 555 South Avenue East (Block 511, Lot 1). The Lehigh property had already been declared an area in need of redevelopment by the Township and a redevelopment plan had been adopted for it in January of 2006 pursuant to N.J.S.A. 40A:12A-7. The Township's adopted redevelopment plan had permitted 80 *age-restricted* condominium units, of which 9 were to be affordable. Prior to Lehigh's filing of the lawsuit, there had been a period of negotiations between Lehigh and the Township during which time Lehigh had presented proposals for a higher density of development (and asked for removal of the age-restriction) but the density could not be agreed upon and the Township had not at the time consented to remove the age-restriction, so Lehigh sued, seeking the Court's approval for 186 units, with a 15% set-aside for affordable housing. In addition to the builder's remedy, Lehigh's complaint also sought scarce resource restraints on land and sewer service capacity.

In November of 2008, while Cranford Township was still dealing with the Lehigh lawsuit, Cranford Development Associates (CDA) filed a second Mount Laurel lawsuit against the Township of Cranford.

CDA is the owner of a 15.8 acre tract located at 215 and 235 Birchwood Avenue in Cranford (Block 291, Lot 15.01, and Block 292, Lot 2). These lots were zoned O-1; each contained an office building and associated parking lot(s). This tract had been the subject of a hotly contested request for rezoning sought by a prior contract purchaser in 2007. The rezoning sought in 2007 would have permitted a 128 unit *age-restricted*

multi-family inclusionary residential development on the tract. That proposal failed to gain municipal support (due to strong neighborhood opposition relating, primarily, to drainage and flooding concerns) and was ultimately withdrawn. The property owner sold the tract to CDA in 2008, and CDA made a number of unsuccessful attempts to have the Township Committee consider its proposal before filing the lawsuit. CDA's lawsuit sought a 419 unit inclusionary residential project, with a 15 percent set-aside for affordable housing.

The two lawsuits are captioned, respectively, Lehigh Acquisition Corp. v. Township of Cranford, et al, Docket No.: UNN-L-0140-08, and Cranford Development Associates, LLC, et al, v. Township of Cranford, et al, Docket No.: UNN-L-3759-08.

Ultimately, the Township settled with Lehigh agreeing to a development of 163 units, including 24 low and moderate income housing units. A Consent Judgment approving the settlement was entered by the Court in January, 2011, following a Fairness Hearing held in November, 2010.

CDA's proposal was the subject of a lengthy trial, and CDA was ultimately awarded a builder's remedy permitting that site to be developed with 360 total units, of which 15 percent, or 54, would be affordable to low and moderate income households. An Order approving the builder's remedy was entered by the Court on December 9, 2011. As part of that Order, the Honorable Lisa Chrystal, JSC, ordered Cranford to revise its Housing Plan Element and Fair Share Plan and adopt zoning regulations that would address its fair share obligation.

#### CRANFORD'S FAIR SHARE OBLIGATION

According to the New Jersey Council on Affordable Housing (COAH), Cranford's fair share obligation for the period between the end of 1986 and the end of 1999 is 148

units. These 148 units represent an obligation for the construction of new affordable housing units to meet regional low and moderate income housing obligations. The Township also has an obligation to provide for the rehabilitation of another 55 existing housing units in Cranford that are already occupied by qualified low and moderate income households, based on statistical data derived from the 2000 U.S. Census. In 2008, COAH had also projected a third round "growth share obligation" for Cranford of another 328 units, but the entire notion of using growth share as a means of determining municipal low and moderate income housing obligations was invalidated by the Appellate Court in 2010, so as of this writing, a growth share projection cannot be relied upon as a means of measuring Cranford's third round fair share obligation under the 1983 Mount Laurel II decision and pursuant to the 1985 New Jersey Fair Housing Act.

In light of the void that currently exists at the State level with respect to valid regulations for the determination and fulfillment of municipal third round affordable housing obligations, it is not possible to assign Cranford a definitive third round fair share obligation at this time. This does not mean that the Township does not have a third round obligation; it only means that the third round obligation has yet to be determined.

COAH never adopted revised third round Rules as it had been ordered to do by the Appellate Court in 2010, and it was subsequently abolished as a separate agency of the State of New Jersey under the Governor's Administrative Reorganization. The Appellate Division ruled that the abolition of COAH was illegal and ordered its reinstatement. In June of 2012, the Supreme Court rejected the Governor's request to stay the Appellate Division's decision, effectively reinstating COAH. Nevertheless, COAH has yet to reconvene and resume its duties under the Fair Housing Act. The Fair Housing Act invests COAH with certain powers and responsibilities, including the determination of municipal fair share allocations, which cannot be implemented unless COAH resumes its former role.

The Appellate Division's 2010 decision invalidating large portions of COAH's third round Rules has been appealed, and the Supreme Court has accepted certification and heard oral argument, but it has yet to rule on the issues addressed by the Appellate Division.

In light of the uncertainty surrounding the assignment of third round affordable housing obligations, the focus of this report will be on Cranford's status with respect to its prior round affordable housing obligation as previously determined by COAH and the rehabilitation share calculated by COAH based on the 2000 Census. Despite its invalidation of significant aspects of COAH's third round Rules, including those pertaining to the calculation of the third round fair share obligation, the Appellate Court specifically upheld those portions of the Rules dealing with the prior round obligation and the rehabilitation share.

The report will also look at Cranford's capacity to address a third round obligation based on its available vacant and underdeveloped land, and will evaluate the number of potential credits available to Cranford to satisfy both its Realistic Development Potential (as determined by the vacant land analysis) and any Unmet Need that may be found to exist once the municipal third round obligations have been issued by COAH or a successor agency.

#### CRANFORD'S PAST AFFORDABLE HOUSING ACTIVITIES

The Township of Cranford had not previously obtained approval of a housing plan element and fair share plan from COAH or from a Court. In fact, it adopted its first Housing Element and Fair Share Plan in December of 2008, after both lawsuits had already been filed.

The Township does have some affordable housing, however.

### *Lincoln Apartments*

The Lincoln Apartments is an older (pre-1980s) affordable senior housing project to which another 100 age-restricted units were added in the early 1990's. The entire project is Township-owned and all of the units are affordable one-bedroom rental units. While not all 100 of the newer units will be eligible for crediting in the prior round, due to a 25 percent cap on the use of age-restricted units to meet the fair share obligation, a substantial number (up to 50) will be eligible, and some of the remaining units can be used to fulfill up to 25 percent of the third round obligation (or, assuming the vacant land adjustment is approved, up to 25 percent of the third round Realistic Development Potential (RDP) and up to 25 percent of the third round Unmet Need). The Appendix to the Township's Housing Element and Fair Share Plan contains the documentation required in COAH's Rules as to the qualification of this project for crediting, and I am satisfied as to the creditworthiness of the 100 age-restricted rental units constructed in 1994.

Even though these units were partially funded with Low Income Housing Tax Credits (LIHTC), under IRS Code Section 42, which regulates the occupancy of these units for a period of only 15 years (or, in this case, until 2009), the owner, Cranford Lincoln Associates, L.P., has executed a Deed of Easement and Restrictive Covenant for Extended Low Income Occupancy which extends these restrictions for a minimum of 30 years, even after the disposition of the project by the LIHTC partnership, or until at least 2024. Moreover, the Township owns the development, and thus it is unlikely that the controls on affordability will ever be released.

There is a provision in COAH's Rules, at N.J.A.C. 5:97-4.3.h., which reads as follows:

Any affordable units where funding was allocated for construction by the Low-Income Housing Tax Credit Program (Internal Revenue Code Section 42h) or Balanced Housing Program (N.J.A.C. 5:43 during the period beginning on or

after December 15, 1986 and before June 6, 1999, and not included in a Housing Element and Fair Share Plan submitted to the Council as of May 6, 2008, shall not be eligible for credit against any portion of the fair share obligation.

Although I had been aware of this provision in COAH's Rules, the issue of its impact on the creditworthiness of a LIHTC project has not arisen in any other municipality in which I have had occasion to work, largely because either the towns with LIHTC projects had filed housing elements and fair share plans with COAH prior to the May, 2008, cut-off date or there were no LIHTC projects that would have been in jeopardy. I became aware of the potential impact on Cranford only after re-reviewing the documentation submitted by the Township in support of the Lincoln Apartments development and noting for the first time the references to the LIHTC funding.

In researching the reason for this provision in COAH's Rules, I learned that COAH had used all LIHTC-funded units in excess of those reported in housing elements and fair share plans COAH had on file as of May, 2008, to reduce the recalculated Statewide need for the prior round period (1993-1999) back down to the level originally calculated so that it would not have to increase municipal prior round obligations across the board to reflect the fact that growth had occurred at higher rates than originally projected (in 1993). This explanation is found in Appendix C of 5:97 (on page 133 – see Appendix to this report). It was confirmed in COAH's Comment and Response document defending the Rules (40 N.J.R. 6004).

For two reasons, however, I believe that Cranford should be entitled to claim credit for these units, despite the use of LIHTC funding to help create the 100 units built in 1994 and despite the Township's failure to file a housing element and fair share plan with COAH declaring these units.

The first reason is that, in 2009, the Legislature adopted a provision in P.L. 2009, Ch. 82, (C.45:22A-46.16), also known as the "Sarlo bill", that reads as follows:

Determination of credits granted against fair share obligation.

14. For the purpose of determining credits to be granted against the fair share obligation of a municipality under the requirements of P.L. 1985, c.222 (C.52:27D-301, *et al.*) **and the regulations promulgated to effectuate that act**, a housing unit financed in whole or in part through the allocation of federal Low-Income Housing Tax Credits shall be eligible to be credited if the requirements of federal law pursuant to 26 U.S.C. s.42 have been met for that unit. In the event the federal requirements have been met, the provisions of the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency shall not be applied to inhibit or prevent the crediting of the housing unit against the municipal fair share obligation.

(emphasis added)

This portion of the Sarlo bill that was adopted by the Legislature and signed into law on July 2, 2009, was clearly intended to override COAH's Rule at N.J.A.C. 5:97-4.3h. Even if one were to argue that the Legislature's override has undermined the calculation of the prior round need obligation and its action should therefore be invalidated, there is a second reason for awarding Cranford credits for these units.

Cranford had the foresight to impose "at least" 30 year affordability controls on these units (15 years longer than the 15 year controls the federal LIHTC program calls for), so that they will continue to provide affordable housing opportunities through 2024, and beyond (as it is quite unlikely that Cranford would ever release the affordability controls on its own affordable housing development after having invested municipal funds to create these units). COAH's Rules (at N.J.A.C. 5:97-6.14) do permit municipalities to claim new credits against at least the third round portion of the fair share obligation through the extension of affordability controls in accordance with N.J.A.C. 5:97-9 and UHAC, provided the unit meets the criteria for prior cycle or post-1986 credits set forth in N.J.A.C. 5:97-4.2 or 4.3 (subject to the Legislature's subsequent modification of a portion of 4.3); the affordability controls are scheduled to expire during the 1999-2018 period (which they were), the unit continues to meet all code standards and the



Township obtains a certified statement from the municipal building inspector to that effect (not done, but certainly do-able); and that any necessary repair or rehabilitation work shall be funded by the municipality, which may use its affordable housing trust fund for such purposes.

Should the Court have any issues with whether or not these units have had a proper extension of affordability controls per N.J.A.C. 5:97-6.14, the Court could require an inspection and certification as to the compliance of the units with the Uniform Construction Code and could also require the municipality to certify that the controls on affordability will remain in effect until at least 2039, although I do not believe these actions are really necessary in this particular case, since the units are and have been owned continuously by Cranford. In my opinion, the Lincoln Apartments units are creditworthy and should be allowed to be used to help fulfill both Cranford's prior round and third round fair share obligations.

#### *Riverfront Redevelopers, LLC*

The Township also has a 108 unit redevelopment project ("Riverfront Redevelopers, LLC") which will yield 19 affordable family rental units. The Redevelopment Plan for this project has been adopted, the redeveloper has been selected, the project has site plan approval and construction has begun. The 19 affordable units represent a set-aside of 17.6 percent, higher than normally required for a rental inclusionary development. Of these 19 units, 5 will be one-bedroom units, 10 will be two-bedroom units and 4 will be three-bedroom units. The bedroom distribution is a bit high on the one-bedroom units, which is limited by COAH regulations to not more than 20 percent of the total, but the number of two and three bedroom units to be provided is consistent with COAH's requirements of 30 percent and at least 20 percent, respectively. It appears that two of the three "extra" affordable units (over the 15 percent minimum) will be one-bedroom units. Apart from the two "extra" one-bedroom units in the Riverfront Redevelopers,

LLC, project, it will, in all other respects, comply fully with COAH's requirements for creditworthiness. As the project is currently under construction, and no deed restriction has, as yet, been filed for any of the affordable units, it is recommended that two of the two-bedroom market units be redesignated as affordable units, and that two of the one-bedroom affordable units be redesignated as market units.

### *Needlepoint Homes*

There is also one (1) affordable housing unit that was approved by the Zoning Board of Adjustment in the Needlepoint Homes development. The unit has been completed and is occupied, but not, apparently, by an income-qualified applicant. The Township is taking steps to correct this situation and will seek credit for this particular unit as part of its plan to address its third round obligation, once the unit has been deed restricted for a period of at least 30 years, has been affirmatively marketed and is occupied by a qualified low income household.

### *Special Needs Housing*

The Township has three group homes for persons with special needs within its boundaries.

Unfortunately, the Township has been unable to obtain all of the information needed to demonstrate that two of these facilities (the two that are owned by Community Access Unlimited or CAU) comply fully with all of COAH's Rules pertaining to special needs housing. Although there is every indication that these units will probably be found to be creditworthy, once all of the documentation is provided, I cannot at this time represent to the Court that they are compliant with COAH's Rules. Consequently, I have recommended that the Township continue its efforts to obtain the requisite

documentation, applying any credits earned on the two CAU facilities against the third round obligation.

The SERV facility has been completely documented and is creditworthy. It is covered by a 20-year capital funding contract with the State of New Jersey, Department of Human Services, as well as annual operational funding, and provides housing for very low income adults ages 18 and over, who are referred to SERV by the Division of Mental Health Services. The unit of crediting for special needs shared housing facilities is the bedroom. The SERV facility includes three special needs bedrooms. It is thus eligible for three credits and also for rental bonuses on all three units (or bedrooms).

#### *Rehabilitated Units*

Union County operates a housing rehabilitation program for the benefit of its constituent municipalities. Although the County had allegedly rehabilitated 15 properties in Cranford Township that are owned and occupied by low or moderate income households, Cranford's consultants have determined, based on a closer inspection of the documentation available from the County, that these 15 units would not qualify for crediting against the rehabilitation obligation. The Union County rehabilitation program is limited to owner occupants (it is not available to rental units) and does not meet some of the other criteria in the current Rules for rehabilitation crediting, such as the minimum expenditure for hard costs, the necessity of involving a "major system" in the scope of the rehabilitation, and the imposition of affordability controls on rehabilitated units. Consequently, Cranford has accepted its responsibility to implement and fund a rehabilitation program to address its entire 55 unit rehabilitation obligation.

## CRANFORD'S PROPOSED COMPLIANCE PLAN

Cranford's proposed compliance plan is embodied in its 2013 Housing Plan Element and Fair Share Plan, which is scheduled for adoption on April 3, 2013. The 2013 Plan utilizes the affordable units that will be generated by both of the plaintiffs' sites (Lehigh and CDA) as well as the affordable units that already exist or have been approved in Cranford to address the prior round obligation and its Realistic Development Potential for fulfilling the third round obligation.

### Prior Round Obligation

The Township proposes to use the following credits to fulfill its prior round obligation:

1. **50 age-restricted units at Lincoln Apartments.** The 50 units of age-restricted housing is permissible based upon the formula set forth at N.J.A.C. 5:97-3.10(c)1, which is 25 percent of the prior round obligation plus the rehabilitation obligation less any rehabilitation credits). Since the Township is not claiming credit for any of the units rehabilitated as a result of Union County's rehabilitation program, it is eligible to claim credit for 50 of its existing age-restricted units as part of its prior round compliance plan, based on COAH's formula. As previously indicated, the necessary documentation has been provided demonstrating the creditworthiness of the Lincoln Apartments units, and these **50 credits are acceptable.**
2. **16 credits for 19 of the affordable units in the Riverfront Developers, LLC, project.** All of the documentation needed to demonstrate the creditworthiness of the 19 affordable units in this development has been supplied. With the exception of the number of one bedroom affordable units, which exceeds by two units the limit set forth in COAH's Rules, this project complies with all of COAH's requirements. Since the Township is only seeking prior round credit for 16 out of the 19 affordable units in the

Riverfront Developers, LLC, project, the excess one-bedroom units can be among those excluded from the prior round, and ***the 16 credited units (4 three-bedroom units, 3 one-bedroom units and 9 two-bedroom units) will comply fully with COAH's requirements and are acceptable.***

3. ***54 credits for the family affordable rental units to be constructed by CDA on the builder's remedy site.*** As this project was the subject of a lengthy trial with extensive site suitability documentation, no further documentation is needed to justify the creditworthiness of this project, although the project will have to comply with UHAC Rules regarding administration, affirmative marketing and affordability controls, as well as all provisions of the December 9, 2011, Order Granting Relief in Exclusionary Zoning Litigation, all conditions of site plan approval, and all requirements of N.J.A.C. 5:97-6.4 pertaining to inclusionary developments. ***These 54 credits are acceptable.***

4. ***22 out of 24 possible credits for the family affordable rental units to be constructed by Lehigh on the settlement site.*** As this project was the subject of a Fairness Hearing, and sufficient site suitability documentation was presented in support of the settlement, no further documentation is needed to justify the creditworthiness of this project, although the project will have to comply with UHAC Rules regarding administration, affirmative marketing and affordability controls, as well as all provisions of the January 28, 2011, Consent Judgment for Builder's Remedy, all conditions of site plan approval, and all requirements of N.J.A.C. 5:97-6.4 pertaining to inclusionary developments. ***All 24 of the units in this project are eligible for crediting, although the Township plans to apply only 22 of the credits from this project toward the prior round.***

5. ***3 group home bedrooms (SERV).*** The three bedrooms in the SERV facility have been demonstrated to be creditworthy. In addition, they are ***eligible for rental***

***bonuses at the rate of one bonus credit per unit (or bedroom), earning the Township a total of six (6) credits for this project.***

In the December 1, 2010, Supplementary Report of the Court Master to the Court responding to the testimony presented in the CDA trial, I had indicated to the Court that I did not believe that Cranford was eligible for any rental bonuses arising from units that were built after 1999 in fulfillment of the prior round obligation. I had based this opinion on a strict reading of the Appellate Division's October 8, 2010, decision invalidating large portions of COAH's Rules, including its Rules pertaining to the award of rental bonuses for rental units that had been proposed as a way to meet the prior round obligation but *that remained unbuilt* more than a decade after the expiration of the prior round period.

At the time I offered my opinion to the Court, the Appellate Division's decision was still relatively new and was still being interpreted by other Court Masters and by other Superior Court Judges. Since the submission of my Supplementary Report, I have had an opportunity to reconsider my original position in light of how the Appellate Court's ruling is being applied elsewhere, and I have modified it accordingly. It is now my recommendation that Cranford be permitted to take rental bonus credits for eligible completed affordable units (but not from affordable units that are proposed but remain unbuilt) up to the maximum number of units for which rental bonuses can be claimed in the prior round, which is 25 percent of the prior round obligation or, in this case, 37 units. Consequently, Cranford may claim rental bonuses for the three eligible group home bedrooms, since they exist.

***Based on the foregoing projects and credits, which include the Court-approved settlement with Lehigh and the Court-awarded builder's remedy to CDA, it is my conclusion and recommendation to the Court that Cranford be found to be in full compliance with its prior round obligation of 148 units.***

### Rehabilitation Obligation

As to the Township's 55 unit rehabilitation obligation, the Township is no longer claiming credit for the 15 units rehabilitated by the County of Union. Thus, the rehabilitation obligation remains at 55 units. The Township proposes to establish its own rehabilitation program, funded in part by any development fees the Township collects as a result of a newly proposed Development Fee Ordinance, in part by any outside sources of funding the Township is able to access, and by Township funds or bonding to cover any shortfall. The documentation provided within the Housing Element and Fair Share Plan includes a proposed resolution of intent to fund such shortfall, which resolution sets forth a funding schedule for the rehabilitation program (at the rate of 11 units per year for the next five (5) years beginning in 2014) as well as a draft Development Fee Ordinance and a draft Spending Plan. The Township will commit by resolution to appoint a qualified rehabilitation administrator before the end of 2013. A draft rehabilitation manual has been prepared by Cranford. The draft manual tracks COAH's model. It is expected that the appointed rehabilitation administrator will customize the manual to Cranford's program before it is adopted by the governing body.

As long as the Township hires a rehabilitation administrator and adopts a customized rehabilitation manual before the end of 2013 and fulfills its funding commitments, it is recommended that the Court find Cranford to have created a compliant rehabilitation program. Cranford has indicated that it may implement a shared services program with one or more other municipalities in the same housing region. This is a perfectly acceptable means of accomplishing a rehabilitation program, as long as the shared services program also complies with COAH's Rules with respect to funding, administration, program rules and procedures. ***Subject to the Township's timely fulfillment of all of the conditions set forth in this paragraph, its proposed rehabilitation program complies with applicable requirements and is recommended for approval by the Court.***

It is noteworthy that, even though the 2010 U.S. Census data should be available now, the Department of Community Affairs/COAH has yet to publish new municipal rehabilitation obligations based on these data. When the municipal rehabilitation obligations are updated based on the 2010 data, and new rehabilitation share numbers are issued, they will supersede those that were determined based on 2000 Census data, and Cranford's new rehabilitation obligation may rise or fall accordingly.

### Third Round Obligation

The Housing Element and Fair Share Plan includes an analysis of Cranford's growth potential based on its remaining vacant developable land.

The raw data pertaining to the vacant parcels of land in Cranford were assembled by T&M Associates and broken out by lots that are privately-owned and lots that are publicly-owned but uncommitted to a public use. Birdsall Engineering revised the analysis originally undertaken by T&M Associates and eliminated any sites of insufficient size to accommodate a development of at least five (5) units based on a density of at least 8 units per acre (COAH's minimum presumptive density for sites in Planning Area One, the Metropolitan Planning Area, in the State Development and Redevelopment Plan), unless the undersized sites were located adjacent to and owned in common with other lands that could be merged to create a sufficiently sized parcel of land. Additionally, sites were eliminated that were subject to known environmental constraints.

Birdsall Engineering came up with a total of 3.09 acres of land in two separate parcels (both made up of a number of smaller parcels). These 3.09 acres of land could, at a density of 8 units per acre, yield a total of 24 dwelling units, five of them affordable, resulting in a Realistic Development Potential (RDP) of 5 units.



It is not suggested that this 5 unit RDP will or should be the sum total of the third round obligation assigned to Cranford. The Township could well be assigned a much higher obligation - depending on the methodology ultimately used. If the Supreme Court upholds the Appellate Court's ruling that growth share is not an appropriate methodology to use in calculating third round fair share obligations, then Cranford will undoubtedly be able to rely on its vacant land capacity (its calculated RDP) to satisfy its third round obligation within the repose period. Any portion of the third round obligation ultimately assigned to Cranford that the Township does not have the capacity to address within the repose period will remain as its Unmet Need obligation. The Unmet Need is that portion of the obligation that may be fulfilled over an extended period of time through opportunities that are not currently anticipated, such as private redevelopment proposals.

Cranford will be able to fulfill its five (5) unit RDP with one of the Lincoln Apartments age-restricted units (which is less than 25% of the RDP), the Needlepoint Homes unit (once the occupancy and deed restriction issues have been corrected), the remaining two (2) Lehigh units and one (1) of the remaining three (3) Riverfront Developers, LLC units. This is a total of five (5) units, all of which are rental units and only one of which is age-restricted. Assuming that there will be an Unmet Need for the third round of some magnitude, the Township can apply some or all of the remaining two (2) Riverfront Developers, LLC, units and the remaining 49 Lincoln Apartments age-restricted units, subject, of course, to whatever rules and statutes will apply at that time.

Cranford cannot now access any rental bonus credits for units fulfilling the prior round obligation that are not yet built. However, once the Lehigh, CDA and Riverfront Developers, LLC, projects are constructed, the Township may receive rental bonuses for the units in these projects - but only up to the amount of the prior round rental obligation (37 rental units). In Cranford's case, this would mean a potential to access up to 37 rental bonuses less the 3 rental bonuses already taken for the three (3) SERV

bedrooms, or 34 more rental bonuses. This would enable Cranford to rearrange its allocation of units between the prior round and the third round, adding 34 rental bonus credits to the prior round plan and moving 34 actual units from the prior round plan into the third round plan to help address the Unmet Need.

Additionally, Cranford will have some time to attempt to document the creditworthiness of the Community Access Unlimited (CAU) special needs bedrooms, which could produce as many as 10 additional credits toward the third round Unmet Need, if necessary.

Finally, the Township could explore the development potential for the Myrtle Avenue and Grant/Arthur Streets sites and either sell these sites to one or more prospective inclusionary developers or find a developer/partner and sponsor one or more municipal affordable housing developments.

It is not necessary or even possible at this time to determine how far the Township will need to go in addressing any third round Unmet Need, as we do not know what the third round obligation will be. What we do know is that the Township can satisfy its third round RDP, in addition to its prior round and rehabilitation obligations. It is suggested that within a specified time after the third round numbers are issued, Cranford be required to return to the Court with an amended Housing Element and Fair Share Plan that quantifies its third round fair share obligation and that includes proposals for addressing any Unmet Need it may have.

#### Administrative Issues

Cranford's Housing Element and Fair Share Plan includes (in Appendix F) a proposed new Affordable Housing Ordinance, which I have reviewed and find to be consistent

with COAH's Rules and the Uniform Housing Affordability Controls (found at N.J.A.C. 5:80-26.1, *et seq.*).

The Housing Element and Fair Share Plan also includes (in Appendix K) a proposed Resolution adopting an Affirmative Marketing Plan covering all affordable housing projects in the municipality (except those that are specifically exempted by Rule). I have reviewed the Resolution and find it to be acceptable and consistent with COAH's policies.

A proposed Development Fee Ordinance has been drafted for Cranford. It is included in Appendix G of the Housing Element and Fair Share Plan. I have reviewed this document, and find that it generally tracks COAH's model, although there are sections of the model that require a choice to be made between certain alternatives, and this has not yet been done by Cranford. The Township will need to decide whether it intends to open an affordable housing trust fund or allow development fees and other affordable housing revenues to be paid into the State of New Jersey Cash Management Fund. If it chooses the first option of opening an affordable housing trust fund, then the Township will be required by COAH to enter into a three-way escrow agreement with COAH and the Bank to give COAH access to the funds in the account in the event that funds are not spent in accordance with an approved Spending Plan. Additionally, the Township will need to decide whether to collect the entire development fee at the time the Certificate of Occupancy is issued or to collect half of it when the building permit is issued and the balance at the time of the C. of O. The Ordinance is also silent on whether it will charge a residential development fee on improvements to existing residential structures and whether it will charge a non-residential development fee (once the moratorium has been lifted) on changes or improvements to existing non-residential structures. Finally, limiting the applicability of an exemption (from payment of a fee) to *only owner-occupied* residential structures that are demolished and replaced as a result of a fire, flood or other natural disaster may not be constitutional.

Appendix H of the Housing Element and Fair Share Plan includes a proposed Spending Plan as well as a proposed Resolution of Intent to Cover any Shortfall in the funding of its affordable housing programs (specifically, the Rehabilitation Program). The Resolution is ready for adoption. There are still a few editorial changes needed in the Spending Plan before it will be ready to submit to COAH for approval (primarily changing some of the tables to reflect a start year of 2013 and balances as of 2012). Apart from these editorial corrections, however, I believe that the Court can approve the Spending Plan for submission to COAH for its final review and approval.

Appendix L of the Housing Element and Fair Share Plan includes drafts of the Ordinance the Township will need to adopt to create the position of Municipal Housing Liaison and the Resolutions that will be needed to appoint both a Municipal Housing Liaison and an Administrative Agent. It also includes a draft contract with an Administrative Agent that names Birdsall Services Group as the Administrative Agent. I have reviewed each of these documents and find them to be in order, but I have advised the Township that it will need to contract with an Administrative Agent that has specific experience in the field of affordable housing administration and that has been accepted by COAH as a duly qualified Administrative Agent.

It is recommended that the Court's approval of the Township's compliance plan be conditioned on the adoption of all of these Ordinances and Resolutions, subject to certain changes being made to the Development Fee Ordinance and Spending Plan before they are adopted and forwarded to COAH for review and approval.

#### Repose Issues

In the Supplementary Report of the Special Master dated December 1, 2010, I had recommended that the Court consider permitting Cranford to submit a revised Housing Element and Fair Share Plan covering *not only* the prior round obligation and the

rehabilitation obligation, *but also* an "adjusted" third round obligation. The revised Plan would encompass the settlement with Lehigh, the CDA builder's remedy, some Lincoln Apartments units, the group home bedrooms, the Riverfront Redevelopers, LLC, units, and the Needlepoint Homes unit, along with a program for addressing the Township's remaining rehabilitation obligation. Any "excess" new construction units from the prior round would be treated as third round units. Some or all of the remaining Lincoln Apartments units could also be applied to the third round Unmet Need, if there is one.

I had recommended this rather unorthodox approach in Cranford's case because of my conviction that no matter what the Township's third round obligation is determined to be, it is unlikely that the Township will be able to address it fully, and a vacant land adjustment will be warranted. Cranford would be able to rely on an extended repose (to the end of 2018) now, would see an end to the litigation, and would have the ability to focus municipal planning efforts and resources on other important local issues.

I had pointed out at the time that while it would be a relatively simple matter to determine what Cranford's adjusted third round number (or RDP) should be, there would still be uncertainty regarding the extent of the Unmet Need once Cranford's third round obligation has been determined by COAH or a successor agency.

This issue of the uncertainty associated with the Unmet Need had been raised on behalf of Fair Share Housing Center in a letter to me from Kevin D. Walsh, Esquire, dated June 5, 2012 (appended to this report). I do not agree with all of the arguments presented by Mr. Walsh in support of his position that the Township should not be granted extended repose (or, indeed, any repose as to the third round obligation), and I believe that he has misinterpreted the Court's December 9, 2011, Order and my original recommendation. The sixth point in his letter, that mechanisms for addressing the Unmet Need should be part of any third round plan, is valid, however. Since we do not know the extent of the Unmet Need as this point, it is not possible to address it fully at

this time, but the Township's Housing Element and Fair Share Plan does evaluate the potential availability of credits to satisfy an Unmet Need, should there be one.

I remain convinced that it is appropriate for the Court to approve a third round vacant land adjustment with a calculated RDP of five (5) units. In response to the Unmet Need issue raised by Fair Share Housing Center, however, it would also be reasonable to require Cranford to return to the Court or to COAH or its successor agency within a year of the issuance of third round fair share numbers and present its proposals for addressing whatever Unmet Need obligation it may have based on the third round obligation assigned to it. Meanwhile, Cranford should be able to proceed with the Court's blessing to implement its RDP – which is that portion of the third round obligation that the Township can readily satisfy within the repose period and that is not subject to change. The plan to address the Unmet Need, once the third round obligation has been quantified, can be reviewed and approved as an amendment or supplement to the Court-approved Housing Element and Fair Share Plan on which the Township's Judgment of Compliance and Repose is based.

## CONCLUSION

Based upon my review of Cranford's 2013 Housing Element and Fair Share Plan, I am pleased to be able to recommend that the Court grant a Final Judgment of Compliance and Repose to Cranford subject to certain terms and conditions, each of which is discussed more fully in the body of this report. Should the Court concur with these terms and conditions and make them part of the Order granting a Final Judgment of Compliance and Repose, and should Cranford thereafter fail to satisfy any of these terms and conditions within the time periods set by the Court, such failure could become a basis for challenging the Township's continuing entitlement to Repose. As long as Cranford continues to fulfill all of the terms and conditions of the Final Judgment, it is

my recommendation that the Township be entitled to Repose as to both its prior round and third round fair share obligations through December 31, 2018.

1. All inclusionary developments in the Compliance Plan will have to be appropriately deed restricted and administered by the Township's Administrative Agent to ensure that they comply with UHAC Rules regarding administration, affirmative marketing and affordability controls and all other requirements of N.J.A.C. 5:97-6.4, pertaining to inclusionary developments. As well, the CDA development will have to comply with all provisions of the December 9, 2011, Order Granting Relief in Exclusionary Zoning Litigation and all conditions of site plan approval, and the Lehigh development will have to comply with all provisions of the January 28, 2011, Consent Judgment for Builder's Remedy, all conditions of the amended Redevelopment Plan for that site and all conditions of site plan approval.
2. The Township shall adopt its new Affordable Housing Ordinance within 45 days of the entry of a Final Judgment of Compliance and Repose.
3. The Township shall adopt its Affirmative Marketing Plan Resolution within 45 days of the entry of a Final Judgment of Compliance and Repose.
4. The Township shall perfect and adopt its draft Development Fee Ordinance within 45 days of the entry of a Final Judgment of Compliance and Repose. Should the Township elect the option of establishing an Affordable Housing Trust Fund, it shall enter into a three-way escrow agreement with COAH and the Bank. The Development Fee Ordinance (and the executed escrow agreement) shall be forwarded to COAH within seven (7) days of the adoption of the Development Fee Ordinance and/or the establishment of the Trust Fund, whichever occurs later, and no fees shall be collected until COAH has approved these documents.

5. The proposed Spending Plan shall be corrected and adopted by Resolution of the governing body within 45 days of the entry of a Final Judgment of Compliance and Repose. Similarly, the Township shall adopt the proposed Resolution of Intent to Fund any Shortfall in the moneys available for its affordable housing (rehabilitation) program, also within 45 days of the entry of a Final Judgment of Compliance and Repose. Approval of these documents by the Court is for the purpose of directing Cranford to submit them to COAH for review and approval, as COAH has exclusive authority to review and approve Spending Plans for the disposition of funds from an Affordable Housing Trust Fund. Submission of these documents to COAH shall occur simultaneously with the submission of the adopted Development Fee Ordinance and executed escrow agreement addressed in condition 4. herein.

6. The Ordinance to create the position of Municipal Housing Liaison and the Resolution appointing someone to fill the position of Municipal Housing Liaison, as well as the execution of a contract with a duly qualified Administrative Agent shall all occur within 45 days of the entry of a Final Judgment of Compliance and Repose. The costs of the Administrative Agent shall be paid by the owners of inclusionary developments or affordable units for all services rendered in connection with their particular developments or units.

7. The Township shall retain the services of a Rehabilitation Administrator and adopt a customized rehabilitation manual before the end of 2013 and shall continuously fulfill the funding commitments reflected in the approved Spending Plan and the Resolution of Intent to Fund any Shortfall. Additionally, Cranford shall regularly advertise the availability of its housing rehabilitation program. As a minimum, fliers advertising the availability of the program shall be included with the annual municipal tax bills. Nothing herein shall prevent the Township from entering into a shared



services agreement for the administration of the rehabilitation program, as long as the program complies fully with COAH's Rules.

8. Cranford shall have an adjusted third round fair share obligation (RDP) of five (5) units. In addition, Cranford shall be required to return to the Court or to COAH (or COAH's successor agency) within a year of the issuance of third round fair share numbers and present its proposals for addressing any Unmet Need obligation it may have based on the third round obligation assigned to it. The plan to address the Unmet Need, once the third round obligation has been quantified, may be reviewed and approved as an amendment or supplement to the Court-approved Housing Element and Fair Share Plan on which the Township's Final Judgment of Compliance and Repose is based.

9. In order for the remaining three units (not used to satisfy the prior round obligation) in the Riverfront Redevelopers, LLC, project to qualify for crediting against the third round RDP, the filed deed restriction shall reflect the following bedroom mix for all 19 affordable units: a maximum of three (3) one-bedroom units, a minimum of four (4) three-bedroom units and twelve (12) two-bedroom units. This will require two of the two-bedroom market units to be redesignated as affordable units and two of the one-bedroom affordable units to be redesignated as market units.

10. In order to claim credit for the affordable unit in the Needlepoint Homes development against the third round RDP, the Township must ensure that when the affordable unit is vacated by its current (non-qualified) occupant, it will be affirmatively marketed (for a period of 120 days), will be rented only to a qualified low income household at an affordable rent, and will be deed restricted as a low income unit for a period of at least 30 years from the time the unit is leased to a qualified low income household.

11. If the Township is able to obtain all of the necessary documentation for the two Community Access Unlimited special needs homes, it should be able to apply any credits available for these facilities against any portion of the third round obligation.

12. Within 60 days of the entry of the Final Judgment of Compliance and Repose, the Township shall provide COAH with copies of all materials and records of the Court proceedings needed for COAH to undertake annual monitoring of the implementation of the Housing Element and Fair Share Plan.

**FAIR SHARE HOUSING CENTER LETTER  
OF JUNE 5, 2012**



Peter J. O'Connor, Esq.  
Kevin D. Walsh, Esq.  
Adam M. Gordon, Esq.  
Laura Smith-Denker, Esq.

June 5, 2012

Elizabeth C. McKenzie, P.P., P.A.  
9 Main Street  
Flemington, New Jersey 08822

**Re: Cranford Development Associates, LLC v. Township of Cranford, Docket  
No. UNN-L-3759-08.**

Dear Ms. McKenzie:

Please accept this letter as Fair Share Housing Center's (FSHC) comments regarding Cranford Township's recently adopted fair share plan. FSHC, founded in 1975, is New Jersey's only public interest organization dedicated solely to the preservation and growth of the Mount Laurel doctrine. We work to ensure that every municipality in New Jersey provides its fair share of low- and moderate-income housing in order to promote housing opportunities for all New Jerseyans and racially and economically diverse communities. As you know, we appear regularly in Mount Laurel proceedings as a plaintiff or objector or as part of a fairness hearing.

We submit these comments without formally intervening in the above-captioned matter and without appealing Cranford's adoption on May 22, 2012 of its fair share plan. We do so with the goal of avoiding the need for adversarial proceedings given that our principal concern is easily addressed as part of your review of Cranford's fair share plan and the Court's response to that report. We reserve our right to intervene and to file an action in lieu of prerogative writ challenging the Township's May 22, 2012 adoption of a fair share plan.

Our principal concern involves a court order indicating that Cranford will receive ten years of repose and, apparently, not have to comply with the Council on Affordable Housing's (COAH) Third Round regulations. The Honorable Lisa F. Chrystal, J.S.C. by order dated December 9, 2011 awarded Cranford ten years of immunity from Mount Laurel litigation, stating at paragraph 6 that upon the adoption of the necessary implementing orders Cranford "will have satisfied," among other things, "its prospective (post-1999) need obligation." The order further suggests (but does not explicitly state) at paragraph 12 that Cranford will receive immunity through December 31, 2018. We object to these findings and urge the Court to adopt a revised position that does not adjudicate the Township's Third Round obligations or provide an extended period of immunity for six reasons.

First, we note that the builder's remedy did not rely in any way on the failure of Cranford to meet its Third Round obligation. Paragraph 1 of the December 9, 2011 order states that Cranford failed to meet its Prior Round obligation by 54 units "regardless of what its prospective (post-1999) need obligation might be." The fact that the Third Round obligation was not needed to demonstrate the violation of the doctrine suggests that the prospective repose is unnecessary and that Cranford should simply await the Third Round regulations. Further, anything that is not necessary to the adjudication of the builder's remedy matter would appear to be properly subjected to a fairness hearing at which the municipality's compliance with the doctrine is evaluated. A Prior Round builder's remedy need not and should not adjudicate Third Round issues and thus unnecessarily exclude the public from the process.

Second, we note that as a practical matter, the Township is already planning to apply to reduce its obligation if it is assigned a lower Third Round obligation. The Township notes as much repeatedly in its fair share plan, stating, for instance, at page 4 that it "reserves the right to amend all portions of this Plan, including Prior and Third Round portions of the Plan and the third round vacant land adjustment based upon any new affordable housing regulations, legislative action, or court decision." As framed by the Township, its ability to return to court is a one-way ratchet; the obligation can only go down during the next decade. The Township's interest in amending its fair share plan should cut both ways. Requiring the Township to file an amended fair share plan for the Third Round is thus consistent with the Township's overall expectations.

Third, demonstrating the practicality of requiring the municipality to return to court is that the Township already acknowledges that it must return to court when the new regulations are adopted because of incomplete details regarding part of its Third Round plan. It writes on page 29 of its fair share plan that it plans to develop a nine-unit special needs development, however the township has not provided sufficient information to demonstrate a realistic opportunity. Its plan states that "[t]he Township will provide a detailed Plan for addressing the 9-unit component of its potential third round obligation upon the adoption of amended affordable housing regulations." In short, its existing plan is not intact and needs to be finalized. In light of the gap and the municipality's failure to provide sufficient credits, the court cannot grant repose. Granting credits for sites whose realistic nature cannot be determined would violate the Appellate Division's decision in In re Adoption of N.J.A.C. 5:96 and 5:97, 416 N.J. Super. 462, 487-88 (App. Div. 2010).

Fourth, the Township's Third Round obligation will change and in all likelihood will not be based on the invalidated approach of growth share and the growth projection adjustment scheme authorized by N.J.A.C. 5:97-5.6. It would be especially anomalous if the trial court immunized Cranford from litigation based simply on the remnant of a need allocation scheme that was invalidated by the Appellate Division. There is no reason to rely on an invalidated scheme when the municipality could simply be required to amend its fair share plan when new regulations are released.

Fifth, numerous other courts have required municipalities to meet parts of their Third Round plans and to likewise return to court or COAH when revised Third Round regulations are released. This approach was used in Cinnaminson, a matter in which you are involved as the special master and likely more than ten other matters in Burlington and Gloucester Counties. See, for example, attached orders. Those courts provide "immunity and repose against exclusionary zoning litigation through the time for submission of a third round Compliance Plan, if any, once established by regulation, statute, or decision of a court with appropriate jurisdiction."

Sixth, the Township has proposed no mechanisms for meeting what is likely to be a significant unmet need once the Third Round regulations are adopted. This is inconsistent with COAH's regulations on unmet need, which are entitled to considerable deference. COAH does not "intend 'unmet need' to become 'a permanent adjustment to municipal affordable housing obligations.'" In re Adoption of N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1, 87-88 (App. Div.), certif. denied, 192 N.J. 71 (2007)(quoting 36 N.J.R. 5770 (December 20, 2004)). Based on that representation and COAH's history of requiring plans to meet unmet need, the Appellate Division has found that COAH's approach to unmet need met the requirements of the Mount Laurel doctrine. Ibid. See also In re Fair Lawn Borough, 406 N.J. Super. 433, 445 (App. Div.

2009) (noting in case in which COAH required overlay zoning that COAH "carefully scrutinized" a municipality's "plan to be sure the vacant land adjustment did not become a hollow promise"). COAH has indicated that its regulations are intended to "require meaningful plans for unmet need." 40 N.J.R. 5965(a), 6005 (October 20, 2008). It is also important to note that COAH and the courts have taken the requirements that municipalities impose overlay zoning very seriously, going so far as exposing a municipality to builder's remedy litigation because it failed to provide a mechanism to meet unmet need when directed to do so by COAH. See In re Fair Lawn, supra, 406 N.J. Super. at 444-45. This demonstrates that the adoption of overlay zoning is an important part of the fair implementation of the Mount Laurel doctrine.

We therefore respectfully suggest that you advise the court that the Township's fair share plan does not entitle it to ten years of repose and that instead the municipality should be directed to return to court or to COAH when new regulations are adopted to demonstrate its compliance in the Third Round with the Mount Laurel doctrine.

Thank you for your attention to this matter.

Sincerely,



Kevin D. Walsh  
Staff Attorney

c: Stephen Eisdorfer, Esq.  
Philip Morin, Esq.

File No. 04719-0137

**Law Offices**

**PARKER McCAY, P.A.**

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Attorneys for Petitioner, Township of Cinnaminson

**FILED with the Court**

**DEC - 6 2011**

**Ronald E. Bookbinder, A.J.S.C.**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
BURLINGTON COUNTY  
DOCKET NO. BUR-L-000476-06

IN THE MATTER OF THE  
APPLICATION OF THE TOWNSHIP  
OF CINNAMINSON, a municipal  
Corporation of the State of New Jersey,

Petitioner

Civil Action  
(Mount Laurel)

**ORDER GRANTING STAY OF  
THIRD ROUND PROCEEDINGS  
AND PROVIDING CONTINUED  
IMMUNITY AND REPOSE**

**THIS MATTER** having been brought before the Court on the application of Petitioner Township of Cinnaminson ("Township" and/or "Cinnaminson") pursuant to the Superior Court, Appellate Division's decision in In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, (416 N.J. Super. 462 (App. Div. 2010)), whereupon the Court invalidated the revised third round growth share rules adopted by the New Jersey Council on Affordable Housing ("COAH") and directed COAH to complete new rulemaking and release revised third round fair share numbers for all New Jersey municipalities by March 8, 2011;

And it appearing that the Appellate Division "decline[d] to issue a blanket stay of proceedings before COAH or in the courts pending completion of a remand to COAH" in view of "the fact that more than ten years have now elapsed since expiration of the second

round rules". Instead, the Appellate Court indicated that "... any municipality or other interested party may apply for a stay to COAH or the Court in which a Mount Laurel case is pending. Any such application should be decided in light of the status of the individual municipality's compliance with its affordable housing obligations and all other relevant circumstances." Ibid. at 512;

And it further appearing that the Supreme Court granted petitions for certification filed by various parties seeking reversal of the 2010 Appellate Division decision and thereafter granted a stay of COAH's March 8, 2011 rulemaking deadline and that none of the 566 municipalities in New Jersey currently have knowledge of the magnitude or nature of their third round fair share numbers;

And it further appearing that the petitions for certification before the Supreme Court remain pending and undecided which impedes the ability of trial courts to dispose of the third round compliance proceedings that are under the Court's jurisdiction;

And it further appearing that COAH elected to stay the review of the third round Compliance Plans for the municipalities under its administrative review jurisdiction in response to the Appellate Division's 2010 decision pending the resolution of the appeals of that decision that were filed with the Supreme Court;

And it further appearing that both COAH and the Court determined during prior round affordable housing compliance proceedings that Cinnaminson is nearing full build-out and that vacant developable land is a scarce resource in the Township;

And it further appearing that the Governor issued Administrative Agency Reorganization Plan No. 001-2011 on June 29, 2011 which eliminated COAH as the state administrative agency responsible for guiding municipal affordable housing compliance



effective August 29, 2011 and transferred the obligation to assist municipalities with their affordable housing compliance initiatives to the New Jersey Department of Community Affairs ("DCA");

And it further appearing that DCA elected to continue COAH's prior stay of review of third round Compliance Plans until the disposition of the appeals pending before the Supreme Court;

And it further appearing that DCA began implementing interim policies and guidelines on September 15, 2011 which were challenged and stayed by the Appellate Division on October 18, 2011 through litigation filed by Fair Share Housing Center because said interim policies and guidelines have the effect of rules which were not adopted in accordance with the Administrative Procedures Act;

And it further appearing, based upon (a) the Appellate Division's invalidation of the revised third round growth share rules, (b) the rulemaking stay ordered by the Supreme Court and the pending undecided appeals of the Appellate Division decision, (c) the fact that none of the municipalities in New Jersey know what their third round fair share obligations are, (d) the Governor's elimination of COAH as a state administrative agency and the transfer of its functions to DCA, (e) the stay of review of third round Plans implemented by COAH and its continued application by DCA, and (f) the stay of the application of DCA's interim rules, policies and guidelines imposed by the Appellate Division on October 18, 2011; that Cinnaminson will not be able to comprehend what its affordable obligation is for the third round and realistically prepare a third round Housing Element and Fair Share Plan (collectively "Compliance Plan") until the aforementioned issues are resolved by the courts, the Legislature and/or DCA;

And it further appearing, despite the aforementioned confusion and turmoil surrounding third round municipal affordable housing compliance, that Cinnaminson has been directed by the Court and the Special Master to provide opportunities to meet its as yet unquantified third round obligation and has entered into an Agreement with Lutheran Social Ministries ("LSM") to convey the 2.75-acre Cinnaminson Home property on Riverton Road that the Township acquired in 2005 to enable LSM to create 54 affordable units in satisfaction, in whole or in part, of the Township's third round fair share obligation when that obligation is eventually established by the judicial, legislative or executive branches of government;

And it further appearing that the New Jersey Department of Environmental Protection ("DEP") has taken the position that the Cinnaminson Home parcel is considered by DEP to be on the Township's Green Acres Recreation Open Space Inventory ("ROSI") and may not be used for affordable housing unless the Township initiates the Green Acres diversion process even though the property was not acquired with Green Acres Open Space funding;

And it further appearing that Cinnaminson disputes DEP's determination in this regard, which resulted in the Township filing Order to Show Cause proceedings against DEP under Docket No. BUR-L-2688-11 (Mount Laurel) seeking a Court Order compelling DEP to remove the Cinnaminson Home parcel from the ROSI so that the Township can convey the property to LSM to facilitate the construction of 54 affordable units in the third round;

And it further appearing that the trial court in the aforementioned proceeding entered an Order on September 28, 2011 transferring the matter to the Appellate Division;

And it further appearing that Cinnaminson heretofore tentatively agreed to convey a vacant lot that it owns on Inman Street through tax foreclosure to Habitat for Humanity,

Burlington County Chapter ("Habitat") to enable Habitat to construct two (2) affordable duplex units to apply against its unknown third round fair share obligation, but is now impaired in its ability to do so because that property may have to be added to the ROSI list and encumbered with a DEP-imposed open space restriction in exchange for DEP's willingness to remove the larger Cinnaminson Home property from the ROSI to enable LSM to produce 54 affordable units;

And it further appearing that the aforementioned circumstances involving DEP and the Township's ROSI negatively impact the Township's ability to produce affordable housing on the Cinnaminson Home parcel and the Inman Street lot until the Township's litigation is disposed of by the Appellate Division and/or the Supreme Court.

In light of the foregoing the trial Court has found and determined good cause has been shown for entry of a stay of Cinnaminson Township's third round affordable housing compliance proceedings, dismissal of the Township's third round declaratory judgment Complaint and providing extended immunity and repose against exclusionary zoning litigation through the time for submission of a third round Compliance Plan, if any, once established by regulation, statute, or decision of a court with appropriate jurisdiction.

IT IS, on this 6<sup>th</sup> day of December, 2011,

ORDERED as follows:

1. Cinnaminson Township's Petition for a Stay of third round compliance proceedings is granted subject to the Township's continued implementation of its Court-approved prior cycle Compliance Plan.
2. This case is hereby dismissed without prejudice. Cinnaminson Township is granted extended immunity and repose against exclusionary zoning litigation through the

time for submission of a third round Compliance Plan, if any, once established by regulation, statute, or decision of a court with appropriate jurisdiction.


3. Cinnaminson shall be freely permitted to refile with the Court for third round declaratory judgment relief pursuant to N.J.S.A. 52:27D-313(a) once its third round fair share obligation is known or, in the alternative, may elect to invoke the DCA administrative review process pursuant to the Governor's June 29, 2011 Reorganization Plan.

4. DCA shall continue to monitor, review and approve the Township's affordable housing development fee ordinance, Trust Account and Spending Plan and the Township shall file all required accounting balances and monitoring forms.

5. Cinnaminson may continue its efforts to compel DEP to permit the removal of the Cinnaminson Home parcel from the ROSI so that it may be used for affordable housing production purposes subsequent to the dismissal of the within proceedings and shall report to the Master and Fair Share Housing Center on a quarterly basis regarding the status of this effort. In the event the Township changes its course of action, it shall notify the Court.

6. The Township shall appoint a qualified administrative agent by April 1, 2012.

7. The Township shall consider the bills of Elizabeth C. McKenzie, Special Master, by December 23, 2011. The Township shall notify Ms. McKenzie of any questions on her bills by January 13, 2012. The Township shall pay those bills which it does not question by January 31, 2012.

  
RONALD E. BOOKBINDER, A.J.S.C.

#### JUDGE'S CHECKLIST

\_\_\_\_\_ Opposed

\_\_\_\_\_ Unopposed

RECEIVED AUG 31 2011

**JEFFREY R. SURENIAN AND ASSOCIATES, LLC**

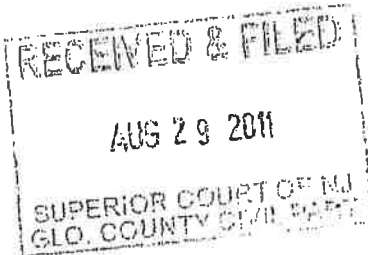
Brielle Galleria

707 Union Avenue, Suite 301

Brielle, NJ 08730

(732) 612-3100

Attorneys for the Borough of Swedesboro



**In the Matter of the Application of the  
Township of Swedesboro, County of  
Gloucester**

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: GLOUCESTER COUNTY  
DOCKET NO. L-2233-08**

**Civil Action  
(MOUNT LAUREL)**

**ORDER GRANTING PRIOR ROUND  
JUDGMENT OF COMPLIANCE AND  
REPOSE AND STAY OF THIRD ROUND  
OBLIGATIONS**

Whereas, the Borough of Swedesboro ("Borough") adopted a Housing Element and Fair Share Plan ("Affordable Housing Plan") in December of 2008; and

Whereas, the Borough filed the Affordable Housing Plan with COAH and brought a declaratory relief action seeking approval of said plan pursuant to N.J.S.A. 52:27D-313; and

Whereas, no objections were filed with respect to the Affordable Housing Plan; and

Whereas, the Court entered an Order on December 5, 2008 granting the Borough temporary immunity from Mount Laurel lawsuits; and

Whereas, the Appellate Division decided In re the Adoption of 5:96 and 5:97 on October 8, 2010; and

Whereas, the Court invalidated the growth share component of each municipality's fair share obligation and validated the rehab component and prior cycle component of the fair share obligation; and

Whereas, the Appellate Division specifically contemplated that a stay would be appropriate under certain circumstances because of its invalidation of the round three regulations and various other regulations:

[A]ny municipality or other interested party may apply for a stay to COAH or the court in which a Mount Laurel case is pending. **Any such application should be decided in light of the status of the individual municipality's compliance with its affordable housing obligations and all other relevant circumstances. In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing**, 416 N.J. Super. 462, 476 (App. Div. 2010) (emphasis added).

Whereas, several municipalities responded to the Appellate Division's invitation for towns to move for a stay; and

Whereas, on December 8, 2010, COAH granted all of the motions, and issued a resolution in favor of the six towns that took action; and

Whereas, COAH eliminated the need for a municipality to file a motion for a stay if the municipality was not seeking to stay its rehab and prior cycle components of its affordable housing plan: **"Whereas, . . . going forward municipalities are not required to seek a stay from COAH proceedings concerning third round prospective growth share obligations";** and

Whereas, the Borough sought a stay of its third round obligation from the Court on November 24, 2010; and

Whereas, the Court has adopted an alternative procedure which was recommended by the master, Phil Caton, in light of the Appellate Decision and reflected

in this Court's Case Management Order on June 3, 2011. Under this procedure the Court has considered the Borough's application for a stay in light of the status of its satisfaction of its rehabilitation and prior cycle fair share obligations and the extent to which it is making a reasonable effort to address its – as yet unspecified – third round obligation.

Whereas, the Case Management Order required a hearing on: 1) the Borough's application for a judgment of compliance and repose on the Borough's rehabilitation obligation and prior round obligation; and 2) the Borough's request for a stay on its third round obligation; and

Whereas, the Case Management Order further required the Borough to provide a 45 day notice of the hearing to local housing advocates and Fair Share Housing Center; and

Whereas, the Case Management Order further required the submission by the Master of a Master's Report by July 20, 2011 and required any objections to the Borough's applications to be submitted in writing to the Court, the Borough and the Master by July 27, 2011; and

Whereas, it also required the Borough to make the changes to its Affordable Housing Ordinance as requested in the Master's Report dated January 18, 2010; and

Whereas, on June 16, 2011, the Borough submitted its application for a prior round judgment of compliance and repose (hereinafter "JOR") and stay of its third round obligations to the Court; and

Whereas, the Borough made those documents available for public inspection and provided public notice in the Gloucester County Times of the availability of those documents and the hearing date; and

Whereas the Borough also prepared a letter enclosing a copy of that legal notice to Fair Share Housing Center, the known affordable housing advocacy groups in the region and all developers in the Borough who expressed an interest in affordable housing; and

Whereas, no objections were received , although Fair Share Housing Center submitted a letter dated July 28, 2011 which did not object to the relief sought, but rather objected to the logic employed by the Borough in seeking a stay; and

Whereas, the Master issued his report on July 20, 2011 ("Report"); and

Whereas, the Report acknowledged the Borough's 9-unit rehabilitation obligation and 23-unit prior round obligation; and

Whereas, as to the rehabilitation obligation, the Report recognized the Borough's participation in the Gloucester County Rehabilitation program, and recognized 8 credits resulting therefrom; and

Whereas, the Master recommended the granting of a waiver of the \$10,000 average per-unit rehab cost because, among other reasons: 1) the \$9,379.00 average per unit cost was a de minimus departure from the \$10,000.00 per unit requirement; and 2) the Borough had exceeded the average cost requirement on its separate RCA rehab program with Woolwich; and

Whereas, the Master deemed the rehabilitation obligation satisfied as long as the Borough agrees to rehabilitate any rental unit not covered by the County program until such time as the Borough completes its rehabilitation obligation; and

Whereas, the Master also deemed the 23-unit prior round obligation satisfied with six (6) senior rental units from the King's Way apartments which have already been



constructed, one (1) bonus rental credit from the Kings Way apartments; and eighteen (18) affordable units from Valley View Land Company, Inc.; and

Whereas, the Master recommended that the Affordable Housing Plan be revised to satisfy the prior round obligation in the manner set forth above; and

Whereas, the Master recognized two surplus units from Valley View and the 30 surplus credits from King's Way Apartments to be carried over to future housing obligations; and

Whereas, the Master recommended spending plan approval and required the Borough to conduct monitoring of its affordable housing trust fund using the CTM system to ensure that funds are properly tracked; and

Whereas, the Master approved the revised Affordable Housing Ordinance and required the Borough to adopt an Affirmative Marketing Plan; and

Whereas, the Master also required a resolution appointing an affordable housing administrator and a contract with an affordable housing administrator when the Valley View affordable units are ready for occupancy; and

Whereas, the Master also required a for-sale operating manual for Valley View when the units when the units are ready for occupancy; and

Whereas, the Master also recommended the grant of a third round stay noting that the Borough has credits for more than twice its prior round obligation (55 credits vs. a 23-unit obligation); and

Whereas, the Master concluded his report by recommending: 1) approval of the plan subject to the six conditions noted therein; 2) that the period of repose and immunity from exclusionary zoning litigation run until the municipality's deadline for submission

of a third round Fair Share Plan pursuant to revised third round rules or a deadline created by revised third round rules or the New Jersey State Legislature; and 3) a stay of planning for implementing a Fair Share Plan for the third round obligation; and

Whereas, the Borough (appearing through Donna A. McBarron, Esq.), the Master and Fair Share Housing Center (appearing through Kevin Walsh, Esq.) participated in a hearing before the Court on August 3, 2011 at 1:30 p.m.; and

Whereas, no party objected to the relief sought by the Borough, although Fair Share Housing Center reiterated its concern regarding the logic employed by the Borough in seeking a stay; and

Whereas, in view of the foregoing, the Court's review of the documents submitted into evidence identified on the Table of Contents attached hereto as Exhibit "A," a consideration of the arguments of the Borough and the comments of FSHC and a consideration of the report and testimony of the Court appointed master,

It is on this <sup>7<sup>th</sup></sup> day of August 2011 ordered as follows:

1. The Borough is entitled to a judgment of compliance and repose on its rehabilitation and prior round obligations.
2. The Borough shall rehabilitate any rental unit if rehabilitation is requested (to the extent the County program remains closed to rental units) until such time as the Borough completes its rehabilitation obligation.
3. The Borough Planning Board shall adopt and amended Affordable Housing Plan to satisfy the prior round obligation in the manner indicated in Table I of the Master's Report, including the maximum permitted bonus credits, within 90 days of the date of this Order.

4. The Borough shall conduct monitoring of its affordable housing trust fund using the CTM system to ensure that funds are properly tracked.
5. The Borough shall adopt an Affirmative Marketing Plan, via resolution of the Governing Body, to set forth the affirmative marketing requirements within 90 days of the entry of this Order.
6. The Borough shall adopt the revised Affordable Housing Ordinance within 90 days of the date of this Order.
7. The Borough shall adopt a resolution appointing an affordable housing administrator and enter into a contract for same prior to the Valley View units being ready for occupancy.
8. The Borough shall prepare an operating manual for sale units on the Valley View project prior to the units being ready for occupancy.
9. The Borough's Spending Plan (revised September 14, 2010) is consistent with the third round substantive rules, N.J.A.C. 5:97-8; however, approval of the Spending Plan must be granted by COAH or its successor.
10. The Borough is granted a stay of its third round planning obligation subject to the Borough maintaining the current zoning of the Valley View property..
11. The Borough shall remain immune from exclusionary zoning challenges and builder's remedy suits until the time for submission of a third round compliance plan, if any, is established by regulation, statute or decision of a court with appropriate jurisdiction, provided that immunity will be extended upon the filing by the Borough of a duly adopted and endorsed housing element and fair share plan for the third round for such time as COAH, the

DCA Commissioner or the Court, with the input of its Master, may deem appropriate.

12. The Borough shall submit annual reports to the Court and Master, with a copy to Fair Share Housing Center, on the status of the rehab obligation and the Valley View project commencing on the one-year anniversary of the entry of this Order.

13. Valley View Land Company, Inc. shall pay the sum of \$9,675.00 to Clark Caton Hintz within 30 days of the entry of this Order for services owed in connection with the Valley View project.



---

Anne McDonnell, P.J. Ch.

**APPENDIX C OF N.J.A.C. 5:97**

## **Appendix C**

### **COUNCIL ON AFFORDABLE HOUSING (COAH)**

### **PRIOR ROUND AFFORDABLE NEED UPDATED METHODOLOGY**

#### **CONTENTS**

**INTRODUCTION**

**THE ADJUSTED BASE**

**DEMOLITIONS**

**FILTERING**

**RESIDENTIAL CONVERSIONS**

**REACHING AN UPDATED PRIOR ROUND AFFORDABLE HOUSING NEED**

*Prepared by*

**WHARTON GIS LAB**

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**PAUL AMOS**

**PRAVIN MATHUR**

**KENDRA GOLDBAS**

**KAREN BECK POOLEY, Ph.D.**

**MAY 1, 2008**

## INTRODUCTION

As part of this effort, researchers also reviewed prior round obligation numbers and updated those numbers based on the latest data available for measuring secondary sources of supply. Replicating the existing methodology with updated data (described in detail below) increased municipalities' collective prior round obligation by 992 units in comparison to the 1993 unadjusted obligations. COAH is adopting municipalities' unadjusted 1987 to 1999 obligations, first published in 1993, which totaled 85,964, as shown in this Appendix. These are the numbers under which municipalities received substantive certification for their second round new construction obligations (prior round obligation). The methodology description below details the process researchers undertook to validate and update (where indicated) the prior round obligation numbers.

## THE ADJUSTED BASE

In 1993, COAH released municipal-level affordable housing obligations that consisted of Indigenous Need *plus* Reallocated Present Need *plus* Prospective Need (1993 to 1999) *plus* Prior Round Prospective Need *plus* Demolitions *minus* Filtered Units *minus* Residential Conversions *minus* Spontaneous Rehabilitations. The Prior Round Prospective Need, as published in 1993, was updated by the prior research team of Robert W. Burchell and William R. Dolphin, from Rutgers University, in 2004.

Replication efforts followed the methodology described in the Existing Third Round Rules, used data presented in the August 19, 2004, OPRA response, and accepted the Appendix A assertion that 2000 Census data indicated a 25 percent increase in all previously published projections (based on 1993 numbers). This effort recalculated only 1993 to 1999 Prospective Need, Demolitions, Filtered Units, and Residential Conversions. (The First Round Prospective Need was already adjusted in 1993 to reflect the difference between 1987 projections and data published in 1993 based on the 1990 Census.)

This work resulted in a Prior Round Obligation of 3,844 more units than previously published. These updated numbers were used as the Adjusted Base in this methodology.

COAH Region		Adjusted Base
1	Northeast	12,882
2	Northwest	7,490
3	West Central	17,573
4	East Central	32,602
5	Southwest	18,303
6	South-Southwest	10,582
Total		99,432

Again, the Adjusted Base of 99,432 units consists of the following three components: 1) the first round prior round prospective need of 38,202 units; 2) the second round prospective need of 42,127 units with a 25 percent increase in the 1993 numbers, resulting in 52,658 units; and 3) the second round reallocated present need of 8,572 units. The remaining reallocated present need was credited to the third round Rehabilitation Share.

## DEMOLITIONS

Demolition data by municipality is available from the New Jersey Construction Reporter for the years 1996 to 2007. Statewide demolition totals from 1990 to 1999 were listed in the existing Third Round Substantive Rules. To determine the number of demolitions in each municipality between 1993 and 1999, this methodology first gathered municipal-level data for 1996 to 1999 from the New Jersey Construction Reporter. Next, this methodology analyzed the State-level data to determine what portion of New Jersey demolitions occurring between 1993 and 1999 occurred between 1996 and 1999.

Year	Demolitions	Breakdown
1993	1,430	30 percent
1994	1,471	
1995	3,350	
1996	2,642	70 percent
1997	4,918	
1998	2,867	
1999	4,052	
Total	20,730	

It was assumed that this breakdown held at the municipal level as well, or that each municipal total for 1996 to 1999 represented 70 percent of a community's total number of demolitions from 1993 to 1999. Therefore, to get a demolition figure for 1993 to 1999 at the municipal level, each municipal total from 1996 to 1999 was divided by 70 percent.



To isolate demolitions affecting low- and moderate-income households (by removing stock affordable to these households), this methodology then multiplied municipality demolition totals by 19.5 percent, the portion of New Jersey's housing valued at a level that low- and moderate-income households can afford.<sup>7</sup>

COAH Region		Demolitions (1993-1999)
1	Northeast	587
2	Northwest	1,422
3	West Central	298
4	East Central	556
5	Southwest	383
6	South-Southwest	795
Total		4,040

## FILTERING

Econsult reviewed comprehensive property-level data on all paired home transactions in New Jersey from 1989-2006 to identify "filtered" housing unit – those that experienced a significant price change and whose occupant experienced a significant income change. Researchers further refined this analysis to focus only on those units starting or ending at values affordable to low- and moderate-income households or with occupants earning incomes below 80 percent of their regional median. (These methods are described in further detail in Appendix F.)

According to Econsult's analysis (described in further detail in Appendix F), 7,796 units filtered down to households of lower incomes between 1993 and 1999:

<sup>7</sup> According to the National Association of Realtors' mortgage calculator – and assuming households could put up to \$10,000 toward their down-payment, had the state's average car payment (\$447, reported by Edmunds Automotive Network) and credit card debt (\$165, reported by PlasticEconomy.com), took out a loan at 6.375 percent (roughly the average commitment rate for 30-year, fixed rate loans in 2006 and 2007, according to Freddie Mac), and faced a 2.5 percent property tax rate (slightly below the average effective property tax rate for all New Jersey municipalities in 2004, reported by the New Jersey Division of Taxation) – a household earning \$52,296 (80 percent of the State's median family income in 2000) could afford a \$109,547 home. U.S. Census data from 2000 indicates that 19.5 percent of specified owner-occupied units were valued below \$109,547.

COAH Region		Filtering (1993-1999)
1	Northeast	3,422
2	Northwest	1,708
3	West Central	402
4	East Central	554
5	Southwest	1,351
6	South-Southwest	359
Total		7,796

### RESIDENTIAL CONVERSIONS

This methodology replicated the technique used in the previously released Third Round Substantive Rules, using the following steps to quantify residential conversions:

- The **change in total units** was derived by subtracting the number of housing units reported by the U.S. Census in 1990 from the number of housing units reported by the U.S. Census in 2000.
- **Certificates of Occupancy** numbers are available at the municipal level from the New Jersey Construction Reporter for 1996 to 1999. These totals were extrapolated to the 1990 to 1999 time span by analyzing building permits issued at the state level from 1990 to 1999 (available from the U.S. Census at <http://www.census.gov/const/www/C40/table2.html#annual>) to determine what portion of New Jersey building permits issued between 1990 and 1999 were issued between 1996 and 1999. It was assumed that the same breakdown held at the municipal level, or that each municipal total for 1996 to 1999 represented 48 percent of a community's total number of certifications from 1990 to 1999. Therefore, to get a certification figure for 1990 to 1999 at the municipal level, each municipal total from 1996 to 1999 was divided by 48 percent.
- **Demolition** data was collected at the municipal level from the New Jersey Construction Reporter for the years 1996 to 1999. To determine the number of demolitions in each municipality between 1990 and 1999, this methodology analyzed the state-level data to determine what portion of New Jersey demolitions occurring between 1990 and 1999 occurred between 1996 and 1999. It was assumed that this breakdown held at the municipal level, or that each municipal total for 1996 to 1999 represented 55 percent of a community's total number of demolitions from 1990 to 1999. Therefore, to get a demolition figure for 1990 to 1999 at the municipal level, each municipal total from 1996 to 1999 was divided by 55 percent.

<b>Residential Conversions = Change in Units <i>minus</i> C of Os <i>plus</i> Demolitions</b>
---

This methodology assumed that 19.5 percent of residential conversions were occupied by low- or moderate-income households. (In 2000, this portion of all New Jersey housing units was affordable to low- and moderate-income households.) The number of residential conversions affecting low- and moderate-income households between 1993 and 1999 is simply two-thirds (66.67 percent) of the Low-/Moderate-Income Share of Residential Conversions occurring between 1990 and 1999.

If a municipality lost low- or moderate-income units through conversions (the case in 257 communities), its residential conversion figure was 0. This was done because filtering numbers implicitly account for any loss of stocks.

Ultimately, these calculations indicated that there were 8,720 residential conversions statewide between 1993 and 1999:

COAH Region		Residential Conversions (1993-1999)
1	Northeast	2,338
2	Northwest	1,833
3	West Central	1,334
4	East Central	1,273
5	Southwest	1,299
6	South-Southwest	643
Total		8,720

## REACHING AN UPDATED PRIOR ROUND AFFORDABLE HOUSING NEED

The Updated Affordable Housing Need in is equal to the Adjusted Base *plus* Demolitions *minus* Filtering *minus* Residential Conversions.<sup>8</sup> According to this analysis, 58 municipalities had negative Updated Prior Round Need numbers. Converting these negative figures to zero results in the following regional and statewide totals:<sup>9</sup>

<sup>8</sup> Spontaneous rehabilitations were not included in this methodology since, while units were likely brought up to code ("spontaneously rehabilitated") over the course of the study period, others likely fell out of compliance, and it was not possible to verify the number of properties doing either.

<sup>9</sup> If these negative figures were not zeroed out but kept as negative values, the Statewide Update Prior Round Need would be 86,956 and the regional subtotals as follows:

COAH Region		Updated Prior Round Need
1	Northeast	7,709
2	Northwest	5,371
3	West Central	16,135
4	East Central	31,331
5	Southwest	16,035
6	South-Southwest	10,374

COAH Region		Updated Prior Round Need
1	Northeast	11,355
2	Northwest	6,774
3	West Central	16,310
4	East Central	31,931
5	Southwest	16,988
6	South-Southwest	10,456
Total		93,813

This total is 7,849 units higher than that calculated in 1993 (85,964).



#### **AFFORDABLE HOUSING ASSISTED THROUGH FEDERAL AND STATE PROGRAMS**

COAH additionally reviewed data describing the number of housing units allocated between 1987 and 1999 through the Federal Low Income Housing Tax Credit (LIHTC) program and the State's Balanced Housing (BH) Program.

COAH Region		LIHTC Units	BH Units	Total
1	Northeast	1,315	503	1,818
2	Northwest	2,107	544	2,651
3	West Central	48	136	184
4	East Central	1,166	660	1,826
5	Southwest	465	420	885
6	South-Southwest	579	79	658
Total		5,680	2,173	7,853

These units were built but never credited toward any municipal affordable housing plan. COAH will not provide credit for these units to individual municipalities but will instead credit the total updated Statewide need of 93,813, to reach an updated prior round need number of 85,960 ( $93,813 - 7,853 = 85,960$ ), nearly the same as that published in 1993.

## **CREDENTIALS**

**TOWNSHIP OF CRANFORD  
CRANFORD, NEW JERSEY**

**RESOLUTION NO. 2017-198**

**WHEREAS**, it is necessary for the Township to retain an expert responsible for the administration of affordable housing units; and

**WHEREAS**, **Community Grants, Planning & Housing (CGP&H)** has completed and submitted a Business Entity Disclosure Certification which certifies that **CGP&H** has not made any reportable contributions to a political or candidate committee in the Township of Cranford in the previous one year, and that the contract will prohibit **CGP&H** from making any reportable contributions through the term of the contract; and

**WHEREAS**, **CGP&H** has submitted a Business Entity Contribution Certification which certifies that **CGP&H** has not made any reportable contribution during the past twelve (12) month period, pursuant to N.J.S.A. 19:44A-1 et seq.; and

**WHEREAS**, the Chief Financial Officer and Finance Director have certified as to the availability of funds which is on file in the office of the Township Clerk.

**NOW, THEREFORE BE IT RESOLVED** by the Township Committee of the Township of Cranford, New Jersey as follows:

1. **CGP&H, 101 Interchange Plaza, Suite 301, Cranbury, NJ 08512-3716**, be and hereby is awarded a contract to provide administrative agent services at a cost not to exceed \$5,625; and
2. The Business Entity Disclosure Certification and Business Entity Contribution Disclosure Certification be placed on file with a copy of this resolution; and
3. A copy of this resolution be published as required by law within twenty (20) days of its adoption.

Certified to be a true copy of a resolution adopted by the Township Committee of the Township of Cranford at a meeting held May 9, 2017.

  
\_\_\_\_\_  
Tara Rowley, RMC  
Township Clerk

Dated: 5/10/17

**TOWNSHIP OF CRANFORD  
CRANFORD, NEW JERSEY**

**RESOLUTION NO. 2017-199**

**A RESOLUTION APPOINTING A MUNICIPAL HOUSING LIAISON**

**WHEREAS**, pursuant to the Municipal Code of the Township Section 136-86, the Township has designated the Municipal Housing Liaison as responsible for the oversight and administration of the Township's affordable housing program; and

**WHEREAS**, the Municipal Housing Liaison is required to be a Township employee; and


**WHEREAS**, Township's immediate past-Municipal Housing Liaison is no longer an employee of the Township;

**NOW, THEREFORE, BE IT RESOLVED**, that Zoning Officer Ronald Johnson is hereby appointed as the Township of Cranford Municipal Housing Liaison for the administration of the affordable housing program and he shall be compensated for said administrative service with a stipend equal to \$1,500 per annum during such time as the affordable housing trust fund balance is below \$37,000 per annum, and equal to \$3,000 during such time as the affordable housing trust fund is greater than \$37,000 per annum.

Certified to be a true copy of a resolution adopted by the Township Committee of the Township of Cranford at a meeting held on May 9, 2017.

Dated: \_\_\_\_\_

5/10/17

  
\_\_\_\_\_  
Tara Rowley, RMC  
Township Clerk

**TOWNSHIP OF CRANFORD  
CRANFORD, NEW JERSEY**

**RESOLUTION NO. 2017-200**

**WHEREAS**, pursuant to the Municipal Code of the Township Section 136-72, the Township has undertaken to develop and adopt a rehabilitation program to renovate deficient housing units occupied by low- and moderate-income households consistent with the New Jersey State Housing Code and N.J.A.C. 5:28; and

**WHEREAS**, pursuant to the Resolution 2017-198, the Township Committee has authorized the Township to enter into a contract with Community Grants, Planning & Housing to serve as administrative agent for the rehabilitation program; and

**WHEREAS**, pursuant to Municipal Code Section 136-72(G), the Township has prepared a rehabilitation manual for the owner occupancy rehabilitation program and rental occupancy rehabilitation program to be administered by the administrative agent.

**NOW, THEREFORE, BE IT RESOLVED**, that the Mayor and Township Committee of the Township of Cranford, County of Union, State of New Jersey, do hereby adopt the Township of Cranford Home Improvement Program Policies and Procedures Manual as the Township's rehabilitation manual for both the owner occupancy and rental occupancy rehabilitation programs.

I hereby certify that this is a true copy of a resolution duly adopted by the Mayor and Township Committee of the Township of Cranford at a Committee meeting held on November 12, 2012.

Date: 5/10/17

  
\_\_\_\_\_  
Tara Rowley, RMC  
Township Clerk



**TOWNSHIP OF CRANFORD  
CRANFORD, NEW JERSEY**

**ORDINANCE NO. 2017-06**

**AN ORDINANCE TO AMEND THE CODE OF THE TOWNSHIP OF CRANFORD, CHAPTER 136 LAND DEVELOPMENT, ARTICLE IX, SECTION 72 TO IDENTIFY THE ADMINISTRATIVE AGENT FOR THE TOWNSHIP'S REHABILITATION PROGRAM.**

**NOW THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Cranford, in the County of Union, State of New Jersey, as follows:

**SECTION 1.** Section 136-72, is hereby amended as follows:

**§ 136-72. Rehabilitation program.**

- A. Cranford's rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
- B. Cranford hereby designates Community Grants, Planning & Housing, LLC as the administrative agent for its entire rehabilitation program.

**SECTION 2.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

**SECTION 3.** This ordinance shall become effective upon final passage and publication according to law.

STATE OF NEW JERSEY )

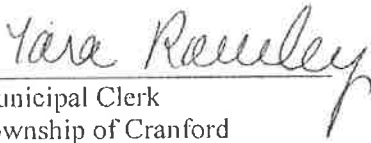
: ss.:

COUNTY OF UNION )

I, Tara Rowley, Municipal Clerk of the Township of Cranford, in the County of Union, in the State of New Jersey, DO HEREBY CERTIFY that I the foregoing Ordinance No. 2017-06 was introduced and approved on first reading by the Township Committee of the Township of Cranford, in the County of Union, at a meeting held on May 9, 2017, and is scheduled for a public hearing to be held on June 13, 2017.

IN WITNESS WHEREOF, I have hereunto set my hand and have affixed the corporate seal of said Township, this 10<sup>th</sup> day of May, 2017.

(SEAL)

  
Municipal Clerk  
Township of Cranford  
County of Union  
New Jersey

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July 13, 2017

Initial Cranford RDP and Credits Analysis

<b>Table 1: RDP Calculation</b>			
<b>Project</b>	<b>Total Units Developed</b>	<b>Density</b>	<b>RDP</b>
RDP established by JOR <sup>1</sup>	N/A	N/A	<b>5 units</b>
<b>Changed Circumstances</b>			
Birchwood (Block 291, Lot 15.01, Block 292, Lot 2)	360 <sup>2</sup>	22.69 units/acre <sup>3</sup>	360/15.86 acres = <b>72 units</b>
Hartz Mountain (Block 541, Lot 2)	0	10 units/acre	10 x 30.5 acres <sup>4</sup> = 305; 305 x 20% = <b>61 units</b>
North Avenue Redevelopment Area (NARA) (Block 195, Lots 1, 2, 3, 4, 5, 6, 7.01, 10, & 11, Block 193, Lots 6.01, 10, 11, 12, 13, 14 15&16)	79	20 units/acre	20 x 3.95 acres <sup>5</sup> = 79; 79 x 20% = <b>16 units</b>
109 Walnut (Block 478, Lots 10,11,12,13)	24	50 units/acre	24/0.48 acres= <b>5 units</b> <sup>6</sup>
Lehigh Gas Station - Centennial Avenue project (Block 525, Lot 5)	20	41.67 units/acre	20/0.48 acres = <b>4 units</b>
<b>Total</b>	<b>483</b>		<b>RDP = 163 units</b>

<sup>1</sup> Based on the Vacant Land Capacity analysis included as Appendix A in Cranford's 2013 Housing Element and Fair Share Plan and includes Township-owned vacant land at Block 573, Lots 9, 10, & 12.02 (1.21 acres) and Block 574, Lots 14 & 15 (0.52 acres).

<sup>2</sup> This represents the unit count identified in Cranford's Housing Element and Fair Share Plan. Changed circumstances have reduced the yield to 225 total units, based on the RFP issued by the Township on April 20, 2017.

<sup>3</sup> Acreage based on Cranford's RFP for site.



### Affordable Housing Credit Analysis

Table 2 demonstrates how Cranford Township has satisfied its recalibrated RDP and generated a surplus to be applied in the future

Project	Affordable Units/Credits	Unit/Credit Type
Riverfront Developers, LLC (Block 481; Lots 1.02, 2.01 and 3-9)	19	Non Age-Restricted Rental
Lehigh Acquisition Project (Block 511, Lot 1) aka Woodmont	24	Non Age-Restricted Rental
Needlepoint Homes (Block 480, Lot 1)	1	Non Age-Restricted Rental
Lincoln Apartments – Age-Restricted (Block 532, Lot 18.01)	40	Age-Restricted Rental
SERV Center of NJ (Block 514, Lot 3)	3	Three Bedroom Group Home
Cranford Development Associates (CDA) Project (Block 291, Lot 15.01, Block 292, Lot 2) aka Birchwood	34	Family Rental
Potential Credits from Group Homes	29 <sup>7</sup>	Group Home Bedrooms
North Avenue Redevelopment Area (NARA) (Block 195, Lots 1, 2, 3, 4, 5, 6, 7.01, 10, & 11, Block 193, Lots 6.01, 10, 11, 12, 13, 14 15&16)	12	Non Age-Restricted Rental
109 Walnut (Block 478, Lots 10,11,12,13)	4	Non Age-Restricted Rental
Potential Bonus Credits based on recalibrated RDP	40	Rental Bonus Credits
<b>Total Credits/Units</b>	<b>207</b>	
<b>Total RDP (see Table 1)</b>	<b>163</b>	
<b>Surplus Credits</b>	<b>44</b>	
<b>Surplus from Lincoln for Future Obligation</b>	<b>60</b>	

<sup>7</sup> Subject to confirmation

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**TOWNSHIP OF CRANFORD  
CRANFORD, NEW JERSEY**

**RESOLUTION NO. 2017-236**

**RESOLUTION OF THE TOWNSHIP OF CRANFORD, COUNTY OF  
UNION, STATE OF NEW JERSEY ADOPTING AN AFFORDABLE  
HOUSING SPENDING PLAN AND REQUESTING JUDICIAL REVIEW  
AND APPROVAL OF SAME**

**WHEREAS**, on May 22, 2013, Honorable Lisa F. Chrystal, J.S.C. entered a Final Judgment of Compliance in favor of the Township of Cranford; and

**WHEREAS**, among other things, the Judgment of Compliance approved the Township's Mount Laurel development fee ordinance; and

**WHEREAS**, the development fee ordinance establishes an affordable housing trust fund that may include, for example, development fees, payments from developers in lieu of constructing affordable units on-site, barrier free escrow funds, rental income, repayments from affordable housing program loans, recapture funds, and proceeds from the sale of affordable units; and

**WHEREAS**, regulations adopted by the New Jersey Council on Affordable Housing ("COAH") have consistently required a municipality with an affordable housing trust fund to receive approval of a Spending Plan by COAH prior to spending any of the funds in its housing trust fund; and

**WHEREAS**, these regulations required a Spending Plan to include the following:

1. A projection of revenues anticipated from imposing fees on development, based on pending, approved and anticipated developments and historic development activity;
2. A projection of revenues anticipated from other sources, including payments in lieu of constructing affordable units on sites zoned for affordable housing, funds from the sale of units with extinguished controls, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, and interest earned;
3. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;
4. A description of the anticipated use of all affordable housing trust funds;
5. A schedule for the expenditure of all affordable housing trust funds;
6. If applicable, a schedule for the creation or rehabilitation of housing units;

7. A pro-forma statement of the anticipated costs and revenues associated with the development if the municipality envisions supporting or sponsoring public sector or non-profit construction of housing; and

8. A plan to spend the trust fund balance within four years of COAH's approval of the Spending Plan, or in accordance with an implementation schedule approved by COAH;

9. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues are not sufficient to implement the Plan; and

10. A description of the anticipated use of excess affordable housing trust funds, in the event more funds than anticipated are collected, or projected funds exceed the amount necessary for satisfying the municipal affordable housing obligation.

**WHEREAS**, Cranford Township has prepared a Spending Plan consistent with COAH's longstanding rules and policies; and

**WHEREAS**, because COAH is no longer a functioning administrative agency, it will not approve the Township's Spending Plan; and

**WHEREAS**, the Township of Cranford shall therefore seek review and approval of its adopted Spending Plan by the court.

**NOW THEREFORE BE IT RESOLVED** that the Governing Body of the Township of Cranford, County of Union hereby adopts the Spending Plan attached hereto;

**BE IT FURTHER RESOLVED THAT** the Township of Cranford hereby requests that the court review and approve its adopted Spending Plan.

I hereby certify that this is a true copy of the resolution adopting the Spending Plan of the Township of Cranford and requesting judicial review and approval of same as adopted on June 13, 2017.

  
Tara Rowley, RMC  
Township Clerk

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**TOWNSHIP OF CRANFORD  
CRANFORD, NEW JERSEY**

**RESOLUTION NO. 2017-200**

**WHEREAS**, pursuant to the Municipal Code of the Township Section 136-72, the Township has undertaken to develop and adopt a rehabilitation program to renovate deficient housing units occupied by low- and moderate-income households consistent with the New Jersey State Housing Code and N.J.A.C. 5:28; and

**WHEREAS**, pursuant to the Resolution 2017-198, the Township Committee has authorized the Township to enter into a contract with Community Grants, Planning & Housing to serve as administrative agent for the rehabilitation program; and

**WHEREAS**, pursuant to Municipal Code Section 136-72(G), the Township has prepared a rehabilitation manual for the owner occupancy rehabilitation program and rental occupancy rehabilitation program to be administered by the administrative agent.

**NOW, THEREFORE, BE IT RESOLVED**, that the Mayor and Township Committee of the Township of Cranford, County of Union, State of New Jersey, do hereby adopt the Township of Cranford Home Improvement Program Policies and Procedures Manual as the Township's rehabilitation manual for both the owner occupancy and rental occupancy rehabilitation programs.

I hereby certify that this is a true copy of a resolution duly adopted by the Mayor and Township Committee of the Township of Cranford at a Committee meeting held on November 12, 2012.

Date: 5/10/17

  
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Tara Rowley, RMC  
Township Clerk

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**TOWNSHIP OF CRANFORD  
CRANFORD, NEW JERSEY**

**RESOLUTION NO. 2012-347**

**WHEREAS**, in accordance with the regulations of COAH pursuant to N.J.A.C. 5:97-1, *et seq.*, and the New Jersey Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26-1, *et seq.*, the Township of Cranford is required to adopt by resolution an Affirmative Marketing Plan to ensure that all affordable housing units created, including those created by the rehabilitation of rental housing units within the Township of Cranford, are affirmatively marketed to low and moderate income households, particularly those living and/or working within Housing Region 2, the COAH Housing Region encompassing the Township of Cranford.

**NOW, THEREFORE, BE IT RESOLVED**, that the Mayor and Township Committee of the Township of Cranford, County of Union, State of New Jersey, do hereby adopt the following Affirmative Marketing Plan:

**Affirmative Marketing Plan**

- A. All affordable housing units in the Township of Cranford shall be marketed in accordance with the provisions herein unless otherwise provided in COAH's Rules at N.J.A.C. 5:97-1, *et seq.*
- B. This Affirmative Marketing Plan shall apply to all developments that contain or will contain low- and moderate-income units, including those that are part of the Township's Prior Round Fair Share Plan and its current Fair Share Plan and those that may be constructed in future developments not yet anticipated by the Fair Share Plan. This Affirmative Marketing Plan shall also apply to any rehabilitated rental units that are vacated and re-rented during the applicable period of controls for rehabilitated rental units.
- C. The Affirmative Marketing Plan shall be implemented by an Administrative Agent designated by and/or under contract to the Township of Cranford. All of the costs of advertising and affirmatively marketing affordable housing units shall be borne by the developer/seller/owner of the affordable unit(s).
- D. In implementing the Affirmative Marketing Plan, the Administrative Agent, acting on behalf of the Township of Cranford, shall undertake all of the following strategies:
  - 1. Publication of one advertisement in a newspaper of general circulation within the housing region.
  - 2. Broadcast of one advertisement by a radio or television station broadcasting throughout the housing region.
  - 3. At least one additional regional marketing strategy using one of the other sources listed below.

- E. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer or sponsor of affordable housing. The Affirmative Marketing Plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward the COAH Housing Region in which the municipality is located and covers the entire period of the deed restriction for each restricted housing unit. The Township of Cranford is located in COAH Housing Region 2, consisting of Morris, Essex, Union and Warren Counties.
- F. The Affirmative Marketing Plan is a continuing program intended to be followed throughout the entire period of restrictions and shall meet the following requirements:
1. All newspaper articles, announcements and requests for applications for low and moderate income units shall appear in the Star Ledger, the Daily Record and the Express Times.
  2. The primary marketing shall take the form of at least one press release and a paid display advertisement in the above newspapers once a week for four consecutive weeks. Additional advertising and publicity shall be on an "as needed" basis. The developer/owner shall disseminate all public service announcements and pay for display advertisements. The developer/owner shall provide proof of publication to the Administrative Agent. All press releases and advertisements shall be approved in advance by the Administrative Agent.
  3. The advertisement shall include a description of the:
    - a. Location of the units;
    - b. Directions to the units;
    - c. Range of prices for the units;
    - d. Size, as measured in bedrooms, of units;
    - e. Maximum income permitted to qualify for the units;
    - f. Location of applications;
    - g. Business hours when interested households may obtain an application; and
    - h. Application fees.
  4. Newspaper articles, announcements and information on where to request applications for low and moderate income housing shall appear at least once a week for four consecutive weeks in at least three locally oriented weekly newspapers within the region, one of which shall be circulated primarily in Union

County and the other two of which shall be circulated primarily outside of Union County but within the housing region.

5. The following regional cable television stations or regional radio stations shall be used during the first month of advertising. The developer must provide satisfactory proof of public dissemination:

- a. Cablevision of Elizabeth
- b. Comcast of NJ
- c. Comcast of Plainfield
- d. WFMU 91.1
- e. WDHA 105.5
- f. WMGQ 98.3

- G. Applications, brochure(s), sign(s) and/or poster(s) used as part of the affirmative marketing program shall be available/posted in the following locations:

1. Cranford Township Hall
2. Cranford Township Web Site (if applicable)
3. Developer's Sales/Rental Offices
4. Morris County Administration Building
5. Essex County Administration Building
6. Union County Administration Building
7. Warren County Administration Building
8. Morris County Library (all branches)
9. Essex County Library (all branches)
10. Union County Library (all branches)
11. Warren County Library (all branches)

Applications shall be mailed by the Administrative Agent and Municipal Housing Liaison to prospective applicants upon request. Also, applications shall be available at the developer's sales/rental office and shall be mailed to prospective applicants upon request.

H. The Administrative Agent shall develop, maintain and update a list of community contact person(s) and/or organizations(s) in Morris, Essex, Union and Warren Counties that will aid in the affirmative marketing program with particular emphasis on contacts that will reach out to groups that are least likely to apply for housing within the region, including major regional employers identified in Attachment A, Part III, Marketing, Section 3d of COAH's *Affirmative Fair Housing Marketing Plan for Affordable Housing in Region 2* (attached to and hereby made part of this Resolution).

1. Quarterly informational flyers and applications shall be sent to each of the following agencies for publication in their journals and for circulation among their members:

Morris County Board of Realtors  
Essex County Board of Realtors  
Union County Board of Realtors  
Warren County Board of Realtors

2. Quarterly informational circulars and applications shall be sent to the administrators of each of the following agencies within the counties of Morris, Essex, Union and Warren:

Welfare or Social Service Board (via the Director)  
Rental Assistance Office (local office of DCA)  
Office on Aging  
Housing Authority (municipal or county)  
Community Action Agencies  
Community Development Departments

3. Quarterly informational circulars and applications shall be sent to the chief personnel administrators of all of the major employers within the region, as listed on Attachment A, Part III, Marketing, Section 3d.

I. The following is a listing of community contact person(s) and/or organizations in Morris, Essex, Union and Warren Counties that will aid in the affirmative marketing program and provide guidance and counseling services to prospective occupants of low and moderate income units:

1. Housing Partnership for Morris County, 2 East Blackwell Street, Dover, NJ 07801

2. Community Access Unlimited, Inc., 80 West Grand Street, Elizabeth, NJ 07202

3. Northwest New Jersey Community Action Program, Inc. (NORWESCAP), 350 Marshall Street, Phillipsburg, NJ 08865


J. A random selection method to select occupants of low and moderate income housing will be used by the Administrative Agent, in conformance with N.J.A.C. 5:80-26.16 (I). The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 2 comprised of Morris, Essex, Union and

Warren Counties.

- K. The Administrative Agent shall administer the Affirmative Marketing Plan. The Administrative Agent has the responsibility to income qualify low and moderate income households; to place income eligible households in low and moderate income units upon initial occupancy; to provide for the initial occupancy of low and moderate income units with income qualified households; to continue to qualify households for re-occupancy of units as they become vacant during the period of affordability controls; to assist with outreach to low and moderate income households; and to enforce the terms of the deed restriction and mortgage loan as per N.J.A.C 5:80-26-1, *et seq.*
- L. The Administrative Agent shall provide or direct qualified low and moderate income applicants to counseling services on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements and landlord/tenant law and shall develop, maintain and update a list of entities and lenders willing and able to perform such services.
- M. All developers/owners of low and moderate income housing units shall be required to undertake and pay the costs of the marketing of the affordable units in their respective developments, subject to the direction and supervision of the Administrative Agent.
- N. The implementation of the Affirmative Marketing Plan for a development that includes affordable housing shall commence at least 120 days before the issuance of either a temporary or permanent certificate of occupancy. The implementation of the Affirmative Marketing Plan shall continue until all low income housing units are initially occupied and for as long as affordable units exist that remain deed restricted and for which the occupancy or reoccupancy of units continues to be necessary.
- O. The Administrative Agent shall provide the Affordable Housing Liaison with the information required to comply with monitoring and reporting requirements pursuant to N.J.A.C.5:80-26-1, *et seq.*

I hereby certify that this is a true copy of a resolution duly adopted by the Mayor and Township Committee of the Township of Cranford at a Committee meeting held on November 12, 2012.

Date: 7/10/17

  
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Tara Rowley, RMC  
Township Clerk

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**TOWNSHIP OF CRANFORD  
CRANFORD, NEW JERSEY**

**RESOLUTION NO. 2013-161**

**RESOLUTION OF GOVERNING BODY OF INTENT TO BOND FOR SHORTFALL**

**WHEREAS**, Cranford in Union County has petitioned for substantive certification of its adopted housing element and fair share plan; and

**WHEREAS**, the Court and the assigned Court Master has determined that Cranford must allocate sufficient funds for the rehabilitation of 55 units; and

**WHEREAS**, Cranford anticipates that funding will come from the following sources to satisfy said obligation: Cranford Township Affordable Housing Trust Fund; and


**WHEREAS**, in the event that the above funding source proves inadequate to meet Cranford's funding obligation, Cranford shall provide sufficient funding to address any shortfall.

**NOW THEREFORE BE IT RESOLVED** by the governing body of Cranford, Union County, State of New Jersey, that the governing body does hereby agree to fund any shortfall in its affordable housing rehabilitation program that may arise whether due to inadequate funding from other sources or for any other reason; and that such funding shall be available in accordance with the following schedule:

<b>Year</b>	<b>Funding Allocated</b>
2014	\$110,000
2015	\$110,000
2016	\$110,000
2017	\$110,000
2018	\$110,000

**BE IT FURTHER RESOLVED** that said shortfall shall be funded by bonding if there are no other resources.

Certified to be a true copy of a resolution adopted by the Township Committee of the Township of Cranford at a meeting held March 26, 2013.

  
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Tara Rowley, RMC  
Township Clerk

Dated: 5/11/17

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**TOWNSHIP OF CRANFORD  
CRANFORD, NEW JERSEY**

**RESOLUTION NO. 2017-198**

**WHEREAS**, it is necessary for the Township to retain an expert responsible for the administration of affordable housing units; and

**WHEREAS**, Community Grants, Planning & Housing (CGP&H) has completed and submitted a Business Entity Disclosure Certification which certifies that CGP&H has not made any reportable contributions to a political or candidate committee in the Township of Cranford in the previous one year, and that the contract will prohibit CGP&H from making any reportable contributions through the term of the contract; and

**WHEREAS**, CGP&H has submitted a Business Entity Contribution Certification which certifies that CGP&H has not made any reportable contribution during the past twelve (12) month period, pursuant to N.J.S.A. 19:44A-1 et seq.; and

**WHEREAS**, the Chief Financial Officer and Finance Director have certified as to the availability of funds which is on file in the office of the Township Clerk.

**NOW, THEREFORE BE IT RESOLVED** by the Township Committee of the Township of Cranford, New Jersey as follows:

1. **CGP&H, 101 Interchange Plaza, Suite 301, Cranbury, NJ 08512-3716**, be and hereby is awarded a contract to provide administrative agent services at a cost not to exceed \$5,625; and
2. The Business Entity Disclosure Certification and Business Entity Contribution Disclosure Certification be placed on file with a copy of this resolution; and
3. A copy of this resolution be published as required by law within twenty (20) days of its adoption.

Certified to be a true copy of a resolution adopted by the Township Committee of the Township of Cranford at a meeting held May 9, 2017.

  
Tara Rowley, RMC  
Township Clerk

Dated: 5/10/17

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**TOWNSHIP OF CRANFORD  
CRANFORD, NEW JERSEY**

**ORDINANCE NO. 2017-06**

**AN ORDINANCE TO AMEND THE CODE OF THE TOWNSHIP OF CRANFORD, CHAPTER 136 LAND DEVELOPMENT, ARTICLE IX, SECTION 72 TO IDENTIFY THE ADMINISTRATIVE AGENT FOR THE TOWNSHIP'S REHABILITATION PROGRAM.**

**NOW THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Cranford, in the County of Union, State of New Jersey, as follows:

**SECTION 1.** Section 136-72, is hereby amended as follows:

**§ 136-72. Rehabilitation program.**

- A. Cranford's rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
- B. Cranford hereby designates Community Grants, Planning & Housing, LLC as the administrative agent for its entire rehabilitation program.

**SECTION 2.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

**SECTION 3.** This ordinance shall become effective upon final passage and publication according to law.


STATE OF NEW JERSEY)

:SS.:

COUNTY OF UNION)

I, TARA ROWLEY, Municipal Clerk of the Township of Cranford, in the County of Union, in the State of New Jersey, DO HEREBY CERTIFY that the attached Ordinance No. 2017- 06 was finally adopted by the Township Committee of the Township of Cranford, in the County of Union, at a meeting held on June 13, 2017.

IN WITNESS WHEREOF, I have hereunto set my hand and have affixed the corporate seal of said Township, this 14 day of JUNE 2017

  
Tara Rowley, RMC, Municipal Clerk  
Township of Cranford  
County of Union  
New Jersey

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TOWNSHIP OF CRANFORD  
CRANFORD, NEWJERSEY

ORDINANCE NO. 2012-24

AN ORDINANCE TO CREATE THE POSITION OF  
MUNICIPAL HOUSING LIAISON FOR THE PURPOSE OF  
ADMINISTERING THE TOWNSHIP OF CRANFORD'S  
AFFORDABLE HOUSING PROGRAM PURSUANT TO  
THE FAIR HOUSING ACT.

BE IT ORDAINED by the *Township Committee of the Township of Cranford* in the County of *Union* and State of New Jersey that the following amendments be made to Chapter 136 of the *Code of the Township of Cranford*:

SECTION 1. (New Article IX is hereby created as follows:)

ARTICLE IX. AFFORDABLE HOUSING

Section 136-69.      Purpose.

The purpose of this article is to create the administrative mechanisms needed for the execution of Township of Cranford's responsibility to assist in the provision of affordable housing pursuant to the Fair Housing Act of 1985.

Section 136-70.      Definitions.

As used in this article, the following terms shall have the meanings indicated:

**MUNICIPAL HOUSING LIAISON** – The employee charged by the governing body with the responsibility for oversight and administration of the affordable housing program for *the Township of Cranford*.

**ADMINISTRATIVE AGENT** – The entity responsible for administering the affordability controls of some or all units in the affordable housing program for Township of Cranford to ensure that the restricted units under administration are affirmatively marketed and sold or rented, as applicable, only to low- and moderate-income households.

Section 136-71.      Establishment of Municipal Housing Liaison position and compensation; powers and duties.

- A. Establishment of position of Municipal Housing Liaison. There is hereby established the position of Municipal Housing Liaison for *the Township of Cranford*.
- B. Subject to the approval of the Superior Court the Municipal Housing Liaison shall be appointed by the Governing Body and may be a full or part time municipal employee.
- C. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for *the Township of Cranford*, including the following responsibilities which may not be contracted out, exclusive of item 6 which may be contracted out:
  - (1) Serving as *the Township of Cranford's* primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents, and interested households;
  - (2) Monitoring the status of all restricted units in *the Township of Cranford's* Fair Share Plan;
  - (3) Compiling, verifying, and submitting annual reports as required by the Superior Court;

- (4) Coordinating meetings with affordable housing providers and Administrative Agents, as applicable;
  - (5) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Superior Court;
  - (6) If applicable, serving as the Administrative Agent for some or all of the restricted units in *the Township of Cranford* as described in F. below.
- D. Subject to approval by COAH, *the Township of Cranford* may contract with or authorize a consultant, authority, government or any agency charged by the Governing Body, which entity shall have the responsibility of administering the affordable housing program of *the Township of Cranford*, except for those responsibilities which may not be contracted out pursuant to subsection C above. If *the Township of Cranford* contracts with another entity to administer all or any part of the affordable housing program, including the affordability controls and Affirmative Marketing Plan, the Municipal Housing Liaison shall supervise the contracting Administrative Agent.
- E. Compensation. Compensation shall be fixed by the Governing Body at the time of the appointment of the Municipal Housing Liaison.
- F. Administrative powers and duties assigned to the Municipal Housing Liaison.
- (1) Affirmative Marketing
    - (a) Conducting an outreach process to insure affirmative marketing of affordable housing units in accordance with the Affirmative Marketing Plan of *the Township of Cranford* and the provisions of N.J.A.C. 5:80-26.15; and
    - (b) Providing counseling or contracting to provide counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
  - (2) Household Certification
    - (a) Soliciting, scheduling, conducting and following up on interviews with interested households;
    - (b) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
    - (c) Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
    - (d) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et. seq.;
    - (e) Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and
    - (f) Employing the random selection process as provided in the Affirmative Marketing Plan of *the Township of Cranford* when referring households for certification to affordable units.



(3) Affordability Controls

- (a) Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
- (b) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
- (c) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the appropriate county's register of deeds or county clerk's office after the termination of the affordability controls for each restricted unit;
- (d) Communicating with lenders regarding foreclosures; and
- (e) Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

(4) Resale and rental

- (a) Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or rental; and
- (b) Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or re-rental.

(5) Processing request from unit owners

- (a) Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership;
- (b) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the cost of central air conditioning systems; and
- (c) Processing requests and making determinations on requests by owners of restricted units for hardship waivers.

(6) Enforcement

- (a) Securing annually lists of all affordable housing units for which tax bills are mailed to absentee owners and notifying all such owners that they must either move back to their unit or sell it;
- (b) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
- (c) The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent can be made;

- Section 136-72.                      Severability.

**Section 136-73. Inconsistent Ordinances Repealed.**

## SECTION 2.

STATE OF NEW JERSEY )  
 ) ss.:  
COUNTY OF UNION )

IN WITNESS WHEREOF, I have hereunto set my hand and have affixed the corporate seal of said Township this 10<sup>th</sup> day of July, 2017.

(SEAL)

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**TOWNSHIP OF CRANFORD  
CRANFORD, NEW JERSEY**

**RESOLUTION NO. 2017-199**

**A RESOLUTION APPOINTING A MUNICIPAL HOUSING LIAISON**

**WHEREAS**, pursuant to the Municipal Code of the Township Section 136-86, the Township has designated the Municipal Housing Liaison as responsible for the oversight and administration of the Township's affordable housing program; and

**WHEREAS**, the Municipal Housing Liaison is required to be a Township employee; and

**WHEREAS**, Township's immediate past-Municipal Housing Liaison is no longer an employee of the Township;

**NOW, THEREFORE, BE IT RESOLVED**, that Zoning Officer Ronald Johnson is hereby appointed as the Township of Cranford Municipal Housing Liaison for the administration of the affordable housing program and he shall be compensated for said administrative service with a stipend equal to \$1,500 per annum during such time as the affordable housing trust fund balance is below \$37,000 per annum, and equal to \$3,000 during such time as the affordable housing trust fund is greater than \$37,000 per annum.

Certified to be a true copy of a resolution adopted by the Township Committee of the Township of Cranford at a meeting held on May 9, 2017.

Dated: 5/10/17

Tara Rowley  
Tara Rowley, RMC  
Township Clerk

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**TOWNSHIP OF CRANFORD  
CRANFORD, NEW JERSEY**

**ORDINANCE NO. 2012-32**

**AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE TOWNSHIP OF  
CRANFORD TO ADDRESS THE REQUIREMENTS OF THE COURT AND THE  
COUNCIL ON AFFORDABLE HOUSING (COAH) REGARDING COMPLIANCE  
WITH THE TOWNSHIP'S AFFORDABLE HOUSING OBLIGATIONS**

**BE IT ORDAINED** by the governing body of the Township of Cranford, Union County, New Jersey, that the Zoning Ordinance of the Township of Cranford is hereby amended to include provisions addressing Cranford's constitutional obligation to provide for its fair share of low- and moderate-income housing, consistent with N.J.A.C. 5:97-1, et seq., as may be amended and supplemented, and N.J.A.C. 5:80-26.1, et seq., as may be amended and supplemented, and pursuant to the New Jersey Fair Housing Act of 1985. This Ordinance is intended to provide assurances that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This Ordinance shall apply except where inconsistent with applicable law.

The Cranford Township Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the methods by which Cranford shall address its fair share for low- and moderate-income housing as determined by the Council on Affordable Housing (COAH) and documented in the Housing Element. This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97-1, et seq., as may be amended and supplemented.

The Township of Cranford shall file monitoring reports with COAH in accordance with N.J.A.C. 5:96 et seq. regarding the status of the implementation of the Housing Element and Fair Share Plan. Any report filed by Cranford with COAH and any report prepared by COAH in response shall also be filed with the Union County Superior Court and shall be available to the public at the Office of Township Clerk, 8 Springfield Avenue, Cranford, New Jersey, 07016, at the COAH offices at P.O. Box 813, 101 South Broad Street, Trenton, New Jersey 08625-0813 and on COAH's website.

**Section 1. Municipal Fair Share Obligation**

The Township of Cranford has a fair share obligation consisting of a 148 unit prior round obligation and a 55 unit rehabilitation obligation. The Township's third round obligation has yet to be determined.

**Section 2. Definitions**

The following terms when used in this Ordinance shall have the meanings given in this Section:

"Act" means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

"Adaptable" means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

"Administrative agent" means the entity responsible for the administration of affordable units in accordance with this Ordinance, N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC (N.J.A.C. 5:80-26).

"Affirmative marketing" means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

"Affordability average" means the average percentage of median income at which new restricted units in an affordable housing development are affordable to low- and moderate-income households.

"Affordable" means, a sales price or rent level that is within the means of a low- or moderate-income household as defined in N.J.A.C. 5:97-9 and in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

"Affordable development" means a housing development of which all or a portion consists of restricted units.

"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 housing development.

"Affordable housing program(s)" means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

"Affordable unit" means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97-4, and/or funded through an affordable housing trust fund.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

"Age-restricted unit" means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years of age or older; or 2) at least 80 percent of the units are occupied by one person that is 55 years of age or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

"Assisted living residence" means a facility that is licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

"Certified household" means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

"COAH" means the Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.).

"DCA" means the State of New Jersey Department of Community Affairs.

"Deficient housing unit" means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

"Developer" means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1, et seq.

"Inclusionary development" means a development containing both affordable units and market rate units. This term includes, but is not limited to: new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the reconstruction of a vacant residential structure.

"Low-income household" means a household with a total gross annual household income equal to 50 percent or less of the median household income.

"Low-income unit" means a restricted unit that is affordable to a low-income household.

"Major system" means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

"Market-rate units" means housing not restricted to low- and moderate-income households that may sell or rent at any price.

"Median income" means the median income by household size for the applicable housing region, as adopted annually by COAH.

"Moderate-income household" means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income.

"Moderate-income unit" means a restricted unit that is affordable to a moderate-income household.

"Non-exempt sale" means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.

"Random selection process" means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

"Regional asset limit" means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by COAH's adopted Regional Income Limits published annually by COAH.

"Rehabilitation" means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

"Rent" means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

"Restricted unit" means a dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under UHROP or MONI.

"UHAC" means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26, et seq.

"Very low-income household" means a household with a total gross annual household income equal to 30 percent or less of the median household income for the applicable housing region.



"Very low-income unit" means a restricted unit that is affordable to a very low-income household.

"Weatherization" means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of the rehabilitation program.

### **Section 3. Affordable Housing Programs**

Cranford has determined that the following programs will be used to satisfy its affordable housing obligations:

1. A rehabilitation program. See Section 4.
2. Inclusionary multifamily residential district (Cranford Development Associates) development of Lots 15 in Block 291 and Lot 2 in Block 292, to be developed with a total of 54 affordable dwelling units, which will be non age-restricted family rental units pursuant to Court Order dated December 9, 2011, in the matter of *Cranford Development Associates, LLC et als. v. The Township of Cranford, et al., Superior Court of New Jersey, Law Division, Union County, Docket No. UNN-L-3759-08*.
3. Lehigh Acquisition Project an inclusionary development of Lot 1 in Block 511, to be developed with a total of 24 affordable dwelling units, which will be non age-restricted family rental units pursuant to Court Order dated December 9, 2011.
4. All of a 100-unit age-restricted rental development completed in the 1990s known as Lincoln Apartments, developed on Lot 18.01 of Block 532.
5. Needlepoint Homes, consisting of one (1) non-age restricted rental affordable housing unit already constructed, on Lot 1 of Block 480.
6. Riverfront Developers LLC, consisting of a total of 19 non-age restricted rental affordable housing units proposed on Lots 1.02, 2.01, 3, 4, 5, 6, 7, 8 and 9 of Block 481 within an inclusionary mixed use redevelopment site.
7. Special needs housing, Community Access Unlimited 1 group home, consisting of four (4) bedrooms on Lot 62 of Block 403.
8. Special needs housing, Community Access Unlimited 2 group home, consisting of four (4) bedrooms on Lot 59 of Block 403.
9. Special needs housing, SERV Center of NJ group home, consisting of four (4) bedrooms on Lot 3 of Block 514.

In addition to the foregoing, any property in the Township of Cranford that is currently zoned for nonresidential uses and that is subsequently rezoned for residential purposes or receives a use variance to permit residential development, and where such residential development provides a sufficient compensatory benefit in terms of the density of development permitted, shall provide an affordable housing set-aside of 15% if the affordable units will be for rent and 20% if the affordable units will be for sale. The determination of a "sufficient compensatory benefit" shall be made by the reviewing authority based upon prevailing legislation and/or case law.

8. The following general guidelines apply to all developments that contain low- and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

### **Section 4. Rehabilitation**

1. Cranford's rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28. The rehabilitation

program shall include an owner occupancy rehabilitation program and a renter occupancy rehabilitation program.

2. Cranford hereby designates \_\_\_\_\_ as the Administrative Agent for its entire rehabilitation program.

3. Both owner occupied and renter occupied units shall be eligible for rehabilitation funds.

4. All rehabilitated units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner occupied units, the control period shall be enforced with a lien, and, for renter occupied units, the control period shall be enforced with a deed restriction.

5. Cranford shall dedicate a minimum of \$10,900 for each unit to be rehabilitated through the rehabilitation program, with \$10,000 of this amount reflecting the minimum hard costs of rehabilitation per unit and the remaining \$900 reflecting the cost of the administrative services for each rehabilitation unit.

6. The Township of Cranford shall adopt a resolution committing to fund any shortfall in the rehabilitation program.

7. The Administrative Agent shall provide rehabilitation manual for the owner occupancy rehabilitation program to be adopted by resolution of the governing body, and the Township of Cranford shall prepare and adopt by resolution a rehabilitation manual for the rental occupancy rehabilitation program to be administered by the Administrative Agent. Both manuals shall be continuously available for public inspection in the Office of the Township Clerk and in the office of the Administrative Agent.

8. Units in a rehabilitation program shall be exempt from N.J.A.C. 5:97-9 and UHAC, but shall be administered in accordance with the following:

a. Upon the initial rental of a vacant unit subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and to be affirmatively marketed pursuant to N.J.A.C. 5:97-9 and UHAC.

b. If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:97-9 and UHAC.

c. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9.

d. Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:97-9 and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

#### **Section 5. Permanent Supportive Living and Supportive Shared Living Housing**

1. The administration of a supportive living housing facility shall be in compliance with N.J.A.C. 5:97-6.10, including the administration thereof in accordance with N.J.A.C. 5:97-9 and UHAC, with the following exceptions:

a. Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms shall be affirmatively marketed to individuals with special needs in accordance with a plan approved by the Court or by COAH's Executive Director, if approval is delegated by the Court;

b. Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).

2. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities,

supportive living housing facilities shall have the appropriate controls on affordability in accordance with N.J.A.C. 5:97-9 and UHAC.

3. The service provider for a supportive living housing facility shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the supportive living housing facility.

#### **Section 6. Phasing Schedule for Inclusionary Zoning**

In inclusionary developments the following schedule shall be followed:

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Low- and Moderate-Income Units Completed
25	0
25+1	10
50	50
75	75
90	100

#### **Section 7. New Construction**

1. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

a. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit. At least 10 percent of all restricted rental units shall be very low income units (affordable to a household earning 30 percent or less of median income). The very low income units shall be counted as part of the required number of low income units within the development.

b. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.

c. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

1) The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;

2) At least 30 percent of all low- and moderate-income units shall be two bedroom units;

3) At least 20 percent of all low- and moderate-income units shall be three bedroom units; and

4) The remaining units may be allocated among two and three bedroom units at the discretion of the developer.

d. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

2. Accessibility Requirements:

a. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free SubCode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

b. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:

- 1) An adaptable toilet and bathing facility on the first floor;
- 2) An adaptable kitchen on the first floor;
- 3) An interior accessible route of travel on the first floor;
- 4) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor;
- 5) An interior accessible route of travel between stories within an individual unit, except that if all of the terms of paragraphs b.1) through b.4) above have been satisfied, an interior accessible route of travel shall not be required between stories within an individual unit; and
- 6) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a, et seq.) and the Barrier Free SubCode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, or evidence that Cranford has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
  - a) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
  - b) To this end, the builder of restricted units shall deposit funds within the Township of Cranford's Affordable Housing Trust Fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
  - c) The funds deposited under paragraph 6)b) above shall be used by the Township of Cranford for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
  - d) The developer of the restricted units shall submit a design plan and cost estimate for the conversion of adaptable to accessible entrances to the Construction Official of the Township of Cranford.
  - e) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free SubCode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township's Affordable Housing Trust Fund in care of the Township Treasurer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
- 6) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free SubCode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

3. Design:

- a. In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.
- b. In inclusionary developments, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.

4. Maximum Rents and Sales Prices:

a. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by COAH.

b. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52 percent of median income.

c. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 10 percent of all low- and moderate-income rental units shall be affordable to very low-income households.

d. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.

e. In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:

- 1) A studio shall be affordable to a one-person household;
- 2) A one-bedroom unit shall be affordable to a one and one-half person household;
- 3) A two-bedroom unit shall be affordable to a three-person household;
- 4) A three-bedroom unit shall be affordable to a four and one-half person household; and
- 5) A four-bedroom unit shall be affordable to a six-person household.

f. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:

- 1) A studio shall be affordable to a one-person household;
- 2) A one-bedroom unit shall be affordable to a one and one-half person household; and
- 3) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.

g. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

h. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate size household, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended

and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

i. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.

j. The rent of low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.

#### **Section 8. Utilities**

1. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.

2. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

#### **Section 9. Occupancy Standards**

In referring certified households to specific restricted units, the Administrative Agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:

1. Provide an occupant for each bedroom;
2. Provide children of different sexes with separate bedrooms;
3. Provide separate bedrooms for parents and children; and
4. Prevent more than two persons from occupying a single bedroom.

#### **Section 10. Control Periods for Restricted Ownership Units and Enforcement Mechanisms**

1. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance for a period of at least thirty (30) years, until Cranford takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.

2. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.

3. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.

4. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.

5. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.

6. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

#### **Section 11. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices**

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

1. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
2. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
3. The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.
4. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See Section 14.

#### **Section 12. Buyer Income Eligibility**

1. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
2. Notwithstanding the foregoing, however, the Administrative Agent may, subject to COAH's approval, permit moderate-income purchasers to buy low-income units in housing markets determined by COAH to have an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate-income households shall retain the required pricing restrictions for low-income units.
3. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to a certified household for a period not to exceed one year.
4. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's eligible monthly income.

#### **Section 13. Limitations on Indebtedness Secured by Ownership Unit; Subordination**

1. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.

2. With the exception of First Purchase Money Mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of the unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C. 5:80-26.6(b).

#### **Section 14. Capital Improvements To Ownership Units**

1. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.

2. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

#### **Section 15. Control Periods for Restricted Rental Units**

1. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least 30 years, until Cranford takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.

2. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Union. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.

3. A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:

- a. Sublease or assignment of the lease of the unit;
- b. Sale or other voluntary transfer of the ownership of the unit; or

3. The entry and enforcement of any judgment of foreclosure on the property containing the unit.

#### **Section 16. Rent Restrictions for Rental Units; Leases**

1. A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.

2. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.



3. Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

#### **Section 17. Tenant Income Eligibility**

1. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:

a. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.

b. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.

c. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of median income.

2. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

a. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;

b. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;

c. The household is currently in substandard or overcrowded living conditions;

d. The household documents the existence of assets with which the household proposes to supplement the rent payments; or

e. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.

3. The applicant shall file documentation sufficient to establish the existence of the circumstances in 1.a. through 2.e. above with the Administrative Agent, who shall counsel the household on budgeting.

#### **Section 18. Municipal Housing Liaison**

1. COAH requires Cranford to appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for administering the affordable housing program, including affordability controls, the Affirmative Marketing Plan, monitoring and reporting, and, where applicable, supervising any contracted Administrative Agent. Cranford shall adopt an Ordinance creating the position of Municipal Housing Liaison. Cranford shall adopt a Resolution appointing a Municipal Housing Liaison. The Municipal Housing Liaison shall be appointed by the governing body and may be a full or part time municipal employee. The Municipal Housing Liaison shall be approved by the Court unless such approval is delegated by the Court to COAH and shall be duly qualified before assuming the duties of Municipal Housing Liaison.

2. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Cranford, including the following responsibilities which may not be contracted out to the Administrative Agent:

- a. Serving as Cranford's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
- b. Monitoring the status of all restricted units in Cranford's Fair Share Plan;
- c. Compiling, verifying and submitting annual monitoring reports as required by COAH;
- d. Coordinating meetings with affordable housing providers and Administrative Agents, as needed; and
- e. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.

3. Subject to the approval of the Court or of COAH if such approval is delegated to COAH by the Court, the Township of Cranford shall designate one or more Administrative Agent(s) to administer newly constructed affordable units in accordance with N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC. An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Court or of COAH if approval is delegated by the Court to COAH. The Operating Manuals shall be available for public inspection in the Office of the Township Clerk and in the office(s) of the Administrative Agent(s). The Municipal Housing Liaison shall supervise the contracting Administrative Agent(s).

#### **Section 19. Administrative Agent**

The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which includes:

1. Affirmative Marketing:
  - a. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Township of Cranford and the provisions of N.J.A.C. 5:80-26.15; and
  - b. Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
2. Household Certification:
  - a. Soliciting, scheduling, conducting and following up on interviews with interested households;
  - b. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
  - c. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
  - d. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
  - e. Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and

f. Employing a random selection process as provided in the Affirmative Marketing Plan of the Township of Cranford when referring households for certification to affordable units.

3. Affordability Controls:

a. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;

b. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;

c. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Union County Register of Deeds or Union County Clerk's office after the termination of the affordability controls for each restricted unit;

d. Communicating with lenders regarding foreclosures; and

e. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

4. Resales and Rentals:

a. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or rental; and

b. Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or re-rental.

5. Processing Requests from Unit Owners:

a. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Ordinance;

b. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;

c. Notifying the municipality of an owner's intent to sell a restricted unit; and

d. Making determinations on requests by owners of restricted units for hardship waivers.

6. Enforcement:

a. Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

b. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;

c. The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;

d. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;

e. Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund or other appropriate municipal fund approved by the DCA; and

f. Creating and publishing a written operating manual, as approved by COAH, setting forth procedures for administering the affordability controls.

7. Additional Responsibilities:

a. The Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

b. The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time for their submission by the Municipal Housing Liaison to COAH, as required by COAH.

c. The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH.

**Section 20. Affirmative Marketing Requirements**

1. The Township of Cranford shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Court, that is compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.

2. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs marketing activities toward COAH Housing Region 2 and is required to be followed throughout the period of restriction.

3. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 2, consisting of Morris, Essex, Union and Warren Counties.

4. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the Township of Cranford shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.

5. In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

6. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.

7. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.

8. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within

the housing region; the municipal administration building and the municipal library in the municipality in which the units are located; and the developer's rental office. Applications shall be mailed to prospective applicants upon request.

9. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

#### **Section 21. Enforcement of Affordable Housing Regulations**

1. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

2. After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action(s) against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

a. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is adjudged by the Court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the Court:

1) A fine of not more than \$500.00 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;

2) In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Township of Cranford Affordable Housing Trust Fund of the gross amount of rent illegally collected;

3) In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.

b. The municipality may file a court action in the Superior Court seeking a judgment that would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- or moderate-income unit.

1) The judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.

2) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs

incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

3) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

4) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

5) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.

6) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner

## **Section 22. Appeals**

Appeals from all decisions of an Administrative Agent appointed pursuant to this Ordinance shall be filed in writing with the Court unless the Court delegates this responsibility to the Executive Director of COAH.

## **REPEALER**

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

## **SEVERABILITY**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.


**EFFECTIVE DATE**

This Ordinance shall take effect upon passage and publication as provided by law.

STATE OF NEW JERSEY     )  
                                      : ss.:  
COUNTY OF UNION    )

I, TARA ROWLEY, Municipal Clerk of the Township of Cranford, in the County of Union, in the State of New Jersey, DO HEREBY CERTIFY that the attached Ordinance No. 2012-32 was finally adopted by the Township Committee of the Township of Cranford, in the County of Union, at a meeting held on December 11, 2012.

IN WITNESS WHEREOF, I have hereunto set my hand and have affixed the corporate seal of said Township this 10th day of July, 2017.

  
Tara Rowley, RMC  
Municipal Clerk  
Township of Cranford  
County of Union  
New Jersey

(SEAL)

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#### 5:91-12.2 Oral argument

A movant's request for oral argument shall be made either in the moving papers or the reply. A respondent's request for oral argument shall be made in the answering papers. All requests for oral argument shall state the reasons therefore.

#### 5:91-12.3 Affidavits, briefs and supporting statements

Motions and answering papers shall be accompanied by all necessary supporting affidavits, briefs and supporting documents. A party shall submit an original and 20 copies of all motions and answering papers, as well as all accompanying papers. All motions and answering papers shall be supported by affidavits for facts relied upon which are not of record or which are not subject to official notice. Such affidavits shall set forth only facts to which the affiants are competent to testify. Properly verified copies of all papers referred to in such affidavits may be annexed thereto.

#### 5:91-12.4 Time for serving and filing motions and affidavits or briefs

- (a) A notice of motion shall establish a return date at least 30 days from the date of service upon the opposing party. All motions, except for those which seek emergent relief, shall be made returnable on a regularly scheduled meeting day of the Council. A party seeking emergent relief shall contact the Executive Director to arrange for an emergency hearing by the Council. If a motion is supported by an affidavit or brief, the affidavit or brief shall be served and filed with the motion. Any opposing affidavits or briefs, or any cross-motions, shall be served and filed not later than 20 days after receipt of the moving papers. Answers or responses to any opposing affidavits or briefs, or to any cross-motions, shall be served and filed not later than 10 days after receipt of the opposing papers.
- (b) All papers shall be accompanied by a certification of service.

#### 5:91-12.5 Orders

The Council shall render a decision on the motion and may instruct the prevailing party to prepare and submit an appropriate order. If the Council has made findings of fact and conclusions of law explaining its disposition of the motion, the order shall so indicate.

### **SUBCHAPTER 13. AMENDMENT OF SUBSTANTIVE CERTIFICATION**

#### 5:91-13.1 General

- (a) Amendments to the terms of substantive certification may be approved by the Council at any time following the granting of substantive certification. Amendments may be required by the Council as a result of facts that were not apparent at the time of substantive certification. Approval of any such

amendment shall be solely at the discretion of the Council. Amendments may be requested by a municipality or any other party.

- (b) A municipality seeking an amendment to substantive certification that requires a change in site, substantial increase in density or other zoning requirements that result in a change of housing structure on a specific site or a fundamental change in approach to its low and moderate income housing obligation shall file a petition for such an amendment.
- (c) A municipality seeking a minor, technical amendment to its certified housing element and fair share plan that does not materially alter the terms of certification may request such an amendment by motion pursuant to N.J.A.C. 5:91-12.
- (d) Requests for amendments of the terms of substantive certification may be made by any party other than a municipality by motion. If the motion requests a change in site, a substantial increase in density or other zoning requirements that result in a change of housing structure, on a specific site or a fundamental change in approach to the municipal low and moderate income housing obligation, and if the municipality does not object to the motion, the Council may direct the municipality to seek a plan amendment by filing a petition.
- (e) All parties to the substantive certification, including the municipality and all objectors, shall be able to comment on any proposed amendment.
- (f) In general, a municipality shall not be able to amend zoning on sites included in the certified housing element and fair share plan without the agreement of the affected property owner.

#### 5:91-13.2 Municipal petition

- (a) A municipal petition to amend the terms of its certification shall include, at a minimum, the following information, as well as such other information as the Council may request:
  - 1. A summary of, and detailed reasons for, the proposed amendment;
  - 2. Evidence that the amendment was previously presented to, and endorsed by, the municipal planning board;
  - 3. A duly adopted resolution of the municipal governing body requesting Council review and approval of the petition to amend;
  - 4. Proof of service of the petition on all objectors and owners of sites contained in both the certified and proposed fair share plans; and

5. Proof of public notice in conformity with the requirements of N.J.A.C. 5:91-13.4.

- (b) All of the information required by (a)1 through 4 above shall be filed with the Council by the municipality at the time of filing of its petition for amendment. The information required by (a)5 above shall be filed with the Council within seven days of the date of the municipality's filing of its petition.

#### 5:91-13.3 Amendment by motion

(a) A motion to amend the terms of a certification by a municipality or other party shall follow the requirements of N.J.A.C. 5:91-12.1, and shall include, at a minimum, the following information, as well as such other information as the Council may request:

1. A summary of, and detailed reasons for the proposed amendment; and
2. Proof of service of the motion on all objectors, interested parties, and owners of sites contained in both the certified and proposed fair share plans.

#### 5:91-13.4 Notice of amendment petition

- (a) A municipality which has petitioned to amend its substantive certification shall publish a notice of said petition in a newspaper of general circulation within the municipality and the county, using this format:

##### NOTICE OF AMENDMENT TO SUBSTANTIVE CERTIFICATION

Notice is hereby given that the (name of municipality) Planning Board, adopted a housing element/fair share plan on (date) which was certified by the Council on Affordable Housing (COAH) on (date). Now, the (name of municipality) is proposing to amend its certified housing element and fair share plan.

##### (INSERT BRIEF DESCRIPTION OF AMENDMENT)

A copy of the amendment to the housing element/fair share plan is available for public inspection at the office of (Municipal Clerk, etc.) Municipal Building, located at (street address), during the hours of \_\_\_\_\_. Any interested party must file comments or objections to the plan with the Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, NJ 08625-0813 and with the (name of municipality) within 30 days of publication of this notice.

- (b) Where a party other than the municipality moves to amend the terms of certification, the Council may direct the municipality to publish notice of this motion and the municipality may require the moving party to pay the cost of publishing the required notice. The municipality shall file with the Council proof

of publication within seven days of its receipt of notification from the Council of the necessity of publishing notice.

- (c) The Council shall publish a monthly list of all petitions for amendments to certification it has received in newspapers of general circulation within the State.

#### 5:91-13.5 Objections to amendment petitions

- (a) Within 30 days of the publication of a notice of a petition to amend the terms of certification, any person may file objections to the terms of the proposed amendment with the Council. These objections shall be in a form acceptable to the Council and shall include, at a minimum, the following:
  - 1. A clear and complete statement as to each aspect of the municipality's proposed amendment to its housing element and fair share plan to which an objection is made;
  - 2. An explanation of the basis for each objection, including, where appropriate, citations to expert reports, studies and data relied upon;
  - 3. Copies of all expert reports, studies and data relied upon;
  - 4. Proposed modifications, changes, or other measures which will resolve the objection consistent with the Council's criteria and guidelines; and
  - 5. A statement documenting all efforts at premediation, participation in conferences, or public hearings and a summary of the results of any such efforts.

#### 5:91-13.6 Review of objections

- (a) The Council shall review objections subject to the criteria in N.J.A.C. 5:91-13.5. An objector that has met these criteria shall participate in the Council's administrative process beginning with mediation as set out at N.J.A.C. 5:91-7.
- (b) Objections that are determined to be incomplete shall be returned to the objectors and they will be given 14 days to amend their objections and resubmit them in a manner conforming to 5:91-13.5.

### **SUBCHAPTER 14. INTERIM PROCEDURES**

#### 5:91-14.1 Municipalities that petition on or before June 6, 2000

A municipality that has not addressed its cumulative 1987-1999 fair share obligation may file an adopted housing element and fair share plan together with a petition for