EXHIBIT 1
CURRICULUM VITAE

Art Bernard and Associates, L.L.C.

Housing and Land Use Planning

ART BERNARD, P.P
CURRICULUM VITAE

EDUCATION

Master of City and Regional Planning, Rutgers University, 1974
BA, History, Lafayette College, 1971

LICENSES AND AFFILIATIONS

New Jersey Professional Planners License #02507
American Planning Association
New Jersey Federation of Planning Officials
New Jersey Builder's Association Land Use Committee
New Jersey State Planning Commission Housing Advisory Committee
Highlands Technical Advisory Committee

PROFESSIONAL EXPERIENCE

Private Consultant **1994 to present**

Managing Member of Art Bernard and Associates, L.L.C. Provide consulting services related to general land use and affordable housing. Activities include preparation of municipal plans, development ordinances and development reviews. Represent developers before municipal boards and in litigation. Specialize in representing municipalities and developers in exclusionary zoning matters before the Superior Court and the Council on Affordable Housing. Serve the Superior Court as Special Master.

New Jersey Council on Affordable Housing (COAH)
Executive Director **1993 to 1994**

Developed recommendations to the Governor and Legislature. Negotiated contracts for consulting services as necessary for the proper operation of the Council. Represented the Council before relevant interest groups, governmental bodies and the general public. Acted as a hearing officer in accordance with the provisions of the Fair Housing Act and the rules established by the Council

77 North Union Street, Lambertville, New Jersey 08530 Phone (609) 397-8070 Fax (609) 397-8084
E-mail: yukygolfer@aol.com

Deputy Director **1986 to 1993**

Responsible for developing all regulatory and policy recommendations for COAH. Managed the review of housing elements and the negotiations between municipalities and parties objecting to municipal housing elements. Developed and supervised a work program pertaining to mediation training, municipal and legislative outreach, housing element review and the production of publications. Negotiated housing settlements involving over 5,000 low and moderate income housing units.

New Jersey Department of Community Affairs (DCA)
Program Development Specialist **1982 to 1986**

Responsible for developing the rules for the Neighborhood Preservation Balanced Housing Program, a low and moderate income housing grant program designed to supplement the goals of New Jersey's Fair Housing Act. Co-authored the program guidelines, application criteria and review criteria for New Jersey's Small Cities Community Development Block Grant Program.

Project Manager of the New Jersey Model Subdivision and Site Plan Ordinance, designed to provide quality municipal improvements without adding unnecessary costs to the development process.

Project Manager of the New Jersey Class C Boarding House Study. Analyzed the costs associated with operating a boarding house. Assisted in developing New Jersey's Life Safety Improvement Program for boarding homes.

Responsible for representing DCA on the Delaware Valley Regional Planning commission and the New Jersey Clean Water Council. Responsible for providing technical assistance to the Division of Coastal Resources, the Pinelands Commission and the Meadowlands Commission on housing issues.

Principal Planner **1979 to 1982**

Provided technical assistance to municipalities on land use and housing issues. Co-authored the *Affordable Housing Handbook* which discussed various means of reducing the cost of housing.

Hunterdon County Planning Board
Senior Planner **1974 to 1977**

Responsible for subdivision and site plan review and for providing technical assistance at municipal planning board meetings. Prepared the *Hunterdon County Economic Base Study* and the Hunterdon *County Transportation Plan.*

New Jersey Department of Health
Health Consultant **1977 to 1979**

Surveyed health providers throughout New Jersey and incorporated findings into the *New Jersey Health Master Plan.*

PUBLICATIONS

"Limits to the Builder's Remedy", New Jersey Municipalities
"COAH and Its Rules: Time to Pay Attention", New Jersey Planning Officials
"Low & Moderate Income Housing in NJ Faces Double Barreled Opposition", Dimensions
"Planning for Affordable Housing", New Jersey Planning Officials
"Planning Update", THP Newsletter
"Strategies for Addressing Low Income Housing Needs", New Jersey Municipalities
Mount Laurel II: Methods of Calculating Fair Share
" The New Jersey Experience: Affordable Housing Seen as a Constitutional Obligation", Trends in Housing
"Mount Laurel II: Revisited Five Years Later", Federation Planner.
"Mount Laurel II: Working Toward Compliance", New Jersey Municipalities
"Looking Beyond COAH's Numbers, New Jersey Municipalities
Requirements of a Housing Element and Fair Share Plan
"COAH Counts Successes Along Road to Affordable Housing", CUPREPORT

LECTURES/AWARDS

Associate of the Year, New Jersey Builder's Association, 1997 and 2006
New Jersey Federation of Planning Officials Citation of Merit
Edward J. Bloustein School of Planning and Public Policy, Rutgers University
Camden Law School, Rutgers University
American University Law School
Housing Conferences in New York, New Jersey, Rhode Island and Pennsylvania
Colloquium of The Seton Hall University Center for Social Justice

Municipal Clients – Served the following municipalities as municipal planner and/or affordable housing planner.

Allendale Borough, Avon Borough, Bernardsville Borough, Carteret Borough, Cherry Hill Township, Closter Borough, Delanco Township, Hampton Borough, Harrison Township, High Bridge Borough, Marlboro Township, Medford Township, Milltown Borough, Mount Laurel Township, North Plainfield Borough, Piscataway Township, Princeton Township, Ramsey Borough, South River Borough, Tinton Falls Borough, Ramsey Borough, Wall Township, Wanaque Borough, West Caldwell Township.

Court Master Assignments

Burlington City, Cinnaminson Township, Edgewater Park Township, Franklin Lakes Borough, Little Falls Township, Old Bridge Township.

Private Sector Assignments Before Local Boards, COAH and Court.

Atlantic County – Absecon City, Brigantine City, Galloway Township, Egg Harbor Township, Hammonton Town, Northfield City, Somers Point City.

Bergen County – East Rutherford Borough, Fair Lawn Borough, Glen Ridge Borough, Hohokus Borough, Little Ferry Borough, Mahwah Township, Milltown Borough, North Arlington Borough, Oakland Borough, Oradell Borough, Paramus Borough, Park Ridge Borough, Ramsey Borough, Ridgewood Borough, River Vale Township, Rutherford Borough, Tenafly Borough, Upper Saddle River Borough, Verona Borough, Wallington Borough, Woodcliff Lake Borough.

Burlington County – Bordentown Township, Delran Township, Evesham Township, Mansfield Township, Moorestown Borough, Mount Laurel Township, Pemberton Township, Springfield Township, Westampton Township.

Camden County – Berlin Township, Haddonfield Borough, Pine Hill Township, Stratford Borough.

Cape May County – West Cape May Borough.

Cumberland County – Vineland City.

Essex County – Cedar Grove Township, Fairfield Township, Livingston Township, Nutley Borough, Roseland Borough, South Orange Village Township, West Orange Township.

Gloucester County – Clayton Borough, Deptford Township, East Greenwich Township, Logan Township, Newfield Borough, South Harrison Township, Swedesboro Borough, West Deptford Township, Woolwich Township.

Hudson County – Bayonne City, Hoboken City, Secaucus Town.

Hunterdon County – Alexandria Township, Clinton Town, Clinton Township, Delaware Township, East Amwell Township, Lebanon Borough, Milford Borough, Raritan Township, Readington Township, Union Township.

Mercer County –East Windsor Township, Hamilton Township, Hopewell Township, Princeton Borough, Robbinsville Township, Trenton City, West Windsor Township.

Middlesex County – Cranbury Township, East Brunswick Township, Edison Township, Highland Park Borough, Monroe Township, North Brunswick Township, Sayreville Borough, South Brunswick Township, South Plainfield Borough.

Monmouth County – Aberdeen Township, Atlantic Highlands Borough, Avon Borough, Belmar Borough, Eatontown Borough, Farmingdale Borough, Freehold Township, Hazlet Borough, Highlands Borough, Holmdel Township, Howell Township, Keyport Borough, Little Silver Borough, Manalapan Township, Marlboro Township, Middletown Township, Neptune City Borough, Ocean Township, Red Bank Borough, Rumson Borough, Sea Bright Borough, Shrewsbury Borough, Tinton Falls Borough, Wall Township.

Morris County - Chester Borough, Denville Township, Dover Town, East Hanover Township, Florham Park Borough, Hanover Township, Lincoln Park Borough, Long Hill Township, Mine Hill Township, Montville Township, Morris Township, Morris Plains Borough, Morristown Town, Mountain Lakes Borough, Mount Arlington Borough, North Hanover Township, Parsippany Troy-Hills Township, Randolph Township.

Ocean County – Barnegat Township, Berkeley Township, Brick Township, Jackson Township, Little Egg Harbor Township, Manchester Township, Toms River.

Passaic County – Bloomingdale Borough, Clifton City, Elmwood Park Borough, Passaic City, Pompton Lakes Borough, Ringwood Borough, Wanaque Borough, Wayne Township, Woodland Park Borough.

Salem County – Oldmans Township, Pittgrove Township.

Somerset County – Bedminster Borough, Bernards Township, Branchburg Township, Bridgewater Township, Far Hills Borough, Franklin Township, Green Brook Township, Hillsborough Township, Manville Borough, Millstone Borough, Montgomery Township, Raritan Borough, Warren Township.

Sussex County – Frankford Township, Fredon Township, Green Township, Hampton Township, Hardyston Township, Lafayette Township, Newton Town.

Union County – Berkeley Heights Township, Clark Township, Cranford Township, Fanwood Borough, Hillside Township, Mountainside Borough, New Providence Township, Roselle Park Borough, Scotch Plains Township, Springfield Township, Westfield Township.

Warren County – Alpha Borough, Greenwich Township, Hacketstown Town, Harmony Township, Hopatcong Township, Oxford Township.

Pennsylvania – Buckingham Township, Forks Township, Plumstead Township, Tinicum Township, Upper Mount Bethel Township, Williams Township.

New Jersey Builders Association

Wrote comments to each iteration of COAH's proposed third round rules.

EXBHIT 2
SECTION 307 OF NEW JERSEY FAIR HOUSING ACT

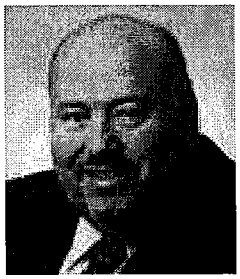
NEW JERSEY FAIR HOUSING ACT

N.J.S.A. 52:27D-301 et seq.

Amended July 2008

State of New Jersey
Jon Corzine
Governor

N.J. Council on Affordable Housing
101 South Broad Street
PO Box 813
Trenton, NJ 08625-0813
(609) 292-3000
www.nj.gov/dca/affiliates/coah



Department of Community Affairs
Joseph V. Doria, Jr.
Commissioner

technical and operational personnel and consultants as may be necessary to the performance of its duties. Employees shall be enrolled in the Public Employees' Retirement System of New Jersey established under P.L. 1954, c. 84 (C. 43:15A-1 et seq.).

L. 1985, c. 222, s. 6, eff. July 2, 1985, operative July 2, 1985.

52:27D-307 Duties of council.

7. It shall be the duty of the council, seven months after the confirmation of the last member initially appointed to the council, or January 1, 1986, whichever is earlier, and from time to time thereafter, to:

a. Determine housing regions of the State;

b. Estimate the present and prospective need for low and moderate income housing at the State and regional levels;

c. Adopt criteria and guidelines for:

(1) Municipal determination of its present and prospective fair share of the housing need in a given region which shall be computed for a 10-year period.

Municipal fair share shall be determined after crediting on a one-to-one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households. Notwithstanding any other law to the contrary, a municipality shall be entitled to a credit for a unit if it demonstrates that (a) the municipality issued a certificate of occupancy for the unit, which was either newly constructed or rehabilitated between April 1, 1980 and December 15, 1986; (b) a construction code official certifies, based upon a visual exterior survey, that the unit is in compliance with pertinent construction code standards with respect to structural elements, roofing, siding, doors and windows; (c) the household occupying the unit certifies in writing, under penalty of perjury, that it receives no greater income than that established pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304) to qualify for moderate income housing; and (d) the unit for which credit is sought is affordable to low and moderate income households under the standards established by the council at the time of filing of the petition for substantive certification. It shall be sufficient if the certification required in subparagraph (c) is signed by one member of the household. A certification submitted pursuant to this paragraph shall be reviewable only by the council or its staff and shall not be a public record;

Nothing in P.L.1995, c.81 shall affect the validity of substantive certification granted by the council prior to November 21, 1994, or of a judgment of compliance entered by any court of competent jurisdiction prior to that date. Additionally, any municipality that received substantive certification or a judgment of compliance prior to November 21, 1994 and filed a motion prior to November 21, 1994 to amend substantive certification or a judgment of compliance for the purpose of obtaining credits, shall be entitled to a determination of its right to

credits pursuant to the standards established by the Legislature prior to P.L.1995, c.81. Any municipality that filed a motion prior to November 21, 1994 for the purpose of obtaining credits, which motion was supported by the results of a completed survey performed pursuant to council rules, shall be entitled to a determination of its right to credits pursuant to the standards established by the Legislature prior to P.L.1995, c.81;

(2) Municipal adjustment of the present and prospective fair share based upon available vacant and developable land, infrastructure considerations or environmental or historic preservation factors and adjustments shall be made whenever:

(a) The preservation of historically or important architecture and sites and their environs or environmentally sensitive lands may be jeopardized,

(b) The established pattern of development in the community would be drastically altered,

(c) Adequate land for recreational, conservation or agricultural and farmland preservation purposes would not be provided,

(d) Adequate open space would not be provided,

(e) The pattern of development is contrary to the planning designations in the State Development and Redevelopment Plan prepared pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.),

(f) Vacant and developable land is not available in the municipality, and

(g) Adequate public facilities and infrastructure capacities are not available, or would result in costs prohibitive to the public if provided.

(3) (Deleted by amendment, P.L.1993, c.31).

d. Provide population and household projections for the State and housing regions;

e. In its discretion, place a limit, based on a percentage of existing housing stock in a municipality and any other criteria including employment opportunities which the council deems appropriate, upon the aggregate number of units which may be allocated to a municipality as its fair share of the region's present and prospective need for low and moderate income housing. No municipality shall be required to address a fair share of housing units affordable to households with a gross household income of less than 80% of the median gross household income beyond 1,000 units within ten years from the grant of substantive certification, unless it is demonstrated, following objection by an interested party and an evidentiary hearing, based upon the facts and circumstances of the affected municipality that it is likely that the municipality through its zoning powers could create a realistic opportunity for more than 1,000 low and moderate income units within that ten-year period. For the purposes of this section, the facts and circumstances which shall determine whether a municipality's fair share shall exceed 1,000 units, as provided

above, shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential units in the ten-year period preceding the petition for substantive certification in connection with which the objection was filed.

For the purpose of crediting low and moderate income housing units in order to arrive at a determination of present and prospective fair share, as set forth in paragraph (1) of subsection c. of this section, housing units comprised in a community residence for the developmentally disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2), shall be fully credited pursuant to rules promulgated or to be promulgated by the council, to the extent that the units are affordable to persons of low and moderate income and are available to the general public.

The council, with respect to any municipality seeking substantive certification, shall require that a minimum percentage of housing units in any residential development resulting from a zoning change made to a previously non-residentially-zoned property, where the change in zoning precedes or follows the application for residential development by no more than 24 months, be reserved for occupancy by low or moderate income households, which percentage shall be determined by the council based on economic feasibility with consideration for the proposed density of development.

In carrying out the above duties, including, but not limited to, present and prospective need estimations the council shall give appropriate weight to pertinent research studies, government reports, decisions of other branches of government, implementation of the State Development and Redevelopment Plan prepared pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and public comment. To assist the council, the State Planning Commission established under that act shall provide the council annually with economic growth, development and decline projections for each housing region for the next ten years. The council shall develop procedures for periodically adjusting regional need based upon the low and moderate income housing that is provided in the region through any federal, State, municipal or private housing program.

No housing unit subject to the provisions of section 5 of P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for inclusion in the municipal fair share plan certified by the council unless the unit complies with the requirements set forth thereunder.

L.1985, c.222, s.7; amended 1993, c.31, s.1; 1993, c.104; 1995, c.81; 1995, c.344, s.1; 2001, c.435, s.1; 2005, c.350, s.4; 2008, c.46, s.6.

52:27D-307.1. Definitions

1. As used in this act:

"Agency" means the Housing and Mortgage Finance Agency established pursuant to section 4 of the "New Jersey Housing and Mortgage Finance Agency Law of 1983," P.L.1983, c.530 (C.55:14K-4).

"Commissioner" means the Commissioner of Community Affairs.

"Council" means the Council on Affordable Housing created by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.)

"Department" means the Department of Community Affairs.

"Housing region" means a housing region as determined by the Council on Affordable Housing pursuant to section 7 of P.L.1985, c.222 (C.52:27D-307).

"Project" or "housing project" means any specific work or undertaking for the purpose of providing housing accommodations, whether by new construction or by rehabilitation or adaptation of existing structures, that shall be affordable to persons and families of low or moderate income within the meaning of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). Such work or undertaking may include the acquisition, construction or rehabilitation of lands, buildings and improvements, and such stores, offices, and social, recreational, communal or other facilities as may be incidental or appurtenant to the housing accommodations that are to be provided.

"Register" means the Register of Housing Projects directed by section 2 of this act to be established and maintained by the commissioner.

L.1991,c.479,s.1.

52:27D-307.2. Register of Housing Projects, requirements, reports

2. a. The commissioner shall cause to be established and kept a Register of Housing Projects. The register shall list all projects for which proposal or application has been submitted for assistance under any program of loans, grants or other financial aid administered by the department, including programs administered by the agency, or for which the offices of the department have been solicited in furthering an application for such assistance from any other program of like nature administered by another agency or instrumentality of the State or of the United States government.

b. The register shall identify each such project by name and location, and shall identify the proposed sponsor or developer thereof. If the proposed sponsor or developer is a corporation, association or partnership, the register shall identify by name and address each stockholder, member or partner whose participation therein represents an equity interest exceeding five percent. No application or proposal relating to a project for which the information required by this subsection is not made available to the commissioner shall be received or entertained by the department or any division, bureau, officer or employee thereof, or by the agency; nor shall any action upon such application or proposal heretofore received or entertained be taken after the effective date of this act until the required information is made available to the commissioner.

c. The commissioner shall, not later than the 90th day next following the effective date of this

act, file with the Governor and Legislature a copy of the register upon its compilation in accordance with this section, and thereafter shall promptly report to the Governor and Legislature any additional projects to be included therein. The register and subsequent reports shall include for each project the priority designation assigned to it pursuant to section 3 of this act. The register and subsequent supplements pursuant to this subsection shall be filed with the Secretary of the Senate and Clerk of the General Assembly, and shall be a public record.

L.1991,c.479,s.2.

52:27D-307.3. Priority ratings of projects

3. a. The commissioner shall cause to be developed a system for assigning and designating priority ratings to each project included in the register. Priority ratings shall be based upon the following factors, giving to each factor such weight as the commissioner shall judge to be appropriate:

(1) Feasibility. Each project shall be evaluated for its physical and financial feasibility, giving consideration to the capabilities of the proposed sponsor or developer, market conditions and regulatory requirements in the locality for which it is proposed, and the availability of financing in sufficient amount and at reasonable cost.

(2) Desirability. Each project shall be evaluated with relation to its probable effect in meeting the affordable housing needs of the housing region in which it is to be located, in accordance with the standards and criteria of the council. Consideration shall be given to (a) the number of affordable dwelling units that the project would provide, (b) the proportion of affordable units to the total number of units envisaged in the project plan, (c) the distribution of those affordable units as between those affordable to persons and families of low income and those of moderate income, considered in relation to the needs of the housing region, (d) appropriateness of the proposed tenure of the affordable units, whether to be rental or owner-occupied, in relation to the needs of the housing region, and (e) appropriateness of the proposed distribution of units as to family size, in relation to the needs of the housing region.

(3) Efficiency. Each project shall be evaluated on the basis of the cost to the State, in terms of financial assistance granted or revenue forgone in order to further the project, for each affordable dwelling unit judged by the commissioner to be feasible and desirable according to the terms of the proposal or application made for such assistance.

b. In developing the system of assigning and designating priorities, and in evaluating individual projects for such assignment and designation in the register, the commissioner shall consult with the executive director of the agency and the executive director of the council. The council and the agency shall promptly and fully supply the commissioner with all relevant information necessary for the commissioner's timely and complete fulfillment of the requirements of this act.

L.1991,c.479,s.3.

52:27D-307.4. Reports of communications in furtherance of projects

4. a. Any officer or employee of the department, including any member, officer or employee of the agency or the council, who receives from any person any solicitation, application, proposal or communication of any kind, whether oral or in writing, aimed at furthering the assistance of any project shall promptly report the same to the commissioner. The report shall identify the person or persons making such communication. If any such person is not identified in the register in accordance with the requirements of subsection b. of section 2 of this act, the report shall state the person's relationship to the sponsor or developer of the project and the capacity in which the person represents himself or herself to be acting on behalf of the sponsor or developer; or if the person fails or refuses to supply that information, the report shall so state.

b. The commissioner shall develop a procedure or procedures by which reports required under subsection a. of this section shall be made either to the commissioner directly or through such administrative channels as the commissioner shall devise and direct. Notwithstanding the provisions of subsection i. of section 4 of P.L.1983, c.530 (C.55:14K-4) and subsection a. of section 5 of P.L.1985, c.222 (C.52:27D-305), the regulations adopted by the commissioner in fulfillment of this subsection shall be of full force and application on and within the agency and the council; and all members, officers and employees of the agency and council shall give full compliance with and obedience to the rules and orders of the commissioner made in pursuance of his duties and responsibilities under this act.

c. Reports made to the commissioner shall be promptly forwarded by him, not later than 10 days after their receipt, to the Governor and to the presiding officers of the Houses of the Legislature, who shall cause all members of their respective Houses to be notified of the receipt of those reports and shall make adequate provision for the inspection of the commissioner's reports by members and committees of either House, and for the dissemination of those reports to the public. The reports forwarded by the commissioner shall in each instance indicate the priority rating that has been assigned in the register to the project to which the report relates.

L.1991,c.479,s.4.

52:27D-307.5 Rules, regulations

5. The commissioner shall adopt and promulgate, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), all rules and regulations necessary or expedient for the prompt and effective carrying out of the provisions and purposes of this act.

L.1991,c.479,s.5.

52:27D-307.6 Methodology for change in calculation for use on June 7, 2000 and after.

6. The change in the calculation of a municipality's determination of present and prospective share of housing need as provided in P.L.2001,c.435 shall apply to the methodology employed by the council for the certification period beginning June 7, 2000 and thereafter.

EXHIBIT 3
N.J.A.C. 5:93-4

SUBCHAPTER 4. MUNICIPAL ADJUSTMENTS

5:93-4.1 Purpose and background

(a) Subchapters 2 and 3 delineate the criteria for determining the municipal housing obligation. However, there may be instances where a municipality can exhaust an entire resource (land, water or sewer) and still not be able to provide a realistic opportunity for addressing the need for low and moderate income housing as determined by the Council. This subchapter outlines standards and procedures for municipalities to demonstrate that the municipal response to its housing obligation is limited by the lack of land, water or sewer. The procedures in this subchapter shall not be used to reduce or defer the rehabilitation component.

(b) Where a municipality attempts to demonstrate that it does not have the capacity to address the housing obligation calculated by the Council, the municipality shall identify sites that are realistic for inclusionary development in order to calculate the realistic development potential (RDP) of the community, in accordance with N.J.A.C.5:93-4.2. Where the RDP is less than the precredited need minus the rehabilitation component the municipality shall provide a response toward the obligation not addressed by the RDP. Examples of such a requirement include, but are not necessarily limited to, a redevelopment ordinance, an ordinance permitting apartments in developed areas of the municipality and a mandatory development fee ordinance.

(c) With the concept of RDP, the Council is recognizing that some sites are more realistic and/or appropriate than others for the location of inclusionary development. For example, some sites may lack infrastructure or be surrounded by incompatible land uses. However, these sites and others have the potential to develop or redevelop over time and, as such development takes place, the Council has determined that such sites shall contribute toward the housing obligation.

(d) A municipality seeking an adjustment due to available land capacity shall base the number of units that may be age restricted and the number of units that may be transferred via an RCA on the calculated need which is the RDP plus the rehabilitation component. If both an RCA and senior units are proposed, then the formula is based on the RDP and does not include the rehabilitation component. The RDP shall equal the calculation pursuant to N.J.A.C. 5:93-4.2(f). If additional low and moderate income housing opportunities develop pursuant to N.J.A.C.5:93-4.2(h) (describing the municipal response in addition to the RDP), the municipality may seek a plan amendment, pursuant to N.J.A.C.5:91-13 to age restrict or transfer more units, based on a demonstrated increased RDP.

5:93-4.2 Lack of land

(a) Municipalities that request an adjustment due to available land capacity shall submit an existing land use map at an appropriate scale to display the land uses of each parcel within the municipality. Such a map shall display the following land uses: single family, two-to-four family, other multi-family, commercial, industrial, agricultural, parkland, other public uses, semipublic uses and vacant land.

(b) Municipalities that request an adjustment due to available land capacity shall submit an inventory of vacant parcels by lot and block that includes the acreage and owner of each lot.

(c) Municipalities shall exclude from the vacant land inventory:

1. Any land that is owned by a local government entity that, as of January 1, 1997, has adopted, prior to the filing of a petition for substantive certification, a resolution authorizing the execution of an agreement that such land shall be utilized for a public purpose other than housing; and

2. Any vacant contiguous parcels of land in private ownership of a size which would accommodate less than five dwelling units as per the COAH standard in (f) below;

   i. In preparing a housing plan, a municipality may designate land in (c)2 above for affordable housing infill purposes, but is not required to do so.

(d) The Council shall review the existing land use map and inventory to determine which sites are most likely to develop for low and moderate income housing. All vacant sites shall initially be presumed to fall into this category. In addition, the Council may determine that other sites, that are devoted to a specific use which involves relatively low-density development would create an opportunity for affordable housing if inclusionary zoning was in place. Such sites include, but are not limited to: golf courses not owned by its members; farms in SDRP planning areas one, two and three; driving ranges; nurseries; and nonconforming uses. The Council may request a letter from the owner of sites that are not vacant indicating the site's availability for inclusionary development.

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

1. Agricultural lands shall be excluded when the development rights to these lands have been purchased or restricted by covenant.

2. Environmentally sensitive lands shall be excluded as follows:

   i. Within the areas of the State regulated by the Pinelands Commission, Division of Coastal Resources of the DEP and the Hackensack Meadowlands Development Commission of DCA, the Council shall adhere to the policies delineated in The Pinelands Comprehensive Management Plan, N.J.A.C.7:50; the Coastal Permit Program Rules, N.J.A.C.7:7-1; Coastal Resource and Development Rules, N.J.A.C.7:7E-1; and the Zoning Regulations of the Hackensack Meadowlands District, N.J.A.C. 19:4.

   ii. In areas of the State not regulated by the Pinelands Commission, the Division of Coastal Resources and the Hackensack Meadowlands Development Commission, municipalities may exclude as potential sites for low and moderate income housing: inland wetlands as delineated on the New Jersey Freshwater Wetlands Maps, or when unavailable, the U.S. Fish and Wildlife Service National Wetlands Inventory; or as delineated on-site by the U.S. Army Corps of Engineers or DEP, whichever agency has jurisdiction; when on-site delineation is required

by the Council; flood hazard areas as defined in N.J.A.C.7:13; and sites with slopes in excess of 15 percent, as determined from the U.S.G.S. Topographic Quadrangles, which render a site unsuitable for low and moderate income housing. In cases where part of a site is unsuitable for low and moderate income housing because of flood hazard areas or inland wetlands, the Council shall not permit low and moderate income housing to be constructed on that unsuitable part of the site; provided however, that this rule shall not prohibit construction of low and moderate income housing on the remainder of the site. In the case of slopes in excess of 15 percent, a municipality may regulate inclusionary development through a steep slope ordinance, provided the ordinance also regulates non-inclusionary developments in a consistent manner. The Council reserves the right to exclude sites in whole or in part when excessive slopes threaten the viability of an inclusionary development.

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

3. Historic and architecturally important sites may be excluded as follows:

i. Historic and architecturally important sites shall be excluded if such sites were listed on the State Register of Historic Places in accordance with N.J.A.C.7.4 prior to the submission of the petition of substantive certification.

ii. Municipalities may apply to exempt a buffer area to protect sites listed on the State Register of Historic Places. The Council shall forward such request to the Office of New Jersey Heritage for a recommendation pertaining to the appropriateness and size of a buffer.

iii. Upon receipt of the Office of New Jersey Heritage's recommendation, the Council shall determine if any part of a site should be eliminated from the inventory described in (d) above.

iv. Within historic districts, a municipality may regulate low and moderate income housing to the same extent it regulates all other development.

4. Active recreational lands may be excluded as follows:

i. Municipalities may reserve three percent of their total developed and developable acreage for active municipal recreation and exclude this acreage from consideration as potential sites for low and moderate income housing. However, all sites designated for active recreation must be designated for recreational purposes in the municipal master plan. In determining developable acreage, municipalities shall calculate their total vacant and undeveloped lands and deduct from that total number the lands excluded by the Council's rules regarding historic and architecturally important sites, agricultural lands and environmentally sensitive lands. Municipalities shall also exclude from this calculation of total vacant and undeveloped lands, those owned by nonprofit organizations, counties and the State or Federal government when such lands are precluded from development at the time of substantive

certification. Municipalities shall submit appropriate documentation demonstrating that such active recreational lands are precluded from development. Existing active municipal recreation areas shall be subtracted from the three percent calculation of total developed and developable acreage to determine additional land that may be reserved for active municipal recreation.

ii. Sites designated for active recreation must be purchased and limited to active recreational purposes within one year of substantive certification. Sites that are not purchased and limited to active recreational purposes shall, if determined necessary by the Council, be zoned to permit inclusionary development.

5. Conservation, parklands and open space lands may be excluded as follows:

i. Any land designated on a master plan of a municipality as being dedicated or which is dedicated by easement or otherwise for purposes of conservation, parklands or open space and which is owned, leased, licensed or in any other manner operated by a county, municipality or tax-exempt, nonprofit organization including a local board of education or by more than one municipality, by joint agreement pursuant to P.L. 1964,c.185 (N.J.S.A. 40:61-35.1 et seq.), for so long as the entity maintains such ownership, lease, license or operational control of such land.

ii. If less than three percent of the municipality's total land area is designated for conservation, parklands or open space, the municipality may reserve up to three percent of its total land area for such purposes. However, the acquisition of such sites must be initiated by the municipality within one year of substantive certification. Sites that are not purchased and limited to conservation, parklands or open space within that time-frame, shall, if determined necessary by the Council, be zoned to permit inclusionary development.

iii. If sites designated for conservation, parklands or open space no longer serve those purposes and subsequently become available for residential or nonresidential development, these sites shall have an affordable housing obligation, if determined necessary by the Council.

6. Individual sites that the Council determines are not suitable for low and moderate income housing may also be eliminated from the inventory described in (d) above.

(f) The Council shall consider sites, or parts thereof, not specifically eliminated from the inventory described in (d) above, for inclusionary development. The Council shall consider the character of the area surrounding each site and the need to provide housing for low and moderate income households in establishing densities and set-asides for each site, or part thereof, remaining in the inventory. The minimum presumptive density shall be six units per acre and the maximum presumptive set-aside shall be 20 percent. The density and set-aside of each site shall be summed to determine the RDP of each municipality. Example: Lowmod Borough has three suitable sites. The sites are 10 acres, five acres and one acre. The larger sites may accommodate eight units/acre. The one acre site may accommodate six units/acre. All sites are assigned a 20 percent set-aside. The RDP equals 25 low and moderate income units.

10 acres	X	8 units/acre	X	.2	=	16
5 acres	X	8 units/acre	X	.2	=	8
1 acre	X	6 units/acre	X	.2	=	1
						25

A municipality that received an adjustment due to lack of vacant land in addressing its 1987-1993 need obligation shall be presumed to have addressed its RDP , provided the municipality continues to implement the terms of its previous substantive certification.

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

(h) If the RDP described in (f) above is less than the precredited need minus the rehabilitation component, the Council shall review the existing municipal land use map for areas that may develop or redevelop. Examples of such areas include, but are not limited to: a private club owned by its members; publicly owned land; downtown mixed use areas; high density residential areas surrounding the downtown; areas with a large aging housing stock appropriate for accessory apartments; and properties that may be subdivided and support additional development. After such an analysis, the Council may require at least any combination of the following in an effort to address the housing obligation:

1. Zoning amendments that permit apartments or accessory apartments;

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

3. Zoning amendments that impose a development fee consistent with N.J.A.C. 5:93-8.

5:93-4.3 Lack of water and sewer

(a) When a community has sufficient land, but insufficient water and/or sewer to support inclusionary development, the Council shall review each possible site for inclusionary development to determine if it is realistic for the site to receive the required water and/or sewer during the period of substantive certification. The Council shall require sufficient information to determine the site's prospects of receiving infrastructure, and the site's prospects of inclusion in an areawide water quality management plan amendment, developed in accordance with the rules of the DEP. If the site had been zoned for inclusionary development, the Council shall consider how long the site had been zoned and if the developer had filed a development application.

(b) If the Council determines that a site may receive water and/or sewer during the period of substantive certification, it shall require the site to be zoned for inclusionary development, or, if the site had already been zoned for inclusionary development, it shall require the

continuation of that zoning. If the Council determines that a site may not receive water and/or sewer during the period of substantive certification, the Council shall not require inclusionary zoning, but may require overlay zoning requiring inclusionary development (if water and sewer become available) and/or the imposition of a development fee consistent with N.J.A.C. 5:93-8.

(c) The lack of adequate capacity, in and of itself, shall constitute a durational adjustment of the municipal housing obligation. The requirement to address the municipal housing obligation shall be deferred until adequate water and/or sewer are made available. In order to provide water and/or sewer on sites the Council determines are realistic for inclusionary development, municipalities shall adhere to the following:

1. Notwithstanding the lack of adequate water and/or sewer at the time a municipality petitions for substantive certification, the municipality shall reserve and set aside new water and/or sewer capacity, when it becomes available, for low and moderate income housing, on a priority basis.

2. Municipal officials shall endorse all applications to the DEP or its agent to provide water and/or sewer capacity. Such endorsements shall be simultaneously submitted to the Council.

3. Where the DEP or its designated agent approves a proposal to provide infrastructure to a site for the development of low and moderate income housing identified in the housing element, the municipality shall permit such development; and

4. Where a municipality has designated sites for low and moderate income housing that lack adequate water and/or sewer and where the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in the housing element, the municipality shall amend its housing element and fair share housing ordinance to permit development of such site for low and moderate income housing. The amended housing element and fair share housing ordinance shall be submitted to the Council within 90 days of the site's approval by the DEP or its agent. The Council may waive these requirements when it determines that the municipality has a plan that will provide water and/or sewer to sufficient sites to address the municipal housing obligation within the substantive certification period.

(d) Municipalities may demonstrate that the cost of providing water and/or sewer to realistic sites identified in (a) and (b) is prohibitive by completing "The Costs of Providing Infrastructure" application provided by the Council (see Appendix D, incorporated herein by references) and submit it to the Council for its review. The Council shall forward "The Costs of Providing Infrastructure" application to the DCA Division of Local Government Services for review. The Council shall consider the report of the Division of Local Government Services in determining whether to permit an adjustment due to prohibitive costs associated with providing water and/or sewer to inclusionary sites. Where the Council determines the cost associated with providing water and/or sewer to inclusionary sites is prohibitive, it shall limit the municipality's fiscal responsibility of providing water and/or sewer. However, notwithstanding any limits placed on the municipality's fiscal responsibility to provide water and/or sewer, the Council may require the municipality to designate and zone appropriate sites to accommodate the municipal housing obligation or to adopt other approaches consistent with N.J.A.C.5:93-4.2(h). The municipality shall also adhere to the requirements outlined in (c)1 to 4 above.

5:93-4.4 Application for grants

A municipality that has demonstrated that land, water and/or sewer limits its ability to address the municipal rehabilitation component may be required to address its rehabilitation component by submitting an application for Federal and/or State housing programs. Such a municipality shall be required to apply for a county, State and/or Federal grant if the Council determines that the success of such a grant application is realistic and necessary to address the rehabilitation component.

5:93-4.5 Waivers

(a) The Council shall entertain waiver requests by motion, in accordance with N.J.A.C. 5:91-12 from municipalities seeking relief from the following requirements:

1. The use of an entire resource (land, water, sewer) in addressing the municipal housing obligation; and

2. The requirement to impose development fees on all development within the municipality.

(b) The criteria for evaluating such a waiver request shall include one or more of the following:

1. Past inclusionary practices, measured by the following criteria: jobs to housing ratio; municipal median income as compared to regional median income; and the percentage of low and moderate income households in the municipality as compared to the percentage in the housing region;

2. A demonstration of hardship. To demonstrate hardship related to the imposition of development fees, the municipality shall, at a minimum, document that the imposition of development fees would retard necessary economic development within the municipality. To demonstrate hardship related to utilizing all available land, water and sewer capacity, the municipality shall (where applicable), at a minimum, document prospects for obtaining additional capacity and the public good realized by allowing competing land uses a reservation of the limited capacity; or

3. A demonstration that the municipality has actively pursued its municipal housing obligation by petitioning for certification prior to litigation.

EXHIBIT 4
SETTLEMENT AGREEMENT

AGREEMENT TO RESOLVE ISSUES BETWEEN THE TOWNSHIP OF CRANFORD AND FAIR SHARE HOUSING CENTER CONCERNING THE TOWNSHIP'S MOUNT LAUREL FAIR SHARE OBLIGATIONS AND THE MEANS BY WHICH THE TOWNSHIP SHALL SATISFY SAME

In the Matter of the Township of Cranford, County of Union, Docket No. UNN-L-3976-18

THIS SETTLEMENT AGREEMENT ("Agreement") made this ___th day of November, 2019, by and between:

TOWNSHIP OF CRANFORD, a municipal corporation of the State of New Jersey, County of Union, having an address at 8 Springfield Avenue, Cranford, NJ 07016 (hereinafter the "Township" or "Cranford");

And

FAIR SHARE HOUSING CENTER, having an address at 510 Park Boulevard, Cherry Hill, New Jersey 08002, (hereinafter "FSHC");

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), the Township filed the above-captioned matter on November 21, 2018 seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), as may be further amended in accordance with the terms of this settlement, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the Mount Laurel doctrine; and

WHEREAS, the Township simultaneously sought, and ultimately secured, an Order protecting Cranford from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

WHEREAS, the immunity secured by Cranford remains in place as of the date of this Agreement; and

WHEREAS, the trial court appointed a "Special Master", as is customary in a Mount Laurel case, to assist the Court; and

WHEREAS, more specifically, the Court appointed Kendra Lelie, P.P., A.I.C.P. to serve as the Special Master;

WHEREAS, with Ms. Lelie's assistance, Cranford and FSHC have engaged in good faith negotiations and have reached an amicable accord on the various substantive provisions, terms and conditions delineated herein; and

WHEREAS, through that process, the Township and FSHC agreed to settle the litigation and to present that settlement to the trial court, recognizing that the settlement

of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households; and

WHEREAS, it is particularly appropriate where, as here, the Court has yet to make a determination of the Township's fair share, to arrive at a settlement regarding a municipality's fair share obligation, instead of doing so through plenary adjudication of that obligation.

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties hereto, each binding itself, do hereby covenant and agree, each with the other, as follows:

Settlement Terms

The Township and FSHC hereby agree to the following general terms, subject to any relevant conditions set forth in more detail below:

1. Cranford's "Rehabilitation" obligation is 85.

2. Cranford's "Prior Round" obligation is 148.

3. Cranford's allocation of the Round 3 regional need is 440.

4. FSHC and the Township agree that the 440 Round 3 regional need obligation is the number that multiple experts have used as an extrapolation of the Mercer County Opinion, which is not otherwise binding on either party except by way of this Settlement Agreement. Although the Township does not accept the basis of the methodology or calculations proffered by FSHC's consultant, FSHC contends, and is free to take the position before the Court, that the 440-unit Round 3 obligation should be accepted by the Court, because it is based on the Prior Round methodology and reflects a reduction of Dr. Kinsey's July 2016 and April 2017 calculation of the Township's Round 3 (1999-2025) fair share obligation.

5. For the purposes of this Agreement, the "Round 3 regional need" (also referenced as the "Third Round Prospective Need") shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999 to 2015 that need affordable housing, that was recognized by the Supreme Court in In re Declaratory Judgment Actions filed by Various Municipalities, 227 N.J. 508 (2017).

6. The Township, as calculated in Exhibit A, has a Round 3 realistic development potential (hereinafter "RDP") of 131. In addition, for settlement purposes only, the Parties recognize that pursuant to the Honorable Judge Kenny's January 16, 2019 Order In CDA vs the Township of Cranford, UNN-L-3759-08, the Township has an additional obligation of 20 units, which are not eligible for bonus credits. Nothing in this agreement precludes the Township from pursuing its pending litigation regarding the January 16, 2019 Order and the imposition of the additional 20-unit obligation.

7. **Satisfaction of the Rehabilitation Obligation**: The Township has an 85-unit rehabilitation obligation. The Township plans to meet this obligation through participation in the Union County Housing Rehabilitation Program and through a supplemental municipally operated rehabilitation program that shall address the rental rehab requirement but which may also be utilized for for-sale rehabilitation. Said municipal program shall meet the requirements in N.J.A.C. 5:93-5.2.

8. **Satisfaction of the Prior Round Obligation**: The Township has a 148-unit Prior Round obligation, which will be addressed as follows:

Table 21: Prior Round Affordable Housing Fulfilment Township of Cranford, Union County, New Jersey		
Project	**Affordable Units/Credits**	**Unit/Credit Type**
Prior Round Obligation		
Lincoln Apartments – Age-Restricted (Block 532, Lot 18.01)(maximum based on 25% of 148)	37	Age-Restricted Rentals
Riverfront Developers, LLC (Block 481; Lots 1.02, 2.01 and 3-9)	16	Non Age-Restricted Family Rentals
SERV Center of NJ (Block 514, Lot 3)	3	Special Needs Housing – 3 Bedroom Group Home
Birchwood Site (formerly Cranford Development Associates (CDA) Project) (Block 291, Lot 15.01, Block 292, Lot 2)	34	Non Age-Restricted Family Rentals
Lehigh Acquisition Project (Block 511, Lot 1) aka Woodmont	21	Non Age-Restricted Family Rentals
Subtotal	**111**	**-**
Rental Bonus Credits (Based on 25% of 148)	37	Rental Bonus Credits taken on 21 Lehigh Acquisition Project Units, 3 SERV Bedrooms and 13 Riverfront Units
Total	**148**	**Units/Credits**
Total for Prior Round Plan		
Total Prior Round Obligation	**148**	

The plan components shown in the above table fully satisfy the minimums and maximums for the Prior Round, RCA cap (50% of Prior Round obligation), maximum age-restricted unit requirement (25% of Prior Round obligation less RCAs), minimum required rental units (at least 25% of Prior Round obligation), and maximum rental bonus credits (equal to rental obligation).

9. **Satisfaction of the Round 3 RDP**: The Township has a 131-unit Round 3 RDP + 20 additional units and shall satisfy that obligation as follows:

Project	Units	Bonus	Status
Riverfront – family rental	3	3	Existing
Woodmont – family rental	3	3	Existing
Needlepoint – family rental	1	1	Existing
Lincoln – Senior Rental	37 (of 63*)		Existing
Homefirst (18b Parkway Village)	4		Existing
Homefirst #2: (117 Benjamin)	3		Existing
Bridgeway (304 Lincoln)	2		Existing
SERV (125 Dietz Street)	4		Existing
Community Access Unlimited (CAU) 48 Johnson Ave	6		Existing
310 Centennial - Family rental	2	2	Under Construction
109 Walnut – Family rental	4	4	Constructed
EF Britten - Family rental	3	3	Proposed
North Ave Redevelopment – family rental	8	2	Proposed
Myrtle Special Needs	8	8	Proposed
201 Walnut (Wells Fargo) – Family rental	8	7	Proposed
750 Walnut (Block 541, Lot 2) – Inclusionary	49	-	Proposed
Market-to-Affordable	5		Cranford agrees to provide a realistic opportunity for 5 units through a market-to-affordable program in accordance with the terms of paragraph 9.c of this Agreement.
CAU additional beds or other Group Home bedrooms	7		Cranford agrees to provide a realistic opportunity for 5 units of supportive housing in accordance with the terms of paragraph 9.d of this Agreement.
Total	157	33	
Grand Total	190		

a. The plan components shown in the above table fully satisfy the minimums and maximums for the Third Round RDP, inclusive of maximum age-restricted units (25% of RDP less RCAs), minimum rental units (25% including at least half

available to families), and maximum rental bonus credits (equal to rental obligation), including maximum rental bonus credits for age-restricted units (50% of rental obligation). Those maximums and minimums are predicated upon the cumulative 152-figure except that bonus credits are capped at 25% of the RDP pursuant to N.J.A.C. 5:93-5.15.

b. The remaining 7 group home bedrooms will be realized with either CAU, CIS, Bergen County United Way, and/or another experienced provider of supportive and special needs housing. In order to be eligible for bonus credits, by the final compliance hearing the Township will provide signed agreements with an experienced provider to provide that are eligible for bonus credits in accordance with N.J.A.C. 5:93. The Parties acknowledge that an existing CAU project, consisting of 3 special needs bedrooms and located at 112 Glenwood Road may become eligible for affordable housing credits. The Parties acknowledge and agree that in order for these bedrooms to be eligible for affordable housing credits, the Township shall enter into separate agreements with both FSHC and CAU prior to the Compliance Hearing in this matter requiring the group homes to continue to operate as eligible group homes.

c. With respect to the Market-to-Affordable program, the Township shall complete at least 2 units by July 1, 2022; at least 4 total units by 2023; and shall complete all 5 units by the end of the year 2024. At least 4 of the units shall be affordable to low-income households unless the Township has otherwise satisfied the requirement to provide half of its RDP as low-income units. The Parties agree that the Township is exempt from these scheduling requirements and the production of MTA units in the event that the Township identifies and generates 5 credits with any combination of supportive housing units or newly constructed municipally-sponsored affordable housing through Habitat for Humanity, CIS, BCUW or other non-profit entity. In either event, the Township is required to report on the MTA program or chosen alternative compliance technique(s) at the July 1, 2020 midpoint as defined by Section 26 of this Agreement. Regardless of which mechanism is identified and utilized, the Township agrees to comply with all relevant COAH regulations and standards for the given mechanism, including N.J.A.C. 5:93-5.8 (Alternative living arrangements) and N.J.A.C. 5:93-5.5 (Municipally sponsored construction). At or before the time of compliance, the Township shall issue a report as part of its HEFSP that satisfies the conditions and requirements of N.J.A.C. 5:97-6.9.

d. In accordance with N.J.A.C. 5:93-5.5, the Township recognizes that it must provide evidence that the municipality has adequate and stable funding for any non-inclusionary affordable housing developments. The municipality is required to provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source in the event that the funding request is not approved. The Township shall adopt a

resolution of intent to fund for any shortfall associated with its municipally-sponsored programs. The municipality shall demonstrate its satisfaction of these obligations during the compliance phase of this matter.

e. In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The schedule shall provide for construction to begin within two years of court approval of this settlement. The municipality shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The municipality shall demonstrate its satisfaction of these obligations during the compliance phase of this matter.

f. Wells Fargo Redevelopment: Within one year of the Court's approval of this Agreement, the Township shall adopt a redevelopment plan for 201 Walnut Avenue, Block 484, Lots 19.01 (the "Wells Fargo Site"), which shall permit up to 40 total units of residential housing, of which at least 8 units shall be affordable to low- and moderate-income households. Nothing in this Agreement shall preclude, nor require, the Township and the developer of the Wells Fargo site from agreeing to construct some of the units offsite as family affordable units and/or as special needs bedrooms, provided, however, that a) at least a 15% set aside is provided on site; and b) COAH's phasing requirements are followed relative to all units, both on and offsite. The Redevelopment Agreement shall specify that the affordable units shall be rental units.

10. With Respect to 750 Walnut Avenue (Block 541, Lot 2), the Parties agree that the site will be rezoned pursuant to Section 10.b below or redeveloped pursuant to 10.a. below within one (1) year of court approval of this Agreement.

a) Redevelopment: The Parties agree that the Township may create a realistic opportunity for the construction of 49 family units by a) declaring the site an area in need of redevelopment; b)adopting a redevelopment plan for the site with the power of condemnation; and c) naming a redeveloper for the project, which must occur within one year of court approval of this Agreement. In addition, the Township shall transfer the land to a developer within 18 months of the approval of this agreement, which may be extended for good cause for a period of up to three (3) months. The Parties further agree that, in such an event, 24.5 acres of the site will be rezoned to permit a gross density of 10 units per acre, or 245 total units. Of the 245 total units, 49 shall be available to low- and moderate-income families. In the event of redevelopment with the power to condemn, the 196 market-rate units may be age-restricted and such a determination shall be solely within the discretion of the Township.

b) Rezoning: Alternatively, Township may rezone the site at a gross density of 9 units per acre, or 221 family units, of which 20%, or 45 units, would be affordable to low- and moderate-income households.

c) RDP: The Parties acknowledge that PSEG has expressed an interest in at least 6 acres of the 30.5-acre site and further acknowledge that PSEG may utilize its power to condemn in acquiring that portion of the site (the "6 Acres"). See Exhibit A to this Agreement. In light of the foregoing, the Parties agree that 24.5 acres of the site shall generate RDP and 6 acres of the site shall be excluded from the calculation of RDP as unavailable pursuant to N.J.A.C. 5:93-4.2. Consistent with the policies of N.J.A.C. 5:93-4.2 (e)(5)(ii), which addresses land being utilized for a public purpose, if the 6 Acres remains available after the expiration of one year from the Court's approval of this Settlement Agreement, the Parties agree that the 6 Acres shall generate RDP under N.J.A.C. 5:93-4.2. In the event that the 6 Acres generates RDP, the Township reserves the right to apply its surplus credits to address that increase in RDP pursuant to Section 9 of this Agreement or to otherwise unilaterally determine how to satisfy the RDP pursuant to N.J.A.C. 5:93-4.2(g) with the consent of FSHC.

11. FSHC and the Township agree that the Township shall have the right to apply the 39-unit surplus (plus any eligible bonuses that may be associated with increases in RDP), in accordance with then-applicable law, and in accordance with required maximum and minimum standards, generated in excess of the Township's Round 3 RDP to any future changed circumstances, which would result in an increase in the Township's RDP. See Fair Share Housing Center v. Cherry Hill, 173 N.J. 393 (2002) ("Cherry Hill"). Should a suitable, available, approvable and developable site become vacant that had not been vacant, available, suitable or developable at the time of the VLA, and did not contribute to the Township's current 131-unit RDP ("additional site"), the Township would be entitled to apply any or all of the 39-unit surplus, as may be necessary, towards addressing the increase in RDP, provided that the Township shall be required to identify in a filing with the Court the additional site or additional sites, and the RDP generated by those sites consistent with N.J.A.C. 5:93-4.2, that it is applying all or part of the 39-unit surplus of the RDP, within forty-five (45) days after the Township becomes aware of the changed circumstance, on notice and opportunity to be heard to FSHC, the owner of the additional site or sites, and any other interested parties. To the extent a change in circumstances results in an increase in RDP that is larger than the Township's 39-unit surplus, the Township shall still have an obligation to address the portion of the RDP in excess of 39-unit surplus ("Residual RDP"), provided, however, that the Township shall maintain the right to satisfy any Residual RDP in a manner and location it deems appropriate pursuant to N.J.A.C. 5:93-4.2 and otherwise consistent with the requirements of this Agreement and shall not be required to utilize the site generating the increase in RDP in order to satisfy the increase in RDP. The Township agrees that this provision specifically, and the interpretation of application of surplus units generally as it relates to other matters, has no bearing on any other settlement agreement entered into between FSHC and any other municipality. This

provision is of no precedential value and cannot be used by either party or their respective attorneys as a mechanism of interpreting any other settlements in other declaratory judgment actions.

12. **Addressing the Remaining "Unmet Need"**: For the purposes of settlement, the Township agrees to address the 289-unit remaining portion of its allocation of the Round 3 regional need or "unmet need" through the following mechanisms

a) The Township will adopt overlay ordinances in the areas described herein and as depicted and depicted on Exhibit B to this Settlement Agreement.:

i. D-C Downtown Core District (Except Block 483, Lot 18 and Block 508, Lot 1, which will be treated as D-T pursuant to section 12.a.iii below) in a mixed use zone permitting up to 35 residential units per acre with a 20% set aside for affordable housing;

ii. D-B Downtown Business District in a mixed-use zone permitting up to 30 residential units per acre with a 20% set aside for affordable housing;

iii. D-T Downtown Transitional District (and 483, Lot 18 and Block 508, Lot 1) in a mixed-use zone permitting up to 25 residential units per acre with a 20% set aside for affordable housing;

iv. Elise Burnside at 12 units per acre

v. Park Street Block 555, lots 1, 2, 3, 7 at 12 units per acre

b) The sites identified in paragraph 12(a)(i)-(iv) above will be overlaid with zoning for residential density and zoning standards that are consistent with this Agreement and Exhibit B to this Settlement attached hereto. Those standards provide a compensatory benefit by relaxing conditions that are required for residential development in the underlying zoning and by providing an increase in density. For inclusionary projects resulting from paragraph 12(a) the affordable set-aside percentage shall be 20 percent regardless of tenure. Nothing in the paragraph shall preclude the Township from adopting redevelopment plans in any of the overlay zones to address unmet need so long as the residential density and set aside is equal to or greater than the density and yield associated with the subject overlay zone.

c) Subject to all relevant notice and public hearing provisions pursuant to the New Jersey Municipal Land Use Law, within 150 days of the approval of this Agreement at a Fairness Hearing, the Township will adopt an ordinance requiring a mandatory affordable housing set aside for all new multifamily residential developments of five (5) units or more. The set

aside for developments shall be twenty percent (20%) regardless of tenure. The provisions of the ordinance shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five or more, or to specific parcels or zones identified in other paragraphs of this agreement which shall be subject to the requirements specified therein. The form of the Ordinance shall be finalized prior to the Compliance Hearing through collaboration between FSHC, Special Master Lelie, and representatives of the Township. FSHC and the Township, in collaboration with the Special Master will agree upon the density upon which the ordinance shall be triggered in prior to the Compliance Hearing.

13. The Township's RDP shall not be revisited by FSHC or any other interested party absent a substantial changed circumstance and, if such a change in circumstance occurs with the RDP, the Township shall have the right to address the issue without negatively affecting its continuing entitlement to immunity from all Mount Laurel lawsuits through July 7, 2025. In addition, said substantial change in circumstances shall be governed by paragraph 11 above.

14. The Township agrees to require 13% of all the affordable units referenced in this plan, with the exception of units constructed prior to July 1, 2008, and units subject to preliminary or final site plan approval prior to July 1, 2008, to be very low income units (defined as units affordable to households earning 30 percent or less of the regional median income by household size), with half of the very low income units being available to families. During the compliance phase of this matter, the municipality will demonstrate its satisfaction of this obligation. The municipality will further address this obligation by requiring all unbuilt developments that are identified in this development and all developments that will be credited to unmet need to provide a 13% set-aside of affordable housing.

15. Cranford will apply "rental bonus credits" in accordance with N.J.A.C. 5:93-5.15(d).

16. At least 50 percent of the units addressing the Township's Third Round Prospective Need shall be affordable to a combination of very-low-income and low-income households, while the remaining affordable units shall be affordable to moderate-income households.

17. At least twenty-five percent of the Township's Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.

18. At least half of the units addressing the Township's Third Round Prospective Need in total must be available to families.

19. The Township agrees to comply with COAH's Round 2 age-restricted cap of 25 percent, and to not request a waiver of that requirement. The Parties agree that this cap applies to the Township's RDP + 20 units and is thus 25% of 151 for Round 3. This shall be understood to mean that in no circumstance may the Township claim credit toward its fair share obligation for age-restricted units that exceed 25 percent of all units developed or planned to meet its Prior Round and Third Round fair share obligations.

20. The Township and/or its Administrative Agent shall add the following entities to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A. (17 C. 5:80-26.15(f)(5): Fair Share Housing Center (510 Park Boulevard, Cherry Hill, NJ 08002), the New Jersey State Conference of the NAACP, the Latino Action Network (P.O. Box 943, Freehold, NJ 07728), the Homecorp Talbot Street, Montclair), Housing Partnership (2 East Blackwell Street, Suite 12, Dover), and Union County Housing Coalition. As part of its regional affirmative marketing strategies during implementation of its Housing Element and Fair Share Plan, the Township and/or its administrative agent shall also provide notice of all available affordable housing units to the above-referenced organizations.

21. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law. The Township as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. Income limits for all units that are part of the Plan required by this Agreement and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Township annually within 30 days of the publication of determinations of median income by HUD as follows:

a) Regional income limits shall be established for the region that the Township is located within (i.e. Region 2) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Township's housing region. This quotient represents the regional weighted average of median income for a

household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

b) The income limits attached hereto as Exhibit C are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2019, and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year.

c) The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Township annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

d) The parties agree to request the Court prior to or at the fairness hearing in this matter to enter an order implementing this paragraph of this Agreement.

22. Upon full execution of this Agreement, Cranford shall notify the Court so that a Fairness Hearing can be scheduled to approve the Agreement. Cranford will place this Agreement on file in the Township's municipal building and file a copy with the Court 45 days prior to the Fairness Hearing, at which the Township will seek judicial approval the terms of this Agreement pursuant to the legal standard set forth in Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. City of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). Notice of the Fairness Hearing shall be published at least 30 days in advance of the Hearing. Within 150 days of the approval of this Agreement by the Court after a Fairness Hearing, Cranford will adopt a Housing Element and Fair Share Plan, along with a Spending Plan, and adopt all ordinances required to be adopted as part of this Agreement. The Township will then apply to the Court for the scheduling of a "Compliance Hearing" seeking judicial approval of Cranford's adopted Housing Element and Fair Share Plan (hereinafter "Affordable Housing Plan") and other required documents. Although it is expected that the Special Master will provide the majority of the required testimony at both the Fairness Hearing and the Compliance Hearing, Cranford shall also make its consulting planner and any

other relevant witnesses available for testimony at the Hearings. As long as the Affordable Housing Plan complies with the terms set forth herein, FSHC shall support the Township's application for approval of its Affordable Housing Plan at the Compliance Hearing. If the Court approves this Agreement after a Fairness Hearing, the parties hereto agree not to appeal the Court's approval. If the Court approves the Affordable Housing Plan following a Compliance Hearing, the parties agree that the Township will be entitled to either a "Judgment of Compliance and Repose" ("JOR") or the "judicial equivalent of substantive certification and accompanying protection as provided under the FHA," 221 N.J. at 6, which shall be determined by the trial judge. Each party may advocate regarding whether substantive certification or repose should be provided by the Court, with each party agreeing to accept either form of relief and to not appeal an order granting either repose or substantive certification. The parties further agree that the JOR shall insulate the Township and its Planning Board from, among other things, exclusionary zoning litigation through July 7, 2025.

23. Subsequent to the signing of this Agreement, if a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch determines that Cranford's Round 3 obligation is decreased to 352 or less, with any relevant appeal periods having passed, the Township may file a proposed form of Order, on notice to FSHC and the Township's Service List, seeking to reduce its Round 3 obligation accordingly. Such relief shall be presumptively granted. Notwithstanding any such reduction, or in the event of a successful appeal pursuant to Paragraph 6 of this agreement, the Township shall be obligated to implement the Housing Element and Fair Share Plan prepared, adopted and endorsed as a result of this Agreement, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement, maintaining all mechanisms to continue to address the remaining portion of the Township's allocation of the Round 3 regional need, and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Township's obligation below what is established in this Agreement does not provide a basis for seeking leave to amend this Agreement or the Fair Share Plan adopted pursuant to this Agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Township prevails in reducing its prospective need for Round 3, the Township may carry over any resulting surplus credits to Round 4.

24. The Township shall prepare a Spending Plan for approval by the Court during, or prior to, the duly-noticed Compliance Hearing. FSHC reserves its right to provide any comments or objections on the Spending Plan to the Court upon review. Upon approval by the Court, the Township and FSHC agree that the expenditures of funds contemplated in the Township's Spending Plan shall constitute the "commitment" for expenditure required pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period contemplated therein commencing in accordance with the provisions of applicable law. Upon approval of its Spending Plan, the Township shall also provide an annual Mount Laurel Trust Fund accounting report to the New Jersey Department of Community Affairs, Council on Affordable Housing, Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to FSHC and

posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services.

25. On the first anniversary of the Judgment of Compliance and Repose, and every anniversary thereafter through the end of this Agreement, the Township agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC. In addition to the foregoing, the Township may also post such activity on the CTM system and/or file a copy of its report with the Council on Affordable Housing or its successor agency at the State level.

26. The Fair Housing Act includes two provisions regarding actions to be taken by the Township during the ten-year period of protection provided in this agreement. The Township agrees to comply with those provisions as follows:

a) For the midpoint realistic opportunity review due on July 7, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether the mechanisms to meet unmet need should be revised or supplemented. Such posting shall provide the opportunity for the aforementioned entities to submit comments to the municipality regarding whether any sites no longer present a realistic opportunity and should be replaced and whether the mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues.

b) For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of the Judgment of Compliance and Repose, and every third year thereafter, the Township will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall provide the opportunity for entities to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.

c) In addition to the foregoing postings, the Township may also elect to file copies of its reports with the Council on Affordable Housing or its successor agency at the State level.

27. This Agreement may be enforced by the Township or FSHC through a motion to enforce litigant's rights or a separate action filed in Superior Court, Union County. If FSHC determines that such action is necessary, the Township consents to the entry of an order providing FSHC party status as an intervenor solely for purposes of its motion to enforce litigant's rights.

28. The Township will ensure that the sum of $50,000 in payment of fees and costs is conveyed to Fair Share Housing Center within 60 days of the approval of this Agreement by court order following a Fairness Hearing. The Township may enter into a separate agreement with Developer(s) for the payment of the entire fee of $50,000.00 to be paid to FSHC, but failure to secure payment from Developer(s) shall not remove the requirement that $50,000 shall be conveyed to FSHC within 30 days of the approval pursuant to a duly-notice fairness hearing. The Township agrees to enter into agreements with the developers that require the payment of the funds to their counsel to be held in escrow within 30 days of the execution of the agreements between the Township and intervenors and before the fairness hearing in this matter.

29. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement. However, if an appeal of the Court's approval or rejection of the Settlement Agreement is filed by a third party, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division, and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved by the Trial Court unless and until an appeal of the Trial Court's approval is successful, at which point the Parties reserve their right to return to the *status quo ante*. In this regard, the Township and FSHC acknowledge that the parties have entered into this Agreement to settle the litigation and that each is free to take such position as it deems appropriate should the matter return to the *status quo ante*.

30. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

31. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

32. This Agreement may not be modified, amended or altered in any way except by a writing signed by both the Township and FSHC.

33. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

34. The Township and FSHC acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each person to sign this Agreement is the proper person and possesses the authority to sign the Agreement, that this Agreement contains the entire understanding of the Township and FSHC and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

35. The Township and FSHC acknowledge that this Agreement was not drafted by the Township and FSHC, but was drafted, negotiated and reviewed by representatives of the Township and FSHC and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. The Township and FSHC expressly represent that: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the persons executing it.

36. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both the Township and FSHC.

37. This Agreement constitutes the entire Agreement between the Township and FSHC hereto and supersedes all prior oral and written agreements between the Township and FSHC with respect to the subject matter hereof except as otherwise provided herein.

38. No member, official or employee of the Township shall have any direct or indirect interest in this Settlement Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

39. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which representatives of the Township and FSHC have executed and delivered this Agreement.

40. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the Township and FSHC by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

TO FSHC: Kevin Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002

Phone: (856) 665-5444
Telecopier: (856) 663-8182
Email: adamgordon@fairsharehousing.org

TO THE TOWNSHIP:

Michael J. Edwards, Esq.
Jeffrey R. Surenian & Associates, LLC
707 Union Avenue, Suite 301
Brielle, NJ 08730
Phone: (732) 612-3100
Telecopier: (732) 612-3101
Email: MJE@Surenian.com

WITH A COPY TO THE TOWNSHIP ADMINISTRATOR:

Township Administrator
Township of Cranford
Jamie Cryan
Cranford, NJ 07016
Email: j-cryan@cranfordnj.org

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Witness/Attest:

FAIR SHARE HOUSING CENTER:

By: _____
Kevin Walsh, Esq.
On Behalf of Fair Share Housing Center

Dated: November 8, 2019

Witness/Attest:

Ryan J. Cooper, Esq.

TOWNSHIP OF CRANFORD:

By: _____
Patrick Giblin, Mayor
On Behalf of the Township of Cranford

Dated: Nov. 12, 2019

EXHIBIT A
Vacant Land Analysis

ATTACHMENT A
LAND INVENTORY TABLES

Class 1 (Private Vacant), Class 3A/3B (Farmland), and 4A (Commercial) Lands
Cranford Township, Union County, NJ

	BLOCK	LOT	LOCATION	OWNER	CLASS	TOTAL AREA	RETAIL AREA	OFFICE AREA	TOTAL COMMERCIAL AREA	GROSS TOTAL VACANT AREA	REASON	NET TOTAL VACANT AREA
1	109	38	16 NOMAHEGAN CT	DI FABIO, EMILIO	1	0.28	-	-	-	0.28	EXCLUDED DUE TO SMALL SIZE	0.00
2	142	11	200 FIFTH AVE CARWOOD, NJ	MALCOLM, RICHARD/KRIST, TRICIA A	1	0.05	-	-	-	0.05	EXCLUDED DUE TO SMALL SIZE	0.00
3	144	37	INDIAN SPRING RD	KANE, LARRY	1	0.13	-	-	-	0.13	EXCLUDED DUE TO SMALL SIZE	0.00
4	177	2.01	259 NORTH AVE W.	THE TOWN BANK	1	0.33	-	-	-	0.33	EXCLUDED DUE TO SMALL SIZE	0.00
5	177	4.01	245 NORTH AVE W	THE TOWN BANK	1	0.12	-	-	-	0.12	EXCLUDED DUE TO SMALL SIZE	0.00
6	183	9.01	195 NORTH AVE W	GASPORT INC % BHUPENDRA LAL	1	5.34	-	-	-	5.34	EXCLUDED DUE TO SMALL SIZE	0.00
7	181	5	111-115 UNION AVE N	MONE RIA CORP	1	0.08	-	-	-	0.08	EXCLUDED DUE TO SMALL SIZE	0.00
8	281	9	74 GARDEN ST	BUONTEMPO, MARY	1	0.23	-	-	-	0.23	EXCLUDED DUE TO SMALL SIZE	0.00
9	285	24.01	237 CRANFORD AVE	CRANFORD AVE LLC	1	0.23	-	-	-	0.23	EXCLUDED DUE TO SMALL SIZE	0.00
10	285	23	239 CRANFORD AVE	CRANFORD AVENUE LLC	1	0.15	-	-	-	0.15	EXCLUDED DUE TO SMALL SIZE	0.00
11	285	26	237 CRANFORD AVE	CRANFORD AVENUE LLC	1	0.16	-	-	-	0.16	EXCLUDED DUE TO SMALL SIZE	0.00
12	286	3	ORANGE AVE	PALMADESSO GEN BLDG CONTRACTORS INC	1	0.07	-	-	-	0.07	EXCLUDED DUE TO SMALL SIZE	0.00
13	291	12	ROSELLE AVE	RUPP, RICHARD & JANET	1	0.03	-	-	-	0.03	EXCLUDED DUE TO SMALL SIZE	0.00
14	296	5.02	212 CRANFORD AVE	HIGGINS, CHARLES R & SHEENA P	1	0.21	-	-	-	0.21	EXCLUDED DUE TO SMALL SIZE	0.00
15	303	4	12 BLOOMINGDALE AVE	CHIZZONITI, LINDA	1	0.43	-	-	-	0.43	EXCLUDED DUE TO SMALL SIZE	0.00
16	304	2.03	126 BLOOMINGDALE AVE	GARRETSON, JOHN S, LAMAR, VERONICA	1	0.41	-	-	-	0.41	EXCLUDED DUE TO SMALL SIZE	0.00
17	305	10	204 UNION AVE N	MADORMA, MARIO	1	0.23	-	-	-	0.23	EXCLUDED DUE TO SMALL SIZE	0.00
18	310	1	OSBORNE PL	MATUS, ROBERT & CAROL	1	0.04	-	-	-	0.04	EXCLUDED DUE TO SMALL SIZE	0.00
19	334	8.02	134 GROVE ST, ROSELLE PK	OLAZO, KIEL V & MERLIE S	1	0.03	-	-	-	0.03	EXCLUDED DUE TO SMALL SIZE	0.00
20	335	11.01	CARPENTER PL REAR	HANSEN, KENNETH & MARILYN	1	0.01	-	-	-	0.01	EXCLUDED DUE TO SMALL SIZE	0.00
21	335	11.02	CARPENTER PL REAR	CHENG, SHING SHEUNG	1	0.03	-	-	-	0.03	EXCLUDED DUE TO SMALL SIZE	0.00
22	335	12	CARPENTER PL REAR	KRIEG, JOHN	1	0.03	-	-	-	0.03	EXCLUDED DUE TO SMALL SIZE	0.00
23	335	14	CARPENTER PL REAR	RYBICKE ZYGMUNT & FRANCISZKA	1	0.06	-	-	-	0.06	EXCLUDED DUE TO SMALL SIZE	0.00
24	335	15	CARPENTER PL REAR	VIEIRA, ROGERIO FRANCISCO	1	0.05	-	-	-	0.05	EXCLUDED DUE TO SMALL SIZE	0.00
25	335	16	CARPENTER PL REAR	MOSSUCCO, FRANK & ANN	1	0.05	-	-	-	0.05	EXCLUDED DUE TO SMALL SIZE AND ADJACENT TO KNOWN CONTAMINATED SITE	0.00
26	340	1	MAGNOLIA WOOD AVE	BRANFORD BUILDERS % WOODSIDE ASSO	1	0.31	-	0.31	0.31	0.00	EXCLUDED DUE TO SMALL SIZE	0.00
27	400	84.01	15 ELISE ST	PEIXOTO, ALVARO	1	0.34	-	0.34	0.34	0.00	EXCLUDED DUE TO SMALL SIZE	0.00
28	406	6	92 JAMES AVE	DE GEORGE, MICHELINA	1	0.17	-	-	-	0.17	EXCLUDED DUE TO SMALL SIZE	0.00
29	407	7	110 PRESTON AVE	DENICOLA, CARMINE P & DEBORAH	1	0.11	-	-	-	0.11	EXCLUDED DUE TO SMALL SIZE	0.00
30	420	2.01	74 BENJAMIN ST	DIORIO, ADALAGISA	1	0.13	-	-	-	0.13	EXCLUDED DUE TO SMALL SIZE	0.00
31	445	33	26 CONNECTICUT ST	SNYDER, SANNA A, GAIL D	1	0.16	-	-	-	0.16	EXCLUDED DUE TO SMALL SIZE AND ADJACENT TO KNOWN CONTAMINATED SITE	0.00
32	473	12	15 WASHINGTON PL	METER, WILLIAM E & JACQUELINE	1	0.19	-	-	-	0.19	CONTAMINATED SITE	0.00
33	473	33	15 WOODLAWN AVE	CAMPOS, JORGE & ROSE MARY	1	0.30	-	-	-	0.30	EXCLUDED DUE TO SMALL SIZE	0.00
34	474	1.03	7 SOUTH AVE W	EAST COAST CRANFORD CROSSING LLC	1	0.47	-	-	-	0.47	EXCLUDED DUE TO SMALL SIZE AND ADJACENT TO KNOWN CONTAMINATED SITE	0.00
35	476	2.01	11 SOUTH AVE E	EAST COAST CRANFORD CROSSING LLC	1	0.34	-	-	-	0.34	EXCLUDED DUE TO SMALL SIZE	0.00
36	481	5.01	200 SOUTH AVE E	RIVERFRONT DEVELOPERS LLC	1	0.18	-	-	-	0.18	EXCLUDED DUE TO SMALL SIZE AND SITE IS A KNOWN CONTAMINATED SITE	0.00
37	481	5.02	206 SOUTH AVE E	RIVERFRONT DEVELOPERS, LLC	1	0.36	-	-	-	0.36	EXCLUDED DUE TO SMALL SIZE AND SITE IS A KNOWN CONTAMINATED SITE	0.00
38	481	6	216 SOUTH AVE E	RIVERFRONT DEVELOPERS, LLC	1	0.07	-	-	-	0.07	EXCLUDED DUE TO SMALL SIZE	0.00
39	481	24.01	34 GROVE ST	DELLA SERRA, FRANCES	1	0.17	-	-	-	0.17	EXCLUDED DUE TO SMALL SIZE	0.00
40	487	1.01	WALNUT AVE	PUBLIC SERVICE E & G CO % TAX DEPT	1	0.53	-	-	-	0.53	EXCLUDED DUE TO SMALL SIZE	0.00
41	492	8	8 HOLLYWOOD AVE	WITTING, LORRAINE	1	0.23	-	-	-	0.23	EXCLUDED DUE TO SMALL SIZE	0.00
42	514	10.02	128 THOMAS ST	DELLA SALA, ROSE % GEORGE TOLL	1	0.20	-	-	-	0.20	EXCLUDED DUE TO SMALL SIZE	0.00
43	518	19	110 CENTENNIAL AVE LLC	RANKIN, WARREN	1	0.13	-	-	-	0.13	EXCLUDED DUE TO SMALL SIZE	0.00
44	526	11	57 WINANS AVE	ARCHITECTURAL HOLDINGS LLC	1	0.11	-	-	-	0.11	EXCLUDED DUE TO SMALL SIZE	0.00
45	527	13	WINANS AVE.	CRANFORD POINT, LLC	1	0.21	-	-	-	0.21	EXCLUDED DUE TO SMALL SIZE AND ADJACENT TO KNOWN CONTAMINATED SITE	0.00
46	528	43.02	98 WINANS AVE	ASHLEY BUSINESS PARK LLC	1	0.16	-	-	-	0.16	EXCLUDED DUE TO SMALL SIZE	0.00
47	533	19	QUINE ST REAR	TWIN OAKS REALTY DEVELOPMENT LLC	1	0.04	-	-	-	0.04	EXCLUDED DUE TO SMALL SIZE	0.00
48	533	6.01	HEINRICH ST	MOSHE RG PROPERTY LLC	1	6.44	-	-	-	6.44	EXCLUDED DUE TO SMALL SIZE	0.00
49	533	12.06	12 HALE ST	MOSHE RG PROPERTY LLC	1	0.02	-	-	-	0.02	EXCLUDED DUE TO SMALL SIZE	0.00
50	534	12.07	14 HALE ST	MOSHE RG PROPERTY LLC	1	0.02	-	-	-	0.02	EXCLUDED DUE TO SMALL SIZE	0.00
51	534	12.08	18 HALE ST	MOSHE RG PROPERTY LLC	1	0.02	-	-	-	0.02	EXCLUDED DUE TO SMALL SIZE	0.00
52	534	12.09	16 HALE ST	MOSHE RG PROPERTY LLC	1	0.02	-	-	-	0.02	EXCLUDED DUE TO SMALL SIZE	0.00
53	534	12.10	20 HALE ST	MOSHE RG PROPERTY LLC	1	0.02	-	-	-	0.02	EXCLUDED DUE TO SMALL SIZE	0.00
54	534	12.18	HEINRICH ST	TWIN OAKS REALTY DEVELOPMENT	1	1.58	-	-	-	1.58	NOT ON TAX MAP; UNDERSIZED VACANT LAND ON BLOCK 534	1.58
55	534	1.02	43 HALE ST	FRANDESE, FRANK/PODSIEREZ/MAKANDREW	1	0.11	-	-	-	0.11	EXCLUDED DUE TO SMALL SIZE AND ADJACENT TO KNOWN CONTAMINATED SITE	0.00
56	535	4.02	HALE ST	TWIN OAKS REALTY DEVELOPMENT	1	0.03	-	-	-	0.03	EXCLUDED DUE TO SMALL SIZE	0.03
57	535	5	600 SOUTH AVE E REAR	O'NEILL, JOSEPH E	1	0.02	-	-	-	0.02	EXCLUDED DUE TO SMALL SIZE	0.02
58	538	7	10 QUINE ST	PETRO PLASTICS CO	1	0.17	-	-	-	0.17	EXCLUDED DUE TO SMALL SIZE AND ADJACENT TO KNOWN CONTAMINATED SITE	0.00
59	562	1	ADJ GARDEN STATE PKWY	PUBLIC SERVICE E & G CO % TAX DEPT	1	0.28	-	-	-	0.28	EXCLUDED DUE TO SMALL SIZE	0.00
60	564	7	REAR OF LOT 6	DOWD, RAYMOND & REBECCA	1	0.03	-	-	-	0.03	EXCLUDED DUE TO SMALL SIZE	0.00
61	571	5.01	HOBY ST	LITTLE, ROESCHN & CYNTHIA	1	0.20	-	-	-	0.20	EXCLUDED DUE TO SMALL SIZE	0.00
62	571	17	184 BALTIMORE AVE	DRESCHNIOL, RICHARD MICHAEL	1	0.11	-	-	-	0.11	EXCLUDED DUE TO SMALL SIZE	0.00
63	574	1	BALTIMORE AVE	PHANOWSKI, J & M, JOSEPH P	1	0.06	-	-	-	0.06	EXCLUDED DUE TO SMALL SIZE	0.00
64	575	2	209 BALTIMORE AVE	VALPIEL, ERNEST W & DONNA K	1	0.06	-	-	-	0.06	EXCLUDED DUE TO SMALL SIZE	0.00
65	575	5	496 CENTENNIAL AVE	DENNY, BRIAN T	1	0.18	-	-	-	0.18	EXCLUDED DUE TO SMALL SIZE	0.00
66	584	3.01	54 WALL ST	PHANOWSKI, CHARLES J ET AL	1	0.13	-	-	-	0.13	EXCLUDED DUE TO SMALL SIZE	0.00
67	588	5.02	50 WALL ST	PHANOWSKI, CHARLES ET AL	1	0.13	-	-	-	0.13	EXCLUDED DUE TO SMALL SIZE	0.00
68	588	3.03	50 WALL ST	PHANOWSKI, CHARLES ET AL	1	0.13	-	-	-	0.13	EXCLUDED DUE TO SMALL SIZE	0.00
69	588	4	ARTHUR ST	FAIR, JAMES ANDREW	1	0.09	-	-	-	0.09	EXCLUDED DUE TO SMALL SIZE	0.00
70	600	1	MYRTLE ST	HILAIRE, SUZANNE DIORRICO, LISA D	1	0.04	-	-	-	0.04	EXCLUDED DUE TO SMALL SIZE	0.00
71	634	3	MYRTLE ST	HILAIRE, SUZANNE DIORRICO, LISA D	1	0.09	-	-	-	0.09	EXCLUDED DUE TO SMALL SIZE	0.00

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SITE #	BLOCK	LOT	LOCATION	OWNER	LAND USE CLASS	TOTAL AREA	WETLANDS AREA	FLOOD AREA	CONSTRAINED AREA	NET BUILDABLE AREA	COMMENTS	TOTAL DEVELOPABLE AREA
73	638	4.01	MASTE/OGAM AVE	CENTRAL GRANT CRD ASSOCIATION	1	0.19	-	-	-	0.19	EXCLUDED DUE TO SMALL SIZE	0.00
74	640	10	JACKSON DR REAR	HUSOSKY: JOHN & SIMONE	1	0.01	-	-	-	0.01	EXCLUDED DUE TO SMALL SIZE	0.00
75	640	13	JACKSON DR REAR	HUSOSKY: JOHN & SIMONE	1	0.06	-	-	-	0.06	EXCLUDED DUE TO SMALL SIZE	0.00
76	640	15	JACKSON DR REAR	BARA: FREDERICK & MARY ANN	1	0.04	-	-	-	0.04	EXCLUDED DUE TO SMALL SIZE	0.00
77	642	5	653 RARITAN RD	GRABER ROGG INC	1	0.13	-	-	-	0.13	EXCLUDED DUE TO SMALL SIZE	0.00
78	642	7	647 RARITAN RD	SIVERINO: A & B / SPIRN: F & S	1	0.27	-	-	-	0.27	EXCLUDED DUE TO SMALL SIZE	0.00
79	642	9	MC KINLEY ST	MADORMA: MARIO % PNC REALTY	1	0.14	-	-	-	0.14	EXCLUDED DUE TO SMALL SIZE	0.00
80	151	14	SPRINGFIELD & BROOKSIDE	FAIRVIEW MANOR LLC	3B	5.27	-	5.27	5.27	0.00	EXCLUDED DUE TO 100-YR FLOOD PLAIN AND RIPARIAN ZONE	0.00
81	604	10	517 CENTENNIAL AVE	DARK ELF MANAGEMENT LLC	4A	0.44	-	-	-	0.44	EXCLUDED DUE TO SMALL SIZE	0.00
											TOTAL LAND AREA CONTRIBUTING TO RDP OF PRIVATE VACANT LANDS:	0.00

SOURCE: NJ PROPERTY TAX, ACCESSED ON JULY 24, 2012.

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Class 15C (Public) Lands
Cranford Township, Union County, NJ

BLOCK	LOT	LOCATION	OWNER	LANDUSE CODE	GIS AREA	WETLANDS AREA	HEDGE AREA	PROVIDE ENCUMBERED AREA	DEDUCTIBLE AREA	ROSI/LAND	COMMENTS	ROSI/LAND AREA
101.01	1	KENILWORTH BLVD	UNION COUNTY DIV PARKS & RECREATION	15C	30.19	15.69	25.69	22.19	3.00	ROSI	LENAPE PARK	0.00
101.02	1	KENILWORTH BLVD	UNION COUNTY DIV PARKS & RECREATION	15C	6.13	1.34	5.61	5.61	0.32	ROSI	LENAPE PARK	0.00
102.01	1	KENILWORTH BLVD	UNION COUNTY DIV PARKS & RECREATION	15C	9.44	9.44	9.44	9.44	-	ROSI	LENAPE PARK	0.00
102.02	1	KENILWORTH BLVD	UNION COUNTY DIV PARKS & RECREATION	15C	14.50	14.50	14.50	14.50	-	ROSI	LENAPE PARK	0.00
102.03	1	KENILWORTH BLVD	UNION COUNTY DIV PARKS & RECREATION	15C	8.31	4.82	7.31	7.90	0.66	ROSI	LENAPE PARK	0.00
102.04	1	KENILWORTH BLVD	UNION COUNTY DIV PARKS & RECREATION	15C	0.04	-	0.04	0.04	-		EXCLUDED DUE TO SMALL SIZE	0.00
102.05	1	KENILWORTH BLVD	UNION COUNTY DIV PARKS & RECREATION	15C	0.54	-	0.54	0.54	-	ROSI	LENAPE PARK; EXCLUDED DUE TO SMALL SIZE	0.00
102.06	1	100 KENILWORTH BLVD	UNION COUNTY DIV PARKS & RECREATION	15C	0.71	-	0.71	0.71	-	ROSI	LENAPE PARK; EXCLUDED DUE TO SMALL SIZE	0.00
103	1	RIVERSIDE DR	UNION COUNTY DIV PARKS & RECREATION	15C	25.55	15.15	25.55	25.53	0.02	ROSI	NOMAHEGAN PARK	0.00
104	1	KENILWORTH BLVD	UNION COUNTY DIV PARKS & RECREATION	15C	7.85	2.41	7.85	7.85	-	ROSI	NOMAHEGAN PARK	0.00
105	1	1600 SPRINGFIELD AVE	UNION COUNTY DIV PARKS & RECREATION	15C	58.77	53.80	58.80	59.76	1.01	ROSI	NOMAHEGAN PARK	0.00
109	58	NOMAHEGAN CT	TOWNSHIP OF CRANFORD	15C	0.05	-	0.01	0.01	0.04		EXCLUDED DUE TO SMALL SIZE	0.00
110	1	SPRINGFIELD AVE	TOWNSHIP OF CRANFORD	15C	0.41	-	-	-	0.41	ROSI	SPRINGFIELD&DELWORTH; EXCLUDED DUE TO SMALL SIZE	0.00
112	9.01	SHAWNEE RD	TOWNSHIP OF CRANFORD	15C	0.04	-	-	-	0.04		EXCLUDED DUE TO SMALL SIZE	0.00
116	1	PANNELL RD REAR	TOWNSHIP OF CRANFORD	15C	0.04	-	-	-	0.04		EXCLUDED DUE TO SMALL SIZE	0.00
117	25	RUTGERS RD	TOWNSHIP OF CRANFORD	15C	0.01	-	-	-	0.01		EXCLUDED DUE TO SMALL SIZE	0.00
130	1	COLBY LN - STRIP	TOWNSHIP OF CRANFORD	15C	0.07	-	-	-	0.07		EXCLUDED DUE TO SMALL SIZE	0.00
132	19	150 CORNELL RD REAR	TOWNSHIP OF CRANFORD	15C	0.04	-	-	-	0.04		EXCLUDED DUE TO SMALL SIZE	0.00
136	52	MANATOM DR	TOWNSHIP OF CRANFORD	15C	0.02	-	-	-	0.02	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
138	65	GALLOWS HILL RD REAR	TOWNSHIP OF CRANFORD	15C	0.07	-	-	-	0.07		EXCLUDED DUE TO SMALL SIZE	0.00
138	55	BERGEN ST	TOWNSHIP OF CRANFORD	15C	3.40	2.54	-	2.94	3.47	ROSI	ROSI	0.00
140	11	2 CEDAR ST	TOWNSHIP OF CRANFORD	15C	0.19	-	-	-	0.19	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
141	1	BROOKSIDE PL	TOWNSHIP OF CRANFORD	15C	0.01	-	-	-	0.01		EXCLUDED DUE TO SMALL SIZE	0.00
143	3	2 FIFTH AVE	TOWNSHIP OF CRANFORD	15C	0.29	-	-	-	0.29	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
144	44	GALLOWS HILL RD REAR	TOWNSHIP OF CRANFORD	15C	0.0034	-	-	-	0.0034	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
144	45	GALLOWS HILL RD REAR	TOWNSHIP OF CRANFORD	15C	0.0014	-	-	-	0.0014		EXCLUDED DUE TO SMALL SIZE	0.00
158	37	BEECH ST	TOWNSHIP OF CRANFORD	15C	0.02	-	-	-	0.02		EXCLUDED DUE TO SMALL SIZE	0.00
160	27	ORCHARD ST	TOWNSHIP OF CRANFORD	15C	0.02	-	-	-	0.02		EXCLUDED DUE TO SMALL SIZE	0.00
162	35	RAMSGATE RD	TOWNSHIP OF CRANFORD	15C	0.04	-	-	-	0.04		EXCLUDED DUE TO SMALL SIZE	0.00
168	1	104 HAMPTON ST	TOWNSHIP OF CRANFORD	15C	1.37	-	1.37	1.37	-	ROSI	HAMPTON PARK	0.00
168	6	HAMPTON ST	TOWNSHIP OF CRANFORD	15C	9.12	-	9.12	9.12	-		EXCLUDED DUE TO SMALL SIZE	0.00
174	23	SPRING GARDEN ST REAR	TOWNSHIP OF CRANFORD	15C	0.04	-	-	-	0.04		EXCLUDED DUE TO SMALL SIZE	0.00
177	9.02	243 NORTH AVE W REAR	TOWNSHIP OF CRANFORD	15C	0.02	-	-	-	0.02		EXCLUDED DUE TO SMALL SIZE	0.00
180	1	125 EASTMAN ST	UNION COUNTY DIV PARKS & RECREATION	15C	2.73	-	2.59	2.59	0.14	ROSI	MCCONNEL PARK	0.00
181	1	8 MOLLY ST	TOWNSHIP OF CRANFORD	15C	6.15	-	-	-	6.15	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
181	10	3 MILN ST	U S GOVERNMENT % GENERAL SERV ADM	15C	1.11	-	-	-	1.11		DEVELOPED SITE	0.00
182	1	2 MILN ST	TOWNSHIP OF CRANFORD	15C	0.03	-	-	-	0.03		EXCLUDED DUE TO SMALL SIZE	0.00
184	18	901 SPRINGFIELD AVE	TOWNSHIP OF CRANFORD	15C	9.73	-	9.73	9.73	-	ROSI	SPRINGFIELD TENNIS COURTS; EXCLUDED DUE TO SMALL SIZE	0.00
185	11.01	108 MOLY ST	TOWNSHIP OF CRANFORD	15C	1.45	-	-	-	1.45		DEVELOPED SITE	0.00
190	1	15 NORTH AVE W	TOWNSHIP OF CRANFORD	15C	0.10	-	-	-	0.10		EXCLUDED DUE TO SMALL SIZE	0.00
191	19	36 ALDEN ST	TOWNSHIP OF CRANFORD	15C	0.25	-	-	-	0.25		EXCLUDED DUE TO SMALL SIZE; PARKING LOT	0.00
193	9.01	7 SPRINGFIELD AVE	TOWNSHIP OF CRANFORD	15C	1.38	-	-	-	1.38		DEVELOPED SITE	0.00
194	1	NORTH & SPRINGFIELD AVE	TOWNSHIP OF CRANFORD	15C	0.01	-	0.01	0.01	-		EXCLUDED DUE TO SMALL SIZE	0.00
195	11	20 NORTH AVE E	TOWNSHIP OF CRANFORD	15C	0.58	-	0.44	0.44	0.14		EXCLUDED DUE TO SMALL SIZE; PARKING LOT	0.00
196	1.01	8 SPRINGFIELD AVE	TOWNSHIP OF CRANFORD	15C	2.35	-	1.90	1.90	0.45		DEVELOPED SITE	0.00
196	2.01	124 UNION AVE N	UNION COUNTY DIV PARKS & RECREATION	15C	1.91	-	1.90	1.90	0.01	ROSI	SPERRY PARK	0.00
200	32	RAHWAY RIVER	UNION COUNTY DIV PARKS & RECREATION	15C	9.09	-	9.09	9.09	-		EXCLUDED DUE TO SMALL SIZE	0.00
202	26	151 KENILWORTH BLVD	UNION COUNTY % SHADE TREE COMM	15C	7.80	2.46	7.14	7.14	0.66	ROSI	ROSI	0.00
203	29	RIVERSIDE DR	TOWNSHIP OF CRANFORD	15C	0.04	-	0.04	0.04	-	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
210	7	STONE ST	TOWNSHIP OF CRANFORD	15C	0.35	-	-	-	0.35	ROSI	LOT RENUMBERED; INCLUDED IN TABLE UNDER NEW NUMBER (11-MARCH-19)	0.00
211	5	STONE ST - STRIP W SIDE	TOWNSHIP OF CRANFORD	15C	0.07	-	-	-	0.07	ROSI	LOT RENUMBERED; INCLUDED IN TABLE UNDER NEW NUMBER (11-MARCH-19)	0.00
212	15	HERNING AVE	TOWNSHIP OF CRANFORD	15C	0.01	-	-	-	0.01		EXCLUDED DUE TO SMALL SIZE	0.00
214	4.02	609 RIVERSIDE DR	TOWNSHIP OF CRANFORD	15C	0.10	-	0.10	0.10	-		EXCLUDED DUE TO SMALL SIZE	0.00
215	12	15 RICHMOND AVE	TOWNSHIP OF CRANFORD	15C	0.20	-	0.20	0.20	-	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
216	11	103 EDGAR AVE	TOWNSHIP OF CRANFORD	15C	0.09	-	0.09	0.09	-		EXCLUDED DUE TO SMALL SIZE	0.00
219	18	26 ELMORA AVE	TOWNSHIP OF CRANFORD	15C	0.11	-	0.02	0.02	0.09		EXCLUDED DUE TO SMALL SIZE	0.00
221	1	350 SPRINGFIELD AVE	TOWNSHIP OF CRANFORD	15C	0.67	-	0.04	0.04	0.63		PARK	0.00
222	13	CENTRAL AVE	TOWNSHIP OF CRANFORD	15C	0.02	-	-	-	0.02		EXCLUDED DUE TO SMALL SIZE	0.00
225	1	202 CENTRAL AVE	TOWNSHIP OF CRANFORD	15C	0.38	-	-	-	0.38		EXCLUDED DUE TO SMALL SIZE	0.00
226	18	RIVERSIDE DR	TOWNSHIP OF CRANFORD	15C	0.03	-	-	-	0.03		EXCLUDED DUE TO SMALL SIZE	0.00
233	27	DUNHAM AVE REAR	TOWNSHIP OF CRANFORD	15C	0.000122	-	-	-	0.000122		EXCLUDED DUE TO SMALL SIZE	0.00
233	39	5 OAK LN	TOWNSHIP OF CRANFORD	15C	0.20	-	-	-	0.20	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
242	1	RIDGE ST	TOWNSHIP OF CRANFORD	15C	3.64	1.19	-	1.19	2.46	ROSI	LOT RENUMBERED; INCLUDED IN TABLE UNDER NEW NUMBER (11-MARCH-19)	0.00
242	2	RIDGE ST	TOWNSHIP OF CRANFORD	15C	0.39	0.03	-	0.03	0.35		LOT RENUMBERED; INCLUDED IN TABLE UNDER NEW NUMBER (11-MARCH-19)	0.00
243	3	RIDGE ST	TOWNSHIP OF CRANFORD	15C	1.71	-	-	-	1.71	ROSI	RIDGE STREET/BELMONT AVENUE	0.00
251	1	131 Orange Avenue	TOWNSHIP OF CRANFORD	15C	3.70	-	-	-	-		THEODORE ROOSEVELT PARK	0.00
251	4	11 PACIFIC AVE	TOWNSHIP OF CRANFORD	15C	0.53	-	-	-	0.53	ROSI	ORANGE AVENUE; EXCLUDED DUE TO SMALL SIZE	0.00
253	19	BELMONT AVE	TOWNSHIP OF CRANFORD	15C	0.06	-	-	-	0.06		EXCLUDED DUE TO SMALL SIZE	0.00
253	11	BIRCH ST	TOWNSHIP OF CRANFORD	15C	0.98	-	-	-	0.98	ROSI	ROSI	0.00
254	1	ORANGE AVE	TOWNSHIP OF CRANFORD	15C	0.51	-	-	-	0.51	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
255	1	1036 ORANGE AVE	TOWNSHIP OF CRANFORD	15C	19.60	-	-	-	19.60	ROSI	ORANGE AVENUE POOL	0.00
260	1	256 SPRINGFIELD AVE	TOWNSHIP OF CRANFORD	15C	0.24	-	0.24	0.24	-	ROSI	CANOE CLUB ACC; EXCLUDED DUE TO SMALL SIZE	0.00
261	8	RIVERSIDE DR	UNION COUNTY DIV PARKS & RECREATION	15C	9.09	-	9.06	9.08	0.01	ROSI	RAHWAY RIVER PARKWAY; EXCLUDED DUE TO SMALL SIZE	0.00
262	1	30 SPRINGFIELD AVE	UNION COUNTY DIV PARKS & RECREATION	15C	0.57	-	0.44	0.44	0.13	ROSI	RAHWAY RIVER PARKWAY; EXCLUDED DUE TO SMALL SIZE	0.00
262	3.01	38 SPRINGFIELD AVE	TOWNSHIP OF CRANFORD	15C	2.18	-	1.84	1.84	0.34	ROSI	HANSON PARK	0.00
262	3	10 SPRINGFIELD AVE	TOWNSHIP OF CRANFORD	15C	0.67	-	0.26	0.26	0.41	ROSI	CRANES PARK; EXCLUDED DUE TO SMALL SIZE	0.00
263	1	1 RIVERSIDE DR	UNION COUNTY DIV PARKS & RECREATION	15C	1.08	-	1.08	1.08	-	ROSI	RAHWAY RIVER PARKWAY	0.00
265	1	132 ORANGE AVE	TOWNSHIP OF CRANFORD	15C	0.11	-	0.11	0.11	-		EXCLUDED DUE TO SMALL SIZE	0.00
266	11	400 UNION AVE N	TOWNSHIP OF CRANFORD	15C	0.18	-	-	-	0.18	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00

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[illegible]	BLOCK	LOT	LOCATION	OWNER	LAND USE CLASS	GROSS AREA	WETLANDS AREA	FLOOD WAY AREA	TOTAL AREA RENUMBERED	TOTAL AREA UNDER NEW NUMBER	[illegible]	[illegible]	TOTAL AVAILABLE DEVELOPABLE AREA
80	281	11.02	219 CRANFORD AVE	TOWNSHIP OF CRANFORD	15C	0.21	-	-	-	0.21		EXCLUDED DUE TO SMALL SIZE	0.00
81	282	6	PACIFIC AVE	TOWNSHIP OF CRANFORD	15C	1.75	-	-	-	1.75	ROSI	LOT RENUMBERED; INCLUDED IN TABLE UNDER NEW NUMBER (11-MARCH-10)	0.00
82	282	7	PACIFIC AVE	TOWNSHIP OF CRANFORD	15C	0.82	-	-	-	0.82	ROSI	LOT RENUMBERED; INCLUDED IN TABLE UNDER NEW NUMBER (11-MARCH-10)	0.00
83	282	8	537 UNION AVE N	TOWNSHIP OF CRANFORD	15C	0.25	-	-	-	0.25	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
84	284	1	PACIFIC AVE & UNION AVE N	TOWNSHIP OF CRANFORD	15C	0.29	-	-	-	0.29	ROSI	LOT RENUMBERED; INCLUDED IN TABLE UNDER NEW NUMBER (11-MARCH-10)	0.00
85	285	12	163 GARDEN ST	TOWNSHIP OF CRANFORD	15C	0.18	-	-	-	0.18		EXCLUDED DUE TO SMALL SIZE	0.00
86	285	17	253 CRANFORD AVE	TOWNSHIP OF CRANFORD	15C	0.18	-	-	-	0.18	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
87	287	16	HASKINS AVE	TOWNSHIP OF CRANFORD	15C	4.91	-	-	-	4.91	ROSI	LOT RENUMBERED; INCLUDED IN TABLE UNDER NEW NUMBER (11-MARCH-10)	0.00
88	288	1	PACIFIC AVE	TOWNSHIP OF CRANFORD	15C	4.29	-	-	-	4.29	ROSI	LOT RENUMBERED; INCLUDED IN TABLE UNDER NEW NUMBER (11-MARCH-10)	0.00
89	293	2	210 BIRCHWOOD AVE	TOWNSHIP OF CRANFORD	15C	30.85	0.05	0.27	0.32	30.53		CONSERVATION CENTER	0.00
90	295	1	CRANFORD AVE	TOWNSHIP OF CRANFORD	15C	1.19	-	-	-	1.19		CONSERVATION CENTER	0.00
91	298	1	266 BLOOMINGDALE AVE	TOWNSHIP OF CRANFORD	15C	0.87	-	-	-	0.87		EXCLUDED DUE TO SMALL SIZE	0.00
92	298	5	BLOOMINGDALE AVE	TOWNSHIP OF CRANFORD	15C	0.03	-	-	-	0.03		EXCLUDED DUE TO SMALL SIZE	0.00
93	298	8	CRANFORD & BLOOMINGDALE	TOWNSHIP OF CRANFORD	15C	2.45	-	-	-	2.45	ROSI	ROSI	0.00
94	300	10	263 BLOOMINGDALE AVE	TOWNSHIP OF CRANFORD	15C	0.12	-	-	-	0.12		EXCLUDED DUE TO SMALL SIZE	0.00
95	300	18	242 CRANFORD AVE	TOWNSHIP OF CRANFORD	15C	0.38	-	-	-	0.38		EXCLUDED DUE TO SMALL SIZE	0.00
96	302	14	250 CRANFORD AVE	TOWNSHIP OF CRANFORD	15C	0.20	-	-	-	0.20	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
97	303	15	127 BLOOMINGDALE AVE	TOWNSHIP OF CRANFORD	15C	0.70	-	-	-	0.70	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
98	303	8	216 CRANFORD AVE	TOWNSHIP OF CRANFORD	15C	0.28	-	-	-	0.28		EXCLUDED DUE TO SMALL SIZE	0.00
99	305	4.01	14 HASKINS AVE	TOWNSHIP OF CRANFORD	15C	0.31	-	-	-	0.31		EXCLUDED DUE TO SMALL SIZE	0.00
100	309	13	HAMILTON AVE	TOWNSHIP OF CRANFORD	15C	2.01	-	-	-	2.01	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
101	312	18	NORTH AVE E	TOWNSHIP OF CRANFORD	15C	0.07	-	0.07	0.07	-		EXCLUDED DUE TO SMALL SIZE	0.00
102	313	1	8 CENTENNIAL AVE	TOWNSHIP OF CRANFORD	15C	0.18	-	0.18	0.18	-		EXCLUDED DUE TO SMALL SIZE; DEVELOPED SITE	0.00
103	317	15	326 NORTH AVE E	TOWNSHIP OF CRANFORD	15C	0.71	-	-	-	0.71		EXCLUDED DUE TO SMALL SIZE; PARKING LOT	0.00
104	319	10	364 NORTH AVE E	TOWNSHIP OF CRANFORD	15C	1.31	-	-	-	1.31		DEVELOPED SITE	0.00
105	320	57	SAILER ST REAR	TOWNSHIP OF CRANFORD	15C	0.06	-	-	-	0.06		EXCLUDED DUE TO SMALL SIZE	0.00
106	322	16	100 LAMBERT ST	TOWNSHIP OF CRANFORD	15C	1.77	-	-	-	1.77	ROSI	ADAMS PARK	0.00
107	322	19	VAN BEUREN AVE	TOWNSHIP OF CRANFORD	15C	0.16	-	-	-	0.16	ROSI	VAN BUREN PARK; EXCLUDED DUE TO SMALL SIZE	0.00
108	323	13	VAN BEUREN AVE REAR	TOWNSHIP OF CRANFORD	15C	0.63	-	-	-	0.63	ROSI	EXCLUDED DUE TO SMALL SIZE; ROSI	0.00
109	323	14	139 WADE AVE	TOWNSHIP OF CRANFORD	15C	0.03	-	-	-	0.03		EXCLUDED DUE TO SMALL SIZE	0.00
110	324	27	ALBANY AVE	TOWNSHIP OF CRANFORD	15C	0.20	-	-	-	0.20		EXCLUDED DUE TO SMALL SIZE; LANDLOCKED	0.00
111	325	1	101 LAMBERT ST	TOWNSHIP OF CRANFORD	15C	3.27	-	-	-	3.27	ROSI	ROSI	0.00
112	326	1	VAN BEUREN AVE	TOWNSHIP OF CRANFORD	15C	1.15	-	-	-	1.15	ROSI	ROSI	0.00
113	327	1	VAN BEUREN AVE	TOWNSHIP OF CRANFORD	15C	0.76	-	-	-	0.76	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
114	328	1	PINEWOOD AVE	TOWNSHIP OF CRANFORD	15C	0.01	-	0.01	0.01	-		EXCLUDED DUE TO SMALL SIZE	0.00
115	331	7	MAGNOLIAWOOD AVE	TOWNSHIP OF CRANFORD	15C	0.09	0.07	0.08	0.08	0.01	ROSI	LOT RENUMBERED; INCLUDED IN TABLE UNDER NEW NUMBER (11-MARCH-10)	0.00
116	331	8	MAGNOLIAWOOD AVE	UNION COUNTY	15C	3.26	0.08	3.28	3.28	0.00		LOT RENUMBERED; INCLUDED IN TABLE UNDER NEW NUMBER (11-MARCH-10)	0.00
117	333	1.01	NORTH AVE E	N.J. DEPT OF TRANSPORTATION	15C	0.39	-	-	-	0.39		EXCLUDED DUE TO SMALL SIZE; ROW	0.00
118	334	14	CARPENTER PL REAR	TOWNSHIP OF CRANFORD	15C	0.20	-	-	-	0.20		EXCLUDED DUE TO SMALL SIZE; ROW	0.00
119	335	10	29 CARPENTER PL	TOWNSHIP OF CRANFORD	15C	0.42	0.10	0.42	0.42	-	ROSI	LOT RENUMBERED; INCLUDED IN TABLE UNDER NEW NUMBER (11-MARCH-10)	0.00
120	336	1	41 CARPENTER PL	TOWNSHIP OF CRANFORD	15C	0.19	0.13	0.19	0.19	-	ROSI	LOT RENUMBERED; INCLUDED IN TABLE UNDER NEW NUMBER (11-MARCH-10)	0.00
121	336	2	43 CARPENTER PL	TOWNSHIP OF CRANFORD	15C	0.19	0.13	0.19	0.19	-	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
122	336	3	45 CARPENTER PL	TOWNSHIP OF CRANFORD	15C	0.25	0.18	0.25	0.25	-	ROSI	LOT RENUMBERED; INCLUDED IN TABLE UNDER NEW NUMBER (11-MARCH-10)	0.00
123	338	11	OSBORNE & HENRY PL	TOWNSHIP OF CRANFORD	15C	0.12	-	-	-	0.12	ROSI	LOT RENUMBERED; INCLUDED IN TABLE UNDER NEW NUMBER (11-MARCH-10)	0.00
124	340	2	CARPENTER PL	TOWNSHIP OF CRANFORD	15C	1.39	0.42	0.83	0.83	0.55	ROSI	LOT RENUMBERED; INCLUDED IN TABLE UNDER NEW NUMBER (11-MARCH-10)	0.00
125	340	3	101 CARPENTER PL	TOWNSHIP OF CRANFORD	15C	0.29	0.19	0.29	0.29	-	ROSI	LOT RENUMBERED; INCLUDED IN TABLE UNDER NEW NUMBER (11-MARCH-10)	0.00
126	402	14	18 BURNSIDE AVE	TOWNSHIP OF CRANFORD	15C	0.13	-	0.01	0.01	0.12		EXCLUDED DUE TO SMALL SIZE	0.00
127	402	18	22 BURNSIDE AVE	TOWNSHIP OF CRANFORD	15C	0.13	-	0.02	0.02	0.11		EXCLUDED DUE TO SMALL SIZE	0.00
128	402	19	26 ELISE ST	TOWNSHIP OF CRANFORD	15C	0.69	-	0.69	0.69	-		EXCLUDED DUE TO SMALL SIZE	0.00
129	403	34	30 ELISE ST	TOWNSHIP OF CRANFORD	15C	0.33	-	0.33	0.33	-		EXCLUDED DUE TO SMALL SIZE	0.00
130	403	34	35 JOHNSON AVE	TOWNSHIP OF CRANFORD	15C	0.17	-	-	-	0.17		JOHNSON AVENUE LOT; EXCLUDED DUE TO SMALL SIZE	0.00
131	403	39.01	39 JOHNSON AVE	TOWNSHIP OF CRANFORD	15C	1.92	-	-	-	1.92	ROSI	JOHNSON AVENUE LOT	0.00
132	403	6	119 NEW ST	TOWNSHIP OF CRANFORD	15C	0.08	-	-	-	0.08	ROSI	NEW STREET LOT; EXCLUDED DUE TO SMALL SIZE	0.00
133	403	67.01	36 JOHNSON AVE	TOWNSHIP OF CRANFORD	15C	0.34	-	0.34	0.34	-	ROSI	JOHNSON AVENUE LOT; EXCLUDED DUE TO SMALL SIZE	0.00
134	405	1	120 BESLER AVE	TOWNSHIP OF CRANFORD	15C	0.07	-	-	-	0.07		EXCLUDED DUE TO SMALL SIZE	0.00
135	412	20	12 DESLER AVE	TOWNSHIP OF CRANFORD	15C	0.08	-	-	-	0.08		EXCLUDED DUE TO SMALL SIZE	0.00
136	416	25	14 NEW ST	TOWNSHIP OF CRANFORD	15C	0.07	-	-	-	0.07		EXCLUDED DUE TO SMALL SIZE	0.00
137	421	23	61 BENJAMIN ST	TOWNSHIP OF CRANFORD	15C	0.13	-	-	-	0.13	ROSI	BENJAMIN STREET LOT; EXCLUDED DUE TO SMALL SIZE	0.00
138	421	3.01	15 LINCOLN AVE W	TOWNSHIP OF CRANFORD	15C	2.85	-	-	-	2.85	ROSI	LINCOLN PARK	0.00
139	427	11	DENMAN RD	TOWNSHIP OF CRANFORD	15C	0.05	-	-	-	0.05	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
140	431	23	216 RETFORD AVE	TOWNSHIP OF CRANFORD	15C	0.14	-	-	-	0.14		EXCLUDED DUE TO SMALL SIZE	0.00
141	434	30	RETFORD AVE REAR	TOWNSHIP OF CRANFORD	15C	0.01	-	-	-	0.01	ROSI	EXCLUDED DUE TO SMALL SIZE	0.00
142	435	1	400 UNION AVE S	UNION COUNTY DIV PARKS & RECREATION	15C	5.76	1.33	-	1.33	0.05	ROSI	RAHWAY RIVER PARKWAY	0.00
143	443	2.01	LEWIS ST	TOWNSHIP OF CRANFORD	15C	0.88	-	-	-	0.88	ROSI	LEWIS STREET	0.00
144	444	10	LEWIS ST	TOWNSHIP OF CRANFORD	15C	1.38	-	-	-	1.38	ROSI	DENMAN-LEWIS CORNER	0.00
145	473	26	WOODLAWN AVE - STRIP	TOWNSHIP OF CRANFORD	15C	0.01	-	-	-	0.01		EXCLUDED DUE TO SMALL SIZE	0.00
146	474	4.02	4 UNION AVE S	TOWNSHIP OF CRANFORD	15C	0.47	-	-	-	0.47		EXCLUDED DUE TO SMALL SIZE; PARKING LOT	0.00
147	479	3	261 SOUTH AVE E	N.J. TRANSIT CORP.	15C	1.66	-	0.53	0.53	1.13		TRAIN STATION PARKING AREA	0.00
148	481	1.01	230 SOUTH AVE E	UNION COUNTY DIV PARKS & RECREATION	15C	0.61	-	0.59	0.59	0.02	ROSI	RAHWAY RIVER PARKWAY; EXCLUDED DUE TO SMALL SIZE	0.00
149	481	1.02	230 SOUTH AVE E REAR	TOWNSHIP OF CRANFORD	15C	0.03	-	0.03	0.03	-		RAHWAY RIVER PARKWAY; EXCLUDED DUE TO SMALL SIZE	0.00
150	482	1	1035 LINCOLN PARK E	UNION COUNTY DIV PARKS & RECREATION	15C	2.62	1.37	0.83	1.42	1.19	ROSI	RAHWAY RIVER PARKWAY	0.00
151	483	1	233 HIGH ST	UNION COUNTY DIV PARKS & RECREATION	15C	4.52	-	4.00	4.06	0.07	ROSI	RAHWAY RIVER PARKWAY	0.00
152	483	17.01	31 HIGH ST	TOWNSHIP OF CRANFORD	15C	0.69	-	0.69	0.69	-		EXCLUDED DUE TO SMALL SIZE; PARKING LOT	0.00
153	485	33.11	220-232 WALPUT AVE	TOWNSHIP OF CRANFORD	15C	2.04	-	-	-	2.04		DEVELOPED SITE	0.00
154	489	9	150 LINCOLN AVE E	TOWNSHIP OF CRANFORD	15C	3.88	-	-	-	3.88	ROSI	SHERMAN PARK	0.00
155	493	12	850 HIGH ST	UNION COUNTY DIV PARKS & RECREATION	15C	8.68	-	3.15	3.15	5.53	ROSI	RAHWAY RIVER PARKWAY	0.00
156	495	12	115 LEHIGH AVE N	TOWNSHIP OF CRANFORD	15C	0.34	-	-	-	0.34		EXCLUDED DUE TO SMALL SIZE; TUNNEL	0.00
157	496	5	106 HAWTHORN ST	TOWNSHIP OF CRANFORD	15C	0.43	-	-	-	0.43		EXCLUDED DUE TO SMALL SIZE	0.00
158	500	19	1 HAWTHORN ST	UNION COUNTY DIV PARKS & RECREATION	15C	0.75	-	0.54	0.54	0.22	ROSI	RAHWAY RIVER PARKWAY; EXCLUDED DUE TO SMALL SIZE	0.00
159	505	8	LINCOLN PARK E	UNION COUNTY	15C	1.24	0.47	0.77	0.47	0.77		RAHWAY RIVER PARKWAY	0.00
160	508	20	CENTENNIAL AVE REAR	TOWNSHIP OF CRANFORD	15C	0.02	-	-	-	0.02		EXCLUDED DUE TO SMALL SIZE	0.00
161	517	6	213 CENTENNIAL AVE	TOWNSHIP OF CRANFORD	15C	5.10	-	-	-	5.10		EXCLUDED DUE TO SMALL SIZE; PARKING LOT	0.00
162	527	4	WINANS AVE	TOWNSHIP OF CRANFORD	15C	0.01	-	-	-	0.01		EXCLUDED DUE TO SMALL SIZE	0.00

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Table 2: Third Round RDP Calculation Township of Cranford, Union County, New Jersey		
Project	**Density**	**RDP**
RDP established by JOR (2013) For Block 573, Lots 9, 10, & 12.02, Block 574, Lots 14 & 15, and Block 606, Lots 1, 2, 3, 4, & 5	8 units/acre	**5 units**
Changed Circumstances		
310 Centennial Avenue project (Block 525, Lot 5) Approved via Zoning Board of Adjustment Resolution dated April 24, 2017. Mixed-use three-story project located in the Village Commercial District consisting of 20 residential apartments located on the second and third floors with retail use on the first floor. In the absence of a Mandatory Set-Aside Ordinance at the time of approval, the Township signed a Settlement Agreement with the property owner stipulating that the Owner will deed-restrict two (2) of the Project's one-bedroom units as affordable housing units.	41.67 units/acre	41.67 DU/AC x 0.48 acres → **4 affordable unit set-aside**
Hartz Mountain (Block 541, Lot 2) On March 27, 2017 the zoning department received an application from Hartz Mountain to rezone the property from C-3 Commercial to Residential. The application is in front of the Planning Board.	18 units/acre	18 DU/AC x 24.5 acres[1] = 205 → **88 affordable unit set-aside**
109 Walnut (Block 478, Lots 10,11,12,13) Approved via Zoning Board of Adjustment Resolution dated June 19, 2017. Mixed-use three-story project located in the Downtown Business District consisting of 24 residential	50 units/acre	50 DU/AC x 0.48 acres = 24 → **5 affordable unit set-aside**

apartments located on the second and third floors with a restaurant and residential parking on the first floor. The resolution stipulated that "there shall be one one-bedroom apartment that is affordable, two two-bedroom apartments that are affordable, and one three-bedroom apartment that is affordable"		
E.F. Britten & Co. (Block 474, Lot 1) Property located in the Downtown Business District along South Avenue which has been put on the market for sale. The property is 0.75 acres.	20 units/acre	20 DU/AC x 0.75 acres = 15→ **3 affordable unit set-aside**
North Avenue Redevelopment Block 193(Block 193, Lots 10, 11, 12, 13, 14, & Portion of 6.01) Properties are located in the Downtown Core District. Lots 6.01 and 14 are Township owned—Lots 10, 11, 12, & 13 are privately owned.	30 units/acre	30 DU/AC x 1.41 acres = 42→ **8 affordable unit set-aside**
201 Walnut (Wells Fargo) – Family rental	47 units/acre	47 DU/AC x .846 acres = 40 → **8 affordable unit set-aside**
Riverfront – Family Rental (Block 481; Lots 1.02, 2.01 and 3-9)	38.5 units/acre	**3 unit RDP***
Woodmont – Family Rental (Block 511, Lot 1)	32 units/acre	**3 Unit RDP***
Neddlepoint – Family rental (Block 480, Lot 1)	3 total units on roughly .09 acres	1 **affordable unit set-aside**
Myrtle Special Needs (Block 574, Lots 14 & 15 & Block 573, Lot 9) (inclusionary) the group home is: ((Block 573, Lots 12.02 & 10)	10 units/acre	10 DU/AC x .919 = 10 units → **2 affordable unit set-aside**
Existing Sites		
SERV (Block 569, Lot 8)	--	**1 bedrooms**
	Total	**RDP = 131 units**

[1] *Based on conservative estimate and removal of 6 acres from 30.5 acre site to be used by*

PSE&G based on letter from PSE&G to the Township, dated March 30, 2018 which stated "PSE&G desires to purchase 10 to 12 of the 30.5 acres at the [Hartz Mountain] site. The electric station is necessary to address aging electric infrastructure in the vicinity to ensure continued reliable service for all residents. Hartz Mountain has confirmed negotiations with PSE&G during Planning Board testimony. Acreage subject to ongoing negotiations and land acquisition. However, even if those negotiations fail, the Township does have the power to condemn to protect the interests of the citizens in the PSE&G service area. **The RDP for both Riverfront and Woodmont represent the portion of the project utilized to address the Round 3 RDP.*

EXHIBIT B

Exhibit B:
Overlay Zones

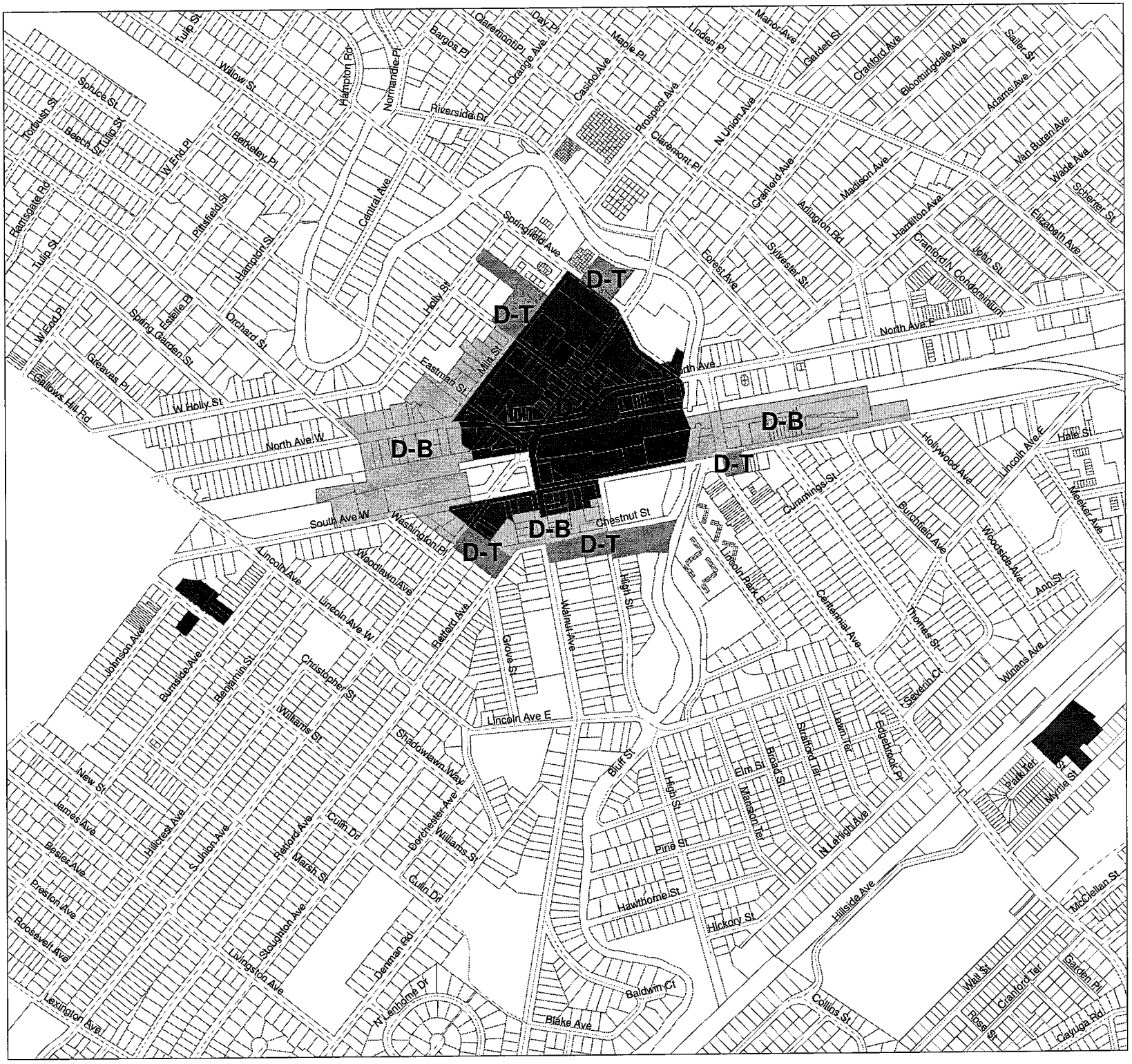
Portion of Cranford Township
Union County, NJ
October 2019

Legend

- Elise/Burnside
- Park Street Block

Downtown Overlay

- D-B
- D-C
- D-T



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Feet

Data Sources:
NJGIN Parcels and MOD IV data
NJDOT Roadway Network

BANISCH
ASSOCIATES INC
Planning and Design

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EXHIBIT C: 2019 INCOME LIMITS

Prepared by Affordable Housing Professionals of New Jersey (AHPNJ) - May 2019

2019 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE

Income limits not officially adopted by the State of New Jersey. Contact your municipality to see if applicable in your jurisdiction. Additional information about AHPNJ income limits is posted on AHPNJ.org

		1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8+ Person	Max Increase Rents**	Max Increase Sales***	Regional Asset Limit****
Region 1	Median	$66,607	$71,365	$76,122	$85,637	$95,153	$98,959	$102,765	$110,377	$117,989	$125,602	2.6%	4.73%	$183,994
Bergen, Hudson,	Moderate	$53,285	$57,092	$60,898	$68,510	$76,122	$79,167	$82,212	$88,302	$94,391	$100,481			
Passaic and Sussex	Low	$33,303	$35,682	$38,061	$42,819	$47,576	$49,479	$51,382	$55,189	$58,995	$62,801			
	Very Low	$19,982	$21,409	$22,837	$25,691	$28,546	$29,688	$30,829	$33,113	$35,397	$37,680			
Region 2	Median	$70,537	$75,576	$80,614	$90,691	$100,767	$104,798	$108,829	$116,890	$124,952	$133,013	2.6%	5.67%	$193,321
Essex, Morris,	Moderate	$56,430	$60,460	$64,491	$72,553	$80,614	$83,838	$87,063	$93,512	$99,961	$106,410			
Union and Warren	Low	$35,269	$37,788	$40,307	$45,345	$50,384	$52,399	$54,414	$58,445	$62,476	$66,506			
	Very Low	$21,161	$22,673	$24,184	$27,207	$30,230	$31,439	$32,649	$35,067	$37,485	$39,904			
Region 3	Median	$82,810	$88,725	$94,640	$106,470	$118,300	$123,032	$127,764	$137,228	$146,692	$156,156	2.6%	9.64%	$225,261
Hunterdon,	Moderate	$66,248	$70,980	$75,712	$85,176	$94,640	$98,426	$102,211	$109,782	$117,354	$124,925			
Middlesex and	Low	$41,405	$44,363	$47,320	$53,235	$59,150	$61,516	$63,882	$68,614	$73,346	$78,078			
Somerset	Very Low	$24,843	$26,618	$28,392	$31,941	$35,490	$36,910	$38,329	$41,168	$44,008	$46,847			
Region 4	Median	$72,185	$77,319	$82,474	$92,783	$103,092	$107,216	$111,340	$119,587	$127,834	$136,082	2.6%	3.91%	$193,919
Mercer,	Moderate	$57,732	$61,855	$65,979	$74,226	$82,474	$85,773	$89,072	$95,670	$102,268	$108,865			
Monmouth and	Low	$36,082	$38,660	$41,237	$46,392	$51,546	$53,608	$55,670	$59,794	$63,917	$68,041			
Ocean	Very Low	$21,649	$23,196	$24,742	$27,835	$30,928	$32,165	$33,402	$35,876	$38,350	$40,825			
Region 5	Median	$63,070	$67,575	$72,080	$81,090	$90,100	$93,704	$97,308	$104,516	$111,724	$118,932	2.6%	3.09%	$166,981
Burlington,	Moderate	$50,456	$54,060	$57,664	$64,872	$72,080	$74,963	$77,846	$83,613	$89,379	$95,146			
Camden and	Low	$31,535	$33,788	$36,040	$40,545	$45,050	$46,852	$48,654	$52,258	$55,862	$59,466			
Gloucester	Very Low	$18,921	$20,273	$21,624	$24,327	$27,030	$28,111	$29,192	$31,355	$33,517	$35,680			
Region 6	Median	$53,714	$57,550	$61,387	$69,061	$76,734	$79,803	$82,873	$89,011	$95,150	$101,289	2.6%	5.15%	$143,713
Atlantic, Cape	Moderate	$42,971	$46,040	$49,110	$55,248	$61,387	$63,843	$66,298	$71,209	$76,120	$81,031			
May, Cumberland,	Low	$26,857	$28,775	$30,694	$34,530	$38,367	$39,902	$41,436	$44,506	$47,575	$50,644			
and Salem	Very Low	$16,114	$17,265	$18,416	$20,718	$23,020	$23,941	$24,862	$26,703	$28,545	$30,387			

Moderate income is between 80 and 50 percent of the median income. Low income is 50 percent or less of median income. Very low income is 30 percent or less of median income.

* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:80-26.4(a).

**This column is used for calculating the pricing for rent increases for units (as previously calculated under N.J.A.C. 5:97-9.3). The increase for 2015 was 2.3%, the increase for 2016 was 1.1%, the increase for 2017 was 1.7%, and the increase for 2018 was 2.2%. The increase for 2019 is 2.6% (Consumer price index for All Urban Consumers (CPI-U): Regions by expenditure category and commodity and service group). Landlords who did not increase rents in 2015, 2016, 2017, or 2018 may increase rent by up to the applicable combined percentage including 2019 or 9.0% whichever is less in accordance with N.J.A.C. 5:97-9.3(c). In no case can rent for any particular apartment be increased more than one time per year.

*** This column is used for calculating the pricing for resale increases for units (as previously calculated under N.J.A.C. 5:97-9.3). The price of owner-occupied low and moderate income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

Low income tax credit developments may increase based on the low income tax credit regulations.

**** The Regional Asset Limit is used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3

EXHIBIT 5
COAH'S AMICUS BRIEF IN CHERRY HILL

SUPREME COURT OF NEW JERSEY
DOCKET NO. 52,472

FAIR SHARE HOUSING CENTER, INC.; NEW JERSEY COUNCIL OF CHURCHES, CAMDEN COUNTY BRANCH OF THE N.A.A.C.P.; SOUTHERN BURLINGTON COUNTY BRANCH OF THE N.A.A.C.P.,	Civil Action
Plaintiffs-Appellants	On Motion for Direct Certification (M-646) from:
v.	SUPERIOR COURT Appellate Division Docket No. A-22552-01-T3
TOWNSHIP OF CHERRY HILL, NEW JERSEY; and GEORGE H. CROFT, II and JOHN W. CROFT, III, Trustees Under the Will of John W. Croft, Jr.,	LAW DIVISION CAMDEN COUNTY Docket No. L-042750-85-PW
Defendants-Respondents,	
and	Sat Below:
REALEN-TURNBERRY/CHERRY HILL, L.L.C.	Hon. Theodore Z. Davis, J.S.C. Davis, J.S.C.
Intervenor-Respondents.	

BRIEF AND APPENDIX FOR AMICUS CURIAE
NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY
Attorney for New Jersey Council on Affordable Housing
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 112
Trenton, New Jersey 08625-0112
(609) 292-9302

DOUGLAS K. WOLFSON
Assistant Attorney General
Of Counsel

WILLIAM P. MALLOY
Deputy Attorney General
On the Brief

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APPENDIX

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PRELIMINARY STATEMENT

In this Mount Laurel case, see Burlington County, N.A.A.C.P. v. Mount Laurel, 67 N.J. 151 (1975) (Mount Laurel I), and Southern Burlington County N.A.A.C.P. v. Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II), the New Jersey Council on Affordable Housing ("the Council" or "COAH") files this brief as an amicus curiae in order to present to this Court a summary of the Council's administration of the Township of Cherry Hill's ("Township" or "Cherry Hill") Mount Laurel compliance efforts, see Fair Share Housing v. Cherry Hill, 242 N.J. Super. 76, 79-80 (App. Div. 1990) and ACa[1] to ACa60, and to present a review of the Council's rules and procedures that pertain to the 223-acre former Garden State Park racetrack ("Garden State" or "the racetrack") and the role it should play, if any, in Cherry Hill's Mount Laurel compliance efforts.

The Council is the administrative body empowered under the Fair Housing Act ("FHA"), N.J.S.A. 52:27D-301 to -329, to administer disputes involving exclusionary zoning so as to assure that a municipality meets its Mount Laurel obligation to provide a realistic opportunity for a fair share of its region's present and prospective need for low and moderate income housing. The Council acquired jurisdiction over Cherry Hill's affordable housing efforts in early 1987 when this exclusionary zoning litigation filed by plaintiffs-appellants Fair Share Housing Center, Inc., New Jersey Council of Churches, Camden County Branch of the N.A.A.C.P., and Southern Burlington County Branch of the N.A.A.C.P. (hereafter jointly referred to as "plaintiffs")[1], along with all other pending cases, was transferred to COAH (Pa109 to Pa172) following Hills Dev. Co. v. Bernards Twsp., 103 N.J. 1, 56 (1986), in which this Court upheld the constitutionality of the FHA.

In September 1988 the Council denied substantive certification to Cherry Hill (ACa10 to ACa60) because the Township failed to comply with six conditions set out by COAH as a prerequisite to certification. ACa4. Thereafter, the entire matter was returned to the Superior Court, where in 1993 all parties signed a Settlement Agreement. Pa208 to Pa227.

The plaintiffs, Cherry Hill and Realen-Turnberry/Cherry Hill ("Realen"), the owner/developer of the racetrack, dispute whether or not the site's contribution to Cherry Hill's affordable housing obligation would be limited to a development fee, or on-site affordable housing shall be required. The Council as amicus respectfully suggests that any decision as to the racetrack's role in Cherry Hill's compliance plan is premature. Since Cherry Hill has not yet developed a fair share plan to meet its second-round Mount Laurel obligation, the precise contribution to be needed to be derived from the racetrack site is not knowwn.

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[1] ACa refers to the appendix filed by amicus Council on Affordable Housing with this brief. The items in the appendix are judicially noticable regulatory and administrative determinations of the Council. N.J.R.E. 201(a); see also, Brunno, current New Jersey Rules of Evidence, comments 6 and 7 to N.J.R.E. 201.

[1] This brief will refer to the moving parties as plaintiffs, for consistency with the Brief in Support of Appeal that they filed with this Court. The designation Pa shall refer to the appendix filed by plaintiffs in support of their brief filed with this Court. Pb shall refer to plaintiffs' brief.

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The Council has, on two prior occasions, issued rules for the determination of municipal Mount Laurel obligations. On August 4, 1986 the Council adopted its rules and methodology for determining first-round Mount Laurel need, as calculated pursuant to N.J.A.C. 5:92-1 et seq., for the period of August 1, 1986 through June 5, 1994. Thereafter, on June 6, 1994, the Council adopted rules and regulations for calculating municipal second-round affordable housing responsibilities, see N.J.A.C. 5:93-1 et seq. Cherry Hill and Realen have taken the position that the fair share plan set out in the 1993 Settlement Agreement was intended to meet the Township's first and second-round fair share obligations.

As amicus the Council argues that one uniform set of standards, the Council's, must be applied to all of New Jersey's municipalities with regard to Mount Laurel compliance issues. The Council acknowledges that it has not participated in this matter below and that the courts have had jurisdiction over this case exclusively since 1988. However, this Court in Hills, supra, has held that the judiciary should "whenever possible" conform to the "decisions, criteria and guidelines" of the Council. 103 N.J. at 63. In this regard, the Council believes that this Court should conclude that Cherry Hill has failed to address its second-round fair share obligation, as calculated pursuant to N.J.A.C. 5:93-1 et seq. If this Court so concludes, this Court should compel Cherry Hill to take the necessary steps to create a fair share plan that satisfies its second-round obligation. In that undertaking, Cherry

Hill would determine, in the first instance whether and how the racetrack will be used.

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STATEMENT OF THE CASE

This case began with the filing, on May 21, 1985, of an exclusionary zoning litigation by plaintiffs. Pa94. Named as defendants were the Township of Cherry Hill, and George H. Croft, II and John W. Croft, III, Trustees of the Will of John W. Croft, Jr. The complaint contained two counts. Count I was a standard Mount Laurel count charging that Cherry Hill's zoning ordinances were exclusionary and they failed to provide a realistic opportunity for the Township's fair share housing obligation. Count II addressed the status of a particular tract of undeveloped land in Cherry Hill (hereafter the "Croft site") which had previously been the subject of litigation, and which had been purchased by the Township; specifically, plaintiffs asked the Court to void that transaction as against public policy.

Shortly thereafter, on July 2, 1985, the Legislature adopted the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. The Act represented the Legislature's response to this Court's decisions in "Mount Laurel I" and "Mount Laurel II". The FHA was enacted by the Legislature at this Court's invitation, see N.J.S.A. 52:27D-302(b), with an effective date of July 2, 1985. The Legislature declared at N.J.S.A. 52:27D-303 that the mediation and review process set forth in the Act "and not litigation" would henceforth be the preferred mechanism for the resolution of existing and future disputes involving exclusionary zoning. Further, the Legislature stated that it was the intention of the FHA to provide "various

alternatives to the use of the builders' remedy" as a method of achieving fair share housing.* Id.

The FHA at N.J.S.A. 52:27D-307 required the Council to adopt regulations and guidelines for the establishment of its methodology and for the municipal determination of its Mount Laurel need within seven months after confirmation of the last member initially appointed to the Council. The FHA provided that municipalities may satisfy their Mount Laurel fair share obligations by the creation of a housing element and fair share plan containing the information required by N.J.S.A. 52:27D-310. Pursuant to the FHA, each municipality was permitted to file with the Council a Resolution of Participation within four months of the July 2, 1985 effective date of the FHA, and was then required to file a final housing element and fair share plan by January 5, 1987, which was five months after the Council initially adopted its substantive regulations. N.J.S.A. 52:27D-309(a). The result of a timely filing was that a municipality was entitled to avail itself of the Council's process, including the Council's mediation and review process, in the event that Mount Laurel litigation was initiated against the municipality in Superior Court. N.J.S.A. 52:27D-316(b). See, Hills, supra, 103 N.J. at 25.

On January 23, 1986, the Honorable L. Anthony Gibson, J.S.C., granted a motion filed by Cherry Hill to transfer Count I

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*The builders' remedy had been created by this Court in Mount Laurel II, supra, 92 N.J. at 208 to enforce the Mount Laurel constitutional requirement that had been established in Mount Laurel I, supra, 67 N.J. at 147.

of the plaintiffs' complaint to COAH. Pa169 to Pa171. This transfer was effectuated pursuant to the authority of N.J.S.A. 52:27D-316(b); that section provides that "[a]ny person who institutes [Mount Laurel] litigation less than 60 days before the effective date of this Act or after the effective date of this Act ...shall file a notice to request review and mediation with [COAH]...." The court did not transfer Count II, and therefore retained jurisdiction of that count. Ibid. In addition, the court in its order restrained the Township "from the sale and/or development of all parcels of Township-owned land of three acres or more in size." Pa170. The Township was also required to give notice to plaintiffs of any proposed sale of any Township owned parcel less than three acres in size.* Ibid.

As a court transferred municipality under N.J.S.A. 52:27D-316(b), Cherry Hill was required to file with COAH by January 5, 1987 a housing element and fair share plan; failure to do so would result in reversion of the case to the Superior Court. Fair Share Housing v. Cherry Hill, supra, 242 N.J. Super. at 78. Cherry Hill complied by filing on the last day of the deadline. Ibid. Under COAH's methodology, the Township was assigned a "pre-credited need" number of 2,295 units of affordable housing, 2,104 "reallocated present need" units and 181 "indigenous need" units.**

*The Order also granted the plaintiffs' application to join the Township Planning Board as a defendant.

**"Pre-credited need" was then defined as a municipality's estimated fair share housing obligation for 1987 to 1993. N.J.A.C. 5:92-Appendix. Now see N.J.A.C. 5:93-1.3.

ACa3. However, because of the operation of the Council's 1,000-unit drastic alteration cap, Cherry Hill's obligation was ultimately reduced to 1,000 units, comprised of 819 inclusionary new construction units and 181 indigenous rehabilitation units. ACa3.

On April 20, 1987 the Council issued an Order and Opinion addressing the issue of the treatment of vacant land within Cherry Hill. Pa172 to Pa180. COAH had raised the issue of possible restraints on vacant land sua sponte, after reviewing Cherry Hill's housing element, which requested an adjustment of the Township's fair share number due to a lack of vacant, developable and suitable land. Specifically, Cherry Hill had sought a reduction from its pre-credited need number of 2,295 to 1,292 due to its lack of land. Pa173; Pa177. Also, the Council noted that when Judge Gibson transferred this case to the Council, the transfer "was with the condition that Cherry Hill be restrained from the sale and/or development of all parcels of township owned land of three acres or more in size. Judge Gibson reaffirmed the transfer with the conditions by Order dated July 22, 1986." Pa174. The Council stated that its decision was intended to supplement Judge Gibson's orders. Pa174.

"Reallocated present need" means that portion of a housing region's present need that is redistributed to a municipality. N.J.A.C. 5:92-1.3; N.J.A.C. 5:93-1.3.

"Indigenous need" means deficient housing occupied within a municipality by low and moderate income individuals. N.J.A.C. 5:92-1.3; N.J.A.C. 5:93-1.3.

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Further, COAH concluded that vacant land was in fact a scarce resource in Cherry Hill. Pa176. COAH went on to determine that the imposition of scarce resource restraints was appropriate and practical, that the cost of restraints would not be unduly burdensome, and that failure to impose restraints could result in irreparable harm, Pa178 to Pa180, in the issuance of a Restraining Order by COAH on April 24, 1987. Pa172. That order was later clarified by an Amended Order Imposing Restraints dated June 1, 1987, Pa181 to Pa 184, which provided that the Township be restrained from granting any approvals for the development of "any parcel of vacant land in excess of three acres in size." Pa182. The Township was allowed to process applications as long as it did not grant any applications or create any vested rights. Pa183. COAH ruled that Judge Gibson's previous Order dealing with vacant land would also remain in effect. Pa184.

On March 2, 1987 COAH instructed the Township to remedy certain identified deficiencies in its plan, and to resubmit the plan within 60 days, a period that was subsequently extended to July 3, 1987. ACa1; Fair Share Housing, supra, 242 N.J. Super. at 78. The Township complied with that requirement, and its resubmission constituted a petition for substantive certification. Id. at 79. Mediation commenced on August 27, 1987 and continued for 164 days, ending in February 1988. The mediated plan "resolved objections and eliminated certain techniques the Township had proposed to utilize," and that had been opposed by the plaintiffs and the Public Advocate. Ibid.; ACa6 to ACa42.

Following a COAH staff recommendation to approve the mediated plan with conditions, COAH was scheduled to act on the Township's petition at its June 6, 1988 meeting (ACa43 to ACa50); however, several days before that meeting Cherry Hill filed with COAH a motion seeking to amend the mediated plan "in many significant respects," including reinstatement of the techniques previously objected to by plaintiffs and the Public Advocate. Fair Share Housing, supra, 242 N.J. Super. at 79, COAH denied the motion by Opinion dated July 25, 1988. Ibid. On the same day COAH adopted a resolution approving the Township's petition based on the mediated plan, subject to several conditions, including that the Township adopt the plan within 60 days. Ibid. ACa43 to ACa60. Cherry Hill did not comply, and on September 26, 1988 COAH adopted a resolution "denying substantive certification and returning the controversy to the 'jurisdiction of the courts.'" ACa1 to ACa60. Included in the Council's September 26, 1988 order denying certification was a provision that "the vacant land development constraints imposed by COAH shall remain in force for a period of one month from the date of this resolution...in order to enable the court to rule on the vacant land issue if it so chooses." ACa5. This ended COAH's direct participation in the case.

Upon return of the case to the Superior Court, Judge Gibson issued a series of orders restraining land use within Cherry Hill. Ia30 to Ia53. The first such order referred to by the parties was dated December 5, 1988. Ia30. The last one referenced by the parties prior to Judge Gibson's March 30, 1993 Order

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Establishing Cherry Hill's Fair Share Number (Pa227 to Pa233), discussed infra, was dated June 4, 1991. Ia50.

On March 12, 1993, a "Stipulation of Settlement Establishing Cherry Hill's Fair Share and Other Issues in Dispute" was entered into by the plaintiffs, the Township, and the Township Planning Board. Pa208 to Pa227. In that Stipulation, it was agreed that, in light of the scarcity of land within the Township the total fair share obligation for Cherry Hill, its "realistic development potential," would be reduced from COAH's first-round pre-credited need number of 2,295 units to 787 units, including an indigenous need of 52 units. Further, the Stipulation provided that "[t]his Fair Share allocation shall represent the [Township's] Mount Laurel responsibility for 1987-1999." Pa210.

> B. The maximum capability and responsibility of Cherry Hill in fulfilling its Mount Laurel affordable housing obligation in light of the scarcity of land in the Township is a Fair Share obligation of 735 units plus 52 indigenous need units totaling 787 units.
>
> C. As a result of the lack of adequate vacant, developable land the Township's fair share is reduced from 2295 to 787. By the Township implementing the terms of the compliance pursuant to this Order, it has addressed its realistic, development potential. This Fair Share allocation shall represent the Township of Cherry Hill's Mount Laurel responsibility for 1987 to 1999. [Pa210.]

The Stipulation Agreement also stated that the Township's obligation would be met through a variety of outlined mechanisms, including the zoning of certain specified sites, as well as a Regional Contribution Agreement (hereafter "RCA") with the City of

Camden.* Pa211 to Pa213. The Stipulation also provided that the Township's obligation could be reduced by the 29 units planned for the Tavistock parcel, depending on the result of a Green Acres inventory. Pa209. The Stipulation also set forth certain specific parcels that were to be omitted from the current plan, with the promise that if any of these enumerated parcels were to become available for development in the future, Cherry Hill's fair share obligation would be "re-evaluated." Pa210 to Pa211.** The Garden State site was not referred to at any point in the stipulation.

The Stipulation was made subject to "the appropriate legal steps consistent herewith being taken by the Planning Board and Township Council" (Pa209); specifically, the Stipulation required the Planning Board to take whatever steps were necessary to "adopt and implement a housing element amending the Master Plan," and the Township Council to similarly "adopt and implement a fair share plan." Pa213 to Pa214. Subsequent to the adoption of zoning ordinances, the Agreement contemplated that a formal compliance hearing would be held, leading to a judgement of repose and the lifting of scarce resources restraints. Pa214.

On March 30, 1993, Judge Gibson issued an "Order Establishing Cherry Hill's Fair Share Number." Pa227 to Pa233. The

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*The Township has never entered into the contemplated RCA, but rather has addressed the units contemplated to be met through the RCA by other means. Pa342.

**With regard to the Croft site, the Stipulation reserved for decision by the Court the question of whether the site should be included in Cherry Hill's vacant land inventory; if it were to be ultimately included, the fair share allocation for the site would be 108 units. Pa214.

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court found that the prior Stipulation entered into by the parties was "fair and reasonable." Pa228. The court then set Cherry Hill's Mount Laurel obligation at 758 units (including a 52 unit indigenous need component), which it stated was the Township's "realistic development potential." Pa230.[*] The reduction from COAH's first-round figure of 2,295 units was expressly stated to be the result of "the lack of adequate vacant, developable land" within Cherry Hill. Ibid. The figure of 758 was exclusive of the Croft site and the other enumerated properties previously excluded from the plan in the Stipulation. The owner noted that the Stipulation provided that should any of these other properties become available the Township's allocation would be re-evaluated accordingly. Ibid. However, the order made clear that under no circumstances could the Township's obligation exceed 1,000 units. Ibid.[**]

[*]This number is 29 units less than the figure of 787 cited in the Stipulation; presumably this resulted from deletion of the Tavistock parcel, as per paragraph E of Judge Gibson's Order. Pa229. Further, it is interesting to note the use of the term "realistic development potential." The Council's first-round "municipal adjustment" rules, N.J.A.C. 5:92-8.1 et seq. describe the process used to calculate municipal affordable housing need in municipalities without sufficient land to accommodate the Council's calculated pre-credited need. However, the term "realistic development potential" is not used in these rules to describe the final calculated municipal obligation for such municipalities. The term is used, however, in the Council's second-round rules, see N.J.A.C. 5:93-1.3 "realistic development potential" and N.J.A.C. 5:93-4.1 et seq., to describe this calculation.

[**]Effective August 3, 1987, COAH adopted N.J.A.C. 5:92-7.1(b), which provided for a "1,000-unit cap" on any municipality's fair share obligation during any six-year period of substantive certification. 19 N.J.R. 806(a), 19 N.J.R. 1431(a). The regulation was struck down in Calton Homes v. COAH, 244 N.J. Super. 438 (App. Div. 1990). However the Legislature subsequently amended

The court went on to state that the terms and conditions of the Stipulation would be "binding upon all parties and should be determinative of the issues in the Stipulation." Pa231. The court stated that Cherry Hill would be immune from Mount Laurel challenge "provided the Township implements the housing element and fair share plan." Ibid. Specifically, the Order provided that the amended housing element should be adopted by the Township Planning Board and the zoning ordinance amendments adopted by the Township Council by June 15, 1992. Ibid. Thereafter, the Master would submit his report on the compliance plan, and "a formal compliance hearing shall be held before the court on July 26, 1993...upon a finding of compliance, the court shall order a judgment of repose and vacate the scarce resources moratorium imposed by the court order of December 5, 1988...." Pa232. Apparently this scheduled proceeding never took place; the parties offer no explanation for this failure.

On December 20, 1993, the Council published for comment its proposed second-round methodology and regulations. 25 N.J.R. 5763(a). The final regulations were subsequently adopted by COAH on May 10, 1994, and became effective on June 6, 1994. 26 N.J.R.

the Fair Housing Act to provide for a new 1,000-unit cap, based on different criteria, N.J.S.A. 52:27D-307(e), which provision is now implemented by a COAH regulation. N.J.A.C. 5:93-14.1. On January 16, 2002, L. 2001, c. 435 was enacted, which amended N.J.S.A. 52:27D-307(c) to increase from 6 to 10 years the period for which the 1,000-unit cap applied. This amendment was consistent with the increase from 6 to 10 years in the length of time for which a substantive certification will now be effective for the Council's third certification round. However, it should be noted that the calculation period for the 10-year certification begins at the date a municipality petitions for certification. L. 2001, c. 435.

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2300. The methodology was a cumulative one which corrected several incorrect assumptions in the Council's first-round rules and which credited low and moderate income units zoned for and built by municipalities to meet the Council's first-round obligation. N.J.A.C. 5:93-Appendix A. Under the second-round methodology, Cherry Hill was assigned a pre-credited need obligation of 1,851 units of affordable housing.*

On March 18, 1994, Judge Gibson issued an Order addressing the question of housing development fees within Cherry Hill. Pa249, Pa250. The Order permitted the Township to assess and collect certain housing development fees as of that date, as governed by Township Ordinance 93-37, as amended by Ordinance 94-21. Ibid. In paragraph 2 of this Order, the court went on to provide that the Township and Planning Board would remain bound by the terms of the prior orders concerning housing development fees entered in the case. Ibid.

On December 13, 1999, COAH Executive Director Shirley M. Bishop wrote to Cherry Hill Mayor Susan Bass Levin**, to address two questions concerning the Council's interpretation of its 1,000-unit cap rule and its application to Cherry Hill. Pa154. The Council had discovered during its administration of municipal fair share plans that its second-round rules and methodology raised unanswered

*The Council is currently preparing its third-round methodology and rules.

**Susan Bass Levin is now Commissioner of the Department of Community Affairs, and as such serves by statute as Chairperson of COAH. Commissioner Levin has recused herself from any involvement in the current matter.

questions with regard to the inter-relationship of the 1,000-unit cap and the Council's second-round cumulative methodology. Pa154 to Pa157.

The first question concerned the relationship of the 1,000-unit cap rule to COAH's second-round cumulative methodology in municipalities such as Cherry Hill that had first-round fair share obligations above 1,000 units. The Council's methodology at N.J.A.C. 5:93-1 et seq. is a cumulative one in that it accounts for the actual housing activity that occurred during the Council's 1987-1993 first-round fair share cycle. N.J.A.C. 5:93-Appendix A. Where necessary, the new methodology corrected projections and assumptions made for the prior 1987-1993 cycle in order to reflect the most current information available as to what housing activity occurred between 1987-1993 and incorporated this information into the calculation of the 1987-1999 cumulative fair share obligation. See "Prior-Cycle Prospective Need (1987 to 1993)" at N.J.A.C. 5:93-Appendix A and N.J.A.C. 5:93-2.8.

Because the cumulative methodology created by N.J.A.C. 5:93-1 et seq. recalculated and incorporated the first-round 1987-1993 need into the second-round 1987-1999 need, the Council realized that it needed to consider the applicability of the 1,000-unit cap rule to both the Council's calculation of the municipality's 1987-1993 need and the municipality's 1987-1999 need. This was because N.J.S.A. 52:27D-307(c)(3)(e) stated that "[n]o municipality shall be required to address a fair share beyond 1,000 units within six years" and the 12-year cumulative

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methodology accounted for two six year periods of a municipality's affordable housing obligation.

The Council consulted Dr. Robert Burchell, of the Rutger's Center for Urban Policy Research, who is the Council's consultant on its methodology. Burchell reviewed the calculation of the fair share obligation of all municipalities, with more than a 1,000-unit first-round obligation in light of the 1,000-unit cap. Ten municipalities were in this category: Dover, Newark, Jersey City, Paterson, Elizabeth, Woodbridge, Middletown, Clifton, Atlantic City, and Cherry Hill. Burchell recalculated the prior cycle prospective need of all ten municipalities that had more than 1,000 unit first-round obligations, including Cherry Hill. With regard to Cherry Hill, he determined that Cherry Hill's prior cycle prospective need was greater than 1,000 and would therefore be revised to 806 units of affordable housing. Then the re-calculated prior-cycle prospective need was inserted into the Council's calculation of its cumulative methodology and Cherry Hill's second-round pre-credited need number was revised from 1,851 to 1,669 affordable units. Pa154 to Pa157 at Pa155.

The second question raised with regard to the 1,000-unit cap rule was the relationship between the cap and the various credits and reductions allowed in COAH's rules. At issue was whether the 1,000-unit cap should be applied to a municipality's "pre-credited need," see N.J.A.C. 5:93-2.13, or to "calculated need," see N.J.A.C. 5:93-2.17. The Council determined that the

1000-unit cap should be applied to "calculated need" rather than "prescribed need."*

This information was communicated to Cherry Hill's mayor by Executive Director Bishop in her letter of December 13, 1999. Pa154 to Pa157. The letter also informed Cherry Hill that with regard to its second-round obligation, all "eligible credits and reductions" would be subtracted from the 1,669 unit pre-credited need figure and if the remaining second-round number "is over 1,000, then Cherry Hill's obligation is capped at 1,000." Pa155. The Council never received any comment or reply from Cherry Hill in response to the December 13, 1999 letter.

Cherry Hill's latest round of Mount Laurel litigation began with Realen's filing of a declaratory judgment action in Superior Court on June 8, 2001. Pa24 to Pa44; Ia54 to Ia109. Realen had purchased the Garden State site, and sought to develop the site according to its present B-4 zoning, which allows mixed office, retail, hotel, restaurant and residential use. Pa5. Realen sought to intervene in this case to confirm that the Mount Laurel obligation attributable to the racetrack site was limited to the payment of a standard development fee as set out at N.J.A.C. 5:93-8.10(a) and -8.11(a) and Cherry Hill's fee development ordinance, and that it would not be used to generate affordable housing on-site. In as much as the full history of the litigation is before this Court in the papers filed by the parties, we will

*This determination is currently challenged in the Appellate Division in In re the Application of the Township of Jackson, Docket No. A-5616-99T3, argued on March 18, 2002.

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not repeat it here at length. COAH was not a participant at any stage of the trial court proceedings.

In broad terms, however, because of the scarcity of vacant developable land in the Township the plaintiffs contend that the racetrack site would inevitably be needed to provide on-site affordable housing. Therefore, the plaintiffs object to Realen paying development fees in lieu of building on-site affordable housing. In this regard, they moved to enjoin any further Township proceedings with regard to the site, prior to a determination of that obligation and how it would be addressed. Pa45 to Pa116.

A decision was issued by Judge Davis on October 26, 2001 (later corrected by order dated November 8, 2001). Pa2 to Pa20. The court granted Realen's motion to intervene in the case. With regard to the status of Cherry Hill's compliance with its affordable housing obligations, the court stated that "[t]here is in fact some question as to whether Cherry Hill Township has fully complied with the 1993 order, but that question is not now before the court." Pa5. Rather, the court indicated it would limit itself to the issue of whether Realen would be permitted to pay a development fee, or would instead be required to potentially provide on-site affordable housing. The court refused to consider plaintiffs' motion for restraints against Realen developing its property consistent with the B-4 zoning of the racetrack site. Pa6.

Relying principally on this Court's decision in Holmdel Builders Ass'n v. Township of Holmdel, 121 N.J. 550 (1990), Judge

Davis concluded that use of development fees was appropriate and the "functional equivalent" of providing on-site housing. Pa8. The court rejected plaintiffs' argument that use of the fees was not appropriate in this instance, and noted that Cherry Hill was nearly (if not totally) in compliance with the 1993 settlement. Ibid. The court also rejected plaintiffs' applications for a scarce resource injunction, for inclusion of the Garden State Park racetrack in the Township's compliance plan, and to "use [the Court's] equity power to ensure that the Township meets its Mount Laurel obligations." Pa13 to Pa16. With regard to the issue of possible new Mount Laurel obligations to be imposed on the Township, the court stated that the issue would have to be taken in the first instance before COAH. Pa18. A motion for reconsideration subsequently filed by plaintiffs (Pa117 to Pa193) was denied by Order dated December 19, 2001. Pa21 to Pa23. Then, after an interlocutory appeal was filed by plaintiffs, this Court granted direct certification to review Judge Davis' trial court decisions.

Notwithstanding this Court's grant of direct certification, proceedings with regard to this case have continued before Judge Davis, who has accepted a "Stipulation of Partial Settlement" dated January 11, 2002, signed by plaintiffs, the Township, and the Township Planning Board. Pa339 to Pa353. The settlement provides that the "Township has met and continues to meet its 758 unit affordable housing obligation (706 plus 52 post-credited indigenous need units) as set forth in the 1993

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Stipulation of Settlement and Order entered in this matter." Pa343. It goes on to provide that this original obligation has in fact been adjusted to a 747 unit obligation. Ibid.

Further, on March 20, 2002 Judge Davis issued a decision and order in a Cherry Hill motion for a Judgment of Repose filed on September 14, 2001. ACa61 to ACa76. The Judgment of Repose ordered by Judge Davis was nunc pro tunc to March 24, 1994 (thirty days after the date Cherry Hill adopted its development fee ordinances) and expired on March 24, 2000. ACa68 to ACa76. Judge Davis issued the Judgment to "provide badly needed finality" to this litigation that he stated "could otherwise drag on for years." ACa73. Also, the court issued the Judgment "to alleviate whatever merit attended the plaintiffs' agreement that the Township's housing element was irreconcilably stale." ACa74. Finally, the court made the Judgment nunc pro tunc rather than prospective, as the Township had requested, because

> [t]o do so would also work a grave injustice on the Mount Laurel beneficiary class. Giving the Township six prospective years would protect the Township against COAH's Round III assessments, which will produce new, and possibly increased, Mount Laurel obligations for the municipalities subject to Round III. Were Cherry Hill immune, by virtue of the repose shield, from Round III, Cherry Hill will not have been assessed since COAH promulgated its Round I assessments. The constitutional rights of the Mount Laurel beneficiaries cannot possibly be protected were the Township allowed a prospective repose period, which would give the Township, all told, nearly fifteen years of protection from providing the opportunity for affordable housing. [ACa73, ACa74.]

No mention was made in Judge Davis' March 20, 2002 decision of Cherry Hill's second-round obligation, as calculated pursuant to N.J.A.C. 5:93-1 et seq.

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ARGUMENT

THE REGULATIONS OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING ARE A "COMPREHENSIVE PLANNING AND IMPLEMENTATION RESPONSE," N.J.S.A. 52:27D-302(c), TO THE MOUNT LAUREL CONSTITUTIONAL OBLIGATION AND, THEREFORE, SHOULD BE UNIFORMLY APPLIED TO ALL MUNICIPALITIES.

This case has been under the jurisdiction of the courts since 1988. The Council, apart from sending to Cherry Hill its December 13, 1999 letter concerning COAH's recalculation of the Township's second-round obligation (Pa154 to Pa157), has had no contact with Cherry Hill since 1988.* Therefore, the Council's intent as amicus is to provide the Council's view of the role its regulations and policies can play in the resolution of this dispute. For example, the Council's second-round methodology and rules are discussed here to present the Council's view of the regulatory context by which the Mount Laurel compliance efforts of all New Jersey municipalities must be measured. Also the Council's rules and policies with regard to vacant land adjustments (N.J.A.C. 5:93-4.2), development fees (N.J.A.C. 5:93-8.1 et seq.) and the 1000-unit cap (N.J.A.C. 5:93-4.2), are discussed in relation to the parties' contentions with regard to Cherry Hill's continuing Mount Laurel responsibilities and the role of the Garden State site in Cherry Hill's future Mount Laurel compliance. In all of this, the Council's basic position is that the Council's rules constitute a

*The Council, for example, has not provided compliance monitoring services to the Township under the court's direction, as it does for many other municipalities under the jurisdiction of the courts.

"comprehensive planning and implementation" tool for the municipal achievement of Mount Laurel compliance, which should be uniformly applied to all New Jersey municipalities, so that municipal Mount Laurel compliance is consistent statewide and, therefore, fair to all municipalities in the State.

In Mount Laurel I this Court held that the New Jersey Constitution requires each developing municipality to make possible through its zoning ordinances the development of its fair share of the regional need for low and moderate income housing. Mount Laurel I, supra, 67 N.J. at 174. That holding was reaffirmed and restated in Mount Laurel II, supra, 92 N.J. 158. To enforce the Mount Laurel obligation this Court created the "builders remedy" as a mechanism to compel recalcitrant municipalities to comply with their fair share obligations. Specifically, this Court stated that the power to zone, delegated to New Jersey municipalities by statute, is one portion of the police power, and thus must be exercised consonant with the general welfare. Id. at 208. A consideration of the general welfare includes more than the needs of a municipality's own residents -- it also includes the housing needs of those outside the municipality but within the region contributing to housing need within the municipality. Ibid. Zoning regulations that conflict with the general welfare, as thus defined, are unconstitutional. Ibid.

The Mount Laurel obligation requires that municipalities provide, through their land use regulations, a "realistic opportunity" for the construction of their fair share of the State-

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wide obligation. Id. at 205. In providing that realistic opportunity a municipality must, at a minimum, remove all municipally created barriers to the construction of its fair share. Id. at 259. Thus, to the extent necessary to meet its Mount Laurel obligation, a municipality must "remove zoning and subdivision restrictions and exactions that are not necessary to protect health and safety." Ibid.

However, the removal of such barriers does not automatically signal that a municipality has provided the requisite realistic opportunity. Rather, in Mount Laurel II, it was made clear that in most cases municipalities must go further, and provide inducements in the form of "affirmative measures" in order to insure the existence of a realistic opportunity. Id. at 261. Thus, a municipality could not simply zone a site to permit the construction of affordable housing as one of several permissible uses. In such a case, other permitted uses might prove to be more profitable, and thus no affordable housing would actually result. Satisfaction of the obligation "cannot depend on the inclination of developers to help the poor." Ibid. For the opportunity to be realistic it must be "one that is at least sensible for someone to use." Ibid.

Several possible forms of "affirmative measures" were suggested in Mount Laurel II, although the list was not meant to be exclusive, and other solutions were encouraged. First and foremost, a municipality should aid in procuring available federal or state subsidies for the construction of affordable housing. Id.

at 262. Second, it was held that municipalities should use inclusionary zoning devices, such as incentive zoning and mandatory set-asides. Id. at 265. Once a municipality had done these two things (removed excessive restrictions and instituted appropriate affirmative measures) "the Mount Laurel doctrine requires it to do no more." Id. at 259-60.

In 1985 the Fair Housing Act, N.J.S.A. 52:27D-301 to -329, was enacted and established the Council as an alternative to the builder's remedy law suit, N.J.S.A. 52:27D-305. At N.J.S.A. 52:27D-302 the Legislature set out its findings with regard to the FHA.

> c. The interest of all citizens, including low and moderate income families in need of affordable housing, would be best served by a comprehensive planning and implementation response to this constitutional obligation.
>
> d. There are a number of essential ingredients to a comprehensive planning and implementation response, including the establishment of reasonable fair share housing guidelines and standards, the initial determination of fair share by officials at the municipal level and the preparation of a municipal housing element, State review of the local fair share study and housing element, and continuous State funding for low and moderate income housing to replace the federal housing subsidy programs which have been almost completely eliminated. [N.J.S.A. 52:27D-302(c) and (d).]

In N.J.S.A. 52:27D-303, the Legislature set out the legislative declaration of intention for the FHA.

> The Legislature declares that the statutory scheme set forth in this act is in the public interest in that it comprehends a low and moderate income housing planning and financing mechanism in accordance with regional

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> considerations and sound planning concepts which satisfies the constitutional obligation enunciated by the Supreme Court. The Legislature declares that the State's preference for the resolution of existing and future disputes involving exclusionary zoning is the mediation and review process set forth in this act and not litigation, and that it is the intention of this act to provide various alternatives to the use of the builder's remedy as a method of achieving fair share housing. [N.J.S.A. 52:27D-303.]

The Fair Housing Act incorporates at N.J.S.A. 52:27D-314 the compliance test laid down in the Mount Laurel decisions. N.J.S.A. 52:27D-311(a) provides that, in adopting its housing element, a municipality "may provide for its fair share of low and moderate income housing by means of any technique or combination of techniques which provide a realistic opportunity for the provision of the fair share." Thus, the responsibility for creation of the plan, and the selection of the appropriate approach, rests with the municipality.

In Hills Dev. Co. v. Bernards Twp., supra, 103 N.J. at 25, this Court held that the FHA was constitutional. In so concluding, this Court emphasized that the Council was empowered under the FHA to create, through its regulations, uniform standards regarding affordable housing policy and procedures that could be applied to each municipality in the State:

> [t]he Council will determine the total need for lower income housing, the regional portion of that need, and the standards for allocating to each municipality its fair share. The Council is charged by law with that responsibility, imparting to it the legitimacy and presumed expertise that derives from selection by the Governor and confirmation by the Senate, in accordance with the will of the

> Legislature. Instead of varying and potentially inconsistent definitions of total need, regions, regional need, and fair share that can result from the case-by-case determinations of courts involved in isolated litigation, an overall plan for the entire state is envisioned, with definitions and standards that will have the kind of consistency that can result only when full responsibility and power are given to a single entity. Municipalities will have both the means and motives to determine, using the same standards, what is required of them, what their fair share is, and what combinations of ordinances and other measures will achieve that fair share. The means consist of the rules, criteria, and guidelines of the Council, along with the Council's determination that the municipal fair share plan complies, or, if it does not, what steps must be taken. The motives are the municipalities' strong preference to exercise their zoning powers independently and voluntarily as compared to their open hostility to court-ordered rezoning; the motives also include the municipalities' desire to avoid such litigation, a goal best achieved by voluntary compliance through conformance with the standards adopted by the Council. [Id. at 22.]

This Court expanded on this theme in Holmdel Building Ass'n v. Township of Holmdel, 121 N.J. 555 (1990), when it ruled that the adoption of development fee ordinances were within the power of municipalities, but because the Council had not adopted regulatory standards for development fees, the municipal development fee ordinances at issue were not "validly adopted." Therefore, the Council was directed by this Court to adopt comprehensive development fee regulations so as to assure that municipal fee ordinances were uniform and consistent with the Council's rules. Id. at 586.

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This Court's deference to the Council's expertise in its Holmdel decision is consistent with the presumption that agency action is valid, that administrative decisions are reasonable and correct, and that the discretion legislatively delegated to such an agency has been properly exercised. In re Township of Warren, 132 N.J. 1, 26 (1993); New Jersey League of Municipalities v. Department of Community Affairs, 158 N.J. 211, 222 (1999); Boyle v. Ricci, 175 N.J. Super. 158, 166 (App. Div. 1980); Commuter Operating Agency's Determination, 166 N.J. Super. 430, 435 (App. Div.), certif. denied. 81 N.J. 261 (1979). It is also understood that deference is warranted because of the Council's special competence and expertise in the area of affordable housing. Hills Dev. Co. v. Bernards Tp., supra, 103 N.J. at 32; Van Dalen v. Washington Township, 120 N.J. 234, 245 (1990) (the Council has consistently been recognized by this Court as having broad powers and wide discretion to resolve low and moderate income housing problems.) As stated in Holmdel, supra:

> It cannot be overstressed that the Legislature, through the FHA, intended to leave the specific methods of compliance with Mount Laurel in the hands of COAH and the municipalities, charging COAH with the singular responsibility for implementing the statute and developing the State's regulatory policy for affordable housing. [121 N.J. at 576.]

COAH's authority comports "with the complexity and sensitivity of the subject of affordable housing." Id. at 577.*

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*However, this Court has also held that the Council's jurisdiction over Mount Laurel compliance did not preclude a party's right to challenge municipal action taken in furtherance

It should therefore be clear that the Council's rules and regulations are applicable to all municipalities.

> While the Legislature has left a continuing role under the Act for the judiciary in Mount Laurel matters, any such proceedings before a court should conform whenever possible to the decisions, criteria, and guidelines of the Council. We do not believe the Legislature wanted lower income housing opportunities to develop in two different directions at the same time, contrary to sound comprehensive planning. [Hills, supra, 103 N.J. at 63.]

Accordingly, municipal compliance with Mount Laurel is wanting if it is at a variance with the Council's rules, whether a municipality's Mount Laurel compliance plan is under the jurisdiction of the Council or the courts.

> A. TO THE EXTENT THAT CHERRY HILL HAS NOT ADDRESSED ITS SECOND-ROUND MOUNT LAUREL OBLIGATION CALCULATED PURSUANT TO N.J.A.C. 5:93-1 ET SEQ., IT MUST DO SO.

Perhaps the most fundamental of the Council's rules, and one that must apply to all New Jersey municipalities, is the Council's methodology for the determination of municipal second-round Mount Laurel obligations; N.J.A.C. 5:93-1 et seq. This Court in Hills read the FHA provision at N.J.S.A. 52:27D-307 that the Council will promulgate its regulations and methodology by January 1, 1986 or earlier "and from time to time thereafter" as follows:

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of a COAH certified fair share plan in an action in lieu of prerogative writs. Alexander's v. Paramus, 125 N.J. 100 (1991). See also, Sartoga v. Borough of West Paterson, 346 N.J. Super. 569 (App. Div. 2002); petition for certification filed, February 6, 2002.

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> [t]he Act contemplates that the Council will periodically adjust its regional need figures. In other words, the Council is not required to make a static determination by August 1, 1986, but rather the first determination of the major facts and standards that will enable municipalities to determine their fair share at that time, the Council's determination to be revised "from time to time" in accordance with changing needs and changing circumstances. § 7. The Act contemplates that the information and criteria adopted by the Council at any given time will result in municipal fair share ordinances, revision of which should be considered after six years. That is the same period (six years) used in the Municipal Land Use Law requiring periodic revisions of municipal master plans, N.J.S.A. 40:55D-89, and the period used by this Court in Mount Laurel II, during which a zoning ordinance complying with the Mount Laurel obligation would be protected from attack. 92 N.J. at 291-92. [Hills, supra, 103 N.J. at 33.]

Consistent with the FHA and Hills, the Council adopted in 1994 its second-round cumulative methodology and rules. The technical description of the Council's second-round methodology is set out in detail at N.J.A.C. 5:93-Appendix A. The methodology builds upon and refines the methodology initially created by the Council for its first-round period of substantive certification from 1987 to 1993. That methodology was set out at N.J.A.C. 5:92-Appendix A and was extensively reviewed with approval in In re Township of Warren, supra, 132 N.J. at 9-19. The Council's second-round methodology is cumulative for the period 1987 to 1999 and, when necessary, recalculates the Council's projections for the 1987-1993 first-round certification period. N.J.A.C. 5:93-Appendix A. However, the goal of both methodologies is the same -- the determination of a municipal fair share obligation to provide low

and moderate income housing for each of New Jersey's municipalities.

The Council determined that Cherry Hill's first-round pre-credited need obligation calculated pursuant to N.J.A.C. 5:92-1 et seq. was 2,295 units, but with credits was reduced to 2,081 units and then because of the Council's 1,000-unit drastic alteration cap was reduced to 1,000 units. ACa3. Once Cherry Hill returned to the court, its 1993 Settlement Agreement, which was approved by the court, established Cherry Hill's "adjusted fair share number" to be 735 affordable units (Pa200), a number that was "adjusted" because of the lack of "adequate vacant, developable" land in Cherry Hill to meet a higher number. Pa210. Several named parcels were included in the 1993 Settlement Agreement that if developed would be incorporated into Cherry Hill's fair share, but in no case would the obligation exceed 1,000 units. Pa209 to Pa211.

Thereafter, with the adoption of its second-round rules, the Council set Cherry Hill's second-round cumulative pre-credited need obligation at 1,851 affordable units. Later, when the Council re-calculated Cherry Hill's obligation to be consistent with the 1,000-unit cap provision of N.J.S.A. 57:27D-307(e) (see Counterstatement of Facts, infra), the Township's cumulative second-round pre-credited need obligation was reduced to 1,669 affordable units. Pa154, Pa155.

Cherry Hill and Realen have taken the position below that the Cherry Hill fair share plan set out in the March 12, 1993

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Settlement Agreement remains valid and that by complying with the terms of its 1993 Settlement Agreement the Township has met and continues to meet its full Mount Laurel obligation as established by N.J.A.C. 5:92-1 et seq. and N.J.A.C. 5:93-1 et seq. This position is not consistent with the Council's rules.

The Council's second-round methodology and rules were not adopted until June 6, 1994, a full year after the Cherry Hill Settlement Agreement. Further, it is clear from a review of the process by which Cherry Hill and the plaintiffs arrived at the Settlement Agreement that the agreement was exclusively concerned with the Cherry Hill fair share obligation as calculated pursuant to N.J.A.C. 5:92-1 et seq.. The Agreement in Paragraph c, for example, states that "the Township's fair share is reduced from 2295," the Council determined first-round pre-credited need figure, "to 787" affordable units. Pa210.

Also, there was no authority in the Council's procedural rules in March 1993 for a substantive certification (or Judgment of Repose) that could meet a two-round fair share obligation. Such authorization was later found in the Council's "Interim Rules" adopted effective June 6, 1994. N.J.A.C. 5:91-14.2, was captioned "Municipalities that have not received substantive certification." and stated:

> (a) A municipality that has petitioned for substantive certification of a housing element and fair share plan designed to address its 1987-1993 obligation, but has not received a final determination of the Council on its plan by June 6, 1994, may either:

> 1. Move to amend its housing element and fair share plan to address its 1987-1999 obligation pursuant to N.J.A.C. 5:93 and repetition for certification of the amended plan; or
>
> 2. Choose to continue to seek substantive certification on its 1987-1993 obligation. [N.J.A.C. 5:91-14.2, effective June 6, 1994, see 25 N.J.R. 5763(a), 26 N.J.R. 2300(a); repealed by R. 1999 at 378, effective November 1, 1999, see 31 N.J.R. 2319(a), 31 N.J.R. 3290(a).]

It is therefore clear that no authority existed in COAH's procedural rules in March 1993 for a settlement agreement such as that entered into in this case which would meet the Council's two rounds of substantive certification.

The 1993 Settlement Agreement stated that it "shall represent the Township of Cherry Hill's Mount Laurel responsibility for 1987 - 1999." Pa210. This statement is consistent with the fact that the agreement was entered into in 1993 and court-ordered judgments of repose and COAH's grants of substantive certification last for a six-year period, which would then have terminated in 1999. Judge Davis has very recently, on March 20, 2002, granted Cherry Hill a six-year Judgment of Repose, nunc pro tunc lasting from March 24, 1994 to March 24, 2000. ACa75, ACa76. However, once that six-year period of repose was over, Judge Davis did not acknowledge a subsequent municipal responsibility to plan for and meet the Council's second-round obligation.* Therefore, it remains that there is nothing in the record below to establish that there

*He did however, state that Cherry Hill would have a third-round obligation. ACa73, ACa74.

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was any municipal effort on the part of Cherry Hill to calculate or meet its second-round obligation.

The Council's review of the record does not reveal any evidence that Cherry Hill took any steps, formal or otherwise, to plan for its second-round Mount Laurel obligations. It is also clear that Cherry Hill continued to implement the fair share plan set out in the 1993 Settlement Agreement. Affordable housing was thereby created within Cherry Hill consistent with its 1993 fair share plan. However, the Council cannot find evidence in the record of a municipal attempt to measure and meet any further responsibility for affordable housing, as calculated pursuant to N.J.A.C. 5:93-1 et seq. for the Council's second-round. To the extent that Cherry Hill has not addressed its second-round Mount Laurel obligation, this Court should order that it do so.*

B. CHERRY HILL'S SECOND-ROUND CALCULATED NEED FIGURE MAY BE CAPPED AT 1,000 UNITS PURSUANT TO N.J.A.C. 5:93-14.1.

When determining its second-round Mount Laurel obligation, Cherry Hill may be subject to the 1,000-unit cap set out at N.J.S.A. 52:27D-307(e) and N.J.A.C. 5:93-14.1. In determining Cherry Hill's second-round pre-credited need, the Council on December 13, 1999 informed Cherry Hill that it had

*The Council's interim rules, N.J.A.C. 5:91-14.1 et seq., provide that a municipality such as Cherry Hill that has not addressed its second-round obligation by June 6, 2000 may petition with a fair share plan to meet its second-round obligation and receive interim substantive certification for that plan that is valid for up to one year after the effective date of the adoption of the Council's third-round methodology and rules. N.J.A.C. 5:91-14.2(a) and (b).

reduced its second-round pre-credited need from 1,851 affordable units to 1,669 units. Pa154 to Pa157. Further, the Council informed the Township that once all credits and reductions to which Cherry Hill was entitled for its compliance with its first-round Mount Laurel obligation were subtracted from the 1,669 unit pre-credited need, the resulting calculated need figure could also be subject to the 1,000-unit cap. Pa154, Pa155. Therefore in determining Cherry Hill's second-round Mount Laurel obligation, the Township would receive a reduction for all affordable housing constructed and zoned-for within the Township addressing its first-round obligation.

The "1,000-unit cap" provision of the FHA is found at N.J.S.A. 52:27D-307(e), which directs the Council to:

> [i]n its discretion, place a limit, based on a percentage of existing housing stock in a municipality and any other criteria including employment opportunities which the council deems appropriate, upon the aggregate number of units which may be allocated to a municipality as its fair share of the region's present and prospective need for low and moderate income housing. No municipality shall be required to address a fair share beyond 1,000 units within six years from the grant of substantive certification, unless it is demonstrated, following objection by an interested party in an evidentiary hearing, based upon the facts and circumstances of the affected municipality that it is likely that the municipality through its zoning powers could create a realistic opportunity for more than 1,000 low and moderate income units within that six-year period. For the purposes of this section, the facts and circumstances which shall determine whether a municipality's fair share shall exceed 1,000 units, as provided above, shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential

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> units in the six-year period preceding the petition for substantive certification in connection with which the objection was filed. [N.J.S.A. 52:27D-307(c)(3)(e).]

The "1,000-unit cap" is codified in the Council's rules at N.J.A.C. 5:93-14.1, which states that:

> [n]o municipality shall be required to address a fair share beyond 1,000 units within six years from the grant of substantive certification, unless it is demonstrated, following an objection and an evidentiary hearing, based upon the facts and circumstances of the affected municipality that it is likely that the municipality through its zoning powers could create a realistic opportunity for more than 1,000 low and moderate income units within the six-year period. The facts and circumstances which shall determine whether a municipality's fair share shall exceed 1,000 units shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential units in a six-year period preceding the petition for substantive certification. [N.J.A.C. 5:93-14.1]

The Council has interpreted the 1,000-unit cap to apply to "calculated need," as defined at N.J.A.C. 5:93-1.3 "calculated need."* In part, the need for the Council's 1,000-unit cap rule interpretation is caused by the use of the term "fair share" in N.J.S.A. 52:27D-307(e), which states that "[n]o municipality shall be required to address a fair share beyond 1,000 units within six years from the grant of substantive certification...." Although

*That interpretation was the subject of a COAH Motion Decision dated May 3, 2000 (ACa77 to ACa87), which was issued in response to a motion to reconsider the interpretation filed by the Township of Jackson, which argued that the term should be applied to "pre-credited need," see N.J.A.C. 5:93-1.3 "pre-credited need."

the term "fair share" is used throughout the Fair Housing Act, the term is neither defined by the FHA, nor in the Council's rules.

Generally, however, in the FHA and the Council's rules the term "calculated need" is equivalent to "fair share". For example, at N.J.S.A. 52:27D-312(a) the FHA states with regard to RCAs that "a municipality may propose the transfer of up to 50% of its fair share to another municipality within its housing region by means of a contractual agreement into which the two municipalities voluntarily enter." In 1989 COAH issued a decision In the Matter of the Township of Parsippany-Troy Hills, ACa88 to ACa92, concerning the meaning of the phrase "50% of its fair share" found in N.J.S.A. 52:27D-312(a). The Council in this decision had to decide whether an RCA would be based upon a municipal pre-credited need figure, which was the position taken by the affected municipality or "the number of units arrived at after credits." The Council determined in the Parsippany-Troy Hills decision that the municipal pre-credited need was not equivalent to the term "fair share" found in N.J.S.A. 52:27D-312, but rather that "fair share" was calculated "after taking any allowable credits or adjustments." ACaa89 to ACa91; see also N.J.A.C. 5:93-6.1 et seq.

The Council in its 1,000-unit cap motion decision discussed the Parsippany-Troy Hills decision and concluded that the term "fair share" as it appears in N.J.S.A. 52:27D-307 and in N.J.S.A. 52:27D-312 should be interpreted consistently. Therefore, the Council determined that in both -307 and -312, the term "fair share" must be interpreted to mean the municipal obligation "after

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taking any allowable credits and adjustments." In order for the Council's interpretation of the 1,000-unit cap to be consistent with the Council's Parsippany-Troy Hills decision, the 1,000-unit cap must therefore be applied to "calculated need," not to "pre-credited need."

The Council's interpretation of "fair share" in the Parsippany-Troy Hills decision and its decision in this matter concerning the 1,000-unit cap is also consistent with the description of COAH's methodology found in Calton Homes v. New Jersey Council on Affordable Housing, 244 N.J. Super. 438 (App. Div. 1990), certif. denied 127 N.J. 326 (1991). It is clear that COAH's prior 1,000-unit cap rule at issue in Calton Homes that was not applied to pre-credited need, but rather to the municipal obligation after credits and reductions:

> Once a municipality's pre-credited need has been calculated, that number is subjected to a variety of credits, caps and adjustments to arrive at the municipality's fair share number.... Two caps may further reduce a municipality's fair share; specifically, every municipality's fair share is capped at twenty percent of its occupied housing stock or 1,000 units, whichever is less. [Id. at 445, 446.]

Further, a comparison of N.J.A.C. 5:92-7.1, the statute at issue in Calton Homes, with N.J.A.C. 5:93-2.16 and -14.1 is instructive with regard to the Council's position that the 1,000-unit cap limitation should be applied to "calculated need," rather than "pre-credited need." N.J.A.C. 5:92-7.1 provided that the 20% cap and the 1,000-unit cap were to be applied to a "municipality's present and prospective fair share," but only "after receiving the

crediting provided in Subchapter 6, Credits." Similarly, N.J.A.C. 5:93-2.16(a) applies the second-round 20% cap to "pre-credited need minus the reductions, prior cycle credits, and the rehabilitation components." Therefore, applying the 1,000-unit cap provided at N.J.A.C. 5:93-14.1 to "calculated need" is identical to the way the 20% cap was applied in both the first and second rounds, except for the fact that the 20% cap is also included when determining "calculated need."

Therefore, once Cherry Hill begins to determine its Mount Laurel responsibilities under the Council's second-round rules it may receive reductions for all affordable housing activity undertaken in compliance with its first-round fair share plan set out in its 1993 Settlement Agreement. After reducing its pre-credited need of 1,669 units by the units zoned for or produced during its first-round, Cherry Hill's calculated need is subject to the 1,000-unit cap set out at N.J.A.C. 5:93-14.1. That calculated need figure, capped or not, is the "fair share" obligation which Cherry Hill must plan to meet for its second-round. Until that obligation is determined, the proper role that the Garden State site will play in Cherry Hill's future Mount Laurel compliance cannot be established.

C. THE COUNCIL'S RULES CONCERNING LAND AS A SCARCE RESOURCE, N.J.A.C. 5:93-4.2, REQUIRE THAT THE GARDEN STATE SITE BE INCLUDED IN A RECALCULATED REALISTIC DEVELOPMENT POTENTIAL TO ESTABLISH CHERRY HILL'S SECOND-ROUND AFFORDABLE HOUSING OBLIGATION.

The lack of vacant land has always been an issue in Cherry Hill with regard to the Township's compliance with its Mount

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Laurel obligations. Both the Council and the Superior Court have entered restraints preserving land in Cherry Hill as a scarce resource. Pa172 to Pa180; Ia30 to Ia53. Moreover, in this Court's Holmdel decision, which invalidated an early Cherry Hill development fee ordinance, it was noted that Cherry Hill had enacted its development fee ordinance because the municipality lacked the requisite land to build all of its required affordable housing.

> Cherry Hill Township's Mt. Laurel obligation is not limited to indigenous need. The Township claims it is approaching "total build out," and therefore adopted a housing impact-fee ordinance. [Holmdel, supra, 121 N.J. at 561.]

The lack of vacant land for development was reflected in the March 1993 "Stipulation of Settlement establishing Cherry Hill's Fair Share and Other Issues." Pa208 to Pa227. Because of the scarcity of land within the Township, the fair share obligation for Cherry Hill was reduced from 2,295 units to 787 units, including an indigenous need of 52 units. Pa210. The Settlement Agreement also listed certain specific parcels (but did not include the Garden State site in that list) and if any of the listed sites became available for development, Cherry Hill's fair share obligation would be "re-evaluated." Pa210, Pa211. The settlement was incorporated into Judge Gibson's March 30, 1993 "Order Establishing Cherry Hill's Fair Share Number," which set the Township's fair share at 758 units, which it called the Township's "realistic development potential." Pa227 to Pa233 at Pa230.

The process by which the Cherry Hill first-round obligation was reduced to a realistic development potential of 758 units is found at N.J.A.C. 5:92-8.1 et seq. for the first-round and N.J.A.C. 5:93-4.2 for the second-round. The processes described are essentially the same, although more fully set out at N.J.A.C. 5:93-4.2. Because that rule will be relevant to Cherry Hill's second-round obligation and the status of the Garden State site in that obligation, those rules will be described here.

The Council's rules at N.J.A.C. 5:93-4.2 guide municipal requests for an adjustment to fair share numbers "due to available land capacity." N.J.A.C. 5:93-4.2(a). The rule requires that if a municipality desires to seek a vacant land adjustment it must submit an existing land use map and an inventory of all vacant parcels in the municipality by block and lot numbers "that includes the acreage and owner of each lot." N.J.A.C. 5:93-4.2(b). A municipality may exclude from the vacant land inventory land owned by a local government entity that is being used for a public purpose other than housing. It may also exclude vacant contiguous parcels of land in private ownership of a size which would accommodate less than five (5) dwelling units pursuant to the Council's standards. N.J.A.C. 5:93-4.2(c). The Council then reviews the submitted land use map and inventory to determine what sites are more likely to develop for low and moderate income housing. Further, the Council may determine that other sites in the municipality not on the submitted vacant land inventory and which "are devoted to a specific use which involves relatively low

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density development" could create an opportunity for affordable housing if zoned for inclusionary development and the Council could then include that land in the inventory. "The Council may request a letter from the owner of sites that are not vacant indicating the site's availability for inclusionary development." N.J.A.C. 5:93-4.2(d).

A municipality may seek to eliminate sites or parts of sites from the vacant land inventory. Agricultural lands, environmentally sensitive lands, historic and architecturally important sites, active recreational land, conservation lands, parklands and open space may be excluded from the vacant land inventory. N.J.A.C. 5:93-4.2(e). The Council will consider sites or parts thereof not specifically eliminated from the vacant land inventory as sites suitable for inclusionary development. The Council will consider the character of the area surrounding each site and the need to provide housing for low and moderate income households in establishing density and set-asides for each site or part thereof remaining in the inventory. The minimum presumptive density shall be six units per acre and the maximum presumptive set-aside shall be 20 percent. N.J.A.C. 5:93-4.2(f). Once the density and set-aside of each site in the vacant land inventory is summed, the Council has determined the realistic development potential ("RDP") of the municipality. N.J.A.C. 5:93-4.2(f).

A municipality that received an adjustment due to the lack of vacant land in addressing its first-round obligation "shall be presumed to have addressed its RDP, provided the

municipality continues to implement the terms of its previous substantive certification." N.J.A.C. 5:93-4.2(f). A municipality may address its RDP through any activity approved by the Council. The municipality need not incorporate into its housing element and fair share plan all sites used to calculate the RDP, if the municipality can devise an acceptable means of addressing its RDP. N.J.A.C. 5:93-4.2(g). If a calculated RDP is less than the pre-credited need minus the rehabilitation component, the Council shall review the existing municipal land use map for areas that may develop and redevelop. An example of such areas may include, but are not limited to, a private club owned by its members; publicly owned land; downtown mixed use areas; high density residential areas surrounding the downtown; areas with a large aging housing stock appropriate for accessory apartments; and properties that may be subdivided and support additional development. With regard to these kinds of properties, N.J.A.C. 5:93-4.2(h) states that the Council may require the municipality to address its unmet RDP through zoning amendments that permit apartments or accessory apartments, zoning amendments that impose a development fee or overlay zoning requiring inclusionary development or the imposition of a development fee. N.J.A.C. 5:93-4.2(h).

Applying these vacant land adjustment rules to Cherry Hill, it is clear that the Garden State site should be included in Cherry Hill's vacant land inventory when calculating its second-round obligation. The racetrack was not included in Cherry Hill's vacant land inventory in its first round, presumably because the

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site was an active racetrack. However, in 2001 the racetrack use of the property ceased and the approximately 223-acre site then became available for development. The site was not zoned with an overlay zone that would include an affordable housing set-aside in conjunction with the first-round vacant land adjustment, such as now is contemplated in N.J.A.C. 5:93-4.2(h), because this was not a requirement of the Council's rules during its first round. See, N.J.A.C. 5:92-8.4. However, as Judge Davis' ruling of March 20, 2002 makes clear, Cherry Hill's first-round nunc pro tunc judgment of repose ended in March 2000. ACa75, ACa76. Therefore, when Cherry Hill reconsiders its vacant land inventory during its second-round planning process, the racetrack site's acreage should now be included in the Township's vacant land inventory as available for calculating Cherry Hill's new second-round realistic development potential. N.J.A.C. 5:93-4.2.

The fact that N.J.A.C. 5:93-4.2(f) allows a presumption that a first-round RDP calculation will continue in the second round does not permit Cherry Hill to ignore the fact that the racetrack site is now available for development and should now be included in Cherry Hill's vacant land inventory. The rule establishes a presumption, which can be rebutted by facts such as those that are presented here. Prior to 2001, the Garden State site was an active racetrack, now that use has ceased and the land is available for development. The Council's administration of vacant land adjustment municipalities has always allowed for changes in the RDP calculation due to changed municipal

circumstances. A dramatic example of this is found in the Council's administration of the Borough of Wanaque's vacant land adjustment. ACa93 to ACa98.

In Wanaque, the Council calculated an RDP and included a site, called "the Powder Hollow" site, in the vacant land inventory. Only 50 acres of the 350 acre Powder Hollow site was included in the inventory, because the remaining acreage was considered undevelopable. Therefore, the RDP was calculated by including the 50 Powder Hollow acres zoned at the Council's standard 6 units to the acre with a 20% set-aside. N.J.A.C. 5:93-4.2(f). However, several years later when Wanague was ready to be certified with a plan that addressed its calculated RDP, the Council learned that a developer of the Powder Hollow site had sought and received preliminary site plan approval for an age restricted development of 1,185 units constituted a net density of 23.7 units per acre, rather than the 6 units per acre for which the site was calculated in the Borough's RDP. As a result, the Council recalculated the RDP for Wanaque to reflect the density of the actual approved development of the Powder Hollow site and required Wanaque to create a new fair share plan that addressed the re-calculated and increased RDP; which Wanaque did. ACa93 to ACa98.

Therefore, in Cherry Hill's second-round plan, the Garden State site should be included in a re-calculation of the Township's RDP, consistent with the Council's vacant land adjustment rules. N.J.A.C. 5:93-4.2.

D. THE COUNCIL'S DEVELOPMENT FEE REGULATIONS, N.J.A.C. 5:93-8 et seq., MAY BE

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RELEVANT TO THE WAY IN WHICH THE GARDEN STATE SITE IS ZONED TO ADDRESS CHERRY HILL'S SECOND-ROUND OBLIGATION.

In 1990, the Holmdel decision reported that because Cherry Hill considered itself to be approaching "total build out", the Township determined that it needed a development fee ordinance to meet its Mount Laurel goals. Holmdel, supra, 121 N.J. at 561. The Council's rules adopted in response to Holmdel provide a uniform regulatory structure for the imposition, collection and expenditure of municipally-imposed development fees, a structure that must apply to Cherry Hill and which may affect the way in which the Garden State site is used to address Cherry Hill's second-round fair share obligation.

The dispute that started this case began when Realen moved to intervene in this long-standing Mount Laurel matter to establish that in its development of the racetrack property it would be responsible for paying a standard development fee, calculated pursuant to N.J.A.C. 5:93-8.10(a) and -8.11(a) and amounting to approximately $4.2 million, as the development's contribution toward meeting Cherry Hill's Mount Laurel responsibilities. Judge Davis affirmed that Realen would be responsible for the payment of the standard development fee in his decision of October 26, 2001. Pa2 to Pa20. Judge Davis relied in his decision on this Court's reasoning in Holmdel that the use of development fees is an appropriate method by which a municipality may meet its Mount Laurel obligation and the "functional equivalent" of providing on-site housing. Pa8. Plaintiffs,

however, argue that substantial on-site housing must be provided in any contemplated development of the Garden State property. Given the fact that Cherry Hill has not yet begun to plan to meet its second-round Mount Laurel need, it is not possible to take a position on the proper role the Garden State site may play in Cherry Hill's second-round plan. However, the Council's development fee rules provide a tool that Cherry Hill may consider when developing its plan.

The Council's development fee regulations set a standard of one half of one percent of the equalized assessed value of residential development as the maximum permitted development fee for residential construction where no increased density is permitted. N.J.A.C. 5:93-8.10(a). With regard to non-residential development, the maximum allowable development fee is one percent of the equalized assessed value of the non-residential development. N.J.A.C. 5:93-8.11(a). Municipalities are allowed to collect up to one half of the development fee at the time of the issuance of a building permit for the development and the remaining portion could be collected at the time of the issuance of a certificate of occupancy. N.J.A.C. 5:93-8.13. All development fees are required to be deposited in an interest bearing affordable housing trust fund. N.J.A.C. 5:93-8.15. The money collected through development fees can only be used for activities approved by the Council for addressing municipal fair share. N.J.A.C. 5:93-8.16.

In addition to establishing the maximum development fees that may generally be imposed by a municipality on residential and

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non-residential development, the Council's rules also set out several alternative ways by which a municipality may collect development fees. A municipality is permitted to impose a development fee of up to six percent of the equalized assessed value of each additional residential unit that is realized from an increased residential zoning. N.J.A.C. 5:93-8.10(b). Also, development fees exceeding the maximum permitted fees can be collected if municipalities enter into agreements with developers that offer financial incentives such as tax abatements, for paying higher fees. Such agreements are subject to Council approval. N.J.A.C. 5:93-8.10(d). Finally, municipalities may allow developers of sites zoned for inclusionary development "to pay a fee in-lieu of the low and moderate income units." N.J.A.C. 5:93-8.10(c). The full text of this regulation states:

> (c) Municipalities may allow developers of sites zoned for inclusionary development to pay a fee in lieu of building low and moderate income units, provided the Council determines the municipal housing element and fair share plan provides a realistic opportunity for addressing the municipal fair share obligation. The fee may equal the cost of subsidizing the low and moderate income units that are replaced by the development fee. For example, an inclusionary development may include a 20 percent set-aside, no set-aside and a fee that is the equivalent of a 20 percent set-aside or a combination of a fee and set-aside that is the equivalent of a 20 percent set-aside. [N.J.A.C. 5:93-8.10(c).]

The Council has recently submitted an amicus brief to this Court in Bi-County Development of Clinton, Inc., v. Borough of High Bridge, Docket No. 51,719, in which the Council has taken the position that sites developed to provide an in-lieu development fee

pursuant to N.J.A.C. 5:93-8.10(c) are equivalent to "inclusionary sites" for the purposes of the Council's administration of municipal Mount Laurel obligations. N.J.A.C. 5:93-8.10(c) states that the fee is paid "in lieu" of building a low and moderate income unit and the fee "may equal the cost of subsidizing" the replaced affordable units. Moreover, as was made clear at the time the Council's development fee regulations were initially adopted, an in-lieu development fee should generally be greater than a fee that would be paid pursuant to a municipality's standard residential development fee ordinance adopted pursuant to N.J.A.C. 5:93-8.10(a). Also, an in-lieu fee that is equivalent to the Council's required minimum payment for a RCA unit, which is currently set at $25,000 per unit at N.J.A.C. 5:93-6.5(c), would be sufficient to meet the standard of N.J.A.C. 5:93-8.10(c) that the fee equal the cost of subsidizing an affordable unit. See, 24 N.J.R. 235 to 24 N.J.R. 245.

In its High Bridge amicus brief the Council stated that its policy of equating sites that produce in-lieu development fees with inclusionary sites that produce housing on site was important because the policy provides the flexibility needed by municipalities, the Council and the courts to settle Mount Laurel disputes other than by the high-density zoning of five (5) times the number of needed affordable units required by the standard inclusionary zoning of land. The in-lieu fees provide a necessary source of funding for municipalities to pursue other less intrusive methods of achieving Mount Laurel obligations. Under the FHA,

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municipalities are not obligated to expend their own revenues for purposes of achieving Mount Laurel compliance. N.J.S.A. 52:27D-311(d). Therefore, money to finance approved affordable housing techniques, such as Regional Contribution Agreements (N.J.S.A. 52:27D-312; N.J.A.C. 5:93-6.1 et seq.), rehabilitation programs (N.J.A.C. 5:93-5.2), accessory apartments (N.J.A.C. 5:93-5.9) or write down/buy down units (N.J.A.C. 5:93-5.1), must come through development fees. Because the payment of an in-lieu development fee is generally greater than the payment of a standard maximum development fee and because the payment of an in-lieu development fee is generally equivalent to the internal subsidization required to provide a unit of affordable housing within an inclusionary development, the Council believes that developers that pay in-lieu fees should receive the same status as inclusionary developers in the COAH process. Accordingly, the Council has historically treated sites that pay in-lieu fees as the equivalent of inclusionary sites where units are built on-site.

The Council has concluded above that Cherry Hill has heretofore failed to plan for or address its second-round Mount Laurel obligation. Any calculation of the extent of that obligation must account for the new status of the racetrack site as available for development. Therefore, the racetrack site's acreage must be included in the calculation of Cherry Hill's second-round RDP. However, the racetrack site would not necessarily have to be used to address the RDP on-site if some other satisfactory means is found to meet the Cherry Hill obligation. N.J.A.C. 5:93-4.2(g).

Therefore, the question of whether the racetrack site should be zoned as an inclusionary site providing on-site housing or an equivalent in-lieu development fee or may pay a standard development fee depends upon a planning process that Cherry Hill has yet to begin.

As such, the Council can take no position on the issue of how the Garden State Park site should be used to address Cherry Hill's Mount Laurel obligation. The resolution of this issue requires Cherry Hill to calculate its second-round obligation and then create a plan to meet that obligation. When creating its second-round plan, Cherry Hill must decide how the Garden State site fits into its new fair share plan. Until this planning process occurs, the status of the Garden State site and the appropriateness of any development fee to be imposed on the development of the site cannot be determined.

E. THE ARGUMENTS MADE IN PART D OF PLAINTIFFS' BRIEF ARE NOT SUPPORTED BY THE RECORD BELOW AND SHOULD NOT BE ADDRESSED BY THIS COURT.

In Part D of their brief the plaintiffs present their general views as to what this Court "should do to improve the Mount Laurel doctrine." This polemic is unsupported by the evidence presented in the record below and raises numerous issues that were not raised below. Therefore, this Court should not address the arguments presented in Part D of plaintiffs' brief.

For example, the plaintiffs aver that the regional contribution agreement mechanism set out at N.J.S.A. 52:27D-312 is unconstitutional, even though Cherry Hill has never entered into an

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RCA to satisfy a portion of its Mount Laurel obligation and even though the RCA has been approved by the this Court in Hills, supra 103 N.J. at 37, 38. Also, plaintiffs opine that this Court's Mount Laurel jurisprudence is at cross purposes with its Abbott jurisprudence: "Like ships passing in the night, Mount Laurel calls for the use of resources to promote regionalization while Abbott's massive allocation of resources are focused on funding racially-segregated schools...." Pb53. The plaintiffs have not sought to create a record below to support their contentions on this or any other point raised in Part D of their brief.

Also unsupported in the record are plaintiffs' complaints about regulations and funding policies of the Department of Community Affairs' Balanced Housing Program and the Housing and Mortgage Finance Agency. Pb59 to Pb62. Neither of these agencies are parties to this matter and, as far as one can tell, neither agency's critized policies and rules are at issue in this case. Plaintiffs have even choosen in Part D of their brief to raise issues with regard to proposed rules that have not yet been adopted (Pb60, Pb61) and to criticize COAH policy statements that have been raised for informal comment with regard to the Council's future third round and which may never be formally proposed as regulations (Pb62).

The issues presented in this case call for this Court's resolution with regard to Cherry Hill's future Mount Laurel compliance and the proper role the Garden State site should play in that compliance effort. Part D does not contribute to the

resolution of these issues. As such, and because the arguments raised in Part D are not supported by the record or raised below, this Court should not address the issues improperly raised by plaintiffs in Part D of their brief.

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CONCLUSION

For all of the above-stated reasons, amicus curiae New Jersey Council on Affordable Housing urges this Court to apply the Council's regulations to the resolution of this dispute and to require the Township of Cherry Hill to adopt a fair share plan to meet its second-round Mount Laurel obligation. The fair share plan should include the Garden State acreage in the calculation of Cherry Hill's realistic development potential and should include how the Garden State site will address Cherry Hill's second-round obligation.

Respectfully submitted,
DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY

By: William P. Malloy
William P. Malloy
Deputy Attorney General

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