

BOROUGH OF BOGOTA MASTER PLAN DRAFT HOUSING ELEMENT AND FAIR SHARE PLAN

Prepared for:

Planning Board
Borough of Bogota
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Adopted June 17, 2025

The original copy of this document was signed and sealed
in accordance with N.J.S.A. 45:14 A-1 et seq.



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Table of Contents

I.	Introduction	1
II.	Affordable Housing in New Jersey	2
III.	Housing Element/ Fair Share Plan Requirements.....	4
IV.	Housing Stock and Demographic Analysis.....	7
	Housing Stock Inventory.....	7
	General Population Characteristics	10
	Household Characteristics	11
	Income Characteristics.....	11
	Employment Characteristics.....	12
	Growth Trends and Projections.....	16
V.	Fair Share Plan.....	18
	Affordable Housing Obligations.....	18
	Proposed Compliance Mechanisms	21
	Summary of Credits and Bonuses	27
	Consideration of Lands and Buildings for Low- and Moderate-Income Housing.....	27
	Spending Plan	28
VI.	Relationship to Multigenerational Family Housing Continuity	29
VII.	Consistency with the State Development and Redevelopment Plan	30
	Appendices.....	32

List of Tables

Table 1.	Housing Units by Occupancy Status, 2023	7
Table 2.	Housing Units by Number of Units in Structure, 2023.....	7
Table 3.	Housing Units by Age to 2023	8
Table 4.	Housing Units by Number of Rooms for Bogota Borough and Bergen County, 2023.....	8
Table 5.	Housing Values, Owner Occupied, 2013	9
Table 6.	Housing Values, Owner Occupied, 2023	9
Table 7.	Comparison of Bogota and Bergen County, Gross Monthly Rental Cost, 2023.....	10
Table 8.	Selected Quality Indicators, Percentage of Occupied Housing Units, 2023.....	10
Table 9.	Population Growth.....	10

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

Table 10. Age Distribution, 2010-2020	11
Table 11. Household Income by Income Brackets for Bogota and Bergen County, 2023	12
Table 12. Employment Status, Bogota, 2023.....	13
Table 13. Employment by Occupation, Bogota, 2023.....	13
Table 14. Distribution of Employment by Industry, Bogota Residents, 2023.....	14
Table 15. Distribution by Class of Worker, 2023.....	14
Table 16. Private Sector Employment in Bogota by Industry Sector, 2012, 2017, 2022	16
Table 17. Residential Certificates of Occupancy, 2013-2023	16
Table 18. Non-Residential Certificates of Occupancy, 2013-2023.....	17
Table 19. Prior and Third Round Entitlement to Affordable Housing Credits	22
Table 20. Fourth Round Credits.....	27

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I. Introduction

This Housing Element and Fair Share Plan has been prepared on behalf of the Borough of Bogota, Bergen County, in accordance with the New Jersey Municipal Land Use Law per N.J.S.A. 40:55D-28b(3) and the Fair Housing Act (N.J.S.A. 52:27D-301, et seq.). This document supersedes and replaces the Borough's 2018 Housing Element and Fair Share Housing Plan, which was adopted on March 27, 2018, hereinafter referred to as the "Borough's 2018 Housing Plan."

The Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., requires that a municipal master plan include a Housing Element in order for the municipality to exercise the power to zone and regulate land use. The Housing Element and Fair Share Plan is adopted by the Borough Planning Board and endorsed by the governing body. It is intended to achieve the goal of meeting the Borough's obligations to plan and regulate land use to provide for a fair share of the regional need for affordable housing.

Bogota remains committed to meeting its constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of the region's present and prospective needs for housing for low- and moderate-income families. This Housing Element and Fair Share Plan document outlines how the Borough will address its affordable housing obligations.

II. Affordable Housing in New Jersey

In 1975 the Supreme Court of New Jersey in South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975), ruled that the developing municipalities in the State of New Jersey exercising their zoning power had a constitutional obligation to provide a realistic opportunity for the construction of their fair share of the region's need for low- and moderate-income housing. In 1983, the Supreme Court decided South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983), commonly referred to as Mount Laurel II. In this landmark case, the Supreme Court replaced the developing municipality standard with a new standard. Specifically, it ruled that only municipalities with "growth areas" would have a responsibility to provide a realistic opportunity for their fair share of low and moderate income housing. "Growth area" is a designation in the State Development Guide Plan where growth was to be targeted. In 1985, in response to the flood of builder's remedy lawsuits precipitated by Mount Laurel II and a trial court decision enabling developers to easily quantify the fair share obligation of growth share municipalities, the New Jersey Legislature adopted, and the Governor signed, the Fair Housing Act N.J.S.A. 52:2D-301, et seq. ("FHA") into law. The FHA transformed the judicial doctrine, commonly referred to as the "Mount Laurel doctrine", into a statutory one and provided an alternative administrative process in which municipalities could elect to participate in order to secure approval of a Housing Element and Fair Share Plan ("HEFSP") from an entity the FHA created and gave "primary jurisdiction": the New Jersey Council on Affordable Housing ("COAH"). COAH promulgated regulations to implement the FHA and then processed applications by municipalities to secure approval of their Housing Element and Fair Share Plans.

In 1986, COAH adopted regulations for the First Round. In 1994, COAH adopted regulations for the Second Round. COAH adopted regulations for the Third Round in 2004. The Appellate Division invalidated several of the key regulations. COAH adopted regulations for Round 3 a second time in 2008. In October of 2010, the Appellate Division invalidated those regulations as well in a case entitled In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 416 N.J. Super. 462 (App. Div. 2010) (the "2010 Case") and gave COAH five months to adopt new regulations for Round 3. In 2013, , in a case entitled In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 215 N.J. 578 (2013) (the "2013 Case"). the Supreme Court affirmed the Appellate Division's invalidation of the second iteration of the Third Round regulations and directed COAH to adopt new regulations based upon the methodology utilized in the First and Second Rounds. COAH proceeded to propose such regulations in accordance with the schedule established by the New Jersey Supreme Court in the 2013 Case However, instead of adopting the regulations, on October 20, 2014, COAH deadlocked with a 3-3 vote and then proceeded to make no effort to break the deadlock.

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

Due to COAH's failure to adopt the revised regulations and subsequent inaction, Fair Share Housing Center ("FSHC"), a party in the 2010 Case and the 2013 Case, filed a motion with the New Jersey Supreme Court to enforce litigant's rights. On March 10, 2015 the New Jersey Supreme Court issued its decision on FSHC's motion in a case entitled, In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (the "2015 Case"). In this case, the Supreme Court found that the COAH administrative process had become non-functioning and, consequently, returned the responsibility for implementing the FHA and the affordable housing laws of our State back to the courts. While the Supreme Court provided broad guidelines to the lower courts as to how to implement the Mount Laurel doctrine, the Supreme Court left it to the trial judges to determine appropriate standards and to process applications for approvals of Housing Element and Fair Share Plans by municipalities that committed to comply in the new process it devised.

In the 2015 Case, the Supreme Court decision recognized that many municipalities attempted to address their affordable housing obligations in 2008 by preparing a housing element and fair share plan and petitioning COAH for substantive certification of the plan. Through no fault of its own, Bogota, like a number of other municipalities, did not receive substantive certification of its 2008 plan due to inaction by COAH and subsequent legal challenges. Such towns are considered "participating municipalities". The 2015 Case gave such municipalities the opportunity to prepare a new housing element and fair share plan to address its affordable housing obligations and seek court approval of those plans. Bogota subsequently filed a declaratory judgment with the Superior Court in July 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and FHA in accordance with the decision in the 2015 Case. The Borough reached a settlement with FSHC, which was memorialized in an agreement between the two parties dated November 29, 2016. Bogota subsequently received a Judgment of Compliance and Repose from the Superior Court on April 19, 2018.

On March 20, 2024, Governor Phil Murphy signed a major amendment to the FHA into law. The Amended FHA overhauled the FHA, eliminated COAH, and it set forth standards by which the fair share of municipalities must be established for Round 4 covering the period July 1, 2025 through June 30, 2035 and for subsequent rounds. The Amended FHA required the New Jersey Department of Community Affairs (DCA) to determine the obligation of all municipalities based upon the standards in the Amended FHA and to issue a non-binding report no later than October 30, 2024 setting forth its view of the obligations of each municipality based upon the standards in the Act. The Amended FHA then gave municipalities the choice to either accept the DCA determination of their obligation, or to provide their own determination based upon the standards in the Act.

This Housing Element and Fair Share Plan has been prepared pursuant to applicable law and regulations and addresses Bogota's affordable housing obligations through Round 4.

III. Housing Element/ Fair Share Plan Requirements

In accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1, et seq.), a municipal Master Plan must include a housing element as the foundation for the municipal zoning ordinance. Pursuant to the Fair Housing Act, a municipality's housing element must be designed to provide access to affordable housing to meet present and prospective housing needs, with particular attention to low- and moderate-income housing. The housing element must contain at least the following, as per the FHA at N.J.S.A. 52:27D-310:

- An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low- and moderate-income households and substandard housing capable of being rehabilitated;
- A projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development, and probable residential development of lands;
- An analysis of the municipality's demographic characteristics, including, but not necessarily limited to, household size, income level, and age;
- An analysis of the existing and probable future employment characteristics of the municipality;
- A determination of the municipality's present and prospective fair share of low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share of low- and moderate-income housing; and
- A consideration of the lands most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing; and
- An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, pursuant to N.J.S.A. 52:27D-329.20f.(1); and
- An analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

The Administrative Office of the Courts issued Administrative Directive #14-24 issued on December 13, 2024 establishing guidelines for the implementation of the Amended FHA through the Affordable Housing Alternative Dispute Resolution Program (“the Program”) established pursuant to section 5 of P.L.2024, c.2 (N.J.S.A. 52:27D-313.2). The Directive added additional requirements of municipalities, some in violation of the Amended FHA. More specifically, the Directive adds the following requirements:

- Detailed site suitability analyses, based on the best available data, for each of the un-built inclusionary or 100 percent affordable housing sites in the plan as well as an identification of each of the sites that were proposed for such development and rejected, along with the reasons for such rejection.
- The concept plan for the development of each of the selected sites should be overlaid on the most up to date environmental constraints map for that site as part of its analysis to see what changes will be needed (either to the selected sites or to their zoning) to ensure that all of the units required by the settlement agreement will actually be produced.
- Documentation of the creditworthiness of all of the existing affordable housing units in its HEFSP and to demonstrate that it has followed all of the applicable requirements for extending expiring controls, including confirmation that all of the units on which the controls have been extended are code-compliant or have been rehabilitated to code-compliance, and that all extended controls cover a full 30-year period beginning with the end of the original control period. Documentation as to the start dates and lengths of affordability controls applicable to these units and applicable Affordable Housing Agreements and/or deed restrictions is also required. Additionally, the income and bedroom distributions and continued creditworthiness of all other existing affordable units in the HEFSP must be provided.
- An analysis of how the HEFSP complies with or will comply with all of the terms of the executed settlement agreement.

The Directive also states that the HEFSP must also include (in an Appendix) all of the adopted ordinances and resolutions needed to implement the HEFSP, including:

- All zoning amendments (or redevelopment plans, if applicable).
- An Affordable Housing Ordinance that includes, among other required regulations, its applicability to 100 percent affordable and tax credit projects, the monitoring and any reporting requirements set forth in the settlement agreement, requirements regarding very low income housing and very low income affordability consistent with the FHA and the settlement agreement, provisions for calculating annual increases in income levels and sales prices and rent levels, and a clarification regarding the minimum length of the affordability controls (at least 30 years, until the municipality takes action to release the controls).

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

- The adoption of the mandatory set aside ordinance, if any, and the repeal of the existing growth share provisions of the code.
- An executed and updated Development Fee Ordinance that reflects the court's jurisdiction.
- An Affirmative Marketing Plan adopted by resolution that contains specific directive to be followed by the Administrative Agent in affirmatively marketing affordable housing units, with an updated COAH form appended to the Affirmative Marketing Plan, and with both documents specifically reflecting the direct notification requirements set forth in the settlement agreement.
- An updated and adopted Spending Plan indicating how the municipality intends to allocate development fees and other funds, and detailing (in mini manuals) how the municipality proposes to expend funds for affordability assistance, especially those funds earmarked for very low income affordability assistance.
- A resolution of intent to fund any shortfall in the costs of the municipality's municipally sponsored affordable housing developments as well as its rehabilitation program, including by bonding if necessary.
- Copies of the resolution(s) and/or contract(s) appointing one or more Administrative Agent(s) and of the adopted ordinance creating the position of, and resolution appointing, the Municipal Affordable Housing Liaison.
- A resolution from the Planning Board adopting the HEFSP, and, if a final Judgment is sought before all of the implementing ordinances and resolutions can be adopted, a resolution of the governing body endorsing the HEFSP.

The most glaring example of the Directive exceeding the authority created by the Amended FHA is the requirement to adopt ordinances before the plan is approved. The Amended FHA explicitly provides that municipalities can adopt the ordinances after the plan is approved.

IV. Housing Stock and Demographic Analysis

Housing Stock Inventory

In 2023, there were 3,203 housing units in the Borough of Bogota, of which 78 were vacant. Of the 3,125 occupied units, approximately 68.5 percent were owner-occupied and 31.5 percent were renter-occupied. Table 1, Housing Units by Occupancy Status, 2023 illustrates this occupancy status.

Table 1. Housing Units by Occupancy Status, 2023

	Housing Units	Owner Occupied	Renter Occupied
Occupied	3,125	2,142	983
Vacant	78	-	-
Total	3,203	-	-

Source: American Community Survey, 2019-2023 (Table DP04 Selected Housing Characteristics)

Single-family detached units are the most prevalent housing type in Bogota, making up approximately 68.5 percent of the Borough's total housing stock (both occupied and vacant). Two-unit dwellings occupy 11.4 percent of the housing stock. Structures with three or more units make up approximately 16 percent of the total housing stock. Housing units in structures with 20 or more units make up 8.5 percent of all housing units. See Table 2, Housing Units by Number of Units in Structure, 2023, for a detailed explanation of housing units.

Table 2. Housing Units by Number of Units in Structure, 2023

Number of Units	Total	Percent
1, Detached	2,193	68.5%
1, Attached	127	4.0%
2	366	11.4%
3 or 4	85	2.7%
5 to 9	65	2.0%
10 to 19	95	3.0%
20+	272	8.5%
Mobile Home	0	0.0%
Other	0	0.0%
Total	3,203	100%

Source: American Community Survey, 2019-2023 (Table DP04 Selected Housing Characteristics)

Table 3, Housing Units by Age to 2023, illustrates the age of the Borough's housing stock. Approximately 50 percent of Bogota's housing units were built prior to 1940. Construction of housing units later peaked during 1950-1959 with 446 units built, and then it experienced its slowest decade for new housing unit during 2000-2009, with only 20 units built. Since 2010, 146 units have been built, or 4.6 percent of the housing stock.

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

Table 3. Housing Units by Age to 2023

Year Built	Total Units	Percent
2020 or later	96	3.0%
2010 to 2019	50	1.6%
2000 to 2009	20	0.6%
1990 to 1999	133	4.2%
1980 to 1989	127	4.0%
1970 to 1979	183	5.7%
1960 to 1969	304	9.5%
1950 to 1959	446	13.9%
1940 to 1949	238	7.4%
Before 1940	1,606	50.1%

Source: American Community Survey, 2019-2023 (Table DP04 Selected Housing Characteristics)

Table 4, Housing Units by Number of Rooms for Bogota Borough and Bergen County, 2023, shows that in Bogota, 15.7 percent of housing units have between one and three rooms; just over 52 percent have between four and six rooms; and approximately 32 percent have seven or more rooms. In Bergen County, approximately 17.6 percent of housing units have between one and three rooms; approximately 27.7 percent have between four and six rooms; and 39.0 percent have seven or more rooms. The mean number of rooms per housing unit in Bogota is similar to the Bergen County average, with 5.9 and 5.8 rooms per unit, respectively.

Table 4. Housing Units by Number of Rooms for Bogota Borough and Bergen County, 2023

Rooms	Number of Units in Bogota	Percent of Units in Bogota	Number of Units in Bergen County	Percent of Units in Bergen County
1	97	3.0%	10,090	2.7%
2	134	4.2%	13,229	3.6%
3	273	8.5%	41,700	11.3%
4	463	14.5%	51,568	14.0%
5	319	10.0%	50,366	13.7%
6	887	27.7%	57,779	15.7%
7	477	14.9%	46,007	12.5%
8	147	4.6%	38,447	10.4%
9+	406	12.7%	59,349	16.1%
Total	3,203	100%	368,535	100%
Mean Rooms per Unit	5.9		5.8	

Source: American Community Survey, 2019-2023 (Table DP04 Selected Housing Characteristics)

Tables 5 and 6, Housing Values, Owner Occupied, 2013 and 2023, respectively, show that the median value of owner-occupied housing in Bogota increased by approximately 31 percent between 2013 and 2023. During this same time period, the median housing value in Bergen County increased by 31.4 percent. In 2013, Bogota's median housing value of \$338,200 was approximately 25 percent lower than the Bergen County median housing value of \$451,400. In 2023, Bogota's median housing value of \$443,400 was still approximately 25 percent lower than Bergen County's median housing value of

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

\$593,200. The growth in housing value from 2013 to 2023 was approximately the same for Bogota and Bergen County.

Table 5. Housing Values, Owner Occupied, 2013

	Number in Bogota	Percent in Bogota	Number in Bergen County	Percent in Bergen County
Less than \$50,000	7	0.4%	3,463	1.6%
\$50,000 to \$99,999	12	0.7%	2,019	0.9%
\$100,000 to \$149,999	46	2.5%	3,343	1.5%
\$150,000 to \$199,999	34	1.9%	4,657	2.1%
\$200,000 to \$299,999	434	23.8%	21,262	9.7%
\$300,000 to \$499,999	1,193	65.3%	97,870	44.5%
\$500,000 to \$999,999	93	5.1%	72,577	33.0%
\$1,000,000 or more	7	0.4%	14,827	6.7%
Total	1,826	100%	220,018	100%
2013 Median Value	\$338,200		\$451,400	

Source: American Community Survey, 2009-2013 (Table DP04 Selected Housing Characteristics)

Table 6. Housing Values, Owner Occupied, 2023

Housing Value	Number in Bogota	Percent in Bogota	Number in Bergen County	Percent in Bergen County
Less than \$50,000	44	2.1%	4,241	1.8%
\$50,000 to \$99,999	52	2.4%	2,583	1.1%
\$100,000 to \$149,999	0	0.0%	2,366	1.0%
\$150,000 to \$199,999	0	0.0%	2,680	1.2%
\$200,000 to \$299,999	111	5.2%	11,285	4.9%
\$300,000 to \$499,999	1,307	61.0%	62,212	26.9%
\$500,000 to \$999,999	628	29.3%	115,000	49.8%
\$1,000,000 or more	0	0.0%	30,556	13.2%
Total	2,142	100%	230,923	100%
2023 Median Value	\$443,400		\$593,200	

Source: American Community Survey, 2019-2023 (Table DP04 Selected Housing Characteristics)

Average monthly rental costs in Bogota (\$1,893) are similar to average monthly rental costs in Bergen County (\$1,863), with 73.5 percent of Borough renters paying over \$1,500 per month in rent, while 2.7 percent of renters pay less than \$1,000 per month. Similarly, approximately 74 percent of Bergen County renters pay more than \$1,500 in rent and only 2.5 percent pay less than \$1,000. In Bogota, the largest percentage of renters, 37.8 percent, pay between \$2,000 and \$2,499 in monthly rent. In Bergen County, the largest percentage of renters, approximately 33.3 percent, pay \$1,500 to \$1,999 in rent. See Table 7, Comparison of Bogota and Bergen County, Monthly Rental Cost, 2023, for additional details.

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

Table 7. Comparison of Bogota and Bergen County, Gross Monthly Rental Cost, 2023

Gross Monthly Rent	Number in Bogota	Percent in Bogota	Number in Bergen County	Percent in Bergen County
No Rent Paid	20	-	3,907	-
Less than \$500	0	0.0%	3,870	3.3%
\$500 - \$999	24	2.5%	5,086	4.3%
\$1,000 - \$1,499	231	24.0%	21,678	18.3%
\$1,500 - \$1,999	288	29.9%	39,395	33.3%
\$2,000 - \$2,499	311	32.3%	21,731	18.3%
\$2,500 - \$2,999	59	6.1%	11,103	9.4%
\$3,000 or more	50	5.2%	15,614	13.2%
Total Occupied Units Paying Rent	963	100%	118,477	100%
Median Rent	\$1,893		\$1,863	

Source: American Community Survey, 2019-2023 (Table DP04 Selected Housing Characteristics)

Out of 3,125 occupied housing units in Bogota in 2023, none lacked complete plumbing or kitchen facilities, 1.2 percent lacked telephone service, and 7.4 percent were overcrowded (defined as having 1.01 or more persons per room). See Table 8, Selected Quality Indicators, Occupied Housing Stock, 2023, for further information.

Table 8. Selected Quality Indicators, Percentage of Occupied Housing Units, 2023

	Overcrowded	No Telephone Service Available	Lacking Complete Plumbing Facilities	Lacking Complete Kitchen Facilities
No. Units	232	38	0	0

Source: American Community Survey, 2019-2023 (Table DP04 Selected Housing Characteristics)

General Population Characteristics

Bogota has seen an overall increase in population since 1990, with an initial increase of 5.4 percent from 1990 to 2000. From 2000 to 2010, the Borough's population declined by 0.8 percent; during this same period, the County's population increased by 2.4 percent. From 2010 to 2020, the population growth in Bogota grew by 7.6%, outpacing the growth in Bergen County. See Table 9, Population Growth, for additional information.

Table 9. Population Growth

	1990	2000	Percent Change (1990-2000)	2010	Percent Change (2000-2010)	2020	Percent Change (2010-2020)
Bogota	7,824	8,249	5.4%	8,187	-0.8%	8,778	7.2%
Bergen County	825,380	884,118	7.1%	905,116	2.4%	955,732	5.6%

Source: 1990, 2000, 2010 & 2020 U.S. Census

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

From 2010 through 2020, there were shifts in Bogota's age distribution. Youth under the age of 24 declined in the Borough, both in the number of persons and the share of the population. The 45-54 age group declined as well, by 9 percent nominally and approximately 15 percent as a share of the population. The age groups with the largest increases were the 65-74 age group (an approximately 48 percent nominal increase and 38 percent as a share of the population), followed by the 55-64 age group (a 29 percent nominal increase and 20 percent as a share), and next by the 25 to 34 age group (a 21.6 percent nominal increase and 13.6 as a share). See Table 10, Age Distribution, 2000-2010, for additional details.

Table 10. Age Distribution, 2010-2020

Age Group	2010		2020		Percent Change (Nominal)	Percent Change (Share of Total)
	Number of Persons	Percent of Population	Number of Persons	Percent of Population		
Under 5	471	5.8%	438	5.0%	-7.0%	-13.8%
5-14	1,056	12.9%	1,013	11.5%	-4.1%	-10.9%
15-24	1,197	14.6%	1,129	12.9%	-5.7%	-11.6%
25-34	965	11.8%	1,173	13.4%	21.6%	13.6%
35-44	1,200	14.7%	1,241	14.1%	3.4%	-4.1%
45-54	1,334	16.3%	1,214	13.8%	-9.0%	-15.3%
55-64	1,010	12.3%	1,303	14.8%	29.0%	20.3%
65-74	518	6.3%	768	8.7%	48.3%	38.1%
75+	436	5.3%	499	5.7%	14.4%	7.5%
Total	8,187	100%	8,778	100%	-	-

Source: 2010 and 2020 U.S. Census (2020 - Table DP1 Profile of General Population and Housing Characteristics)

Household Characteristics

A household is defined by the U.S. Census Bureau as those persons who occupy a single room or group of rooms constituting a housing unit; however these persons may or may not be related. As a subset of households, a family is identified as a group of persons, including a householder and one or more persons related by blood, marriage or adoption, all living in the same household. In 2023, there were 3,125 households in Bogota, with an average of 2.90 persons per household. Approximately 74 percent of all households were families, for which there was an average family size of 3.24 persons per family. In terms of household composition, approximately 50 percent of households were married couple families, approximately 37.5 percent of households had children related to the householder, and 20.8 percent were householders living alone. Over 31 percent of households had four or more persons. (Source: ACS 2019-2023, Table S1101 & S2501)

Income Characteristics

Bogota households have, on average, lower incomes than that of Bergen County. Annual median income for Bogota households was \$107,321 in 2023, whereas annual median income for households in the County was \$123,715. Table 11, Household and Family Income by Income Brackets

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

for Bogota and Bergen County, 2023, further illustrates these findings by noting the number and share of households in each of the income categories.

Table 11. Household Income by Income Brackets for Bogota and Bergen County, 2023

	Bogota Borough		Bergen County	
	Households	Percent	Households	Percent
Less than \$5,000	23	0.7%	7,259	2.1%
\$5,000 to \$9,999	11	0.4%	3,942	1.1%
\$10,000 to \$14,999	35	1.1%	7,234	2.0%
\$15,000 to \$19,999	42	1.3%	6,577	1.9%
\$20,000 to \$24,999	72	2.3%	6,705	1.9%
\$25,000 to \$34,999	64	2.0%	15,240	4.3%
\$35,000 to \$49,999	256	8.2%	23,079	6.5%
\$50,000 to \$74,999	503	16.1%	39,916	11.3%
\$75,000 to \$99,999	421	13.5%	35,056	9.9%
\$100,000 to \$149,999	678	21.7%	62,751	17.8%
\$150,000 or more	1,020	32.6%	145,548	41.2%
Total	3,125	100%	353,307	100%
Median Household Income	\$107,321		\$123,715	

Source: American Community Survey, 2019-2023 (Table S2503 Financial Characteristics)

Although the Census data does not provide a breakdown of household income by household size, the 2024 Regional Income Limits prepared by the Affordable Housing Professionals of New Jersey¹ for Bergen, Hudson, Passaic and Sussex Counties (Region 1) indicate the median household income for a household of one person was \$84,288. As such, the moderate-income threshold for a household of one person was \$67,431 (i.e., 80 percent of \$84,288). In attempting to approximate the number of low- and moderate-income households in the Borough, using a household size of one is a conservative approach that represents just a minimum threshold. Table 13 above shows that the percentage of households in the Borough for which income was below the closest breakpoint to this minimum threshold (i.e. \$75,000) was approximately 32 percent.

The percentage of persons and household below the poverty level, as defined by the 2023 American Community Survey, equates to 5.6 percent of all Bogota residents. This is lower than the County as a whole, wherein 6.7 percent of County residents were living below the poverty level in 2023. (Source: ACS 2019-2023, Table S1701)

Employment Characteristics

Table 12, Employment Status, Bogota, 2023, indicates the number of Borough residents aged 16 years and over who are in the labor force, the type of labor force (i.e., civilian or armed forces), and employment status. Approximately 70 percent of Bogota residents aged 16 and over are in the labor

¹ https://ahpnj.org/member_docs/Income_Limits_2024_FINAL.pdf

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

force and, among those in the labor force, 99.5 percent are part of the civilian labor force. Of the residents in the civilian labor force, 92 percent are employed and 8 percent are unemployed.

Table 12. Employment Status, Bogota, 2023

	Number in Bogota	Percent in Bogota
Population 16 years and over	7,394	100%
In Labor Force	5,128	69.4%
Civilian Labor Force	5,102	69.0%
<i>Employed</i>	4,695	92.0%
<i>Unemployed</i>	407	8.0%
Armed Forces	26	0.4%
Not in Labor Force	2,266	30.6%

Source: American Community Survey, 2019-2023 (Table DP03 Selected Economic Characteristics)

Table 13, Employment by Occupation, Bogota, 2023, identifies the occupations of employed persons. Approximately 45 percent of Bogota residents work in Management, Business, Science, and Arts Occupations and 24 percent work in Sales and Office-related occupations. A smaller share of the population works in Service jobs (12.5 percent); the Production, Transportation, and Moving sector (approximately 10 percent); and in Natural Resources, Construction, and Maintenance (8.4 percent).

Table 13. Employment by Occupation, Bogota, 2023

Sector Jobs	Number	Percent
Management, Business, Science, and Arts Occupations	2,121	45.2%
Service	586	12.5%
Sales and Office	1,128	24.0%
Natural Resources, Construction, and Maintenance	396	8.4%
Production, Transportation, and Moving	464	9.9%
Total	4,695	100%

Source: American Community Survey, 2019-2023 (Table DP03 Selected Economic Characteristics)

Table 14, Distribution of Employment by Industry, Bogota Residents, 2023, shows the distribution of employment by industry for employed Bogota residents. The largest sector of employment was in Educational Services, Health Care and Social Assistance (28 percent), with smaller shares of the population employed in Retail Trade (9.4 percent), Manufacturing (9 percent), the sectors of Professional, Scientific, Management, Administrative, and Waste Management Services as well as Transportation and Warehousing and Utilities (8.9 percent each), Finance, Insurance, Real Estate, Rental and Leasing (8.4 percent), and Arts, Entertainment, Recreation, Accommodation and Food Services (8.1 percent). The Construction sector employed 6.6 percent of the working population, and small portions of the population were employed in the remaining industries.

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

Table 14. Distribution of Employment by Industry, Bogota Residents, 2023

Sector Jobs	Number	Percent
Agriculture, Forestry, Fishing and Hunting, and Mining	0	0.0%
Construction	308	6.6%
Manufacturing	421	9.0%
Wholesale Trade	200	4.3%
Retail Trade	443	9.4%
Transportation and Warehousing, and Utilities	416	8.9%
Information	62	1.3%
Finance, Insurance, Real Estate, Rental and Leasing	393	8.4%
Professional, Scientific, Management, Administrative, and Waste Management Services	419	8.9%
Educational Services, Health Care and Social Assistance	1,316	28.0%
Arts, Entertainment, Recreation, Accommodation and Food Services	378	8.1%
Other	134	2.9%
Public Administration	205	4.4%
Total	4,695	100%

Source: American Community Survey, 2019-2023 (Table DP03 Selected Economic Characteristics)

Of Bogota residents who are employed, approximately 81 percent are private wage and salary workers; 15 percent are government workers; and over 3.6 percent are self-employed. See Table 15, Distribution by Class of Worker, 2023, for additional details.

Table 15. Distribution by Class of Worker, 2023

	Number in Bogota	Percent in Bogota
Private Wage and Salary Workers	3,791	80.7%
Government Workers	716	15.3%
Self-employed in own not incorporated business workers	170	3.6%
Unpaid family workers	18	0.4%
Total	4,695	100%

Source: American Community Survey, 2019-2023 (Table DP03 Selected Economic Characteristics)

The New Jersey Department of Labor and Statistics tracks covered employment throughout the State. See Table 16, Private Sector Employment in Bogota by Industry Sector, 2012, 2017, 2022, shows the

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

number of employees by sector in Bogota in 2012, 2017, and 2022. According to the New Jersey Department of Labor and Statistics, there were 780 private sector jobs in Bogota in 2022. The largest sectors of employment were in Wholesale Trade (15 percent of total employment); Accommodation and Food Services (10.9 percent); Administration & Support, Waste Management and Remediation (10.6 percent); Manufacturing (10.1 percent); Health Care and Social Assistance (9.7 percent); and Retail Trade (9.5 percent). Other notable employment sectors include Construction (7.9 percent) and Transportation and Warehousing (7.3 percent). From 2012 and 2022, various sectors experienced decreases in their share of all jobs. The most notable increases in the share of employment by sector occurred in the Administration & Support, Waste Management and Remediation sector, which grew from 3.2 percent to 10.6 percent of all jobs; and the Accommodation and Food Services sector, which grew from 5.4 percent to 10.9 percent of all jobs. The share of jobs in the Construction and the Wholesale Trade sectors rose notably between 2012 and 2017, but by 2022 the share had fallen below 2012 levels.

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

Table 16. Private Sector Employment in Bogota by Industry Sector, 2012, 2017, 2022

	2012		2017		2022	
PRIVATE SECTOR JOBS	Count	Share	Count	Share	Count	Share
Agriculture, Forestry, Fishing and Hunting	0	0.0%	0	0.0%	0	0.0%
Mining, Quarrying, and Oil and Gas Extraction	0	0.0%	0	0.0%	0	0.0%
Utilities	5	0.7%	0	0.0%	0	0.0%
Construction	60	8.3%	132	16.6%	62	7.9%
Manufacturing	110	15.2%	118	14.9%	79	10.1%
Wholesale Trade	116	16.0%	146	18.4%	118	15.1%
Retail Trade	114	15.7%	75	9.5%	74	9.5%
Transportation and Warehousing	27	3.7%	21	2.6%	57	7.3%
Information	3	0.4%	0	0.0%	2	0.3%
Finance and Insurance	72	9.9%	39	4.9%	39	5.0%
Real Estate and Rental and Leasing	7	1.0%	7	0.9%	7	0.9%
Professional, Scientific, and Technical Services	26	3.6%	33	4.2%	39	5.0%
Management of Companies and Enterprises	0	0.0%	0	0.0%	4	0.5%
Administration & Support, Waste Management and Remediation	23	3.2%	26	3.3%	83	10.6%
Educational Services	23	3.2%	29	3.7%	4	0.5%
Health Care and Social Assistance	61	8.4%	47	5.9%	76	9.7%
Arts, Entertainment, and Recreation	7	1.0%	0	0.0%	14	1.8%
Accommodation and Food Services	39	5.4%	76	9.6%	85	10.9%
Other Services (excluding Public Administration)	31	4.3%	44	5.5%	37	4.7%
Public Administration	0	0.0%	0	0.0%	0	0.0%
TOTAL PRIVATE SECTOR	724	100%	793	100%	780	100%

Source: State of New Jersey Department of Labor and Workforce Development Local Employment Dynamics;
<http://onthemap.ces.census.gov/>

Growth Trends and Projections

Residential Trends and Projections

According to the New Jersey Construction Reporter, between 2013 and 2023, Bogota issued 373 certificates of occupancy: nine (9) for one- and two-family dwellings, 363 for multifamily dwellings almost exclusively in inclusionary residential development, and one (1) for a dwelling in a mixed-use building. See Table 17, Residential Certificates of Occupancy, 2013-2023, for additional details.

Table 17. Residential Certificates of Occupancy, 2013-2023

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
1&2 Family	0	0	0	2	0	0	1	1	3	2	0	9
Multifamily	0	0	0	44	0	0	0	0	201	0	118	363
Mixed Use	0	1	0	0	0	0	0	0	0	0	0	1
Total	0	1	0	46	0	0	1	1	204	2	118	373

Source: New Jersey Construction Reporter

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

The trend of multi-family residential construction is projected to continue in designated redevelopment areas. However, there is very little vacant land on which to develop sizable new housing projects.

Nonresidential Trends and Projections

According to the New Jersey Construction Reporter, between 2013 and 2023, the Borough of Bogota issued certificates of occupancy for a total of ±299,876 square feet of non-residential² building space. See Table 18, Non-Residential Certificates of Occupancy, 2013-2023, for additional details.

Table 18. Non-Residential Certificates of Occupancy, 2013-2023

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
Office	0	1,960	0	0	0	0	234	0	0	0	0	2,194
Retail	0	0	0	0	0	0	0	0	0	0	0	0
A-1	0	0	0	0	0	0	0	0	0	0	0	0
A-2	0	0	0	0	0	0	0	0	0	0	0	0
A-3	0	0	0	0	0	0	0	23,347	0	0	0	23,347
A-4	0	0	0	0	0	0	0	0	0	0	0	0
A-5	0	0	0	0	0	0	0	0	0	0	0	0
Multifamily/ Dormitories	0	0	0	86,472	0	0	0	0	54,015	0	124,000	264,487
Hotel/ Motel	0	0	0	0	0	0	0	0	0	0	0	0
Education	0	3,920	0	0	0	0	0	0	0	0	0	3,920
Industrial	0	0	0	0	0	0	0	0	0	0	0	0
Hazardous	0	0	0	0	0	0	0	0	0	0	0	0
Institutional	0	0	0	0	0	0	0	0	0	0	0	0
Storage	0	0	0	0	5,048	0	0	0	0	0	0	5,048
Signs, Fences, Utility & Misc.	440	0	0	0	0	0	0	0	0	440	0	880
TOTAL	440	5,880	0	86,472	5,048	0	234	23,347	54,015	440	124,000	299,876

Source: New Jersey Construction Reporter

Capacity for Growth

Bogota is essentially fully developed, as detailed in the Vacant Land Analysis included in Appendix 2 which demonstrates the lack of available developable land within the Borough.

² Multifamily and dormitories are included in the “non-residential” category in the New Jersey Construction Reporter.

V. Fair Share Plan

Affordable Housing Obligations

Introduction

The New Jersey Department of Community Affairs (DCA) has calculated statewide and regional affordable housing needs, including municipal obligations, based upon its interpretations of the standards for the determination of fair share obligations in the FHA, as amended.. These non-binding determinations of each municipality's Fourth Round (2025 to 2035) affordable housing obligation were released on October 18, 2024. A deadline of January 31, 2025 was set for municipalities to adopt a binding resolution setting forth the Present and Round 4 Prospective Need numbers to which they committed based upon their municipal interpretation of the standards set forth in the FHA as amended. Based on its interpretation of the FHA as amended, Bogota's Mayor and Council adopted a resolution on January 16, 2025 committing to a Present Need (also known as a rehab component) of 26 and a Round 4 Prospective Need obligation of 83. In accordance with the FHA as amended, the Borough filed a declaratory relief compliant within 48 hours of adoption and included the resolution as part of its submission. Each of these obligations is discussed below.

Present Need

Present need, also known as the rehabilitation obligation, is defined as the number of substandard existing deficient housing units in the municipality currently occupied by low- and moderate-income (LMI) households. DCA proposed a non-binding Present Need obligation for Bogota of 26. The Borough of Bogota has accepted this obligation.

Prospective Need

Municipal Prospective Need obligations are calculated as a share of the region in which the municipality is located (Bogota's region includes Bergen, Hudson, Passaic and Sussex Counties). The total Prospective Need for this region for Round 4 is 27,743, with this need allocated to municipalities throughout the region. However, "Qualified Urban Aid Municipalities" are exempt from addressing Prospective Need, which increases the obligations on the remaining municipalities. Regional Prospective Need is then allocated across the non-qualified urban aid municipalities in the region by applying three factors.

Equalized Nonresidential Valuation

This factor is the change in nonresidential property valuations in the municipality from 1999 to 2023 divided by the regional total change in nonresidential valuations. This factor for Bogota is 0.23%.

Income Capacity

This factor measures the extent to which a municipality's income level differs from that of the lowest-

income municipality in its housing region. This factor for Bogota is 0.66%.

Land Capacity

This factor determines the total acreage that is developable in a municipality utilizing the most recent land use / land cover (LULC) data from the New Jersey Department of Environmental Protection (DEP), the most recently available MOD-IV Property Tax List data from the Division of Taxation in the Department of the Treasury, and construction permit data from DCA. The calculation is supposed to exclude lands subject to development limitations. “Weighting factors” as specified in the Affordable Housing Law were applied to developable lands based on the planning area type in which such land was located. For municipalities such as Bogota located in Planning Area 1, the weight is 1, meaning there is no reduction, unlike in various other planning areas. This factor for Bogota is 0.06%.

The DCA provided the data it used for the Land Capacity factor about a month past the October 20, 2024 deadline established by the FHA as amended. The DCA recognized that the land data it used to determine the Land Capacity Allocation Factor may not be accurate and so invited municipalities to correct the acreage that DCA’s data and stated that any disputes over any position that municipalities made could be resolved in the dispute resolution process established by the legislation. More specifically, on November 27, 2024, the DCA issued the data that was the basis for the Land Capacity factor on November 27, 2024. The link to the DCA GIS data³, and the description section, includes the following language:

The land areas identified in this dataset are based on an (sic) the best available data using publicly available data enumerated in N.J.S.A. 52:27D-304.3c.(4) to estimate the area of developable land, within municipal and regional boundaries, that may accommodate development. It is important to note that the identified areas could be over or under inclusive depending on various conditions and that municipalities are permitted to provide more detailed mappings as part of their participation in the Affordable Housing Dispute Resolution Program.

Bogota accepted the DCA’s invitation to review the data the DCA used to calculate the Borough’s Round 4 Prospective Need and found that the DCA had overestimated the amount of developable land. Upon correcting the data, the Borough concluded that the amount of developable land should be adjusted from 1.2325 by 1.0124 to 0.2201 acres, which would result in the Land Capacity factor dropping from 0.06% to 0.01%.

³ <https://njdca.maps.arcgis.com/home/item.html?id=12acdf0a5104f8f8a2f604e96063e74>

Final Prospective Need Calculation

The Equalized Nonresidential Valuation Factor, Land Capacity Factor And Income Capacity Factor for each municipality were averaged to determine an Average Allocation Factor, which is the basis for the determination of the prospective need for each municipality in the region. The DCA reported that Bogota's Average Allocation Factor is 0.32%, which resulted in DCA's proposed non-binding Prospective Need obligation for Bogota of 88. However, upon correction, the Average Allocation factor should be reduced from 0.32% to 0.30%. When this correction is made, Bogota's Round 4 obligation is as follows:

Fourth Round (2025 to 2035) Prospective Need: 83.⁴

Based upon this analysis, the Borough committed to a Round 4 Prospective Need in the resolution it adopted in January 2025 and the declaratory relief action that followed shortly thereafter.

The New Jersey Builders' Association (NJBA) filed an objection to Bogota's filing on February 25, 2025, which challenged the proposed reduction in the Borough's Prospective need number. On March 21, 2025, just before a scheduled settlement conference, NJBA offered a settlement to adjust the DCA's prospective affordable housing need number for Bogota from 88 to 85. After considering the settlement offer by the NJBA, Bogota agreed to the settlement. Therefore, the Borough's modified Fourth Round Prospective Need is 85 units.

The Prospective Need obligation is cumulative. The new construction number consists of the Prior Round obligations for Rounds 1 and 2, the Prospective Need obligation for Round 3 and the Prospective Need obligation for Round 4.

In accordance with an agreement reached in 2016 between the Borough of Bogota and Fair Share Housing Center (FSHC) (the "2016 FSHC settlement agreement"), Bogota's affordable housing obligations for Rounds 1 through 3 are as follows:

Prior Round Obligation (1987 to 1999, pursuant to N.J.A.C. 5:93): 13

Third Round (1999 to 2025) Prospective Need: 87

If we add the prospective need of 13 for Rounds 1 and 2 to the Round 3 obligation of 87 and the Round 4 obligation of 85, the total prospective need through Round 4 is 185. This is the new

⁴ This calculation is based on the factors including in DCA's Fourth Round municipal obligations spreadsheets, as it impossible to determine how these numbers would change based on numerous municipalities potentially submitting changes such as those being considered based on this document.

construction obligation for the Borough at this time. Add this 185 new construction obligation to the 26 present need obligation to determine the Borough's fair share. The fair share is 211.

185, the new construction component of the Borough's fair share, is subject to an adjustment based upon the fact that there is insufficient land to create a that requires every fifth unit to be affordable. More specifically, the Borough's prospective need for Rounds 1 through 3 is 100 and for Round 4 is 85. The Borough satisfied its 100 obligation for Rounds 1 through 3, but lacks sufficient land to satisfy its Round 4 prospective need of 85. Therefore, the Borough is entitled to adjust its Round 4 prospective Need of 85.

Vacant Land Analysis

There remains limited land in Bogota that is vacant or underutilized and therefore available for inclusionary development. Indeed, applying the protocols established by COAH regulations (N.J.A.C. 5:93-4.2), housing, meaning the Borough is entitled to a adjust its Fourth Round obligation of 85 to zero. That means that the Borough's realistic development potential is zero and its unmet need is 85.

The tables and figures in Appendix 2: Vacant Land Adjustment provide the basis for the conclusion that the Borough's realistic development potential or RDP is zero. The vacant land inventory (VLI) is based on the most recent and accurate quantitative and qualitative data and information available to the Borough. The Vacant Land Adjustment analysis performed followed the criteria outlined in N.J.A.C. 5:93-4.

Proposed Compliance Mechanisms

Present Need

As noted, the Borough's present need is 26 units. Bogota has had a rehabilitation program as a participant in the Bergen County Home Improvement Program and the Community Development Block Grant program. The Borough will continue to promote rehabilitation of existing units through these programs, as well as through its affordable housing trust fund and other sources, as funds become available. In our firm's experience, landlords rarely take advantage of rental rehabilitation programs and it is difficult to find companies that will administer such programs. If the Borough cannot find an entity to manage a rental rehabilitation program, it will seek a waiver from this requirement.

Prior Round and Prospective Need

As stated above, the Borough has a Prior Round Obligation of 13 units and a Third Round Prospective Need of 87 units, for a combined 1987-2025 fair share prospective need of 100 units. The following table provides an update on the compliance mechanisms for these prior rounds, followed by descriptions of each:

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

Table 19. Prior and Third Round Entitlement to Affordable Housing Credits

CREDITS APPLIED TOWARDS PRIOR ROUND OBLIGATION (1987-1999)					
<u>Affordable Development</u>	<u>Type</u>	<u>Units</u>	<u>Bonus Credits</u>	<u>Total Credits Plus Bonuses</u>	<u>Status</u>
Group Homes	Alternative Living Arrangements	18 bedrooms	3 (see below)	21	Occupied
Silver Maple Gardens I and II	New Affordable Senior Citizen Housing	20 units	0 (see below)	20	Occupied
CREDITS APPLIED TOWARDS THIRD ROUND OBLIGATION (1999-2025)					
<u>Affordable Development</u>	<u>Type</u>	<u>Units</u>	<u>Bonus Credits</u>	<u>Total Credits Plus Bonuses</u>	<u>Status</u>
West Fort Lee Road Redevelopment Plan	Inclusionary Development	42 units	22 (see below)	64	Occupied
River Road Redevelopment Area	Inclusionary Development	0 units	No	0	Not yet constructed
57 West Fort Lee Road	Inclusionary Development	0 units	No	0	Not yet constructed
TOTAL		80	25	105	

As shown above, Bogota has addressed its Prior and Third Round obligations of 100, meaning that it has a surplus of five credits that can be applied to its Fourth Round obligation.

The narrative that follows further explains the projects set forth in Table 19 above.

Group Homes

There are four existing group homes in Bogota that qualify as “alternative living arrangements”:

1. **The ARC of Bergen and Passaic County Group Home – Block 20, Lot 20:** This five-bedroom home is located on Gray Street and opened in 1999. It is licensed as a “supervised apartment” by the New Jersey Department of Human Services, Division of Developmental Disabilities (DDD). The residents of this facility are referred to its operator by DDD.
2. **AAH of Bergen County Supportive Housing – Block 58, Lot 12:** This four-bedroom group home is located on Ridgefield Avenue and opened in 1997. This residence is occupied by four unrelated formerly homeless individuals who each have been diagnosed with a serious mental illness. According to its operator, this facility is considered by the State of New Jersey to be Supportive Housing and an Independent Living Residence.
3. **Avidd Community Services Group Home – Block 61, Lot 11:** Avidd Community Services of NJ, operates a four-bedroom group home on Linwood Avenue which opened in 2016.

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

4. **Children's Aid & Family Services, Inc. Group Home – Block 9, Lot 5:** Children's Aid & Family Services, Inc. operates a five-bedroom group home for adults ages 21 and older on Larch Avenue, which opened in 2018.

N.J.A.C. 5:93-1.3 defines group homes for the developmentally disabled as licensed and/or regulated by the New Jersey Department of Human Services, transitional facilities for the homeless, group homes and congregate living arrangements as alternative living arrangements. Per N.J.A.C. 5:93-5.8 alternative living arrangements may be used to address a municipal housing obligation. The unit of credit is the bedroom and each unit may be used to address a municipality's rental obligation. Per N.J.A.C. 5:97-3.5, units created and occupied after December 15, 1986 may receive rental bonuses for the Prior Round Obligation. Thus, the above homes are eligible for rental bonuses. The maximum number of bonus credits (25 percent) limits those that can be applied for the Prior Round and Third Round.

Other Affordable Units

There are two age-restricted affordable housing complexes in Bogota with a total of 20 units:

1. **Silver Maple Gardens I – 348 Leonia Avenue (Block 34, Lot 4.01):** This development contains 10 affordable one bedroom units. This two story garden apartment complex is designed for Senior Citizens, 62 years of age or older. The facility was constructed in 1993.
2. **Silver Maple Gardens II – 354 Leonia Avenue (Block 34, Lot 2.01):** This development contains 10 affordable one bedroom units. This two story garden apartment complex is designed for Senior Citizens, 62 years of age or older. The facility was constructed in 1996.

These developments are owned by the Housing Development Corporation of Bergen County (HDC). HDC is affiliated with the Housing Authority of Bergen County (HABC), which manages the property. As the HDC's mission is to provide affordable housing. Therefore there is no end term for their status as affordable units.

The above developments are exempt from typical bedroom distribution requirements as they are age-restricted projects. Per N.J.A.C. 5:97-3.5, units created and occupied after December 15, 1986 may receive rental bonuses for the Prior Round Obligation. Thus, the above projects are eligible for rental bonuses. However, as noted the maximum number of bonus credits have been applied for the Prior Round and Third Round, so no additional bonus credits have been claimed for this development.

West Fort Lee Road Redevelopment Plan – 172, 229 and 250 West Fort Lee Road (Block 3, Lots 3, 4, 7, 8 & 9; Block 72, Lots 1, 2, 3 & 4): There are two adjoining redevelopment areas on West Fort Lee Road. A redevelopment plan has been prepared for this 13.125-acre area, with a maximum permitted

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

density of 32 units per acre and a setaside of 10 percent of new dwelling units as low- and moderate-income units. The site plan and redeveloper's agreement for a 421-unit development, including 42 affordable units, was approved by the Bogota Planning Board in late 2016. The development, known as the Atwater, was constructed in phases and it is now complete. Thirty one of the affordable units are reserved for households of low- and moderate-income military veterans, with the remainder available to other low- and moderate-income households. This development is also be eligible for rental bonus credits, which have been limited based on the maximum noted above. The affordable housing setaside of 10 percent is due to site-specific conditions, such as contamination that needed remediation and soil conditions that required more expensive construction techniques than typical, as well as significant infrastructure improvements in the vicinity.

Furthermore, since the adoption of the 2018 Housing Plan, the following project was approved:

The Gabriel – 51 Queen Anne Road (Block 95, Lots 1.01 and 1.02): The Bogota Planning/Zoning Board approved this development in 2022 on a site that was previously occupied by a commercial use, a gasoline service station. The Board granted use, height and bulk variances to permit a four-story multifamily residential building containing 34 dwelling units, including five affordable units. This project has been built and is eligible for one-half bonus credit per unit (2.5 credits), as it was constructed on land that was previously developed and utilized for commercial space. As Bogota satisfied its Prior and Third Round obligations and did not receive a VLA for the Prior Round or Third Round, these 7.5 credits can be applied to the Borough's Fourth Round obligation.

Other Projects

River Road Redevelopment Area – 300, 310 and 316 River Road (Block 64.01, Lots 6.01, 6.02 and 7.01): This 0.372-acre property is subject to a 20 percent affordable housing overlay per Chapter XXII B of the Borough's General Ordinances. The site was also determined to be an area in need of redevelopment. A redevelopment plan has not yet been prepared for this area. This site has not been redeveloped to date.

57 West Fort Lee Road (Block 66, Lot 12): Although the site was included in the Housing Element and Fair Share Plan for Round 3 and zoned accordingly, this site is no longer available for affordable housing production.

Bonus Credits

The bonuses included in the amended FHA for the Fourth Round are as follows:

- Supportive/Special Needs: One unit of credit and one bonus credit for each unit of low- or moderate-income housing for individuals with special needs or permanent supportive housing, as those terms are defined in section 2 of P.L. 2004, c.70 (C.34:1B-21.24)

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

- Ownership Units Created with Non-Profit: One unit of credit and one-half bonus credit for each low- or moderate-income ownership unit created in partnership sponsorship with a non-profit housing developer
- Transit: One unit of credit and one-half bonus credit for each unit of low- or moderate-income housing located within a one-half mile radius (or one-mile radius for projects located in a Garden State Growth Zone), surrounding a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, measured from the closest point on the outer perimeter of the station, including any associated park-and-ride lot, to the closest point of the housing project property
- Age-Restricted: One unit of credit and one-half bonus credit for a unit of age-restricted housing, provided that a bonus credit for age-restricted housing shall not be applied to more than 10 percent of the units of age-restricted housing constructed in compliance with the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency in a municipality that count towards the municipality's affordable housing obligation for any single 10-year round of affordable housing obligations
- Additional Three-Bedroom Units: One unit of credit and one-half bonus credit for each unit of low- or moderate-income family housing with at least three bedrooms above the minimum number required by the bedroom distribution
- Former Retail, Office, Commercial: One unit of credit and one-half bonus credit for a unit of low- or moderate-income housing constructed on land that is or was previously developed and utilized for retail, office, or commercial space
- Extension of Controls: One unit of credit and one-half bonus credit for each existing low- or moderate-income rental housing unit for which affordability controls are extended for a new term of affordability, in compliance with the Uniform Housing Affordability Controls, and the municipality contributes funding towards the costs necessary for this preservation
- Municipal Contribution to 100% Affordable: One unit of credit and one bonus credit for each unit of low- or moderate-income housing in a 100 percent affordable housing project for which the municipality either contributes property without which the project would not be feasible, or makes contributions from the municipal affordable housing trust fund that cover no less than 3 percent of the project cost
- Additional Very Low-Income Units: One unit of credit and one-half bonus credit for each unit of very low-income housing for families above the 13 percent of units required to be reserved for very low-income housing pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1)
- Market to Affordable: One unit of credit and one bonus credit for each unit of low- or moderate-income housing created by transforming an existing rental or ownership unit from a market rate unit to an affordable housing unit

For the Fourth Round and beyond, a municipality shall not receive more than one type of bonus credit for any unit, and a municipality shall not be permitted to satisfy more than 25 percent of its prospective need obligation through the use of bonus credits. Therefore a maximum of 20.75 bonus credits may be granted (25 percent of the Prospective Need of 83 units).

Unmet Need

In sum, Bogota's Fourth Round Unmet Need obligation of 85 units will be addressed through the following compliance mechanisms:

Surplus Credits: As discussed above, Bogota has five surplus credits from its Prior Round and Third Round compliance, which can be applied to the Fourth Round obligation.

The Gabriel: As discussed above, this recently constructed project created five affordable units plus 2.5 bonus credits, for a total of 7.5 credits that can be applied to the Fourth Round obligation.

Extension of Affordability Controls – Silver Maple Gardens:

The two **Silver Maple Gardens** age-restricted affordable housing complexes were constructed in 1993 and 1996. Therefore, the standard 30-year period of affordability controls for these developments have recently passed or will soon. HDC's mission is to provide affordable housing, as noted above, and it is standard procedure to extend controls. As these developments will continue to be restricted to occupancy by low- and moderate-income households, the 20 units provided 20 credits that can be applied to the Fourth Round obligation.

Inclusionary Zoning Requirements: In the event there is any redevelopment, the Affordable Housing Controls section of the Borough's General Ordinances that were amended in 2023 create the following new Subsection 22B-1.5a.3:

Rezoning and Variances.

Notwithstanding the provisions of subsection 22B-1.5a1(b), or any other section in this Chapter, any residential development consisting of five or more dwelling units, at a density above six units per acre, that is permitted pursuant to a variance or rezoning shall produce low- and moderate-income housing on-site or elsewhere in the Borough or pay a fee in lieu of providing affordable units. The number of affordable units to be provided or in lieu payment shall be equal to 20% of the residential units in the development, or 15% for affordable rental units. The amount of the payment in lieu of providing housing shall be as determined by the appropriate rules of the New Jersey Council on Affordable Housing and any other relevant state regulations.

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

There are existing inclusionary zoning requirements in Chapter 22B of the Borough's General Ordinances, which pertain to the River Road Redevelopment Area and the 57 West Fort Lee Road property discussed above. Section 22B-1.7a.2 includes standards for rental developments. At present, the presumptive minimum density is 12 units per acre, which may be increased to 20 units per acre with a 20 percent set-aside of low- and moderate-income units.

Summary of Credits and Bonuses

These Borough's Fourth Round compliance mechanisms and the credits and bonuses associated with them are summarized in Table 20.

Table 20. Fourth Round Credits

CREDITS APPLIED TOWARDS FOURTH ROUND UNMET NEED OBLIGATION (2025-2035) OF 85				
<u><i>Affordable Development</i></u>	<u><i>Type</i></u>	<u><i>Units/ Credits</i></u>	<u><i>Bonus Credits</i></u>	<u><i>Total Credits Plus Bonuses</i></u>
Surplus Credits		5		5
The Gabriel	Inclusionary Development	5	2.5	7.5
Silver Maple Gardens	Extension of Controls	20	N/A	20
Inclusionary zoning		TBD		TBD
TOTAL		30	2.5	32.5

Consideration of Lands and Buildings for Low- and Moderate-Income Housing

Bogota is an essentially fully developed municipality with limited vacant land. As documented by the VLA discussed above, most of the vacant land in the Borough is not developable due to environmental constraints or other factors. The one prime developable parcel of land at the time of the 2018 Housing Plan, the former Hess site, has been redeveloped with an inclusionary mixed-use development that includes 42 affordable units.

As of the date of this plan, there have not been any developers who have expressed a commitment to provide low- and moderate-income housing.

All of the above sites designated for affordable housing development, with the exception of group homes, are shown on the "Potential Affordable Housing Sites" map in Appendix 1. The map depicts all environmental constraints affecting all properties within the Borough, consisting of water bodies derived from the 2020 State Land Use/Land Cover dataset; steep slope areas exceeding 15 percent greater than 5,000 square feet as per 10 foot digital elevation model LiDAR data; and flood hazard areas within the 100-year floodplain as indicated by FEMA. The final sites evaluated as being

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

potentially developable for affordable housing include Silver Maple Gardens I and II age-restricted housing developments, the West Fort Lee Road Redevelopment Area, and The Gabriel multi-family residential development. The Silver Maple Gardens I development does not contain any environmentally constrained areas, and the Silver Maple Gardens II developments includes negligible slivers of steep slope areas in the northwestern corner of the lot. Much of the Fort Lee Road Redevelopment Area lies within the 100-year floodplain, which includes the entirety or majority of each individual property within the Redevelopment Area. Block 3, Lots 8 and 9 of the Redevelopment Area are the lone exceptions to this, as they contain minimal areas which lie within the 100-year floodplain. Block 72, Lots 1-4 of the Redevelopment Area also all feature steep slope areas which lie directly along the Hackensack River, which directly adjoins and minimally encroaches upon the lots. The Gabriel apartment development features little to no environmental constraints, with a sliver of steep slope areas along the southern boundary of Block 95, Lot 1.01.

Spending Plan

The Borough of Bogota has a development fee ordinance (Chapter 22A) which provides a dedicated revenue source for affordable housing. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund for the purposes of affordable housing. These funds shall be spent for purposes including a housing rehabilitation program, costs associated with affordable housing construction, providing affordability assistance to low-income households and professional services related to the planning for affordable housing. The proposed Spending Plan is included in the Appendix 3.

VI. Relationship to Multigenerational Family Housing Continuity

Multigenerational housing is becoming a desired housing option in the State due to rising housing costs and an aging population. Housing for multigenerational families is necessary to offer a diverse housing stock and to account for population trends. Multigenerational housing can provide an opportunity for residents to age in place, save on costs associated with housing, and provide in-house care for an older adult or persons with disabilities. Additionally, multigenerational housing is a more sustainable approach to meeting housing obligations as there is no need for the construction of new homes in order to provide housing for additional individuals.

One possible approach to providing multigenerational housing is the construction of accessory dwelling units (ADUs). A frequent concern when choosing to live in multigeneration housing layout is lack of privacy. ADUs offer sufficient privacy within a home, providing all the benefits of multigenerational housing without individuals sacrificing their personal space. State legislation has been proposed to permit ADUs subject to certain regulations, but it has not been adopted as of the date of this plan.

VII. Consistency with the State Development and Redevelopment Plan

The New Jersey State Development and Redevelopment Plan (SDRP) was originally adopted in 1992. The purpose of the SDRP according to the State Planning Act at N.J.S.A. 52:18A-200(f) is to:

Coordinate planning activities and establish Statewide planning objectives in the following areas: land use, housing, economic development, transportation, natural resource conservation, agriculture and farmland retention, recreation, urban and suburban redevelopment, historic preservation, public facilities and services, and intergovernmental coordination.

The State Plan is not a regulation, but a policy guide, and is meant to coordinate planning activities and development throughout the state. At the municipal level, master plans are required to be evaluated and, if necessary, modified to reflect policies of the State Plan. The State Plan is also important when the State makes infrastructural and other investment decisions, i.e., in determining where available State funds should be expended.

A revised version of the plan was adopted by the State Planning Commission in 2001. While required by the State Planning Act to be revised and re-adopted every three years, the SDRP has only been readopted once during the 32 years since its original adoption. A new State Strategic Plan (SSP) was proposed in 2011 as the revision to the 2001 SDRP, but it has not been advanced in recent years. The State Office of Planning Advocacy started the process of preparing a new State Plan in 2023 and the State Planning Commission has been engaging with stakeholders. As part of the update process, the State Planning Commission approved the Preliminary State Development and Redevelopment Plan on December 4, 2024, and is now undertaking the Cross-Acceptance process (i.e. review of the plan at the county level).

Spatially, the last adopted State Plan utilizes planning areas, centers, and environs as a framework for implementing Statewide goals and policies. The State Plan Map indicates that the Borough of Bogota is located within the Metropolitan Planning Area (PA1). For the Metropolitan Planning Area, the State Plan has four major aims, as follows: (1) to provide for much of the state's future redevelopment; (2) to revitalize cities and towns and promote growth in compact forms; (3) to stabilize older suburbs and redesign areas of sprawl; and (4) to protect the character of existing stable communities.

The land use policy objectives of the Metropolitan Planning Area are to:

1. Promote redevelopment and development in cores and neighborhoods through cooperative regional planning efforts;

**Borough of Bogota Master Plan
2025 Housing Element and Fair Share Plan**

2. Promote diversification of land uses, including housing where appropriate, in single-use developments and enhance their linkages to the rest of the community; and
3. Ensure efficient and beneficial utilization of scarce land resources throughout the Planning Area to strengthen its existing diversified and compact nature.

The Borough has satisfied its responsibilities through Round 3 and taken appropriate measures to satisfy its unmet need in Round 4

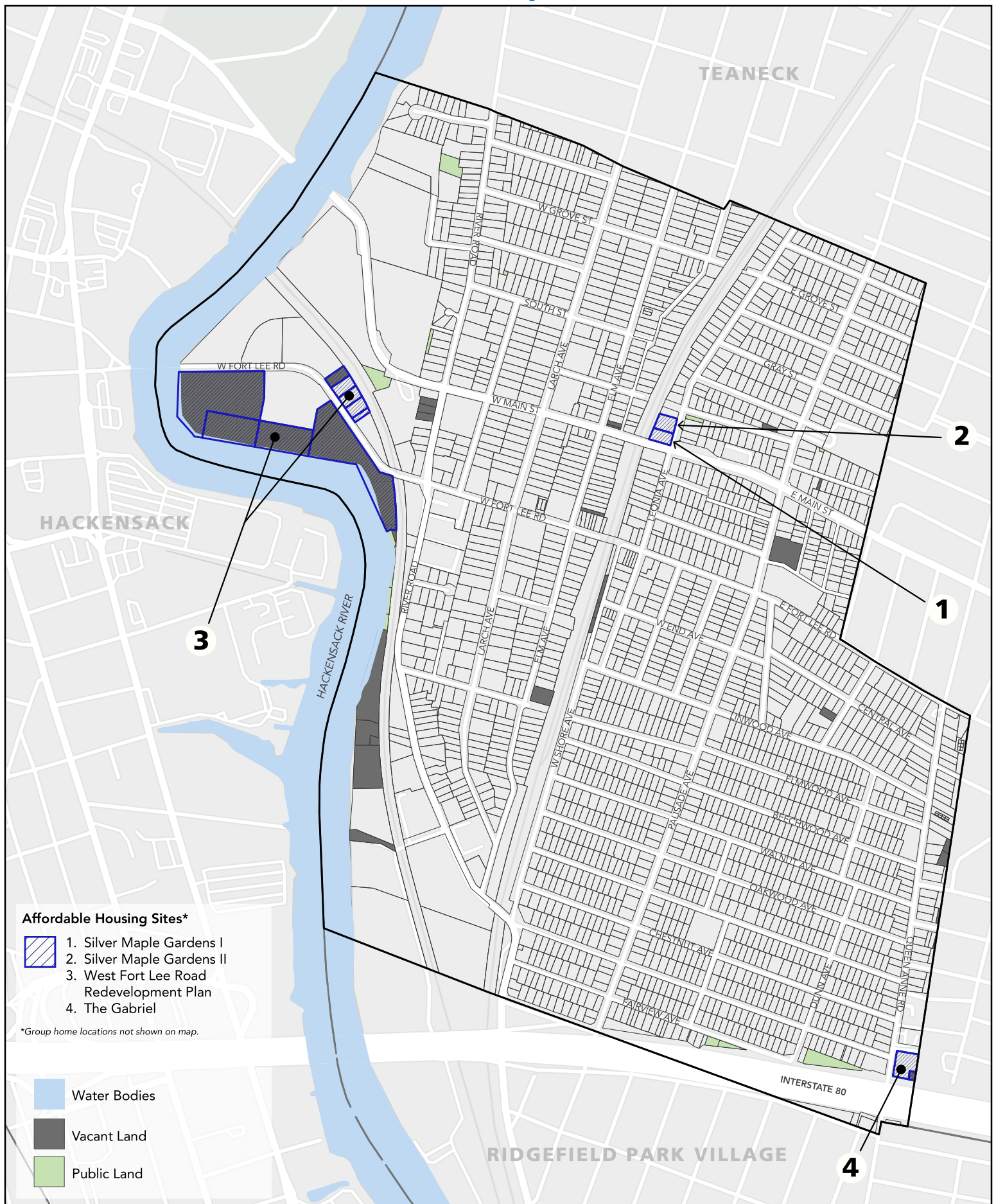
Appendices

Appendix 1: Affordable Housing Sites

Appendix 2: Vacant Land Adjustment

Appendix 3: Spending Plan

Appendix 4: Draft Ordinance Amendments



Appendix 1: Affordable Housing Sites

Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community, New York State, Maxar

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Affordable Housing Trust Fund Spending Plan
Borough of Bogota
May 2025

INTRODUCTION

The Borough of Bogota, Bergen County has prepared a Housing Element and Fair Share plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) and the Fair Housing Act (N.J.S.A. 52:27D-301). A development fee ordinance creating a dedicated revenue source for affordable housing was approved by COAH and the Superior Court and adopted by the municipality. The ordinance establishes the Bogota affordable housing trust fund for which this spending plan is prepared.

As of December 31, 2024, the Bogota affordable housing trust fund had a balance of \$118,949. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in an account with TD Bank for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:97-8.7-8.9 as described in the sections that follow.

The Borough reserves the right and authority to further amend or modify the within spending plan to address or take into account changes which may be warranted due to new rules or rule amendments or judicial determinations, which may change standards or establish new criteria for the Borough to address its affordable housing obligation.

DRAFT**1. REVENUES FOR CERTIFICATION PERIOD**

To calculate a projection of revenue anticipated during the Fourth Round, Bogota considered the following:

(a) Development fees:

1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
3. Future development that is likely to occur based on historical rates of development. Residential development fees collected in the past five years have averaged approximately \$8,000 per year, and no nonresidential development fees were collected during that period.

(b) Payment in lieu (PIL):

Actual and committed payments in lieu (PIL) of construction from developers as follows: none.

(c) Other funding sources:

Funds from other sources, including, but not limited to, the sale of units with extinguished controls, repayment of affordable housing program loans, rental income and proceeds from the sale of affordable units. No other funds have been or are anticipated to be collected.

(d) Projected interest:

Interest on the projected revenue in the municipal affordable housing trust fund at the current average interest rate.

It is noted in January 2025 a nonresidential development fee was collected for a single large project, a light industrial/warehouse development on Cross Street. The amount of this fee is included in the "Approved Development" category for 2026. No other large development projects are anticipated in the coming years due to the lack of vacant and developable land in Bogota.

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SOURCE OF FUNDS		PROJECTED REVENUE SCHEDULE JANUARY 1, 2025-JUNE 30, 2035				
		2026	2027	2028	2029	2030
(a) Development fees:						
1. Approved Development		\$144,000	\$0	\$0	\$0	\$0
2. Development Pending Approval		\$0	\$0	\$0	\$0	\$0
3. Projected Development		\$8,500	\$8,500	\$8,500	\$8,500	\$8,500
(b) Payments in Lieu of Construction		\$0	\$0	\$0	\$0	\$0
(c) Other Funds (Specify source(s))		\$0	\$0	\$0	\$0	\$0
(d) Interest		\$2,500	\$2,500	\$2,500	\$2,500	\$2,500
Total		\$155,000	\$11,000	\$11,000	\$11,000	\$11,000
	2031	2032	2033	2034	2035	Total
(a) Dev. fees:						
1. Appr.	\$0	\$0	\$0	\$0	\$0	\$144,000
2. Pending	\$0	\$0	\$0	\$0	\$0	\$0
3. Projected	\$8,500	\$8,500	\$8,500	\$8,500	\$8,500	\$85,000
(b) In Lieu	\$0	\$0	\$0	\$0	\$0	\$0
(c) Other	\$0	\$0	\$0	\$0	\$0	\$0
(d) Interest	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$25,000
Total	\$11,000	\$11,000	\$11,000	\$11,000	\$11,000	\$254,000

Bogota projects a total of \$254,000 in revenue to be collected between January 1, 2025 and June 30, 2035. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing.

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2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by Bogota:

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with Bogota's development fee ordinance for both residential and non-residential developments in accordance with COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

(b) Distribution of development fee revenues:

The disbursement of monies in Bogota's affordable housing trust fund will be coordinated by its Municipal Housing Liaison. In some instances, funds will be provided to other entities, such as an entity responsible for administering a rehabilitation program, for eventual disbursement.

DRAFT**3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS****(a) Rehabilitation program (N.J.A.C. 5:97-8.7)**

Bogota will dedicate \$186,564 to its rehabilitation program.

(b) Affordability Assistance (N.J.A.C. 5:97-8.8)

Projected minimum affordability assistance requirement:

Actual development fees and other income through 12/31/2024		\$118,949
Development fees projected 2025-2035	+	\$229,000
Interest projected 2025-2035	+	\$25,000
Total	=	\$372,949
30 percent requirement	x 0.30 =	\$111,885
Less Affordability assistance expenditures through 12/31/2024	-	\$0
PROJECTED MINIMUM Affordability Assistance Requirement 1/1/2025 through 6/30/2035	=	\$111,885
PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement 1/1/2025 through 6/30/2035	÷ 3 =	\$37,295

Bogota will dedicate \$111,885 from the affordable housing trust fund to render units more affordable, including \$37,295 to render units more affordable to households earning 30 percent or less of median income by region, as follows:

Bogota will address this requirement through subsidizing the provision of very low-income housing and through other means such as down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments and assistance with emergency repairs.

(c) Administrative Expenses (N.J.A.C. 5:97-8.9)

Bogota projects that \$74,500 will be available from the affordable housing trust fund to be used for administrative purposes. Projected administrative expenditures, subject to the 20 percent cap, are as follows:

- Administering a housing rehabilitation program
- Managing the provision of affordability assistance to low-income households
- Provision of professional planning and legal services related to the planning for affordable housing

DRAFT**4. EXPENDITURE SCHEDULE**

Bogota intends to use affordable housing trust fund revenues for the creation and/or rehabilitation of housing units. Where applicable, the creation/rehabilitation funding schedule below parallels the implementation schedule set forth in the Housing Element and Fair Share Plan and is summarized as follows.

Program		PROJECTED EXPENDITURE SCHEDULE				
		JANUARY 1, 2025-JUNE 30, 2035				
		2026	2027	2028	2029	2030
Rehabilitation		\$18,656	\$18,656	\$18,656	\$18,656	\$18,656
Affordability Assistance		\$11,188	\$11,188	\$11,188	\$11,188	\$11,188
Administration		\$7,450	\$7,450	\$7,450	\$7,450	\$7,450
Total		\$37,295	\$ 37,295	\$ 37,295	\$37,295	\$37,295
	2031	2032	2033	2034	2035	Total
Rehab.	\$18,656	\$18,656	\$18,656	\$18,656	\$18,656	\$186,564
Aff. Asst.	\$11,188	\$11,188	\$11,188	\$11,188	\$11,188	\$111,885
Admin.	\$7,450	\$7,450	\$7,450	\$7,450	\$7,450	\$ 74,500
Total	\$37,295	\$37,295	\$37,295	\$37,295	\$37,295	\$372,949

DRAFT**5. EXCESS OR SHORTFALL OF FUNDS**

Pursuant to the Housing Element and Fair Share Plan, the governing body of Bogota will adopt a resolution agreeing to fund any shortfall of funds required for implementing the rehabilitation program, providing affordability assistance and helping with the creation of new affordable housing. In the event that a shortfall of anticipated revenues occurs, Bogota will utilize a capital ordinance to provide the necessary funds. A copy of the adopted resolution of intent to adopt such an ordinance if necessary is attached.

In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be used to provide affordability assistance and/or aid with the rehabilitation of units.

DRAFT**SUMMARY**

Bogota intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:97-8.7 through 8.9 and consistent with the housing programs outlined in its housing element and fair share plan.

Bogota had a balance of \$118,287 as of December 31, 2024 and anticipates an additional \$254,000 in revenues from 2025 to 2035. The municipality will dedicate \$186,564 towards rehabilitation, \$111,885 to render units more affordable, and \$74,500 to administrative costs. Any shortfall of funds will be offset by funds appropriated from general revenue. The municipality will dedicate any excess funds toward providing affordability assistance, aiding with the rehabilitation of units and/or encouraging provision of affordable accessory apartments.

SPENDING PLAN SUMMARY		
Balance as of December 31, 2024		\$118,949
PROJECTED REVENUE 2025-2035		
Development fees	+	\$229,000
Payments in lieu of construction	+	\$0
Other funds	+	\$0
Interest	+	\$25,000
TOTAL REVENUE	=	\$372,949
EXPENDITURES		
Funds used for Rehabilitation	-	\$186,564
Affordability Assistance	-	\$111,885
Administration	-	\$74,500
TOTAL PROJECTED EXPENDITURES	=	\$372,949
REMAINING BALANCE	=	\$0

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Proposed Affordable Housing Zoning Amendments
Borough of Bogota

Note: additions shown in underline, deletions in ~~strikethrough~~

Chapter 22A**AFFORDABLE HOUSING DEVELOPMENT FEES****§ 22A-1. PURPOSE.**

- a) In Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to the then functioning COAH ~~developing-adoption of~~ rules as amended from time to time and/or in accordance with the enacted legislation and/or in accordance with directives from the courts.
- b) Pursuant to P.L. 2008, c. 46, § 8 (N.J.S.A. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7), COAH was authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that were under the jurisdiction of the Council or court of competent jurisdiction and had a COAH-approved spending plan were able to retain fees collected from nonresidential development.
- c) In Re: Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), also known as the Mount Laurel IV decision, the Supreme Court remanded COAH's duties to the Superior Court. As a result, affordable housing development fee collections and expenditures from the municipal affordable housing trust funds to implement municipal Third Round Fair Share Plans through July 1, 2025 were under the Court's jurisdiction and were subject to approval by the Court.
- d) Pursuant to P.L.2024, c. 2, the authority relating to rulemaking on the collection of residential and non-residential development fees is appropriately delegated to the Department of Community Affairs, following the abolition of COAH. As such, municipalities which have obtained or are in the process of seeking compliance certification may retain and expend these development fees. The regulations set forth in P.L.2024, c. 2 amend those regulations originally established in accordance with P.L. 2008, c. 46, §§ 8 and 32 through 38, and supersede COAH's regulations where in conflict, which remain otherwise valid.

The purpose of this chapter is to establish standards for the collection, maintenance and expenditure of development fees pursuant to the above. Fees collected pursuant to this chapter shall be used for the sole purpose of providing low- and moderate-income housing.

§ 22A-2. DEFINITIONS.

The following terms, as used in this chapter, shall have the following meanings:

AFFORDABLE HOUSING DEVELOPMENT — A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

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BOROUGH — The Borough of Bogota.

COAH OR THE COUNCIL— The New Jersey Council on Affordable Housing, as previously established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), prior to its abolition through P.L.2024, c.2., or any entity administering or operating on its behalf, including, but not limited to, the superior courts of the State of New Jersey.

DEVELOPER — The legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT FEE — Funds paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in DCA's rules and in N.J.A.C. 5:93-8, as amended and applicable~~COAH's rules~~.

DISPUTE RESOLUTION PROGRAM - "Dispute Resolution Program" means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L. 2024, c.2 (N.J.S.A. 52:27D-313.2). The Dispute Resolution Program is established within the Judiciary of the State, for the purpose of resolving disputes associated with the Fair Housing Act with respect to municipalities seeking to obtain a certification of compliance of their adopted Housing Element & Fair Share Plan.

EQUALIZED ASSESSED VALUE — The value of a property determined by the Municipal Tax Assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of issuance of a building permit may be obtained utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the Municipal Tax Assessor.

GREEN BUILDING STRATEGIES — Those strategies that minimize the impact of development on the environment and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

§ 22A-3. RESIDENTIAL DEVELOPMENT FEES.

- a. Within all zoning districts, residential developers shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted.
- b. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) has been permitted, developers shall pay a development fee of 6% of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

§ 22A-4. NONRESIDENTIAL DEVELOPMENT FEES.

- a. Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee of 2.5% of the equalized assessed value of the land and improvements for all new nonresidential construction on an unimproved lot or lots.
- b. Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
- c. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting land and improvement and the equalized assessed value of the newly

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improved structure, i.e., land and improvement, at the time the final certificate of occupancy is issued. If the calculation required under this subsection results in a negative number, the nonresidential development fee shall be zero.

§ 22A-5. ELIGIBLE EXACTIONS, INELIGIBLE EXACTIONS AND EXEMPTIONS.

- a. Affordable housing developments and developments where the developer has paid a payment in lieu of on-site construction shall be exempt from development fees. All other forms of new construction shall be subject to development fees, unless exempted below.
- b. The two and one-half (2.5%) percent fee shall not apply to developers of any not-for-profit use; federal, state and municipal government uses; churches and other places of worship; and public schools.
- c. Developments that have received preliminary or final approval prior to the imposition of a municipal development fee ordinance shall be exempt from development fees unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- d. Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.
- e. The development fee shall not apply to the expansion of a single- or two-family home where the net increase in interior floor area is less than 15% of the existing structure. In no event shall the development fee be collected where the total increase in floor area is 500 square feet or less. Upon the request of the Zoning Officer, the property owner shall produce, within 30 days, a set of certified plans, signed by a licensed architect, confirming the amount of previously existing and as-built conditions.

§ 22A-6. COLLECTION OF FEES.

50% of the development fee will be collected at the time of issuance of the building permit. The remaining portion will be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy. After issuance of a building permit, the Construction Official shall refer the plans for the development to the Tax Assessor. The Tax Assessor shall certify to the Construction Official the final equalized assessed value in advance of the issuance of a certificate of occupancy by the Construction Official. The remaining portion of the development fee shall be adjusted to reflect any change in the estimated equalized assessed value so that the total of the two payments shall equal 100% of the total development fee based upon the final equalized assessed value.

§ 22A-7. CONTESTED FEES.

- a. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Borough of Bogota. Appeals from a determination of the Board may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
- b. A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Borough of Bogota. Appeals from a determination of the Director may

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be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

§ 22A-8. AFFORDABLE HOUSING TRUST FUND.

- a. There is hereby created a separate, interest-bearing housing trust fund, in a bank utilized by the Borough for its ordinary business purposes, and maintained by the Chief Financial Officer of the Borough, for the purpose of depositing development fees collected from residential and nonresidential developers, any other payments made pursuant to this chapter from residential and nonresidential developers, and proceeds from the sale of units with extinguished controls. All development fees paid by developers pursuant to this chapter shall be deposited into this fund.
- b. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 1. Payments in lieu of on-site construction of affordable units;
 2. Developer-contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached development accessible;
 3. Rental income from municipally operated units;
 4. Repayments from affordable housing program loans;
 5. Recapture funds;
 6. Proceeds from the sale of affordable units; and
 7. Any other funds collected in connection with the Borough of Bogota's affordable housing program.

§ 22A-9. USE OF FUNDS.

- a. Funds deposited in the housing trust fund may be used for any eligible activity as set forth in the amended Fair Housing Act. (N.J.S.A. 52:27D-301 et seq.), in COAH's regulations and in accordance with any directives from the courts-Dispute Resolution Program to address the municipal fair share. Such activities include, but are not limited to: rehabilitation, new construction, ECHO housing, purchase of land for affordable housing, improvement of land to be used for affordable housing, purchase of housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, or administration necessary for implementation of the Housing Element and Fair Share Plan. The expenditure of all funds shall conform to a spending plan approved by the courts.
- b. Funds shall not be expended to reimburse the Borough for past housing activities.
- c. At least 30% of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the Municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of median income by region.
 1. Affordability assistance programs may include downpayment assistance, security deposit assistance, low-interest loans, and rental assistance.
 2. Affordability assistance to households earning 30% or less of median income may include

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buying down the cost of low- or moderate-income units in the third-round Municipal Fair Share Plan to make them affordable to households earning 30% or less of median income.

3. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- d. The Borough may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:94-7, as amended and applicable.
- e. No more than 20% of the revenues collected from development fees each year shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20% of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the court's monitoring requirements. Development fee administrative costs are calculated and may be expended at the end of each year or upon receipt of the fees. Legal or other fees related to litigation opposing affordable housing sites or objecting to ~~COAH's~~ the amended Fair Housing Act or DCA's regulations or court action are not eligible uses of the Affordable Housing Trust Fund.

§ 22A-10. MONITORING.

~~Bogota shall comply with the reporting requirements set forth in N.J.S.A. 52:27D-329.2. The Borough shall complete and return to the Fair Share Housing Center (FSHC) all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, and funds from the sale of units with extinguished controls, and the expenditure of revenues and implementation of the plan approved by the court. All monitoring reports shall be completed on forms designed by COAH or similar to COAH's monitoring forms and approved by FSHC.~~

§ 22A-11. ONGOING COLLECTION OF FEES.

The ability for the Borough to impose, collect and expend development fees shall expire with its ~~judgment~~ certification of compliance on the date of expiration of the ~~judgment-certification~~ of compliance unless the Borough has filed an adopted Housing Element and Fair Share Plan with the court, has petitioned for a ~~judgment-certification~~ of compliance, and has received the court's approval of its Development Fee Ordinance. If the Borough fails to renew its ability to impose and collect development fees prior to the date of expiration of its ~~judgment-certification~~ of compliance, it may resume the imposition and collection of development fees only by complying with the requirements of N.J.A.C. 5:97-8, as amended and applicable. The Borough shall not impose a development fee on a development that receives preliminary or final approval after the expiration of its ~~judgment-certification~~ of compliance, nor will the Borough retroactively impose a development fee on such a development. The Borough will not expend development fees after the expiration of its ~~judgment-certification~~ of compliance.

Chapter 22B AFFORDABLE HOUSING
§ 22B-1. COMPLIANCE WITH ~~COAH~~ REQUIREMENTS FOR AFFORDABLE HOUSING**§ 22B-1.1. Purpose.**

The purpose of this section is to provide for and regulate affordable housing in the Borough of Bogota to

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address the Borough's constitutional obligation to provide for its fair share of low- and moderate-income housing as directed by the Administrative Director of the Courts and as stipulated by P.L.2024, c. 2 and N.J.S.A. 52:27D-301 et seq. (the amended Fair Housing Act).- These regulations supersede N.J.A.C. 5:93-1 et seq., as amended and supplemented, and N.J.A.C 5:94-1 et seq, as amended and supplemented, where applicable, which otherwise remain valid. P.L. 2024, c.2 established the Affordable Housing Dispute Resolution Program ("Dispute Resolution Program"), which provides a new process for municipalities to come into constitutional compliance with their affordable housing obligations. This chapter is intended to assure compliance with the foregoing provisions and with the regulations of the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., as amended and supplemented, including provisions for unit affordability controls as well as eligibility for low- and moderate-income households. This chapter shall apply except where inconsistent with applicable law.

§ 22B-1.2. Definitions.

The following terms, when used in this section, shall have the meanings given in this subsection:

ACT — The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.), as amended through P.L. 2024, c.2.-

ADAPTABLE — Constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

ADMINISTRATIVE AGENT — The entity responsible for the administration of affordable units in accordance with this section, N.J.A.C. 5:93, as amended and applicable, and UHAC (N.J.A.C. 5:80-26), as amended and supplemented.

AFFIRMATIVE MARKETING — A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.1~~56~~.

AFFORDABILITY AVERAGE — The average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

AFFORDABLE — A sales price or rent level that is within the means of a low- or moderate-income household as defined within N.J.A.C. 5:93-7.4, as amended and applicable, and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.~~76~~, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.1~~32~~, as may be amended and supplemented.

AFFORDABLE HOUSING DEVELOPMENT — A development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

AFFORDABLE HOUSING PROGRAM(S) — Any mechanism in a Municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE UNIT — A housing unit proposed or created pursuant to the Act and approved for crediting by the court and/or funded through an affordable housing trust fund.

AGE-RESTRICTED UNIT — A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that:

- a. All the residents of the development wherein the unit is situated are 62 years of age or older; or
- b. At least 80% of the units are occupied by one person who is 55 years of age or older; or
- c. The development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair

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Housing Act, 42 U.S.C. § 3607.

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

ALTERNATIVE LIVING ARRANGEMENTS — A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

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

CERTIFIED HOUSEHOLD — A household that has been certified by an administrative agent as a low-income household or moderate-income household.

COAH OR THE COUNCIL — The Council on Affordable Housing, as previously established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) or the Superior Court of the State of New Jersey pursuant to the New Jersey Supreme Court case known as "Mount Laurel IV.", prior to its abolition through P.L.2024, c.2.

DCA — The State of New Jersey Department of Community Affairs.

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

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

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

DISPUTE RESOLUTION PROGRAM - The Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L. 2024, c.2 (N.J.S.A. 52:27D-313.2). The Dispute Resolution Program is established within the Judiciary of the State, for the purpose of resolving disputes associated with the Fair Housing Act with respect to municipalities seeking to obtain a certification of compliance of their adopted Housing Element & Fair Share Plan.

INCLUSIONARY DEVELOPMENT — A development containing both affordable units and market-rate units. This term includes, but is not limited to: new construction, the conversion of a nonresidential structure to residential use, and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

LOW-INCOME HOUSEHOLD — A household with a total gross annual household income equal to 50% or less of the median household income.

LOW-INCOME UNIT — A restricted unit that is affordable to a low-income household.

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MAJOR SYSTEM — The primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building, which include, but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load-bearing structural systems.

MARKET-RATE UNITS — Housing not restricted to low- and moderate-income households that may sell or rent at any price.

MEDIAN INCOME — The median income by household size for the applicable housing region, as adopted annually by the Affordable Housing Professionals of New Jersey ~~COAH~~ or an ~~successor~~ entity approved by the court.

MODERATE-INCOME HOUSEHOLD — A household with a total gross annual household income in excess of 50% but less than 80% of the median household income.

MODERATE-INCOME UNIT — A restricted unit that is affordable to a moderate-income household.

MULTIFAMILY UNIT — A structure containing five or more dwelling units.

NONEXEMPT SALE — Any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a Class A beneficiary; and the transfer of ownership by court order.

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

REGIONAL ASSET LIMIT — The maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by duly adopted regional income limits published annually by the Affordable Housing Professionals of New Jersey or an entity approved by the court.

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

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

RESTRICTED UNIT — A dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as amended and supplemented, but does not include a market-rate unit financed under UHOP or MONI.

UHAC — The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq., as amended and supplemented.

VERY-LOW-INCOME HOUSEHOLD — A household with a total gross annual household income equal to 30% or less of the median household income for the applicable housing region.

VERY-LOW-INCOME UNIT — A restricted unit that is affordable to a very-low-income household.

WEATHERIZATION — Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

§ 22B-1.3. Applicability.

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The provisions of this section shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Bogota pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.

§ 22B-1.4. Affordable Housing Programs.

The Borough of Bogota has determined that it will use the following mechanisms to satisfy its affordable housing obligations:

a. Rehabilitation program.

1. The County of Bergen CDBG rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
2. Both owner-occupied and renter-occupied units shall be eligible for rehabilitation funds.
3. All rehabilitated units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner-occupied units the control period will be enforced with a lien and for renter occupied units the control period will be enforced with a deed restriction.
4. The Borough of Bogota shall designate, subject to the approval of the Court, one or more administrative agents to administer the rehabilitation program in accordance with N.J.A.C. 5:93, as amended and applicable. The administrative agent(s) shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental-occupancy rehabilitation program to be adopted by resolution of the governing body and subject to approval of the Court. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the administrative agent(s).
5. Units in a rehabilitation program shall be exempt from the Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
 - (a) If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to the Court and UHAC.
 - (b) If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to the Court and UHAC.
 - (c) Rents in rehabilitated units may increase annually based on the standards established by the Court.
 - (d) Applicant and/or tenant households shall be certified as income-eligible in accordance with the Court and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

§ 22B-1.5. Inclusionary Zoning.

- a. Presumptive densities and set-asides. To ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, inclusionary zoning permits minimum presumptive densities and presumptive maximum affordable housing set-asides as follows:

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1. For-sale developments.

- (a) Inclusionary zoning in Planning Area 1 permits residential development at a presumptive minimum gross density of eight units per acre and a presumptive maximum affordable housing set-aside of 20% of the total number of units in the development. The zoning of the Affordable Housing Overlay Zone provides for a 20% set-aside for restricted units and a density of 20 units per acre.

(b) Zones included:

B3 Business Office Zone located on the corner of River Road and West Main Street:
Block 64.01, Lots 6.01, 6.02, 7.01

300-316 River Road
3 units/20 du/ac

B1 Business Retail Zone located on the corner of West Fort Lee Road and Elm Avenue:
Block 66, Lot 12

57 West Fort Lee Road
3 units/20 du/ac

2. Rental developments.

- (a) Inclusionary zoning permits a presumptive minimum density of 12 units per acre and a presumptive maximum affordable housing set-aside of 20% of the total number of units in the development, and the zoning provides for at least 13% of the affordable units to be affordable to households earning 30% or less of the area median income for the ~~COAH~~ Region 1. The zoning of the Affordable Housing Overlay Zone provides for a 20% set-aside for restricted units and a density of 20 units per acre.

(b) Zones included:

Block 64.01, Lots 6.01, 6.02, 7.01
300-316 River Road
3 units/20 du/ac

Block 66, Lot 12
57 West Fort Lee Road
3 units/20 du/ac

3. Rezoning and Variances.

Notwithstanding the provisions of subsection 22B-1.5a1(b), or any other section in this Chapter, any residential development consisting of five or more dwelling units, at a density above six units per acre, that is permitted pursuant to a variance or rezoning shall produce low- and moderate-income housing on-site or elsewhere in the Borough or pay a fee in lieu of providing affordable units. The number of affordable units to be provided or in lieu payment shall be equal to 20% of the residential units in the development, or 15% for affordable rental units. The amount of the payment in lieu of providing housing shall be as determined by the appropriate ~~rules of the New Jersey Council on Affordable Housing and any other relevant~~ state regulations.

§ 22B-1.6. Alternative Living Arrangements.

- a. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-

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5.8, as amended and applicable, and UHAC, with the following exceptions:

1. Affirmative marketing (N.J.A.C. 5:80-26.1~~65~~); provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the court.
 2. Affordability average and bedroom distribution (N.J.A.C. 5:80-26.~~43~~).
- b. With the exception of units established with capital funding through a twenty-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least thirty-year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the court.
1. The service provider for the alternative living arrangement shall act as the administrative agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

§ 22B-1.7. Phasing Schedule for Inclusionary Zoning.

- a. In inclusionary developments, the following project phasing schedule shall be followed ~~adhere to the requirements set forth in UHAC, N.J.A.C. 5:80-26.1 et seq, as amended and supplemented.:~~

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

§ 22B-1.8. New Construction.

The required income and bedroom distributions of affordable housing units, as well as additional applicable standards, shall be as set forth in UHAC, N.J.A.C. 5:80-26.1 et seq, as amended and supplemented.

- a. Low/moderate split and bedroom distribution of affordable housing units:
1. The fair share obligation shall be divided equally between low- and moderate-income units; except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least 13% of all restricted rental units shall be very-low-income units (affordable to a household earning 30% or less of median income). The very-low-income units shall be counted as part of the required number of low-income units within the development.
 2. At least 25% of the obligation shall be met through rental units, including at least half in rental units available to families.
 3. A maximum of ~~25~~30% of the Borough's obligation may be met with age-restricted units. At least half of all affordable units in the Borough's plan shall be available to families.
 4. In each affordable development, at least 50% of the restricted units within each bedroom

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distribution shall be low-income units.

5. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - (a) The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;
 - (b) At least 30% of all low- and moderate-income units shall be two-bedroom units;
 - (c) At least 20% of all low- and moderate-income units shall be three-bedroom units; and
 - (d) The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
 6. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.
- b. Accessibility requirements:
1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7, and the following:
 2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor; and
 - (b) An adaptable kitchen on the first floor; and
 - (c) An interior accessible route of travel on the first floor; and
 - (d) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
 - (e) If not all of the foregoing requirements in Subsection b2(a) through (d) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit; but if all of the terms of Subsection b2(a) through (d) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
 - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that Bogota has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
 - (1) Where a unit has been constructed with an adaptable entrance, upon the request of a person with disabilities who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - (2) To this end, the builder of restricted units shall deposit funds within the Borough of Bogota's Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.

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- (3) The funds deposited under Subsection b2(f)(2) above shall be used by the Borough of Bogota for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
- (4) The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the Borough of Bogota for the conversion of adaptable to accessible entrances.
- (5) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meets the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's Affordable Housing Trust Fund in care of the Borough Chief Financial Officer, who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
- (6) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

c. Design:

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

d. Maximum rents and sales prices:

1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and by the Superior Court regional income limits established by COAH or a successor entity.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52% of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13% of all low- and moderate-income rental units shall be affordable to very-low-income households, earning 30% or less of the regional median household income, with such very-low-income units counted toward the very-low-income requirement.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.
5. In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted

DRAFT

developments, the following standards shall be used:

- (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one-and-one-half-person household;
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four-and-one-half-person household; and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
- (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one-and-one-half-person household; and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowners' and private mortgage insurance and condominium or homeowners' association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.54, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.43, as may be amended and supplemented.
8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate size household, including an allowance for tenant-paid utilities, as determined under N.J.A.C. 5:80-26.54, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.43, as may be amended and supplemented.
9. 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.
10. The rent of low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed 9% in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

§ 22B-1.9. Utilities.

- a. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
- b. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by ~~DCA~~-HUD for its Section 8 program.

DRAFT**§ 22B-1.10. Occupancy Standards.**

- a. In referring certified households to specific restricted units, the administrative agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:
 - 1. Provide an occupant for each bedroom;
 - 2. Provide children of different sexes with separate bedrooms;
 - 3. Provide separate bedrooms for parents and children; and
 - 4. Prevent more than two persons from occupying a single bedroom.

§ 22B-1.11. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- a. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.65, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this section for a period of at least 30 years, until Bogota takes action to release the unit from such requirements; prior to such action, a restricted ownership unit shall remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, except that, for any units approved after October 13, 2016, such controls shall be for at least 50 years, or until such time after the initial fifty-year period as the Borough of Bogota elects to release the unit from such requirements.
- b. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- c. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- d. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the administrative agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first nonexempt sale after the unit's release from the restrictions set forth in this section, an amount equal to the difference between the unit's nonrestricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- e. The affordability controls set forth in this section shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- f. A restricted ownership unit shall be required to obtain a continuing certificate of occupancy or a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.65(a), as may be amended and supplemented.

§ 22B-1.12. Price Restrictions for Restricted Ownership Units, Homeowners' Association Fees and Resale Prices.

- a. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
 - 1. The initial purchase price for a restricted ownership unit shall be approved by the administrative

DRAFT

agent.

2. The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
3. The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowners' association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.
4. The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See Subsection 22B-1.15a.

§ 22B-1.13. Buyer Income Eligibility.

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

§ 22B-1.14. Limitations on Indebtedness Secured by Ownership Unit; Subordination.

- a. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the administrative agent for a determination in writing that the proposed indebtedness complies with the provisions of this section, and the administrative agent shall issue such determination prior to the owner incurring such indebtedness.
- b. With the exception of first purchase money mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of the unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-276.6(c**b**).

§ 22B-1.15. Capital Improvements to Ownership Units.

- a. The owners of restricted ownership units may apply to the administrative agent to increase the

DRAFT

maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.

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

§ 22B-1.16. Control Periods for Restricted Rental Units.

- a. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.1~~21~~, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this section for a period of at least 30 years, until Bogota takes action to release the unit from such requirements. Prior to such action, a restricted rental unit shall remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, except that, for any units approved after October 13, 2016, such controls shall be for at least 50 years, or until such time after the initial fifty- year period as the Borough of Bogota elects to release the unit from such requirements. For new projects receiving 9% low-income housing tax credits, a control period of not less than a thirty-year compliance period plus a fifteen-year extended use period shall be required.
- b. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Bergen. The deed shall also identify each affordable unit by apartment number and/or address and whether that unit is designated as a very-low-, low- or moderate-income unit. Neither the unit nor its affordability designation shall change throughout the term of the deed restriction. A copy of the filed document shall be provided to the administrative agent within 30 days of the receipt of a certificate of occupancy.
- c. A restricted rental unit shall remain subject to the affordability controls of this section despite the occurrence of any of the following events:
 - 1. Sublease or assignment of the lease of the unit;
 - 2. Sale or other voluntary transfer of the ownership of the unit; or
 - 3. The entry and enforcement of any judgment of foreclosure on the property containing the unit.

§ 22B-1.17. Rent Restrictions for Rental Units; Leases.

- a. A written lease shall be required for all restricted rental units, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the administrative agent.
- b. No additional fees or charges shall be added to the approved rent (except, in the case of units in an

DRAFT

assisted living residence, to cover the customary charges for food and services) without the express written approval of the administrative agent.

- c. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the administrative agent to be applied to the costs of administering the controls applicable to the unit as set forth in this section.
- d. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least 15% of the total number of dwelling units are restricted rental units in compliance with this section.

§ 22B-1.18. Tenant Income Eligibility.

- a. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.1~~43~~, as may be amended and supplemented, and shall be determined as follows:
 - 1. Very-low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.
 - 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
 - 3. Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.
- b. The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income household, a low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.1~~76~~, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 - 1. The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 - 2. The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 - 3. The household is currently in substandard or overcrowded living conditions;
 - 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - 5. The household documents reliable anticipated third-party assistance from an outside source, such as a family member, in a form acceptable to the administrative agent and the owner of the unit.
- c. The applicant shall file documentation sufficient to establish the existence of the circumstances in Subsections a1 through b5 above with the administrative agent, who shall counsel the household on budgeting.

§ 22B-1.19. Municipal Housing Liaison.

- a. The Borough of Bogota shall appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for administering the affordable housing program, including affordability controls, the affirmative marketing plan, monitoring and reporting, and, where applicable, supervising

DRAFT

any contracted administrative agent. Bogota shall adopt an ordinance creating the position of Municipal Housing Liaison. Bogota shall adopt a resolution appointing a Municipal Housing Liaison. The Municipal Housing Liaison shall be appointed by the governing body and may be a full- or part-time municipal employee. The Municipal Housing Liaison shall be approved by the court and shall be duly qualified through a training program sponsored by Affordable Housing Professionals of New Jersey before assuming the duties of Municipal Housing Liaison.

- b. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Bogota, including the following responsibilities, which may not be contracted out to the administrative agent:
 - 1. Serving as Bogota's primary point of contact for all inquiries from the state, affordable housing providers, administrative agents and interested households;
 - 2. Monitoring the status of all restricted units in Bogota's Fair Share Plan;
 - 3. Compiling, verifying and submitting annual monitoring reports as may be required by the court;
 - 4. Coordinating meetings with affordable housing providers and administrative agents, as needed; and
 - 5. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.
- c. Subject to the approval of the court, the Borough of Bogota shall designate one or more administrative agent(s) to administer newly constructed affordable units in accordance with UHAC. An operating manual for each affordable housing program shall be provided by the administrative agent(s) to be adopted by resolution of the governing body and subject to approval of the court. The operating manual(s) shall be available for public inspection in the office of the Borough Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the administrative agent(s). The Municipal Housing Liaison shall supervise the contracting administrative agent(s).

§ 22B-1.20. Administrative Agent.

The administrative agent shall be an independent entity serving under contract to and reporting to the municipality. For new sale and rental developments, all of the fees of the administrative agent shall be paid by the owners of the affordable units for which the services of the administrative agent are required. For resales, single-family homeowners and condominium homeowners shall be required to pay 3% of the sales price for services provided by the administrative agent related to the resale of their homes. That fee shall be collected at closing and paid directly to the administrative agent. The administrative agent shall perform the duties and responsibilities of an administrative agent as set forth in UHAC, including those set forth in Sections 5:80-26.1~~54~~, 1~~76~~ and 1~~98~~ thereof, which include:

- a. Affirmative marketing:
 - 1. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Bogota and the provisions of N.J.A.C. 5:80-26.1~~55~~; and
 - 2. Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- b. Household certification:
 - 1. Soliciting, scheduling, conducting and following up on interviews with interested households;

DRAFT

2. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
 3. Providing written notification to each applicant as to the determination of eligibility or noneligibility;
 4. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendixes J and K of N.J.A.C. 5:80-26.1 et seq.;
 5. Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and
 6. Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough of Bogota when referring households for certification to affordable units.
- c. Affordability controls:
1. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
 2. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
 3. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Bergen County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit;
 4. Communicating with lenders regarding foreclosures; and
 5. Ensuring the issuance of continuing certificates of occupancy or certifications pursuant to N.J.A.C. 5:80-26.1¹⁹.
- d. Resales and rentals:
1. Instituting and maintaining an effective means of communicating information between owners and the administrative agent regarding the availability of restricted units for resale or rental; and
 2. Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or rental.
- e. Processing requests from unit owners:
1. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this section;
 2. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air-conditioning systems;
 3. Notifying the municipality of an owner's intent to sell a restricted unit; and
 4. Making determinations on requests by owners of restricted units for hardship waivers.

DRAFT

f. Enforcement:

1. Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
2. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the administrative agent;
3. The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the administrative agent where complaints of excess rent or other charges can be made;
4. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.1~~98~~(d)4;
5. Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and
6. Creating and publishing a written operating manual for each affordable housing program administered by the administrative agent, to be approved by the Borough Committee and the court, setting forth procedures for administering the affordability controls.

g. Additional responsibilities:

1. The administrative agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
2. The administrative agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet any monitoring requirements and deadlines imposed by the court.
3. The administrative agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

§ 22B-1.21. Affirmative Marketing Requirements.

- a. The Borough of Bogota shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the court, that is compliant with N.J.A.C. 5:80-26.1~~65~~, as may be amended and supplemented.
- b. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children, to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. In addition, as a result of the Borough's 2016 settlement agreement with FSHC, the Affirmative Marketing Plan shall require the notification to the New Jersey State NAACP, the Latino Action Network, Fair Share Housing Center and the Bergen County chapter of the NAACP of affordable housing opportunities. It is a continuing program that directs marketing activities toward Housing Region 1 and is required to be followed throughout the period of restriction.
- c. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 1, comprised of Bergen, Hudson, Passaic and Sussex Counties.

DRAFT

- d. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and rerentals. The administrative agent designated by the Borough of Bogota shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
- e. In implementing the Affirmative Marketing Plan, the administrative agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- f. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the administrative agent shall consider the use of language translations where appropriate.
- g. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- h. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the municipality in which the units are located; and the developer's rental office. Preapplications shall be emailed or mailed to prospective applicants upon request.
- i. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

§ 22B-1.22. Enforcement of Affordable Housing Regulations.

- a. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the municipality shall have all remedies provided at law or equity, including, but not limited to, foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- b. After providing written notice of a violation to an owner, developer or tenant of a low- or moderate-income unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action(s) against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 - 1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the owner, developer or tenant is adjudged by the court to have violated any provision of the regulations governing affordable housing units, the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - (a) A fine of not more than \$500 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
 - (b) In the case of an owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Bogota Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - (c) In the case of an owner who has rented a low- or moderate-income unit in violation of the

DRAFT

regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.

2. The municipality may file a court action in the Superior Court seeking a judgment that would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.
 - (a) The judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorneys' fees. The violating owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.
 - (b) The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.
 - (c) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
 - (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
 - (e) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from

DRAFT

any qualified purchaser which may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.

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

§ 22B-1.23. Appeals.

Appeals from all decisions of an administrative agent appointed pursuant to this section shall be filed in writing with the court.