

HOUSING ELEMENT & FAIR SHARE PLAN

Borough of East Rutherford, New Jersey

Prepared for the Borough of East Rutherford Planning Board by
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HOUSING ELEMENT AND FAIR SHARE PLAN BOROUGH OF EAST RUTHERFORD, NEW JERSEY

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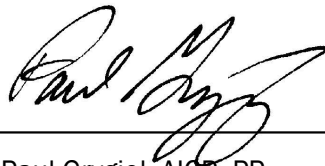
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I. Introduction

This Housing Element and Fair Share Plan has been prepared on behalf of the Borough of East Rutherford, 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 2024 Housing Element and Fair Share Housing Plan, which was adopted on June 10, 2019, revised on April 17, 2023, and last amended on September 5, 2024, hereinafter referred to as the "Borough's 2024 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 addressing the Borough's obligations to plan and regulate land use to provide for a fair share of the regional need for affordable housing.

East Rutherford remains committed to meeting its constitutional obligation to address its affordable housing responsibilities through its land use regulations. 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 area" 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.

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

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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 a number of 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, East Rutherford, 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.

East Rutherford 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 20, 2018. East Rutherford subsequently received a Preliminary Judgment of Compliance and Repose with Conditions from the Superior Court on January 7, 2019. Due to a variety of factors, including the intervention of an interested party, the Borough and FSHC amended the settlement agreement on September 13, 2024 and the Borough received a Final Judgment of Compliance and Repose from the Superior Court on November 15, 2024.

On March 20, 2024, Governor Phil Murphy signed a major amendment to the FHA into law. The Amended FHA (hereinafter “FHA II”) overhauled the FHA, eliminated COAH, and it set forth standards by which the fair share of municipalities must be established for the Fourth Round covering the period July 1, 2025 through June 30, 2035 and for subsequent rounds. The FHA II required the New Jersey Department of Community Affairs (DCA) to determine the obligation of all municipalities based upon the standards in the Act 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 those standards. FHA II 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 East Rutherford’s affordable housing obligations through the Fourth Round.

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.

The Administrative Office of the Courts issued Administrative Directive #14-24 on December 13, 2024 establishing guidelines implementing 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 imposed additional requirements found nowhere in FHA II.

IV. Housing Stock and Demographic Analysis

Housing Stock Inventory

In 2023, there were 4,325 housing units in the Borough of East Rutherford, of which 148 were vacant. Of the 4,177 occupied units, approximately 35.7 percent were owner-occupied and 64.3 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 | 4,177 | 1,493 | 2,684 |
| Vacant | 148 | - | - |
| Total | 4,325 | - | - |

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

Approximately 18.8 percent of the Borough's total housing stock (both occupied and vacant) consists of single-family detached units. Two-unit dwellings are the most common type of housing in the Borough, occupying approximately 35 percent of the housing stock. Structures with three or more units make up approximately 39 percent of the total housing stock. Housing units in structures with 20 or more units make up 22.5 percent of all housing units. It is notable that there are fewer single-family detached housing units than there are housing units in structures with 20 units or more. 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 | 813 | 18.8% |
| 1, Attached | 265 | 6.1% |
| 2 | 1,543 | 35.7% |
| 3 or 4 | 365 | 8.4% |
| 5 to 9 | 60 | 1.4% |
| 10 to 19 | 307 | 7.1% |
| 20+ | 972 | 22.5% |
| Mobile Home | 0 | 0.0% |
| Other | 0 | 0.0% |
| Total | 4,325 | 100.0% |

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 20.5 percent of East Rutherford's housing units were built prior to 1940. Construction of housing units peaked with 709 units built during 1950-1959, slowed down during 1990-1999 with 55 units built, and then regained traction in the 2000s with 594 units built. From 2010 to 2023, 466 units, or approximately 10.8 percent of the Borough's housing units, were constructed.

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Table 3. Housing Units by Age to 2023

| Year Built | Total Units | Percent |
|---------------|-------------|---------|
| 2020 or later | 50 | 1.2% |
| 2010 to 2019 | 416 | 9.6% |
| 2000 to 2009 | 594 | 13.7% |
| 1990 to 1999 | 55 | 1.3% |
| 1980 to 1989 | 263 | 6.1% |
| 1970 to 1979 | 451 | 10.4% |
| 1960 to 1969 | 530 | 12.3% |
| 1950 to 1959 | 709 | 16.4% |
| 1940 to 1949 | 371 | 8.6% |
| Before 1940 | 886 | 20.5% |

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

Table 4, Housing Units by Number of Rooms for East Rutherford Borough and Bergen County, 2023, shows that in East Rutherford, 25.5 percent of housing units have between one and three rooms; just over 58 percent have between four and six rooms; and approximately 16.5 percent have seven or more rooms. The median number of rooms per housing unit in East Rutherford is 4.4, which is smaller than the average for Bergen County of 5.8 rooms per unit.

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

| Rooms | Number of Units in East Rutherford | Percent of Units in East Rutherford | Number of Units in Bergen County | Percent of Units in Bergen County |
|---------------------|------------------------------------|-------------------------------------|----------------------------------|-----------------------------------|
| 1 | 42 | 2.3% | 10,090 | 2.7% |
| 2 | 375 | 4.2% | 13,229 | 3.6% |
| 3 | 686 | 12.6% | 41,700 | 11.3% |
| 4 | 1,149 | 16.2% | 51,568 | 14.0% |
| 5 | 823 | 7.8% | 50,366 | 13.7% |
| 6 | 538 | 15.8% | 57,779 | 15.7% |
| 7 | 170 | 12.8% | 46,007 | 12.5% |
| 8 | 231 | 11.7% | 38,447 | 10.4% |
| 9+ | 311 | 16.5% | 59,349 | 16.1% |
| Total | 4,325 | 100% | 368,535 | 100% |
| Mean Rooms per Unit | 4.4 | | 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 East Rutherford increased by approximately 14.1 percent between 2013 and 2023. During this same time period, the median housing value in Bergen County increased by 31.4 percent. In 2013, East Rutherford's median housing value of \$397,300 was approximately 12.0 percent lower than the Bergen County median housing value of \$451,400. In 2023, East Rutherford's median housing value of \$453,500 was approximately 23.6 percent lower than the Bergen County median housing value of \$593,200. Bergen County's growth in housing value outpaced that of East Rutherford in the 10-year span from 2013 to 2023.

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Table 5. Housing Values, Owner Occupied, 2013

| | Number in East Rutherford | Percent in East Rutherford | Number in Bergen County | Percent in Bergen County |
|--------------------------|---------------------------|----------------------------|-------------------------|--------------------------|
| Less than \$50,000 | 0 | 0.0% | 3,463 | 1.6% |
| \$50,000 to \$99,999 | 26 | 1.6% | 2,019 | 0.9% |
| \$100,000 to \$149,999 | 20 | 1.2% | 3,343 | 1.5% |
| \$150,000 to \$199,999 | 0 | 0.0% | 4,657 | 2.1% |
| \$200,000 to \$299,999 | 272 | 16.7% | 21,262 | 9.7% |
| \$300,000 to \$499,999 | 897 | 55.2% | 97,870 | 44.5% |
| \$500,000 to \$999,999 | 370 | 22.8% | 72,577 | 33.0% |
| \$1,000,000 or more | 41 | 2.5% | 14,827 | 6.7% |
| Total | 1,626 | 100% | 220,018 | 100% |
| 2013 Median Value | \$397,300 | | \$451,400 | |

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

Table 6. Housing Values, Owner Occupied, 2023

| Housing Value | Number in East Rutherford | Percent in East Rutherford | Number in Bergen County | Percent in Bergen County |
|--------------------------|---------------------------|----------------------------|-------------------------|--------------------------|
| Less than \$50,000 | 83 | 5.6% | 4,241 | 1.8% |
| \$50,000 to \$99,999 | 27 | 1.8% | 2,583 | 1.1% |
| \$100,000 to \$149,999 | 0 | 0.0% | 2,366 | 1.0% |
| \$150,000 to \$199,999 | 58 | 3.9% | 2,680 | 1.2% |
| \$200,000 to \$299,999 | 96 | 6.4% | 11,285 | 4.9% |
| \$300,000 to \$499,999 | 738 | 49.4% | 62,212 | 26.9% |
| \$500,000 to \$999,999 | 491 | 32.9% | 115,000 | 49.8% |
| \$1,000,000 or more | 0 | 0.0% | 30,556 | 13.2% |
| Total | 1,493 | 100% | 230,923 | 100% |
| 2023 Median Value | \$453,500 | | \$593,200 | |

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

Monthly rental cost in East Rutherford (\$1,867) is almost the same as average monthly rental costs in Bergen County (\$1,863). In East Rutherford, 77.7 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 7.6 percent pay less than \$1,000. See Table 7, Comparison of East Rutherford and Bergen County, Monthly Rental Cost, 2023, for additional details.

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

| Gross Monthly Rent | Number in East Rutherford | Percent in East Rutherford | Number in Bergen County | Percent in Bergen County |
|----------------------------------|---------------------------|----------------------------|-------------------------|--------------------------|
| No Rent Paid | 13 | - | 3,907 | - |
| Less than \$500 | 33 | 1.2% | 3,870 | 3.3% |
| \$500 - \$999 | 40 | 1.5% | 5,086 | 4.3% |
| \$1,000 - \$1,499 | 522 | 19.5% | 21,678 | 18.3% |
| \$1,500 - \$1,999 | 1,010 | 37.8% | 39,395 | 33.3% |
| \$2,000 - \$2,499 | 632 | 23.7% | 21,731 | 18.3% |
| \$2,500 - \$2,999 | 237 | 8.9% | 11,103 | 9.4% |
| \$3,000 or more | 197 | 7.4% | 15,614 | 13.2% |
| Total Occupied Units Paying Rent | 2,671 | 100% | 118,477 | 100% |
| Median Rent | \$1,867 | | \$1,863 | |

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

Out of 4,177 occupied housing units in East Rutherford in 2023, none lacked complete plumbing facilities, 56 lacked complete kitchen facilities, 24 lacked telephone service, and 298 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 | 298 | 24 | 0 | 56 |

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

General Population Characteristics

East Rutherford has seen an overall increase in population since 1990, with an initial increase of 10.3 percent from 1990 to 2000. From 2000 to 2010, the Borough's population grew more slowly, by approximately 2.3 percent; during this same period, the County's population increased by a similarly slow rate of 2.4 percent. From 2010 to 2020, the population growth in East Rutherford grew by 12.4 percent, 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) |
|-----------------|---------|---------|----------------------------|---------|----------------------------|---------|----------------------------|
| East Rutherford | 7,902 | 8,716 | 10.3% | 8,913 | 2.3% | 10,022 | 12.4% |
| Bergen County | 825,380 | 884,118 | 7.1% | 905,116 | 2.4% | 955,732 | 5.6% |

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

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From 2010 through 2020, there were shifts in East Rutherford's age distribution. The largest nominal increases occurred in the 5-14 years age group, which experienced a 106 percent increase; the 65-74 years age group, which experienced a 37 percent increase; the 35-44 years age group, which experienced a 31 percent increase; and the age group for children under 5 years, which increased by close to 21 percent. The only age group that experienced a decrease was for 45-54-year-olds, which decreased by 3.4 percent.

The share of the population within each age group also shifted between 2010 and 2020. The share of the population in the 65-74 years age group increased by 22.4 percent, followed by the 35-44 years age group with an increase of 16 percent. The share of the population under the age of 5 increased by approximately 7 percent, but the share of the population within the 5-14 and 15-24 age groups decreased by 8 percent and close to 16 percent, respectively. The share of the population within the 45-54 and 75+ age groups also decreased by approximately 14 percent each. 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 | 492 | 5.5% | 595 | 5.9% | 20.9% | 7.3% |
| 5-14 | 435 | 9.7% | 896 | 8.9% | 106.0% | -8.2% |
| 15-24 | 926 | 11.5% | 974 | 9.7% | 5.2% | -15.7% |
| 25-34 | 1,691 | 19.0% | 1,978 | 19.7% | 17.0% | 3.7% |
| 35-44 | 1,267 | 14.3% | 1,662 | 16.6% | 31.2% | 16.1% |
| 45-54 | 1,303 | 14.6% | 1,259 | 12.6% | -3.4% | -13.7% |
| 55-64 | 1,067 | 12.0% | 1,233 | 12.3% | 15.6% | 2.5% |
| 65-74 | 601 | 6.7% | 826 | 8.2% | 37.4% | 22.4% |
| 75+ | 599 | 7.0% | 599 | 6.0% | 0.0% | -14.3% |
| Total | 8,913 | 100% | 10,022 | 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 4,117 households in East Rutherford, with an average of 2.43 persons per household. Approximately 62 percent of all households were families, for which there was an average family size of 2.99 persons per family. In terms of household composition, approximately 39 percent of households were married couple families, approximately 28 percent of households had children related to the householder, and 30.5 percent were householders living alone. Over 16 percent of households had four or more persons. (Source: ACS 2019-2023, Table S1101 & S2501)

Income Characteristics

East Rutherford households have, on average, lower incomes than that of Bergen County. Annual median income for East Rutherford households was \$91,789 in 2023, whereas annual median income for

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households in the County was \$123,715. Table 11, Household and Family Income by Income Brackets for East Rutherford 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 East Rutherford and Bergen County, 2023

| | East Rutherford Borough | | Bergen County | |
|--------------------------------|-------------------------|-------------|------------------|-------------|
| | Households | Percent | Households | Percent |
| Less than \$5,000 | 204 | 2.9% | 7,259 | 2.1% |
| \$5,000 to \$9,999 | 0 | 0.0% | 3,942 | 1.1% |
| \$10,000 to \$14,999 | 98 | 2.3% | 7,234 | 2.0% |
| \$15,000 to \$19,999 | 34 | 0.8% | 6,577 | 1.9% |
| \$20,000 to \$24,999 | 229 | 5.5% | 6,705 | 1.9% |
| \$25,000 to \$34,999 | 100 | 2.4% | 15,240 | 4.3% |
| \$35,000 to \$49,999 | 251 | 6.0% | 23,079 | 6.5% |
| \$50,000 to \$74,999 | 774 | 18.5% | 39,916 | 11.3% |
| \$75,000 to \$99,999 | 532 | 12.7% | 35,056 | 9.9% |
| \$100,000 to \$149,999 | 840 | 20.1% | 62,751 | 17.8% |
| \$150,000 or more | 1,115 | 26.7% | 145,548 | 41.2% |
| Total | 4,117 | 100% | 353,307 | 100% |
| Median Household Income | \$91,789 | | \$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 41 percent.

The percentage of persons and household below the poverty level, as defined by the 2023 American Community Survey, equates to 7.4 percent of all East Rutherford residents. This is higher 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, East Rutherford, 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

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

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employment status. Approximately 70 percent of East Rutherford residents aged 16 and over are in the labor force and, among those in the labor force, all are part of the civilian labor force. Of the residents in the civilian labor force, approximately 95 percent are employed and approximately 5 percent are unemployed.

Table 12. Employment Status, East Rutherford, 2023

| | Number in East Rutherford | Percent in East Rutherford |
|-------------------------------------|---------------------------|----------------------------|
| Population 16 years and over | 8,499 | 100% |
| In Labor Force | 5,939 | 69.9% |
| Civilian Labor Force | 5,939 | 69.9% |
| <i>Employed</i> | 5,654 | 95.2% |
| <i>Unemployed</i> | 285 | 4.8% |
| Armed Forces | 0 | 0.0% |
| Not in Labor Force | 2,560 | 30.1% |

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

Table 13, Employment by Occupation, East Rutherford, 2023, identifies the occupations of employed persons. While East Rutherford residents work in a variety of industries, approximately 53 percent of employed residents work in Management, Business, Science, and Arts-related occupations; over 17 percent are employed in Sales and Office-related occupations; and approximately 15 percent work in Service-related occupations.

Table 13. Employment by Occupation, East Rutherford, 2023

| Sector Jobs | Number | Percent |
|--|--------|---------|
| Management, Business, Science, and Arts Occupations | 3,001 | 53.1% |
| Service | 858 | 15.2% |
| Sales and Office | 992 | 17.5% |
| Natural Resources, Construction, and Maintenance | 284 | 5.0% |
| Production, Transportation, and Moving | 519 | 9.2% |
| Total | 5,654 | 100.0% |

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

Table 14, Distribution of Employment by Industry, East Rutherford Residents, 2023, shows the distribution of employment by industry for employed East Rutherford residents. The industries that employed the largest segments of the population were the Professional, Scientific, Management, Administrative, and Waste Management Services sector at approximately 20 percent; the Educational, Health, and Social Services sector at 16 percent; the Retail Trade sector at over 13 percent; the Arts, Entertainment, Recreation, Accommodation and Food Services sector at approximately 9 percent; and the Manufacturing sector at 9 percent.

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Table 14. Distribution of Employment by Industry, East Rutherford Residents, 2023

| Sector Jobs | Number | Percent |
|---|--------------|---------------|
| Agriculture, Forestry, Fishing and Hunting, and Mining | 0 | 0.0% |
| Construction | 207 | 3.7% |
| Manufacturing | 507 | 9.0% |
| Wholesale Trade | 199 | 3.5% |
| Retail Trade | 757 | 13.4% |
| Transportation and Warehousing, and Utilities | 230 | 4.1% |
| Information | 253 | 4.5% |
| Finance, Insurance, Real Estate, Rental and Leasing | 551 | 9.7% |
| Professional, Scientific, Management, Administrative, and Waste Management Services | 1,123 | 19.9% |
| Educational Services, Health Care and Social Assistance | 924 | 16.3% |
| Arts, Entertainment, Recreation, Accommodation and Food Services | 528 | 9.3% |
| Other | 121 | 2.1% |
| Public Administration | 254 | 4.5% |
| Total | 5,654 | 100.0% |

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

Of East Rutherford residents who are employed, approximately 81 percent are private wage and salary workers; 12 percent are government workers; and over 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 East Rutherford | Percent in East Rutherford |
|--|---------------------------|----------------------------|
| Private Wage and Salary Workers | 4,601 | 81.4% |
| Government Workers | 681 | 12.0% |
| Self-employed in own not incorporated business workers | 372 | 6.6% |
| Unpaid family workers | 0 | 0.0% |
| Total | 5,654 | 100.0% |

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 East Rutherford by Industry Sector, 2012, 2017, 2022, shows the number of employees by sector in East Rutherford in 2012, 2017, and 2022. According to the New Jersey

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Department of Labor and Statistics, there were 11,946 private sector jobs in East Rutherford in 2022. The largest sectors of employment were in Retail Trade (14 percent of total employment); Accommodation and Food Services (13 percent); Real Estate and Rental and Leasing (12.7 percent); Administration & Support, Waste Management and Remediation (12.6 percent); and Arts, Entertainment, and Recreation (12.6 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 Real Estate and Rental and Leasing sector, which grew from 3 percent to 12.7 percent of all jobs; and in Arts, Entertainment, and Recreation, which grew from 7.5 percent to 12.6 percent of all jobs. The share of jobs in the Retail Trade sector declined from 18.7 percent to 9 percent between 2012 and 2017, but it rebounded by 2022, making up 14 percent of all jobs.

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

| | 2012 | | 2017 | | 2022 | |
|--|--------------|---------------|--------------|---------------|---------------|---------------|
| PRIVATE SECTOR JOBS | Count | Share | Count | Share | Count | Share |
| Agriculture, Forestry, Fishing and Hunting | 11 | 0.1% | 8 | 0.1% | 0 | 0.0% |
| Mining, Quarrying, and Oil and Gas Extraction | 0 | 0.0% | 0 | 0.0% | 3 | 0.0% |
| Utilities | 1 | 0.0% | 2 | 0.0% | 0 | 0.0% |
| Construction | 435 | 5.5% | 618 | 6.4% | 407 | 3.4% |
| Manufacturing | 725 | 9.2% | 798 | 8.2% | 772 | 6.5% |
| Wholesale Trade | 940 | 11.9% | 1,061 | 11.0% | 873 | 7.3% |
| Retail Trade | 1,478 | 18.7% | 885 | 9.1% | 1,702 | 14.2% |
| Transportation and Warehousing | 230 | 2.9% | 206 | 2.1% | 219 | 1.8% |
| Information | 261 | 3.3% | 149 | 1.5% | 214 | 1.8% |
| Finance and Insurance | 640 | 8.1% | 532 | 5.5% | 586 | 4.9% |
| Real Estate and Rental and Leasing | 238 | 3.0% | 312 | 3.2% | 1,515 | 12.7% |
| Professional, Scientific, and Technical Services | 327 | 4.1% | 341 | 3.5% | 240 | 2.0% |
| Management of Companies and Enterprises | 49 | 0.6% | 106 | 1.1% | 121 | 1.0% |
| Administration & Support, Waste Management and Remediation | 741 | 9.4% | 1,726 | 17.8% | 1,510 | 12.6% |
| Educational Services | 70 | 0.9% | 24 | 0.2% | 63 | 0.5% |
| Health Care and Social Assistance | 127 | 1.6% | 191 | 2.0% | 297 | 2.5% |
| Arts, Entertainment, and Recreation | 592 | 7.5% | 904 | 9.3% | 1,504 | 12.6% |
| Accommodation and Food Services | 941 | 11.9% | 1,512 | 15.6% | 1,580 | 13.2% |
| Other Services (excluding Public Administration) | 113 | 1.4% | 314 | 3.2% | 340 | 2.8% |
| Public Administration | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| TOTAL PRIVATE SECTOR | 7,919 | 100.0% | 9,689 | 100.0% | 11,946 | 100.0% |

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, East Rutherford issued 545 certificates of occupancy: 21 for one- and two-family dwellings and 524 for multifamily dwellings, which are attributable to inclusionary developments. 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 | 1 | 4 | 0 | 1 | 4 | 2 | 3 | 0 | 4 | 2 | 0 | 21 |
| Multifamily | 0 | 0 | 0 | 316 | 0 | 0 | 0 | 0 | 208 | 0 | 0 | 524 |
| Mixed Use | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 1 | 4 | 0 | 317 | 4 | 2 | 3 | 0 | 212 | 2 | 0 | 545 |

Source: New Jersey Construction Reporter

The trend of multi-family residential construction is projected to continue in redevelopment areas where multifamily development is permitted. However, as much of the vacant land in the Borough is characterized by environmental constraints or public/institutional use, the opportunities for additional multifamily housing will be constrained in the future.

Nonresidential Trends and Projections

According to the New Jersey Construction Reporter, between 2013 and 2023, East Rutherford issued certificates of occupancy for a total of ±1,215,733 square feet of non-residential building space. See Table 18, Non-Residential Certificates of Occupancy, 2013-2023, for additional details. The majority of the non-residential growth can be attributed to:

- 1,043,073 square feet of multi-family/dormitories, for which certificate(s) of occupancy were issued in 2016, 2021, 2022, and 2023;²
- 138,000 square feet of storage space in 2021;
- 11,013 square feet of office space in 2014, 2016, 2017, and 2018;
- 10,796 square feet of educational space in 2014;
- 3,658 square feet of industrial space in 2021; and
- Small amounts of A-2 and A-3 space and signs, fences, utility, and miscellaneous space.

This data fails to account for the construction of the American Dream Mall in East Rutherford, which opened in 2019 and has added significant square footage of retail and entertainment space. Of note, the American Dream Mall was not required to provide a nonresidential development fee under the exemptions in N.J.S.A. 40:55D-8.6(4). The new Lincoln Middle School building was completed in 2022, and it is also unaccounted for in the NJ Construction Reporter data.

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

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

| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | Total |
|-----------------------------------|----------|---------------|------------|----------------|--------------|--------------|----------|----------|----------------|------------|------------|------------------|
| Office | 0 | 1,404 | 0 | 4,500 | 941 | 4,168 | 0 | 0 | 0 | 0 | 0 | 11,013 |
| 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 | 4,189 | 1 | 0 | 0 | 0 | 0 | 0 | 4,190 |
| A-3 | 0 | 0 | 0 | 0 | 0 | 800 | 0 | 0 | 700 | 0 | 0 | 1,500 |
| A-4 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| A-5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Multifamily/ Dormitories | 0 | 0 | 0 | 720,340 | 0 | 0 | 0 | 0 | 321,593 | 204 | 936 | 1,043,073 |
| Hotel/ Motel | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Education | 0 | 10,796 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10,796 |
| Industrial | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3,658 | 0 | 0 | 3,658 |
| 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 | 0 | 0 | 0 | 0 | 138,000 | 0 | 0 | 138,000 |
| Signs, Fences, Utility & Misc. | 0 | 0 | 468 | 351 | 1 | 1,600 | 0 | 0 | 720 | 362 | 0 | 3,502 |
| TOTAL | 0 | 12,200 | 468 | 725,191 | 5,131 | 6,570 | 0 | 0 | 464,671 | 566 | 936 | 1,215,733 |

Source: New Jersey Construction Reporter

Capacity for Growth

Large areas of the Borough are environmentally constrained within the NJ Meadowlands District. The remainder of the Borough, which generally lies west of Route 17, is almost completely developed or constrained by public/institutional uses. This plan accounts for vacant land as well as land that has the potential to redevelop, either through redevelopment designations, rezoning, affordable housing overlay zones, or other mechanisms.

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 determination of each municipality's Fourth Round (2025 to 2035) affordable housing obligations were released on October 18, 2024. The DCA interpreted FHA II to set the Borough's Present Need at 53 and its Fourth Round new construction obligation at 412.

FHA II set a deadline of January 31, 2025 for municipalities to adopt a binding resolution setting forth the Present and Fourth Round prospective need number to which they committed based upon their municipal interpretation of the standards set forth in FHA II. Based on its interpretation of the FHA as amended, East Rutherford's Mayor and Council adopted Resolution #36-2025 on January 21, 2025 setting forth its determination of the Borough's Fourth Round obligations. In that resolution, the Borough committed to a Present Need (also known as a rehabilitation component) of 53 and a Fourth Round Prospective Need of 375. In accordance with FHA II, the Borough filed a declaratory relief compliant within 48 hours of adoption and included the resolution as part of its submission.

In response to a challenge by the New Jersey Builder's Association (NJBA), the Borough and the NJBA engaged in mediation. Mediation culminated in a Mediation Agreement dated April 23, 2025, setting the Borough's Fourth Round Prospective Need of 393. The Present Need and Prospective Need obligations are discussed as follows.

Present Need

Present need, also known as the rehabilitation obligation, is defined in the Affordable Housing Law as the number of units in the municipality currently occupied by low- and moderate-income (LMI) households that meet certain criteria. The DCA proposed a non-binding Present Need obligation for East Rutherford of 53. The Borough has accepted this obligation. The DCA based its present need calculation on the 2020 Census and consequently it supersedes the present need obligation set forth in the Round 3 Housing Element and Fair Share Plan approved by the Court.

Prospective Need

Municipal Prospective Need obligations are calculated as a share of the region in which the municipality is located (East Rutherford's region includes Bergen, Hudson, Passaic and Sussex Counties). The total Prospective Need for this region is 27,743, with this need allocated to municipalities throughout the region. However, "Qualified Urban Aid Municipalities" ("QUAMs") are exempt from addressing Prospective Need, which increases the obligations on the remaining municipalities. Regional Prospective Need is then allocated to the municipalities in the region that are not QUAMs 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 East Rutherford is 3.27%.

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 East Rutherford is 0.50%.

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 East Rutherford located in Planning Area 1, the weight is 1, meaning there is no reduction, unlike in various other planning areas. This factor for East Rutherford is 0.69%.

However, East Rutherford's Prospective Need obligation should be lower than the DCA's non-binding obligation due to issues with the DCA's calculation of the Land Capacity factor classifying a number of areas in the Borough as "developable" when in reality they are not.

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.

The areas identified as developable in the DCA's calculation of the Land Capacity factor is indeed overinclusive. Accordingly, the Borough reasonably took the position that the amount of developable land should be adjusted from 13.60 to 5.55 acres, which would result in the Land Capacity factor dropping from 0.69% to 0.28%. A document outlining this analysis is included in the Appendix.

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 municipal Prospective Need. East Rutherford's Average Allocation Factor is 1.49%, which resulted in

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

the DCA's proposed non-binding Prospective Need obligation for East Rutherford of 412. However, the Average Allocation factor should be reduced from 1.49% to 1.35%. When this correction is made, East Rutherford's Round 4 prospective need number was recalculated as 375.⁴

The Borough filed a declaratory judgment complaint in the Superior Court of New Jersey on January 22, 2025, wherein it asserted that its Prospective Need number for the Fourth Round should be 375, not the 412 number reported by the DCA. The New Jersey Builders' Association (NJBA) filed an objection to East Rutherford's filing on February 25, 2025, which challenged the proposed reduction in the Borough's Prospective Need number. During the settlement conference on this matter on March 31, 2025, NJBA offered a settlement which resulted in an adjustment to the DCA's Prospective Need for East Rutherford from 412 to 393. After considering the settlement offer by the NJBA and the comments of the Affordable Housing Alternative Dispute Resolution Program member and a Special Adjudicator, East Rutherford accepted this settlement, subject to approval by the Mayor and Council and certain reservations. Based on this settlement, the Borough's modified Fourth Round Prospective Need is 393 units.

- **Fourth Round Prospective Need Obligation (2025-2035): 393 units** (as adjusted by settlement with the NJBA).

Vacant Land Analysis

There is limited land in the Borough that is vacant or otherwise developable for affordable and/or inclusionary housing. East Rutherford is entitled to a Vacant Land Adjustment (VLA) to determine the Borough's Fourth Round Realistic Development Potential (RDP) based on the amount of vacant and/or developable land that is suitable for inclusionary development. As part of the November 2024 Judgment of Compliance and Repose for East Rutherford's Third Round, the Court approved a VLA presented by the Borough. COAH policies permit the Borough to rely upon the relatively recent approval (November 2024) of the Borough's vacant land adjustment. Notwithstanding the foregoing, there have been some minor changes since the Court approved the Borough's vacant land adjustment in November 2024. However, those changes are so minor as to not trigger an obligation to recalibrate the Borough's RDP. Therefore, the Borough relies on the Court's approval of its Housing Element and Fair Share Plan for the Third Round, which included a VLA. Consequently, the Borough's Fourth Round RDP is 0. Since the RDP is 0, the Borough's Unmet Need for the Fourth Round is 393.

Proposed Compliance Mechanisms

Present Need

In order to meet the 53-unit Rehabilitation obligation, the Borough has participated and will continue to participate in the Bergen County Home Improvement Program (HIP) for owner-occupied units. The Borough's current Administrative Agent declined to offer to run a rehabilitation program for landlords. In addition, the Borough attempted to engage the firms of CGP&H and Center State Engineering, both

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

of which declined to offer a supplemental rehabilitation program for rental units. Since the Borough has been unable to find a company that can implement a rehabilitation program for rental units, it requests a waiver from providing a municipal rehabilitation program for rental units. The County's rehabilitation program will address the Borough's rehabilitation obligation. This program will meet the requirements of N.J.A.C. 5:93-5.2.

The program has been promoted by posting the County's HIP fliers on the public bulletin boards in Borough Hall, the Building Department, and the Senior Center; and on the Borough's website. To date, no residents from East Rutherford have applied to the program. However, the Borough will continue to exercise due diligence in making the public aware of the availability of the program, regardless of whether low- and moderate-income households choose to participate.

Prior Round Obligations

The Court approved the mechanisms provided in the Borough's 2024 Housing Plan to address the Prior Round obligation and the Third Round obligation. The Borough will continue to rely on those mechanisms and to include them in this Fourth Round plan. The following summarizes those mechanisms.

Status on Satisfaction of the Prior Round Obligations

COAH assigned East Rutherford a Prior (First and Second) Round obligation of 90 units. Pursuant to the Mount Laurel IV decision, Dr. Kinsey and Econsult Solutions Inc. ("Econsult") utilized the COAH-assigned obligation as a basis for municipal Prior Round obligations. Note that the Prior Round obligation was recalculated for COAH for the 2008 substantive rules, N.J.A.C. 5:97, Appendix C, to reflect the latest available data for measuring secondary sources of supply. COAH adjusted the Borough's Prior Round obligation from 90 to 70. However, in the Third Round Housing Element and Fair Share Plan that the Court approved, the Borough addressed a Prior Round obligation of 90.

The Borough of East Rutherford's Third Round affordable housing obligation was 656 units. The Borough was eligible for a vacant land adjustment ("VLA"), pursuant to N.J.A.C. 5:93-4.2, which adjusted the Third Round obligation to a realistic development potential (RDP) of 149 units, leaving the Borough with an Unmet Need of 507 in the Third Round. . Municipalities have an obligation to create a realistic opportunity for satisfaction of their realistic development potential and a lesser obligation with respect to their unmet need.

Table 19, Satisfaction of Prior Round Obligations shows compliance in meeting the Prior (First and Second) Round obligation and the Third Round RDP.

- **Prior Round Obligation (1987-1999): 90 units** (per N.J.A.C. 5:93, et seq., East Rutherford's 1987-1999 obligation); and
- **Third Round Prospective Need Obligation (1999-2025): 656 units** (based on the settlement agreement with FSHC).

Land in East Rutherford that is located east of the rail tracks running parallel to Route 17 are subject to the zoning and development regulations of the New Jersey Sports and Exhibition Authority (NJSEA), formerly the New Jersey Meadowlands Commission. This land is under NJSEA jurisdiction. The

remaining land located west of the rail tracks running parallel to Route 17 are under the Borough's jurisdiction and are subject to East Rutherford's zoning and development regulations.

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Table 19. Satisfaction of All Prior Round Obligations

| Development | Block | Lot | Address | Program Type | Housing Type | Total Units | Unit Credits to Prior Rounds |
|---------------------------------|--------|-----------|----------------------|-----------------|-----------------|-------------|------------------------------|
| Tomu Development Co. | 107.03 | 2, 5, 7 | 'Meadows' | Inclusionary | Family Rental | 420 | 60* |
| The Monarch Phase I (7 of 32) | 108.04 | 5.01/5.02 | 100-200 Schindler Ct | Inclusionary | Family Rental | 316 | 7 |
| The Monarch Phase I (25 of 32) | 108.04 | 5.01/5.02 | 100-200 Schindler Ct | Inclusionary | Family Rental | 316 | 25* |
| 132 Union Avenue | 97 | 3.01 | 132 Union Avenue | Inclusionary | Family For-Sale | 32 | 3 |
| Garden House | 66 | 8 | 151 Hackensack St | 100% Affordable | Family Rental | 2 | 2* |
| Bergen County Housing Authority | 66 | 9 | 153 Hackensack St | 100% Affordable | Family Rental | 2 | 2* |
| 228 Park Avenue | 73 | 7 | 228 Park Ave | Inclusionary | Family Rental | 54 | 9* |
| 384 Paterson Avenue | 44 | 41 | 384 Paterson Ave | Inclusionary | Family For-Sale | 7 | 1 |
| Van Winkle Street | 92 | 16 | Van Winkle St | Inclusionary | Family Rental | 33 | 6 |
| Macedonian Drive Apartments | 19 | 1 | 754 Paterson Ave | Inclusionary | Family Rental | 9 | 2 |
| 480 Flatz | 28 | 1 | 480 Paterson Ave | Inclusionary | Family Rental | 35 | 6 |
| 315 Railroad Avenue | 52 | 8 | 315 Railroad Ave | Inclusionary | Family Rental | 23 | 4 |
| 263 Hackensack Street | 97 | 5 | 50 Winter Pl | Inclusionary | Family Rental | 86 | 13 |
| | 98 | 1 | 263 Hackensack St | | | | |
| KS Rock | 77 | 3 | 150 Union Ave | Inclusionary | Family Rental | 120 | 18 |
| | 77 | 4 | 35 Union Ave | | | | |
| 10-20 Winter Place | 77 | 5 | 10-20 Winter Pl | Inclusionary | Family Rental | 19 | 3 |
| 4 Jersey Street | 9 | 1 | 4 Jersey St | Inclusionary | Family Rental | 14 | 3 |
| Market-to-Affordable Program | - | - | - | - | - | - | 15 |

*Plus bonus rental credits

| | |
|---|------------|
| Prior (First & Second) Round Rental Bonus | 23 |
| Prior (First & Second) Round Credits (Units + Bonus) | 90 |
| Third Round Unit Credits | 112 |
| Third Round Rental Bonus (max. allowed=25% of RDP) | 37 |
| Age-Restricted Bonus (max. allowed=25% of RDP) | 0 |
| Third Round Credits | 149 |

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Documentation regarding the mechanisms listed in Table 19 was provided in the Appendix of the Third Round Housing Element and Fair Share Plan. This Fourth Round plan relies on that documentation due to the recency of the Third Round Judgment of Repose in November 2024. This documentation is on file with the court and is available by request.

As noted in Table 19, the Borough's Third Round Housing Element and Fair Share Plan addressed 15 units of the Borough's obligation with a "market-to-affordable" program. The Borough's plan provided that funding for the program would come from the Borough's Trust Fund. In this regard, the Borough had \$1,363,876.10 in its trust fund on May 31, 2024 and anticipated \$1,593,906 by December 31, 2025. The Borough reached out to the target multifamily residential property owners shown in Table 20, Market-to-Affordable Program, Target Projects, which included an unspecified offer of financial assistance to convert units to affordable. Although no property owners have sought to participate in the program, the program was approved less than one year ago and, with time, the intention is that the program will be effective. Indeed, the Borough will further pursue discussions with these property owners.

Table 20. Market-to-Affordable Program, Target Projects

| Name | Block | Lot | Units (±) | Year Built ¹ | Location |
|--------------------------------|--------------------|------------------------|-----------|-------------------------|--|
| Station Square Apartments | 73 | 1 | 46 units | 1960 | 351 Van Winkle Street, between Orchard Street and Union Avenue |
| Liberty Terrace Apartments | 90 | 1 | 125 units | 2002 | Hackensack Street, between Stanley Street and Ann Street |
| Rutherford Station Apartments | 72 | 1 | 108 units | 2004 | 201 Railroad Avenue, east of Rutherford Train Station |
| Rutherford Heights Apartments | 23.01 | 1.01, 1.02, & 1.03 | 256 units | 2004 | Paterson Avenue, between Franklin Place and Herrick Street |
| River Renaissance Condominiums | 6 ¹ | 3, 4, & 5 ² | 148 units | 1984 | Border with Passaic River |
| Carlton Hill Condominiums | 24.04 ¹ | 1 ² | 86 units | 1985 | Triumph Court, Border with Rutherford |
| Willow Wood Condominiums | 30 | 1 ² | 44 units | 1988 | Central Avenue between Willow Street and Oak Street |
| Franton Manor Condominiums | 42 | 5 ² | 15 units | 1986 | 410 Paterson Avenue between Herman Street and Mozart Street |
| Orchard Manor Condominiums | 95 | 1 ² | 16 units | 1986 | 120 Orchard Street |

Table Notes:

¹ Approximate built date, according to online property tax records.

² Condominium units are recorded under separate block/lot numbers.

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A status of the Prior Round sites and Third Round RDP sites is provided below.

- Sixty (60) affordable family rental units (23 Bonus Credits) at **Tomu Development Co.**
 - Tomu Development Co. (Block 107.03, Lots 2, 5, and 7) site was the subject of the 2006 builder's remedy. In 2003, the Borough of East Rutherford, as well as the Borough of Carlstadt, were subject to a builder's remedy suit by Tomu Development Co. In connection with the builder's remedy, an Order Imposing Scarce Resource Restraints was put in place on May 13, 2005. The builder's remedy was later awarded pursuant to an Order by the Hon. Jonathan Harris, J.S.C., on November 10, 2005. A settlement determined that the site would produce 60 affordable family rental units. The site was eligible for 23 bonus credits. Several interested parties have met with the NJSEA, who has zoning and development jurisdiction over the site. Yet no developers have elected to move forward with a development project at the site.
 - **No development applications have been filed.**
- Seven (7) affordable family rental units (plus 7 Bonus Credits) in **The Monarch Phase I (100-120 Schindler Court)**
 - The Monarch (Block 108.04, Lot 5.01/5.02) is located within the jurisdiction of the NJSEA. This project includes a total of 316 units, of which 32 units, or 10 percent, are affordable. Seven (7) units were applied to the Prior (First and Second) Round obligation, and 25 units were applied to the Third Round obligation.
 - **Project has been completed.**
- Twenty-five (25) family affordable rental units (25 Bonus Credits) in **The Monarch Phase I (100-120 Schindler Court)**
 - The Monarch (Block 108.04, Lot 5.01/5.02) is located within the jurisdiction of the NJSEA. This project includes a total of 316 units, of which 32 units, or 10 percent, are affordable. Seven units were applied to the Prior Round obligation, and 25 units were applied to the Third Round obligation.
 - **Project is completed.**
- Three (3) family affordable for-sale units at **132 Union Avenue**
 - The Borough Zoning Board of Adjustment adopted a resolution of approval for this project on June 1, 2006, with subsequent amended approval granted in 2007 (Block 97, Lot 3.01). This project includes a total of 32 units, of which 3 units, or 9.4 percent, are affordable. This project is not within the jurisdiction of the NJSEA.
 - **Project is completed.**

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- Two (2) family affordable rental units in the **Garden House (151 Hackensack Street)**
 - This 100% affordable project is administered by the Housing Authority of Bergen County and was acquired and converted for use as a two-family affordable housing rental unit with a \$140,000 contribution from East Rutherford's Affordable Housing Trust Fund (Block 66, Lot 8). This project is not under the jurisdiction of the NJSEA.
 - **Project is completed.**
- Two (2) family affordable rental units at **153 Hackensack Street**
 - This 100% affordable project is administered by the Housing Authority of Bergen County (Block 66, Lot 9). The Housing Authority purchased the residential property in 2018. This project is not under the jurisdiction of the NJSEA.
 - **Project is completed.**
- Nine (9) family affordable rental units at **228 Park Avenue**
 - The Borough Zoning Board of Adjustment approved this project in 2014 (Block 73, Lot 7), which involved the removal of an existing industrial building from the site in order to construct a new multifamily residential development. However, the 2014 project did not move forward. A new application was submitted and the Board of Adjustment ultimately approved it in March of 2021. The project will provide 54 units, of which nine units, or 16%, will be affordable. This project is not within the jurisdiction of the NJSEA.
 - **Project is under construction.**
- One (1) family affordable for-sale unit at **384 Paterson Avenue**
 - The Borough Zoning Board of Adjustment approved this project in 2016 (Block 44, Lot 41); construction was completed in 2018. This project includes a total of seven (7) condominium units, of which one (1) unit, or 14 percent, is affordable. The affordable unit is comprised of two bedrooms. This project is not within the jurisdiction of the NJSEA.
 - **Project is completed.**
- Six (6) family affordable rental units at **Van Winkle Street**
 - The Borough Zoning Board of Adjustment approved a project to redevelop an industrial building with a 33-unit inclusionary project in 2005 (Block 92, Lot 16), of which six units would be affordable, but it did not move forward. A new application was submitted around 2018 for a five-story, 82-unit project, of which 2 units would have been 5-bedroom group home units for veterans (12.5 credits). The Zoning Board of Adjustment ultimately denied

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the application; the Implementation Monitor did not overturn the decision. This site remains developable for inclusionary housing. This project is not within the jurisdiction of the NJSEA.

- The site is available, suitable, developable and approvable as defined in N.J.A.C. 5:93-1.3. The site can be developed consistent with RSIS and other state regulations, such as the NJDEP. A review of NJDEP's wetlands mapping indicates that there are no wetlands on the site. A review of FEMA FIRMs indicates that the site is not within a floodplain. The site is serviced by water and sewer infrastructure. NJDEP mapping indicates that the site is located within a sewer service area maintained by the Bergen County Utilities Authority. The site is located in Planning Area 1 (Metropolitan) of the State Development and Redevelopment Plan Policy Map.
- **Site remains developable.**
- Two (2) family affordable rental units at **754 Paterson Avenue**
 - The Borough Zoning Board of Adjustment approved this project, memorialized by Resolution 16-001 on January 7, 2016 (Block 19, Lot 1); construction was completed around 2021/22. This project includes a total of nine (9) family rental units, of which two (2) units, or 22 percent, are affordable. The affordable units are comprised of one (1) one-bedroom unit and one (1) two-bedroom unit. This project is not within the jurisdiction of the NJSEA.
 - **Project is completed.**
- Six (6) family affordable rental units at **480 Paterson Avenue**
 - The Borough Zoning Board of Adjustment approved this project by Resolution 18-003 on July 19, 2018 (Block 28, Lot 1); construction was completed around 2021. This project includes a total of 35 family rental units, of which six (6) units, or 17 percent, are affordable. The affordable units are comprised of one (1) one-bedroom unit, four (4) two-bedroom units, and one (1) three-bedroom unit. This project is not within the jurisdiction of the NJSEA.
 - **Project is completed.**
- Four (4) family affordable rental units at **315 Railroad Avenue**
 - The Mayor & Council adopted a Redevelopment Plan by Resolution 76-2021 on May 18, 2021. Subsequently, the Borough Planning Board approved a site plan application in 2022 by Resolution 2022-07 on August 8, 2022 (Block 52, Lot 8); construction is anticipated to finish in 2025. This project includes a total of 23 family rental units, of which four (4) units, or 17 percent, are affordable. The affordable units are comprised of one (1) one-bedroom unit, two (2) two-bedroom units, and one (1) three-bedroom unit. This project is not within the jurisdiction of the NJSEA.
 - **Under construction.**

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- Thirteen (13) family affordable rental units at **263 Hackensack Street**
 - The Mayor & Council adopted Resolution #165-2021 on December 21, 2021 designating 263 Hackensack Street (Block 97, Lot 5 and Block 98, Lot 1) as a non-condemnation area in need of redevelopment. The Mayor & Council then adopted a Redevelopment Plan for 263 Hackensack Street, memorialized by Resolution #2022-08 on May 17, 2022. Subsequently, the Borough Planning Board reviewed a site plan application in 2023 and 2024. On September 4, 2024, the Court-appointed Special Implementation Monitor directed the Planning Board Attorney to prepare a resolution of approval for a site plan application consisting of 86 dwelling units, of which 13 units, or 15 percent, are affordable. The Planning Board approved the site plan application, memorialized by Resolution PB24-04 on October 21, 2024. The affordable units are comprised of three (3) studio units, seven (7) two-bedroom units, and three (3) three-bedroom units. Of these, three (3) units shall be for households with moderate income, eight (8) units for households with low income, and two (2) for households with very low income. This project is not within the jurisdiction of the NJSEA.
 - **Project is approved.**

- Three (3) family affordable rental units at **4 Jersey Street**
 - The Mayor & Council adopted Resolution 22-06 in June 2022 designating 4 Jersey Street (Block 9, Lot 1) as a non-condemnation area in need of redevelopment. The Mayor & Council then adopted a Redevelopment Plan for 4 Jersey Street, memorialized by Resolution 2023-11 on April 25, 2023. Subsequently, the Borough Planning Board reviewed a site plan application in 2024 and denied it on November 18, 2024. The Planning Board is anticipating a new application before the Board in 2025. The Redevelopment Plan permits a total of 14 units, of which it requires a 15 percent set-aside of rental units as affordable and a 20 percent set-aside of for-sale units. Three (3) affordable family rental units are anticipated. This project is not within the jurisdiction of the NJSEA.
 - **Redevelopment Plan is adopted. Project is pending before the Planning Board.**

- Eighteen (18) family affordable rental units at **150 Union Avenue**
 - The Mayor & Council designated 150 Union Avenue (Block 77, Lots 3, 4, and 5) as a non-condemnation area in need of redevelopment on November 12, 2019. On May 30, 2023, KS Rock LLC, the owner of Block 77, Lot 3, filed a motion to intervene in the Borough's final housing compliance and repose. On August 21, 2024, the Borough and KS Rock entered into a Settlement Agreement. The Settlement Agreement stipulates that the Borough prepare a Redevelopment Plan permitting a maximum of 120 units, with 15% of units being affordable rentals. On September 24, 2024, the Mayor & Council adopted a Redevelopment Plan for 150 Union Avenue (Block 77, Lots 3 & 4) by Ordinance 2024-17. The Redevelopment Plan permits a total of 120 units, of which it requires a 15 percent set-aside

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of units as affordable, or 18 affordable family units. This project is not within the jurisdiction of the NJSEA.

- **Redevelopment Plan is adopted.**

- Three (3) family affordable rental units at **10-20 Winter Place**
 - The Mayor & Council designated 150 Union Avenue (Block 77, Lots 3, 4, and 5) as a non-condemnation area in need of redevelopment on November 12, 2019. The Mayor & Council adopted a Redevelopment Plan for 10-20 Winter Place on December 17, 2024 by Ordinance 2024-23. The Redevelopment Plan permits a total of 18 units, of which it requires a 15 percent set-aside of units as affordable, or 3 affordable family units. This project is not within the jurisdiction of the NJSEA.
 - **Redevelopment Plan is adopted.**

The Borough of East Rutherford reserves the right to revisit the Prior Round calculations in the future, should it be necessary.

Very Low-Income Units

Additionally, the Borough is subject to the requirements in the Fair Housing Act (“FHA”) for Very Low-Income Units. Per N.J.S.A. 52:27-D-329.1 of the FHA, at least 13 percent of the housing units made available for occupancy by low-income and moderate-income built after July 1, 2008 shall be reserved for occupancy by very low-income households. Half of the very low-income units must be available to families. In the Third Round, the Borough’s requirement to provide for very low-income units is 13 percent of 127 post-2008 units developed in the Borough. The 127 units include the 97 units that are credited toward addressing the Third Round RDP obligation and 30 affordable units at the Central & Oak inclusionary development that contribute to the Unmet Need. Of the 127 units, 16.51 units are required to be very low-income, rounded to 17 units. The Borough intends to offset any shortfall of very low-income units through future development approvals. The Borough plans to comply with this requirement as shown in Table 21, Very Low Income Units Allocation.

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Table 21. Very Low Income Units Allocation

| Project Name | Block | Lot | Address | Unit Type | Very Low-Income Units |
|------------------------------------|--------|-------------|-----------------------------|-------------------------------|-----------------------|
| The Monarch Phase I (25 of 32) | 108.04 | 5.01/5.02 | 100-200 Schindler Ct | Inclusionary Family Rental | 5 |
| Garden House | 66 | 8 | 151 Hackensack St | 100% Affordable Family Rental | 1 |
| Housing Authority of Bergen County | 66 | 9 | 153 Hackensack St | 100% Affordable Family Rental | 1 |
| 228 Park Avenue | 73 | 7 | 228 Park Ave | Inclusionary Family Rental | 2 |
| Central & Oak | 26 | 1, 2 (1.01) | Paterson, Oak, Central Aves | Inclusionary Family Rental | 4 |
| 480 Flatz | 28 | 1 | 480 Paterson Ave | Inclusionary Family Rental | 1 |
| Van Winkle Avenue | 92 | 16 | Van Winkle Ave | Inclusionary Family Rental | 1 |
| 315 Railroad Avenue | 52 | 8 | 315 Railroad Ave | Inclusionary Family Rental | 1 |
| 263 Hackensack Street | 97 | 5 | 50 Winter Pl | Inclusionary Family Rental | 2 |
| | 98 | 1 | 263 Hackensack St | | |
| 4 Jersey Street | 9 | 1 | 4 Jersey St | Inclusionary Family Rental | 1 |
| KS Rock | 77 | 3 | 150 Union Ave | Inclusionary Family Rental | 3 |
| | 77 | 4 | 35 Union Ave | | |
| Total Units | | | | | 21 |

Bonus Credits

COAH's Second and Third Round Substantive Rules provide bonus credits for the provision of affordable rental units, as well as for other compliance mechanisms, within certain limitations. As shown in Table 19, Satisfaction of All Prior Round Obligations, the Borough counted 23 rental bonus credits and 0 age-restricted bonus credits in the Prior (First and Second) Round. As shown in Table 22, Compliance with Minimum Rental and Maximum Age-Restricted and Bonus Requirements for Third Round, the Borough was required to produce a minimum of 38 rental units, and it produced 93 rental units. The maximum allowable rental bonus credits was 37 and age-restricted bonus credits was 0 for the Third Round. The Borough accounted for the maximum permitted number of bonus credits for rental units of 37 credits (25% x RDP of 149 credits). The developments from which these rental bonus credits are derived are indicated in Table 19.

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Table 22. Compliance with Minimal Rental and Maximum Age-Restricted and Bonus Requirements for Third Round

| | | |
|-------------------------------------|-------------------------|--|
| Minimum Rental Obligation | <i>Regulation</i> | =0.25 (Realistic Development Potential) =0.25 (149) = 38 units (rounded up from 37.25 units) |
| | <i>Minimum Required</i> | 38 rental units |
| | <i>Proposed</i> | 93 rental units |
| Maximum Rental Bonuses | <i>Regulation</i> | A rental unit available to the general public receives one rental bonus; An age-restricted unit receives 0.33 rental bonus, but no more than 50 percent of the rental obligation shall receive a bonus for age-restricted units; and No rental bonus is granted in excess of the Prior Round rental obligation |
| | <i>Maximum Allowed</i> | =0.25 (Third Round Obligation) =0.25 (149) = 37 credits (rounded down from 37.25) |
| | <i>Proposed</i> | 37 Bonus credits |
| Maximum Age-Restricted Units | <i>Regulation</i> | =0.25 (Third Round Obligation) =0.25 (149) = 37 units (rounded down from 37.25) |
| | <i>Maximum Allowed</i> | 37 credits |
| | <i>Proposed</i> | 0 Bonus credits |

Unmet Need

Affordable Housing Controls

The Mayor & Council adopted Chapter 90, Affordable Housing to the Borough's Zoning Ordinance on July 16, 2019 by Ordinance 2019-15. The ordinance established several important mechanisms to promote the conversion to, construction, or preservation of affordable housing. First, the ordinance established a Borough-wide mandatory set-aside, in which multifamily or single-family developments providing five or more units are required to provide at least 15 percent of rental units as affordable and 20 percent of for-sale units as affordable.

Importantly, the ordinance established an Affordable Housing Trust Fund and provisions for collection of residential and non-residential development fees. The minimum residential development fee is 1.5 percent of the equality assessment value, or 6 percent in cases involving a zoning amendment, a redevelopment plan, or an increase in density permitted by variance pursuant to N.J.S.A. 40:55D-70d. For new non-residential developments, the ordinance established a development fee of 2.5 percent of the equality assessed value. The trust funds may be used for any activity approved for addressing the Borough's low- and moderate-income housing obligation in accordance with an approved Spending Plan. These activities include but are not limited to: housing rehabilitation; new construction; the purchase of land for low- and moderate-income housing; preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, including the extension of controls, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing nonresidential buildings to create new affordable units, extensions and/or improvements of roads and infrastructure to low- and moderate-income housing sites; assistance designed to render

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units to be more affordable to low- and moderate-income households; and administrative costs necessary to implement the Borough of East Rutherford's Housing Element.

The ordinance also provides administrative mechanisms for managing the Borough's affordable housing plan, including appointment of a Municipal Housing Liaison, an Administrative Agent, and enforcement mechanisms. The ordinance established affordable housing controls and requirements for occupancy, construction and phasing requirements, and an affirmative marketing program. The ordinance provides templates of deed restrictions for rental and for-sale affordable properties.

Overlay Zoning

The Mayor & Council adopted its first affordable housing overlay zoning on March 26, 2009 by Ordinance 2009-05, and later on June 21, 2011 by Ordinance 2011-08. After preparation of the initial 2019 Housing Element and Fair Share Plan, the Mayor & Council adopted additional affordable housing overlay zoning regulations on December 17, 2019 by Ordinance 2019-21. On March 21, 2023, the Mayor and Council adopted Resolution #60-2023 authorizing the East Rutherford Planning Board to prepare an amendment to the 2019 HEFSP with the intent of moving the Affordable Housing Overlay (AHO) District from the location identified in the 2019 HEFSP at Block 8, Lots 1, 2, 6, 7, & 8 and Block 18, Lot 14 to a different location at Block 24.03, Lot 33 and Block 25, Lots 2, 4, 4.01, 4.02, 4.03, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14. On April 17, 2023, the Planning Board adopted the 2023 Amendment. On June 20, 2023, the Mayor & Council subsequently adopted Ordinance #2023-15, which relocated the properties in the AHO Zone as outlined in the 2023 Amendment, and amended bulk standards for the zone to be no more restricted than the underlying zoning district. The 2023 Amendment and ordinance amendment were intended to positively affect the Borough's ability to address its unmet need. Presently, the affordable housing overlay zones consist of the following:

- **AHO Zone.** The AHO Zone permits multifamily residential, townhouses, and garden apartments, and the minimum lot size is one acre. The underlying NC Neighborhood Commercial District permits retail and personal service uses, group daycare centers and nursery schools, eat-in and takeout restaurants, townhouses, and multifamily residences. The permitted density for residential uses in the NC Zone is limited, with up to 13 units per acre for townhouses and 15 units per acre for garden apartments. The AHO Zone allows densities up to 25 units per acre. The AHO Zone requires an affordable set-aside of 20 percent of total approved units for very low-, low-, and moderate-income households.
 - Block 24.03, Lot 33. This property is located at the western corner of Paterson Avenue and Willow Street and totals 3.72 acres. The lot is presently developed with a multi-tenant shopping center and a large, accessory parking lot occupying the front yard. The permitted density and affordable housing requirement could yield 19 affordable units.
 - Block 25, Lots 2, 4, 4.01, 4.02, 4.03, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14. This collection of properties comprises a contiguous, rectangular block of 5.25 acres. The block is bound by Paterson Avenue to the northeast, Oak Street to the southeast, Central Avenue to the southwest, and Willow Street to the northwest. The block consists primarily of industrial land uses, as well as smaller instances of automotive service, commercial, and residential uses. The permitted density and affordable housing requirement had the potential to yield 26 affordable units if the entire block was

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developed as a single site. In January 2025, the Zoning Board of Adjustment granted site plan approval for a 26-unit inclusionary family rental development on Block 25, Lots 4, 4.01, 4.02, and 5, also known as 20-30 Willow Street, as memorialized by Resolution 2025-01 on February 6, 2025. Of the 26 units, five (5) units, or >19 percent, will be set aside as affordable for very low-, low-, and moderate-income households, as approved by a Special Implementation Monitor. The affordable units will consist of one (1) one-bedroom unit, three (3) two-bedroom units, and one (1) three-bedroom unit.

- **AHO-B Zone.** The AHO-B Zone permits multifamily residential, townhouse, and garden apartment uses. The underlying NC Neighborhood Commercial District permits retail and personal service uses, group daycare centers and nursery schools, eat-in and takeout restaurants, townhouses, and multifamily residences. The AHO-B Zone is also within the Central Avenue area in need of redevelopment. The permitted density for residential uses in the NC Zone is limited, with up to 13 units per acre for townhouses and 15 units per acre for garden apartments. The AHO-B Zone allows market-rate densities of 27.5 units per acre, with an affordable housing bonus density not to exceed 20 percent of the market rate units. The AHO-B Zone requires an affordable set-aside of 20 percent of total approved units for very low-, low-, and moderate-income households.
 - Block 26, Lots 1 and 2 (now Lot 1.01). These properties, located at 10 and 20 Oak Street, respectively, total 7.44 acres. The Borough's Planning Board granted site plan approval for 208 inclusionary rental units by Resolution 17-05 on Block 26, Lots 1 and 2. The project was completed in 2021, providing a total of 30 affordable units, including six (6) one-bedroom units, 18 two-bedroom units, and six (6) three-bedroom units. Fifteen (15) units are for households with moderate income, 11 units are for households with low income, and four (4) units are for households with very low income.
- **AHO-C Zone.** The Affordable Housing Overlay Zone C (AHO-C) permits multifamily residential, townhouses, and garden apartments. The minimum lot size is 3.5 acres and the maximum permitted density is 20 units per acre. The AHO-C Zone requires a minimum set-aside of 15 percent of rental units and 20 percent for-sale units for very low-, low-, and moderate-income households. The underlying I Light Industrial District permits a variety of light industrial and office uses, including manufacturing, processing, assembling and packaging of materials, wholesale establishments, professional offices, self-storage facilities, indoor recreation, and recycling facilities, among others. More intensive, heavy industrial uses are prohibited in the I zone.
 - Block 6, Lot 12. This property, located along Madison Street, totals 6.22 acres. The permitted density could yield about 25 affordable units. The property is currently developed with industrial and office uses that would not be easily retrofitted to meet the needs of new industrial or office tenants, but it could be redeveloped for multifamily residential uses if such operations ceased and the current improvements were

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demolished and removed. The site remains available, suitable, developable, and approvable as defined in N.J.A.C. 5:93-1.3.

- Block 8, Lot 10. This property, located along Madison Street, totals 3.6 acres. The permitted density could yield about 14 affordable units. The property is currently developed with an industrial and office use that would not be easily retrofitted to meet the needs of new industrial or office tenants, but it could be redeveloped for multifamily residential uses if such operations ceased and the current improvements were demolished and removed. The site remains available, suitable, developable, and approvable as defined in N.J.A.C. 5:93-1.3.
- **MRO Zone.** The MRO Zone permits senior citizen multifamily residential, townhouses, duplex structures, and uses of land and buildings by the Borough for government purposes. The minimum lot size is 3.5 acres. The MRO Zone permits a maximum density of 20 units per acre, with a density bonus for affordable senior housing units of 12 units per acre. The underlying I Light Industrial District permits a variety of light industrial and office uses, including manufacturing, processing, assembling and packaging of materials, wholesale establishments, professional offices, self-storage facilities, indoor recreation, and recycling facilities, among others. More intensive, heavy industrial uses are prohibited in the I zone. The MRO Zone is also within the Central Avenue area in need of redevelopment, for which there is no redevelopment plan.
 - Block 29, Lot 3. This property, located at 401 Central Avenue, total 4.79 acres. The permitted density could yield about affordable 19 units. The property is currently developed with an industrial use (moving and storage) that would not be easily retrofitted to meet the needs of new industrial tenants, but it could be redeveloped for multifamily residential uses if such operations ceased and the current improvements were demolished and removed.

The Borough's affordable housing overlay zones have produced new construction and approvals of affordable units. As previously described, two inclusionary developments have been built or approved within East Rutherford's affordable housing overlay zones. These projects contribute a cumulative 35 affordable units to address the Unmet Need, as follows:

- **30 units**, out of 208 units total, are affordable family rental units at 10-20 Oak Street (Block 26, Lot 1.01). This project was completed in 2021 in the AHO-C Zone.
- **Five (5) units**, out of 26 units total, will be affordable family rental units at 20-30 Willow Street (Block 25, Lots 4, 4.01, 4.02, and 5). This project was approved in January/February 2025 in the AHO Zone.

Fourth Round Prospective Need

As previously described, the Borough of East Rutherford's Fourth Round prospective need was negotiated to 393 units. Based on a VLA, the Fourth Round RDP for the Borough is zero (0) and the Unmet Need is 393. In addition to the compliance mechanisms set forth in the Prior (First to Third)

Rounds, the following new mechanisms are proposed to address the Unmet Need and to demonstrate additional support for affordable housing.

Bonus Credits for the Fourth Round

Any new development or extension of affordability controls may yield 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).
- 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.

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- 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 with the use of bonus credits.

Unmet Need

Per the Third Round VLA, the Borough had insufficient land to satisfy its Third Round obligation. Due to the recency of that VLA, it remains applicable and the Borough continues to have insufficient land to address its Fourth Round obligation, such that its RDP is 0. The Borough will continue to rely on the Unmet Need mechanisms in the Third Round Housing Element.

The Fourth Round rules require municipalities to “identify sufficient parcels likely to redevelop during the current round of obligations to address at least 25 percent of the prospective need obligation that has been adjusted and adopt realistic zoning that allows for such adjusted obligation, or demonstrate why the municipality is unable to do so.” Since “the prospective need obligation that has been adjusted” is 0, 25 percent of that number is also 0.

Notwithstanding the foregoing, the Borough has searched for ways to address the needs of lower income households and has identified the following mechanisms..

Mixed-Use Development (MUD) Zone

The Planning Board adopted a new Master Plan for the Borough of East Rutherford on March 24, 2025. The Master Plan recommends replacing the existing Neighborhood Commercial (NC) Zone with a new Mixed-Use Development (MUD) Zone. The Future Land Use map indicates an expansion of the land area within this zone and adjusted density and bulk standards. The NC Zone permits multifamily development with a required affordable housing set-aside of 20% and maximum densities ranging from 13 units per acre for townhouses, 15 units per acre for garden apartments, and 20 units per acre for multifamily developments. The recommended MUD Zone provides more incentives for inclusionary multifamily development, with the same set-aside of 20%. Much of the recommended MUD Zone is near the Rutherford NJ Transit commuter train station as well as bus stops, which would allow for a half-unit of bonus credits for every one unit of affordable housing built. The MUD Zone will consist of three subzones. The Sensitive Residential Subzone will permit residential development at a density of 25 units per acre. The Prime Development Subzone and the Transit-Oriented Height Incentive Subzone will each permit residential development at a density of 40 units per acre. These densities are higher than the existing density permitted for the NC Zone. When implemented, this new zoning will encourage realistic inclusionary development with bonus credits to address the Unmet Need obligation. The Appendix includes a draft ordinance establishing the MUD Zone and its zoning regulations.

Mandatory Borough-Wide Set-Aside

The Borough seeks to require a higher proportion of affordable housing in inclusionary developments by increasing the Borough-wide mandatory affordable housing set-aside from 15 percent for applicable rental projects to 20 percent. This mechanism is included in the draft zoning ordinance amendments provided in the Appendix. The ordinance shall continue to provide an exception for RDP-contributing sites, existing redevelopment plan areas, and existing overlay zones, per the existing ordinance. The increased set-aside will encourage the construction of more affordable units in the MUD Zone, in particular.

Boiling Springs Gardens

An existing 100% affordable housing development called Boiling Springs Gardens is located at 147 Hackensack Street (Block 66, Lot 7) in the Borough of East Rutherford. It is owned and managed by the Housing Authority of Bergen County (HABC). The building features 79 efficiency units, 63 one-bedroom units, and related amenities for seniors and persons with disabilities.

The Boiling Springs Gardens property did not count toward addressing prior affordable housing rounds because the project was constructed prior to April 1, 1980. Property tax records indicate that Boiling Springs Gardens was built in 1980, though other Borough records show that it was built “pre-1977.” The property was subject to a “public housing Declaration of Trust” for close to 40 years, until December 13, 2016, at which time there was a Release of Declaration of Trust.

In anticipation of the release of the public housing Declaration of Trust, the HABC established new affordability controls for the property in 2016/2017. On October 20, 2016, the HABC executed a Rental Assistance Demonstration (RAD) Use Agreement. The RAD Use Agreement and a Housing Assistance Payments (HAP) contract with the U.S. Department of Housing and Urban Development (HUD) established a project-based voucher (PBV) program for 100% of the 142 units to be rented to “elderly or disabled families.” The HAP contract with HUD is dated December 13, 2016 (when the public housing Declaration of Trust ended), and it has an effective date of January 1, 2017. The term of this contract is for 20 years, with the possibility of extensions. The RAD Use Agreement states, “Projects shall have a RAD Use Agreement that will... automatically renew upon each extension or renewal of the HAP contract for a term that runs with each renewal term of the HAP contract,” (see Appendix). A letter in the Appendix from the HABC indicates that “[w]hile the specific mechanism for future restrictions has not yet been determined, the Authority expects to pursue and implement an appropriate affordability control... [f]ollowing the expiration of the current RAD Use Agreement in 2037,” in keeping with their mission to preserve and create affordable housing. Therefore, it is realistic to presume that low- and moderate- income households will secure age-restricted affordable housing for at least 40 years after the April 1980 cutoff for credits.

The HUD PBV housing assistance payments are for a rehabilitated project. A Critical Needs assessment was completed in 2014, which shows that the HABC expended significant funds to rehabilitate the development, including installation of smoke detectors and other repairs. A report titled “RAD Program Green Physical Conditions Assessment” and dated August 7, 2014 details the condition of critical features and repairs, including but not limited to the sections titled Critical Repairs (Sec. 2.5), Structural Frame and Building Envelope (Sec. 3.3), Mechanical and Electrical Systems (Sec. 3.4), Fire Protection and Security Systems (Sec. 3.6), Code Compliance and Accessibility (Sec. 4), etc. Building

**Borough of East Rutherford Master Plan
2025 Housing Element and Fair Share Plan**

permit records also show a history of critical upgrades over the past 30+ years. Lastly, the HAP contract discusses the owner's obligation to maintain the premises and all units to "housing quality standards" (HQS) – defined as HUD's minimum quality standards for dwelling units occupied by families receiving PBV program assistance. The units are being maintained and have been rehabilitated to code.

The establishment of new affordability controls for 79 efficiency units and 63 one-bedroom units should be recognized as addressing the needs of lower income households to secure affordable housing. As such, the units contribute to satisfaction of the Borough's Unmet Need. The mission of HABC is "Committed to Creating and Preserving Affordable Housing." Consistent with their mission, HABC has indicated their intention to continue unspecified affordability controls for seniors at Boiling Springs Gardens when the existing controls expire and thereafter, per their mission. Therefore, it should be presumed that lower income households will receive at least 30 additional years of restricted affordable housing, in addition to the period that controls were in already place pre-April 1980 to 2017. As such, these units should be credited toward the Unmet Need.

Appended:

- Rental Assistance Demonstration (RAD) Use Agreement, dated December 13, 2016.
- Housing Assistance Payments (HAP) Contract with U.S. HUD, dated December 13, 2016.
- Permit Options Report for Block 66, Lot 7, by the Office of the Construction Official, for the period between 1/1/1991 to 3/21/2024.
- Certificate of Registration, NJ Department of Community Affairs.

Detached Accessory Dwelling Unit (ADU) Ordinance

A draft amendment to the zoning ordinance is appended to this Plan which provides specific requirements for detached accessory dwelling units (ADUs) within the R-2 Zone and the R-3 Zone, where two-family dwellings are already permitted. The ordinance requires that existing bulk requirements for accessory structures be applied to detached accessory dwellings. In addition, it requires that the property owner reside in either the principal or accessory dwelling, and that detached accessory dwellings be limited to studio/efficiency or one-bedroom configurations. These specific standards to support detached ADUs will encourage this lower-cost housing type to occur within the existing fabric of the community.

HDCBC 100% Affordable Housing Development (Block 66, Lot 10)

The Housing Development Corp. of Bergen County (HDCBC) owns a parcel known as Block 66, Lot 10 (105 Main Street), which is adjacent to two existing properties owned and operated by the Housing Authority of Bergen County (HABC) or HDCBC, namely Lots 8 and 9. The HDCBC intends to build a new 100% affordable housing development at Block 66, Lot 10 (105 Main Street). Although a specific project is not currently in the pipeline, conversations with the HDCBC indicate that a 100% affordable development could easily occur during the Fourth Round, 2025-2035, provided that there is sufficient funding and organizational capacity to pursue development. The Borough of East Rutherford will assist with zoning the property to effectuate a reasonable affordable housing development, and it will contribute funds from its Affordable Housing Trust Fund toward development of the project, as indicated in the Spending Plan.

Spending Plan

The Borough of East Rutherford updated its development fee ordinance as part of amendments to its Affordable Housing ordinance, adopted on July 16, 2019 by Ordinance No. 2019-15. The development fee ordinance provides a dedicated revenue source for affordable housing. All development fees 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 providing affordability assistance to low-income households and professional services related to the planning for affordable housing. A proposed Spending Plan was adopted by Ordinance in 2019, and an updated Spending Plan was adopted in 2023, and subsequently as amended in the 2024 Housing Element and Fair Share Plan. A proposed amended Spending Plan for the Fourth Round is included in the Appendix.

VI. Relationship to Multigenerational Family Housing Continuity

An amendment to the Fair Housing Act requires “an analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20).” As of the date of this Housing Plan, there have been no recommendations.

VII. Consistency with the State Development & 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 years since its original adoption. A new State Strategic Plan (SSP) was proposed in 2011 as the revision to the 2001 SDRP, but it did not advance in recent years. The State Office of Planning Advocacy started the process of preparing a new State Plan in 2023. 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 East Rutherford 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;
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 East Rutherford Master Plan, which was adopted in March of 2025, recognizes the need to encourage development and redevelopment on the limited developable land in the Borough. The Master Plan and this Housing Plan promote realistic development of affordable housing in 100% affordable, inclusionary, and mixed-use developments. These developments are encouraged in appropriate locations served by existing infrastructure and are proximate to transit, stores, and services. As such, the Borough's Master Plan and Housing Element are consistent with the State Plan.

VIII. Appendices

APPENDIX A:

Judgments, Settlements, Mediations, Resolutions Relating to Third Round and Fourth Round

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FILED
NOV 15 2024
CHRISTINE A. FARRINGTON,
J.S.C.

**IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
EAST RUTHERFORD FOR A
JUDGMENT OF COMPLIANCE AND
REPOSE**

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET No.: **BER-L-5925-15**

CIVIL ACTION
MOUNT LAUREL

**FINAL JUDGMENT OF
COMPLIANCE & REPOSE**

THIS MATTER having been opened to the Court by Aronsohn Weiner Salerno & Kaufman ^{PC} (Gerald R. Salerno, Esq. appearing), attorneys for Petitioner Borough of East Rutherford, New Jersey (hereinafter the “Borough”) in the presence of (a) the Fair Share Housing Center (hereinafter “FSHC”) (Ashley Lee, Esq. appearing) ;(b) Prime & Tuvel ^{LLC} (Danielle Kinback, Esq. appearing) counsel for Intervenor KS Rock, LLC (hereinafter “KS Rock”); (c) Robert T. Regan, Esq., Court appointed Mount Laurel implementation monitor appearing, and (d) Elizabeth K. McManus, PP, AICP, LEED, AP Court appointed Special Adjudicator appearing;

WHEREAS, pursuant to In the Matter of the Adoption of N.J.A.C. 5:96 & 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”), the Borough filed the above-captioned matter on July 2, 2015 seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”) satisfied its affordable housing obligations; and

WHEREAS, the Borough simultaneously sought and ultimately obtained an

order protecting East Rutherford from all exclusionary zoning lawsuits, including builder's remedy lawsuits, while it pursued approval of its Housing Element and Fair Share Plan (hereinafter "HEFSP"); and

WHEREAS, the Borough and FSHC entered into a Settlement Agreement dated November 20, 2018 (hereinafter the "Original Settlement Agreement"); and

WHEREAS, on January 17, 2019, the Court entered an Order entitled: "Order Granting Preliminary Judgment of Compliance and Repose with Conditions" approving the Original Settlement Agreement after a duly noticed Fairness Hearing held on October 10, 2019; and

WHEREAS, on or about May 30, 2023, KS Rock filed a Motion to Intervene in this Action, and such intervention was granted by the Court on June 6, 2023; and

WHEREAS, on or about August 21, 2024, the Borough and KS Rock entered into a Settlement Agreement (hereinafter "KS Rock Agreement"),

WHEREAS, on September 11, 2024, the Borough and FSHC entered into an Amendment to the Original Settlement Agreement (hereinafter "2024 Amendment"); and

WHEREAS, in accordance with the terms of the 2024 Amendment, the Borough duly adopted an Amended Housing Element and Fair Share Plan (hereinafter the "2024 Amended HEFSP"); and

WHEREAS, the Borough having applied to the Court for approval of (1) the 2024 Amendment; (2) the KS Rock Agreement, and (3) the 2024 Amended HEFSP, in accordance with the applicable rules of the Council on Affordable Housing (hereinafter "COAH") (N.J.A.C. 5:93), the Fair Housing Act (N.J.S.A. 52:27D-301 *et seq.*), and relevant case law; and

WHEREAS, the Court having scheduled the matter for a joint fairness and compliance hearing on October 23, 2024; and

WHEREAS, the Borough having provided proper notice of the Joint Fairness and Compliance Hearing before the Hon. Christine A. Farrington, J.S.C., and the Court having conducted a hearing on October 23, 2024, for the purpose of considering the following questions:

1. Whether the 2024 Amendment is fair and reasonable to low and moderate households?
2. Whether the KS Rock Agreement is fair and reasonable to low and moderate households?
3. Whether the 2024 Amended HEFSP creates a realistic opportunity for satisfaction of the Borough's fair share of low and moderate housing in compliance with the Borough's 2024 Amended Settlement Agreement with FSHC, the applicable rules of the Council on Affordable Housing (hereinafter "COAH") (N.J.A.C. 5:93), the Fair Housing Act (N.J.S.A. 52:27D-301 et seq), and relevant case law?

WHEREAS, the hearing having been conducted on October 23, 2024, pursuant to, and in accordance, with East/West Venture v. Borough of Fort Lee, 286 N.J. Super 311 (App. Div. 1996); and proper and sufficient notice of the hearing having been given in accordance with Mount Laurel IV, and Morris County Fair Housing Council v. Boonton Twp., 197 N.J. Super 359 (Law Div. 1984);

WHEREAS, the Court-appointed Special Adjudicator having reviewed the 2024 Amendment, the KS Rock Agreement, and the 2024 Amended HEFSP and issued a report dated October 21, 2024, which report was marked into evidence by the Court as Exhibit C-1; and the Borough having presented testimony made various submissions to the Court, which documents were marked and accepted into evidence as Exhibits P-1 through P-14, which documents are further identified in EXHIBIT A annexed hereto;

WHEREAS, the Court having reviewed and considered Exhibits C-1 and P-1 through P-14; and the Court having heard and accepted the testimony of Court appointed

Special Adjudicator Elizabeth K McManus, PP, and the Borough's planning expert Paul Grygiel, AICP, PP; and the Court having, as a result of the foregoing, made certain findings of fact, conclusions and determinations of law as set forth herein and set forth on the record; and for good cause shown,

IT IS on this 15th day of November 2024,

HEREBY ORDERED AND ADJUDGED as follows:

1. The Court finds that adequate notice was given, including notice to members of the protected class and others who have an interest in the 2024 Amendment and the KS Rock Agreement, and a fairness hearing was conducted on the aforementioned Agreements where any interested parties had an opportunity to object.
2. The Court hereby accepts and approves the 2024 Amendment and finds that the same is fair and reasonable to low- and moderate-income households based upon the authority, procedures, criteria and standards set forth in Bergen County Fair Housing Council v. Boonton Twp. 197 N.J. Super. 359, 369-71 (Law Div. 1984) East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996), for approving a settlement of Mount Laurel litigation.
3. The Court hereby accepts and approves the KS Rock Agreement and finds that same is fair and reasonable to low- and moderate-income households based upon the criteria set forth in East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996), for approving a settlement of Mount Laurel litigation.
4. The Court hereby accepts and approves the 2024 Amended HEFSP and finds that the affordable housing plan creates a realistic opportunity for satisfaction of the Borough's fair share of low and moderate housing.

5. The Court finds and determines that the 2024 Amendment, the KS Rock Agreement, and the 2024 Amended Housing Element and Fair Share Plan, as well as all the Ordinances, Resolutions and other documents that were adopted by the Planning Board and the Borough Council to implement said plan, are consistent with and are in compliance with the Fair Housing Act (N.J.S.A. 52:27D-301 *et. seq.*), the Uniform Housing Affordability Controls (N.J.S.A. 5:80-26.1 *et. seq.*), the applicable Council on Affordable Housing substantive regulations, and the body of case law including the N.J. Supreme Court Mt. Laurel IV decision (collectively the “Affordable Housing Laws”).

6. The Court finds and determines that the Borough shall comply with the following recommendations of the Special Adjudicator on or before December 31, 2024:

- i. Submit zoning for the 10-20 Winter Place compliance strategy.
- ii. Provide a status report on efforts to implement the market to affordable program.

7. The Court finds that the Borough’s third round vacant land adjustment, completed pursuant to N.J.A.C. 5:93-4.2, and included in the Settlement Agreement with FSHC and approved by this Court *via* Order dated January 17, 2019, titled “Order Granting Preliminary Judgement of Compliance and Repose with Conditions” resulted in a Realistic Development Potential (“RDP”) of 187 units and an unmet need of 469 units. The RDP was recalculated as set forth in Table 21 of the 2024 Amended HEFSP, and the Amended Settlement Agreement with FSHC provides that the Borough’s RDP is 149 units. The Court finds that this number is consistent with the standards set forth in N.J.A.C. 5:93-4.2 and finds further that Borough satisfies the recalculated RDP entirely with family affordable units, the majority of which are in inclusionary rental developments, the market to affordable program and associated bonus credits.

8. The Court further finds that the Borough is entitled to apply Third Round Bonus credits as identified in the following table, which prioritizes bonus credits for constructed projects and assigns the remaining bonus credits to the KS Rock Development:

| <i>Satisfaction of the 149 Unit Third Round RDP</i> | | | | |
|---|----------------------------------|--------------|----------------------|----------------------|
| | <i>Program Type</i> | <i>Units</i> | <i>Bonus Credits</i> | <i>Total Credits</i> |
| The Monarch Phase I (25 of 32) | Inclusionary, family rental | 25 | 25 | 50 |
| 132 Union Avenue | Inclusionary, family sale | 3 | 3 | 6 |
| Garden House | 100% affordable family rental | 2 | 2 | 4 |
| Bergen County Housing Authority | 100% affordable family rental | 2 | 2 | 4 |
| 228 Park Avenue | Inclusionary, family rental | 9 | 0 | 9 |
| 384 Paterson Avenue | Inclusionary, family rental | 1 | 1 | 2 |
| Van Winkle Street | Inclusionary, family rental | 6 | - | 6 |
| Macedonian Drive Apartments | Inclusionary family rental | 2 | - | 2 |
| 480 Flatz | Inclusionary family rental | 6 | - | 6 |
| 315 Railroad Avenue | Inclusionary family rental | 4 | - | 4 |
| 263 Hackensack Street & 50 Winter Place | Inclusionary family rental | 13 | - | 13 |
| KS Rock, LLC | Inclusionary family rental | 18 | 5 | 23 |
| 10-20 Winter Place | Inclusionary family rental | 3 | - | 3 |
| 4 Jersey Street | Inclusionary family rental | 3 | - | 3 |
| Market to Affordable Program | Family rental and/or sale | 15 | - | 15 |
| <i>Total</i> | | <i>97</i> | <i>38</i> | <i>149</i> |

9. The Court further finds that the Borough is required to provide an annual status report of all affordable housing unit and trust fund activity on the first

anniversary of this Judgement of Compliance and Repose, and every anniversary thereafter.

10. The Court further finds that within 30 days of every third anniversary of the Judgement of Repose, the Borough will publish on its website and submit to FSHC a status report regarding its satisfaction of the very-low-income requirement pursuant to N.J.S.A. 52:27D – 329.1.

11. The Court hereby **GRANTS** a Final Judgment of Compliance and Repose to the Borough of East Rutherford until July 1, 2025, on the terms and conditions set forth herein.

12. The Court further Orders that Robert T. Regan, Esq., the Court-appointed Mount Laurel implementation monitor, is hereby relieved and discharged from any and all further duties and responsibilities related to overseeing and ensuring compliance with the Mount Laurel affordable housing obligations in this matter. Mr. Regan is hereby released from any further reporting, monitoring, or administrative functions previously assigned by the Court under his appointment as implementation monitor. The Borough shall pay Mr. Regan's invoices for all services rendered by him to the entry of this Final Judgment.

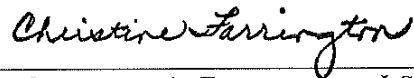
13. The Borough shall not repeal, modify or amend its Affordable Housing Ordinance, Housing Element and Fair Share Plan, Spending Plan, or any other municipal ordinance in effect as of the date of this Judgment that affects the use or development of the affordable housing committed to, except as expressly Ordered and Adjudged herein or with the consent of FSHC and the Court's approval upon notice and opportunity to be heard by all interested parties.

14. The Court retains jurisdiction over this matter solely for the purposes of

enforcement of this Judgment, the KS Rock Agreement and the 2024 Amendment.

15. A copy of the 2024 Amended HEFSP and other documents submitted to the Court shall be retained by the Clerk's office in the Borough of East Rutherford and shall be made available upon request for inspection by any interested party at the offices of the Borough Clerk during normal business hours of the Borough of East Rutherford.

16. A copy of this judgment shall be served by Counsel for the Borough upon the Special Adjudicator and all counsel of record on the official service list within seven (7) days of its entry and uploading to eCourts.



HON. CHRISTINE A. FARRINGTON, J.S.C.

EXHIBIT A

INDEX OF EXHIBITS ADMITTED INTO EVIDENCE

OCTOBER 23, 2024

COMPLIANCE AND FAIRNESS HEARING

- P-1** Certification of Public Notice of Gerald R. Salerno dated October 17, 20224 with attachments.
- P-2** Amendment to Settlement Agreement between the Borough of East Rutherford and Fair Shair Housing Center
- P-3** Resolution authorizing execution of Amendment to FSHA Agreement
- P-4** Amended Housing Element and Fair Share Plan & Appendix
- P-5** Planning Board Resolution adopting Amended HEFSP
- P-6** Resolution of Mayor and Council endorsing Amended HEFSP
- P-7** Amended Spending Plan
- P-8** Resolution Adopting Amended Spending Plan
- P-9** KS Rock Settlement Agreement
- P-10** Reso authorizing KS Rock Settlement Agreement
- P-11** KS Rock Redevelopment Plan
- P-12** Ordinance 2024-16 adopting KS Rock Redevelopment Plan
- P-13** Second Amended Spending Plan
- P-14** Resolution Adopting Second Amended Plan
- C-1** Report of Special Adjudicator Elizabeth McManus