

FOURTH ROUND HOUSING ELEMENT AND FAIR SHARE HOUSING PLAN

TOWNSHIP OF BERKELEY HEIGHTS MASTER PLAN



Berkeley Heights, County of Union, New Jersey

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The original of this report was signed and
sealed in accordance with N.J.S.A. 45:14A-12.

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- APPENDIX B. Fourth Round Declaratory Judgment Complaint dated January 23, 2025.
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- APPENDIX D. Program Order dated March 24, 2025 recommending that the Court enter an order fixing the Township’s Fourth Round Obligations.
- APPENDIX E. Court Order Fixing Municipal Obligations for “Present Need” and “Prospective Need” for the Fourth Round Housing Cycle for the Township of Berkeley Heights signed by Hon. Daniel R. Lindemann, J.S.C., entered on April 14, 2025.
- APPENDIX F. Mediation Agreement between the Township and FSHC regarding the Fourth Round obligations dated March 28, 2025.
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THE TOWNSHIP OF BERKELEY HEIGHTS FOURTH ROUND HOUSING ELEMENT AND FAIR SHARE PLAN

I. INTRODUCTION

This document is presented in two parts; which include (i) the Township of Berkeley Heights Master Plan Housing Element and (ii) the Township of Berkeley Heights Fair Share Plan. This Housing Element and Fair Share Plan (“HEFSP”) addresses the Township’s compliance with the Municipal Land Use Law (“MLUL”), applicable Council on Affordable Housing (“COAH”) and Uniform Housing Affordability Controls (“UHAC”) regulations, and the requirements of the New Jersey Fair Act (“FHA”) (N.J.S.A. 52:27D-301 et seq.) as amended by the A4/S50 Legislation signed into law on March 20, 2024, and other applicable law.

The Master Plan Housing Element will examine the Township’s employment characteristics, population, and demographic characteristics, along with the housing stock and historic trends throughout the decades. A Housing Plan according to the MLUL N.J.S.A. 40:55D-28b(3) must include, but is not limited to, residential standards and proposals for the construction and improvement of housing. According to N.J.S.A. 52:27D-310, the Housing Element shall contain at least the following:

- An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low-and moderate-income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards;
- 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 for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing, as established pursuant to section 3 of P.L.2024, c.2 (N.J.S.A. 52:27D-304.1);
- A consideration of the lands that are 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;
- 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 (N.J.S.A. 52:27D-



329.20);

- For a municipality located within the jurisdiction of the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), an analysis of compliance of the housing element with the Highlands Regional Master Plan of lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands-conforming municipalities. This analysis shall include consideration of the municipality's most recent Highlands Municipal Build Out Report, consideration of opportunities for redevelopment of existing developed lands into inclusionary or 100 percent affordable housing, or both, and opportunities for 100 percent affordable housing in both the Highlands Planning Area and Highlands Preservation Area that are consistent with the Highlands regional master plan; 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 Fourth Round Housing Element and Fair Share Plan reiterates how the Township complied with its Third Round affordable housing obligations under the Township's Court-approved Third Round Housing Element and Fair Share Plan and Third Round Final Judgment of Compliance and Repose ("JOR"), entered on January 22, 2018 (see *Appendix*), and also addresses how the Township intends to meet its fair share obligations for the Fourth Round as settled and committed to by Resolution No. 2025-144 adopted by Township Council on March 16, 2025 (see *Appendix*) and affirmed by the Court Order signed by Hon. Daniel R. Lindemann, J.S.C., dated April 14, 2025 (see *Appendix*). The Housing Element and Fair Share Plan is part of the Township of Berkeley Heights' request to acquire a Compliance Certification from the Affordable Housing Dispute Resolution Program ("the Program") and will include the projects and strategies addressing Berkeley Heights' affordable housing obligations.

II. TOWNSHIP OF BERKELEY HEIGHTS FOURTH ROUND HOUSING ELEMENT

A. OVERVIEW

This Fourth Round Housing Element and Fair Share Plan has been prepared in response to the requirements set forth in the amendments to the Fair Housing Act known as Bill A4/S50 ("FHA Amendments") signed into law on March 20, 2024. The law reformed municipal responsibilities regarding the provision of affordable housing for the Fourth Round and beyond in 10-year rounds of housing obligations beginning on July 1, 2025. The changes and regulations for the FHA Amendments are further explained in Section II.D and Section II.E below.

In accordance with the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D- 28b(3), this Fourth Round Housing Element and Fair Share Plan ("HEFSP") has been prepared pursuant to section 10 of P.L. 1985, which specifies that the HEFSP must include a "determination of the municipality's present and prospective fair share for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing, as established pursuant to section 3 of P.L.2024, c.2 (N.J.S.A. 52:27D-304.1). In accordance with the requirements of section 3 of P.L.2024, c.2 (N.J.S.A. 52:27D-304.1), this Fourth Round Housing Element and Fair Share Plan addresses its affordable housing obligations for the Prior Round, the Third Round and the Fourth Round. The Township's Fourth Round numbers have been established via a Mediation Agreement entered into between the Township and FSHC (see *Appendix*), the Township Council resolution adopted on March 18, 2025 (see *Appendix*) approving



the Mediation Agreement and the Fourth Round numbers therein, an Order from the Program dated March 24, 2025 (see Appendix), and a final Order from the Court entered on April 14, 2025 (see Appendix). The Fourth Round Housing Element and Fair Share Plan has also been prepared to comply with all requirements of the FHA, applicable COAH and UHAC regulations, and relevant Mount Laurel case law.

B. AFFORDABLE HOUSING HISTORY PRIOR TO THE FOURTH ROUND

New Jersey affordable housing law began with the New Jersey Supreme Court's (hereinafter the "Supreme Court") creation of the Mount Laurel doctrine in its landmark case, So. Burl. Cty. N.A.A.C.P. v. Tp. of Mt. Laurel, 67 N.J. 151 (1975) also known as "Mount Laurel I". In Mount Laurel I, the Supreme Court decided that under the State Constitution, each municipality "must, by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there", including those of low and moderate income. Thus, the Supreme Court in its Mount Laurel I decision ruled that municipalities should not use their zoning powers to prevent the potential for the development of affordable housing.

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

Responding to the chaos created by the implementation of the Supreme Court's Mount Laurel decisions and the many Builder's Remedy lawsuits that followed, the State Legislature passed the Fair Housing Act (hereinafter "FHA") in 1985, which the Supreme Court upheld in (Hills Dev. Co. v. Bernards Twp., 103 N.J. 1 (1986) or "Mount Laurel III").

The FHA created COAH, and required COAH to (1) enact regulations that established the statewide affordable housing need, (2) assign to each municipality an affordable housing obligation for its designated region and (3) identify the techniques available to municipalities to meet its assigned obligation. The FHA included a process for municipalities to obtain Substantive Certification, which, if granted by COAH, would protect municipalities against Builder's Remedy lawsuits, or a lawsuit from a housing advocate, for a defined period of time. The FHA also transferred pending Builder's Remedy litigation to COAH for resolution through an administrative process, and established a process for bringing municipalities into compliance.

To implement the FHA requirements, COAH adopted a series of regulations. Round One regulations were enacted in 1987. Round 2 regulations were adopted by COAH in 1994. Round 3 regulations were supposed to be adopted in 1999 when the Round 2 rules were set to expire, but the first iteration of Round 3 rules were not adopted by COAH until 2004.

In 2007, the Appellate Division affirmed portions of COAH's 2004 Round 3 rules, but invalidated other aspects of them. See In Re Adoption of N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1 (App. Div.



2007). The opinion remanded the matter to COAH for adoption of new compliant regulations, and gave the agency six months to do so. The Appellate Division granted COAH two extensions, and COAH finally adopted a second set of Round 3 rules in September of 2008. Many municipalities submitted Round 3 affordable housing plans to COAH and to courts for approval in December of 2008 in response to the new third round rules. Indeed, Berkeley Heights Township petitioned COAH for approval of a Round 3 affordable housing plan on December 31, 2008.

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

During this same time period, then Governor Christie initiated a series of steps to abolish or reduce the role of COAH. During this time period the Legislature introduced a Bill, which would have radically transformed the affordable housing world. The S-1 Bill in its initial form was supported by Governor Christie. By the time it went through the Assembly, however, a very different bill passed and the Governor conditionally vetoed the Bill.

Frustrated with the lack of movement by COAH to adopt updated Round 3 rules, the Supreme Court issued an order on March 14, 2014, which required COAH to adopt new Round 3 regulations by October 22, 2014. COAH proposed the third version of Round 3 regulations on April 30, 2014. However, in October of 2014, the COAH Board deadlocked 3-3 when voting to approve the regulations and the rules were not adopted.

In response, on March 10, 2015, the Supreme Court issued its decision 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) (Mount Laurel IV), in which it (1) found that COAH had violated the March 14, 2014 Order by failing to adopt new Round 3 regulations by October 22, 2014; (2) held that, without new Round 3 regulations, COAH could not process municipalities' petitions for substantive certification; (3) directed trial courts to assume COAH's functions; (4) authorized municipalities under COAH's jurisdiction to file Declaratory Judgment Actions along with a motion for Temporary Immunity by July 8, 2015, or risk exposure to Builder's Remedy lawsuits; and (5) ruled that municipalities would have to prepare and file a Housing Element and Fair Share Plan with a trial court for review. The Supreme Court declined to determine fair share allocations, however, instead assigning this task to the trial court judges with the directive that they use a methodology similar to that used in COAH's first and second round Rules.

Berkeley Heights, which was a participating municipality under COAH, filed a Declaratory Judgment action on July 2, 2015 in Union County Superior Court within the requisite time period, and received temporary immunity from the Court. Subsequent to the filing, the Township (1) entered into a Settlement Agreement with Fair Share Housing Center ("FSHC") on September 20, 2016 to resolve the Township's Declaratory Judgment action on a global level (see *Appendix*), (2) entered into a Settlement Agreement with intervenor developer Berkeley Developers, LLC, which was subsequently amended, (3) entered into a Settlement Agreement with developer intervenor Berkeley Heights Developers, LLC, (4) entered into a Settlement Agreement with intervenor developer Lockhern Associates, LLC, and (5) entered into a Development Agreement with the Connell Company. On October 17, 2016, the Court held a Fairness Hearing, at which all of the aforementioned



agreements were approved by the Court. An order memorializing the Court's findings at the Fairness Hearing was entered by the Court on that same day (see *Appendix*).

As per the deadlines in the October 17, 2016 Court Order, the Township prepared a Housing Element and Fair Share Plan, along with all supporting documents, and the Plan was adopted by the Township's Planning Board on March 15, 2017 and endorsed by the Township Council on that same night. The Township's Third Round Spending Plan was also approved by Township Council as part of its Housing Element and Fair Share Plan on March 15, 2017. The Housing Element and Fair Share Plan was then submitted to the Court, and proper notice was given for a Compliance Hearing to be held on April 17, 2017. Due to two additional developers objecting to the Plan, and for other reasons, the Housing Element and Fair Share Plan was amended, and the Amended Housing Element and Fair Share Plan was adopted by the Township's Planning Board on August 16, 2017 and endorsed by the Township Council on September 5, 2017. The Compliance Hearing was carried by the Court on the record first to May 30, 2017, then to July 31, 2017 and then to September 19, 2017.

The Township obtained a conditional Judgment of Compliance and Repose approving the Township's Housing Element and Fair Share Plan, along with all supporting documents, on October 12, 2017 (see *Appendix*), after a properly noticed Compliance Hearing was held. After the Township satisfied all the conditions of the JOR, the Court entered an Order on June 21, 2018 finalizing the JOR (see *Appendix*), which secured immunity for the Township from all Mount Laurel lawsuits, including but not limited to, Builders Remedy lawsuits, until July 2, 2025.

Prior to the beginning of the Fourth Round, and in response to a settlement process further explained in Section II.G of this HEFSP, the Court memorialized the Township's Fourth Round present and prospective need obligations on behalf of the Program in an Order dated April 14, 2025 (see *Appendix*). The Order set the Township's prospective need obligation at 240 and its present need obligation (also known as rehabilitation obligation) at zero (0) for the Fourth Round period.

C. SUMMARY OF BERKELEY HEIGHTS' PAST AFFORDABLE HOUSING & ACTIVITIES

Berkeley Heights has had a long history of providing affordable housing with respect to its Court and COAH-mandated fair share obligations. On December 12, 1989, Berkeley Heights received a Round One Judgment of Compliance and Repose. On December 14, 1995, the Court entered an order confirming the Township's obligation, confirming the Township's credits, and extending the Township's period of repose until December 12, 2001. Most of the existing affordable housing and credits were obtained prior to 2004 and were memorialized in prior court orders. After the Appellate Division invalidated COAH's first iteration of Round 3 rules in 2007, the Township's Planning Board adopted a Housing Element and Fair Share Plan in 2008, which was subsequently endorsed by the Township and submitted to COAH on December 31, 2008 for review and approval. COAH deemed the application complete on March 3, 2009. COAH requested additional information in a report issued on September 2, 2009, in which COAH also discussed the affordable housing credits to which the Township is entitled. The Township provided additional information to COAH on November 1, 2009. The Township remained under COAH's jurisdiction until it filed a Declaratory Judgment Action on July 2, 2015, in response to the Supreme Court's Mount Laurel IV decision. As detailed in the prior section, the Township reached several settlement agreements with intervening bodies, inclusive of FSHC, which were approved by the Court at a Fairness Hearing



held on October 17, 2016. The Township consequently prepared a Third Round Housing Element and Fair Share Plan, and the Township obtained a conditional Judgment of Compliance and Repose approving the Township's Housing Element and Fair Share Plan, along with all supporting documents, on October 12, 2017 after a properly noticed Compliance Hearing was held. After the Township satisfied all of the conditions of the JOR, the Court entered an Order on June 21, 2018 finalizing the JOR, which secured immunity for the Township from all Mount Laurel lawsuits, including but not limited to, Builders Remedy lawsuits, until the end of the Third Round.

Throughout the duration of the Third Round, and in response to the Township's Third Round Housing Element and Fair Share Plan, additional affordable units have been constructed and completed. The following affordable housing units and credits were created by the Township prior to the Fourth Round:

1. Regional Contribution Agreement between the City of Newark and the Township of Berkeley Heights, dated September 19, 1989, which provided 129 total RCA credits to the City of Newark. The credits were approved by the Court via an order entered on December 14, 1995. The 129 credits were broken down into 65 low-income credits and 64 moderate income credits.
2. The Highlands at Berkeley Heights ("Wren Court") Project (Block 301.08, Lots 1-10 and 12), approved via a resolution adopted on March 28, 1991, which consists of 11 affordable for-sale units (6 low and 5 moderate).
3. The Park Edge Project (Block 301, Lot 6), approved via a resolution entered on June 6, 1990, which consists of 32 age-restricted affordable rental units (4 very low, 13 low, and 15 moderate).
4. The Station Court Project (Block 702, Lot 9), which consists of 13 affordable family rental units (2 very low, 5 low and 6 moderate).
5. The Villas on the Park Project (Block 4603, Lot 36), approved via a resolution adopted on July 27, 1994, which consists of 14 affordable family rental units (2 very low, 6 low, and 6 moderate).
6. The Cottage Lane I, Tudor Court I, Project (Block 614.01, Lots 1-4; Block 614.02, Lots 1-4; Block 614.03, Lots 1-4; Block 614.04, Lots 1-3), approved by a resolution adopted on March 29, 1995, which consists of 3 affordable family for-sale units (1 low and 2 moderate).
7. The Cottage Lane II, Tudor Court II, Project (Block 1301, Lots 9.07, 9.08, 9.09, 9.10, 9.11, and 9.12), which was approved via a resolution adopted on March 28, 1991, and consists of 6 affordable family for-sale units (3 low and 3 moderate).
8. The Cottage Street Station Court Project (Block 1301, Lot 8.10), which consists of 2 low-income affordable family for-sale units.
9. The Berkeley Village Project (Block 1301, Lots 7.10, 7.11, 7.17, and 7.18), which was approved via a resolution entered on December 13, 1995, and consists of 4 affordable family for-sale units (2 low and 2 moderate).
10. The Whispering Way Project (Block 1301, Lots 18.05, 18.07, 18.08, 18.09, and 18.10), which was approved via a resolution dated February 19, 1997, and consists of 5 affordable family rental units (1 very low, 2 low, and 2 moderate).
11. The Terrace at Berkeley Heights Project (Block 702, Lot 13), constructed in 2021, which consists of 3 affordable family rental units (1 very low, 1 low, and 1 moderate).
12. Woodcrest at Berkeley Heights Project (Block 1901, Lot 35), constructed in 2022, which consists of 29 age-restricted affordable rental units (4 very low, 11 low, and 14 moderate).
13. Berkeley Crossing I Project (Block 502, Lots 1, 2, 4, and 5), constructed in 2023, which



- consists of 8 affordable family rental units (1 very low, 3 low, and 4 moderate).
14. Berkeley Crossing II Project (Block 614, Lot 3), constructed in 2022, which consists of 2 affordable family rental units (1 very low and 1 moderate).
 15. Modera Berkeley Heights (“Mill Creek”) Project (Block 703, Lots 4 and 8), constructed in 2023, which consists of 26 affordable family rental units (4 very low, 10 low, and 12 moderate).
 16. Carriages at Berkeley Heights Project (Block 1301, Lot 19), constructed in 2023, which consists of 20 affordable family for-sale units (10 low and 10 moderate).
 17. Clocktower Commons Project (Block 208, Lot 20), leased in 2024, which consists of 3 affordable family rental units (1 very low, 1 low, and 1 moderate).
 18. Clarus Berkeley Heights Project (702, Lot 18.01), constructed in 2025, which consists of 32 affordable family rental units (5 very low, 12 low, and 15 moderate).
 19. Existing Group Homes:
 - a. Our House, 18 Whitney Dr., Block 3203, Lot 18, which consists of 4 very low group home bedrooms.
 - b. Our House, 135 Windsor Way, Block 1606, Lot 7, which consists of 5 very low group home bedrooms.
 - c. ARC of Union County, 640 Plainfield Ave, Block 3201, Lot 54, which consists of 3 very low-income group home bedrooms.

Table A: Summary of Completed Affordable Units prior to July 1, 2025 Township of Berkeley Heights, Union County, NJ				
Affordable Units Previously Built				
	<i>Very Low</i>	<i>Low</i>	<i>Moderate</i>	<i>Total</i>
<i>Rental (Family)</i>	18	40	48	106
<i>Rental (Group Home)</i>	11	0	0	11
<i>For-Sale</i>	0	24	22	46
<i>Age-Restricted</i>	8	24	29	61
Total				224 actual units
RCA Credits				
<i>RCA Total</i>	0	65	64	129
Total Completed Housing				
Total Built Units and RCAs				224 actual units 129 RCAs

D. FOURTH ROUND OF AFFORDABLE HOUSING BACKGROUND

On March 20, 2024, Governor Murphy signed the Amendments to the FHA into law. The amended FHA established new guidelines for determining and regulating the affordable housing obligations of New Jersey municipalities for the Fourth Round and subsequent 10-year rounds as mandated by the Mount Laurel Doctrine and the FHA. This section outlines the key provisions instituted by the FHA Amendments.



Major Items of the FHA Amendments

- The Council on Affordable Housing (“COAH”) is abolished, and its regulatory powers and functions are transferred to the Department of Community Affairs (“DCA”) and the Administrative Office of Courts (“AOC”).
- The DCA is responsible for calculating the regional need and municipal present and prospective fair share obligation for each municipality using the methodology established in sections 6 and 7 of P.L.2024, c.2. The March 8, 2018 Superior Court, Law Division, Mercer County, In re Application of Municipality of Princeton (also known as the “Jacobson opinion”) serves as the basis for any datasets or methodologies not directly addressed in the FHA Amendments. This Fourth Round methodology is further explained in Section II.E below.
- Per N.J.S.A. 52:27D-302, as amended, “the changes made to affordable housing methodologies, obligations, and fair share plans, as determined to be a necessity by the Legislature, through the enactment of [P.L.2024, c.2] are made with the intention of furthering consistency with the State Development and Redevelopment Plan.”
- A municipality will still be permitted to seek a Vacant Land Adjustment (“VLA”).
- A municipality may take into consideration the DCA calculations in determining its present and prospective need obligations, but the DCA calculations are not binding on any municipality. Each municipality establishes its own obligation number, and a municipality may deviate from DCA’s calculations in determining its obligation, provided that it adheres to the methodology established by the FHA Amendments.
- The Affordable Housing Dispute Resolution Program (“Program”) is established within the AOC and is responsible for handling any dispute regarding a municipality’s determination of and/or compliance with its fair share obligation. The Administrative Director of the Courts makes appointments to the Program, which consists of 3-7 retired Mount Laurel judges. The initial judges appointed were the Hon. Thomas C. Miller (chair), the Hon. Ronald E. Bookbinder, the Hon. Thomas F. Brogan, the Hon. Stephan C. Hansbury, the Hon. Mary C. Jacobson, the Hon. Julio L. Mendez, and the Hon. Paulette M. Sapp-Peterson.
- The availability of bonus credits has been expanded but credits remain capped. Notable credit provisions include:
 - More than one type of bonus credit may not be received for the same unit.
 - A maximum of 25% of a municipality’s prospective need obligation may be satisfied by bonus credits.
 - A summary of the types of bonus credits is provided in the table below:

Table B: Fourth Round Bonus Credits	
Description	Bonus
Special Needs or Supportive Housing Units	1.0 bonus credit for each bedroom unit of low- or moderate-income housing for individuals with special needs or permanent supportive housing.
100% Affordable Developments with Municipal Contribution of Land or Funds	1.0 bonus credit for each unit of low- or moderate-income housing in a 100% affordable housing project for which the municipality contributes to the cost of the project. This contribution can either be real property or contributions from the municipal Affordable Housing Trust Fund that covers no less than 3% of the project costs.
Market-to-Affordable	1.0 bonus credit for each unit of low- or moderate-income housing created by transforming an existing



	rental or ownership unit from market rate to affordable. A municipality may only rely on this bonus credit as part of its fair share plan and housing element if the municipality demonstrates that a commitment to follow through with this market to affordable agreement has been made and: (a) this agreement has been signed by the property owner; or (b) the municipality has obtained ownership of the property.
Non-Profit Partnership for For-Sale Housing	0.5 bonus credit for each unit of low- or moderate-income ownership unit created in partnership with a non-profit housing developer.
Proximity to Transit	0.5 bonus credit for each unit of low- or moderate-income housing located within a 0.5 mile radius (or 1 mile radius if located in a Garden State Growth Zone) surrounding a NJ Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations.
Redevelopment	0.5 bonus credit for each unit of low- or moderate-income housing constructed on land that is or was previously developed and utilized for retail, office, or commercial space.
Age-Restricted Units (with 10% Cap)	0.5 bonus credit for a unit of age-restricted housing (Bonus credit only applicable to 10% of all age-restricted housing built that count towards the municipality's affordable housing obligation).
Family Housing	0.5 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. This bonus credit shall be calculated by taking into account the full municipal fair share plan and housing element, and the number of units with at least three bedrooms required for projects satisfying the minimum 50 percent family housing requirements.
Very Low-Income Units Beyond Minimum	0.5 bonus credit for each unit of very low-income housing for families above the 13% of units required to be preserved for very low-income housing.
Extension of Affordability Controls	0.5 bonus credit for each existing low- or moderate-income rental housing unit for which affordability controls are extended for a new term, and the municipality contributes funding towards the costs necessary for this preservation.

- A municipality must adopt and file with the Program and the Court a Housing Element and Fair Share Plan, along with drafts of the appropriate zoning and other ordinances and resolutions implementing its present and prospective obligation by June 30, 2025. The Housing Element and Fair Share Plan must assess the degree to which the municipality has complied with its obligations for the prior three rounds and determine whether the municipality has credits in excess of its prior round obligations. If any units are determined to be unfulfilled from prior rounds, the Plan must address how this unmet obligation will be fulfilled, as well as explain how it plans to meet its Fourth Round obligation. The Plan must also include a spending plan for current funds in the municipal affordable housing trust fund and projected funds towards the round.
- The law establishes several limitations to how units may be counted towards fulfilling a



municipality's fair share obligation:

- A maximum of 30% of the units counted toward the prospective need obligation may be age-restricted units, exclusive of bonus credits.
- A minimum of 50% of the units used toward the prospective need obligation, exclusive of bonus credits, must be available to families with children.
- A minimum of 25% of the units used toward the prospective need obligation, exclusive of bonus credits, must be rental units and at least half of that number must be available to families with children.
- A minimum of 13% of affordable housing units must be available to very low-income households and at least half of that number must be available to families with children.
- A maximum of 10% of a municipality's fair share obligation may be counted by transitional housing credits.
- A municipality may lower its prospective need obligation to prevent an obligation of more than 1,000 housing units or a number exceeding 20% of the total number of households in the municipality.
- The law increases the minimum period requiring affordability controls to 40 years for rental units and maintains a 30-year period for for-sale units. The minimum requirement for affordability controls cannot be reduced.
- The law establishes new development fee collection, expenditure and monitoring rules.
- The amended FHA also establishes many deadlines, including but not limited to, the submission of a Fourth Round Housing Element and Fair Share Plan by June 30, 2025, and any objections being filed by August 31, 2025.

E. FOURTH ROUND METHODOLOGY

Per N.J.S.A. 52:27D-304.1.d, "For the fourth round of affordable housing obligations, the [Department of Community Affairs] shall prepare and submit a report to the Governor, and, pursuant to [N.J.S.A. 52:14-19.1], to the Legislature providing a report on the calculations of regional need and municipal obligations for each region of the State within the earlier of seven months following the effective date of P.L.2024, c.2 (N.J.S.A. 52:27D-304.1 et al.) or December 1, 2024." On October 18, 2024, the Department of Community Affairs (DCA) released a report titled "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background," inclusive of a calculation spreadsheet, which detailed the datasets and calculations used to generate the affordable housing obligation for each municipality within New Jersey for the Fourth Round. Per this report, the Township of Berkeley Heights was calculated to have a present need of 0 units and a prospective need of 275 units for the Fourth Round. The subsections below outline the methodology for calculating the Township's Fourth Round affordable housing obligation per the DCA report and in accordance with the FHA Amendments.

Present Need

Per the amended FHA, "A municipality's present need obligation shall be determined by estimating the existing deficient housing units currently occupied by low- and moderate-income households within the municipality, following a methodology comparable to the methodology used to determine third round present need, through the use of datasets made available through the federal decennial census and the American Community Survey, including the Comprehensive Housing Affordability



Strategy dataset thereof” (N.J.S.A. 52:27D-304.2). P.L.2024, c.2 further defines “deficient housing units” as “housing that: (1) is over fifty years old and overcrowded; (2) lacks complete plumbing; or (3) lacks complete kitchen facilities” (N.J.S.A. 52:27D-304).

In the Third Round, municipal present need calculations were based on the number of housing units lacking complete kitchen facilities, the number of units lacking complete plumbing facilities, and the number of overcrowded units. The present need calculations for the Fourth Round conducted by the DCA similarly use datasets measuring these three factors, but as explained in their report, “The US Department of Housing and Urban Development (HUD) and the US Census Bureau publish separate tables on housing age, lack of plumbing facilities, lack of kitchen facilities, and overcrowding. However, there is no data source that reports the number of units that meet any one of those three conditions. Therefore, this number must be estimated using data from existing tables, with measures taken to account for overlap and to narrow the scope to deficient housing units occupied by low- and moderate-income [[LMI]] households.” The DCA therefore used a combination of the latest data from HUD’s Comprehensive Housing Affordability Strategy (CHAS) LMI dataset corresponding to the latest Census Bureau American Community Survey (ACS) data (which was 2017-2021 5 Year Estimates at the time of the report’s release), data from the IPUMS Center for Data Integration, and the ACS Public Data Microdata Sample (PUMS) at the Public Use Microdata Area (PUMA) level to estimate the number of substandard/deficient low- and moderate-income occupied units (“present need”) for each municipality in New Jersey.

Per the methodology outlined above and described in further detail in the DCA report, the Fourth Round present need obligation for the Township of Berkeley Heights was calculated as zero (0).

Prospective Need

The statewide obligation for the Fourth Round has been calculated as 84,698. This obligation is distributed among the State’s municipalities, excluding Qualified Urban Aid municipalities.

As described in the FHA Amendments and summarized in the DCA report, a municipality’s Fourth Round prospective need obligation is calculated by multiplying its average allocation factor to the total prospective need of its corresponding Housing Region.

Per the FHA Amendments, the State is broken into six regions as follows:

Housing Region	Counties
1	Bergen, Hudson, Passaic, and Sussex
2	Essex, Morris, Union, and Warren
3	Hunterdon, Middlesex, and Somerset
4	Mercer, Monmouth, and Ocean
5	Burlington, Camden, and Gloucester
6	Atlantic, Cape May, Cumberland, and Salem

The average allocation factor is the average of three measures indicative of a municipality’s capacity/potential to address the regional prospective need: the equalized nonresidential valuation factor, the income capacity factor, and the land capacity factor.

The Fourth Round prospective need for each Housing Region is determined by calculating the change



in the number of households within each Housing Region between the 2010 Census and 2020 Census. Per the FHA Amendments, “this household change, if positive, shall be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and to determine the regional prospective need for a 10-year round of low- and moderate-income housing obligations. If household change is zero or negative, the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and the regional prospective need shall be zero” (N.J.S.A. 52:27D-304.2).

The Township of Berkeley Heights is in Housing Region 2, which consists of Essex County, Morris County, Union County, and Warren County. The regional prospective need for Housing Region 2 was calculated as 20,506, and the Township’s average allocation factor was calculated as 1.34%. The regional need of 20,506 multiplied by the Township’s average allocation factor of 1.34% therefore resulted in a Fourth Round prospective need obligation calculation of 275.

Equalized Nonresidential Valuation Factor

The equalized nonresidential valuation factor is one of the three components of the average allocation factor for each municipality. The equalized nonresidential valuation factor is representative of a municipality’s share of the change in nonresidential property value within its Housing Region.

This factor was calculated as follows:

1. The valuations of commercial properties and industrial properties in each municipality in 2023, per data from the NJ Division of Local Government Services, were summed and then divided by the 2023 State Equalization Table Average Ratio corresponding with the municipality to obtain a total equalized nonresidential valuation for 2023.
2. The valuations of commercial properties and industrial properties in each municipality in 1999, per data from the NJ Division of Local Government Services, were summed and then divided by the 1999 State Equalization Table Average Ratio corresponding with the municipality to obtain a total equalized nonresidential valuation for 1999.
3. The difference in total equalized nonresidential valuation from 1999-2023 was calculated for each municipality.
4. The difference in total nonresidential valuation from 1999-2023 was summed for all municipalities (excluding Qualified Urban Aid municipalities) within each Housing Region.
5. The difference in total nonresidential valuation from 1999-2023 for each municipality was divided by the sum of differences in total nonresidential valuation from 1999-2023 for its corresponding Housing Region to compute the municipality’s share of the regional nonresidential valuation change from 1999-2023.

The Township’s equalized nonresidential valuation factor was calculated as 1.10% per the DCA report.

Income Capacity Factor

The second component of the average allocation factor for each municipality is the income capacity factor. The income capacity factor measures the degree to which a municipality’s median household income differs from an income floor of \$100 below the lowest median household income in its Housing Region.



Per the FHA Amendments, a municipality's income capacity factor shall be "determined by calculating the average of the following measures:

- (a) The municipal share of the regional sum of the differences between the median municipal household income, according to the most recent American Community Survey Five-Year Estimates, and an income floor of \$100 below the lowest median household income in the region; and
- (b) The municipal share of the regional sum of the differences between the median municipal household incomes and an income floor of \$100 below the lowest median household income in the region, weighted by the number of the households in the municipality" (N.J.S.A. 52:27D-304.3)."

At the time of the release of the DCA report on October 18, 2024, the most recent American Community Survey Five-Year Estimates data for median household income and number of households were found in Table S1903 of the Census Bureau's American Community Survey 2018-22 5-Year Estimates.

The Township's income capacity factor was calculated as 1.76% per the DCA report.

Land Capacity Factor

The third component of the average allocation factor for each municipality is the land capacity factor. The land capacity factor indicates the percentage share of total "developable" land in a Housing Region accounted for by each municipality within that Region, excluding land area corresponding to Qualified Urban Aid municipalities. The DCA conducted a GIS analysis to identify the "developable" land within the state using several publicly-available datasets, including but not limited to 2020 land use/land cover (LULC) data, New Jersey State Plan Planning Areas weighted by area type, statewide parcel data, open space and preserved farmland, category 1 waterways and wetlands, steep slopes, and open waters.

The steps below provide a summary of the methodology used to identify the vacant land in the state, and consequently identify each municipality's share of developable land within its corresponding Housing Region.

1. Weights were applied to all New Jersey State Plan Planning Areas as specified in the Fourth Round Law.
2. The layer of weighted Planning Areas was merged with land use/land cover (LULC) data for the entire state sourced from 2020 aerial imagery. 18 different types of LULC, such as cropland and pastureland, deciduous forest, and coniferous forest, were identified and extracted as "vacant, developable land" from this merged dataset.
3. Of these areas identified as "developable" from the merged dataset, areas without underlying parcel data and areas with MOD-IV Property Tax data with property class codes for residential, commercial, industrial, apartment, railroad, and school uses were removed to prevent rights-of-way, tree-covered rear yards on residential properties and buffer areas on non-residential development from being included in the "developable" land calculation.
4. Municipally-reported construction permit data to the DCA was used to remove properties otherwise identified as vacant through the LULC analysis.
5. Areas mapped as open space, preserved farmland, category 1 waterways and wetlands



(and associated buffers based on special resource area restrictions) were removed from the “developable” land dataset.

6. Using 10 foot digital elevation LiDAR data, steep slope areas exceeding 15% and steep slope areas consisting of 5,000 square feet or less were removed from the “developable” land dataset.
7. DCA reviewed an unspecified 22,000 vacant parcels to further remove homeowner association common areas, detention basins, and road and utility rights of way.
8. After the removal of all the aforementioned layers from the “developable” land dataset, remaining “slivers” of land with an area of 2,500 square feet or less were also removed due to their inability to support any kind of development.
9. The remaining land was identified as “developable” land and was summed based on the limits of each Housing Region and its corresponding municipalities.
10. The municipality’s percentage of total identified “developable” land within its Housing Region constitutes its land capacity factor.

Through this analysis, the DCA reported 62.434 acres of developable land in the Township of Berkeley Heights and 5,358.483 acres of developable land in Housing Region 2 (excluding Qualified Urban Aid municipalities), therefore computing a land capacity factor of 1.17% for the Township.

DCA Calculated Fourth Round Prospective Need Obligation

Given the calculations of the Township’s equalized nonresidential valuation factor as 1.10%, income capacity factor as 1.76%, and land capacity factor as 1.17%, the average allocation factor for the Township was computed as 1.34%. The average allocation factor of 1.34% multiplied by the Housing Region 2 regional prospective need of 20,506 totaled to a Fourth Round prospective need obligation of 275 for the Township per the DCA report.

F. MUNICIPAL DETERMINATION OF FOURTH ROUND PRESENT NEED AND PROSPECTIVE NEED OBLIGATIONS

As per N.J.S.A. 52:27D-304.1, “[e]ach municipality shall determine its municipal present and prospective obligations in accordance with the formulas established in [N.J.S.A. 52:27D-304.2 - 304.3] and may take into consideration the calculations in the report published by the department.” Furthermore, “For the fourth round of affordable housing obligations, this determination of present and prospective fair share obligation shall be made by binding resolution no later than January 31, 2025” (N.J.S.A. 52:27D-304.1). The Township reviewed and evaluated the DCA’s non-binding calculations of the City’s Fourth Round present need and prospective need, and while the Township concurred with the DCA’s calculation of the Township’s Fourth Round present need obligation of zero (0), the Township calculated its Fourth Round prospective need obligation to be 208 rather than the DCA calculation of 275 due to adjustments to the Township’s income capacity factor calculation and land capacity factor calculation.

Per the FHA Amendments, the income capacity factor shall be calculated “according to the most recent American Community Survey Five-Year Estimates.” On December 12, 2024, the United States Census Bureau released American Community Survey 2019-23 5-Year Estimates data. The Township therefore calculated its income capacity factor calculation based on the most recent American Community Survey 2019-23 5-Year Estimates data for the municipalities in Housing



Region 2 instead of the American Community Survey 2018- 22 5-Year Estimates used in the DCA report. Using updated data for the entirety of Housing Region 2, the Township's income capacity factor was calculated as 1.72% rather than 1.76% as calculated by the DCA.

Additionally, the Township reviewed and evaluated the accuracy of the 62.434 acres of "developable" land identified in the Township used to calculate the Township's land capacity factor of 1.17% in the DCA report. Under further analysis, the Township found that several areas identified as "developable" in the Township by the DCA's geoprocessing model are in fact not "developable." The Township removed +/- 50.343 acres of the 62.434 acres of "developable" land identified in the DCA report from the Township's land capacity factor calculation, resulting in a recalculation of the land capacity factor based on +/- 12.091 total acres of "developable" land within the Township. This adjustment to the Township's developable land acreage resulted in a calculation of the Township's land capacity factor as 0.23% rather than 1.17% as identified in the DCA report.

The Township's adjusted calculations for the income capacity factor and land capacity factor therefore computed an average allocation factor of 1.017% compared to 1.340% as calculated in the DCA report, which when applied to the regional prospective need of 20,506 generated a prospective need obligation of 208.

Based on these calculations, and in accordance with the requirements of the FHA Amendments, the Township Council adopted Resolution No. 2025-72 on January 21, 2025, which committed the Township to the "DCA Fourth Round Present Need (Rehabilitation) Obligation of Zero (0) and the Fourth Round Prospective Need (New Construction) Obligation of 208," subject to all reservations of rights as outlined in the resolution (see *Appendix*). An in-depth explanation of the calculations used to determine the Township's Fourth Round present need obligation and prospective need obligation was provided in a planning report attached as an exhibit to the adopted January 21, 2025 resolution.

On January 23, 2025, pursuant to the Administrative Office of the Courts' Directive No. 14-24, the Township filed a Declaratory Judgment Action in Superior Court, Docket No. UNN-L-340-25 (see *Appendix*), requesting that the Program: (1) approve its Round 4 obligations set forth in its January 21, 2025 binding resolution; (2) approve its Round 4 HEFSP; and (3) continue the Township's immunity from Mount Laurel related lawsuits, as granted by the Court in Round 3.

G. SETTLEMENT PROCESS AND ESTABLISHMENT OF FOURTH ROUND OBLIGATION

Per N.J.S.A. 52:27D-304.1, "An interested party may file a challenge with the program, after adoption of the binding resolution and prior to March 1, 2025, alleging that the municipality's determination of its present and prospective obligation does not comply with the requirements of N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3."

On February 27, 2025, New Jersey Builders Association ("NJBA") filed an objection with the Court of the Township's Fourth Round prospective need obligation adopted by Resolution No. 2025-72, declaring that the Court establish the Township's Fourth Round prospective need obligation as 275 as calculated by the Department of Community Affairs ("DCA"). On February 28, 2025, pursuant to Administrative Directive #14-24, Fair Share Housing Center filed a case information statement



and challenge to the Township’s determination of its Fourth Round present and prospective need obligation and provided an alternate Fourth Round prospective need calculation of 264 for Berkeley Heights.

In response to the challenges filed to the Township’s calculation of its Fourth Round prospective need obligation, pursuant to the Program, the Administrative Office of the Courts (“AOC”) appointed and assigned the case to Program member, the Hon. Thomas C. Miller, J.S.C. (Ret.) (“Program Member”) to manage the proceedings, host settlement conferences, and make recommendations to the Court in accordance with the FHA and the AOC’s Directive #14- 24 (“Directive #14-24”), and the Program Member appointed Art Bernard, PP, as special adjudicator (“Special Adjudicator”) in this case to work with, make recommendations to and assist the Program. Additionally, NJBA notified the Program in writing by their counsel that they would not object to any settlement reached between the Township and the FSHC.

A settlement conference was conducted in March of 2025 on notice to all parties with the participation of local officials, Township affordable housing planner, planners for FSHC, and attorneys for the Township and attorneys for the NJBA and FSHC, in accordance with the statutory framework and Directive #14-24, and with the goal of reaching a resolution. As a result of the settlement conference, the Township and FSHC reached a settlement, which established a present need obligation of zero (0) and prospective need obligation of 240 for the Township of Berkeley Heights for the Fourth Round. The Settlement was placed on the record before the Program on March 14, 2025, the Township Council adopted a resolution on March 18, 2025 (see *Appendix*) accepting and confirming the settlement and authorizing the execution of a Mediation Agreement with FSHC, said Mediation Agreement was subsequently finalized and entered into on March 27, 2025 (see *Appendix*) and was submitted to the Program and the Court, along with the approving resolution, for review.

Having been advised by the Program via an order entered on March 24, 2025 (see *Appendix*) that a settlement on the Fourth Round numbers had been reached, the Court memorialized the Township’s Fourth Round present and prospective need obligations on behalf of the Program in an Order dated April 14, 2025 (see *Appendix*). The Order set the Township’s prospective need obligation at 240 and its present need obligation (also known as rehabilitation obligation) at zero (0) for the Fourth Round period.

H. THIRD ROUND VACANT LAND ADJUSTMENT

In addressing its Third Round prospective need obligation, the Township prepared a Vacant Land Adjustment, which was adopted as part of the Township’s Court-approved Housing Element and Fair Share Plan via the final JOR issued on June 21, 2018. The VLA determined that the Township had a Third Round Realistic Development Potential (“RDP”) of 359 and a Third Round unmet need of 30. The Township is not conducting a Vacant Land Adjustment for the Fourth Round, but will instead be addressing its entire Fourth Round Obligation of 240.

I. HOUSING, DEMOGRAPHIC AND EMPLOYMENT INFORMATION

The following housing, demographic, and employment background information regarding Berkeley Heights helps to describe and create an inventory of characteristics in the Township of Berkeley Heights that directly apply to current and future housing demand in the town and region. This analysis will include population demographics, housing characteristics, regional comparison, and



recent trends.

1. Analysis of Population and Demographics

The following tables analyze the population trends in Berkeley Heights using data from the United States Census Bureau Decennial Census and American Community Survey (“ACS”). An analysis of population demographics in a target area can help a community to understand and plan for the range of people that live and work within its borders. Also, local population demographics understood in the context of and compared to the larger regional area provides a unique opportunity to understand larger geographic implications of present conditions and future local and regional opportunities. This demographic profile was broken down into functional areas including analyses of community demographics, housing stock, employment data, and land use patterns and zoning.

POPULATION

Table 1, which depicts the population change since 1930, shows that from 1930 to 1970, the Township saw a significant increase in population. The numbers demonstrate that the population spiked mostly between the 1950s and 1970s. Since the 1970s the Township of Berkeley Heights has experienced only minor fluctuations in population.

Berkeley Heights' largest increase in growth occurred during the 1950's and 1960's. The Township's population nearly tripled in the 1950's, and continued to grow by 50% through the 1960s. In recent years, Berkeley Heights Township saw an increase in 11.9% from 1990 to 2000, but has remained fairly steady in the past two decades.

Table 1: Population 1930-2020 Township of Berkeley Heights		
Year	Total Population	% Change
1930	1,899	-
1940	2,194	15.5%
1950	3,466	58.0%
1960	8,721	151.6%
1970	13,078	50.0%
1980	12,549	-4.0%
1990	11,980	-4.5%
2000	13,407	11.9%
2010	13,183	-1.7%
2020	13,285	0.8%
Source: U.S. Census Bureau, 1930-2020 Decennial Censuses		



Table 2: Population 1980-2020
Township of Berkeley Heights and Union County

Year	Berkeley Heights	% Change	Union County	% Change
1980	12,549	−4.0%	504,094	−7.2%
1990	11,980	−4.5%	493,819	−2.0%
2000	13,407	11.9%	522,541	5.80%
2010	13,183	−1.7%	536,499	2.70%
2020	13,285	0.8%	575,345	7.20%

Source: U.S. Census Bureau, 1990-2020 Decennial Censuses

In comparing the Township to the County as a whole, the Township's population has experienced slight dips in the 1970s and 1980s, with a slight spike in the 1990s that has since plateaued. Union County, on the other hand has seen modest and steady increases in population in the past 2 decades.



AGE CHARACTERISTICS

Understanding the age make up of a community is important in planning for new housing, resources, and the future of the Township as a whole. Looking at a further breakdown of population data by age and sex, it shows that the town has a large amount of population in specific age cohorts. Table 3 to the right depicts that 22% of the population is 40-54 years old, and another 21% is 5-19 years old. These age cohorts generally suggest that Berkeley Heights consists largely of families with middle-aged parents and children. Table 4 complements the data and compares it to that of Union County as a whole. It shows the steady increase of children ages 5 to 17 in Berkeley Heights from 2000 to 2010 – from 18.8% to 21.2%. However, from 2010 to 2020 the 5- to 17-year-old population slightly decreased to 18.9%, a similar proportion to that of 2000.

Table 3: Population by Sex and Age 2020 Township of Berkeley Heights			
	All	Male	Female
Total 2020 Population	13,285	6,455	6,830
Under 5	681	366	315
5 to 9 years	895	457	438
10 to 14 years	1,004	500	504
15 to 19 years	922	456	466
20 to 24 years	726	373	353
25 to 29 years	404	222	182
30 to 34 years	527	243	284
35 to 39 years	723	330	393
40 to 44 years	873	421	452
45 to 49 years	1,024	510	514
50 to 54 years	1,083	514	569
55 to 59 years	1,126	539	587
60 to 64 years	920	454	466
65+	2,377	1,417	1,907
Median age (years)	44.4	43.3	45.3
<i>Source: U.S. Census Bureau, 2020 Decennial Census</i>			

The population of 45- to 54-year-olds has experienced a similar trend from 2000 to 2020. This age group increased from 2000 to 2010 from 14.7% to 17.7%. However, from 2010 to 2020, this proportion decreased slightly to 15.9%. Union County as a whole has also experienced this trend of slight decreases from 2010 to 2020 after periods of increase from 1990 to 2010 in these age cohorts. Berkeley Heights and Union County have seen overall increases in their 65 and over populations from 2000 to 2020, indicating an aging population.

Union County has been experiencing a steady decrease of the population aged 25-34 from 2000 to 2020. While Berkeley Heights' population aged 25-34 dropped dramatically from 10.3% to 5.8% from 2000 to 2010, this proportion slightly increased to 7.0% from 2010 to 2020.



**Table 4: Population by Age 2000-2020,
Township of Berkeley Heights and Union County**

Age	2000 Berkeley Heights		2000 Union County		2010 Berkeley Heights		2010 Union County		2020 Berkeley Heights		2020 Union County	
	#	%	#	%	#	%	#	%	#	%	#	%
Under 5	1,070	8.0%	36,441	7.0%	755	5.7%	35,783	6.8	681	5.1%	33,661	5.9%
5 to 17	2,521	18.80%	93,500	17.9%	2,796	21.2%	95,475	18.2	2,511	18.9%	100,828	17.5%
18 to 24	577	4.30%	41,469	7.9%	682	5.1%	45,879	8.7	1,036	7.8%	50,630	8.8%
25 to 34	1,383	10.30%	75,189	14.4%	765	5.8%	69,279	13.2	931	7.0%	73,519	12.8%
35 to 44	2,338	17.40%	88,398	16.9%	1,932	14.6%	78,418	15.0	1,596	12.0%	79,963	13.9%
45 to 54	1,965	14.70%	69,568	13.3%	2,339	17.7%	83,409	15.9	2,107	15.9%	79,764	13.8%
55 to 64	1,357	10.10%	45,935	8.8%	1,613	12.3%	60,495	11.6	2,046	15.4%	75,226	13.0%
65 & Over	2,200	16.40%	72,041	13.8%	2,301	17.5%	67,761	12.9	2,377	17.9%	82,145	14.3%
Total	13,407	100%	522,541	100.0%	13,183	100.0%	522,541	100	13,285	100.0%	575,345	100.0%

Note: Figures may not add up due to rounding.

Source: U.S. Census Bureau, 2000, 2010, and 2020 Decennial Censuses

RACE

Table 5 to the right shows the racial breakdown of the population according to responses from the 2010 2020 Decennial Census. Over 90% of the population responded as “One Race”, with 71.5% being White. The next largest racial group in Berkeley Heights is Asian at 15.6%. The smallest population that identified as “One Race” was Black or African American at 1.9%.

The other 8.4% of respondents identified as either “Two or More Races” or “Three or More Races”, with the largest subgroup in those categories being “White; Asian” with 1.7%.

HOUSEHOLD SIZE AND CHARACTERISTICS

In addition to population demographics, household size in relation to the population helps to characterize the Township. Using Decennial Census data from 2000-2020, Table 6 below shows that the average household size in Berkeley Heights decreased slightly from 2.90 to 2.85 from 2000 to 2010, in conjunction with a slight decrease in total population and number of occupied housing units. From 2010 to 2020, both the population and number of occupied housing units saw a slight increase, and the average household size increased as well. Union County as a whole saw a similar trend in the average size of household fluctuating from 2000 to 2020, but maintained steady increases in its total

**Table 5: Population by Race 2020
Township of Berkeley Heights**

	#	%
One Race	12,163	91.6
White	9,505	71.5
Black or African American	254	1.9
American Indian/Alaska Native	15	0.1
Asian	2,068	15.6
Native Hawaiian/Other Pacific Islander	1	0.0
Some Other Race	320	2.4
Two Races	1,122	8.4
White; Black or African American	65	0.5
White; American Indian and Alaska Native	11	0.1
White; Asian	229	1.7
White; Native Hawaiian and Other Pacific Islander	1	0.0
White; Some Other Race	732	5.5
Black or African American; Other Race	31	0.2
American Indian/Alaska Native; Other Race	12	0.1
Asian; Other Race	10	0.1
Three or More Races	23	0.2
Total Population	13,285	100%

Source: U.S. Census Bureau, 2020 Decennial Census



occupied housing units and household population.

**Table 6: Households and Population 2000-2020,
Township of Berkeley Heights and Union County**

	2000			2010			2020		
	HH Population	Occupied Housing Units	Avg HH Size	HH Population	Occupied Housing Units	Avg HH Size	HH Population	Occupied Housing Units	Avg HH Size
Berkeley Heights	12,959	4,479	2.90	12,758	4,470	2.85	13,065	4,484	2.92
Union County	514,733	186,124	2.71	536,499	188,118	2.82	569,791	200,372	2.80

Source: U.S. Census Bureau, 2000, 2010, and 2020 Decennial Censuses

Table 7 shows that Household sizes in occupied housing units was highest for 2 persons in Berkeley Heights, at 37.3%. The next largest household size reported was 4 persons or more at 30.4%.

Overall, in terms of household and per capita income, Berkeley Heights fares well compared to the whole of Union County at 89,178 versus the County's 49,666. Compared to Union County's percent of people below the poverty level at 8.9%, Berkeley Heights stands at 1.9% in the 2018-2022 American Community Survey (Table 8).

**Table 7: Household Size
2018-2022 ACS
Township of Berkeley Heights**

Household Size	Number of Households	Percent
1 Person	572	12.8%
2 Persons	1,672	37.3%
3 Persons	879	19.6%
4+ Persons	1,363	30.4%
Total Occupied Housing Units	4,486	100.0%

Source: Occupancy Characteristics, 2018-2022 American Community Survey, 5-Year Estimates

**Table 8: Income Characteristics, 2018-2022 ACS,
Township of Berkeley Heights and Union County**

	Township of Berkeley Heights	Union County	State of New Jersey
Median Household Income	\$196,389	\$95,000	\$97,126
Median Family Income	\$217,125	\$115,612	\$119,240
Per Capita Income	\$89,178	\$49,666	\$50,995
Percent of Persons Below Poverty Level	1.9%	8.9%	9.7%

Source: Selected Economic Characteristics, 2018-2022 American Community Survey 5-Year Estimates



The income limits in Table 9 were produced by the New Jersey Housing and Mortgage Finance Agency to set the regional income limits when the low-income housing tax credit (LIHTC) is included. LIHTC awards tax credits to housing developers in exchange for agreeing to reserve a certain amount of units as rent restricted for lower-income households. Developers must save at least 20% of units for families earning 50% or below the average median income (AMI). While the NJAHP income limits are based on the AMI and utility costs.

Table 9: <u>UHAC 2025 Affordable Housing Regional Income Limits</u> <u>Region 2: Essex, Morris, Union and Warren, New Jersey</u>			
Household Size	Moderate Income (80%)	Low Income (50%)	Very Low Income (30%)
1 Person	\$75,840	\$47,400	\$28,440
1.5 Persons	\$81,240	\$50,775	\$30,465
2 Persons	\$86,640	\$54,150	\$32,490
2.5 Persons	\$92,040	\$57,525	\$34,515
3 Persons	\$97,440	\$60,900	\$36,540
4 Persons	\$108,240	\$67,650	\$40,590
4.5 Persons	\$112,600	\$70,375	\$42,590
5 Persons	\$116,960	\$73,100	\$43,860
6 Persons	\$125,600	\$78,500	\$47,100
7 Persons	\$134,240	\$83,900	\$50,340
8 Persons	\$142,880	\$89,300	\$53,580
Source: New Jersey Housing and Mortgage Finance Agency			

2. Analysis of Housing Characteristics

This section of the Housing Element provides an inventory of the community's housing stock. Per N.J.S.A. 52:27D-310, one of the components of a municipality's housing element is "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." Each of these items is identified in this section of the report. To supplement and update the information provided by the U.S. Census, information from the N.J. Department of Community Affairs ("DCA") Construction Reporter was reviewed.

AGE OF HOUSING

Berkeley Heights is a substantially developed community. Population spikes in from the 1950s to 1970s were caused by a large increase in the number of houses being built from 1950 to 1969. From 1950 to 1959, 1,209 houses were built and then, from 1960 to 1969, 1,134 houses were built. Both decades saw an increase of about 5,000 people, which correlates to the spike in residential construction. Since the late 1960s the number of constructed houses has dwindled to the lower hundreds. The population has leveled off because the Township has built out a large amount of their developable land, leaving little space for further development and population growth. From 1980 to 2020, 1,310 units have been built, meaning that 71.9% of housing was built prior to 1980 — with nearly 50% of the total units being built prior to 1970.



Table 10: Age of Housing 2018-2022 ACS, Township of Berkeley Heights				
Year Housing Unit Built	Township of Berkeley Heights		Union County	
	Number of Units	Percent	Number of Units	Percent
2020 or later	0	0%	810	0.4%
2010 to 2019	137	2.9%	9,060	4.3%
2000 to 2009	237	5.1%	11,802	5.6%
1990 to 1999	651	14.0%	9,063	4.3%
1980 to 1989	285	6.1%	11,015	5.2%
1970 to 1979	584	12.5%	17,280	8.2%
1960 to 1969	1,134	24.4%	26,876	12.8%
1950 to 1959	1,209	26.0%	46,692	22.2%
1940 to 1949	149	3.2%	27,159	12.9%
1930 to 1939	269	5.8%	50,171	23.9%
Total	4,655	100%	209,928	100%
<i>Note: Figures may not add up due to rounding</i>				
<i>Source: 2018-2022 American Community Survey 5-Year Estimates</i>				

As shown in Table 10 and Table 11, residential development in Berkeley Heights has slowed over the last two decades compared to the 1990s. The age of housing data shows that while 14.0% of the current stock of housing was built in 1990-1999, just 8.0% of housing has been produced since. Additionally, between the 20-year period of 2000 and 2020, 429 residential building permits have been approved, falling just short of the 452 permits approved in the 9-year period between 1990 and 1999. However, while residential permits dropped significantly during the 2020 COVID-19 pandemic, the number of residential permits issued has returned to a similar rate as experienced prior to 2020. Overall, this data suggests that while residential development is still occurring, the amount of developable land, especially for residential uses, has become scarce as the Township has developed over time.

Table 11: Residential Building Permits, 1990-2023 Township of Berkeley Heights	
Year	Residential Building Permits
1990 to 1999	452
2000 to 2009	183
2010 to 2019	227
2020	19
2021	228
2022	178
2023	226
Total	1,513
<i>Source: New Jersey Department of Labor and Workforce Development</i>	



**Table 12: Housing Size by Number of Rooms 2018-2022 ACS,
Township of Berkeley Heights**

Number of Rooms	Township of Berkeley Heights		Union County	
	Number of Units	Percent	Number of Units	Percent
1 Room	0	0.0%	6,401	3.2%
2 or 3 Rooms	156	3.3%	26,314	13.2%
4 or 5 Rooms	591	12.7%	63,545	31.8%
6 or 7 Rooms	1,643	35.2%	56,081	28.0%
8 or more Rooms	2,265	48.6%	47,655	23.8%
Total	4,655	100%	199,996	100%

Note: Figures may not add up due to rounding
Source: 2018-2022 American Community Survey 5-Year Estimates

Table 12 above shows the housing size by the number of rooms, and compares Berkeley Heights to Union County as a whole. In general, Berkeley Heights has a larger number of housing with more bedrooms, with approximately 84% of housing having 6 or more bedrooms. Of that 84%, 48.6% is accounted for by 8 or more bedrooms. In comparison, Union County as a whole has a more even distribution of housing sizes, with just half of the housing having 6 or more bedrooms.

Overall, Berkeley Heights has an overwhelming majority of owner-occupied housing in comparison to renter occupied. The vacancy rate for owner occupied is 3 times lower than that of renter occupied housing. The 2020 Census accounted for 176 vacant units out of the 4,660 units in the Township.

**Table 13: Tenure and Housing Vacancy Rates, 2020
Township of Berkeley Heights**

Total	Total	Owner Occupied	Renter Occupied
Total Housing Units	4,660	4,083	401
Vacant Units	176	84	92
Vacancy Rate	3.8	1.6	5.0

Source: U.S. Census, 2020

(1) Includes all vacant units, including those rented or sold but not occupied, seasonal recreational and occasional use units, and "other" vacant units.

(2) Includes units available for sale only

(3) Includes units available for rent



Table 14 below shows the value of owner-occupied housing, and the Census data provides that the majority of the housing in Berkeley Heights is valued between \$500,000 and \$999,999 – at nearly 70.4%. The next highest value bracket for housing is \$1,000,000 or more– at 12.9%, meaning that over 80% of the housing in Berkeley Heights is valued over \$500,000. In comparison, 41.9% of housing in the county as a whole is valued at over \$1,000,000 with the majority of housing (38.8%) between \$300,000 to \$499,999.

Table 14: Value of Owner-Occupied Housing, 2018-2022 ACS				
Township of Berkeley Heights and Union County				
Housing Value	Township of Berkeley Heights		Union County	
	Number of Units	Percent	Number of Units	Percent
Under \$50,000	0	0.0%	2,350	2.0%
\$50,000 to \$99,999	34	0.8%	497	0.4%
\$100,000 to \$149,999	29	0.7%	1,257	1.1%
\$150,000 to \$199,999	96	2.2%	2,909	2.5%
\$200,000 to \$299,999	65	1.5%	15,320	13.3%
\$300,000 to \$499,999	489	11.4%	44,755	38.8%
\$500,000 to \$999,999	3,008	70.4%	40,102	34.8%
\$1,000,000 or more	550	12.9%	8,141	7.1%
Total	4,271	100.0%	115,331	100.0%
<i>Note: Figures may not add due to rounding.</i>				
<i>Source: Selected Housing Characteristics, 2018-2022 American Community Survey 5-Year Estimates</i>				



Rent levels in Berkeley Heights were found to be quite high, with 64.7% of the units possessing a gross rent of \$2,000 or more, and the median gross rent being \$2,444 for the Township. The only other rent bracket existing in the Township, \$500 to \$999, accounted for 35.3%. No housing was found to have gross rent levels below \$500 or between \$1,000 and \$1,999.

**Table 15: Rent Levels, 2018-2022 ACS
Township of Berkeley Heights**

Rent	Number of Units	Percent
Less than \$500	0	0.0%
\$500 to \$999	66	35.3%
\$1,000 to \$1,499	0	0.0%
\$1,500 to \$1,999	0	0.0%
\$2,000 to \$2,499	31	16.6%
\$2,500 to \$2,999	0	0.0%
\$3,000 or more	90	48.1%
No cash rent	0	0.0%
Total	187	100%
Median (dollars)	\$2,444	
Source: Selected Housing Characteristics, 2018-2022 American Community Survey 5-Year Estimates		

3. Analysis of Employment Characteristics

Economic data about Berkeley Heights retrieved from City-data.com shows that the estimated median household income in 2022 was \$190,809, an increase of 47% from 2011 (Table 16).

**Table 16: Economic Data
Township of Berkeley Heights**

Description	Amount
Estimated Median Household Income in 2022	\$190,809
Estimated Median Household Income in 2000	\$107,716
Estimated Per Capital Income in 2022	\$85,068
Estimated Median House or Condo Value in 2022	\$875,824
Mean Price of All Housing Units in 2022	\$571,611
Mean Price of Detached Houses in 2022	\$596,477
Mean Price of Townhouses/Other Attached Units in 2022	\$609,757
Mean Price of Two Units Structures in 2022	\$452,159
Mean Price of 3-4 Unit Structures in 2022	\$316,757
Mean Price of 5 or more Unit Structures in 2022	\$383,498
Median Gross Rent in 2020	\$1,404
Source: City-Data.com	



Most of Berkeley Heights's employment opportunities are with the Township itself or the number of corporate businesses in town, including The Connell Company, EGL Co., Inc., and Runnells Hospital. Table 17 below shows the number of employees for the major employers in Berkeley Heights.

Table 17: Township of Berkeley Heights, Major Employers			
Employers	Address	Business	No. of Employees
Summit Health	1 Diamond Hill Rd	Healthcare Services	1,000+
Berkeley Heights Board of Education	345 Plainfield Ave	Education	300 to 399
Runnells Center for Rehab	40 Watchung Way	Health Services	200 to 299
Township of Berkeley Heights	29 Park Ave	Municipal Government	200 to 299
Axtria Inc.	300 Connell Dr #5000	Software Development	200 to 299
Hayward Holdings Inc.	400 Connell Dr #6100	Industrial Goods	100 to 199
EGL Company, Inc.	100 Industrial Rd	Manufacturing	100 to 199
The Connell Company	300 Connell Dr #4000	Real Estate Services	100 to 199
Autumn Lake Healthcare	35 Cottage St	Health Services	100 to 199
Source: "Major Employers List" Prepared for Union County Board of Chosen Freeholders, by Union County Economic Development Corporation, 2022			

The Township is highly educated, with over 52% having a Bachelor's degree or higher, and over 23% having a graduate or professional degree. The average commute time is 30.4 minutes, showing that many of the residents commute to work elsewhere.

Finally, Table 19 below shows the most common industries for residents broken down by gender. The most common industry for both males and females in the Township as of 2022 is management, business, and financial occupations, which makes up 42.5% of the employed male population and 25.2% of the employed female population. The next largest industry for males in Berkeley heights is computer, engineering, and science occupations, which makes up 16.7% of the employed male population. The second-largest industry for the female population in Berkeley Heights is education, legal, community service, arts, and media occupations (24.4%), which is followed by sales and office occupations (19.3%).

Table 18: Education and Employment Data for Berkeley Heights	
For Population 25 Years and Over	
High School or Higher	92.5%
Bachelor's Degree of Higher	52.3%
Graduate or Professional Degree	23.2%
Unemployed	2.2%
Mean Travel Time to Work (Commute)	30.4 min.
Source: City-Data.com	



Table 19: Most Common Industries and Occupations by Sex Township of Berkeley Heights	
Most Common Industries for Males in 2022	
Management, business, and financial occupations	42.5%
Computer, engineering, and science occupations	16.7%
Sales and office occupations	13.3%
Production and transportation occupations	7.6%
Service occupations	6.7%
Education, legal, community service, arts, and media occupations	6.2%
Natural resources, construction, and maintenance occupations	5.8%
Most Common Industries for Females in 2022	
Management, business, and financial occupations	25.2%
Education, legal, community service, arts, and media occupations	24.4%
Sales and office occupations	19.3%
Computer, engineering, and science occupations	13.8%
Healthcare practitioners	8.6%
Service occupations	7.1%
Production and transportation occupations	1.7%
Most Common Occupations for Males 2022	
Management	24.4%
Business and financial operations	18.0%
Computer and mathematics occupations	12.5%
Sales	8.7%
Construction and extraction	4.6%
Office and administrative support	4.5%
Production	4.3%
Most Common Occupations for Females 2022	
Educational instruction and library	13.7%
Office and administrative support	13.5%
Business and financial operations	13.1%
Management	12.1%
Health diagnosing and treating occupations	8.0%
Computer and mathematics occupations	7.9%
Life, physical, and social sciences	5.9%
Source: Selected Economic Characteristics, Occupation by Sex for the Civilian Employed Population 16 Years and Over, and Industry by Sex for the Civilian Employed Population 16 Years and Over, American Community Survey 2022	



4. Projection of Township Housing Stock

As per the MLUL, specifically, N.J.S.A. 52:27D-310.b, a housing element must contain 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

The Department of Community Affairs' Division of Codes and Standards website provides data on Certificates of Occupancy and demolition permits for both residential and non-residential development. Within the Division of Codes and Standards website is the New Jersey Construction Reporter, which contains building permit, certificate of occupancy and demolition data that is submitted by the municipal construction officials within the State each month. The New Jersey Construction Reporter has information dating back to 2000, which can be used to show the Township's historic development trends, and data is provided for the Township of Berkeley Heights through the end of 2023.

As shown in Table 20, 331 new housing units were built between 2009 and 2023. During this period, 56 housing units were demolished. This yields a net gain of 275 housing units over this 15-year period, or an average of about 18 units per year.

Table 20: Historic Trend of Certificates of Occupancy and Demolition Permits (2009-2023)

Type	'09	'10	'11	'12	'13	'14	'15	'16	'17	'18	'19	'20	'21	'22	'23	Total
CO	3	3	3	2	8	5	11	15	18	4	16	14	5	85	139	331
Demo	2	6	2	3	3	7	7	1	4	3	8	2	8	0	0	56
Net	1	-3	1	-1	5	-2	4	14	14	1	8	12	-3	85	139	275

Source: NJ DCA Housing Units Certified and NJ DCA Development Trends Viewer

Over the last five years of available permit data for the Township per DCA's Development Trend Viewer (2018-2022), the Township issued an average of 77 permits per year for new housing units. Using this average, the Township projects 10 years out for residential development between the present and 2035. The projected development includes an extrapolation of the historic trend of residential certificates of occupancy, and anticipated development through the projects in this Plan. Based on the data below, the Township anticipates 1,754 new residences (inclusive of residential development permits for new housing units and certificates of occupancy) between now and the end of 2035. Table 21 below provides a loose approximation of the timing of residential development based upon this Plan intended to depict that units will be constructed over time in the next 10 years and is no way an exact prediction.

**Table 21: 10-Year Projection of Residential Development, Township of Berkeley Heights**

Type	July 1, 2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	June 30, 2035	Total
1. Approved New Residential Development Permits Issued	39	77	77	77	77	77	77	77	77	77	38	770
2. Projected Historic Trends	9	18	18	18	18	18	18	18	18	18	9	180
3. Other Projected Development	--	--	--	--	--	--	804	--	--	--	--	804
Connell Site	--	--	--	--	--	--	480	--	--	--	--	480
24-Unit 100% Affordable Development	--	--	--	--	--	--	24	--	--	--	--	24
Nokia Bell Labs Campus	--	--	--	--	--	--	300	--	--	--	--	300
Total Projected Residential Development	48	95	95	95	95	95	899	95	95	95	47	1,754

Of the 1,754 projected new residences (inclusive of residential development permits for new housing units and certificates of occupancy) between 2025 and 2035, 10.26% of the units are anticipated to be reserved for low- and moderate-income households in the Township (see Table 22).

**Table 22: Projection of Affordable Units
Township of Berkeley Heights**

Type	July 1, 2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	June 30, 2035	Total
1. Approved New Residential Development Permits Issued	--	--	--	--	--	--	--	--	--	--	--	0
2. Other Projected Development	--	--	--	--	--	--	180	--	--	--	--	180
Connell Site	--	--	--	--	--	--	96	--	--	--	--	96
24-Unit 100% Affordable Development	--	--	--	--	--	--	24	--	--	--	--	24
Nokia Bell Labs Campus	--	--	--	--	--	--	60	--	--	--	--	60
Total Projected Development	--	--	--	--	--	--	180	--	--	--	--	180



5. A Consideration of Lands of Developers Who Have Expressed a Commitment to Provide Affordable Housing

Pursuant to the Fair Housing Act (N.J.S.A.52:27D-310.f) and the Municipal Land Use Law N.J.S.A. 40:55D-28b(3), a Housing Element must include “a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing.” Thus, it is the Township’s responsibility to consider sites offered for affordable housing. However, the Township does not have an obligation to include every parcel a developer has proposed. In this case, a number of developers have expressed interest in the construction of affordable housing and their site has been included in this Plan below.

- A Developer has prepared concept plans for review by the Township for a mixed-use project at 311 Springfield Avenue (Block 302, Lot 11), which consists of first floor retail and a total of 20 rental units, inclusive of 3 affordable family rental units.
- Lockhern Property II LLC has prepared architectural drawings for review by the Township for a 33-unit multi-family building inclusive of 7 affordable family rental units located at 458 Springfield Avenue and 230 Sherman Avenue (Block 702, Lots 4 and 6). The subject properties were designated as an area in need of redevelopment by Township Council on May 21, 2024, and a Redevelopment Plan is currently being prepared.
- The Township is evaluating conceptual drawings for a mixed-use building consisting of first floor retail and a maximum of 49 rental units, inclusive of up to 10 affordable units, at 414-424 Springfield Avenue (Block 702, Lot 16). The subject property was designated as an area in need of redevelopment by the Township Council on May 21, 2024, and a Redevelopment Plan is currently being prepared. This prospective development remains in the early conceptual stages and no decisions have been made on the final density or mixed-use component.
- 735 Springfield Avenue LLC submitted an application to the Zoning Board of Adjustment for preliminary and final site plan approval to construct a three-story mixed-use residential and commercial building at 714-730 Springfield Avenue (Block 504, Lots 1 and 2), which would consist of 20 total rental units, inclusive of 3 affordable family rental units. The Zoning Board approved the application on February 27, 2025.
- Connell has expressed an interest in providing family rental units on the Connell Campus. A draft ordinance providing for a maximum of 600 additional family residential units with a 20% set inclusionary set aside has been incorporated into the Plan.

6. Consistency with State Plan and Redevelopment Plan

Pursuant to the Fair Housing Act (N.J.S.A.52:27D-310.i) and the Municipal Land Use Law N.J.S.A. 40:55D-28b(3), a Housing Element must include “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.” Per the existing State Development and Redevelopment Plan (SDRP), which was adopted in 2001, the Township of Berkeley Heights is located in the Metropolitan Planning Area (PA1). As stated in



the 2001 SDRP, the State Plan's intention in PA1 is to "provide for much of the state's future redevelopment; revitalize cities and towns; promote growth in compact forms; stabilize older suburbs; redesign areas of sprawl; and protect the character of existing stable communities." The SDRP further elaborates that "these goals will be met by strategies to upgrade or replace aging infrastructure; retain and expand employment opportunities; upgrade and expand housing to attract a balanced residential population; restore or stabilize a threatened environmental base through brownfields redevelopment and metropolitan park and greenway enhancement; and manage traffic effectively and create greater opportunities for public transportation connections within the Metropolitan Planning Area and between the Metropolitan Planning Area, suburban employment centers, and the Philadelphia and New York areas."

On December 4, 2024, the State Planning Commission approved the updated Preliminary State Development and Redevelopment Plan. Per the Preliminary SDRP, Berkeley Heights remains in Metropolitan Planning Area (PA1). The Preliminary SDRP provides that the intent of the Metropolitan Planning Area is to "provide for much of the state's future growth in compact development and redevelopment; revitalize cities, towns and neighborhoods, and in particular overburdened neighborhoods; address existing legacy issues such as air pollution, urban heat islands, lead contamination, Brownfields, urban highways, and combined sewer systems; prevent displacement and gentrification; promote growth that occurs in Centers, other appropriate areas that are pedestrian friendly, and in compact transit-oriented forms; rebalance urbanization with natural systems; promote increased biodiversity and habitat restoration; stabilize and enhance older inner ring suburbs; redesign and revitalize auto oriented areas; protect and enhance the character of existing stable communities." Given that the final updated SDRP is not expected to be adopted until late Fall 2025, the consistency of the Township's Fourth Round Housing Element with the State Development and Redevelopment Plan is evaluated based on the 2001 SDRP.

Redevelopment has been used as a primary tool for housing development in Berkeley Heights over the last decade, which is reflected in the inclusionary projects completed during the Third Round (see Table 25 of this HEFSP) and is a core objective of the existing SDRP and Preliminary SDRP for PA1. Since 2020, over 755 residential units have been completed through the implementation inclusionary redevelopment projects stimulated by the Township's Third Round HEFSP. The Township particularly has prioritized redevelopment efforts in its downtown and along the Springfield Avenue corridor, which has brought an influx of residential development to the Township's urban core, improved walkability and infrastructure, and leveraged access to the Township's rail station. By concentrating higher-density development in the Township's downtown, and simultaneously orienting development around an existing transit hub within the Township, Berkeley Heights is providing for its future growth in "compact" form as envisioned by the SDRP. The Township is continuing to promote redevelopment as a tool for the provision of affordable housing units as part of its compliance with its Fourth Round affordable housing obligations. The Township evaluates the viability of all planned and prospective affordable housing sites with respect to utility access, environmental impacts, and traffic/circulation. The projects contemplated for compliance towards the Township's Fourth Round affordable housing obligation are further evaluated in this Housing Element and Fair Share Plan.



III. TOWNSHIP OF BERKELEY HEIGHTS FOURTH ROUND FAIR SHARE PLAN

A. SATISFACTION OF COMPLIANCE MECHANISMS PRIOR TO THE FOURTH ROUND

Compliance with Fourth Round Deadlines

The amended FHA establishes several deadlines prior to the commencement of the Fourth Round on July 1, 2025, as well as deadlines after the plan is filed with the Program for approval. This section details the Township's compliance with the deadlines mandated by the amended FHA leading up to the preparation of this Housing Element and Fair Share Plan.

- **June 18, 2024:** Deadline for the municipality to submit to the DCA a detailed accounting of all nonresidential development fees collected and expended since it was authorized to collect such fees. This deadline was retroactively moved to coincide with the September 16, 2024 unit and program monitoring report deadline. The Township formally submitted an affordable housing trust fund report inclusive of all residential and non-residential fees through December 31, 2023 to DCA Commissioner Jacquelyn A. Suarez on June 18, 2014 (see *Appendix*).
- **September 16, 2024:** Deadline for the municipality to submit to the DCA a detailed accounting of all residential development fees collected and expended since it was authorized to collect such fees. Starting in September 2024, the DCA released a new Affordable Housing Monitoring System (AHMS) as required by the amended FHA for all municipalities to record and report all affordable housing trust fund and unit monitoring activity. The Township formally submitted all affordable housing trust fund activity through December 31, 2023 on the new online Affordable Housing Monitoring System (AHMS) on September 16, 2024 (see *Appendix*).
- **September 16, 2024:** Deadline for the municipality to submit a unit and program monitoring report to the DCA. The Township formally submitted all affordable housing project and unit monitoring data through December 31, 2023 on the new online Affordable Housing Monitoring System (AHMS) on September 16, 2024 (see *Appendix*).
- **October 20, 2024:** Deadline for DCA to prepare and submit a report on the calculation of regional need and municipal obligations for each region. The DCA released a report titled "Affordable Housing Obligations for 2023-2035 (Fourth Round) Methodology and Background" on October 18, 2024. The DCA report assigned Berkeley Heights a Fourth Round Present Need number of zero (0), and a Fourth Round Prospective Need number of 275 (see *Appendix*).
- **January 31, 2025:** Deadline for a municipality to adopt its fair share obligation numbers via binding resolution, which will either accept the DCA numbers, or describe why the numbers should be adjusted and what those adjusted numbers should be. The Township adopted a binding resolution on January 21, 2025, along with an attached expert report, that accepted the DCA's Fourth Round Present Need number of zero (0), but lowered the Fourth Round Prospective Need number to 208 (see *Appendix*).



- **48 hours following adoption of the resolution:** Deadline for a municipality to file an action with the Program regarding the adopted resolution and committing to its fair share numbers. The resolution must be published on the municipal website. The Township filed a Fourth Round Declaratory Judgment Complaint, along with the Township's adopted numbers resolution, on January 23, 2025 (see *Appendix*).
- **February 15, 2025:** Deadline for the municipality to submit to the DCA a detailed accounting of all nonresidential and residential development fees collected and expended from the previous year and a municipal status report of unit and program monitoring data from the previous year. The Township formally submitted and confirmed all affordable housing trust fund activity through December 31, 2024 on the AHMS on February 12, 2025, and the Township formally submitted and confirmed all affordable housing project and unit monitoring data through December 31, 2024 on the AHMS on February 12, 2025 (see *Appendix*).
- **February 28, 2025:** Deadline for an interested party to challenge a municipality's adopted numbers. On February 27, 2025, New Jersey Builders Association ("NJBA") filed an objection with the Court of the Township's Fourth Round prospective need obligation adopted by Resolution No. 2025-72, declaring that the Court establish the Township's Fourth Round prospective need obligation as 275 as calculated by the Department of Community Affairs ("DCA"). On February 28, 2025, pursuant to Administrative Directive #14-24, Fair Share Housing Center ("FSHC") filed a case information statement and challenge to the Township's determination of its Fourth Round present and prospective need obligation and provided an alternate Fourth Round prospective need calculation of 264 for Berkeley Heights.
- **March 1, 2025:** If no challenges, the Township's numbers are established by default and immunity from exclusionary zoning litigation remains in effect.
- **March 31, 2025:** Deadline for the Program to settle challenges to a municipality's fair share obligation numbers. The Program must issue a decision on any challenges to the municipality's fair share obligation by (i) making a finding that the municipality's determination of its present and prospective need obligation did not facially comply with the law and revoking the municipality's immunity, (ii) making an adjustment to the municipality's determination to comply with the law without revoking immunity or (iii) rejecting the challenge and affirming the municipality's determination of its fair share obligation. NJBA notified the Program in writing that they would not object to any settlement reached between the Township and the FSHC. The Township and FSHC reached a settlement establishing a Fourth Round Present Need Obligation of zero (0) and a Fourth Round Prospective Need Obligation of 240 for the Township of Berkeley Heights for the Fourth Round. The Settlement was placed on the record on March 14, 2025, and the Township adopted a resolution to accept and confirm the settlement on March 18, 2025 (See *Appendix*). The Program entered an order on March 24, 2025, recommending that the Court enter an Order with the agreed upon fair share numbers (See *Appendix*). The Township and FSHC entered into a Mediation Agreement on March 28, 2025, which was submitted to the Program and the Court (See *Appendix*). The Court memorialized the Township's Fourth



Round Present Need Obligation of zero (0) and Prospective Need Obligation of 240 via an Order entered on April 14, 2025 (See Appendix).

- **June 30, 2025:** Deadline to adopt and endorse a Housing Element and Fair Share Plan and propose drafts of the appropriate zoning and other ordinances and resolutions implementing the municipality's present and prospective obligation. This Fourth Round Housing Element and Fair Share Plan, inclusive of all ensuing attachments and appendices, has been prepared for review and adoption by the Township Planning Board, endorsement by the Township Council, and submission to the Program and the Court for review and approval prior to the June 30, 2025 deadline.
- **June 30, 2025 or 48 hours following the Plan's adoption (whichever is sooner):** Deadline for the municipality to file the Housing Element and Fair Share Plan and drafts of resolutions and ordinances to implement its present and prospective obligation with the Program. The Plan and appropriate resolutions and ordinances must be posted on the municipal website. The Plan will be filed with the Program and the Court by June 30, 2025.

Fair Share Obligations Prior to the Fourth Round

As per the terms and conditions of the FSHC Settlement Agreement dated September 13, 2016, the Township and FSHC agreed to use the May 2016 Expert Report of David N. Kinsey, PhD, P.P., F.A.I.C.P. as the basis for negotiations in establishing what fair share obligations the Township would be targeting in its Third Round Housing Element and Fair Share Plan. For purposes of settlement, the parties agreed upon on the following fair share obligations:

Table 23: Agreed Upon 2017 Fair Share Obligations	
Rehabilitation Obligation:	11
Prior Round Obligation (1987-1999):	183
Third Round Obligation (2015-2025)*:	389*
Total Obligation:	583

*The 389 Third Round number represents an agreed upon 35% reduction of the original Third Round number of 598 provided in the May 2016 Expert Report of David N. Kinsey, PhD, P.P., F.A.I.C.P.

Satisfaction of Third Round Rehabilitation Obligation

The Township fully satisfied its 11-unit present need (rehabilitation) obligation from the Third Round from existing units that have been rehabilitated since July of 2010 under the Township's Rehabilitation Program. The Township has an additional rehabilitation credit from a 12th existing unit that was also rehabilitated after July of 2010. Satisfaction of the Township's Third Round rehabilitation obligation was approved as part of the Township's final JOR issued on January 22, 2018.



Satisfaction of Prior Round Obligation

Per the Township's Third Round Settlement Agreement, as amended, the Township was assigned a 183-unit Prior Round obligation. Satisfaction of the Township's Third Round Prior Round obligation was approved as part of the Township's final JOR issued on January 22, 2018 and is detailed below.

1. Prior Round Rental Obligation

Under the COAH rules applicable to the Township's Prior Round obligation, the Township's Prior Round rental obligation was 25% of 183, or 46 units. The Township applied 47 rental units to the Prior Round, therefore satisfying its 46-unit rental obligation.

2. Prior Round Age-Restricted Cap

COAH's Round 2 regulations permitted a total of 25 percent of the new construction obligation (with certain caveats not applicable to Berkeley Heights) to be satisfied with age-restricted housing. Based upon this, a total of 46 age-restricted housing units were permitted to be credited against the Prior Round obligation. The Township applied three (3) age-restricted units from its completed and occupied Park Edge project to the Prior Round, which is well below the age-restricted cap of 46.

3. Prior Round Rental Bonus Credits

In accordance with N.J.A.C. 5:93-5.15(d), the Township was entitled to rental bonus credits generated by projects described below up to the maximum of 45 rental bonuses for which it is eligible based on its 183-unit Prior Round obligation.

4. Very Low-Income Monitoring

Pursuant to the 2008 amendments to the FHA at N.J.S.A. 52:27D-329.1, municipalities must ensure that 13% of all affordable units proposed, approved and constructed after July 17, 2008 are affordable to very low-income households at 30% of the regional median income. Any of the affordable units used towards the Township's Prior Round obligation constructed prior to July 17, 2008, are not subject to the 13% very low-income requirement.

5. Satisfaction of Prior Round Obligation

The Township satisfied its 183-unit Prior Round obligation as follows:



Table 24: Prior Round Affordable Housing Fulfillment Township of Berkeley Heights, Union County, NJ						
1987-1999 Prior Round Obligation	183					
	Obligation	Completed Units	Low	Mod	VL	Totals
Inclusionary Zoning		47	13	17	17	47
Station Court 230-250 Sherman Ave South (Block 702, Lot 9)		13	5	6	2	13 (FR)
Villas on the Park Springholm Drive (Block 4603, Lot 36)		14	6	6	2	14 (FR)
Park Edge (Block 301, Lot 6)		3	0	3	0	3 (ARR)*
Whispering Way (Block 1301, Lots 18.05, 18.07, 18.08, 18.09, and 18.10)		5	2	2	1	5 (FR)
Our House, 18 Whitney Dr. (Block 3203, Lot 18)		4	0	0	4	4 (GH)
Our House, 135 Windsor Way (Block 1606, Lot 7)		5	0	0	5	5 (GH)
ARC of Union County, 640 Plainfield Ave. (Block 3201, Lot 54)		3	0	0	3	3 (GH)
RCA Units (previously approved)**		91	59	32	-	91 (RCA)
Rental Bonuses		45	-	-	-	45 (BC)
Total Prior Round Credits		183	72	49	17	183
<p>*The remaining 29 units in the 32-unit age-restricted project were used toward the Third Round RDP</p> <p>** The Township is entitled to secure all the 129 credits from its Regional Contribution Agreement (“RCA”) with the City of Newark. 91 RCA credits have been applied to the Township’s Prior Round Obligation. The remaining 38 RCA credits have been applied towards the 1999 to 2008 period.</p> <p> (FR) = Family Rental (ARR) = Age-Restricted Rental (S) = For-Sale (GH) = Group Home (SNR) = Special Needs Rental (BC) = Bonus Credit (RCA) = Regional Contribution Agreement </p>						

6. Detailed Summary of Prior Round Satisfaction

- The Township is entitled to secure all of the 129 credits from its Regional Contribution Agreement (“RCA”) with the City of Newark. The credits were approved by the Court via an order entered on December 14, 1995. 91 RCA credits have been applied to the



Township's Prior Round Obligation. The remaining 38 RCA credits have been applied towards the 1999 to 2008 time period.

- b. 47 existing affordable units from the following constructed and occupied units:
 - i. 13 affordable family rental units from the Station Court project on 230-250 Sherman Ave South (Block 702, Lot 9). The project was approved by a resolution dated and constructed in 1996.
 - ii. 14 affordable family rental units from the Villas on the Park project on Springholm Drive (Block 4603, Lot 36). The project was approved via a resolution adopted on July 27, 1994, and constructed in 1996.
 - iii. 5 affordable family rental units from the Whispering Way project (Block 1301, Lots 18.05, 18.07, 18.08, 18.09, and 18.10). The project was approved via a resolution adopted on February 19, 1997, and constructed in 1999.
 - iv. 3 age-restricted affordable rental units from the Park Edge project (Block 301, Lot 6). The project was approved by a resolution dated June 6, 1990, and constructed in 1997.
 - v. 4 group home bedrooms from the Our House project at 18 Whitney Dr. (Block 3203, Lot 18).
 - vi. 5 group home bedrooms from the Our House project at 135 Windsor Way (Block 14.06, Lot 7).
 - vii. 3 group home bedrooms from the ARC of Union County project at 640 Plainfield Ave (Block 3201, Lot 54).
- c. 45 rental bonus credits

Satisfaction of Third Round Prospective Need Obligation

The Township entered Round 3 having fully satisfied the entirety of its Prior Round obligation with a surplus of 55 units provided above those needed to fulfill said obligation, which are detailed in Table 25 below. This Prior Round Surplus is inclusive of 29 age-restricted rental units and 26 for-sale family units. Through the Township's Prior Round surplus, various redevelopment projects that have been approved, completed, or proposed over the duration of the Third Round, and Regional Contribution Agreement credits and bonus credits, the Township has fully satisfied its Third Round RDP of 359 units and possesses a 22-unit surplus that may be applied towards its Third Round unmet need.

1. Vacant Land Adjustment

As discussed in Section II.H of this Plan, the Township prepared a VLA for the Third Round. As per the Settlement Agreement with FSHC, after including additional credits from RCA credits being applied to the 1999 to 2008 time period, applicable rental bonus credits and existing already constructed affordable units, the Township's RDP was determined to be 359, thereby establishing an unmet need of 30. The Third Round VLA was adopted as part of the Township's Court-approved Housing Element and Fair Share Plan and was approved by the Court via the conditional Third Round JOR, which was issued on October 12, 2017, and finalized by the Court via a second order issued on June 21, 2018.



2. Third Round Rental Obligation

COAH's Rules (at N.J.A.C. 5:93-1, et seq.) provided that at least 25 percent of the new construction component for the Third Round had to be satisfied with rental units. Based on the Township's Third Round prospective need number of 389, its Third Round rental obligation was 25 percent of 389 units, or 97 units. The Township has applied 200 creditable rental units to the Third Round to satisfy its minimum 97-unit rental obligation.

In addition, a requirement of the Settlement Agreement with FSHC was that half of the rental units used to satisfy the Township's 97-unit rental obligation be available to families, which equates to 49 family rental units. The Township has proposed 142 total family rental units as part of its Third Round prospective need compliance, so the 49 family rental unit requirement has been more than fully satisfied.

3. Third Round Age-Restricted Housing

Per COAH regulations applicable to the Third Round, municipalities were permitted to age-restrict up to 25 percent of their Third Round obligation. This meant that up to 97 units were permitted to be age-restricted units. Berkeley Heights proposed one new age-restricted affordable housing project at 100 Locust Avenue ("Woodcrest at Berkeley Heights"), totaling 29 age-restricted affordable units, as part of its Third Round Housing Element and Fair Share Plan. The 29 age-restricted affordable units from the project at 100 Locust Avenue, in addition to the 29 age-restricted rental units from the existing Park Edge development, totaled to 58 affordable age-restricted units applicable to the Third Round. These 58 units, or 15 percent of the total obligation, were well under the 97-unit Round 3 age-restricted cap.

4. Third Round Very Low-Income Obligation

As a result of the July 2008 amendments to the Fair Housing Act, all municipalities have an obligation to ensure that at least 13 percent of the affordable units being provided town wide, with the exception of units constructed as of July 1, 2008 and units subject to preliminary or final site plan approval as of July 1, 2008, are affordable to very low-income households (households that earn 30 percent or less of the median income).

Of the 123 affordable units fully constructed in the Township since 2008 and credited toward the Third Round prospective need obligation, 17 units (or 13.8%) have been provided to very low-income households.

As units proposed to be used toward the Township's Third Round obligation are fully built out, the Township will continue to meet the required 13% minimum very-low income threshold. The Township anticipates that additional very low-income units will be provided via future affordable housing projects constructed in the Township's DMX Zone and under the Township's Mandatory Set-Aside Ordinance.

5. Third Round Rental Bonus

In accordance with N.J.A.C. 5:93-5.15(d), the Township was entitled to a maximum of 97 credits for rental bonuses for which it was eligible based on its 389-unit Third Round obligation.



6. Satisfaction of RDP

The Township's 359-unit RDP for the Third Round has been satisfied as detailed in Table 25 below:

Table 25: Existing and Proposed Projects Addressing the Township's RDP 1999 - 2025 Obligation						
RDP	359					
	Status	Proposed Units	Low	Mod	VL	Units Contributing to RDP
Completed/Under Construction/Approved Sites (Included in Third Round HEFSP)						
Inclusionary Zoning		126	78	38	10	126
Connell Site – 500 Connell Drive (Block 4102, Lot 1; Block 4301, Lots 1.02, 1.011, and 1.012)	45 affordable family rental units under construction as part of preliminary and final site plan approval granted by Planning Board resolution on 11/2/2022 (see Appendix). Connell site is subject to accommodate additional affordable units as part of the Fourth Round.	45 (FR)	45	-	-	45 (FR)*
The Clarus – 434 Springfield Ave (Block 702, Lot 18.01)	Fully constructed in 2025 and leasing.	32 (FR)	12	15	5	32 (FR)
The Terrace – 450 Springfield Ave (Block 702, Lot 13)	Fully constructed in 2021 and occupied.	3 (FR)	1	1	1	3 (FR)
Carriages at Berkeley Heights – 1 Peacock Lane (Block 1301, Lot 19)	Fully constructed in 2023 and occupied.	20 (S)	10	10	0	20 (S)
Modera Berkeley Heights ("Mill Creek") – 91 Lone Pine Drive (Block 703, Lots 4 and 8)	Fully constructed in 2023 and occupied.	26 (FR)	10	12	4	26 (FR)
Age-Restricted Housing		29	11	14	4	29
Woodcrest at Berkeley Heights – 100 Locust Ave (Block 1901, Lot 35)	Fully constructed in 2022 and occupied.	29 (ARR)	11	14	4	29 (ARR)
Completed/Under Construction/Approved Sites (Additional to Third Round HEFSP)						



Township of Berkeley Heights – Fourth Round Housing Element and Fair Share Housing Plan

Inclusionary Zoning		16	4	6	3	16
Berkeley Crossing I – 633 Springfield Avenue (Block 502, Lots 1, 2, 4 and 5)	Fully constructed in 2023 and occupied.	8 (FR)	3	4	1	8 (FR)
Berkeley Crossing II ("Mondelli Property") – 182 Plainfield Avenue (Block 614, Lot 3)	Fully constructed in 2022 and occupied.	2 (FR)	0	1	1	2 (FR)
391 Springfield Ave, LLC ("Clocktower Commons") – 389 Springfield Avenue (Block 208, Lot 20)	Preliminary and Final Site Plan approval on 2/25/2021 (see Appendix). Fully constructed in 2022 and leasing.	3 (FR)	1	1	1	3 (FR)
735 Springfield Avenue LLC – 714-730 Springfield Avenue (Block 504, Lots 1 and 2)	Preliminary and Final Site Plan approval on 2/27/2025 (see Appendix).	3 (FR)	TBD	TBD	TBD	3 (FR)
Pending/Proposed Sites (Included in Third Round HEFSP)						
Inclusionary Zoning		32 57	TBD	TBD	TBD	0
DMX Zone** – (Block 703, Lots 6-7)	Ordinance adopted rezoning the site on 6/27/17 (see Appendix).	32	TBD	TBD	TBD	0
Pending/Proposed Sites (Additional to Third Round HEFSP)						
Inclusionary Zoning		20	TBD	TBD	TBD	20 (FR)
Terrace II – 458 Springfield Ave and 230 Sherman Ave (Block 702, Lots 4 and 6)	Redevelopment Study adopted on 5/21/2024 (see Appendix) and Redevelopment Plan currently being prepared.	7 (FR)	TBD	TBD	TBD	7 (FR)
Terrace III – 414-424 Springfield Avenue (Block 702, Lot 16)	Redevelopment Study adopted on 5/21/2024 (see Appendix) and Redevelopment Plan currently being prepared.	10 (FR)	TBD	TBD	TBD	10 (FR)
311 Springfield Ave – (Block 302, Lot 11)	Concept Plan prepared.	3 (FR)	TBD	TBD	TBD	3 (FR)
Existing Prior Round Surplus						
Inclusionary Zoning		55	27	24	4	55
Park Edge – (Block 301, Lot 6)	Completed in Prior Round	29 (ARR)	13	12	4	29 (ARR)*



	period. Approved via a resolution entered on June 6, 1990.					
The Highlands at Berkeley Heights ("Wren Court") – (Block 301.08, Lots 1-10, 12)	Completed in Prior Round period. Approved via a resolution adopted on March 28, 1991.	11 (S)	6	5	0	11 (S)
Cottage Lane I ("Tudor Court I") – (Block 614.01, Lots 1-4; Block 614.02, Lots 1-4; Block 614.03, Lots 1-4; Block 614.04, Lots 1-3)	Completed in Prior Round period. Approved by a resolution adopted on March 29, 1995.	3 (S)	1	2	0	3 (S)
Cottage Lane II ("Tudor Court II") – (Block 1301, Lots 9.07, 9.08, 9.09, 9.10, 9.11, and 9.12)	Completed in Prior Round period. Approved via a resolution adopted on March 28, 1991.	6 (S)	3	3	0	6 (S)
Cottage Street Station Court (Block 1301, Lot 8.10)	Completed in Prior Round period.	2 (S)	2	0	0	2 (S)
Berkeley Village (Block 1301, Lots 7.10, 7.11, 7.17, and 7.18)	Completed in Prior Round period. Approved via a resolution entered on December 13, 1995.	4 (S)	2	2	0	4 (S)
Regional Contribution Agreement						
RCA Credits (applied to 1999-2008 portion)	129 credits were approved by the Court via an order entered on December 14, 1995. 91 RCA credits are applied to the Township's Prior Round obligation and 38 RCA credits are applied towards the Third Round obligation.	38 (RCA)	6	32	0	38 (RCA)
Bonuses						
Rental Bonuses		97				97 (BC)
Total Credits and Units						
Total Credits and Units***		413	126	114	21	381



Third Round RDP Surplus****	381 Creditable Units – 359 Third Round RDP = 22 Units
<p>*The remaining 3 units in the 32-unit age-restricted project were used toward the Prior Round obligation.</p> <p>*** Of the 316 physical units proposed towards the Third Round RDP (the proposed unit count exclusive of the 97 rental bonus credits), 55 units do not have a finalized unit count by income distribution. The combined 55 proposed units from the 735 Springfield Avenue LLC project, Terrace II project, Terrace III project, 311 Springfield Avenue project, and DMX Zone shall be subject to the income distribution requirements of the UHAC rules applicable to units credited toward the Third Round.</p> <p>**** Third Round RDP Surplus may be applied towards satisfaction of the Third Round Unmet Need.</p>	
<p>(FR) = Family Rental (ARR) = Age-Restricted Rental (S) = For-Sale (GH) = Group Home (SNR) = Special Needs Rental (BC) = Bonus Credit (RCA) = Regional Contribution Agreement</p>	

7. Detailed Summary of Third Round RDP Satisfaction

- a. **155 units** from the following completed, under construction, and/or approved projects listed in the Third Round HEFSP:
 - i. **The Clarus (434 Springfield Avenue – Block 702, Lot 18.01).** 211 total rental units, inclusive of 32 affordable family rental units, per Planning Board Resolution granting preliminary and final site plan approval in November 2020. The project was fully constructed in early 2025 and is currently leasing.
 - ii. **The Terrace (450 Springfield Avenue, Block 702, Lot 13).** 20 total rental units, inclusive of 3 affordable family rental units, per Planning Board Resolution granting preliminary and final site plan approval in September 2020. The project was fully constructed in 2021 and is occupied.
 - iii. **Connell Site (500 Connell Drive – Block 4102, Lot 1; Block 4301, Lots 1.02, 1.011, and 1.012).** 328 total rental units, inclusive of 45 affordable family rental units, per Planning Board resolution granting preliminary and final site plan approval on November 2, 2022. As detailed in Section III.B of this HEFSP, the Connell site is subject to accommodate additional affordable units as part of the Township's compliance with its Fourth Round prospective need obligation.
 - iv. **Carriages at Berkeley Heights (1 Peacock Lane – Block 1301, Lot 19).** 67 total units, consisting of 47 market-rate three-bedroom townhouses and 20 affordable for-sale condos. A Redevelopment Plan was approved by the Planning Board on November 2019 and endorsed by Township Council on November 2019. Preliminary and final site plan approval was granted by the Planning Board on February 19, 2020, and the site plan was approved by the Union County Planning Board on July 2020. A redevelopment agreement was reached with Toll Brothers on January 2021. The project was fully constructed in 2023 and is occupied.



- v. **Modera Berkeley Heights/“Mill Creek” (91 Lone Pine Drive – Block 703, Lots 4 and 8).** 170 total rental units, inclusive of 26 affordable family rental units, per Planning Board resolution granting preliminary and final site plan approval in September 2020. The project was fully constructed in 2023 and is occupied.
 - vi. **Woodcrest at Berkeley Heights (100 Locust Avenue – Block 1903, Lot 45).** 196 total rental age-restricted units, inclusive of 29 age-restricted affordable rental units, per Planning Board resolution granting preliminary and final site plan approval in 2018. The project was fully constructed in 2022 and is occupied.
- a. **16 units** from the following completed, under construction, and/or approved projects that have been added since the approval of the Third Round HEFSP:
- i. **Berkeley Crossing I (633 Springfield Avenue – Block 502, Lots 1, 2, 4 and 5).** 45 total rental units, inclusive of 8 affordable family rental units. A redevelopment plan was adopted by the Planning Board on July 2020 and was endorsed by Township Council on July 2020. A redevelopment agreement with Elite Properties was reached on November 2020. The project was fully constructed in 2023 and is occupied.
 - ii. **Berkeley Crossing II/“Mondelli Property” (182 Plainfield Avenue – Block 614, Lot 3).** 10 total rental units, inclusive of 2 affordable family rental units. A redevelopment plan was adopted by Township Council by Ordinance No. 6-2020 on May 26, 2020. A redevelopment agreement with Elite Properties was reached on May 26, 2020 via Resolution No. 151-2020. Minor subdivision and preliminary and final site plan approval was granted by the Planning Board via resolution on August 19, 2020 (see *Appendix*). The project was fully constructed in 2022 and is occupied.
 - iii. **391 Springfield Ave, LLC/“Clocktower Commons” (389 Springfield Avenue – Block 208, Lot 20).** 16 total rental units, inclusive of 3 affordable family rental units, per Planning Board resolution granting preliminary and final site plan approval on February 25, 2021. The project was fully constructed in 2022 and is leasing. One apartment has been filled and the remaining two additional apartments will soon be available.
 - iv. **735 Springfield Avenue LLC (714-730 Springfield Avenue – Block 504, Lots 1 and 2).** 20 total rental units, inclusive of 3 affordable family rental units, per Zoning Board resolution granting preliminary and final site plan approval on February 27, 2025 (see *Appendix*).
- b. **20 units** from the following pending and/or proposed projects that have been added since the approval of the Third Round HEFSP:
- i. **Terrace II (458 Springfield Avenue and 230 Sherman Avenue – Block 702, Lots 4 and 6).** 33 total rental units, inclusive of 7 affordable family rental units. Block 702, Lots 4, 6, and 16 were designated as a non-condemnation area in need of redevelopment by the Township Council on May 21, 2024 (see *Appendix*).



Architectural drawings have been reviewed by the Township and a Redevelopment Plan is currently being prepared for the subject properties.

- ii. **Terrace III (414-424 Springfield Avenue – Block 702, Lot 16).** 49 total rental units, inclusive of up to 10 affordable family rental units. Block 702, Lots 4, 6, and 16 were designated as a non-condemnation area in need of redevelopment by the Township Council on May 21, 2024 (see *Appendix*). Architectural drawings have been reviewed by the Township and a Redevelopment Plan is currently being prepared for the subject property. The final number of affordable units is to be determined within the Redevelopment Plan.
 - iii. **311 Springfield Avenue (Block 302, Lot 11).** 20 total rental units, inclusive of 3 affordable family rental units. Concept plans have been prepared and are currently being reviewed by the Township.
- c. **55 units** from the following existing affordable housing projects, which are a surplus from the Prior Round:
- i. **Park Edge (Block 301, Lot 6).** 29 affordable age-restricted rental units. Approved via a resolution entered on June 6, 1990, and fully constructed and occupied. The remaining 3 affordable age-restricted rental units were credited as part of the Prior Round obligation.
 - ii. **The Highlands at Berkeley Heights/"Wren Court" (Block 301.08, Lots 1-10, 12).** 11 affordable for-sale units. Approved via a resolution entered on March 28, 1991, and fully constructed and occupied.
 - iii. **Cottage Lane I/"Tutor Court I" (Block 614.01, Lots 1-4; Block 614.02, Lots 1-4; Block 614.03, Lots 1-4; Block 614.04, Lots 1-3).** 3 affordable for-sale units. Approved via a resolution entered on March 29, 1995, and fully constructed and occupied.
 - iv. **Cottage Lane II/"Tutor Court II" (Block 1301, Lots 9.07, 9.08, 9.09, 9.10, 9.11, and 9.12).** 6 affordable for-sale units. Approved via a resolution entered on March 28, 1991, and fully constructed and occupied.
 - v. **Cottage Street Station Court (Block 1301, Lot 8.10).** 2 affordable for-sale units. Approved via a resolution and fully constructed and occupied.
 - vi. **Berkeley Village (Block 1301, Lots 7.10, 7.11, 7.17, and 7.18).** 4 affordable for-sale units. Approved via a resolution entered on December 13, 1995, and fully constructed and occupied.
- d. **38 units** from the Regional Contribution Agreement (RCA) between the City of Newark and the Township of Berkeley Heights, dated September 19, 1989, which provided 129 total RCA credits to the City of Newark. The credits were approved by the Court via an order entered on December 14, 1995 and the Township's Third Round JOR. The remaining 91 RCA units were credited toward the Township's Prior Round obligation.



- e. **97 rental bonus credits**, which is the maximum number of rental bonus credits permitted based on the Township's 389-unit Third Round obligation.
- f. As part of the Third Round HEFSP, the DH-24 Zone and DMX Zone were amended to increase the permitted density of each zone so that the DH-24 Zone could produce 163 units, inclusive of 25 affordable units, and the DMX Zone could produce 211 total units, inclusive of 32 affordable units, therefore totaling to 57 affordable units that could be produced from the two zones. The DH-24 Zone and DMX Zone were also amended to require affordable housing set-asides of 20% for for-sale projects and 15% for rental projects. Since the adoption of the Third Round HEFSP, the DH-24 Zone produced the Modera project, which was completed in 2023 and includes 26 affordable family rental units which are credited to the Township's Third Round RDP. Since no development activity has occurred in the DMX Zone at the time of this Plan's preparation, the 32 affordable units intended for this site may not be counted towards the Township's satisfaction of its 359-unit RDP; however, since the amendments to the DMX Zone via Ordinance No. 2017-18 remain in place, any future affordable units generated in the DMX Zone may be counted as a surplus to the Township's satisfaction of its Third Round RDP or unmet need, and may be used to further satisfy the Township's Third Round unmet need and/or applied to the Township's Fourth or Fifth Round prospective need obligations.
- g. The 22-unit surplus of the Township's Third Round RDP may be applied towards satisfaction of the Township's Third Round unmet need.

Satisfaction of Third Round Unmet Need

The Township is addressing the 30-unit remaining portion of its allocation of the Round 3 regional need, or "unmet need", through the following mechanisms:

Table 26. Existing and Proposed Projects Addressing the Third Round Unmet Need Township of Berkeley Heights, Union County, NJ	
Unmet Need	30
	Units
Third Round RDP Surplus	22
1. Downtown Districts	
<ul style="list-style-type: none"> • HB-2 • HB-3 • DD 	8
2. Mandatory Set Aside Ordinance (MSO)	
TOTAL CREDITS AND UNITS	30

1. Detailed Summary of Third Round Unmet Need Satisfaction

- a. **22 units** from the surplus of the Township's satisfaction of its 359-unit Third Round RDP.
- b. **Combined 8 units** from as-of-right inclusionary zoning over the remainder of the Downtown Districts (HB-2, HB-3 and DD zoned districts) and the Township's Mandatory



Set-Aside Ordinance (“MSO”) requiring any site that benefits from rezoning, variance or redevelopment plan approved by the Township that results in multi-family residential development of five (5) dwelling units or more to produce affordable housing at a set-aside rate of 20% for for-sale affordable units and at a set-aside rate of 15% for rental affordable units. The amendments to the Downtown Districts to add residential density limits were adopted via Ord. No. 24-2017 on October 10, 2017 (see *Appendix*). The Township’s MSO was adopted by Ord. No. 15-2017 on May 23, 2017 (see *Appendix*). The MSO will remain in place through July of 2025, or until the Township’s remaining portion of its Round 3 obligation is satisfied, whichever is later. The Township shall have the exclusive right to solve any gap associated with the remaining portion of its Third Round obligation.

B. FOURTH ROUND PLAN COMPLIANCE MECHANISMS

Fourth Round Present Need (Rehabilitation) Obligation

As explained in detail in Section II.E, Section II.F, and Section II.G of this Fourth Round Housing Element and Fair Share Plan, the Township’s Fourth Round Present Need (Rehabilitation) obligation is zero (0).

While the Township is not required to provide any units towards its Rehabilitation obligation during the Fourth Round, the Township may continue to facilitate the rehabilitation of additional units through participation in a rehabilitation program.

Fourth Round Prospective Need Obligation

As explained in detail in Section II.E, Section II.F, and Section II.G of this HEFSP, on January 23, 2025, the Township’s Fourth Round Prospective Need Obligation is 240.

1. Vacant Land Adjustment

As discussed in Section II.H of this plan, the Township has not conducted a Vacant Land Adjustment as part of addressing its Fourth Round prospective need obligation. However, the Township reserves the right to conduct and apply a VLA to its Fourth Round prospective need obligation should conditions to the compliance mechanisms in this plan change.

2. Fourth Round Rental Obligation

Per N.J.S.A. 52:27D-311, “A municipality shall satisfy a minimum of 25 percent of the actual affordable housing units, exclusive of any bonus credits, to address its prospective need affordable housing obligation, through rental housing, including at least half of that number available to families with children.” Based on the Township’s Fourth Round prospective need of 240, its minimum rental obligation is 25 percent, or 60 units. The Township has proposed 120 affordable family rental units and 60 age-restricted rental units towards its Fourth Round prospective need obligation, totaling to 180 total rental units to the Fourth Round. The Township will therefore satisfy its minimum 60-unit rental obligation, and over 50% of its minimum 60-unit rental obligation (30 units) will be satisfied by the 120 affordable family rental units proposed at the Connell site and one hundred percent (100%) affordable housing project.



3. Fourth Round Family Housing Obligation

Per N.J.S.A. 52:27D-311, “A municipality shall satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its prospective need affordable housing obligation through the creation of housing available to families with children and otherwise in compliance with the requirements and controls established pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321).” In compliance with this fifty percent (50%) minimum family housing requirement, 120 units of the Township’s 240-unit Fourth Round prospective need obligation, or fifty percent (50%), will be satisfied by affordable family rental units. These 120 affordable family rental units are comprised of 96 affordable family rental units from the Connell site and 24 affordable family rental units from a one hundred percent (100%) affordable housing project. Should the one hundred percent (100%) affordable housing project fail to secure funding and move forward within two years after the adoption of this HEFSP, then the 24 units from this project shall be constructed on the Connell site and will continue to count towards the Township’s compliance with the fifty percent (50%) minimum family housing requirement.

4. Fourth Round Age-Restricted Housing

Per N.J.S.A. 52:27D-311, “A municipality may not satisfy more than 30 percent of the affordable housing units, exclusive of any bonus credits, to address its prospective need affordable housing obligation through the creation of age-restricted housing.” In compliance with this thirty percent (30%) maximum age-restricted requirement, 60 units of the Township’s 240-unit Fourth Round Prospective Need Obligation, or twenty-five percent (25%), will be satisfied by affordable age-restricted rental housing at the Nokia Bell Labs Campus.

5. Fourth Round Very Low-Income Obligation

Per N.J.S.A. 52:27D-329.1, “Housing elements and fair share plans adopted pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) shall ensure that at least 13 percent of the housing units made available for occupancy by low-income and moderate-income households to address a municipality’s prospective need obligation will be reserved for occupancy by very low income households, as that term is defined pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304), with at least half of such units made available for families with children. The 13 percent shall count towards the minimum 50 percent of the housing units required to be made available for occupancy by low-income households to address a municipality’s prospective need obligation.” Based on the Township’s 240-unit Fourth Round prospective need obligation, the Township will provide a minimum of 32 units to very low-income households, with a minimum of 16 of said units made available for families with children. While the income distribution for the units in each development contributing to the Township’s Fourth Round prospective need has not yet been finalized, the Township will ensure that the required thirteen percent (13%) minimum very-low income threshold is met as each project is built out over the Fourth Round period. Units constructed as part of the Township’s Fourth Round Prospective Need compliance shall be subject to the revised UHAC rules effective as of December 19, 2024, and subject to final revision and adoption, which include amendments at N.J.A.C. 5:80-26.1, 26.2, 26.4 through 26.27 and at Appendices A through Q, and new rules at N.J.A.C. 5:80-26.3 and 26.28 to codify statutory requirements enacted pursuant to P.L. 2024, c.2.



6. Fourth Round Bonus Credits

Per N.J.S.A. 52:27D-311, “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 in the fourth round or any subsequent round through the use of bonus credits.” The Township will use the entirety of its bonus credit cap of 60 units (25% of the Township’s 240-unit Fourth Round prospective need obligation) as follows:

- a. **48 redevelopment bonus credits from 96 affordable family rental units proposed on the Connell site.** Per N.J.S.A. 52:27D-311, a municipality shall “receive 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.” The Connell site is a former traditional office park that is in the process of being developed into a mixed-use campus inclusive of residential, retail and entertainment areas.
- b. **12 one hundred percent (100%) affordable development bonus credits from 12 affordable family rental units proposed on a 24-unit one hundred percent (100%) affordable housing site.** Per N.J.S.A. 52:27D-311, a municipality shall “receive 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 contributes toward the costs of the project. This contribution may consist of: (a) real property donations that enable siting and construction of the project or (b) contributions from the municipal affordable housing trust fund in support of the project, if the contribution consists of no less than three percent of the project cost.”
- c. If the Township fails to contribute to the completion of a 24-unit one hundred percent (100%) affordable housing site, the Township shall apply 12 redevelopment bonus credits from the 24 units added to the Connell site as a result of the unsuccessful completion of the one hundred percent (100%) affordable housing development.
- d. The Township reserves the right to adjust the allocation of bonus credits in accordance with the FHA Amendments should any condition of this plan change.

7. Satisfaction of Fourth Round Prospective Need

The Township’s Fourth Round prospective need obligation of 240 units shall be satisfied as follows:



Table 27. Existing and Proposed Projects Addressing the Fourth Round Prospective Need Township of Berkeley Heights, Union County, NJ						
FOURTH ROUND PROSPECTIVE NEED	240					
	Completed Units	Proposed Units	L	M	VL	Total
Connell Site		96 (FR)	TBD	TBD	TBD	96(FR)
24-unit 100% Affordable Housing Site		24 (FR)	TBD	TBD	TBD	24 (FR)
Nokia Bell Labs Campus		60(ARR)	TBD	TBD	TBD	60(ARR)
TOTAL UNITS		180	TBD	TBD	TBD	180
Bonus Credits (60 maximum based on 25% of 240-unit RDP)						60 (BC)
TOTAL CREDITS AND UNITS	240					
(FR) = Family Rental (ARR) = Age-Restricted Rental (BC) = Bonus Credit						

8. Detailed Summary of Fourth Round Prospective Need Satisfaction

a. 180 units from the following developments:

- i. **96 affordable family rental units from the Connell Site (Connell Drive; Block 4102, Lot 1, Block 4301, Lots 1.02, 1.011, and 1.012).** 480 total units with a twenty percent (20%) set aside of 96 affordable family rental units.

A Draft Ordinance addressing the proposed residential requirements for the Connell site is included in the Appendix. The Township reserves the right to further edit and amend the non-residential uses, design standards and bulk regulations as red-lined in the draft ordinance.

- ii. **24 affordable family rental units from a one hundred percent (100%) Affordable Housing Site (Location TBD).** The Township intends to locate a site and developer to construct a 24-unit one hundred percent (100%) affordable housing development consisting of affordable family rental units. If the Township does not obtain the funding and secure a developer for the one hundred percent (100%) affordable housing development within a two-year period from the date of the adoption of this Housing Element and Fair Share Plan, then the corresponding 24 affordable units are to be constructed on the Connell Site as an inclusionary component. In this scenario, an additional 120 units are to be constructed on the Connell Site, which is to include 24 affordable family rental units (20% set-aside).
- iii. **60 affordable age-restricted rental units from the Nokia Bell Labs Campus (600 Mountain Avenue; Block 3701, Lot 1).** 60 age-restricted units based on a 20% set aside of 300 total units.



Development of this site will be executed in accordance with the redevelopment process as provided in the Local Housing and Redevelopment Law (N.J.S.A. 40A:12A-1). The Township will prepare and adopt a Redevelopment Study and Redevelopment Plan for the site, which will establish the permitted principal use(s), residential density, affordable housing set-aside, and relevant design and bulk standards for the site in consistency with the unit yield and development type provided in this Housing Element and Fair Share Plan. The Redevelopment Plan shall permit a maximum of 300 age-restricted dwelling units on the site with a minimum 20% inclusionary set aside.

- b. **60 bonus credits.** 60 bonus credits will be provided as detailed in Section II.B.6 above.

9. Other Mechanisms

- a. **Extension of Expiring Controls.** Berkeley Heights Township may receive credits by extending controls on affordability that are scheduled to expire during the period of repose (July 1, 2025 through June 30, 2035). The extended controls must be consistent with the applicable State and UHAC regulations. To obtain this credit, the municipality must obtain a certified statement from its building inspector stating that the affordable unit complies with all code standards. The Township of Berkeley Heights will evaluate the expiring controls of the affordable units within the Fourth Round and may use available affordable housing trust fund dollars to update and secure extension of controls of existing affordable housing units in the Fourth Round provided the units are creditworthy.
- b. **Mandatory Set Aside Ordinance.** The Township will amend its Mandatory Set Aside Ordinance (MSO) to provide that all developments will provide a 20% set aside for both rental and for-sale developments. A draft of the amended MSO is provided in the *Appendix*.

C. SITES FOR INCLUSIONARY/100% AFFORDABLE DEVELOPMENT

As required by the FHA, several proposals for inclusionary and/or one hundred percent (100%) affordable residential development have been considered during the preparation of this Housing Element and Fair Share Plan and were ultimately included in this Plan. These sites are outlined below.

Fourth Round Prospective Need Obligation

As shown in Table 27 of this Plan, the Township is seeking 180 unit credits and 60 bonus credits from three proposed developments to fulfill the Township's 240-unit Fourth Round prospective need obligation. These three projects include 96 affordable family rental units and 48 redevelopment bonus credits from the Connell Site (Connell Drive; Block 4102, Lot 1, Block 4301, Lots 1.02, 1.011, and 1.012), 24 affordable family rental units and 12 bonus credits from a one hundred percent (100%) affordable housing project, and 60 affordable age-restricted rental units from the Nokia Bell Labs Campus (600 Mountain Avenue; Block 3701, Lot 1). A location and developer for the 24-unit 100% affordable housing development has not yet been secured, therefore this project has not



been detailed under this section of the HEFSP. However, the Township reserves the right to revise this Plan to reflect any change in status of the progression of the 24-unit affordable housing project. The section below analyzes the Criteria for Compliance Through Inclusionary Development and one hundred percent (100%) Affordable Development, as well as a site suitability analysis demonstrating that the sites are available, approvable, developable, and suitable as is required by applicable COAH regulations.

1. Connell Site (Connell Drive; Block 4102, Lot 1, Block 4301, Lots 1.02, 1.011, and 1.012)

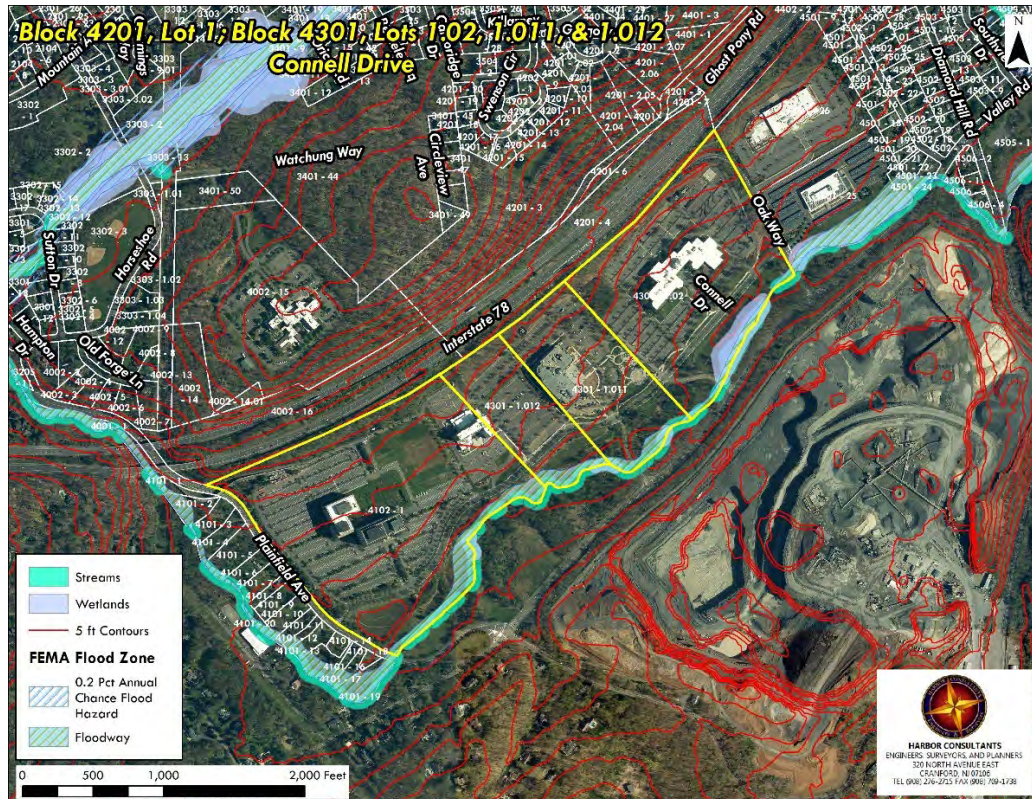


Figure A – Aerial Map of Connell Site

a. Site Description and Project History

- i. The Connell Site is a 185-acre former office park located is located at Block 4102, Lot 1, Block 4301, Lots 1.02, 1.011, and 1.012. The site is delimited by Oak Way to the east, Valley Road to the south, Plainfield Avenue to the west, and Interstate Highway Route 78 to the north. The developed portion of the site is located in the Township of Berkeley Heights north of Connell Drive, while the southern portion of the site is located in Watchung Borough and is covered by wetlands and traversed by Green Brook. The site has been occupied by four office towers, one hotel, and associated surface parking; however, construction began on site in 2023 for the District at The Park.



- ii. The Township entered a Development Agreement with the Connell Company on October 13, 2016 (see *Appendix*) and in December 2020 rezoned the Connell Site to a proposed Mixed-Use (MU) Zone (see *Appendix*). On November 2, 2022, preliminary and final site plan approval was granted by the Planning Board for a mixed-use site consisting of 328 multi-family units (inclusive of 45 affordable units), retail, and entertainment uses (see *Appendix*). Construction began on the site and is expected to open to the public in mid-2026. However, the site is subject to accommodate additional units in accordance with the density and unit counts provided in this Plan.
- iii. Site Control. The property is owned by the Connell Company.
- vi. An Administrative Mechanism. The old Development Agreement states that “Connell will provide very low, low and moderate affordable housing units, and all such units (whether created within the OR-AI Zone or Off-Site) will be developed subject to the Fair Housing Act, N.J.S.A. 52:27D-301, et seq., the Uniform Housing Affordability Controls (“UHAC”) regulations, N.J.A.C. 5:80-26.1, et seq., any other applicable affordable housing regulations.” This will ensure that all applicants for the project are properly income qualified in compliance with UHAC.
- vii. Proforma and Construction Schedule. A proforma and construction schedule will be provided as the project moves forward.

The Township will enter into an Amended Developer’s Agreement with the Connell Company and will also zone the site to accommodate the additional residential units and to ensure that the project is constructed in accordance with applicable COAH and UHAC regulations. The Township reserves the right to further edit and amend the non-residential uses, design standards and bulk regulations as red-lined in the draft ordinance.

b. Site Suitability

The project, which is proposed to be expanded from its current approval to include 480 total units with a twenty percent (20%) set aside of 96 affordable family rental units as part of the Township’s compliance with its Fourth Round Prospective Need Obligation, complies with N.J.A.C. 5:93-1.1, 5.3 and 5.6 that require all new construction sites to be available, approvable, developable, and suitable. This consistency is demonstrated as follows:

- i. There are no known encumbrances that would prohibit or otherwise effect the development of the property in general. The owner of the site approached the Township with a developer, expressing interest in being a part of the Township’s Fourth Round plan.



- ii. The site has access to appropriate streets and is adjacent to compatible land uses. The site has frontage on Interstate 78. Block 4301, Lot 1.02 has frontage on Oak Way and Block 4102, Lot 1 has frontage on Plainfield Avenue. Along rear of the site is Connell Drive. Surrounding land uses include residential homes to the north across Interstate 78, a nursing home to the northwest across the Interstate, commercial and retail use to the east, and industrial uses to the south across a natural wooded area and Green Brook.
- iii. The Township entered a Development Agreement with the Connell Company on October 13, 2016 (see *Appendix*) and in December 2020 rezoned the Connell Site to a proposed Mixed-Use (MU) Zone (see *Appendix*). On November 2, 2022, preliminary and final site plan approval was granted by the Planning Board for a mixed-use site consisting of 328 multi-family units (inclusive of 45 affordable units), retail, and entertainment uses (see *Appendix*). The Township will enter into an Amended Developer's Agreement to add additional residential units to the site, and to ensure that the project is constructed in compliance with applicable COAH and UHAC regulations.
- iv. There is adequate water infrastructure and water capacity to serve the site, as the existing office park has utility service.
- v. The site is located in a sewer service area, and there is adequate sewer infrastructure and sewer capacity to serve the site.
- vi. It is anticipated the site can be developed consistent with the Residential Site Improvement Standards and the appropriate number of parking spaces in accordance with Township standards.
- vii. The site location is consistent with the adopted State Development and Redevelopment Plan. It is located in Planning Area 1, where development is encouraged.
- viii. Per NJDEP mapping, deciduous wooded wetlands are located at the rear of the site. However, these wetlands are part of a buffer from Green Brook traversing through the rear of the site and no development is proposed on these lands.
- ix. Per FEMA floodplain mapping, there is a regulatory floodway and 1% annual chance flood zone along the rear of the property surrounding Green Brook and covering the natural wooded area. No development on site is proposed within any FEMA floodway or flood hazard area.
- x. There are no slopes greater than 15 percent on the site.
- xi. Per NJDEP mapping, the wooded natural area at the rear of the property is a critical environmental site. However, no development is proposed on this portion of the property.



- xii. Per NJDEP mapping, the site is not located within 300 feet of a currently designated Category One waterbody.
- xiii. Per NJDEP, the site is not an active property on the Known Contaminated Sites list. However, the site was reported on the Known Contaminated list on June 15, 2022 due to the Runnells Union County Landfill, but the case has since been marked as closed.
- xiv. The site is located in the MU (mixed use) zone and is surrounded by OR-B (office and research), residential housing, and OL (open land).

2. Nokia Bell Labs Campus (600 Mountain Avenue; Block 3701, Lot 1)

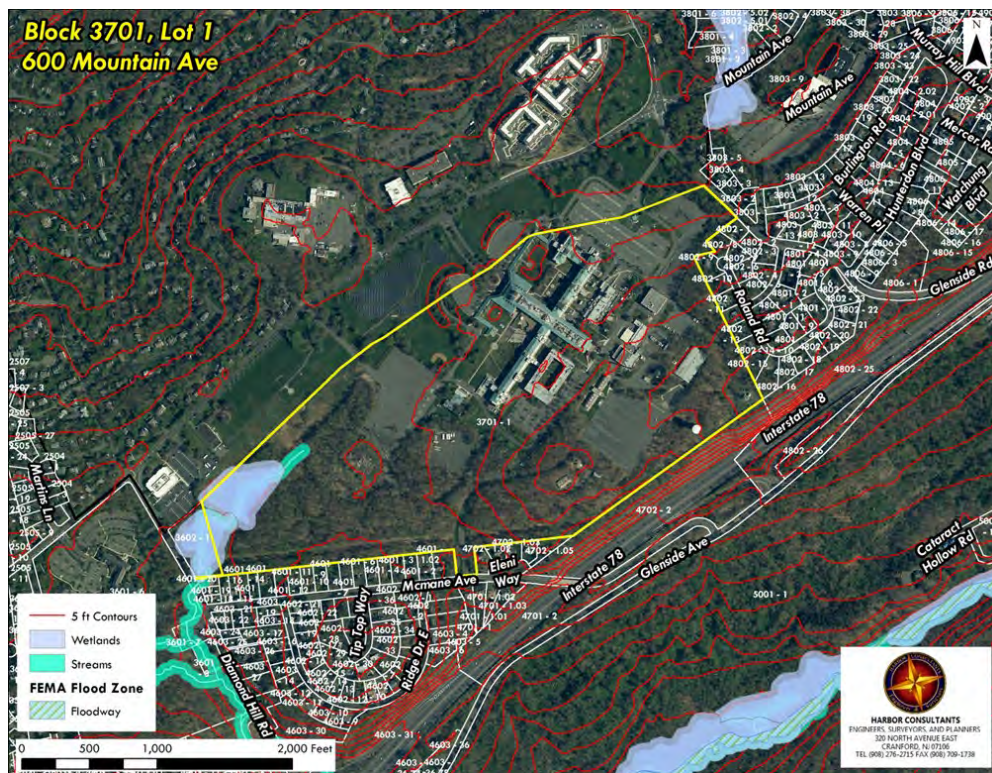


Figure B – Aerial Map of Nokia Bell Labs Campus

a. Site Description and Project History

- i. The Nokia Bell Labs Campus is an industrial research and development campus located at 600 Mountain Avenue (Block 3701, Lot 1) which has operated in the Township for almost 80 years. The campus is split between the Township of Berkeley Heights and the Borough of New Providence, with the majority of the site (approximately 153.4 acres) being located in Berkeley Heights. The site is delimited by Glenside Road to the east, Interstate 78 to the south, McMane Avenue and Diamond Hill Road to the west, and Mountain Avenue to the north. The property is improved with a



large research complex and associated parking, as well as large swaths of forested green space. In December 2023, it was announced that Nokia Bell Labs would relocate to the HELIX Innovation District in New Brunswick by 2028.

- ii. **Site Control.** The property is owned by Alcatel-Lucent USA/ Atn.Corp.Counsel.
- iii. **An Administrative Mechanism.** As the project moves forward, the Township will enter into a Redevelopers Agreement which stipulates the redeveloper of the project to establish an administrative mechanism to ensure that all applicants for the project are properly income qualified in compliance with the Uniform Housing Affordability Controls Rules.
- iv. **Proforma and Construction Schedule.** A proforma and construction schedule will be provided as the project moves forward.
- v. **The Township will prepare and adopt a Redevelopment Study and Redevelopment Plan for this site.**

b. Site Suitability

The project, which is proposed to include 300 total units with a 20% set aside of 60 affordable age-restricted rental units as part of the Township's compliance with its Fourth Round prospective need obligation, complies with N.J.A.C. 5:93-1.1, 5.3 and 5.6 that require all new construction sites to be available, approvable, developable, and suitable. This consistency is demonstrated as follows:

- i. There are no known encumbrances that would prohibit or otherwise impact the development of the property in general.
- ii. The site has access to appropriate streets and is adjacent to compatible land uses. The Berkeley Heights portion of the campus has frontage on McMane Avenue, Interstate 78, and Glenside Road, with egress/ingress via Glenside Road and McMane Avenue. Surrounding land uses include residential homes to the southeast and southwest, Watchung Reservation to the south on the other side of Interstate 78, the front yard of the campus (New Providence portion) and Lantern Hill Senior Living Community to the north along Mountain Avenue, and open space/forest to the west.
- iii. There is adequate water infrastructure and water capacity to serve the site, as the existing research facility has utility service.
- iv. The site is located in a sewer service area, and there is adequate sewer infrastructure and sewer capacity to serve the site.
- v. It is anticipated the site can be developed consistent with the Residential Site



Improvement Standards and the appropriate number of parking spaces in accordance with Township standards.

- vi. The site location is consistent with the adopted State Development and Redevelopment Plan. It is located in Planning Area 1, where development is encouraged.
- vii. Per NJDEP mapping, a small area of deciduous scrub/shrub wetlands are located at the southwestern corner site overlapping Blue Brook tributary, which occupy approximately 7 acres of land.
- viii. Per FEMA floodplain mapping, there is a 1% annual chance flood zone along the southwestern corner of the property.
- ix. There are steep slopes greater than 15 percent at the rear of the site approaching Interstate 78.
- x. Per NJDEP mapping, the site is not covered by critical habitat.
- xi. Per NJDEP mapping, the site is not located within 300 feet of a currently designated Category One waterbody.
- xii. Per NJDEP, the site is not an active property on the Known Contaminated Sites list.
- xiii. The site is located in the OR (office and research) zone, and is surrounded by office and research, open land and residential housing. There is a buffer of trees between the site and the residential homes.

D. AFFORDABLE HOUSING ORDINANCE AND AFFIRMATIVE MARKETING PLAN

The Township adopted an Affordable Housing Ordinance and Affirmative Marketing Plan applicable to all new and existing affordable housing units created within Berkeley Heights during the Third Round (see *Appendices*). The Township will update the Affordable Housing Ordinance once final new UHAC regulations have been adopted and will also amend its Affirmative Marketing Plan as necessary to reflect the projects included in the Township's compliance with its Fourth Round Prospective Need Obligation. The Township is currently contracted with a qualified affordable housing administrator, CGP&H, to act as the Administrative Agent to manage the affordability controls and the affirmative marketing plan for all affordable housing units in the Township (see *Appendix*).

E. DEVELOPMENT FEE ORDINANCE AND SPENDING PLAN

As part of the Third Round, the Township-prepared an Affordable Housing Development Fee Ordinance, which was adopted by the Township Council on November 6, 2017 (see *Appendix*). The Township will revise the Development Fee Ordinance if necessary to comply with statutory changes



in the Fourth Round.

The Township has prepared and adopted a Spending Plan for the Fourth Round period (See Appendix). The Spending Plan outlines the anticipated collection and distribution of mandatory development fees and in lieu contributions and the Township's proposals for spending the money that comes into the Affordable Housing Trust Fund. The Township understands that no funds may be expended without the Court's approval of the Spending Plan. The Township's Administrative Agent prepared an Affordability Assistance Manual as part of the Third Round, which is attached hereto as part of *the Appendix*, and will update the Affordability Assistance Manual as necessary to reflect the adopted Spending Plan and Fourth Round projects.

F. CONCLUSION

In summary, the following map and table provide a visual depiction of all affordable mechanisms that exist or are proposed within the Township of Berkeley Heights.



Table H: Summary of Berkeley Heights's Fourth Round Affordable Housing Plan Township of Berkeley Heights, Union County, NJ		
Obligation	#	Summary of Affordable Housing Strategies
Fourth Round	240	<i>Per Court Order dated April 14, 2025.</i>
	240	<p>TOTAL BONUS CREDITS: 60 TOTAL NEW UNITS: 180</p> <p>Proposed New Units:</p> <ul style="list-style-type: none"> • 24-unit 100% Affordable Housing Site <ul style="list-style-type: none"> ○ <u>24</u> affordable family rental units • Connell Site (Connell Drive; Block 4102, Lot 1, Block 4301, Lots 1.02, 1.011, and 1.012) <ul style="list-style-type: none"> ○ <u>96</u> affordable family rental units • Nokia Bell Labs Campus (600 Mountain Avenue; Block 3701, Lot 1) <ul style="list-style-type: none"> ○ <u>60</u> affordable age-restricted rental units



Township of Berkeley Heights – Fourth Round Housing Element and Fair Share Housing Plan

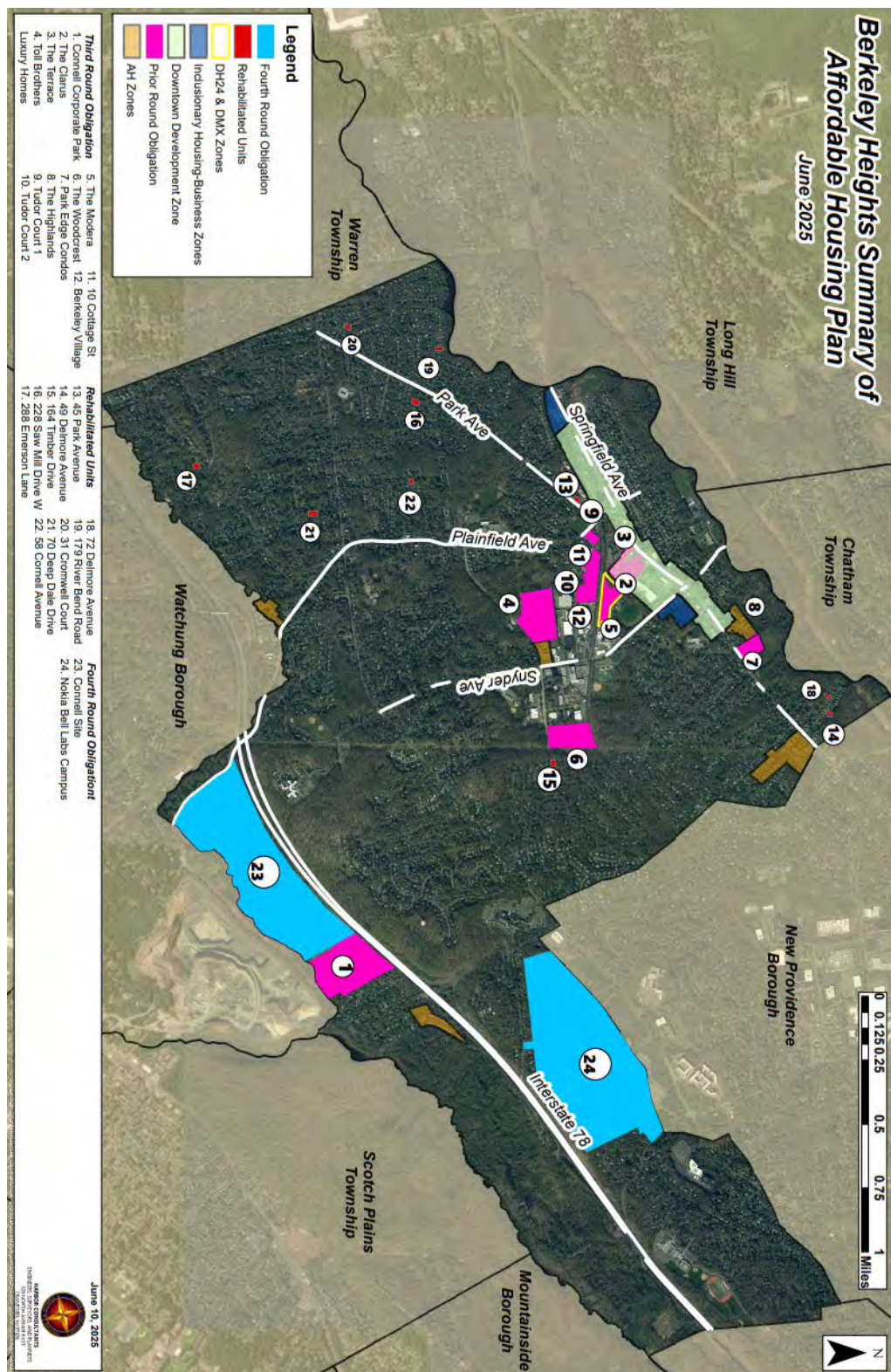


Figure C – Map of All Affordability Mechanisms in the Township of Berkeley Heights



APPENDICES

APPENDIX A

No. 2025- 72

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

**RESOLUTION OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF
BERKELEY HEIGHTS COMMITTING TO FOURTH ROUND PRESENT
AND PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATIONS**

WHEREAS, the Township of Berkeley Heights (hereinafter the “Township” or “Berkeley Heights”) has a demonstrated history of voluntary compliance as evidenced by its Third Round record; and

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), on July 2, 2015, the Township of Berkeley Heights filed a Declaratory Judgment Complaint in Superior Court, Law Division seeking, among other things, a judicial declaration that its Third Round Housing Element and Fair Share Plan, to be amended as necessary, satisfies its “fair share” of the regional need for low and moderate income housing pursuant to the “Mount Laurel doctrine,” and

WHEREAS, that culminated in a Court-approved Third Round Housing Element and Fair Share Plan and a Final Judgment of Compliance and Repose, which precludes all Mount Laurel lawsuits, including builder’s remedy lawsuits until July 1, 2025; and

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2, which amended the 1985 New Jersey Fair Housing Act (hereinafter the “Amended FHA”); and

WHEREAS, the Amended FHA required the Department of Community Affairs (“DCA”) to provide an estimate of the Fourth Round affordable housing obligations for all municipalities on or before October 20, 2024, based upon the criteria described in the Amended FHA; and

WHEREAS, the DCA issued a report on October 18, 2024 (“DCA Report”) wherein it reported its estimate of the Fourth Round affordable housing obligations for all municipalities based upon its interpretation of the standards in the Amended FHA; and

WHEREAS, the DCA Report calculates the Township’s Fourth Round (2025-2035) obligations as follows: a Present Need (Rehabilitation) Obligation of Zero (0) and a Prospective Need (New Construction) Obligation of 275; and

WHEREAS, the Amended FHA further provides that, irrespective of the DCA’s calculations, municipalities have the ability to either accept, or provide alternate calculations for, the DCA’s “present and prospective fair share obligation(s)...by binding resolution no later than January 31, 2025”, a deadline which was later extended to February 3, 2025 by the Administrative Office of the Courts (“AOC”) via a directive issued on December 19, 2024; and

WHEREAS, the Township accepts the DCA's Fourth Round Present Need (Rehabilitation) calculation of Zero (0), but does not accept the DCA's calculation of the Township's Income Capacity Factor or the Land Capacity Allocation Factor, which are two factors that are part of the DCA's calculation of the Township's Fourth Round Prospective Need (New Construction) calculation of 275; and

WHEREAS, as to the Land Capacity Allocation Factor, the Township notes that the DCA belatedly provided the data it used to establish this factor, i.e., on or about November 25, 2024, instead of by October 20, 2024; and

WHEREAS, the Township further notes that the link to the DCA GIS data that the DCA belatedly made available to municipalities includes the following language: "The land areas identified in this dataset are based on ... 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."; and

WHEREAS, the Township maintains that the Income Capacity Allocation factor has to be adjusted and that the areas the DCA identified as developable are indeed overinclusive and, consequently, the Township's Affordable Housing Planner, has prepared an expert report, attached hereto as **Exhibit A**; and

WHEREAS, correcting the Income Capacity Factor and Land Capacity Allocation Factor results in the reduction of Berkeley Heights Township's Fourth Round Prospective Need (New Construction) Obligation from 275 to 208; and

WHEREAS, Section 3 of the Amended FHA provides that: "the municipality's determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7" of the Amended FHA; and

WHEREAS, the Township's acceptance of the Fourth Round obligations calculated by the DCA are entitled to a "presumption of validity" because it complies with Sections 6 and 7 of the Amended FHA; and

WHEREAS, in addition to the foregoing, the Township specifically reserves the right to adjust its fair share obligations in accordance with applicable Council on Affordable Housing ("COAH") regulations or other applicable law based on one or more of the foregoing adjustments if applicable: 1) a windshield survey or similar survey which accounts for a higher-resolution estimate of present need; 2) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 3) a Durational Adjustment, whether predicated upon lack of sewer or lack of water; and/or 4) an adjustment predicated upon regional planning entity formulas, inputs or considerations, including but not limited to, the Highlands Council Regional Master Plan and its build out, or the Pinelands Commission or Meadowlands Commission regulations and planning document; and

WHEREAS, in addition to the foregoing, the Township specifically reserves all rights to revoke or amend this resolution and commitment, as may be necessary, in the event of a successful challenge to the Amended FHA in the context of the case The Borough of Montvale v. the State of New Jersey (MER-L-1778-24), any other such action challenging the Amended FHA, or any legislation adopted and signed into law by the Governor of New Jersey that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in addition to the foregoing, the Township reserves the right to take a position that its Fourth Round Present or Prospective Need Obligations are lower than described herein in the event that a third party challenges the calculations provided for in this Resolution (a reservation of all litigation rights and positions, without prejudice); and

WHEREAS, in addition to the foregoing, nothing in the Amended FHA requires or can require an increase in the Township's Fourth Round Present or Prospective Need Obligations based on a successful downward challenge of any other municipality in the region since the plain language and clear intent of the Amended FHA is to establish unchallenged numbers by default on March 1, 2025; and

WHEREAS, in addition to the foregoing, the Acting Administrative Director of the AOC issued Directive #14-24 on December 19, 2024; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking a Fourth Round Compliance Certification from the entity created by the Amended FHA known as the Affordable Housing Dispute Resolution Program (hereinafter "the Program"), shall file an action in the appropriate venue with the Program, in the form of a Declaratory Judgment Complaint within 48 hours after adoption of the municipal resolution accepting or challenging its Fourth Round fair share obligations, or by February 3, 2025, whichever is sooner; and

WHEREAS, nothing in this Resolution shall be interpreted as an acknowledgment of the legal validity of AOC Directive #14-24 and the Township reserves any and all rights and remedies in relation to the AOC Directive; and

WHEREAS, the Township seeks a Compliance Certification from the Program and, therefore, wishes to file a Declaratory Judgment Complaint in the appropriate venue with the Program, along with a copy of this Resolution, within 48 hours of the adoption of this Resolution; and

WHEREAS, in light of the above, the Mayor and Township Council finds that it is in the best interest of the Township to declare its obligations in accordance with this Resolution; and

NOW, THEREFORE, BE IT RESOLVED on this 21st day of January of 2025, by the Township Council of the Township of Berkeley Heights, Union County, State of New Jersey, as follows:

1. All of the Whereas Clauses are incorporated into the operative clauses of this Resolution as if set forth in full.

2. For the reasons set forth in this Resolution, the Mayor and Township Council hereby commit to the DCA Fourth Round Present Need (Rehabilitation) Obligation of Zero (0) and the Fourth Round Prospective Need (New Construction) Obligation of 208 as described in this Resolution, subject to all reservations of rights, which specifically include, without limitation, the following:

- a) The right to adjust the Township's fair share obligations based on a windshield survey or similar survey, a Vacant Land Adjustment, a Durational Adjustment, and all other applicable adjustments, permitted in accordance with applicable COAH regulations or other applicable law; and
- b) The right to revoke or amend this Resolution in the event of a successful legal challenge, or legislative change, to the Amended FHA; and
- c) The right to take any contrary position, or adjust its fair share obligations, in the event of a third party challenge to the Township's fair share obligations.

3. Pursuant to the requirements of the FHA as amended, and the Administrator of the Court's (AOC) Directive #14-24 issued on December 19, 2024, the Township Council hereby directs its Affordable Housing Counsel to file a Declaratory Judgment Complaint, along with this Resolution, a Case Information Statement (Civil CIS), and supporting expert report, in the appropriate venue with the Program or any other such entity as may be determined to be appropriate, to initiate an action within 48 hours of the adoption of this Resolution, so that the Township's Fourth Round Housing Element and Fair Share Plan can be reviewed and approved.

4. This resolution shall take effect immediately, according to law.

CERTIFICATION

I certify that the foregoing Resolution was duly adopted by the Council of the Township of Berkeley Heights at a regular meeting held on the 21st day of January 2025, a quorum being present and voting in the majority.


Angela Lazzari, Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
COUTO	✓			
FOSTER	✓			
ILLIS	✓			
MACHADO	✓			
MORAN	✓			
POAGE	✓			
TIE:				
MAYOR DEVANNEY				

CERTIFIED TRUE COPY:

Angela Lazzari
Angela Lazzari, RMC, CMR, Township Clerk

In testimony whereof, I have hereunto set my hand and caused the seal of the Township of Berkeley Heights to be affixed.



Date: January 17, 2025

To: Erik Nolan, Esq., Township Affordable Housing Attorney

From: Michael Mistretta, PP, LLA, Harbor Consultants, Inc.
Wyatt Grant, Harbor Consultants, Inc.

**Re: Fourth Round (2025-2035) Affordable Housing Obligation Calculation
Township of Berkeley Heights, New Jersey**

This memo has been prepared to outline the municipal requirements for the Township of Berkeley Heights to establish its Fourth Round (July, 2025 – July, 2035) present and prospective fair share obligation as mandated by the A4/S50 legislation, as well as detail the process and calculations used to determine the Township's Fourth Round present need obligation and prospective need obligation, which are to be adopted by binding resolution prior to January 31, 2025.

Background

On March 20, 2024, Governor Murphy signed into law affordable housing bill A4/S50, which established new guidelines for determining and regulating the affordable housing obligations of New Jersey municipalities for the fourth 10-year-round (July, 2025 – July, 2035). Per A4/S50, before a municipality establishes its Fourth Round present and prospective fair share obligation, "the [Department of Community Affairs] shall prepare and submit a report to the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14- 19.1), to the Legislature providing a report on the calculations of regional need and municipal obligations for each region of the State within the earlier of seven months following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.) or December 1, 2024" (N.J. Stat. § 52:27D-304.1). Then, "with consideration of the calculations contained in the relevant report published by the department... for each 10-year round of affordable housing obligations beginning with the fourth round, a municipality shall determine its present and prospective fair share obligation for affordable housing in accordance with the formulas established in sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) by resolution, which shall describe the basis for the municipality's determination and bind the municipality to adopt a housing element and fair share plan" (N.J. Stat. § 52:27D-304.1). For the Fourth Round, the municipal "determination of present and prospective fair share obligation shall be made by binding resolution no later than January 31, 2025" (N.J. Stat. § 52:27D-304.1).

In compliance with the aforementioned requirements, the Department of Community Affairs (DCA) released a report on October 18, 2024, titled "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background," inclusive of a calculation spreadsheet, which detailed the datasets and calculations used to generate the non-binding affordable housing obligation for each municipality within New Jersey for the Fourth Round. This report was amended several days later to include revised language on the methodology for the land capacity factor calculation. Per this report, the Township's Fourth Round present need was calculated as 0 and the Township's Fourth Round prospective need was calculated as 275.

The Township has reviewed the DCA report and methodology established in A4/S50, which serve as the basis for the Township's evaluation and determination of its Fourth Round present and prospective fair share obligation. The ensuing sections of this memo provide an analysis of the process used to calculate the Township's Fourth Round present and prospective fair share obligation.

Present Need

Per A4/S50, "A municipality's present need obligation shall be determined by estimating the existing deficient housing units currently occupied by low- and moderate-income households within the municipality, following a methodology comparable to the methodology used to determine third round present need, through the use of datasets made available through the federal decennial census and the American Community Survey, including the Comprehensive Housing Affordability Strategy dataset thereof" (N.J. Stat. § 52:27D-304.2). A4/S50 further defines "deficient housing units" as "housing that: (1) is over fifty years old and overcrowded; (2) lacks complete plumbing; or (3) lacks complete kitchen facilities" (N.J. Stat. § 52:27D-304).

In the Third Round, municipal present need calculations were based on the number of housing units lacking complete kitchen facilities, the number of units lacking complete plumbing facilities, and the number of overcrowded units. The present need calculations for the Fourth Round conducted by the DCA similarly use datasets measuring these three factors, but as explained in their report, "The US Department of Housing and Urban Development (HUD) and the US Census Bureau publish separate tables on housing age, lack of plumbing facilities, lack of kitchen facilities, and overcrowding. However, there is no data source that reports the number of units that meet any one of those three conditions. Therefore, this number must be estimated using data from existing tables, with measures taken to account for overlap and to narrow the scope to deficient housing units occupied by low- and moderate-income [(LMI)] households." The DCA therefore used a combination of the latest data from HUD's Comprehensive Housing Affordability Strategy (CHAS) LMI dataset corresponding to the latest Census Bureau American Community Survey (ACS) data (which was 2017-2021 5 Year Estimates at the time of the report's release), data from the IPUMS Center for Data Integration, and the ACS Public Data Microdata Sample (PUMS) at the Public Use Microdata Area (PUMA) level to estimate the number of substandard/deficient low- and moderate-income occupied units ("present need") for each municipality in New Jersey.

Per the methodology outlined above and described in further detail in the DCA report, the Fourth Round present need obligation for the Township of Berkeley Heights is calculated as 0. The Township has reviewed the datasets and methodology used to calculate the Township's Fourth Round present need as published in the DCA report and spreadsheet, and the Township concurs with the report's Fourth Round present need calculation of 0 for the Township of Berkeley Heights.

Prospective Need

As described in A4/S50 and summarized in the DCA report, a municipality's Fourth Round prospective need obligation is calculated by multiplying its average allocation factor to the total prospective need of its corresponding Housing Region.

The average allocation factor is the average of three measures indicative of a municipality's capacity/potential to address the regional prospective need (equalized nonresidential valuation

factor, income capacity factor, and land capacity factor), which are further explained in the subsections below.

The Fourth Round prospective need for each Housing Region is determined by calculating the change in the number of households within each Housing Region between the 2010 Census and 2020 Census. Per A4/S50, "this household change, if positive, shall be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and to determine the regional prospective need for a 10-year round of low- and moderate-income housing obligations. If household change is zero or negative, the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and the regional prospective need shall be zero" (N.J. Stat. § 52:27D-304.2).

The Township of Berkeley Heights is in Housing Region 2, which consists of Essex County, Morris County, Union County, and Warren County. Per the DCA report, the regional prospective need for Housing Region 2 is calculated as 20,506, and the Township's average allocation factor is calculated as 1.34%. The regional need of 20,506 multiplied by the Township's average allocation factor of 1.34% therefore results in a non-binding Fourth Round prospective need obligation calculation of 275.

The Township has evaluated the accuracy of the methodology and datasets used to calculate each of the three measures (equalized nonresidential valuation factor, income capacity factor, and land capacity factor) used to compute the average allocation factor and resulting Fourth Round prospective need, and based on this analysis, has arrived at a reduced Fourth Round prospective need obligation calculation of 208. The process for the Township's adjustment to the Fourth Round prospective need obligation published in the DCA report is detailed in the subsections below.

Equalized Nonresidential Valuation Factor

The equalized nonresidential valuation factor is one of the three components of the average allocation factor for each municipality. The equalized nonresidential valuation factor is representative of a municipality's share of the change in nonresidential property value within its Housing Region.

Per A4/S50, "the changes in nonresidential property valuations in the municipality, since the beginning of the round preceding the round being calculated, shall be calculated using data published by the Division of Local Government Services in the department. For the purposes of this paragraph, the beginning of the round of affordable housing obligations preceding the fourth round shall be the beginning of the gap period in 1999. The change in the municipality's nonresidential valuations shall be divided by the regional total change in nonresidential valuations to determine the municipality's share of the regional change as the equalized nonresidential valuation factor" (N.J. Stat. § 52:27D-304.3).

Following this methodology and as described in the DCA report, the equalized nonresidential factor for each municipality is calculated as follows:

1. The valuations of commercial properties and industrial properties in each municipality in 2023, per data from the NJ Division of Local Government Services, is summed and then

divided by the 2023 State Equalization Table Average Ratio corresponding with the municipality to obtain a total equalized nonresidential valuation for 2023.

2. The valuations of commercial properties and industrial properties in each municipality in 1999, per data from the NJ Division of Local Government Services, is summed and then divided by the 1999 State Equalization Table Average Ratio corresponding with the municipality to obtain a total equalized nonresidential valuation for 1999.
3. The difference in total equalized nonresidential valuation from 1999-2023 is calculated for each municipality.
4. The difference in total nonresidential valuation from 1999-2023 is summed for all municipalities (excluding Qualified Urban Aid municipalities) within each Housing Region.
5. The difference in total nonresidential valuation from 1999-2023 for each municipality is divided by the sum of differences in total nonresidential valuation from 1999-2023 for its corresponding Housing Region to compute the municipality's share of the regional nonresidential valuation change from 1999-2023.

Following this methodology, the Township of Berkeley Heights' equalized nonresidential valuation factor of 1.10% is calculated as follows:

1. **\$362,843,000 (2023 commercial valuation) + \$33,776,700 (2023 industrial valuation) = \$396,619,700 (2023 total nonresidential valuation). \$396,619,700 (2023 total nonresidential valuation) / 0.4615 (2023 State Equalization Table Average Ratio) = \$859,414,301 (2023 total equalized nonresidential valuation).**
2. **\$257,140,800 (1999 commercial valuation) + \$320,030,400 (1999 industrial valuation) = \$577,171,200 (1999 total nonresidential valuation). \$577,171,200 (1999 total nonresidential valuation) / 1.0028 (1999 State Equalization Table Average Ratio) = \$575,559,633 (1999 total equalized nonresidential valuation).**
3. **\$859,414,301 (2023 total equalized nonresidential valuation) - \$575,559,633 (1999 total equalized nonresidential valuation) = \$283,854,668 (difference in total equalized nonresidential valuation from 1999-2023).**
4. **Housing Region 2 sum of differences in total equalized nonresidential valuation from 1999-2023, excluding Qualified Urban Aid municipalities = \$25,808,891,055.**
5. **\$283,854,668 (difference in total equalized nonresidential valuation from 1999-2023) / \$25,808,891,055 (Housing Region 2 sum of differences in total equalized nonresidential valuation from 1999-2023, excluding Qualified Urban Aid municipalities) = 0.0110 or 1.10%**

The Township has reviewed the datasets and methodology used to calculate the Township's Fourth Round equalized nonresidential valuation factor as published in the DCA report and spreadsheet (see above), and the Township concurs with the report's Fourth Round equalized nonresidential valuation factor calculation of 1.10% for the Township of Berkeley Heights.

Income Capacity Factor

The second component of the average allocation factor for each municipality is the income capacity factor. The income capacity factor measures the degree to which a municipality's median household income differs from an income floor of \$100 below the lowest median household income in its Housing Region.

Per A4/S50, a municipality's income capacity factor shall be "determined by calculating the average of the following measures:

- (a) The municipal share of the regional sum of the differences between the median municipal household income, according to the most recent American Community Survey Five-Year Estimates, and an income floor of \$100 below the lowest median household income in the region; and
- (b) The municipal share of the regional sum of the differences between the median municipal household incomes and an income floor of \$100 below the lowest median household income in the region, weighted by the number of the households in the municipality" (N.J. Stat. § 52:27D-304.3).

At the time of the release of the DCA report on October 18, 2024, the most recent American Community Survey Five-Year Estimates data for median household income and number of households were found in Table S1903 of the Census Bureau's American Community Survey 2018-22 5-Year Estimates.

Using the American Community Survey 2018-22 5-Year Estimates data, and following the methodology in A4/S50 outlined above, the Township of Berkeley Heights' income capacity factor of 1.76% was calculated in the DCA report as follows:

1. **\$196,389** (Median household income in the past 12 months in Berkeley Heights per 2022 ACS) - **\$46,360** (\$100 below the lowest median household income in Housing Region 2 of \$46,460 belonging to the City of Newark) = **\$150,029** (Municipal difference in median household income from Housing Region 2 income floor). **\$150,029** (Municipal difference in median household income from Housing Region 2 income floor) / **\$8,307,878** (Housing Region 2 sum of differences from income floor, excluding Qualified Urban Aid municipalities) = **0.0181 or 1.81%** (Berkeley Heights' share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities).
2. **\$150,029** (Municipal difference in median household income from Housing Region 2 income floor) \times **4,486** (Number of households in Berkeley Heights) = **\$673,030,094** (Municipal difference in median household income from Housing Region 2 income floor, excluding Qualified Urban Aid municipalities, weighted by households). **\$673,030,094** (Municipal difference in median household income from Housing Region 2 income floor, excluding Qualified Urban Aid municipalities, weighted by households) / **\$39,453,600,987** (Housing Region 2 sum of differences from income floor, excluding Qualified Urban Aid municipalities, weighted by households) = **0.0171 or 1.71%** (Berkeley Heights' share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities, weighted by households).
3. **Average of 1.81%** (Berkeley Heights' share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities) **and 1.71%** (Berkeley Heights' share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities, weighted by households) = **0.0176 or 1.76%**

While the Township agrees with the Township's income capacity factor calculation of 1.76% at the time of the DCA report, A4/S50 states that the income capacity factor shall be calculated

“according to the most recent American Community Survey Five-Year Estimates.” On December 12, 2024, the United States Census Bureau released American Community Survey 2019-23 5-Year Estimates data. The Township therefore seeks to adjust its income capacity factor calculation based on the American Community Survey 2019-23 5-Year Estimates data for the municipalities in Housing Region 2, which can be found in Table S1903. The adjusted calculation of the Township’s income capacity factor using the American Community Survey 2019-23 5-Year Estimates data is detailed below:

1. **\$198,750** (Median household income in the past 12 months in Berkeley Heights per 2023 ACS) - **\$48,316** (\$100 below the lowest median household income in Housing Region 2 of \$48,416 belonging to the City of Newark) = **\$150,434** (Municipal difference in median household income from Housing Region 2 income floor). **\$150,434** (Municipal difference in median household income from Housing Region 2 income floor) / **\$8,646,298** (Housing Region 2 sum of differences from income floor, excluding Qualified Urban Aid municipalities) = **0.0174 or 1.74%** (Berkeley Heights’ share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities).
2. **\$150,434** (Municipal difference in median household income from Housing Region 2 income floor) x **4,660** (Number of households in Berkeley Heights) = **\$701,022,440** (Municipal difference in median household income from Housing Region 2 income floor, excluding Qualified Urban Aid municipalities, weighted by households). **\$701,022,440** (Municipal difference in median household income from Housing Region 2 income floor, excluding Qualified Urban Aid municipalities, weighted by households) / **\$41,118,073,874** (Housing Region 2 sum of differences from income floor, excluding Qualified Urban Aid municipalities, weighted by households) = **0.0170 or 1.70%** (Berkeley Heights’ share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities, weighted by households).
3. **Average of 1.74%** (Berkeley Heights’ share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities) **and 1.70%** (Berkeley Heights’ share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities, weighted by households) = **0.0172 or 1.72%**

Based on the re-calculation of the Township’s income capacity factor based on the most recent American Community Survey Five-Year Estimates, the Township derives an income capacity factor calculation of 1.72% rather than 1.76% as calculated in the DCA report.

Land Capacity Factor

The third component of the average allocation factor for each municipality is the land capacity factor. The land capacity factor indicates the percentage share of total “developable” land in a Housing Region accounted for by each municipality within that Region, excluding land area corresponding to Qualified Urban Aid municipalities.

A4/S50 states that the land capacity factor “shall be determined by estimating the area of developable land in the municipality’s boundaries, and regional boundaries, that may accommodate development through the use of the ‘land use / land cover data’ most recently published by the Department of Environmental Protection, data from the American Community Survey and Comprehensive Housing Affordability Strategy dataset thereof, MOD-IV Property

Tax List data from the Division of Taxation in the Department of the Treasury, and construction permit data from the Department of Community Affairs and weighing such land based on the planning area type in which such land is located. After the weighing factors are applied, the sum of the total developable land area that may accommodate development in the municipality and in the region shall be determined. The municipality's share of its region's developable land shall be its land capacity factor" (N.J. Stat. § 52:27D-304.3).

Following this methodology, the DCA conducted a GIS analysis to identify the "developable" land within the state using several publicly-available datasets, including but not limited to 2020 land use/land cover (LULC) data, New Jersey State Plan Planning Areas weighted by area type, statewide parcel data, open space and preserved farmland, category 1 waterways and wetlands, steep slopes, and open waters.

The steps below provide a summary of the analysis conducted by DCA to identify the "developable" land in the state and calculate each municipality's land capacity factor, which is further expanded upon in the their report.

1. Weights were applied to all New Jersey State Plan Planning Areas as specified in A4/S50.
2. The layer of weighted Planning Areas was merged with land use/land cover (LULC) data for the entire state sourced from 2020 aerial imagery. 18 different types of LULC, such as cropland and pastureland, deciduous forest, and coniferous forest, were identified and extracted as "vacant, developable land" from this merged dataset.
3. Of these areas identified as "developable" from the merged dataset, areas without underlying parcel data and areas with MOD-IV Property Tax data with property class codes for residential, commercial, industrial, apartment, railroad, and school uses were removed to prevent rights-of-way, tree-covered rear yards on residential properties and buffer areas on non-residential development from being included in the "developable" land calculation.
4. Municipally-reported construction permit data was used to remove properties otherwise identified as vacant through the LULC analysis.
5. Areas mapped as open space, preserved farmland, category 1 waterways and wetlands (and associated buffers based on special resource area restrictions) were removed from the "developable" land dataset.
6. Using 10 foot digital elevation LiDAR data, steep slope areas exceeding 15% and steep slope areas consisting of 5,000 square feet or less were removed from the "developable" land dataset.
7. DCA reviewed an unspecified 22,000 vacant parcels to further remove homeowner association common areas, detention basins, and road and utility rights of way.
8. After the removal of all the aforementioned layers from the "developable" land dataset, remaining "slivers" of land with an area of 2,500 square feet or less were also removed due to their inability to support development.
9. The remaining land was identified as "developable" land and was summed based on the limits of each Housing Region and its corresponding municipalities.
10. The municipality's percentage of total identified "developable" land within its Housing Region constitutes its land capacity factor.

Through this analysis, the DCA reported 62.434 acres of “developable” land in the Township of Berkeley Heights and 5,358.483 acres of “developable” land in Housing Region 2, therefore computing a land capacity factor of 1.17% for the Township.

On November 27, 2024, the DCA released the output geospatial data (titled “Land Capacity Analysis for P.L. 2024, c.2”) generated from the GIS analysis used to compute the land capacity factor as described in the October 18, 2024 report. However, the DCA indicates in the description of this dataset that, “The land areas identified in this dataset are based on 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 Township has therefore reviewed and mapped this dataset to evaluate the accuracy of the 62.434 acres of “developable” land identified in the Township used to calculate the Township’s land capacity factor of 1.17% in the DCA report. Under further analysis, the Township finds that several areas identified as “developable” in the Township by the DCA’s geoprocessing model are in fact not “developable.”

As part of this analysis, the Township has prepared the following:

1. A map of the “developable” lands within the Township as identified in the DCA report (see Exhibit A).
2. A redlined spreadsheet of the “developable” lands within the Township as identified in the DCA report (see Exhibit B), which was prepared by merging the “vacant and developable” land spatial data features in the “Land Capacity Analysis for P.L. 2024, c.2” dataset released by the DCA with current parcel MOD-IV data for the Township as provided by the Union County Board of Taxation. The spreadsheet details the “developable” land areas to be removed from the land capacity factor calculation, which are outlined in red, as well as a description of the reason for removal.

Based on this analysis, the Township finds that +/- 50.343 acres of the 62.434 acres of “developable” land identified in the DCA report are to be removed from the land capacity factor calculation, resulting in a recalculation of the land capacity factor based on +/- 12.091 total acres of “developable” land within the Township. The adjustment to the “developable” land within the Township consequently reduces the total “developable” land within Housing Region 2 from 5,358.483 acres to 5,308.141 acres.

The land capacity factor is therefore re-calculated as follows:

12.091 acres of “developable” land in the Township of Berkeley Heights / 5,308.141 acres of “developable” land in Housing Region 2 = 0.0023 or 0.23%.

Summary

Based on the adjustments to the income capacity factor and land capacity factor as described above, the Township’s average allocation factor is reduced from 1.340% to 1.017%, which when

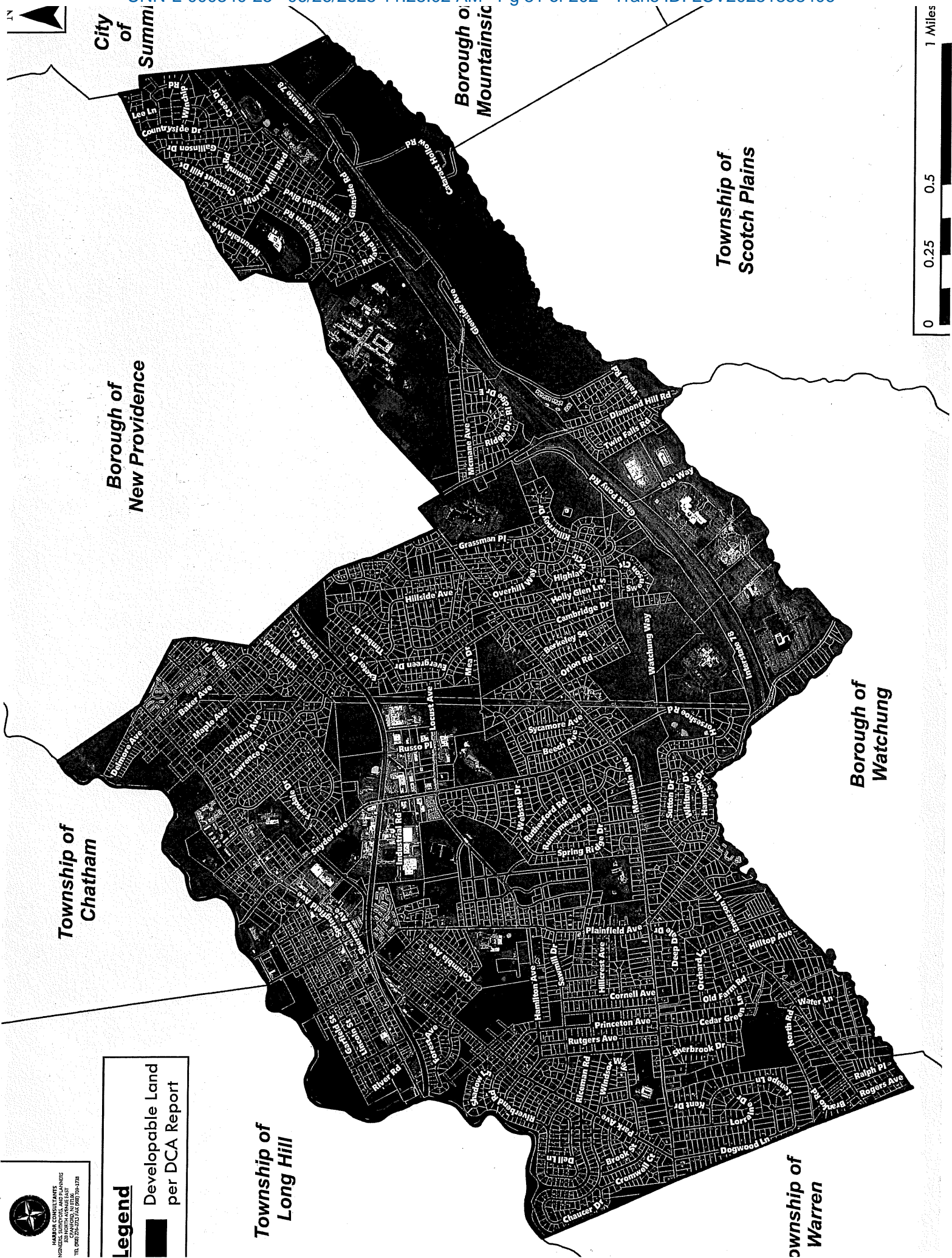
applied to the regional perspective need of 20,506 for Housing Region 2, lowers the Township's prospective need obligation from 275 to 208.

The table below summarizes the Township's Fourth Round present need obligation and prospective need obligation compared to the Township's Fourth Round obligations as calculated in the DCA report. Cells shaded red indicate an adjustment to a calculation provided in the DCA report.

BERKELEY HEIGHTS FOURTH ROUND OBLIGATION SUMMARY TABLE							
PRESENT NEED OBLIGATION							
DCA Calculation	Township Calculation						
0	0 (Township accepts DCA calculation)						
PROSPECTIVE NEED OBLIGATION							
DCA Calculation							
Equalized Nonresidential Valuation Factor	Income Capacity Factor	Land Capacity Factor			Average Allocation Factor	Regional Perspective Need	Berkeley Heights Prospective Need Obligation
		Housing Region 2 "Developable" Land (acres)	Township "Developable" Land (acres)	Land Capacity Factor Calculation			
1.10%	1.76%	5,358.483	62.434	1.17%	1.340%	20,506	275
Township Calculation							
Equalized Nonresidential Valuation Factor	Income Capacity Factor	Land Capacity Factor			Average Allocation Factor	Regional Perspective Need	Berkeley Heights Prospective Need Obligation
		Housing Region 2 "Developable" Land (acres)	Township "Developable" Land (acres)	Land Capacity Factor Calculation			
1.10 % (Township accepts DCA calculation)	1.72 %	5,308.141	12.091	0.23%	1.017%	20,506 (Township accepts DCA calculation)	208

EXHIBIT A

“Map of the ‘Developable’ Lands within the Township of Berkeley Heights per the DCA Report”



Legend

Developable Land
per DCA Report



Township of
Long Hill

Township of
Warren

Borough of
Watchung

Borough of
New Providence

City of
Summit

Borough of
Mountainic

Township of
Scotch Plains

Township of
Chatham



NEW JERSEY
OFFICE OF PLANNING
AND ECONOMIC DEVELOPMENT
300 NORTH AVENUE EAST
TELEPHONE 201-261-5700 FAX 201-261-5701

EXHIBIT B

“Redlined Spreadsheet of the ‘Developable’ Lands within the Township of Berkeley Heights per the DCA Report”

BLOCK	LOT	ADDITIONAL LOTS	QUALIFIER CODE	PROPERTY CLASS	ZONE	ADDRESS	OWNER NAME	OWNER ADDRESS	CITY, STATE	OWNER ADDRESS ZIP CODE	FACILITY NAME	BUILDING DESCRIPTION (MOD-IV)	LAND DESCRIPTION (MOD-IV)	CALCULATED AREA - AC (MOD IV)	PARCEL AREA - SF (STATE PLANE PROJ.)	PARCEL AREA - AC (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - SF (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - AC (STATE PLANE PROJ.)	COMMENTS
208	39			15C	OL	31 SNYDER AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	Single Family Residence	1SF	1.405 AC	1.40500	61,221,24793	1.40545	153,72556	0.00357	155.73 SF of developable land area sliver / Single Family Residence
208	40			15C	OL	21 SNYDER AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVE	BERKELEY HEIGHTS, NJ	07922	Sewerage Treatment Plant		9.800 AC	9.80000	376,331.88269	8.64923	36,331.78983	0.83407	Sewerage Treatment Plant / OCP flood constraints
301	18			1	R-15	KUNTZ AVE	K4K LLC	16192 COASTAL HIGHWAY	LEWES, DE	19558			.661 AC	0.66100	27,475.31046	0.63075	7,222.98488	0.16582	
401	62	NPROV 810 L1		1	R-15	1823 SPRINGFIELD AVE	ZECCALANDREA & S HOGAN, A J NTS	1823 SPRINGFIELD AVE	NEW PROVIDENCE, NJ	07974			.291 AC	0.29100	14,343.02928	0.32927	3,253.43889	0.07469	
504	5			15C	OL	CHRISTOPHER STREET	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922			1.300 AC	1.30000	55,543.25293	1.27510	35,555.81673	0.81625	Municipal Complex & DPW buildings / wetlands
504	6			15C	OL	COLUMBUS AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	GARAGE	15CB	2.865 AC	2.86500	135,832.64932	3.11830	67,958.57119	1.56012	Municipal Complex & DPW buildings / wetlands
504	59			15C	OL	EUCUID AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	VACANT LAND		.637 AC	0.63700	27,653.70570	0.63484	27,319.53184	0.62717	Env. constraints
703	1			1	DH-24	SHERMAN AVE	SHORT, EDWARD	P.O. BOX 510	BASKING RIDGE, NJ	07920			.564 AC	0.56400	27,402.62636	0.62908	27,402.62636	0.62908	Located in floodway / Snyder Avenue Brook
703	2			1	DH-24	SHERMAN AVE	PARAMOUNT PARTNERSHIP LLC	230 PRINCETON AVE	BERKELEY HEIGHTS, NJ	07922			.130 AC	0.13000	5,649.41090	0.12969	5,607.96300	0.12874	Located in floodway of Snyder Avenue Brook
703	8			15F	OL	ERIE LACK R R	LONE PINE DRIVE URBAN RENEWAL LLC	ONE EVERTRUST PLZ #804	JERSEY CITY, NJ	07302	IN-LIEU TAX PAYMENT	PILOT	.270 AC	0.27000	7,726.47678	0.17738	7,726.47678	0.17738	Located in floodway / Snyder Avenue Brook
801	11			15D	R-15	96 FERNDALE DRIVE	DIAMOND HILL COMMUNITY CHURCH	1441 SPRINGFIELD AVE	NEW PROVIDENCE, NJ	07974	PARSONAGE	25F2G	.417 AC	0.41700	18,504.37883	0.42480	4,313.59883	0.05903	Single family residence / parsonage
801	34			1	HB-2	MEAD STREET	PAONE REALTY ASSOCIATES, LLC	308-312 SPRINGFIELD AVE.	BERKELEY HEIGHTS, NJ	07922			.138 AC	0.13800	5,975.48246	0.13718	5,502.57549	0.12632	Encompassed by floodway
1106	11.01			1	R-15	BRUNS AVENUE	HOROVITZ, HARRY % BERKELEY SWIM CLUB	P O BOX 24	BERKELEY HEIGHTS, NJ	07922			.089 AC	0.08900	2,997.91440	0.08882	2,572.24547	0.05905	
1301	21	1301-26 MERGED		15D	OL	310 PLAINFIELD AVE	CHURCH OF THE LITTLE FLOWER BERKELEY	290 PLAINFIELD AVE	BERKELEY HEIGHTS, NJ	07922	CHURCH	1SS2SS1SS3G	11.460 AC	11.46000	487,955.74027	11.20197	103,353.02425	2.37267	Church of the Little Flower / recent site plan approval and build out
1303	6			1	R-15	ROOSEVELT AVE	MORGAN, SUE ANN	6327 GLENVIEW PLACE	PITTSBURGH, PA	15206			.287 AC	0.28700	12,500.02714	0.28696	4,430.16592	0.10170	
1601	23		QFARM	3B		MOUNTAIN AVE	WESTON, JONATHAN P.	1133 MOUNTAIN AVENUE	BERKELEY HEIGHTS, NJ	07922			3.360 AC	3.36000	143,852.94593	3.30242	89,409.56059	2.02961	
1715	23			15D	R-15	763 MOUNTAIN AVE	MT RIDGE BIBLE CHAPEL % RA HOWARD	763 MOUNTAIN AVENUE	BERKELEY HEIGHTS, NJ	07922	CHURCH	25B	1.869 AC	1.86800	81,108.70418	1.86201	23,466.13580	0.53871	Mt. Ridge Bible Chapel
1815	6			15C	OL	355 HAMILTON AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	FIREHOUSE		16.090 AC	16.09000	718,904.23319	16.50384	354,923.32615	8.34795 parlat use 2.5	Township Firehouse / Env. restrictions substantially reduce the developable area
1901	35			15F	LI	100-200 LOCUST AV	LOCUST BERKELEY DEVELOPERS URBAN RE	820 MORRIS TURNPIKE	SHORT HILLS, NJ	07078	IN-LIEU TAX PAYMENT	PILOT	10.190 AC	10.19000	447,322.60958	10.26916	62,150.98846	1.42680	3rd round Inclusionary Age-Restricted Redevelopment
1901	44			1	LI	50 LOCUST AVE	50-60 LOCUST AVE. ASSOCS., LLC	P.O. BOX 492	BERKELEY HEIGHTS, NJ	07922			.690 AC	0.69000	29,647.68191	0.69062	27,970.02521	0.64211	
2006	32			15D	R-15	725 MOUNTAIN AVE	WESTMINSTER PRESBYTERIAN CHURCH	725 MOUNTAIN AVENUE	BERKELEY HEIGHTS, NJ	07922	CHURCH	15B	6.000 AC	6.00000	254,977.04166	5.85349	57,799.14163	1.32689	WESTMINSTER PRESBYTERIAN CHURCH
2201	16			15C	OL	378 SNYDER AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	RESCUE SQD	15B RESCUE SQ	.725 AC	0.72500	48,350.32803	1.10998	12,259.24919	0.28143	Berkeley Heights Rescue Squad
2201	17			15D	OL	15 LOCUST AVENUE	B H POST 6295 VET OF FOREIGN WAR US	15 LOCUST AVENUE	BERKELEY HEIGHTS, NJ	07922	CLUB		.689 AC	0.68900	30,044.60378	0.68973	3,847.07133	0.08832	VPW Hall
2201	19			15C	OL	59 LOCUST AVE	BERKELEY HEIGHTS YMCA LLC	59 LOCUST AVE	BERKELEY HEIGHTS, NJ	07922	POOL	15CB COMM POOL	17.400 AC	17.40000	740,587.78893	17.00162	334,867.26119	7.68753	YMCA
2704	3			1	R-20	EMERSON LANE	K HONNANIAN AT WARREN TOWNSHIP ILL	110 FIELDCREST AVE	EDISON, NJ	08837			1.880 AC	1.88000	53,141.94390	1.21998	19,594.38938	0.44983	Part of K. Honnain Development
2901	1.06			1	R-20	APPLE TREE ROW - REAR	FREE ACRES ASSOCIATION	210 EMERSON LANE	BERKELEY HEIGHTS, NJ	07922			1.06 AC	1.06000	43,638.31194	1.00180	39,133.97236	0.89940	Free Acres Association
2901	1.571			1	R-20	WATER LANE-REAR	FREE ACRES ASSOCIATION	C/O FREE ACRES ASSOC	BERKELEY HEIGHTS, NJ	07922			.510 AC	0.51000	18,313.43200	0.42042	18,313.43200	0.42042	Free Acres Association
2901	1.87			1	R-20	70 GREENBROOK RD	FREE ACRES ASSOCIATION	C/O FREE ACRES ASSOC	BERKELEY HEIGHTS, NJ	07922				0.00000	14,832.29736	0.34050	12,449.02377	0.28579	Free Acres Association
3102	40			15D		PLAINFIELD AVENUE	ST. MARY'S CHURCH - STONY HILL	225 MOUNTAIN BOULEVARD	WATCHUNG, NJ	07060	VACANT LAND		.1805 AC	0.18050	14,001.73020	0.32144	8,260.64276	0.18964	Floodway
3303	1.01	BL 4002/15 BL 3401/		1	OL	HORSESHOE ROAD	RUNNELL'S PROPERTY INC	40 WATCHUNG WAY	BERKELEY HEIGHTS, NJ	07922	VACANT LAND		.226 AC	0.22600	9,998.90272	0.22954	8,060.05025	0.18503	
3401	48.01			1	R-20	110 CIRCLE VIEW AVE	1 & PIRE HOLDING LIMITED LIABILITY C	1061 INMAN AVE	EDISON, NJ	08820			.46 AC	0.46000	20,965.64447	0.48131	6,38716	0.00015	Single Family Residence
3401	48.02			1	R-20	100 CIRCLE VIEW AVE	1 & PIRE HOLDING LIMITED LIABILITY C	1061 INMAN AVE, APT D139	EDISON, NJ	08820			.71 AC	0.71000	29,672.30063	0.68119	2,914.60587	0.06691	

BLOCK	LOT	ADDITIONAL LOTS	QUALIFIER CODE	PROPERTY CLASS	ZONE	ADDRESS	OWNER NAME	OWNER ADDRESS	CITY, STATE	OWNER ADDRESS ZIP CODE	FACILITY NAME	BUILDING DESCRIPTION (MOD-IV)	LAND DESCRIPTION (MOD-IV)	CALCULATED AREA - AC (MOD IV)	PARCEL AREA - SF (STATE PLANE PROJ.)	PARCEL AREA - AC (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - SF (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - AC (STATE PLANE PROJ.)	COMMENTS
3401	49			15C	OL	REAR CIRCLE VIEW AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	VACANT LAND		.544 AC	0.54400	23,551,46834	0.54090	5,613,52666	0.13346	Public utility
3401	50	BL-4002/15.33 03/1.01		1	OL	PLAINFIELD AVE	RUNNELLS PROPERTY LLC	40 WATCHUNG WAY	BERKELEY HEIGHTS, NJ	07922	VACANT LAND		3.200 AC	3.20000	134,537,73557	3.05546	65,557,31471	1.56406	Part of former Runnells Hospital complex w/ deed restriction (Book 6029, Page 125) Stormwater management facility Church & daycare facility
3601	4			1	OR	120 GRASSMAN PLACE	CINNAMON RIDGE ASSOC. C/O INTEGRA	200 VALLEY ROAD, STE 203	MT.ARLINGTON, NJ	07856			1.461 AC	1.46100	55,661,45637	1.27828	3,270,48776	0.75708	
3601	7			15D	OR	105 DIAMOND HILL RD	DIAMOND HILL COMMUNITY CHURCH	1441 SPRINGFIELD AVE	NEW PROVIDENCE, NJ	07974	CHURCH	158	.673 AC	0.67300	45,720,77644	1.04961	8,600,28738	0.20203	
3605	1			1	R-20	35 GRASSMAN PLACE	ERDOS, PAUL	20 LINCOLN PLACE	NORTH PLAINFIELD, NJ	07060			.817 AC	0.81700	34,759,11503	0.79796	29,665,29611	0.68102	
4001	1			15C	RT78	PLAINFIELD AVE	NJ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT OF WAY		2.550 AC	2.55000	87,744,41513	2.01434	4,317,44292	0.09912	NIDOT land restricted by Green Brook
4002	16			15C	RT78	GLENSIDE AVE	NJ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT OF WAY		20.720 AC	20.72000	853,299,69957	19.58934	96,111,43923	2.20642	NIDOT Route 78 r.o.w.
4101	2			1	R-20	PLAINFIELD AVE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922			1.979 AC	1.97900	48,672,66675	1.11738	26,870,23263	0.51686	
4101	3			1	R-20	1021 PLAINFIELD AVENUE	CONNELL COMPANY	300 CONNELL DR	BERKELEY HEIGHTS, NJ	07922			1.104 AC	1.10400	45,318,63060	1.04038	1,306,48581	0.29399	
4101	5			1	R-20	1041 PLAINFIELD AVENUE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922			1.552 AC	1.55200	75,366,48260	1.73018	45,158,12386	1.03689	
4101	7			1	R-20	1067 PLAINFIELD AVENUE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922			.862 AC	0.86200	39,021,48773	0.89581	13,347,25915	0.30641	
4101	9			1	R-20	1085 PLAINFIELD AVENUE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922			.857 AC	0.85700	38,653,73805	0.88829	12,700,69937	0.23157	
4101	10			1	R-20	1095 PLAINFIELD AVENUE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922			.976 AC	0.97600	41,514,21802	0.95304	22,778,95856	0.52294	
4101	16			1	R-20	1129 PLAINFIELD AVENUE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922		1.5SF1G	.413 AC	0.41300	17,827,94674	0.40928	3,640,55977	0.08358	
4101	17			1	R-20	1133 PLAINFIELD AVENUE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922			.499 AC	0.49900	22,703,23249	0.52120	4,667,79669	0.10716	
4101	20			1	R-20	REAR PLAINFIELD AVE	CONNELL COMPANY	300 CONNELL DR	BERKELEY HEIGHTS, NJ	07922			.535 AC	0.53500	22,833,23944	0.52418	4,395,87146	0.10092	Floodway of Green Brook
4201	3			1	R-20	OLD COLONIAL ROAD	CINNAMON RIDGE ASSOC C/O INTEGRA	200 VALLEY ROAD, STE 203	MT.ARLINGTON, NJ	07856			21.080 AC	21.08000	921,412,13095	21.15280	122,289,69787	2.80740	Homeowner's association open space
4201	4			15C	RT78	VALLEY ROAD	NJ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT OF WAY		20.110 AC	20.11000	846,320,64664	19.42893	111,313,06227	2.55541	NIDOT Route 78
4201	6			1	R-20	OLD COLONIAL ROAD	CINNAMON RIDGE ASSOC C/O INTEGRA	200 VALLEY ROAD, STE 203	MT.ARLINGTON, NJ	07856			.820 AC	0.82000	30,849,98103	0.70822	3,542,05122	0.08131	Land between a driveway and Route 78 owned by a homeowner's association
4401	2			1	R-20	DIAMOND HILL RD	AMERICAN WATER SSC	P.O. BOX 2735,TAX DEPT.	CAMDEN, NJ	08101			.640 AC	0.64000	24,235,18882	0.55637	5,032,11027	0.11552	Development (water tank) present on site; parcel completely encompassed by Block 4401, Lot 3 / owned by Water Company
4401	3			1	R-20	GHOST PONY ROAD	CINNAMON RIDGE ASSOC C/O INTEGRA	200 VALLEY ROAD, STE 203	MT.ARLINGTON, NJ	07856			21.699 AC	21.69900	1,091,711,41375	25.06235	412,123,51690	9.46109	Open space set aside from subdivision / owned by homeowner's association / slopes in excess of 15% per VLA
4401	4			1	R-20	DIAMOND HILL RD	LEMAUD INVESTMENT 2 LLC	338 LARRY CT	PISCATAWAY, NJ	08854			3.195 AC	3.19500	146,376,04549	3.36035	10,527,96969	0.24169	3rd round VLA, 20+ft steep slopes (side of a mountain) and bisected by stream
4402	1			15C	RT78	OLD COLONIAL ROAD	NJ DEPT OF TRANSPORTATION	1035 PARKWAY AVENUE CN600	TRENTON, NJ	08625	RIGHT OF WAY		.840 AC	0.84000	21,036,83395	0.48294	7,529,77791	0.17286	NIDOT r.o.w.
4402	2			15C	RT78	VALLEY ROAD	NJ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT OF WAY		17.195 AC	17.19500	685,450,96046	15.73585	25,312,59494	0.58110	NIDOT r.o.w.
4602	5			1	R-20	41 RIDGE DRIVE EAST	HILLTOP RIDGE, LLC	33 RIDGE DRIVE EAST	BERKELEY HEIGHTS, NJ	07922			.300 AC	0.30000	13,300,11221	0.30533	5,057,12540	0.11610	
4603	31			15C	RT78	DIAMOND HILL RD	NJ DEPT OF TRANSPORTATION	1035 PARKWAY AVENUE CN600	TRENTON, NJ	08625	RIGHT OF WAY		30.000 AC	30.00000	847,402,28506	19.45376	50,597,11888	1.16155	NIDOT r.o.w.
4701	2			15C	RT78	GLENSIDE AVE	NJ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT OF WAY		8.100 AC	8.10000	400,603,13729	9.19662	34,490,64395	0.79180	NIDOT r.o.w.
4702	2			15C	RT78	GLENSIDE AVE	NJ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT OF WAY		18.620 AC	18.62000	774,848,30743	17.78355	65,455,94374	1.50267	NIDOT r.o.w.

Prepared on 1/17/2025 by:



HARBOR CONSULTANTS
ENGINEERS, SURVEYORS, AND PLANNERS
320 NORTH AVENUE EAST
CAMDEN, NJ 07106
TEL (800) 210-2125 FAX (800) 703-1726

BLOCK	LOT	ADDITIONAL LOTS	QUALIFIER CODE	PROPERTY CLASS	ZONE	ADDRESS	OWNER NAME	OWNER ADDRESS	OWNER ADDRESS CITY, STATE	OWNER ADDRESS ZIP CODE	FACILITY NAME	BUILDING DESCRIPTION (MOD-IV)	LAND DESCRIPTION (MOD-IV)	CALCULATED AREA - AC (MOD-IV)	PARCEL AREA - SF (STATE PLANE PROJ.)	PARCEL AREA - AC (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - SF (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - AC (STATE PLANE PROJ.)	COMMENTS
4602	25			15C	RT78	GLENSIDE AVE	NU DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, N.J	08625	RIGHT OF WAY		11.724 AC	11,72400	856,887,46452	19.67151	72,114,15810	1.55552	NJDOT r.o.w.
4606	1			15C	RT78	GLENSIDE RD	NU DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, N.J	08625	RIGHT OF WAY		2.510 AC	2,51000	116,526,35574	2.67509	12,123,26601	0.27831	NJDOT r.o.w. / steep slopes
														TOTAL			12,123,26601	0.27831	
														DEVELOPABLE LAND WITHIN PARCEL LINES			62,42112		
														TOTAL				0.01244	
														DEVELOPABLE LAND OUTSIDE PARCEL LINES					
														TOTAL			62,43356		
														DEVELOPABLE AREA PER DCA REPORT					
														TOTAL			50,34285		
														DEVELOPABLE LAND TO BE REMOVED					
														TOTAL			12,09071		
														DEVELOPABLE LAND REMAINING AFTER REMOVING REDLINED PARCELS					

Note: This spreadsheet was not prepared or officially released by the DCA; the DCA only provided spatial data of the land areas identified as "vacant and developable" as part of the land capacity factor calculation. Our office prepared this spreadsheet of properties containing "vacant and developable" land as identified by the DCA by merging the spatial data for the "Land Capacity Analysis for P.L. 2024, c.2" released by the DCA (see <https://njdc.maps.arcgis.com/home/item.html?id=12ac9e0a5104189b2f6d4e96d3e74>) with current parcel MOD-IV data for the Township as provided by the Union County Board of Taxation (see https://taxrecords-nj.com/pub/csl/pres.cgi?ms_user=ctb20&passwd=&distric=2001&arch_type=0&av=2&out_type=2).

FOURTH
ROUND
OBLIGATION
CALCULATION

Existing Region 2 Developable Land per DCA	Proposed Region 2 Developable Land	Existing Developable Land (acres) per DCA	Existing Land Capacity Factor per DCA	Equalized Nonres. Valuation Factor per DCA	Income Capacity Factor per DCA	Average Allocation Factor per DCA	Regional Persp. Need
5,385,483	5,308,141	62,434	1.17%	1.10%	1.75%	1.340%	20,508
Proposed Developable Land (acres)	Proposed Land Capacity Factor	Proposed Developable Land (acres)	Proposed Land Capacity Factor	Proposed Equalized Nonres. Valuation Factor	Proposed Income Capacity Factor	Proposed Average Allocation Factor	Existing Obligation
12,091	0.23%	12,091	1.17%	1.10%	1.72%	1.017%	275
							Proposed Obligation
							208

APPENDIX B

SURENIAN, EDWARDS, BUZAK & NOLAN LLC

311 Broadway, Suite A

Point Pleasant Beach, NJ 08742

(732) 612-3100

By: Erik C. Nolan, Esq. (Attorney ID: 014032006)

Attorneys for Declaratory Plaintiff, Township of Berkeley Heights

**IN THE MATTER OF THE
APPLICATION OF THE TOWNSHIP OF
BERKELEY HEIGHTS, COUNTY OF
UNION, STATE OF NEW JERSEY**

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY**

DOCKET NO.: UNN-L-____

CIVIL ACTION
AFFORDABLE HOUSING DISPUTE
RESOLUTION PROGRAM
PER DIRECTIVE # 14-24

**COMPLAINT FOR DECLARATORY
RELIEF PURSUANT TO AOC
DIRECTIVE # 14-24**

Declaratory Plaintiff, the Township of Berkeley Heights, County of Union, State of New Jersey (hereinafter, “Berkeley Heights” or the “Township”), a municipal corporation of the State of New Jersey, with principal offices located at 29 Park Avenue, Berkeley Heights, New Jersey 07922, by way of filing this Declaratory Judgment Compliant to start this Declaratory Judgment Action (“DJ Action”) as authorized under Directive # 14-24 of the Administrative Office of the Courts (“AOC”) alleges and says:

Background

1. Berkeley Heights is a municipal corporation of the State of New Jersey.
2. The Planning Board of the Township of Berkeley Heights (hereinafter, “Planning Board”) is a municipal agency created and organized under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq., (“MLUL”), and, among other duties and obligations, is responsible for adopting

the Fourth Round Housing Element and Fair Share Plan ("HEFSP") of Berkeley Heights' Master Plan.

3. Through this DJ Action, Berkeley Heights seeks the following relief in relation to its Fourth Round (2025-2035) affordable housing obligation: (a) to secure the jurisdiction of the Affordable Housing Dispute Resolution Program (the "Program") pursuant to P.L. 2024, c.2 (hereinafter, the "Act") and the Court, pursuant to AOC Directive # 14-24; (b) to have the Program and the Court approve the Township of Berkeley Heights' Present and Prospective affordable housing obligations as set forth in the binding resolution adopted by the Township, attached hereto as **Exhibit 1**; (c) to have the Program and the Court approve the Township's HEFSP, to be adopted by the Planning Board and endorsed by the Township Council, and issue a conditional or unconditional "Compliance Certification" pursuant to the Act or other similar declaration; (d) through the filing of this DJ Action and binding resolution, to have the Program and the Court confirm Berkeley Heights' immunity from all exclusionary zoning litigation, including builder's remedy lawsuits, during the pendency of the process outlined in the Act and for the duration of Fourth Round, i.e., through June 30, 2035; and (e) to have the Program and the Court take such other actions and grant such other relief as may be appropriate to ensure that the Township receives and obtains all protections as afforded to it in complying with the requirements of the Act, including, without limitation, all immunities and presumptions of validity necessary to satisfy its affordable housing obligations voluntarily without having to endure the expense and burdens of unnecessary third party litigation.

COUNT I

ESTABLISHMENT OF JURISDICTION UNDER P.L.2024, C. 2

4. The Township of Berkeley Heights repeats and realleges each and every allegation as set forth in the previous paragraphs of this Declaratory Judgment Complaint as if set forth herein in full.

5. The Act represents a major revision of the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 *et. seq.*

6. Among other things, the Act abolished the Council on Affordable Housing (hereinafter, “COAH”), and replaced it with seven retired, on recall judges designated as the Program, and also authorized the Director of the AOC (hereinafter, “Director”) to create a framework to process applications for a Compliance Certification.

7. On or about December 19, 2024, the Director issued Directive #14-24, which among other things, required municipalities seeking Compliance Certification to file an action in the form of a Declaratory Judgment Complaint and Civil Case Information Statement in the County in which the municipality is located within 48 hours after the municipality’s adoption of a binding resolution establishing the municipality’s Fourth Round numbers, as authorized under the Act, with an attached copy of said binding resolution.

8. The Township adopted a binding resolution establishing its Fourth Round present and prospective affordable housing obligations within the statutory window of time set forth in the Act and in accordance with the methodology and formula set forth in the Act, a certified copy of which resolution is attached to this Declaratory Judgment Complaint as **Exhibit 1**.

9. Based on the foregoing, the Township has established the jurisdiction of the Program and the Court in regard to this DJ Action for a Compliance Certification as set forth hereinafter.

WHEREFORE, the Township of Berkeley Heights seeks a declaratory judgment for the following relief:

- a. Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as **Exhibit 1** to this Declaratory Judgment Complaint or to adjust such determination consistent with the Act;
- b. Declaring the present and prospective affordable housing obligations of the Township under the Act;
- c. Declaring the approval of the Township's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a windshield survey or similar survey which accounts for a higher-resolution estimate of present need; (ii) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (iii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iv) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (v) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (vi) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or (vii) any other

applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

- d. Declaring that the Township continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established by the Act;
- e. Declaring and issuing a Compliance Certification and continuing immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to the Township of Berkeley Heights for the period beginning July 1, 2025 and ending June 30, 2035; and
- f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and all applicable regulations related to affordable housing within the State of New Jersey.

COUNT II

DETERMINATION OF THE PRESENT AND PROSPECTIVE NEED OF THE TOWNSHIP OF BERKELEY HEIGHTS

10. Berkeley Heights repeats and realleges each and every allegation set forth in the previous paragraphs of this Declaratory Judgment Complaint as if set forth herein in full.

11. The Act adopted the methodology to calculate every municipality's present and prospective need affordable housing obligation for the Fourth Round (2025-2035) and beyond.

12. The Act directed the Department of Community Affairs ("DCA") to apply the methodology and to render a non-binding calculation of each municipality's present and prospective affordable housing obligations to be contained in a report to be issued no later than October 20, 2024.

13. The DCA issued its report on October 18, 2024.

14. Pursuant to the October 18, 2024 report, the DCA calculated Berkeley Heights' present and prospective affordable housing obligations as follows:

FOURTH ROUND PRESENT NEED (REHABILITATION) OBLIGATION	FOURTH ROUND PROSPECTIVE NEED OBLIGATION (2025-2035)
0	275

15. Pursuant to the Act, a municipality desiring to participate in the Program is obligated to adopt a "binding resolution" determining its present and prospective affordable housing obligations to which it will commit based upon the methodology set forth in the Act.

16. Berkeley Heights adopted a binding resolution, a copy of which resolution is attached hereto and made a part hereof as **Exhibit 1** to this Declaratory Judgment Complaint.

17. The binding resolution maintains that Berkeley Heights' Round 4 (2025-2035) Present Need (Rehabilitation) Obligation is 0 and its Prospective Need ("New Construction") Obligation is 208.

18. Berkeley Heights seeks the approval of, and confirmation by, the Program and the Court of the Round 4 (2025-2035) Present and Prospective affordable housing obligations as set forth in the binding resolution attached hereto and made a part hereof as **Exhibit 1**, or the adjustment of those obligations consistent with the Act and all applicable regulations.

19. Pursuant to the binding resolution, the Township of Berkeley Heights reserves all rights to amend its affordable housing obligations in the event of a successful legal challenge, or legislative change, to the Act.

20. Pursuant to the binding resolution, Berkeley Heights specifically reserves the right to seek and obtain 1) a windshield survey or similar survey which accounts for a higher-resolution estimate of present need; 2) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 3) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); 4) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; 5) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 6) an adjustment based upon any ruling in litigation involving affordable housing obligations; and 7) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations.

WHEREFORE, the Township of Berkeley Heights seeks a declaratory judgment for the following relief:

- a.** Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as **Exhibit 1** to this Declaratory Judgment Complaint or to adjust such determination consistent with the Act;
- b.** Declaring the present and prospective affordable housing obligations of the Township under the Act;
- c.** Declaring the approval of Township's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a windshield survey or similar survey which accounts for a higher-resolution estimate of present need; (ii) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (iii) a

Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iv) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (v) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (vi) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or (vii) any other applicable adjustment permitted in accordance with the Act and/or all applicable regulations;

- d.** Declaring that the Township continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established by the Act;
- e.** Declaring and issuing a Compliance Certification and continuing immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to Berkeley Heights for the period beginning July 1, 2025 and ending June 30, 2035; and
- f.** Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and all applicable regulations related to affordable housing within the State of New Jersey.

COUNT III

APPROVAL OF TOWNSHIP'S HOUSING ELEMENT AND FAIR SHARE PLAN

21. The Township of Berkeley Heights repeats and realleges each and every allegation set forth in the previous paragraphs of this Declaratory Judgment Complaint as if set forth herein in full.

22. Pursuant to the Act, a HEFSP must be prepared, adopted by the Planning Board and endorsed by the municipality by June 30, 2025.

23. Berkeley Heights hereby commits for its professionals to prepare the appropriate HEFSP to address its affordable housing obligations, as determined by the Program and the Court, which HEFSP shall apply as appropriate, any applicable adjustments, including, without limitation, 1) a windshield survey or similar survey which accounts for a higher-resolution estimate of present need; 2) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 3) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); 4) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; 5) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 6) an adjustment based upon any ruling in litigation involving affordable housing obligations; and 7) any other applicable adjustment permitted in accordance with the Act and/or applicable regulations.

WHEREFORE, the Township of Berkeley Heights seeks a declaratory judgment for the following relief:

- a.** Declaring that Berkeley Heights has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs

as set forth in the binding resolution attached as **Exhibit 1** to this Declaratory Judgment Complaint or to adjust such determination consistent with the Act;

- b.** Declaring the present and prospective affordable housing obligations of the Township under the Act;
- c.** Declaring the approval of the Township's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a windshield survey or similar survey which accounts for a higher-resolution estimate of present need; (ii) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (iii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iv) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (v) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (vi) an adjustment based upon any ruling in litigation involving affordable housing obligations; and/or (vii) any other applicable adjustment permitted in accordance with the Act and/or all applicable regulations;
- d.** Declaring that the Township of Berkeley Heights continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established by the Act;
- e.** Declaring and issuing a Compliance Certification and continuing immunity from exclusionary zoning litigation in accordance with the Act and Directive #

14-24 to the Township of Berkeley Heights for the period beginning July 1, 2025 and ending June 30, 2035; and

- f. Declaring such other relief that the program and Court deems just and proper within the parameters of the Act and all applicable regulations related to affordable housing within the State of New Jersey.

COUNT IV

CONFIRMATION OF IMMUNITY

24. The Township of Berkeley Heights repeats and realleges each and every allegation set forth in the previous paragraphs of this Declaratory Judgment Complaint as if set forth herein in full.

25. Pursuant to the Act, a municipality that complies with the deadlines in the Act for both determining present and prospective affordable housing obligations and for adopting an appropriate HEFSP shall have immunity from exclusionary zoning litigation.

26. The Township of Berkeley Heights has met the deadline for the adoption and filing of its binding resolution not later than January 31, 2025, and the filing of this DJ Action in accordance with AOC Directive #14-24 not later than February 3, 2025, by adopting the binding resolution attached to this Declaratory Judgment Complaint as **Exhibit 1**, and has also committed to the adoption of its HEFSP by June 30, 2025.

WHEREFORE, the Township of Berkeley Heights seeks a declaratory judgment for the following relief:

- a. Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set


forth in the binding resolution attached as **Exhibit 1** to this Declaratory Judgment Complaint or to adjust such determination consistent with the Act;

- b.** Declaring the present and prospective affordable housing obligations of the Township under the Act;
- c.** Declaring the approval of the Township's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a windshield survey or similar survey which accounts for a higher-resolution estimate of present need; (ii) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (iii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iv) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (v) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (vi) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (vii) any other applicable adjustment permitted in accordance with the Act and/or all applicable regulations;
- d.** Declaring that the Township continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established by the Act;
- e.** Declaring and issuing a Compliance Certification and continuing immunity from exclusionary zoning litigation in accordance with the Act and Directive #

14-24 to the Township of Berkeley Heights for the period beginning July 1, 2025 and ending June 30, 2035; and

- f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and all applicable regulations related to affordable housing within the State of New Jersey.

SURENIAN EDWARDS BUZAK & NOLAN LLC
Attorneys for Declaratory Plaintiff, Township of Berkeley Heights

By 
Erik C. Nolan, Esq.

Dated: January 23, 2025


CERTIFICATION PURSUANT TO R. 4:5-1

Erik C. Nolan, Esq., of full age, hereby certifies as follows:

1. I am a member of the Firm of Surenian, Edwards, Buzak & Nolan LLC, attorneys for declaratory plaintiff, Township of Berkeley Heights.
2. To the best of my knowledge, there is no other action pending in any court or any pending arbitration proceeding of which the matter in controversy herein is the subject and no such other action or arbitration proceeding is contemplated. To the best of my knowledge, there are no other parties who should be joined in this action.
3. The within Complaint was filed and served within the time prescribed by the Rules of Court.

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

SURENIAN EDWARDS BUZAK & NOLAN LLC
Attorneys for Declaratory Plaintiff, Township of Berkeley Heights

By 
Erik C. Nolan, Esq.

Dated: January 23, 2025

CERTIFICATION PURSUANT TO R. 1:38-7(b)

Erik C. Nolan, Esq., of full age, hereby certifies as follows:

1. I am a member of the firm of Surenian, Edwards, Buzak & Nolan LLC, attorneys for Declaratory Plaintiff, Township of Berkeley Heights.
2. I certify that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

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

SURENIAN EDWARDS BUZAK & NOLAN LLC
Attorneys for Declaratory Plaintiff, Township of Berkeley Heights

By 
Erik C. Nolan , Esq.

Dated: January 23, 2025

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, notice is hereby given that Erik C. Nolan, Esq., attorney for the Declaratory Plaintiff, Township of Berkeley Heights is designated as trial counsel in the above captioned matter.

SURENIAN EDWARDS BUZAK & NOLAN LLC
Attorneys for Declaratory Plaintiff, Township of Berkeley
Heights

By

A handwritten signature in black ink, appearing to read "Erik C. Nolan", is written over a horizontal line.

Erik C. Nolan, Esq.

Dated: January 23, 2025

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

**RESOLUTION OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF
BERKELEY HEIGHTS COMMITTING TO FOURTH ROUND PRESENT
AND PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATIONS**

WHEREAS, the Township of Berkeley Heights (hereinafter the “Township” or “Berkeley Heights”) has a demonstrated history of voluntary compliance as evidenced by its Third Round record; and

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), on July 2, 2015, the Township of Berkeley Heights filed a Declaratory Judgment Complaint in Superior Court, Law Division seeking, among other things, a judicial declaration that its Third Round Housing Element and Fair Share Plan, to be amended as necessary, satisfies its “fair share” of the regional need for low and moderate income housing pursuant to the “Mount Laurel doctrine,” and

WHEREAS, that culminated in a Court-approved Third Round Housing Element and Fair Share Plan and a Final Judgment of Compliance and Repose, which precludes all Mount Laurel lawsuits, including builder’s remedy lawsuits until July 1, 2025; and

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2, which amended the 1985 New Jersey Fair Housing Act (hereinafter the “Amended FHA”); and

WHEREAS, the Amended FHA required the Department of Community Affairs (“DCA”) to provide an estimate of the Fourth Round affordable housing obligations for all municipalities on or before October 20, 2024, based upon the criteria described in the Amended FHA; and

WHEREAS, the DCA issued a report on October 18, 2024 (“DCA Report”) wherein it reported its estimate of the Fourth Round affordable housing obligations for all municipalities based upon its interpretation of the standards in the Amended FHA; and

WHEREAS, the DCA Report calculates the Township’s Fourth Round (2025-2035) obligations as follows: a Present Need (Rehabilitation) Obligation of Zero (0) and a Prospective Need (New Construction) Obligation of 275; and

WHEREAS, the Amended FHA further provides that, irrespective of the DCA’s calculations, municipalities have the ability to either accept, or provide alternate calculations for, the DCA’s “present and prospective fair share obligation(s)...by binding resolution no later than January 31, 2025”, a deadline which was later extended to February 3, 2025 by the Administrative Office of the Courts (“AOC”) via a directive issued on December 19, 2024; and

WHEREAS, the Township accepts the DCA's Fourth Round Present Need (Rehabilitation) calculation of Zero (0), but does not accept the DCA's calculation of the Township's Income Capacity Factor or the Land Capacity Allocation Factor, which are two factors that are part of the DCA's calculation of the Township's Fourth Round Prospective Need (New Construction) calculation of 275; and

WHEREAS, as to the Land Capacity Allocation Factor, the Township notes that the DCA belatedly provided the data it used to establish this factor, i.e., on or about November 25, 2024, instead of by October 20, 2024; and

WHEREAS, the Township further notes that the link to the DCA GIS data that the DCA belatedly made available to municipalities includes the following language: "The land areas identified in this dataset are based on ... 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."; and

WHEREAS, the Township maintains that the Income Capacity Allocation factor has to be adjusted and that the areas the DCA identified as developable are indeed overinclusive and, consequently, the Township's Affordable Housing Planner, has prepared an expert report, attached hereto as **Exhibit A**; and

WHEREAS, correcting the Income Capacity Factor and Land Capacity Allocation Factor results in the reduction of Berkeley Heights Township's Fourth Round Prospective Need (New Construction) Obligation from 275 to 208; and

WHEREAS, Section 3 of the Amended FHA provides that: "the municipality's determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7" of the Amended FHA; and

WHEREAS, the Township's acceptance of the Fourth Round obligations calculated by the DCA are entitled to a "presumption of validity" because it complies with Sections 6 and 7 of the Amended FHA; and

WHEREAS, in addition to the foregoing, the Township specifically reserves the right to adjust its fair share obligations in accordance with applicable Council on Affordable Housing ("COAH") regulations or other applicable law based on one or more of the foregoing adjustments if applicable: 1) a windshield survey or similar survey which accounts for a higher-resolution estimate of present need; 2) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 3) a Durational Adjustment, whether predicated upon lack of sewer or lack of water; and/or 4) an adjustment predicated upon regional planning entity formulas, inputs or considerations, including but not limited to, the Highlands Council Regional Master Plan and its build out, or the Pinelands Commission or Meadowlands Commission regulations and planning document; and

WHEREAS, in addition to the foregoing, the Township specifically reserves all rights to revoke or amend this resolution and commitment, as may be necessary, in the event of a successful challenge to the Amended FHA in the context of the case The Borough of Montvale v. the State of New Jersey (MER-L-1778-24), any other such action challenging the Amended FHA, or any legislation adopted and signed into law by the Governor of New Jersey that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in addition to the foregoing, the Township reserves the right to take a position that its Fourth Round Present or Prospective Need Obligations are lower than described herein in the event that a third party challenges the calculations provided for in this Resolution (a reservation of all litigation rights and positions, without prejudice); and

WHEREAS, in addition to the foregoing, nothing in the Amended FHA requires or can require an increase in the Township's Fourth Round Present or Prospective Need Obligations based on a successful downward challenge of any other municipality in the region since the plain language and clear intent of the Amended FHA is to establish unchallenged numbers by default on March 1, 2025; and

WHEREAS, in addition to the foregoing, the Acting Administrative Director of the AOC issued Directive #14-24 on December 19, 2024; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking a Fourth Round Compliance Certification from the entity created by the Amended FHA known as the Affordable Housing Dispute Resolution Program (hereinafter "the Program"), shall file an action in the appropriate venue with the Program, in the form of a Declaratory Judgment Complaint within 48 hours after adoption of the municipal resolution accepting or challenging its Fourth Round fair share obligations, or by February 3, 2025, whichever is sooner; and

WHEREAS, nothing in this Resolution shall be interpreted as an acknowledgment of the legal validity of AOC Directive #14-24 and the Township reserves any and all rights and remedies in relation to the AOC Directive; and

WHEREAS, the Township seeks a Compliance Certification from the Program and, therefore, wishes to file a Declaratory Judgment Complaint in the appropriate venue with the Program, along with a copy of this Resolution, within 48 hours of the adoption of this Resolution; and

WHEREAS, in light of the above, the Mayor and Township Council finds that it is in the best interest of the Township to declare its obligations in accordance with this Resolution; and

NOW, THEREFORE, BE IT RESOLVED on this 21st day of January of 2025, by the Township Council of the Township of Berkeley Heights, Union County, State of New Jersey, as follows:

1. All of the Whereas Clauses are incorporated into the operative clauses of this Resolution as if set forth in full.

2. For the reasons set forth in this Resolution, the Mayor and Township Council hereby commit to the DCA Fourth Round Present Need (Rehabilitation) Obligation of Zero (0) and the Fourth Round Prospective Need (New Construction) Obligation of 208 as described in this Resolution, subject to all reservations of rights, which specifically include, without limitation, the following:

- a) The right to adjust the Township's fair share obligations based on a windshield survey or similar survey, a Vacant Land Adjustment, a Durational Adjustment, and all other applicable adjustments, permitted in accordance with applicable COAH regulations or other applicable law; and
- b) The right to revoke or amend this Resolution in the event of a successful legal challenge, or legislative change, to the Amended FHA; and
- c) The right to take any contrary position, or adjust its fair share obligations, in the event of a third party challenge to the Township's fair share obligations.

3. Pursuant to the requirements of the FHA as amended, and the Administrator of the Court's (AOC) Directive #14-24 issued on December 19, 2024, the Township Council hereby directs its Affordable Housing Counsel to file a Declaratory Judgment Complaint, along with this Resolution, a Case Information Statement (Civil CIS), and supporting expert report, in the appropriate venue with the Program or any other such entity as may be determined to be appropriate, to initiate an action within 48 hours of the adoption of this Resolution, so that the Township's Fourth Round Housing Element and Fair Share Plan can be reviewed and approved.

4. This resolution shall take effect immediately, according to law.

CERTIFICATION

I certify that the foregoing Resolution was duly adopted by the Council of the Township of Berkeley Heights at a regular meeting held on the 21st day of January 2025, a quorum being present and voting in the majority.


Angela Lazzari, Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
COUTO	✓			
FOSTER	✓			
ILLIS	✓			
MACHADO	✓			
MORAN	✓			
POAGE	✓			
TIE:				
MAYOR DEVANNEY				

CERTIFIED TRUE COPY:

Angela Lazzari
Angela Lazzari, RMC, CMR, Township Clerk

In testimony whereof, I have hereunto set my hand and caused the seal of the Township of Berkeley Heights to be affixed.



EXHIBIT A

Date: January 17, 2025

To: Erik Nolan, Esq., Township Affordable Housing Attorney

From: Michael Mistretta, PP, LLA, Harbor Consultants, Inc.
Wyatt Grant, Harbor Consultants, Inc.

Re: **Fourth Round (2025-2035) Affordable Housing Obligation Calculation
Township of Berkeley Heights, New Jersey**

This memo has been prepared to outline the municipal requirements for the Township of Berkeley Heights to establish its Fourth Round (July, 2025 – July, 2035) present and prospective fair share obligation as mandated by the A4/S50 legislation, as well as detail the process and calculations used to determine the Township's Fourth Round present need obligation and prospective need obligation, which are to be adopted by binding resolution prior to January 31, 2025.

Background

On March 20, 2024, Governor Murphy signed into law affordable housing bill A4/S50, which established new guidelines for determining and regulating the affordable housing obligations of New Jersey municipalities for the fourth 10-year-round (July, 2025 – July, 2035). Per A4/S50, before a municipality establishes its Fourth Round present and prospective fair share obligation, "the [Department of Community Affairs] shall prepare and submit a report to the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14- 19.1), to the Legislature providing a report on the calculations of regional need and municipal obligations for each region of the State within the earlier of seven months following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.) or December 1, 2024" (N.J. Stat. § 52:27D-304.1). Then, "with consideration of the calculations contained in the relevant report published by the department... for each 10-year round of affordable housing obligations beginning with the fourth round, a municipality shall determine its present and prospective fair share obligation for affordable housing in accordance with the formulas established in sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) by resolution, which shall describe the basis for the municipality's determination and bind the municipality to adopt a housing element and fair share plan" (N.J. Stat. § 52:27D-304.1). For the Fourth Round, the municipal "determination of present and prospective fair share obligation shall be made by binding resolution no later than January 31, 2025" (N.J. Stat. § 52:27D-304.1).

In compliance with the aforementioned requirements, the Department of Community Affairs (DCA) released a report on October 18, 2024, titled "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background," inclusive of a calculation spreadsheet, which detailed the datasets and calculations used to generate the non-binding affordable housing obligation for each municipality within New Jersey for the Fourth Round. This report was amended several days later to include revised language on the methodology for the land capacity factor calculation. Per this report, the Township's Fourth Round present need was calculated as 0 and the Township's Fourth Round prospective need was calculated as 275.

The Township has reviewed the DCA report and methodology established in A4/S50, which serve as the basis for the Township's evaluation and determination of its Fourth Round present and prospective fair share obligation. The ensuing sections of this memo provide an analysis of the process used to calculate the Township's Fourth Round present and prospective fair share obligation.

Present Need

Per A4/S50, "A municipality's present need obligation shall be determined by estimating the existing deficient housing units currently occupied by low- and moderate-income households within the municipality, following a methodology comparable to the methodology used to determine third round present need, through the use of datasets made available through the federal decennial census and the American Community Survey, including the Comprehensive Housing Affordability Strategy dataset thereof" (N.J. Stat. § 52:27D-304.2). A4/S50 further defines "deficient housing units" as "housing that: (1) is over fifty years old and overcrowded; (2) lacks complete plumbing; or (3) lacks complete kitchen facilities" (N.J. Stat. § 52:27D-304).

In the Third Round, municipal present need calculations were based on the number of housing units lacking complete kitchen facilities, the number of units lacking complete plumbing facilities, and the number of overcrowded units. The present need calculations for the Fourth Round conducted by the DCA similarly use datasets measuring these three factors, but as explained in their report, "The US Department of Housing and Urban Development (HUD) and the US Census Bureau publish separate tables on housing age, lack of plumbing facilities, lack of kitchen facilities, and overcrowding. However, there is no data source that reports the number of units that meet any one of those three conditions. Therefore, this number must be estimated using data from existing tables, with measures taken to account for overlap and to narrow the scope to deficient housing units occupied by low- and moderate-income [(LMI)] households." The DCA therefore used a combination of the latest data from HUD's Comprehensive Housing Affordability Strategy (CHAS) LMI dataset corresponding to the latest Census Bureau American Community Survey (ACS) data (which was 2017-2021 5 Year Estimates at the time of the report's release), data from the IPUMS Center for Data Integration, and the ACS Public Data Microdata Sample (PUMS) at the Public Use Microdata Area (PUMA) level to estimate the number of substandard/deficient low- and moderate-income occupied units ("present need") for each municipality in New Jersey.

Per the methodology outlined above and described in further detail in the DCA report, the Fourth Round present need obligation for the Township of Berkeley Heights is calculated as 0. The Township has reviewed the datasets and methodology used to calculate the Township's Fourth Round present need as published in the DCA report and spreadsheet, and the Township concurs with the report's Fourth Round present need calculation of 0 for the Township of Berkeley Heights.

Prospective Need

As described in A4/S50 and summarized in the DCA report, a municipality's Fourth Round prospective need obligation is calculated by multiplying its average allocation factor to the total prospective need of its corresponding Housing Region.

The average allocation factor is the average of three measures indicative of a municipality's capacity/potential to address the regional prospective need (equalized nonresidential valuation

factor, income capacity factor, and land capacity factor), which are further explained in the subsections below.

The Fourth Round prospective need for each Housing Region is determined by calculating the change in the number of households within each Housing Region between the 2010 Census and 2020 Census. Per A4/S50, “this household change, if positive, shall be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and to determine the regional prospective need for a 10-year round of low- and moderate-income housing obligations. If household change is zero or negative, the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and the regional prospective need shall be zero” (N.J. Stat. § 52:27D-304.2).

The Township of Berkeley Heights is in Housing Region 2, which consists of Essex County, Morris County, Union County, and Warren County. Per the DCA report, the regional prospective need for Housing Region 2 is calculated as 20,506, and the Township’s average allocation factor is calculated as 1.34%. The regional need of 20,506 multiplied by the Township’s average allocation factor of 1.34% therefore results in a non-binding Fourth Round prospective need obligation calculation of 275.

The Township has evaluated the accuracy of the methodology and datasets used to calculate each of the three measures (equalized nonresidential valuation factor, income capacity factor, and land capacity factor) used to compute the average allocation factor and resulting Fourth Round prospective need, and based on this analysis, has arrived at a reduced Fourth Round prospective need obligation calculation of 208. The process for the Township’s adjustment to the Fourth Round prospective need obligation published in the DCA report is detailed in the subsections below.

Equalized Nonresidential Valuation Factor

The equalized nonresidential valuation factor is one of the three components of the average allocation factor for each municipality. The equalized nonresidential valuation factor is representative of a municipality’s share of the change in nonresidential property value within its Housing Region.

Per A4/S50, “the changes in nonresidential property valuations in the municipality, since the beginning of the round preceding the round being calculated, shall be calculated using data published by the Division of Local Government Services in the department. For the purposes of this paragraph, the beginning of the round of affordable housing obligations preceding the fourth round shall be the beginning of the gap period in 1999. The change in the municipality’s nonresidential valuations shall be divided by the regional total change in nonresidential valuations to determine the municipality’s share of the regional change as the equalized nonresidential valuation factor” (N.J. Stat. § 52:27D-304.3).

Following this methodology and as described in the DCA report, the equalized nonresidential factor for each municipality is calculated as follows:

1. The valuations of commercial properties and industrial properties in each municipality in 2023, per data from the NJ Division of Local Government Services, is summed and then

divided by the 2023 State Equalization Table Average Ratio corresponding with the municipality to obtain a total equalized nonresidential valuation for 2023.

2. The valuations of commercial properties and industrial properties in each municipality in 1999, per data from the NJ Division of Local Government Services, is summed and then divided by the 1999 State Equalization Table Average Ratio corresponding with the municipality to obtain a total equalized nonresidential valuation for 1999.
3. The difference in total equalized nonresidential valuation from 1999-2023 is calculated for each municipality.
4. The difference in total nonresidential valuation from 1999-2023 is summed for all municipalities (excluding Qualified Urban Aid municipalities) within each Housing Region.
5. The difference in total nonresidential valuation from 1999-2023 for each municipality is divided by the sum of differences in total nonresidential valuation from 1999-2023 for its corresponding Housing Region to compute the municipality's share of the regional nonresidential valuation change from 1999-2023.

Following this methodology, the Township of Berkeley Heights' equalized nonresidential valuation factor of 1.10% is calculated as follows:

1. **\$362,843,000 (2023 commercial valuation) + \$33,776,700 (2023 industrial valuation) = \$396,619,700 (2023 total nonresidential valuation). \$396,619,700 (2023 total nonresidential valuation) / 0.4615 (2023 State Equalization Table Average Ratio) = \$859,414,301 (2023 total equalized nonresidential valuation).**
2. **\$257,140,800 (1999 commercial valuation) + \$320,030,400 (1999 industrial valuation) = \$577,171,200 (1999 total nonresidential valuation). \$577,171,200 (1999 total nonresidential valuation) / 1.0028 (1999 State Equalization Table Average Ratio) = \$575,559,633 (1999 total equalized nonresidential valuation).**
3. **\$859,414,301 (2023 total equalized nonresidential valuation) - \$575,559,633 (1999 total equalized nonresidential valuation) = \$283,854,668 (difference in total equalized nonresidential valuation from 1999-2023).**
4. **Housing Region 2 sum of differences in total equalized nonresidential valuation from 1999-2023, excluding Qualified Urban Aid municipalities = \$25,808,891,055.**
5. **\$283,854,668 (difference in total equalized nonresidential valuation from 1999-2023) / \$25,808,891,055 (Housing Region 2 sum of differences in total equalized nonresidential valuation from 1999-2023, excluding Qualified Urban Aid municipalities) = 0.0110 or 1.10%**

The Township has reviewed the datasets and methodology used to calculate the Township's Fourth Round equalized nonresidential valuation factor as published in the DCA report and spreadsheet (see above), and the Township concurs with the report's Fourth Round equalized nonresidential valuation factor calculation of 1.10% for the Township of Berkeley Heights.

Income Capacity Factor

The second component of the average allocation factor for each municipality is the income capacity factor. The income capacity factor measures the degree to which a municipality's median household income differs from an income floor of \$100 below the lowest median household income in its Housing Region.

Per A4/S50, a municipality's income capacity factor shall be "determined by calculating the average of the following measures:

- (a) The municipal share of the regional sum of the differences between the median municipal household income, according to the most recent American Community Survey Five-Year Estimates, and an income floor of \$100 below the lowest median household income in the region; and
- (b) The municipal share of the regional sum of the differences between the median municipal household incomes and an income floor of \$100 below the lowest median household income in the region, weighted by the number of the households in the municipality" (N.J. Stat. § 52:27D-304.3).

At the time of the release of the DCA report on October 18, 2024, the most recent American Community Survey Five-Year Estimates data for median household income and number of households were found in Table S1903 of the Census Bureau's American Community Survey 2018-22 5-Year Estimates.

Using the American Community Survey 2018-22 5-Year Estimates data, and following the methodology in A4/S50 outlined above, the Township of Berkeley Heights' income capacity factor of 1.76% was calculated in the DCA report as follows:

1. **\$196,389** (Median household income in the past 12 months in Berkeley Heights per 2022 ACS) - **\$46,360** (\$100 below the lowest median household income in Housing Region 2 of \$46,460 belonging to the City of Newark) = **\$150,029** (Municipal difference in median household income from Housing Region 2 income floor). **\$150,029** (Municipal difference in median household income from Housing Region 2 income floor) / **\$8,307,878** (Housing Region 2 sum of differences from income floor, excluding Qualified Urban Aid municipalities) = **0.0181 or 1.81%** (Berkeley Heights' share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities).
2. **\$150,029** (Municipal difference in median household income from Housing Region 2 income floor) \times **4,486** (Number of households in Berkeley Heights) = **\$673,030,094** (Municipal difference in median household income from Housing Region 2 income floor, excluding Qualified Urban Aid municipalities, weighted by households). **\$673,030,094** (Municipal difference in median household income from Housing Region 2 income floor, excluding Qualified Urban Aid municipalities, weighted by households) / **\$39,453,600,987** (Housing Region 2 sum of differences from income floor, excluding Qualified Urban Aid municipalities, weighted by households) = **0.0171 or 1.71%** (Berkeley Heights' share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities, weighted by households).
3. **Average of 1.81%** (Berkeley Heights' share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities) **and 1.71%** (Berkeley Heights' share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities, weighted by households) = **0.0176 or 1.76%**

While the Township agrees with the Township's income capacity factor calculation of 1.76% at the time of the DCA report, A4/S50 states that the income capacity factor shall be calculated

"according to the most recent American Community Survey Five-Year Estimates." On December 12, 2024, the United States Census Bureau released American Community Survey 2019-23 5-Year Estimates data. The Township therefore seeks to adjust its income capacity factor calculation based on the American Community Survey 2019-23 5-Year Estimates data for the municipalities in Housing Region 2, which can be found in Table S1903. The adjusted calculation of the Township's income capacity factor using the American Community Survey 2019-23 5-Year Estimates data is detailed below:

1. **\$198,750** (Median household income in the past 12 months in Berkeley Heights per 2023 ACS) - **\$48,316** (\$100 below the lowest median household income in Housing Region 2 of \$48,416 belonging to the City of Newark) = **\$150,434** (Municipal difference in median household income from Housing Region 2 income floor). **\$150,434** (Municipal difference in median household income from Housing Region 2 income floor) / **\$8,646,298** (Housing Region 2 sum of differences from income floor, excluding Qualified Urban Aid municipalities) = **0.0174 or 1.74%** (Berkeley Heights' share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities).
2. **\$150,434** (Municipal difference in median household income from Housing Region 2 income floor) x **4,660** (Number of households in Berkeley Heights) = **\$701,022,440** (Municipal difference in median household income from Housing Region 2 income floor, excluding Qualified Urban Aid municipalities, weighted by households). **\$701,022,440** (Municipal difference in median household income from Housing Region 2 income floor, excluding Qualified Urban Aid municipalities, weighted by households) / **\$41,118,073,874** (Housing Region 2 sum of differences from income floor, excluding Qualified Urban Aid municipalities, weighted by households) = **0.0170 or 1.70%** (Berkeley Heights' share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities, weighted by households).
3. **Average of 1.74%** (Berkeley Heights' share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities) **and 1.70%** (Berkeley Heights' share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities, weighted by households) = **0.0172 or 1.72%**

Based on the re-calculation of the Township's income capacity factor based on the most recent American Community Survey Five-Year Estimates, the Township derives an income capacity factor calculation of 1.72% rather than 1.76% as calculated in the DCA report.

Land Capacity Factor

The third component of the average allocation factor for each municipality is the land capacity factor. The land capacity factor indicates the percentage share of total "developable" land in a Housing Region accounted for by each municipality within that Region, excluding land area corresponding to Qualified Urban Aid municipalities.

A4/S50 states that the land capacity factor "shall be determined by estimating the area of developable land in the municipality's boundaries, and regional boundaries, that may accommodate development through the use of the 'land use / land cover data' most recently published by the Department of Environmental Protection, data from the American Community Survey and Comprehensive Housing Affordability Strategy dataset thereof, MOD-IV Property

Tax List data from the Division of Taxation in the Department of the Treasury, and construction permit data from the Department of Community Affairs and weighing such land based on the planning area type in which such land is located. After the weighing factors are applied, the sum of the total developable land area that may accommodate development in the municipality and in the region shall be determined. The municipality's share of its region's developable land shall be its land capacity factor" (N.J. Stat. § 52:27D-304.3).

Following this methodology, the DCA conducted a GIS analysis to identify the "developable" land within the state using several publicly-available datasets, including but not limited to 2020 land use/land cover (LULC) data, New Jersey State Plan Planning Areas weighted by area type, statewide parcel data, open space and preserved farmland, category 1 waterways and wetlands, steep slopes, and open waters.

The steps below provide a summary of the analysis conducted by DCA to identify the "developable" land in the state and calculate each municipality's land capacity factor, which is further expanded upon in the their report.

1. Weights were applied to all New Jersey State Plan Planning Areas as specified in A4/S50.
2. The layer of weighted Planning Areas was merged with land use/land cover (LULC) data for the entire state sourced from 2020 aerial imagery. 18 different types of LULC, such as cropland and pastureland, deciduous forest, and coniferous forest, were identified and extracted as "vacant, developable land" from this merged dataset.
3. Of these areas identified as "developable" from the merged dataset, areas without underlying parcel data and areas with MOD-IV Property Tax data with property class codes for residential, commercial, industrial, apartment, railroad, and school uses were removed to prevent rights-of-way, tree-covered rear yards on residential properties and buffer areas on non-residential development from being included in the "developable" land calculation.
4. Municipally-reported construction permit data was used to remove properties otherwise identified as vacant through the LULC analysis.
5. Areas mapped as open space, preserved farmland, category 1 waterways and wetlands (and associated buffers based on special resource area restrictions) were removed from the "developable" land dataset.
6. Using 10 foot digital elevation LiDAR data, steep slope areas exceeding 15% and steep slope areas consisting of 5,000 square feet or less were removed from the "developable" land dataset.
7. DCA reviewed an unspecified 22,000 vacant parcels to further remove homeowner association common areas, detention basins, and road and utility rights of way.
8. After the removal of all the aforementioned layers from the "developable" land dataset, remaining "slivers" of land with an area of 2,500 square feet or less were also removed due to their inability to support development.
9. The remaining land was identified as "developable" land and was summed based on the limits of each Housing Region and its corresponding municipalities.
10. The municipality's percentage of total identified "developable" land within its Housing Region constitutes its land capacity factor.

Through this analysis, the DCA reported 62.434 acres of “developable” land in the Township of Berkeley Heights and 5,358.483 acres of “developable” land in Housing Region 2, therefore computing a land capacity factor of 1.17% for the Township.

On November 27, 2024, the DCA released the output geospatial data (titled “Land Capacity Analysis for P.L. 2024, c.2”) generated from the GIS analysis used to compute the land capacity factor as described in the October 18, 2024 report. However, the DCA indicates in the description of this dataset that, “The land areas identified in this dataset are based on 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 Township has therefore reviewed and mapped this dataset to evaluate the accuracy of the 62.434 acres of “developable” land identified in the Township used to calculate the Township’s land capacity factor of 1.17% in the DCA report. Under further analysis, the Township finds that several areas identified as “developable” in the Township by the DCA’s geoprocessing model are in fact not “developable.”

As part of this analysis, the Township has prepared the following:

1. A map of the “developable” lands within the Township as identified in the DCA report (see Exhibit A).
2. A redlined spreadsheet of the “developable” lands within the Township as identified in the DCA report (see Exhibit B), which was prepared by merging the “vacant and developable” land spatial data features in the “Land Capacity Analysis for P.L. 2024, c.2” dataset released by the DCA with current parcel MOD-IV data for the Township as provided by the Union County Board of Taxation. The spreadsheet details the “developable” land areas to be removed from the land capacity factor calculation, which are outlined in red, as well as a description of the reason for removal.

Based on this analysis, the Township finds that +/- 50.343 acres of the 62.434 acres of “developable” land identified in the DCA report are to be removed from the land capacity factor calculation, resulting in a recalculation of the land capacity factor based on +/- 12.091 total acres of “developable” land within the Township. The adjustment to the “developable” land within the Township consequently reduces the total “developable” land within Housing Region 2 from 5,358.483 acres to 5,308.141 acres.

The land capacity factor is therefore re-calculated as follows:

$12.091 \text{ acres of “developable” land in the Township of Berkeley Heights} / 5,308.141 \text{ acres of “developable” land in Housing Region 2} = 0.0023 \text{ or } 0.23\%$

Summary

Based on the adjustments to the income capacity factor and land capacity factor as described above, the Township’s average allocation factor is reduced from 1.340% to 1.017%, which when

applied to the regional perspective need of 20,506 for Housing Region 2, lowers the Township's prospective need obligation from 275 to 208.

The table below summarizes the Township's Fourth Round present need obligation and prospective need obligation compared to the Township's Fourth Round obligations as calculated in the DCA report. Cells shaded red indicate an adjustment to a calculation provided in the DCA report.

BERKELEY HEIGHTS FOURTH ROUND OBLIGATION SUMMARY TABLE							
PRESENT NEED OBLIGATION							
DCA Calculation	Township Calculation						
0	0 (Township accepts DCA calculation)						
PROSPECTIVE NEED OBLIGATION							
DCA Calculation							
Equalized Nonresidential Valuation Factor	Income Capacity Factor	Land Capacity Factor			Average Allocation Factor	Regional Perspective Need	Berkeley Heights Prospective Need Obligation
		Housing Region 2 "Developable" Land (acres)	Township "Developable" Land (acres)	Land Capacity Factor Calculation			
1.10%	1.76%	5,358.483	62.434	1.17%	1.340%	20,506	275
Township Calculation							
Equalized Nonresidential Valuation Factor	Income Capacity Factor	Land Capacity Factor			Average Allocation Factor	Regional Perspective Need	Berkeley Heights Prospective Need Obligation
		Housing Region 2 "Developable" Land (acres)	Township "Developable" Land (acres)	Land Capacity Factor Calculation			
1.10 % (Township accepts DCA calculation)	1.72 %	5,308.141	12.091	0.23%	1.017%	20,506 (Township accepts DCA calculation)	208

EXHIBIT A

“Map of the ‘Developable’ Lands within the Township of Berkeley Heights per the DCA Report”



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06/26/2025 11:28:02 AM
Pg 116 of 202
Trans ID: LCV20251858406

Legend

Developable Land
per DCA Report

**Township of
Chatham**

**Borough of
New Providence**

**City of
Summit**

**Township of
Long Hill**

**Borough of
Mountain**

**Township of
Scotch Plains**

**Borough of
Watchung**

**Township of
Warren**

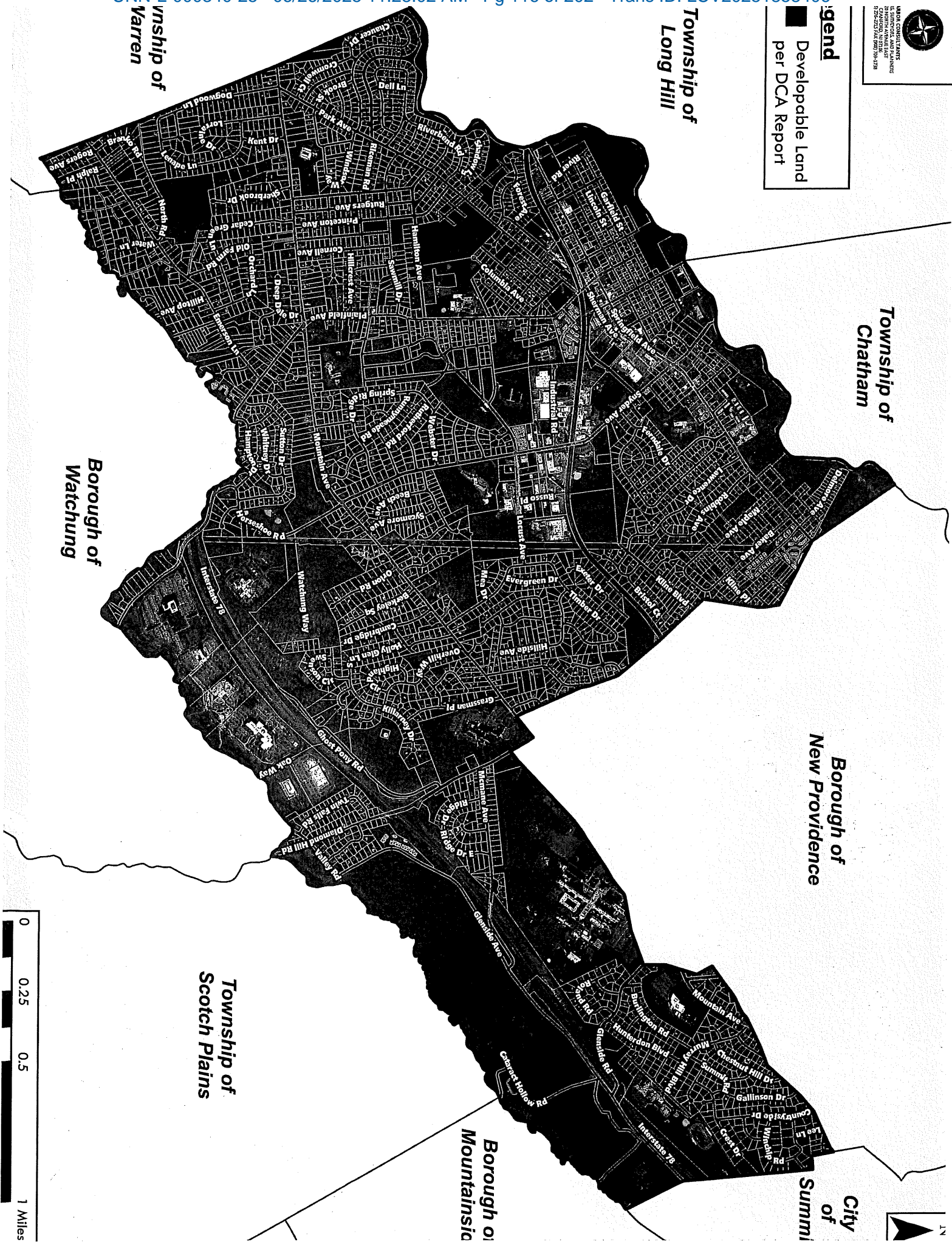


EXHIBIT B

“Redlined Spreadsheet of the ‘Developable’ Lands within the Township of Berkeley Heights per the DCA Report”

ACK	LOT	ADDITIONAL LOTS	QUALIFIER CODE	PROPERTY CLASS	ZONE	ADDRESS	OWNER NAME	OWNER ADDRESS	OWNER ADDRESS CITY / STATE	OWNER ADDRESS ZIP CODE	FACILITY NAME	BUILDING DESCRIPTION (MOD-IV)	LAND DESCRIPTION (MOD-IV)	CALCULATED AREA - AC (MOD IV)	PARCEL AREA - SF (STATE PLANE PROJ.)	PARCEL AREA - AC (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - SF (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - AC (STATE PLANE PROJ.)	COMMENTS
	08	39		15C	OL	31 SNYDER AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	Single Family Residence	1SF	1.405 AC	1.40500	61,221,24793	1.40545	155,72956	0.00357	155.73 SF of developable land area silver / Single Family Residence
	08	40		15C	OL	21 SNYDER AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVE	BERKELEY HEIGHTS, NJ	07922	Sewerage Treatment Plant		9.800 AC	9.80000	376,756,88269	8.64923	36,531,78993	0.53407	Sewerage Treatment Plant / DEP flood constraints
	01	18		R-15	R-15	KUNTZ AVE	K4K LLC	16192 COASTAL HIGHWAY	LEWES, DE	19558			.661 AC	0.66100	27,475,31046	0.65075	7,222,98488	0.16582	
	01	62	NPROV B10 L1	1	R-15	1823 SPRINGFIELD AVE	ZECCA, ANDREA & S HOGAN, J ANIS	1823 SPRINGFIELD AVE	NEW PROVIDENCE, NJ	07974			.291 AC	0.29100	14,343,02928	0.32927	3,253,49889	0.07469	
	04	5		15C	OL	CHRISTOPHER STREET	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922			1.300 AC	1.30000	55,543,25293	1.27510	35,555,81673	0.51625	Municipal Complex & DPW buildings / wetlands
	04	6		15C	OL	COLUMBUS AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	GARAGE	1SCB	2.665 AC	2.66500	135,632,64932	3.11830	67,596,57119	1.56012	Municipal Complex & DPW buildings / wetlands
	04	59		15C	OL	EUCUD AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	VACANT LAND		.637 AC	0.63700	27,653,70570	0.65246	27,319,53184	0.62717	Env. constraints
	03	1		1	DH-24	SHERMAN AVE	SHORT, EDWARD	P.O. BOX 510	BASKING RIDGE, NJ	07920			.564 AC	0.56400	27,402,62636	0.62908	27,402,62636	0.62908	Located in floodway / Snyder Avenue Brook
	03	2		1	DH-24	SHERMAN AVE	PARAMOUNT PARTNERSHIP LLC	230 PRINCETON AVE	BERKELEY HEIGHTS, NJ	07922	IN-LIEU TAX PAYMENT	PILOT	.270 AC	0.27000	7,726,47678	0.17738	7,726,47678	0.17738	Located in floodway / Snyder Avenue Brook
	03	8		15F	OL	ERIE LACK R R	LONE PINE DRIVE URBAN RENEWAL, LLC	ONE EVERJUST PLZ #804	JERSEY CITY, NJ	07302			.270 AC	0.27000	5,649,41090	0.12969	5,607,96500	0.12874	Located in floodway / Snyder Avenue Brook
	01	11		15D	R-15	96 FERRDALE DRIVE	DIAMOND HILL COMMUNITY CHURCH	1441 SPRINGFIELD AVE	NEW PROVIDENCE, NJ	07974	PASSNAGE	2SF2G	.417 AC	0.41700	18,504,37893	0.42480	4,313,59983	0.09903	Single family residence / passenger enclosed by floodway
	01	34		1	H8-2	MEAD STREET	PAONE REALTY ASSOCIATES, LLC	308-312 SPRINGFIELD AVE.	BERKELEY HEIGHTS, NJ	07922			.138 AC	0.13800	5,975,48246	0.13718	5,502,57549	0.12632	
	06	11.01		1	R-15	BRUNS AVENUE	HOROVITZ, HARRY % BERKELEY SWIM CLUB	P O BOX 24	BERKELEY HEIGHTS, NJ	07922			.089 AC	0.08900	2,997,91440	0.08882	2,572,24647	0.05905	
	301	21	1301-26 MERGED	15D	OL	310 PLAINFIELD AVE	CHURCH OF THE LITTLE FLOWER BERKELEY	290 PLAINFIELD AVE	BERKELEY HEIGHTS, NJ	07922	CHURCH	15S23S15S93G	11.460 AC	11.46000	489,955,74027	11.20197	103,353,02425	2.37267	Church of the Little Flower / recent tile piano approval and build out
	303	6		1	R-15	ROOSEVELT AVE	MORGAN, SUE ANN	6277 CLEMEN PLACE	PITTSBURGH, PA	15206			.297 AC	0.29700	12,500,02714	0.28656	4,430,16892	0.10170	
	601	23		8B		MOUNTAIN AVE	WESTON, JONATHAN P.	1133 MOUNTAIN AVENUE	BERKELEY HEIGHTS, NJ	07922			3.360 AC	3.36000	143,652,94593	3.30242	88,409,56059	2.02561	
	715	23		15D	R-15	763 MOUNTAIN AVE	MT RIDGE BIBLE CHAPEL % RA HOWARD	763 MOUNTAIN AVENUE	BERKELEY HEIGHTS, NJ	07922	CHURCH	25B	1.669 AC	1.66900	81,108,70418	1.86201	23,466,13580	0.53871	MT. Ridge Bible Chapel
	815	6		15C	OL	355 HAMILTON AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	FIREHOUSE	FIREHOUSE	16.090 AC	16.09000	718,904,23319	16.50384	354,923,32615		Township Firehouse / Env. Restrictions substantially reduce the developable area
	901	35		15F	LI	100-200 LOCUST AV	LOCUST BERKELEY DEVELOPERS URBAN BE	820 MORRIS TURNPIKE	SHORT HILLS, NJ	07078	IN-LIEU TAX PAYMENT	PILOT	10.190 AC	10.19000	447,222,60958	10.26916	62,250,98946	1.42680	3rd round Incisionary Age-Restricted Redevelopment
	901	44		1	LI	50 LOCUST AVE	50-60 LOCUST AVE. ASSOC., LLC	P.O. BOX 492	BERKELEY HEIGHTS, NJ	07922			.590 AC	0.69000	29,647,68191	0.69062	27,970,02521	0.64211	
	006	32		15D	R-15	775 MOUNTAIN AVE	WESTMINSTER PRESBYTERIAN CHURCH	775 MOUNTAIN AVENUE	BERKELEY HEIGHTS, NJ	07922	CHURCH	15B	6.000 AC	6.00000	254,977,04166	5.86349	57,799,14163	1.32889	WESTMINSTER PRESBYTERIAN CHURCH
	201	16		15C	OL	378 SNYDER AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	RESCUE SOD	15B RESCUE SD	.725 AC	0.72500	48,350,32603	1.10958	12,259,24919	0.28143	Berkeley Heights Rescue Squad
	201	17		15D	OL	15 LOCUST AVENUE	B H POST 6259 VET OF FOREIGN WARS	15 LOCUST AVENUE	BERKELEY HEIGHTS, NJ	07922	CLUB		.689 AC	0.68900	30,044,60378	0.68973	3,847,07133	0.08832	VFW Hall
	201	19		15C	OL	59 LOCUST AVE	BERKELEY HEIGHTS YVCA LLC	59 LOCUST AVE	BERKELEY HEIGHTS, NJ	07922	POOL	15CB COMM POOL	17.400 AC	17.40000	740,587,78893	17.00162	334,867,26119	7.69753	YVCA
	704	3		1	R-20	EMERSON LANE	K HOVANANIAN AT WARREN TOWNSHIP ILL	110 FIELDCREST AVE	EDISON, NJ	08837			1.880 AC	1.88000	53,141,94390	1.12198	19,594,38838	0.44883	Part of K. Hovanian Development
	901	1.06		1	R-20	APPLE TREE ROW - REAR	FREE ACRES ASSOCIATION	210 EMERSON LANE	BERKELEY HEIGHTS NJ	07922			1.06 AC	1.06000	43,638,31194	1.00180	39,138,97236	0.68940	Free Acres Association
	901	1.571		1		WATER LANE-REAR	FREE ACRES ASSOCIATION	C/O FREE ACRES ASSOC	BERKELEY HEIGHTS NJ	07922			.510 AC	0.51000	18,513,43200	0.44204	18,513,43200	0.42042	Free Acres Association
	901	1.67		1	R-20	70 GREENBROOK RD	FREE ACRES ASSOCIATION	C/O FREE ACRES ASSOC	BERKELEY HEIGHTS, NJ	07922				0.00000	14,632,29736	0.34050	12,448,02377	0.28579	Free Acres Association
	102	40		15D		PLAINFIELD AVENUE	ST. MARY'S CHURCH - STONY HILL	225 MOUNTAIN BOULEVARD	WATCHUNG, NJ	07060	VACANT LAND		1.805 AC	0.18050	14,001,79020	0.32144	8,260,64276	0.18564	Floodway
	103	1.01	BL 400215 BL 34017	1	OL	HORSESHOE ROAD	RINNELLS PROPERTY INC	40 WATCHUNG WAY	BERKELEY HEIGHTS, NJ	07922	VACANT LAND		.226 AC	0.22600	9,998,90272	0.22584	8,060,90255	0.18503	
	1401	48.01		1	R-20	110 CIRCLE VIEW AVE	1 & PINE HOLDING LIMITED LIABILITY C	1061 INMAN AVE APT. D 139	EDISON, NJ	08820			.46 AC	0.46000	20,565,64447	0.46131	6,39716	0.00015	Single Family Residence
	1401	48.02		1	R-20	100 CIRCLE VIEW AVE	1 & PINE HOLDING LIMITED LIABILITY C	1061 INMAN AVE, APT D139	EDISON, NJ	08820			.71 AC	0.71000	29,672,30063	0.68119	2,314,60567	0.06691	

DOC	LOT	ADDITIONAL LOTS	QUALIFIER CODE	PROPERTY CLASS	ZONE	ADDRESS	OWNER NAME	OWNER ADDRESS	OWNER ADDRESS CITY, STATE	OWNER ADDRESS ZIP CODE	FACILITY NAME	BUILDING DESCRIPTION (MOD-IV)	LAND DISCRPTION (MOD-IV)	CALCULATED AREA - AC (MOD IV)	PARCEL AREA - SF (STATE PLANE PROJ.)	PARCEL AREA - AC (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - SF (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - AC (STATE PLANE PROJ.)	COMMENTS
	49			15C	OL	REAR CIRCLE VIEW AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	VACANT LAND		.544 AC	0.54400	23,561,48634	0.54090	5,613,52866	0.13346	Public utility
101	50	BL400215.33 09/1.01		1	OL	PLAINFIELD AVE	RUNNELLS PROPERTY LLC	40 WATCHUNG WAY	BERKELEY HEIGHTS, NJ	07922	VACANT LAND		3.200 AC	3.20000	134,837,73567	3.09546	65,567,31471	1.56436	Part of former Runnells Hospital complex w/ deed restriction (Book 6029, Page 125)
101	4			1	OR	120 GRASSMAN PLACE	CINNAMON RIDGE ASSOC. C/O INTEGRA	200 VALLEY ROAD, STE 203	MT ARLINGTON, NJ	07566			1.461 AC	1.46100	55,661,45637	1.27828	3,270,48776	0.07508	Stormwater management facility
101	7			15D	OR	105 DIAMOND HILL RD	DIAMOND HILL COMMUNITY CHURCH	1441 SPRINGFIELD AVE	NEW PROVIDENCE, NJ	07974	CHURCH	158	.673 AC	0.67300	45,720,77644	1.04961	6,800,48738	0.20203	
105	1			1	R-20	35 GRASSMAN PLACE	ERDOS, PAUL	20 LINCOLN PLACE	NORTH PLAINFIELD, NJ	07060			.817 AC	0.81700	34,759,11903	0.79796	29,665,29611	0.66102	
101	1			15C	R7B	PLAINFIELD AVE	N/ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT OF WAY		2.550 AC	2.55000	87,744,41513	2.01434	4,317,44292	0.09912	N/ DOT land restricted by Greer Brook
102	16			15C	R7B	GLENSIDE AVE	N/ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT OF WAY		20.720 AC	20.72000	853,299,69857	19.58974	96,111,43923	2.20642	N/ DOT Route 78 r.o.w.
101	2			1	R-20	PLAINFIELD AVE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922			1.979 AC	1.97900	48,672,86875	1.11736	26,870,23263	0.51866	
101	3			1	R-20	1021 PLAINFIELD AVENUE	CONNELL COMPANY	300 CONNELL DR	BERKELEY HEIGHTS, NJ	07922			1.104 AC	1.10400	45,315,63060	1.04038	1,306,46561	0.23299	
101	5			1	R-20	1041 PLAINFIELD AVENUE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922			1.552 AC	1.55200	75,366,48260	1.73018	45,158,12386	1.03869	
101	7			1	R-20	1067 PLAINFIELD AVENUE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922			.862 AC	0.86200	39,021,48773	0.89561	13,347,25915	0.30641	
101	9			1	R-20	1085 PLAINFIELD AVENUE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922			.857 AC	0.85700	38,653,73805	0.88829	12,700,69387	0.29157	
101	10			1	R-20	1095 PLAINFIELD AVENUE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922			.976 AC	0.97600	41,514,21802	0.95304	22,778,95856	0.52294	
101	16			1	R-20	1129 PLAINFIELD AVENUE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922		1.5571G	.413 AC	0.41300	17,827,34674	0.40928	3,640,55977	0.08358	
101	17			1	R-20	1133 PLAINFIELD AVENUE	CONNELL COMPANY	300 CONNELL DR	BERKELEY HEIGHTS, NJ	07922			.499 AC	0.49900	22,703,23249	0.52120	4,667,79869	0.10716	Floodway of Green Brook
101	20			1	R-20	REAR PLAINFIELD AVE	RK & RK, LLC	901 VALLEY RD	WATCHUNG, NJ	07069			.535 AC	0.53500	22,833,29944	0.52418	4,395,67146	0.10092	Homeowner's association open space
101	3			1	R-20	OLD COCONAL ROAD	CINNAMON RIDGE ASSOC C/O INTEGRA	200 VALLEY ROAD, STE 203	MT ARLINGTON, NJ	07956			21.089 AC	21.08000	921,412,13095	21.15280	122,289,69787	2.80740	Land between a driveway and Route 78 owned by a homeowner's association
101	4			15C	R7B	VALLEY ROAD	N/ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT OF WAY		20.110 AC	20.11000	846,320,64664	19.42893	111,313,06227	2.55541	N/ DOT Route 78
101	6			1	R-20	OLD COCONAL ROAD	CINNAMON RIDGE ASSOC C/O INTEGRA	200 VALLEY ROAD, STE 203	MT ARLINGTON, NJ	07956			.820 AC	0.82000	30,849,98103	0.70822	3,542,05122	0.08131	
101	2			1	R-20	DIAMOND HILL RD	AMERICAN WATER SSC	P.O. BOX 2735, TAX DEPT.	CAMDEN, NJ	08101			.640 AC	0.64000	24,235,18882	0.55637	5,032,11627	0.11552	Development (water tank) present on site; parcel completely encompassed by Block 4401, Lot 3 / owned by Water Company
401	3			1	R-20	GHOST POYNT ROAD	CINNAMON RIDGE ASSOC C/O INTEGRA	200 VALLEY ROAD, STE 203	MT ARLINGTON, NJ	07956			21.699 AC	21.69600	1,091,771,41375	25.06235	412,123,51690	9.46109	Open space set aside from subdivision / owned by homeowners association / slopes in excess of 15% per VLA
401	4			1	R-20	DIAMOND HILL RD	LEHARD INVESTMENT 2 LLC	338 LARRY CT	PISCATAWAY, NJ	08854			3.195 AC	3.19500	146,376,04349	3.36035	10,527,98669	0.24169	3rd round VLA 20+% steep slopes (side of a mountain) and bisected by stream
402	1			15C	R7B	OLD COCONAL ROAD	N/ DEPT OF TRANSPORTATION	1035 PARKWAY AVENUE CN600	TRENTON, NJ	08625	RIGHT OF WAY		.840 AC	0.84000	21,036,83395	0.48294	7,529,77791	0.17286	N/ DOT r.o.w.
402	2			15C	R7B	VALLEY ROAD	N/ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT OF WAY		17.195 AC	17.19500	685,450,98046	15.75655	25,812,59494	0.56110	N/ DOT r.o.w.
302	5			1	R-20	41 RIDGE DRIVE EAST	HILLTOP RIDGE, LLC	33 RIDGE DRIVE EAST	BERKELEY HEIGHTS, NJ	07922			.300 AC	0.30000	13,300,11221	0.30553	5,057,12240	0.16110	
303	31			15C	R7B	DIAMOND HILL RD	N/ DEPT OF TRANSPORTATION	1035 PARKWAY AVENUE CN600	TRENTON, NJ	08625	RIGHT OF WAY		30.000 AC	30.00000	847,402,28506	19.46376	50,597,11888	1.16155	N/ DOT r.o.w.
701	2			15C	R7B	GLENSIDE AVE	N/ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT OF WAY		8.100 AC	8.10000	400,603,13729	9.19662	34,490,64395	0.79180	N/ DOT r.o.w.
702	2			15C	R7B	GLENSIDE AVE	N/ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT OF WAY		18.620 AC	18.62000	774,648,30743	17.78355	65,455,94974	1.50267	N/ DOT r.o.w.

Prepared on 1/17/2025 by:



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320 NORTH AVENUE EAST
CARLETON, NJ 07016
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DOC	LOT	ADDITIONAL LOTS	QUALIFIER CODE	PROPERTY CLASS	ZONE	ADDRESS	OWNER NAME	OWNER ADDRESS	OWNER ADDRESS CITY, STATE	OWNER ADDRESS ZIP CODE	FACILITY NAME	BUILDING DESCRIPTION (MOD-IV)	LAND DESCRIPTION (MOD-IV)	CALCULATED AREA - AC (MOD-IV)	PARCEL AREA - SF (STATE PLANE PROJ.)	PARCEL AREA - AC (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - SF (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - AC (STATE PLANE PROJ.)	COMMENTS
102	25			15C	R178	GLENSIDE AVE	N 1 DEPT OF TRANSPORTATION	1035 PARKWAY AVE CHENGO	TRENTON, NJ	08625	RIGHT OF WAY		11.724 AC	11.72400	655,687,46452	19,57151	72,114,15810	1.55552	N/DOT r.o.w. / steep slopes
108	1			15C	R178	GLENSIDE RD	N 1 DEPT OF TRANSPORTATION	1035 PARKWAY AVE CHENGO	TRENTON, NJ	08625	RIGHT OF WAY		2.810 AC	2.81000	116,528,35574	2.67509	12,123,26601	0.27831	

! This spreadsheet was not prepared or officially released by the DCA, the DCA only provided spatial data of the land areas identified as "vacant and developable" as part of the land capacity factor calculation. Our office prepared this spreadsheet of properties containing "vacant and developable" land as identified by the DCA by merging the spatial data for the "Land
Activity Analysis for P.L. 2024, c.27" released by the DCA (see <https://njica.njms-arcds.com/homeItem.html?id=12&cdlev=5.0&R82bde4e5063e74>) with current Parcel MOD-IV data for the Township as provided by the Union County Board of Taxation (see [https://taxrecords-
no/publicapi/parcel.cgi?ams_user=ctb000&passw=4d4d11c5c2001&arch_type=0&adv=2&out_type=2](https://taxrecords-
no/publicapi/parcel.cgi?ams_user=ctb000&passw=4d4d11c5c2001&arch_type=0&adv=2&out_type=2)).

FOURTH ROUND OBLIGATION CALCULATION										Regional Resp. Need
Existing Region 2 Developable Land per DCA		Proposed Region 2 Developable Land		Existing Land Developable Land (acres) per DCA		Existing Capacity Factor per DCA		Equalized Nonres. Valuation Factor per DCA		20,508
5,598,483		5,508,141		82,484		1.17%		1.10%		
Proposed Developable Land (acres)		Proposed Land Capacity Factor		Proposed Income Capacity Factor per DCA		Proposed Income Allocation Factor per DCA		Proposed Average Allocation Factor		275
12,091		0.23%		1.76%		1.34%		1.017%		208

No. 2025- 72

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

**RESOLUTION OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF
BERKELEY HEIGHTS COMMITTING TO FOURTH ROUND PRESENT
AND PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATIONS**

WHEREAS, the Township of Berkeley Heights (hereinafter the “Township” or “Berkeley Heights”) has a demonstrated history of voluntary compliance as evidenced by its Third Round record; and

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), on July 2, 2015, the Township of Berkeley Heights filed a Declaratory Judgment Complaint in Superior Court, Law Division seeking, among other things, a judicial declaration that its Third Round Housing Element and Fair Share Plan, to be amended as necessary, satisfies its “fair share” of the regional need for low and moderate income housing pursuant to the “Mount Laurel doctrine,” and

WHEREAS, that culminated in a Court-approved Third Round Housing Element and Fair Share Plan and a Final Judgment of Compliance and Repose, which precludes all Mount Laurel lawsuits, including builder’s remedy lawsuits until July 1, 2025; and

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2, which amended the 1985 New Jersey Fair Housing Act (hereinafter the “Amended FHA”); and

WHEREAS, the Amended FHA required the Department of Community Affairs (“DCA”) to provide an estimate of the Fourth Round affordable housing obligations for all municipalities on or before October 20, 2024, based upon the criteria described in the Amended FHA; and

WHEREAS, the DCA issued a report on October 18, 2024 (“DCA Report”) wherein it reported its estimate of the Fourth Round affordable housing obligations for all municipalities based upon its interpretation of the standards in the Amended FHA; and

WHEREAS, the DCA Report calculates the Township’s Fourth Round (2025-2035) obligations as follows: a Present Need (Rehabilitation) Obligation of Zero (0) and a Prospective Need (New Construction) Obligation of 275; and

WHEREAS, the Amended FHA further provides that, irrespective of the DCA’s calculations, municipalities have the ability to either accept, or provide alternate calculations for, the DCA’s “present and prospective fair share obligation(s)...by binding resolution no later than January 31, 2025”, a deadline which was later extended to February 3, 2025 by the Administrative Office of the Courts (“AOC”) via a directive issued on December 19, 2024; and

WHEREAS, the Township accepts the DCA's Fourth Round Present Need (Rehabilitation) calculation of Zero (0), but does not accept the DCA's calculation of the Township's Income Capacity Factor or the Land Capacity Allocation Factor, which are two factors that are part of the DCA's calculation of the Township's Fourth Round Prospective Need (New Construction) calculation of 275; and

WHEREAS, as to the Land Capacity Allocation Factor, the Township notes that the DCA belatedly provided the data it used to establish this factor, i.e., on or about November 25, 2024, instead of by October 20, 2024; and

WHEREAS, the Township further notes that the link to the DCA GIS data that the DCA belatedly made available to municipalities includes the following language: "The land areas identified in this dataset are based on ... 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."; and

WHEREAS, the Township maintains that the Income Capacity Allocation factor has to be adjusted and that the areas the DCA identified as developable are indeed overinclusive and, consequently, the Township's Affordable Housing Planner, has prepared an expert report, attached hereto as **Exhibit A**; and

WHEREAS, correcting the Income Capacity Factor and Land Capacity Allocation Factor results in the reduction of Berkeley Heights Township's Fourth Round Prospective Need (New Construction) Obligation from 275 to 208; and

WHEREAS, Section 3 of the Amended FHA provides that: "the municipality's determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7" of the Amended FHA; and

WHEREAS, the Township's acceptance of the Fourth Round obligations calculated by the DCA are entitled to a "presumption of validity" because it complies with Sections 6 and 7 of the Amended FHA; and

WHEREAS, in addition to the foregoing, the Township specifically reserves the right to adjust its fair share obligations in accordance with applicable Council on Affordable Housing ("COAH") regulations or other applicable law based on one or more of the foregoing adjustments if applicable: 1) a windshield survey or similar survey which accounts for a higher-resolution estimate of present need; 2) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 3) a Durational Adjustment, whether predicated upon lack of sewer or lack of water; and/or 4) an adjustment predicated upon regional planning entity formulas, inputs or considerations, including but not limited to, the Highlands Council Regional Master Plan and its build out, or the Pinelands Commission or Meadowlands Commission regulations and planning document; and

WHEREAS, in addition to the foregoing, the Township specifically reserves all rights to revoke or amend this resolution and commitment, as may be necessary, in the event of a successful challenge to the Amended FHA in the context of the case The Borough of Montvale v. the State of New Jersey (MER-L-1778-24), any other such action challenging the Amended FHA, or any legislation adopted and signed into law by the Governor of New Jersey that alters the deadlines and/or requirements of the Amended FHA; and

WHEREAS, in addition to the foregoing, the Township reserves the right to take a position that its Fourth Round Present or Prospective Need Obligations are lower than described herein in the event that a third party challenges the calculations provided for in this Resolution (a reservation of all litigation rights and positions, without prejudice); and

WHEREAS, in addition to the foregoing, nothing in the Amended FHA requires or can require an increase in the Township's Fourth Round Present or Prospective Need Obligations based on a successful downward challenge of any other municipality in the region since the plain language and clear intent of the Amended FHA is to establish unchallenged numbers by default on March 1, 2025; and

WHEREAS, in addition to the foregoing, the Acting Administrative Director of the AOC issued Directive #14-24 on December 19, 2024; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking a Fourth Round Compliance Certification from the entity created by the Amended FHA known as the Affordable Housing Dispute Resolution Program (hereinafter "the Program"), shall file an action in the appropriate venue with the Program, in the form of a Declaratory Judgment Complaint within 48 hours after adoption of the municipal resolution accepting or challenging its Fourth Round fair share obligations, or by February 3, 2025, whichever is sooner; and

WHEREAS, nothing in this Resolution shall be interpreted as an acknowledgment of the legal validity of AOC Directive #14-24 and the Township reserves any and all rights and remedies in relation to the AOC Directive; and

WHEREAS, the Township seeks a Compliance Certification from the Program and, therefore, wishes to file a Declaratory Judgment Complaint in the appropriate venue with the Program, along with a copy of this Resolution, within 48 hours of the adoption of this Resolution; and

WHEREAS, in light of the above, the Mayor and Township Council finds that it is in the best interest of the Township to declare its obligations in accordance with this Resolution; and

NOW, THEREFORE, BE IT RESOLVED on this 21st day of January of 2025, by the Township Council of the Township of Berkeley Heights, Union County, State of New Jersey, as follows:

1. All of the Whereas Clauses are incorporated into the operative clauses of this Resolution as if set forth in full.

2. For the reasons set forth in this Resolution, the Mayor and Township Council hereby commit to the DCA Fourth Round Present Need (Rehabilitation) Obligation of Zero (0) and the Fourth Round Prospective Need (New Construction) Obligation of 208 as described in this Resolution, subject to all reservations of rights, which specifically include, without limitation, the following:

- a) The right to adjust the Township's fair share obligations based on a windshield survey or similar survey, a Vacant Land Adjustment, a Durational Adjustment, and all other applicable adjustments, permitted in accordance with applicable COAH regulations or other applicable law; and
- b) The right to revoke or amend this Resolution in the event of a successful legal challenge, or legislative change, to the Amended FHA; and
- c) The right to take any contrary position, or adjust its fair share obligations, in the event of a third party challenge to the Township's fair share obligations.

3. Pursuant to the requirements of the FHA as amended, and the Administrator of the Court's (AOC) Directive #14-24 issued on December 19, 2024, the Township Council hereby directs its Affordable Housing Counsel to file a Declaratory Judgment Complaint, along with this Resolution, a Case Information Statement (Civil CIS), and supporting expert report, in the appropriate venue with the Program or any other such entity as may be determined to be appropriate, to initiate an action within 48 hours of the adoption of this Resolution, so that the Township's Fourth Round Housing Element and Fair Share Plan can be reviewed and approved.

4. This resolution shall take effect immediately, according to law.


CERTIFICATION

I certify that the foregoing Resolution was duly adopted by the Council of the Township of Berkeley Heights at a regular meeting held on the 21st day of January 2025, a quorum being present and voting in the majority.


Angela Lazzari, Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
COUTO	✓			
FOSTER	✓			
ILLIS	✓			
MACHADO	✓			
MORAN	✓			
POAGE	✓			
TIE:				
MAYOR DEVANNEY				

CERTIFIED TRUE COPY:


Angela Lazzari, RMC, CMR, Township Clerk

In testimony whereof, I have hereunto set my hand and caused the seal of the Township of Berkeley Heights to be affixed.

EXHIBIT A



Date: January 17, 2025

To: Erik Nolan, Esq., Township Affordable Housing Attorney

From: Michael Mistretta, PP, LLA, Harbor Consultants, Inc.
Wyatt Grant, Harbor Consultants, Inc.

**Re: Fourth Round (2025-2035) Affordable Housing Obligation Calculation
Township of Berkeley Heights, New Jersey**

This memo has been prepared to outline the municipal requirements for the Township of Berkeley Heights to establish its Fourth Round (July, 2025 – July, 2035) present and prospective fair share obligation as mandated by the A4/S50 legislation, as well as detail the process and calculations used to determine the Township's Fourth Round present need obligation and prospective need obligation, which are to be adopted by binding resolution prior to January 31, 2025.

Background

On March 20, 2024, Governor Murphy signed into law affordable housing bill A4/S50, which established new guidelines for determining and regulating the affordable housing obligations of New Jersey municipalities for the fourth 10-year-round (July, 2025 – July, 2035). Per A4/S50, before a municipality establishes its Fourth Round present and prospective fair share obligation, "the [Department of Community Affairs] shall prepare and submit a report to the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14- 19.1), to the Legislature providing a report on the calculations of regional need and municipal obligations for each region of the State within the earlier of seven months following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.) or December 1, 2024" (N.J. Stat. § 52:27D-304.1). Then, "with consideration of the calculations contained in the relevant report published by the department... for each 10-year round of affordable housing obligations beginning with the fourth round, a municipality shall determine its present and prospective fair share obligation for affordable housing in accordance with the formulas established in sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) by resolution, which shall describe the basis for the municipality's determination and bind the municipality to adopt a housing element and fair share plan" (N.J. Stat. § 52:27D-304.1). For the Fourth Round, the municipal "determination of present and prospective fair share obligation shall be made by binding resolution no later than January 31, 2025" (N.J. Stat. § 52:27D-304.1).

In compliance with the aforementioned requirements, the Department of Community Affairs (DCA) released a report on October 18, 2024, titled "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background," inclusive of a calculation spreadsheet, which detailed the datasets and calculations used to generate the non-binding affordable housing obligation for each municipality within New Jersey for the Fourth Round. This report was amended several days later to include revised language on the methodology for the land capacity factor calculation. Per this report, the Township's Fourth Round present need was calculated as 0 and the Township's Fourth Round prospective need was calculated as 275.

The Township has reviewed the DCA report and methodology established in A4/S50, which serve as the basis for the Township's evaluation and determination of its Fourth Round present and prospective fair share obligation. The ensuing sections of this memo provide an analysis of the process used to calculate the Township's Fourth Round present and prospective fair share obligation.

Present Need

Per A4/S50, "A municipality's present need obligation shall be determined by estimating the existing deficient housing units currently occupied by low- and moderate-income households within the municipality, following a methodology comparable to the methodology used to determine third round present need, through the use of datasets made available through the federal decennial census and the American Community Survey, including the Comprehensive Housing Affordability Strategy dataset thereof" (N.J. Stat. § 52:27D-304.2). A4/S50 further defines "deficient housing units" as "housing that: (1) is over fifty years old and overcrowded; (2) lacks complete plumbing; or (3) lacks complete kitchen facilities" (N.J. Stat. § 52:27D-304).

In the Third Round, municipal present need calculations were based on the number of housing units lacking complete kitchen facilities, the number of units lacking complete plumbing facilities, and the number of overcrowded units. The present need calculations for the Fourth Round conducted by the DCA similarly use datasets measuring these three factors, but as explained in their report, "The US Department of Housing and Urban Development (HUD) and the US Census Bureau publish separate tables on housing age, lack of plumbing facilities, lack of kitchen facilities, and overcrowding. However, there is no data source that reports the number of units that meet any one of those three conditions. Therefore, this number must be estimated using data from existing tables, with measures taken to account for overlap and to narrow the scope to deficient housing units occupied by low- and moderate-income [(LMI)] households." The DCA therefore used a combination of the latest data from HUD's Comprehensive Housing Affordability Strategy (CHAS) LMI dataset corresponding to the latest Census Bureau American Community Survey (ACS) data (which was 2017-2021 5 Year Estimates at the time of the report's release), data from the IPUMS Center for Data Integration, and the ACS Public Data Microdata Sample (PUMS) at the Public Use Microdata Area (PUMA) level to estimate the number of substandard/deficient low- and moderate-income occupied units ("present need") for each municipality in New Jersey.

Per the methodology outlined above and described in further detail in the DCA report, the Fourth Round present need obligation for the Township of Berkeley Heights is calculated as 0. The Township has reviewed the datasets and methodology used to calculate the Township's Fourth Round present need as published in the DCA report and spreadsheet, and the Township concurs with the report's Fourth Round present need calculation of 0 for the Township of Berkeley Heights.

Prospective Need

As described in A4/S50 and summarized in the DCA report, a municipality's Fourth Round prospective need obligation is calculated by multiplying its average allocation factor to the total prospective need of its corresponding Housing Region.

The average allocation factor is the average of three measures indicative of a municipality's capacity/potential to address the regional prospective need (equalized nonresidential valuation

factor, income capacity factor, and land capacity factor), which are further explained in the subsections below.

The Fourth Round prospective need for each Housing Region is determined by calculating the change in the number of households within each Housing Region between the 2010 Census and 2020 Census. Per A4/S50, “this household change, if positive, shall be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and to determine the regional prospective need for a 10-year round of low- and moderate-income housing obligations. If household change is zero or negative, the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and the regional prospective need shall be zero” (N.J. Stat. § 52:27D-304.2).

The Township of Berkeley Heights is in Housing Region 2, which consists of Essex County, Morris County, Union County, and Warren County. Per the DCA report, the regional prospective need for Housing Region 2 is calculated as 20,506, and the Township’s average allocation factor is calculated as 1.34%. The regional need of 20,506 multiplied by the Township’s average allocation factor of 1.34% therefore results in a non-binding Fourth Round prospective need obligation calculation of 275.

The Township has evaluated the accuracy of the methodology and datasets used to calculate each of the three measures (equalized nonresidential valuation factor, income capacity factor, and land capacity factor) used to compute the average allocation factor and resulting Fourth Round prospective need, and based on this analysis, has arrived at a reduced Fourth Round prospective need obligation calculation of 208. The process for the Township’s adjustment to the Fourth Round prospective need obligation published in the DCA report is detailed in the subsections below.

Equalized Nonresidential Valuation Factor

The equalized nonresidential valuation factor is one of the three components of the average allocation factor for each municipality. The equalized nonresidential valuation factor is representative of a municipality’s share of the change in nonresidential property value within its Housing Region.

Per A4/S50, “the changes in nonresidential property valuations in the municipality, since the beginning of the round preceding the round being calculated, shall be calculated using data published by the Division of Local Government Services in the department. For the purposes of this paragraph, the beginning of the round of affordable housing obligations preceding the fourth round shall be the beginning of the gap period in 1999. The change in the municipality’s nonresidential valuations shall be divided by the regional total change in nonresidential valuations to determine the municipality’s share of the regional change as the equalized nonresidential valuation factor” (N.J. Stat. § 52:27D-304.3).

Following this methodology and as described in the DCA report, the equalized nonresidential factor for each municipality is calculated as follows:

1. The valuations of commercial properties and industrial properties in each municipality in 2023, per data from the NJ Division of Local Government Services, is summed and then

divided by the 2023 State Equalization Table Average Ratio corresponding with the municipality to obtain a total equalized nonresidential valuation for 2023.

2. The valuations of commercial properties and industrial properties in each municipality in 1999, per data from the NJ Division of Local Government Services, is summed and then divided by the 1999 State Equalization Table Average Ratio corresponding with the municipality to obtain a total equalized nonresidential valuation for 1999.
3. The difference in total equalized nonresidential valuation from 1999-2023 is calculated for each municipality.
4. The difference in total nonresidential valuation from 1999-2023 is summed for all municipalities (excluding Qualified Urban Aid municipalities) within each Housing Region.
5. The difference in total nonresidential valuation from 1999-2023 for each municipality is divided by the sum of differences in total nonresidential valuation from 1999-2023 for its corresponding Housing Region to compute the municipality's share of the regional nonresidential valuation change from 1999-2023.

Following this methodology, the Township of Berkeley Heights' equalized nonresidential valuation factor of 1.10% is calculated as follows:

1. **\$362,843,000 (2023 commercial valuation) + \$33,776,700 (2023 industrial valuation) = \$396,619,700 (2023 total nonresidential valuation). \$396,619,700 (2023 total nonresidential valuation) / 0.4615 (2023 State Equalization Table Average Ratio) = \$859,414,301 (2023 total equalized nonresidential valuation).**
2. **\$257,140,800 (1999 commercial valuation) + \$320,030,400 (1999 industrial valuation) = \$577,171,200 (1999 total nonresidential valuation). \$577,171,200 (1999 total nonresidential valuation) / 1.0028 (1999 State Equalization Table Average Ratio) = \$575,559,633 (1999 total equalized nonresidential valuation).**
3. **\$859,414,301 (2023 total equalized nonresidential valuation) - \$575,559,633 (1999 total equalized nonresidential valuation) = \$283,854,668 (difference in total equalized nonresidential valuation from 1999-2023).**
4. **Housing Region 2 sum of differences in total equalized nonresidential valuation from 1999-2023, excluding Qualified Urban Aid municipalities = \$25,808,891,055.**
5. **\$283,854,668 (difference in total equalized nonresidential valuation from 1999-2023) / \$25,808,891,055 (Housing Region 2 sum of differences in total equalized nonresidential valuation from 1999-2023, excluding Qualified Urban Aid municipalities) = 0.0110 or 1.10%**

The Township has reviewed the datasets and methodology used to calculate the Township's Fourth Round equalized nonresidential valuation factor as published in the DCA report and spreadsheet (see above), and the Township concurs with the report's Fourth Round equalized nonresidential valuation factor calculation of 1.10% for the Township of Berkeley Heights.

Income Capacity Factor

The second component of the average allocation factor for each municipality is the income capacity factor. The income capacity factor measures the degree to which a municipality's median household income differs from an income floor of \$100 below the lowest median household income in its Housing Region.

Per A4/S50, a municipality's income capacity factor shall be "determined by calculating the average of the following measures:

- (a) The municipal share of the regional sum of the differences between the median municipal household income, according to the most recent American Community Survey Five-Year Estimates, and an income floor of \$100 below the lowest median household income in the region; and
- (b) The municipal share of the regional sum of the differences between the median municipal household incomes and an income floor of \$100 below the lowest median household income in the region, weighted by the number of the households in the municipality" (N.J. Stat. § 52:27D-304.3).

At the time of the release of the DCA report on October 18, 2024, the most recent American Community Survey Five-Year Estimates data for median household income and number of households were found in Table S1903 of the Census Bureau's American Community Survey 2018-22 5-Year Estimates.

Using the American Community Survey 2018-22 5-Year Estimates data, and following the methodology in A4/S50 outlined above, the Township of Berkeley Heights' income capacity factor of 1.76% was calculated in the DCA report as follows:

1. **\$196,389** (Median household income in the past 12 months in Berkeley Heights per 2022 ACS) - **\$46,360** (\$100 below the lowest median household income in Housing Region 2 of \$46,460 belonging to the City of Newark) = **\$150,029** (Municipal difference in median household income from Housing Region 2 income floor). **\$150,029** (Municipal difference in median household income from Housing Region 2 income floor) / **\$8,307,878** (Housing Region 2 sum of differences from income floor, excluding Qualified Urban Aid municipalities) = **0.0181 or 1.81%** (Berkeley Heights' share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities).
2. **\$150,029** (Municipal difference in median household income from Housing Region 2 income floor) \times **4,486** (Number of households in Berkeley Heights) = **\$673,030,094** (Municipal difference in median household income from Housing Region 2 income floor, excluding Qualified Urban Aid municipalities, weighted by households). **\$673,030,094** (Municipal difference in median household income from Housing Region 2 income floor, excluding Qualified Urban Aid municipalities, weighted by households) / **\$39,453,600,987** (Housing Region 2 sum of differences from income floor, excluding Qualified Urban Aid municipalities, weighted by households) = **0.0171 or 1.71%** (Berkeley Heights' share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities, weighted by households).
3. **Average of 1.81%** (Berkeley Heights' share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities) **and 1.71%** (Berkeley Heights' share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities, weighted by households) = **0.0176 or 1.76%**

While the Township agrees with the Township's income capacity factor calculation of 1.76% at the time of the DCA report, A4/S50 states that the income capacity factor shall be calculated

“according to the most recent American Community Survey Five-Year Estimates.” On December 12, 2024, the United States Census Bureau released American Community Survey 2019-23 5-Year Estimates data. The Township therefore seeks to adjust its income capacity factor calculation based on the American Community Survey 2019-23 5-Year Estimates data for the municipalities in Housing Region 2, which can be found in Table S1903. The adjusted calculation of the Township’s income capacity factor using the American Community Survey 2019-23 5-Year Estimates data is detailed below:

1. **\$198,750** (Median household income in the past 12 months in Berkeley Heights per 2023 ACS) - **\$48,316** (\$100 below the lowest median household income in Housing Region 2 of \$48,416 belonging to the City of Newark) = **\$150,434** (Municipal difference in median household income from Housing Region 2 income floor). **\$150,434** (Municipal difference in median household income from Housing Region 2 income floor) / **\$8,646,298** (Housing Region 2 sum of differences from income floor, excluding Qualified Urban Aid municipalities) = **0.0174 or 1.74%** (Berkeley Heights’ share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities).
2. **\$150,434** (Municipal difference in median household income from Housing Region 2 income floor) x **4,660** (Number of households in Berkeley Heights) = **\$701,022,440** (Municipal difference in median household income from Housing Region 2 income floor, excluding Qualified Urban Aid municipalities, weighted by households). **\$701,022,440** (Municipal difference in median household income from Housing Region 2 income floor, excluding Qualified Urban Aid municipalities, weighted by households) / **\$41,118,073,874** (Housing Region 2 sum of differences from income floor, excluding Qualified Urban Aid municipalities, weighted by households) = **0.0170 or 1.70%** (Berkeley Heights’ share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities, weighted by households).
3. **Average of 1.74%** (Berkeley Heights’ share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities) **and 1.70%** (Berkeley Heights’ share of the sum of the differences from the income floor in Housing Region 2, excluding Qualified Urban Aid municipalities, weighted by households) = **0.0172 or 1.72%**

Based on the re-calculation of the Township’s income capacity factor based on the most recent American Community Survey Five-Year Estimates, the Township derives an income capacity factor calculation of 1.72% rather than 1.76% as calculated in the DCA report.

Land Capacity Factor

The third component of the average allocation factor for each municipality is the land capacity factor. The land capacity factor indicates the percentage share of total “developable” land in a Housing Region accounted for by each municipality within that Region, excluding land area corresponding to Qualified Urban Aid municipalities.

A4/S50 states that the land capacity factor “shall be determined by estimating the area of developable land in the municipality’s boundaries, and regional boundaries, that may accommodate development through the use of the ‘land use / land cover data’ most recently published by the Department of Environmental Protection, data from the American Community Survey and Comprehensive Housing Affordability Strategy dataset thereof, MOD-IV Property

Tax List data from the Division of Taxation in the Department of the Treasury, and construction permit data from the Department of Community Affairs and weighing such land based on the planning area type in which such land is located. After the weighing factors are applied, the sum of the total developable land area that may accommodate development in the municipality and in the region shall be determined. The municipality's share of its region's developable land shall be its land capacity factor" (N.J. Stat. § 52:27D-304.3).

Following this methodology, the DCA conducted a GIS analysis to identify the "developable" land within the state using several publicly-available datasets, including but not limited to 2020 land use/land cover (LULC) data, New Jersey State Plan Planning Areas weighted by area type, statewide parcel data, open space and preserved farmland, category 1 waterways and wetlands, steep slopes, and open waters.

The steps below provide a summary of the analysis conducted by DCA to identify the "developable" land in the state and calculate each municipality's land capacity factor, which is further expanded upon in the their report.

1. Weights were applied to all New Jersey State Plan Planning Areas as specified in A4/S50.
2. The layer of weighted Planning Areas was merged with land use/land cover (LULC) data for the entire state sourced from 2020 aerial imagery. 18 different types of LULC, such as cropland and pastureland, deciduous forest, and coniferous forest, were identified and extracted as "vacant, developable land" from this merged dataset.
3. Of these areas identified as "developable" from the merged dataset, areas without underlying parcel data and areas with MOD-IV Property Tax data with property class codes for residential, commercial, industrial, apartment, railroad, and school uses were removed to prevent rights-of-way, tree-covered rear yards on residential properties and buffer areas on non-residential development from being included in the "developable" land calculation.
4. Municipally-reported construction permit data was used to remove properties otherwise identified as vacant through the LULC analysis.
5. Areas mapped as open space, preserved farmland, category 1 waterways and wetlands (and associated buffers based on special resource area restrictions) were removed from the "developable" land dataset.
6. Using 10 foot digital elevation LiDAR data, steep slope areas exceeding 15% and steep slope areas consisting of 5,000 square feet or less were removed from the "developable" land dataset.
7. DCA reviewed an unspecified 22,000 vacant parcels to further remove homeowner association common areas, detention basins, and road and utility rights of way.
8. After the removal of all the aforementioned layers from the "developable" land dataset, remaining "slivers" of land with an area of 2,500 square feet or less were also removed due to their inability to support development.
9. The remaining land was identified as "developable" land and was summed based on the limits of each Housing Region and its corresponding municipalities.
10. The municipality's percentage of total identified "developable" land within its Housing Region constitutes its land capacity factor.

Through this analysis, the DCA reported 62.434 acres of “developable” land in the Township of Berkeley Heights and 5,358.483 acres of “developable” land in Housing Region 2, therefore computing a land capacity factor of 1.17% for the Township.

On November 27, 2024, the DCA released the output geospatial data (titled “Land Capacity Analysis for P.L. 2024, c.2”) generated from the GIS analysis used to compute the land capacity factor as described in the October 18, 2024 report. However, the DCA indicates in the description of this dataset that, “The land areas identified in this dataset are based on 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 Township has therefore reviewed and mapped this dataset to evaluate the accuracy of the 62.434 acres of “developable” land identified in the Township used to calculate the Township’s land capacity factor of 1.17% in the DCA report. Under further analysis, the Township finds that several areas identified as “developable” in the Township by the DCA’s geoprocessing model are in fact not “developable.”

As part of this analysis, the Township has prepared the following:

1. A map of the “developable” lands within the Township as identified in the DCA report (see Exhibit A).
2. A redlined spreadsheet of the “developable” lands within the Township as identified in the DCA report (see Exhibit B), which was prepared by merging the “vacant and developable” land spatial data features in the “Land Capacity Analysis for P.L. 2024, c.2” dataset released by the DCA with current parcel MOD-IV data for the Township as provided by the Union County Board of Taxation. The spreadsheet details the “developable” land areas to be removed from the land capacity factor calculation, which are outlined in red, as well as a description of the reason for removal.

Based on this analysis, the Township finds that +/- 50.343 acres of the 62.434 acres of “developable” land identified in the DCA report are to be removed from the land capacity factor calculation, resulting in a recalculation of the land capacity factor based on +/- 12.091 total acres of “developable” land within the Township. The adjustment to the “developable” land within the Township consequently reduces the total “developable” land within Housing Region 2 from 5,358.483 acres to 5,308.141 acres.

The land capacity factor is therefore re-calculated as follows:

$12.091 \text{ acres of “developable” land in the Township of Berkeley Heights} / 5,308.141 \text{ acres of “developable” land in Housing Region 2} = 0.0023 \text{ or } 0.23\%$

Summary

Based on the adjustments to the income capacity factor and land capacity factor as described above, the Township’s average allocation factor is reduced from 1.340% to 1.017%, which when

applied to the regional perspective need of 20,506 for Housing Region 2, lowers the Township's prospective need obligation from 275 to 208.

The table below summarizes the Township's Fourth Round present need obligation and prospective need obligation compared to the Township's Fourth Round obligations as calculated in the DCA report. Cells shaded red indicate an adjustment to a calculation provided in the DCA report.

BERKELEY HEIGHTS FOURTH ROUND OBLIGATION SUMMARY TABLE							
PRESENT NEED OBLIGATION							
DCA Calculation	Township Calculation						
0	0 (Township accepts DCA calculation)						
PROSPECTIVE NEED OBLIGATION							
DCA Calculation							
Equalized Nonresidential Valuation Factor	Income Capacity Factor	Land Capacity Factor			Average Allocation Factor	Regional Perspective Need	Berkeley Heights Prospective Need Obligation
		Housing Region 2 "Developable" Land (acres)	Township "Developable" Land (acres)	Land Capacity Factor Calculation			
1.10%	1.76%	5,358.483	62.434	1.17%	1.340%	20,506	275
Township Calculation							
Equalized Nonresidential Valuation Factor	Income Capacity Factor	Land Capacity Factor			Average Allocation Factor	Regional Perspective Need	Berkeley Heights Prospective Need Obligation
		Housing Region 2 "Developable" Land (acres)	Township "Developable" Land (acres)	Land Capacity Factor Calculation			
1.10 % (Township accepts DCA calculation)	1.72 %	5,308.141	12.091	0.23%	1.017%	20,506 (Township accepts DCA calculation)	208

EXHIBIT A

“Map of the ‘Developable’ Lands within the Township of Berkeley Heights per the DCA Report”



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06/26/2025 11:28:02 AM
Pg 135 of 202
Trans ID: LCV20251858406

Legend

Developable Land
per DCA Report

Township of
Chatham

Borough of
New Providence

City of
Summit

Borough of
Mountainia

Township of
Scotch Plains

Borough of
Watchung

Township of
Warren

Township of
Long Hill

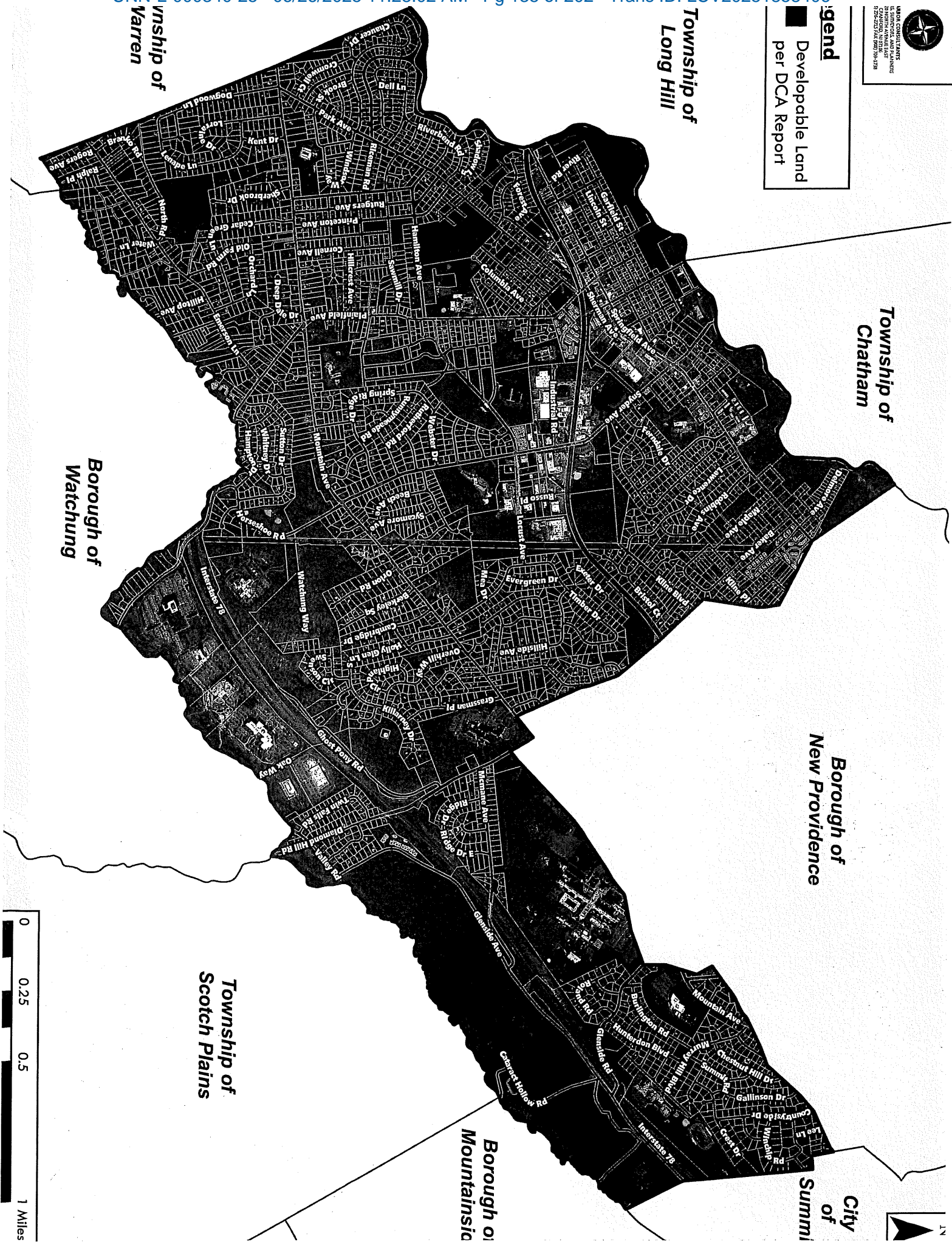


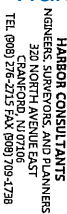
EXHIBIT B

“Redlined Spreadsheet of the ‘Developable’ Lands within the Township of Berkeley Heights per the DCA Report”

ACK	LOT	ADDITIONAL LOTS	QUALIFIER CODE	PROPERTY CLASS	ZONE	ADDRESS	OWNER NAME	OWNER ADDRESS	OWNER ADDRESS CITY / STATE	OWNER ADDRESS ZIP CODE	FACILITY NAME	BUILDING DESCRIPTION (MOD-IV)	LAND DESCRIPTION (MOD-IV)	CALCULATED AREA - AC (MOD IV)	PARCEL AREA - SF (STATE PLANE PROJ.)	PARCEL AREA - AC (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - SF (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - AC (STATE PLANE PROJ.)	COMMENTS
	08	39		15C	OL	31 SNYDER AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	Single Family Residence	1SF	1.405 AC	1.40500	61,221,24793	1.40545	155,72956	0.00357	155.73 SF of developable land area silver / Single Family Residence
	08	40		15C	OL	21 SNYDER AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVE	BERKELEY HEIGHTS, NJ	07922	Sewerage Treatment Plant		9.800 AC	9.80000	376,756,88269	8.64923	36,531,78993	0.53407	Sewerage Treatment Plant / DEP flood constraints
	01	18		R-15	R-15	KUNTZ AVE	K4K LLC	16192 COASTAL HIGHWAY	LEWES, DE	19558			.661 AC	0.66100	27,475,31046	0.65075	7,222,98488	0.16582	
	01	62	NPROV B10 L1	1	R-15	1823 SPRINGFIELD AVE	ZECCA, ANDREA & S HOGAN, J ANIS	1823 SPRINGFIELD AVE	NEW PROVIDENCE, NJ	07974			.291 AC	0.29100	14,343,02928	0.32927	3,253,49889	0.07469	
	04	5		15C	OL	CHRISTOPHER STREET	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922			1.300 AC	1.30000	55,543,25293	1.27510	35,555,81673	0.51625	Municipal Complex & DPW buildings / wetlands
	04	6		15C	OL	COLUMBUS AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	GARAGE	1SCB	2.665 AC	2.66500	135,632,64932	3.11830	67,596,57119	1.56012	Municipal Complex & DPW buildings / wetlands
	04	59		15C	OL	EUCUD AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	VACANT LAND		.637 AC	0.63700	27,653,70570	0.65246	27,319,53184	0.62717	Env. constraints
	03	1		1	DH-24	SHERMAN AVE	SHORT, EDWARD	P.O. BOX 510	BASKING RIDGE, NJ	07920			.564 AC	0.56400	27,402,62636	0.62908	27,402,62636	0.62908	Located in floodway / Snyder Avenue Brook
	03	2		1	DH-24	SHERMAN AVE	PARAMOUNT PARTNERSHIP LLC	230 PRINCETON AVE	BERKELEY HEIGHTS, NJ	07922	IN-LIEU TAX PAYMENT	PILOT	.270 AC	0.27000	7,726,47678	0.17738	7,726,47678	0.17738	Located in floodway / Snyder Avenue Brook
	03	8		15F	OL	ERIE LACK R R	LONE PINE DRIVE URBAN RENEWAL LLC	ONE EVERJUST PLZ #804	JERSEY CITY, NJ	07302			.130 AC	0.13000	5,649,41090	0.12969	5,607,86500	0.12874	Located in floodway / Snyder Avenue Brook
	01	11		15D	R-15	96 FERRDALE DRIVE	DIAMOND HILL COMMUNITY CHURCH	1441 SPRINGFIELD AVE	NEW PROVIDENCE, NJ	07974	PASSNAGE	2SF2G	.417 AC	0.41700	18,504,37893	0.42480	4,313,59983	0.09903	Single family residence / passenger Enccompassed by floodway
	01	34		1	H8-2	MEAD STREET	PAONE REALTY ASSOCIATES, LLC	308-312 SPRINGFIELD AVE.	BERKELEY HEIGHTS, NJ	07922			.138 AC	0.13800	5,975,48246	0.13718	5,502,57549	0.12632	
	06	11.01		1	R-15	BRUNS AVENUE	HOROVITZ, HARRY % BERKELEY SWIM CLUB	P O BOX 24	BERKELEY HEIGHTS, NJ	07922			.089 AC	0.08900	2,997,91440	0.08882	2,572,24647	0.05905	
	301	21	1301-26 MERGED	15D	OL	310 PLAINFIELD AVE	CHURCH OF THE LITTLE FLOWER BERKELEY	290 PLAINFIELD AVE	BERKELEY HEIGHTS, NJ	07922	CHURCH	1S52S51S593G	11.460 AC	11.46000	489,955,74027	11.20197	103,353,02425	2.37267	Church of the Little Flower / recent tile piano approval and build out
	303	6		1	R-15	ROOSEVELT AVE	MORGAN, SUE ANN	6527 CLEMENY PLACE	PITTSBURGH, PA	15206			.297 AC	0.29700	12,500,02714	0.28656	4,430,16892	0.10770	
	601	23		8B		MOUNTAIN AVE	WESTON, JONATHAN P.	1133 MOUNTAIN AVENUE	BERKELEY HEIGHTS, NJ	07922			3.360 AC	3.36000	143,652,94593	3.30242	88,409,56059	2.02561	
	715	23		15D	R-15	763 MOUNTAIN AVE	MT RIDGE BIBLE CHAPEL % RA HOWARD	763 MOUNTAIN AVENUE	BERKELEY HEIGHTS, NJ	07922	CHURCH	25B	1.669 AC	1.66900	81,108,70418	1.86201	23,466,13580	0.53871	MT. Ridge Bible Chapel
	815	6		15C	OL	355 HAMILTON AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	FIREHOUSE	FIREHOUSE	16.090 AC	16.09000	718,904,23319	16.50384	354,923,32615		Township Firehouse / Env. Restrictions substantially reduce the developable area
	901	35		15F	LI	100-200 LOCUST AV	LOCUST BERKELEY DEVELOPERS URBAN BE	820 MORRIS TURNPIKE	SHORT HILLS, NJ	07078	IN-LIEU TAX PAYMENT	PILOT	10.190 AC	10.19000	447,322,60958	10.26916	62,250,98946	1.42680	3rd round Incidental Age-Restricted Redevelopment
	901	44		1	LI	50 LOCUST AVE	50-60 LOCUST AVE. ASSOC., LLC	P.O. BOX 492	BERKELEY HEIGHTS, NJ	07922			.590 AC	0.69000	29,647,68191	0.69062	27,970,02521	0.64211	
	006	32		15D	R-15	725 MOUNTAIN AVE	WESTMINSTER PRESBYTERIAN CHURCH	725 MOUNTAIN AVENUE	BERKELEY HEIGHTS, NJ	07922	CHURCH	1SB	6.000 AC	6.00000	264,977,04166	5.86349	57,799,14163	1.32889	WESTMINSTER PRESBYTERIAN CHURCH
	201	16		15C	OL	378 SNYDER AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	RESCUE SOD	1SB RESCUE SD	.725 AC	0.72500	46,350,32603	1.10958	12,259,24919	0.28143	Berkeley Heights Rescue Squad
	201	17		15D	OL	15 LOCUST AVENUE	B H POST 6259 VET OF FOREIGN WARS	15 LOCUST AVENUE	BERKELEY HEIGHTS, NJ	07922	CLUB		.689 AC	0.68900	30,044,60378	0.68973	3,847,07133	0.08832	VFW Hall
	201	19		15C	OL	59 LOCUST AVE	BERKELEY HEIGHTS YVCA LLC	59 LOCUST AVE	BERKELEY HEIGHTS, NJ	07922	POOL	15CB COMM POOL	17.400 AC	17.40000	740,587,78893	17.00162	334,867,26119	7.69753	YVCA
	704	3		1	R-20	EMERSON LANE	K HOVANANAN AT WARREN TOWNSHIP ILL	110 FIELDCREST AVE	EDISON, NJ	08837			1.880 AC	1.88000	53,141,94390	1.12198	19,594,38838	0.44883	Part of K. Hovanian Development
	901	1.06		1	R-20	APPLE TREE ROW - REAR	FREE ACRES ASSOCIATION	210 EMERSON LANE	BERKELEY HEIGHTS NJ	07922			1.06 AC	1.06000	43,638,31194	1.00180	39,138,97236	0.68940	Free Acres Association
	901	1.571		1		WATER LANE-REAR	FREE ACRES ASSOCIATION	C/O FREE ACRES ASSOC	BERKELEY HEIGHTS NJ	07922			.510 AC	0.51000	18,513,43200	0.44204	18,513,43200	0.42042	Free Acres Association
	901	1.67		1	R-20	70 GREENBROOK RD	FREE ACRES ASSOCIATION	C/O FREE ACRES ASSOC	BERKELEY HEIGHTS, NJ	07922				0.00000	14,632,29736	0.34050	12,448,02377	0.28579	Free Acres Association
	102	40		15D		PLAINFIELD AVENUE	ST. MARY'S CHURCH - STONY HILL	225 MOUNTAIN BOULEVARD	WATCHUNG, NJ	07060	VACANT LAND		1.805 AC	0.18050	14,001,73020	0.32144	6,260,64276	0.18564	Floodway
	103	1.01	BL400215 BL34017	1	OL	HORSESHOE ROAD	RINNELTS PROPERTY INC	40 WATCHUNG WAY	BERKELEY HEIGHTS, NJ	07922	VACANT LAND		.226 AC	0.22600	9,998,90272	0.22584	8,060,50255	0.18503	
	1401	48.01		1	R-20	110 CIRCLE VIEW AVE	1 & PINE HOLDING LIMITED LIABILITY C	1061 INMAN AVE APT. D 139	EDISON, NJ	08820			.46 AC	0.46000	20,565,64447	0.46131	6,39716	0.00015	Single Family Residence
	1401	48.02		1	R-20	100 CIRCLE VIEW AVE	1 & PINE HOLDING LIMITED LIABILITY C	1061 INMAN AVE, APT D139	EDISON, NJ	08820			.71 AC	0.71000	29,672,30063	0.68119	2,314,60567	0.06691	

DOC	LOT	ADDITIONAL LOTS	QUALIFIER CODE	PROPERTY CLASS	ZONE	ADDRESS	OWNER NAME	OWNER ADDRESS	OWNER ADDRESS CITY, STATE	OWNER ADDRESS ZIP CODE	FACILITY NAME	BUILDING DESCRIPTION (MOD-IV)	LAND DISCRPTION (MOD-IV)	CALCULATED AREA - AC (MOD IV)	PARCEL AREA - SF (STATE PLANE PROJ.)	PARCEL AREA - AC (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - SF (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - AC (STATE PLANE PROJ.)	COMMENTS
	49			15C	OL	REAR CIRCLE VIEW AVE	TOWNSHIP OF BERKELEY HEIGHTS	29 PARK AVENUE	BERKELEY HEIGHTS, NJ	07922	VACANT LAND		.544 AC	0.54400	23,561,48634	0.54090	5,613,52866	0.13346	Public utility
101	50	BL400215.33 09/1.01		1	OL	PLAINFIELD AVE	RUNNELLS PROPERTY LLC	40 WATCHUNG WAY	BERKELEY HEIGHTS, NJ	07922	VACANT LAND		3.200 AC	3.20000	134,837,73567	3.09546	65,567,31471	1.56436	Part of former Runnels's Hospital complex w/ deed restriction (Book 6029, Page 125)
101	4			1	OR	120 GRASSMAN PLACE	CINNAMON RIDGE ASSOC. C/O INTEGRA	200 VALLEY ROAD, STE 203	MT.ARLINGTON, NJ	07956			1.461 AC	1.46100	55,661,45637	1.27828	3,270,48776	0.07508	Stormwater management facility
101	7			15D	OR	105 DIAMOND HILL RD	DIAMOND HILL COMMUNITY CHURCH	1441 SPRINGFIELD AVE	NEW PROVIDENCE, NJ	07974	CHURCH	158	.673 AC	0.67300	45,720,77644	1.04961	6,800,48738	0.20203	Church & daycare facility
105	1			1	R-20	35 GRASSMAN PLACE	ERDOS, PAUL	20 LINCOLN PLACE	NORTH PLAINFIELD, NJ	07060			.817 AC	0.81700	34,759,11903	0.79796	29,665,29611	0.66102	
101	1			15C	R7B	PLAINFIELD AVE	NJ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT-OF-WAY		2.550 AC	2.55000	87,744,41513	2.01434	4,317,44292	0.09912	NJDOT land restricted by Greer Brook
102	16			15C	R7B	GLENSIDE AVE	NJ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT-OF-WAY		20.720 AC	20.72000	853,299,69857	19.58974	96,111,43923	2.20642	NJDOT Route 78 r.o.w.
101	2			1	R-20	PLAINFIELD AVE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922			1.979 AC	1.97900	48,672,86875	1.11736	26,870,23263	0.51866	
101	3			1	R-20	1021 PLAINFIELD AVENUE	CONNELL COMPANY	300 CONNELL DR	BERKELEY HEIGHTS, NJ	07922			1.104 AC	1.10400	45,315,63060	1.04038	1,306,46581	0.23299	
101	5			1	R-20	1041 PLAINFIELD AVENUE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922			1.552 AC	1.55200	75,366,48260	1.73018	45,158,12386	1.03869	
101	7			1	R-20	1067 PLAINFIELD AVENUE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922			.862 AC	0.86200	39,021,48773	0.89561	13,347,25915	0.30641	
101	9			1	R-20	1085 PLAINFIELD AVENUE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922			.857 AC	0.85700	38,653,73805	0.88829	12,700,69387	0.29157	
101	10			1	R-20	1095 PLAINFIELD AVENUE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922			.976 AC	0.97600	41,514,21802	0.95304	22,778,95856	0.52294	
101	16			1	R-20	1129 PLAINFIELD AVENUE	THE CONNELL COMPANY	300 CONNELL DRIVE	BERKELEY HEIGHTS, NJ	07922		1.5571G	.413 AC	0.41300	17,827,34674	0.40928	3,640,55977	0.08358	
101	17			1	R-20	1133 PLAINFIELD AVENUE	CONNELL COMPANY	300 CONNELL DR	BERKELEY HEIGHTS, NJ	07922			.499 AC	0.49900	22,703,23249	0.52120	4,667,79869	0.10716	Floodway of Green Brook
101	20			1	R-20	REAR PLAINFIELD AVE	RK & RK, LLC	901 VALLEY RD	WATCHUNG, NJ	07069			.535 AC	0.53500	22,833,29944	0.52418	4,395,67146	0.10092	Homeowner's association open space
101	3			1	R-20	OLD COCONAL ROAD	CINNAMON RIDGE ASSOC C/O INTEGRA	200 VALLEY ROAD, STE 203	MT.ARLINGTON, NJ	07956			21.080 AC	21.08000	921,412,19095	21.15280	122,289,69787	2.80740	Land between a driveway and Route 78 owned by a homeowner's association
101	4			15C	R7B	VALLEY ROAD	NJ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT-OF-WAY		20.110 AC	20.11000	846,320,64664	19.42893	111,313,06227	2.55541	NJDOT Route 78
101	6			1	R-20	OLD COCONAL ROAD	CINNAMON RIDGE ASSOC C/O INTEGRA	200 VALLEY ROAD, STE 203	MT.ARLINGTON, NJ	07956			.820 AC	0.82000	30,849,98103	0.70822	3,542,05122	0.08131	
101	2			1	R-20	DIAMOND HILL RD	AMERICAN WATER SSC	P.O. BOX 2735, TAX DEPT.	CAMDEN, NJ	08101			.640 AC	0.64000	24,235,18882	0.55637	5,032,11627	0.11552	Development (water tank) present on site; parcel completely encompassed by Block 4401, Lot 3 / owned by Water Company
401	3			1	R-20	GHOST POYNT ROAD	CINNAMON RIDGE ASSOC C/O INTEGRA	200 VALLEY ROAD, STE 203	MT.ARLINGTON, NJ	07956			21.699 AC	21.69900	1,091,771,41375	25.06235	412,123,51690	9.46109	Open space set aside from subdivision / owned by homeowners association / slopes in excess of 15% per VLA
401	4			1	R-20	DIAMOND HILL RD	LEHARD INVESTMENT 2 LLC	338 LARRY CT	PISCATAWAY, NJ	08854			3.195 AC	3.19500	146,376,04349	3.36035	10,527,98669	0.24169	3rd round VLA 20+% steep slopes (side of a mountain) and bisected by stream
402	1			15C	R7B	OLD COCONAL ROAD	NJ DEPT OF TRANSPORTATION	1035 PARKWAY AVENUE CN600	TRENTON, NJ	08625	RIGHT-OF-WAY		.840 AC	0.84000	21,036,83395	0.48294	7,529,77791	0.17286	NJDOT r.o.w.
402	2			15C	R7B	VALLEY ROAD	NJ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT-OF-WAY		17.195 AC	17.19500	685,450,98046	15.73585	25,812,59494	0.56110	NJDOT r.o.w.
302	5			1	R-20	41 RIDGE DRIVE EAST	HILLTOP RIDGE, LLC	33 RIDGE DRIVE EAST	BERKELEY HEIGHTS, NJ	07922			.300 AC	0.30000	13,300,11221	0.30553	5,067,12240	0.16100	
303	31			15C	R7B	DIAMOND HILL RD	NJ DEPT OF TRANSPORTATION	1035 PARKWAY AVENUE CN600	TRENTON, NJ	08625	RIGHT-OF-WAY		30.000 AC	30.00000	847,402,28506	19.46376	50,597,11888	1.16155	NJDOT r.o.w.
701	2			15C	R7B	GLENSIDE AVE	NJ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT-OF-WAY		8.100 AC	8.10000	400,603,13729	9.19662	34,490,64395	0.79180	NJDOT r.o.w.
702	2			15C	R7B	GLENSIDE AVE	NJ DEPT OF TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ	08625	RIGHT-OF-WAY		18.620 AC	18.62000	774,648,30743	17.78355	65,455,94974	1.50267	NJDOT r.o.w.

HARBOR CONSULTANTS
ENGINEERS, SURVEYORS, AND PLANNERS
320 NORTH AVENUE EAST
CRANFORD, NJ 07106
TEL. (908) 276-2715 FAX. (908) 709-1738



DOCK	LOT	ADDITIONAL LOTS	QUALIFIER CODE	PROPERTY CLASS	ZONE	ADDRESS	OWNER NAME	OWNER ADDRESS	CITY, STATE	OWNER ADDRESS ZIP CODE	FACILITY NAME	BUILDING DESCRIPTION (MOD-IV)	LAND DESCRIPTION (MOD-IV)	CALCULATED AREA - AC (MOD IV)	PARCEL AREA - SF (STATE PLANE PROJ.)	PARCEL AREA - AC (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - SF (STATE PLANE PROJ.)	DEVELOPABLE LAND AREA - AC (STATE PLANE PROJ.)	COMMENTS
102	25		15C	RT7/8	GLENSIDE AVE	TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ		08625	RIGHT OF WAY	11,724 AC	11,72400	856,887.46452	19,67151	72,114.15610	1.65552	NIDOTT r.o.w. / Steep slopes	
106	1		15C	RT7/8	GLENSIDE RD	TRANSPORTATION	1035 PARKWAY AVE CN600	TRENTON, NJ		08625	RIGHT OF WAY	2,610 AC	2,61000	116,526.35574	2,67909	12,123.25601	0.27831	NIDOTT r.o.w. / Steep slopes	

It is this spreadsheet was not prepared or officially released by the DCA, the DCA only provided spatial data of the land areas identified as "vacant and developable" as part of the land capacity factor calculation. Our office prepared this spreadsheet of properties containing "vacant and developable" land as identified by the DCA by merging the spatial data for the "Land Use Analysis for P.L. 2024, c. 2" released by the DCA (see <https://idea.maps.arcgis.com/home/item?id=12ac8cfe9b510488b65d506563e74>) with current parcel MOD-UY data for the Township as provided by the Union County board of taxation (see https://taxrecs-union.com/ucjrcs/cf?lms_user=tbl2024pasword&id=tbl2024&trc_type=84&trc_val=24out_type=21).

FOURTH ROUND OBLIGATION CALCULATION							
Existing Region 2 Developable Land per DCA		Proposed Region 2 Developable Land		Regional Persp. Need			
5,358,483	5,308,141	20,506					
Existing Developable Land (acres)	Existing Land Capacity Factor per DCA	Equalized Nonres. Valuation Factor per DCA	Income Capacity Factor per DCA	Average Allocation Factor per DCA	Existing Obligation		
62,434	1.17%	1.10%	1.79%	1.340%	275		
Proposed Developable Land (acres)	Proposed Land Capacity Factor	Proposed Equalized Nonres. Valuation Factor	Proposed Income Capacity Factor	Proposed Average Allocation Factor	Proposed Obligation		
12,091	0.23%	1.10%	1.72%	1.017%	208		

Civil Case Information Statement

Case Details: UNION | Civil Part Docket# L-000340-25

Case Caption: IN THE MATTER OF BERKELEY HEIGHTS
TWP

Case Initiation Date: 01/23/2025

Attorney Name: ERIK C NOLAN

Firm Name: SURENIAN, EDWARDS, BUZAK & NOLAN LLC

Address: 311 BROADWAY STE A
POINT PLEASANT BEACH NJ 08742

Phone: 7326123100

Name of Party: PLAINTIFF : Township of Berkeley Heights

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: AFFORDABLE HOUSING

Document Type: Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: Township of Berkeley Heights? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO Medical Debt Claim? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

01/23/2025
Dated

/s/ ERIK C NOLAN
Signed

APPENDIX C

No. 2025- 144

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

**RESOLUTION OF THE COUNCIL OF THE TOWNSHIP OF BERKELEY
HEIGHTS COMMITTING TO FOURTH ROUND PRESENT AND
PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATIONS IN
AGREEMENT WITH FAIR SHARE HOUSING CENTER**

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2 (hereinafter "A4" or "Amended FHA"); and

WHEREAS, P.L. 2024, c.2, modified the process upon which municipalities could comply with their affordable housing obligations pursuant to the Mount Laurel doctrine; and

WHEREAS, P.L. 2024, c.2 required the Township to pass a binding resolution determining its Fourth Round Present Need Obligation and its Fourth Round Prospective Need Obligation by January 31, 2025, and file it, along with a Declaratory Judgment Complaint ("DJ Complaint") in the Superior Court of New Jersey, Union Vicinage; and

WHEREAS, in furtherance of P.L. 2024, c.2, the Township adopted Resolution 2025-72 on January 21, 2025, and thereafter filed a DJ complaint with the Court within 48 hours of its passage, which has resulted in the case In the Matter of the Application of the Township of Berkeley Heights, Docket No. UNN-L-340-25; and

WHEREAS, the Township determined its Fourth Round Present Need Obligation to be Zero (0) and its Fourth Round Prospective Need Obligation to be 208; and

WHEREAS, P.L. 2024, c.2 enabled interested parties to challenge a municipality's number prior to February 28, 2025; and

WHEREAS, the New Jersey Builders Association ("NJBA") and Fair Share Housing Center ("FSHC") filed objections to the Township's Round 4 number; and

WHEREAS, the NJBA argued that the Township's Fourth Round Prospective Need Obligation was 275; and

WHEREAS, FSHC argued the Township's Fourth Round Prospective Need Obligation was 264; and

WHEREAS, pursuant to P.L. 2024, c.2, the Township, the NJBA, and FSHC were to engage in good faith negotiations regarding the Township's Round 4 number; and

WHEREAS, the NJBA filed a letter with the Program in the Berkeley Heights DJ Action on March 13, 2025, which stated that the NJBA would not be participating in any settlement conferences and "has no intention of objecting to or appealing any settlement agreement that may be reached between Plaintiff and Fair Share Housing Center ("FSHC") that establishes a Fourth Round prospective need number for Plaintiff"; and

No. 2025- 144

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

WHEREAS, representatives of the Township and FSHC engaged in good faith negotiations and, as a result of those negotiations, the Township and FSHC agreed to a Fourth Round Present Need Obligation of Zero (0) and a Fourth Round Prospective Need Obligation of 240 for the Township; and

WHEREAS, the Township seeks to bind itself to the agreed upon numbers between itself, and FSHC for a Fourth Round Present Need Obligation of Zero (0) and a Fourth Round Prospective Need Obligation of 240; and

WHEREAS, nothing in this resolution shall be interpreted as an acknowledgement that the Township improperly calculated its Fourth Round Prospective Need Obligation in Resolution 2025-72, nor diminish its immunity from all Mount Laurel lawsuits it has maintained as a result of following the procedural requirements of P.L. 2024, c.2; and

NOW, THEREFORE, BE IT RESOLVED on this 18th day of March, 2025, by the Council of the Township of Berkeley Heights, Union County, State of New Jersey, as follows:

1. The Mayor and Council hereby commit to a Fourth Round Present Need Obligation of Zero (0) and a Fourth Round Prospective Need Obligation of 240 units, as agreed upon by FSHC, subject to the following conditions and/or reservations of rights:
 - a. Nothing in this resolution shall be interpreted as an adjudication or determination of the Township's right to an adjustment of its Fourth Round Prospective Need Obligation predicated upon a lack of developable land, sewer, water or similar adjustments.
 - b. It is anticipated that any order effectively implementing this resolution will expressly recognize the Borough's continuing immunity from all Mount Laurel exclusionary lawsuits during the Fourth Round process.
 - c. If a third party successfully challenges this resolution or any order, judgment or determination effectuating this agreed-upon number, the Township reserves the right to return to *status quo ante* and reserve all litigation rights.
2. The Mayor and Council hereby authorize the Township's affordable housing special counsel to take whatever steps are necessary to effectuate the terms of this resolution with the Program or a court of competent jurisdiction, which authorization shall include, but is not limited to, the execution of an agreement, MOU, consent order or similar document effectuating only the terms of this resolution.
3. This resolution shall take effect immediately.

No. 2025- 144

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

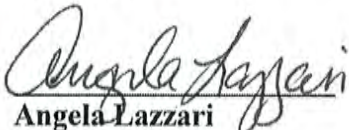
RESOLUTION

CERTIFICATION

I certify that the foregoing Resolution was duly adopted by the Council of the Township of Berkeley Heights at a regular meeting held on the **18th day of March 2025**, a quorum being present and voting in the majority.

Approved this 18th day of March, 2025.

ATTEST:


Angela Lazzari
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
COUTO	✓			
FOSTER	✓			
ILLIS	✓			
MACHADO	✓			
MORAN	✓			
POAGE	✓			
TIE:				
MAYOR DEVANNEY				

CERTIFIED TRUE COPY:

Angela Lazzari, RMC, CMR, Township Clerk

In testimony whereof, I have hereunto set my hand and caused the seal of the Township of Berkeley Heights to be affixed.



APPENDIX D

PREPARED BY THE AFFORDABLE HOUSING PROGRAM:

In the Matter of Berkeley Heights
Township

Superior Court of New Jersey
Law Division, Civil Part

Docket No. UNN-L-340-25

**Program Settlement Recommendation
Present Need and Prospective Need**

THIS MATTER, having come before the Affordable Housing Program, pursuant to the Complaint for Declaratory Judgment filed in this matter on January 23, 2025 (“DJ Complaint”) by the Petitioner, Township of Berkeley Heights (“Petitioner” or “Municipality”), pursuant to N.J.S.A. 52:27D-304.2, -304.3, and -304.1(f)(1)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (collectively, the “FHA”), and in accordance with Section II.A of Administrative Directive #14-24 (“Directive #14-24”) of the Affordable Housing Dispute Resolution Program (the “Program”), seeking a certification of compliance with the FHA;

AND IT APPEARING that, on October 18, 2024, pursuant to the FHA (as amended), the New Jersey Department of Community Affairs (“DCA”) issued its report entitled “Affordable Housing Obligations for 2025-2035 (Fourth Round)”, therein setting forth the “present need” and prospective need” obligations of all New

Jersey municipalities for the Fourth-Round housing cycle (the “DCA’s Fourth Round Report”);

AND IT APPEARING that, pursuant to the DCA’s Fourth Round Report, the “present need” obligation of the Petitioner has been calculated and reported as 0 affordable units, and its “prospective need” obligation of the Petitioner has been calculated and reported as 275 affordable units, and which calculations have been deemed “presumptively valid” for purposes of the FHA;

AND IT APPEARING that the Municipality represented by counsel adopted a resolution seeking deviation from DCA numbers based on their planner's recommendation for its prospective need obligation of 208 units.

AND IT APPEARING that challenges to the Municipal calculations were timely and properly filed by New Jersey Fair Share Housing represented by counsel, and by the New Jersey Builders Association represented by counsel, both challengers disputing the town proposed obligations for present and prospective need, and supporting DCA present and prospective need obligations, each challenge supported by their own expert reports;

AND IT APPEARING; The Program, assigned the case to program member Judge Thomas C. Miller, A.J.S.C. (Ret.) to handle the case in accordance with the statute and the AOC Directive, requiring the member to issue recommendations to the County Mount Laurel Judge, and appointed member of the program having

considered the submissions of counsel, the various planners report and the DCA report, and the program having conducted settlement conferences and sessions hosted by the assigned member in accordance with Directive and the statutory framework.

AND IT APPEARS THAT, the AOC appointed an independent special adjudicator affordable housing expert to work with and make recommendations to the program, and that Art Bernard was appointed special adjudicator in this case,

AND IT APPEARS that the Builders Association have notified the program in writing that by their counsel that they will not participate in the settlement negotiations, and that they will not object to any settlement reached between the municipality and Fair Share Housing,

AND IT APPEARS THAT, the program hosted a settlement conference on this case, and that all parties, local officials, attorneys, and planners appeared with the goal of reaching a resolution,

AND IT APPEARS THAT, the parties have engaged in extensive settlement negotiations before, during and after the settlement conferences, with the guidance and assistance of the program member assigned to the case and the special adjudicator,

AND IT APPEARS THAT the municipality and Fair Housing have reached a resolution, the settlement was place on the record, the parties circulated a settlement

agreement that will be uploaded to eCourts and that the municipal governing body has adopted or intends to adopt a resolution on to accept the settlement,

AND IT APPEARING that the special adjudicator recommends accepting the settlement to the program,

AND it APPEARING THAT the terms of the settlement are as follows: The prospective need obligation for the Township shall be 240 units and that parties will now move on to the compliance phase to address the remaining issues,

For all those reasons, the program member hereby recommends an ORDER as follows:

That the proposed settlement is hereby directed to the vicinage Mount Laurel judge for review and the entry of an order as to the municipality's determination of its fair share obligation is accordance with the terms of the settlement agreement, that this settlement disposes of all the challenges filed, that the municipality retains all the protections of the law and retains immunity from exclusionary zoning litigation, and that the program retains jurisdiction for the compliance phase of accordance with the statutory frame work and the AOC directive.

Respectfully submitted by The Program:

By: /s/ Thomas C. Miller _

Thomas C. Miller, A.J.S.C. (Ret.),

Program Chair
Hon. Thomas C. Miller, A.J.S.C. (Ret.)

Dated: March 24, 2025

Mount Laurel Judge:

The Program's recommendation is ☐ accepted for the reasons set forth by the
Program, ☐ accepted for the reasons set forth below, ☐ rejected,
☐ accepted/rejected in part.

Findings of fact and conclusions of law (Rule 1:7-4(a)):

Arms length settlement entered into by the parties was fair and equitable especially
when balancing and considering the risks and costs and expense of litigation.

By:

Hon. _____, J.S.C.

Dated: _____

APPENDIX E

PREPARED BY THE COURT:

**IN THE MATTER OF THE
DECLARATORY JUDGMENT
ACTION OF THE TOWNSHIP
OF BERKELEY HEIGHTS,
UNION COUNTY PURSUANT
TO P.L. 2024, CHAPTER 2
(N.J.S.A. 52:27D-304.1, et seq.),**

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CIVIL PART
UNION COUNTY
DOCKET NO. UNN-L-000340-25

Civil Action

Mt. Laurel Program

**DECISION AND ORDER FIXING
MUNICIPAL OBLIGATIONS FOR
“PRESENT NEED” AND “PROSPECTIVE
NEED” FOR THE FOURTH ROUND
HOUSING CYCLE**

THIS MATTER, having come before the Court on referral from and recommendation issued by the Affordable Housing Dispute Resolution Program (“Program”), pursuant to the Complaint for Declaratory Judgment filed on January 23, 2025 (“DJ Complaint”) by the Petitioner, **TOWNSHIP OF BERKELEY HEIGHTS** (“Petitioner” or “Municipality”), pursuant to N.J.S.A. 52:27D-304.2, -304.3, and -304.1(f)(1)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (collectively, the “FHA”), and in accordance with Section II.A of Administrative Directive #14-24 (“Directive #14-24”) of the “Program”, seeking a certification of compliance with the FHA;

AND IT APPEARING that, the Municipality timely adopted Resolution 2025-72 on January 23, 2025, seeking deviation from the “present need” and “prospective need” calculations allocated to it by the New Jersey Department of Community Affairs (“DCA”) in its report dated October 18, 2024 entitled *Affordable Housing Obligations for 2025-2035 (Fourth Round* (the “DCA’s Fourth Round Report”) – specifically, a “present need” obligation of 0 affordable housing units, a “prospective need” obligation of 275 affordable housing units, which calculations have

been deemed “presumptively valid” for purposes of the FHA - and based on the Municipality planners’ recommendation for 208 units for a “prospective need” affordable housing obligation for the Fourth Round housing cycle;

AND IT APPEARING that, challenges to the Municipality’s calculations (“Challenges”) were timely and properly filed by Fair Share Housing Center (“FSHC”) and the New Jersey Builders Association (“NJBA”) (each a “Challenger”, and collectively the “Challengers”) by and through their respective counsel, wherein both Challengers disputed the Municipality’s proposed obligation for prospective need, and supported DCA’s present and prospective need obligations, with each Challenge supported by their own expert reports;

AND IT APPEARING that, pursuant to the Program, the Administrative Office of the Courts (“AOC”) appointed and assigned the case to Program member, the Hon. Thomas C. Miller, J.S.C. (Ret.) (“Program Member”) to manage the proceedings, host settlement conferences, and make recommendations to the Court in accordance with the FHA and the AOC’s Directive #14-24 (“Directive #14-24”), and that the Program Member appointed Art Bernard, PP, an independent affordable housing expert, as special adjudicator (“Special Adjudicator”) in this case to work with, make recommendations to and assist the Program, and who worked closely with the Program Member;

AND IT APPEARING that the NJBA notified the Program in writing by their counsel that they will not object to any settlement reached between the Municipality and the FSHC;

AND IT APPEARING that, on March 14, 2025 and March 19, 2025, settlement conferences were conducted on notice to all parties with the participation of local officials, town planner, planners for FSHC, and attorneys for the Municipality and attorneys for the NJBA and

FSHC, in accordance with the statutory framework and Directive #14-24, and with the goal of reaching a resolution;

AND IT APPEARING that, the parties engaged in extensive settlement negotiations before and during the settlement conferences, with the guidance and assistance of the Program Member and the Special Adjudicator;

AND IT APPEARING that, as a result of the settlement conferences conducted, the Municipality and FSHC reached a resolution (“Settlement”); the Settlement was placed on the record on March 14, 2025; the Program consequently directed the parties to circulate a settlement agreement that was uploaded to eCourts on March 28, 2025 [LCV2025954885]; and the Program further directed that the governing body of the Municipality adopt a resolution to accept and confirm the Settlement, which resolution was adopted on March 18, 2025 and uploaded to eCourts on March 28, 2025 [LCV2025954885];

AND THE COURT, having received the Program Member’s report dated March 24, 2025, since posted to the eCourts jacket for this matter at Trans. ID: LCV20251012374, the findings, terms, and recommendations of which are incorporated by reference as though more fully set forth herein (the “Report”);

AND THE COURT, having been advised that (i) the Special Adjudicator has recommended acceptance of the Settlement, (ii) the Program Member has recommended acceptance of the Settlement as reasonable and in furtherance of the interests of low- and moderate-income households in the Municipality (collectively, the “Recommendations”), and that (iii) the Program Member further recommends that the Court adopt the findings and recommendations set forth in the Report and enter an Order, *forthwith*, implementing the terms of Settlement and

thereby fix the “present need” and “prospective need” obligations of the Municipality for the Fourth Round housing cycle;

AND THE COURT, having reviewed and considered the Program Member’s Report and Recommendations, having been satisfied that an arm’s length Settlement was reached and entered into by and between the parties that is fair and equitable as well as in the best interests of the protected class of low- and moderate-income households in the Municipality, and for good and sufficient cause having otherwise been shown:

IT IS, THEREFORE, on and as of this **14th** day of **APRIL 2025 ADJUDGED AND ORDERED**, that the Program Member’s Report and Recommendations for approval of the Settlement, be, and the same hereby is **ACCEPTED** and **ADOPTED** in their entirety; and to that end, more specifically, it is further

ORDERED, as follows:

1. That the “present need” obligation of the Municipality, be, and hereby is fixed as **zero (0)** affordable units for the Fourth Round housing cycle.
2. That the “prospective need” obligation of the Municipality, be, and hereby is fixed as **two-hundred-and-forty (240)** affordable units for the Fourth Round Housing cycle; and
3. That the Petitioner is hereby authorized to proceed to the compliance phase with preparation and adoption of its proposed Housing Element and Fair Share Plan for the Fourth Round, incorporating therein the “present need” and “prospective need” allocations aforesaid (and which plan shall include the elements set forth in the “Addendum” attached to Directive #14-24), by or before June 30, 2025, as provided for and in accordance with Section III.A of Directive #14-24, and without further delay; and

4. That any and all “challenges” to the Petitioner’s Housing Element and Fair Share Plan as adopted by Paragraph 3 above must be filed by August 31, 2025, by way of Answer/Objection filed in the eCourts case jacket for this matter, and as provided for and in accordance with Section III.B of AOC Directive #14-24

IT IS FURTHER ORDERED, that a copy of this Order shall be deemed served on the Petitioner, Petitioner’s counsel, Challenger FSHC’s counsel and Challenger NJBA’s counsel upon its posting by the Court to the eCourts case jacket for this matter pursuant to R. 1:5-1(a) and R. 1:32-2A.

SO ORDERED:

Daniel R. Lindemann

HON. DANIEL R. LINDEMANN, J.S.C.

Designated Mt. Laurel Judge – Union Vicinage

(X) Challenged.

R. 1:7-4(a): Having reviewed and considered the Program Member’s Report and Recommendations as well as the terms of Settlement placed on the record by the parties before the Program Member on March 24, 2025, the Court is satisfied that an arm’s length Settlement was reached and entered into by and between the parties, and that the terms of the Settlement attained are fair and equitable as well as in the best interests of the protected class of low- and moderate-income households in the Municipality. This Settlement disposes of all Challenges filed, i.e., those filed by FSHC and NJBA.

Accordingly, the Court hereby adopts in full the Report and Recommendations of the Program Member and accepts the same for the detailed findings and reasons set forth therein. As a result, the Municipality retains all the protections of the above-referenced amendments to the FHA, continues to retain immunity from exclusionary zoning litigation, and that the Program retains jurisdiction for the compliance phase in accordance with the statutory framework and AOC Directive #14-24.

An appropriate form of Order implementing the Program Member’s Report and Recommendations accompanies this statement of reasons.

SO ORDERED.

APPENDIX F

SURENIAN, EDWARDS, BUZAK & NOLAN LLC

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Also admitted:
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—
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March 28, 2025

VIA ECOURTS

Honorable Thomas C. Miller, A.J.S.C (ret.)

Richard J. Hughes Justice Complex
25 Market Street
P.O Box 37
Trenton, NJ 08625-00373

**RE: In the Matter of the Application of the Township of Berkeley Heights
Docket No. UNN-L-340-25**

Dear Judge Miller,

This office represents the Township of Berkeley Heights ("Township") as Special Affordable Housing Counsel. As you are aware, the Township and Fair Share Housing Center ("FSHC") settled on the record regarding the Township's Fourth Round Present and Prospective Need obligations during a Settlement Conference held on March 14, 2025.

Enclosed please find a Mediation Agreement entered into between the Township and FSHC on March 28, 2025 memorializing the settlement. Also enclosed is a copy of the resolution adopted by the Township Council on March 18, 2025, accepting the agreed upon Fourth Round Present and Prospective Need obligations and authorizing the execution of the Mediation Agreement.

I thank Your Honor and the Special Adjudicator for your assistance in resolving this matter.

Very truly yours,



Erik C. Nolan

ECN/sp

cc: Art Bernard, PP, Special Adjudicator (*via email*)
All attorneys of record (*via ecourts*)

MEDIATION AGREEMENT BEFORE THE AFFORDABLE HOUSING DISPUTE
RESOLUTION PROGRAM

IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF BERKELEY HEIGHTS,
DOCKET NO. UNN-L-340-25

WHEREAS, on March 20, 2024, Governor Murphy signed P.L. 2024, c.2., into law, which established a new framework for determining and enforcing municipalities' affordable housing obligations under the Mount Laurel doctrine and the Fair Housing Act (the "Amended Act"); and

WHEREAS, the Amended Act required the Department of Community Affairs (the "DCA") to prepare a report with the calculation of the regional and municipal Prospective Need and the municipal Present Need for the Fourth Round in accordance with the formula required by the Amended Act; and

WHEREAS, the DCA released this report entitled "Affordable Housing Obligations for 2025-2035 (Fourth Round)" on October 18, 2024; and

WHEREAS, the DCA report concluded that Berkeley Heights Township's ("Berkeley Heights" or the "Township") fair share obligations for the Fourth Round included a Present Need of 0 units and a Prospective Need of 275 units; and

WHEREAS, on January 23, 2025, the Township having filed a Declaratory Judgment Action along with an adopted January 21, 2025 resolution of participation with the Affordable Housing Dispute Resolution Program (the "Program"), in accordance with the requirements of N.J.S.A. 52:27D-301, et seq., and the timeframes set forth in AOC Directive #14-24; and

WHEREAS, the Township's resolution proposed to set Berkeley Heights's affordable housing obligations for the Fourth Round to include a Present Need of 0 units and a Prospective Need of 208 units; and

WHEREAS, in accordance with the timeframes set forth in the Amended Act and the Directive, Fair Share Housing Center (“FSHC”) filed a timely objection to Berkeley Heights’s resolution on February 28, 2025; and

WHEREAS, FSHC’s objection contended that Berkeley Heights had improperly calculated its Prospective Need obligations and requested that the Program find that Berkeley Heights’s Prospective Need obligation set at 264; and

WHEREAS, Berkeley Heights disputes the contentions raised in FSHC’s objection; and

WHEREAS, within the Affordable Housing Dispute Resolution Program (“Program”) established pursuant to N.J.S.A. 52:27D-313.2, the parties have engaged in the mediation process provided by the Program, and conferred and reached an accord setting forth Berkeley Heights’s Fourth Round Prospective Need obligations, without either party admitting the validity of the others’ claims; and

WHEREAS, recognizing that this agreement is reached prior to the adjudication of any challenges by the Program or any potential subsequent review in the judicial system, the parties agree that 240 units is within the range of possibilities of outcomes for Berkeley Heights’s Fourth Round Prospective Need; and

WHEREAS, resolving the Fourth Round Prospective Need at this juncture and allowing Berkeley Heights to move forward with preparing its Fourth Round HEFSP is important to the interests of lower-income households; and

WHEREAS, the Township adopted a resolution on March 18, 2025 authorizing the execution of this agreement; and

WHEREAS, the Township and FSHC thus agree to present this Mediation Agreement to the Program and consent to the Mediation Agreement, upon the approval by the Program, setting

forth Berkeley Heights's Fourth Round obligations and binding the Township to utilize these obligations and foreclosing FSHC from further challenge to said obligations.

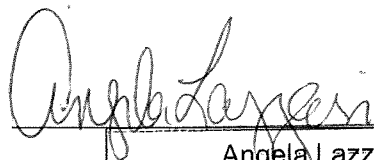
THEREFORE, the Township and FSHC agree:

1. Berkeley Heights's Fourth Round fair share obligations shall be set forth as follows:
 - Present Need – 0 units
 - Prospective Need – 240 units
2. A Fourth Round Fair Share Obligation of 240 units is within the range possible outcomes were the court to fully-adjudicate the Township's Prospective Need.
3. A Fourth Round Fair Share Obligation of 240 units is fair to the interests of lower-income households.
4. The Township and FSHC will jointly present this Mediation Agreement to the Program and request approval of this Agreement from the Program and if approved by the Program from the vicinage Mount Laurel judge. If the Program, trial court, or any appellate court reject approval of this Agreement, the Parties reserve their right to return to the *status quo ante*.
5. The Township shall prepare a Fourth Round Housing Element and Fair Share Plan ("HEFSP") utilizing these present and prospective need obligations and submit the HEFSP to the Program by the deadline in the Amended Act of June 30, 2025. FSHC reserves all rights as to its review of the HEFSP pursuant to the Amended Act.

The undersigned, on behalf of the Township, is authorized to execute this agreement via the Township Council resolution adopted on March 18, 2025. The undersigned on behalf of FSHC consents to this Mediation Agreement and represents that he is authorized to

execute it on FSHC's behalf. This Mediation Agreement shall not be further modified, amended or altered in any way except by a writing signed by both the Township and FSHC.

Witness/Attest:

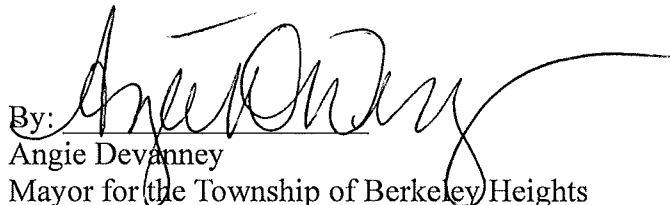


Angela Lazzari
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES October 2, 2028

Dated:

3/26/2025

Township of Berkeley Heights

By: 
Angie Devanney
Mayor for the Township of Berkeley Heights

Dated:

Witness/Attest:

Fair Share Housing Center

By: _____
Joshua D. Bauers, Esq.
Counsel for Fair Share Housing Center

Dated:

Dated:

execute it on FSHC's behalf. This Mediation Agreement shall not be further modified, amended or altered in any way except by a writing signed by both the Township and FSHC.

Witness/Attest:

Township of Berkeley Heights

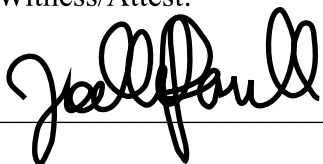
By: _____
Angie Devanney
Mayor for the Township of Berkeley Heights

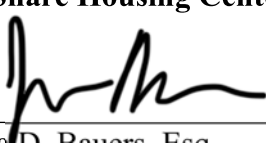
Dated:

Dated:

Witness/Attest:

Fair Share Housing Center



By: 
Joshua D. Bauers, Esq.
Counsel for Fair Share Housing Center

Dated: 3/27/25

Dated: 3/27/25

No. 2025- 144

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

**RESOLUTION OF THE COUNCIL OF THE TOWNSHIP OF BERKELEY
HEIGHTS COMMITTING TO FOURTH ROUND PRESENT AND
PROSPECTIVE NEED AFFORDABLE HOUSING OBLIGATIONS IN
AGREEMENT WITH FAIR SHARE HOUSING CENTER**

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2 (hereinafter "A4" or "Amended FHA"); and

WHEREAS, P.L. 2024, c.2, modified the process upon which municipalities could comply with their affordable housing obligations pursuant to the Mount Laurel doctrine; and

WHEREAS, P.L. 2024, c.2 required the Township to pass a binding resolution determining its Fourth Round Present Need Obligation and its Fourth Round Prospective Need Obligation by January 31, 2025, and file it, along with a Declaratory Judgment Complaint ("DJ Complaint") in the Superior Court of New Jersey, Union Vicinage; and

WHEREAS, in furtherance of P.L. 2024, c.2, the Township adopted Resolution 2025-72 on January 21, 2025, and thereafter filed a DJ complaint with the Court within 48 hours of its passage, which has resulted in the case In the Matter of the Application of the Township of Berkeley Heights, Docket No. UNN-L-340-25; and

WHEREAS, the Township determined its Fourth Round Present Need Obligation to be Zero (0) and its Fourth Round Prospective Need Obligation to be 208; and

WHEREAS, P.L. 2024, c.2 enabled interested parties to challenge a municipality's number prior to February 28, 2025; and

WHEREAS, the New Jersey Builders Association ("NJBA") and Fair Share Housing Center ("FSHC") filed objections to the Township's Round 4 number; and

WHEREAS, the NJBA argued that the Township's Fourth Round Prospective Need Obligation was 275; and

WHEREAS, FSHC argued the Township's Fourth Round Prospective Need Obligation was 264; and

WHEREAS, pursuant to P.L. 2024, c.2, the Township, the NJBA, and FSHC were to engage in good faith negotiations regarding the Township's Round 4 number; and

WHEREAS, the NJBA filed a letter with the Program in the Berkeley Heights DJ Action on March 13, 2025, which stated that the NJBA would not be participating in any settlement conferences and "has no intention of objecting to or appealing any settlement agreement that may be reached between Plaintiff and Fair Share Housing Center ("FSHC") that establishes a Fourth Round prospective need number for Plaintiff"; and

No. 2025- 144

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

WHEREAS, representatives of the Township and FSHC engaged in good faith negotiations and, as a result of those negotiations, the Township and FSHC agreed to a Fourth Round Present Need Obligation of Zero (0) and a Fourth Round Prospective Need Obligation of 240 for the Township; and

WHEREAS, the Township seeks to bind itself to the agreed upon numbers between itself, and FSHC for a Fourth Round Present Need Obligation of Zero (0) and a Fourth Round Prospective Need Obligation of 240; and

WHEREAS, nothing in this resolution shall be interpreted as an acknowledgement that the Township improperly calculated its Fourth Round Prospective Need Obligation in Resolution 2025-72, nor diminish its immunity from all Mount Laurel lawsuits it has maintained as a result of following the procedural requirements of P.L. 2024, c.2; and

NOW, THEREFORE, BE IT RESOLVED on this 18th day of March, 2025, by the Council of the Township of Berkeley Heights, Union County, State of New Jersey, as follows:

1. The Mayor and Council hereby commit to a Fourth Round Present Need Obligation of Zero (0) and a Fourth Round Prospective Need Obligation of 240 units, as agreed upon by FSHC, subject to the following conditions and/or reservations of rights:
 - a. Nothing in this resolution shall be interpreted as an adjudication or determination of the Township's right to an adjustment of its Fourth Round Prospective Need Obligation predicated upon a lack of developable land, sewer, water or similar adjustments.
 - b. It is anticipated that any order effectively implementing this resolution will expressly recognize the Borough's continuing immunity from all Mount Laurel exclusionary lawsuits during the Fourth Round process.
 - c. If a third party successfully challenges this resolution or any order, judgment or determination effectuating this agreed-upon number, the Township reserves the right to return to *status quo ante* and reserve all litigation rights.
2. The Mayor and Council hereby authorize the Township's affordable housing special counsel to take whatever steps are necessary to effectuate the terms of this resolution with the Program or a court of competent jurisdiction, which authorization shall include, but is not limited to, the execution of an agreement, MOU, consent order or similar document effectuating only the terms of this resolution.
3. This resolution shall take effect immediately.

No. 2025- 144

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

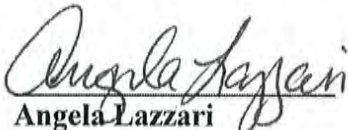
RESOLUTION

CERTIFICATION

I certify that the foregoing Resolution was duly adopted by the Council of the Township of Berkeley Heights at a regular meeting held on the **18th day of March 2025**, a quorum being present and voting in the majority.

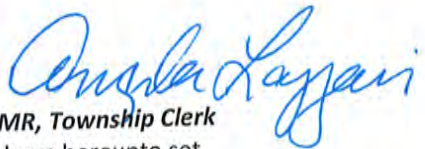
Approved this 18th day of March, 2025.

ATTEST:


Angela Lazzari
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
COUTO	✓			
FOSTER	✓			
ILLIS	✓			
MACHADO	✓			
MORAN	✓			
POAGE	✓			
TIE:				
MAYOR DEVANNEY				

CERTIFIED TRUE COPY:


Angela Lazzari, RMC, CMR, Township Clerk

In testimony whereof, I have hereunto set my hand and caused the seal of the Township of Berkeley Heights to be affixed.

APPENDIX G

JEFFREY R. SURENIAN AND ASSOCIATES, LLC

Brielle Galleria

707 Union Avenue, Suite 301

Brielle, New Jersey 08730

(732) 612-3100

Attorneys for Declaratory Plaintiff, Township of Berkeley Heights

Jeffrey R. Surenian (Attorney ID: 024231983)

Erik C. Nolan (Attorney ID: 014032006)

FILED

OCT 12 2017

**CAMILLE M. KENNY
J.S.C.**

**IN THE MATTER OF THE
APPLICATION OF THE TOWNSHIP
OF BERKELEY HEIGHTS, COUNTY
OF UNION**

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY

DOCKET NO.: UNN-L-2405-15

Civil Case
(*Mount Laurel II*)

**ORDER OF JUDGMENT OF
COMPLIANCE AND REPOSE**

THIS MATTER having been opened to the Court by Jeffrey R. Surenian and Associates, LLC, on behalf of declaratory plaintiff, Township of Berkeley Heights (hereinafter “the Township” or “Berkeley Heights”) via a Declaratory Judgment Complaint filed on July 2, 2015 to approve the Township’s Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”) in response to In re N.J.A.C. 5:96 & N.J.A.C. 5:97, 221 N.J. 1 (2015)(“Mount Laurel IV”); and the Court having granted the Township immunity from Mount Laurel lawsuits from the time of the filing of the Township’s Declaratory Judgment action (hereinafter “DJ Action”); and the Court having appointed Elizabeth C. McKenzie, A.I.C.P., P.P., as the Special Mount Laurel Court Master (hereinafter the “Court Master McKenzie”); and, due to Court Master McKenzie’s identification of a potential conflict involving one of the Intervenor (Berkeley Developers, LLC), Philip B. Caton, P.P., F.A.I.C.P., having been appointed by the Court to serve as the Court Master for the Berkeley Developers, LLC, project only (hereinafter “Court Master Caton”); and

Fair Share Housing Center ("FSHC") having participated in the Township's DJ Action as an "interested party" and not as a formal Intervenor; and FSHC's expert, David Kinsey, PhD, P.P., E.A.I.C.P., having issued an expert report that calculated fair share obligations for all of the municipalities in the state; and the Township's professionals and Kevin D. Walsh, Esq., of FSHC having entered into mediation supervised by Court Master McKenzie to try to settle the Township's DJ Action globally; and the Township and FSHC having entered into a Settlement Agreement on September 20, 2016 (hereinafter the "FSHC Settlement Agreement")(Appendix K of Exhibit P-1); and said FSHC Settlement Agreement having set agreed upon fair share obligations and how the Township would satisfy same; and three developers (Berkeley Developers, LLC, Berkeley Heights Developers, LLC, and Lockhern Property, LLC) having intervened into the Township's DJ Action; and, after mediation, the Township having reached settlements with all three intervenor developers in the fall of 2016 (Appendix L, M and N of Exhibit P-1); and the Township having also entered into a Development Agreement with the Connell Company (hereinafter "Connell") in the fall of 2016 (Appendix O of Exhibit P-1); and the FSHC Settlement Agreement having been approved by the Court during a properly noticed Fairness Hearing on October 17, 2016; and the Court having entered an Order approving the FSHC Settlement Agreement on October 17, 2016 (Appendix J of Exhibit P-1); and the Township having subsequently prepared an initial Housing Element and Fair Share Plan (hereinafter "Fair Share Plan")(Exhibit P-13), and all supporting documentation in accordance with the FSHC Settlement Agreement and the recommendations of the Court Masters, which was then adopted by the Township's Planning Board (Exhibit P-14) and endorsed by the Township Council (Exhibit P-15) on March 15, 2017; and a Compliance Hearing having initially been scheduled for April 17, 2017 to approve the Township's Fair Share Plan; and counsel for the

Township having prepared a Notice Certification (Exhibit P-4), to document that proper notice of the Compliance Hearing had been given; and the Township having received objections to the Fair Share Plan from Elite Properties at Berkeley Heights, LLC and MCRT Investments, LLC; and the Compliance Hearing having been subsequently carried on the record and via Court Order to September 19, 2017 (Exhibit P-5); and the Township having prepared an Amended Housing Element and Fair Share Plan (hereinafter "Amended Fair Share Plan")(Exhibit P-1), which was subsequently adopted by the Township Planning Board (Exhibit P-2) and endorsed by the Township Council (Exhibit P-3); and said Fair Share Plan, and all of its attached exhibits, having been put on file for public review at Township Hall more than 30 days prior to the scheduled Compliance Hearing date of September 19, 2017; and the Amended Fair Share Plan, all of its attached exhibits, as well as other additional documents, resolutions and ordinances having been submitted to Court Master McKenzie for review; and documents relating to the Berkeley Developers, LLC project having been submitted to Court Master Caton for his review; and Court Master Caton having submitted a report to the Court on September 8, 2017 (Exhibit P-17) regarding the Berkeley Developers, LLC project; and Court Master McKenzie having submitted a report to the Court on September 16, 2017 (Exhibit P-16) regarding the approval of the Township's Amended Fair Share Plan; and the Compliance Hearing having been held on September 19, 2017, during which Exhibits P-1 to P-23, which are attached hereto, were marked into evidence; and the Court having considered the testimony taken during the Compliance Hearing, as well as the comments of counsel; and the Court having reviewed all of the documents submitted into evidence during the Compliance Hearing; and good cause having been shown;

It is hereby ordered on this 12th day of October, 2017, as follows:

1. Subject to the satisfaction of the Conditions in Paragraph 10 of this Order and the deadlines established in Paragraph 12 of this Order, the Township of Berkeley Heights' Amended Fair Share Plan (Exhibit P-1) is hereby approved and the Township is granted a Judgment of Compliance and Repose as to its Rehabilitation Obligation, its Prior Round Obligation (1987-1999), and its Third Round Obligation (consisting of both its Gap Obligation for 1999-2015 and its Prospective Need Obligation for 2015-2025) pursuant to the Court approved Settlement Agreement entered into between the Township and FSHC on September 20, 2016, the Fair Housing Act (N.J.S.A. 52:27D-301, et. seq.)(“FHA”), the Uniform Housing Affordability controls (N.J.A.C. 5:80-26.1, et seq.) (“UHAC”), applicable Council on Affordable Housing (hereinafter “COAH”) substantive rules, and Mount Laurel case law, including the New Jersey Supreme Court’s Mount Laurel IV decision.

2. The Township’s Judgment of Compliance and Repose shall remain in effect for ten (10) years beginning on July 2, 2015 and ending on July 2, 2025, and during this ten (10) year period the Township shall have repose from all Mount Laurel lawsuits, including, but not limited to, Builders Remedy lawsuits. In addition to the repose described herein, temporary immunity from all Mount Laurel lawsuits will remain in place until January 15, 2018 while the Township satisfies the Conditions contained in Paragraph 10 below, and to allow for additional time to continue the Compliance Hearing as per Paragraph 13 below, should that be necessary.

3. As per the Court approved Settlement Agreement between the Township and FSHC, and as established in the Township’s Amended Fair Share Plan, the Township’s Present Need or Rehabilitation Obligation is 11, the Township’s Prior Round Obligation (1987-1999) is 183, and the Township’s Third Round Obligation (1999-2025) is 389.

4. The Township prepared a vacant land analysis (Appendix A to Exhibit P-1), and, as a result of that analysis, the Township, FSHC and the Court Master have agreed that the Township is entitled to a vacant land adjustment such that it has a Realistic Development Potential (hereinafter “RDP”) of 359 units, and a remaining portion of its allocation of the third round need (hereinafter “Unmet Need”) of 30 units. The Court hereby approves the Township’s RDP of 359 and the Township’s mechanisms for addressing its Unmet Need.

5. The Township has fully satisfied its 11-unit Present Need Obligation with eleven (11) credits from existing units that have been rehabilitated since July of 2010 under the Township’s rehabilitation program, which is currently being run by Mary M. Moody, P.P. The Township has an additional rehabilitation credit from a 12th existing unit that was also rehabilitated after July of 2010.

6. The Township has satisfied its 183-unit Prior Round Obligation as follows:

- a. 91 RCA credits from the Township’s 129-unit Regional Contribution Agreement (“RCA”) with the City of Newark.
- b. 47 constructed and occupied affordable units.
- c. 45 rental bonuses.

7. The Township will satisfy its 359-unit RDP as follows:

- a. 120 units from six (6) new inclusionary redevelopment projects.
- b. 57 units from two redevelopment projects in the DMX and DH-24 zones.
- c. 54 constructed and occupied affordable units.
- d. 38 remaining RCA credits (applied to 1999-2008 portion of obligation).
- e. 90 rental bonuses.

8. The Township will satisfy its 30-unit Unmet Need via (a) 10 affordable units to be constructed within the Township’s HB-2, HB-3 and DD downtown districts and (b) 20 affordable units to be constructed under the Township-wide Mandatory Set-Aside Ordinance.

9. The Township’s Spending Plan, which is attached hereto as Appendix B of Exhibit P-1, is hereby approved, and the Township is now free to expend funds in its Affordable

Housing Trust Funds in accordance with the FSHC Settlement Agreement, the Township's Amended Fair Share Plan, the FHA, applicable COAH regulations and all other applicable law.

10. The following Conditions in Court Master Caton's September 8, 2017 and Court Master McKenzie's September 16, 2017 reports, as further modified by the Court on the record during the Compliance Hearing on September 19, 2017, shall be addressed and resolved by the Township by December 4, 2017, on which date the Township shall submit a status update report to the Court and all parties:

- a. The Township will enter into a Redevelopment Agreement and a Financial (PILOT) Agreement with Berkeley Developers, LLC.
- b. The Township will enter into a Redevelopment Agreement and a Financial (PILOT) Agreement with Berkeley Heights Developers, LLC.
- c. The Township will enter into a Redevelopment Agreement and a Financial (PILOT) Agreement with Lockhern Property, LLC.
- d. The Township will adopt its revised Development Fee Ordinance, which is Appendix F of attached Exhibit P-1.
- e. The Township and the Connell Group will enter into the Amended Developer's agreement, which is attached hereto as Exhibit P-22.
- f. The Township will adopt the Ordinance rezoning the Connell site, which is attached hereto as Exhibit P-21.
- g. The Township will adopt the Ordinance approving the Hamilton Avenue Redevelopment Plan. The Ordinance is attached hereto as Exhibit P-18, and the Hamilton Avenue Redevelopment plan is attached hereto as Exhibit P-19.
- h. The Township will adopt the Ordinance establishing residential density and other regulations in the Downtown Zoning Districts (HB-2, HB-3 and DD zones) of the Township, which is attached hereto as Exhibit P-9.

11. As per the terms of the FSHC Settlement Agreement and the Court Order approving same, the Township will prepare and adopt a Redevelopment Plan for the Township's DMX Zone within eighteen (18) months of the entry of this Order. As to the preparation of a

Redevelopment Plan for the DH-24 zone, the deadline will be set pursuant to the MOU/Settlement Agreement entered into between the Township and MCRT, if such agreements are entered into, or if such agreements are not entered into, the deadline will be set by Court Master McKenzie after the Township submits its status update report on December 4, 2017.

12. If the Township does not enter into Settlement Agreements with objector developers Elite Properties at Berkeley Heights, LLC and MCRT Investments, LLC by December 4, 2017, which is the date the Township's status update report is due to the Court, then all parties will report to Court on December 18, 2017 at 10:00 a.m. to continue the Township's Compliance Hearing. The continued Compliance Hearing will be for the purpose of hearing the objections of whichever of the above-named parties has not reached a settlement with the Township. If both Settlement Agreements are entered into by December 4, 2017, then no appearance in Court on December 18, 2017 will be necessary.

13. Subject to the deadlines established in Paragraph 12 above, upon the Court Masters receiving, reviewing and approving the additional documents and revisions required by the Conditions in Paragraph 10 of this Order, the Court Masters shall advise the Court that said Conditions have been satisfied. Upon such notification, the Township will provide the Court with a form of a final Judgment of Compliance and Repose Order with all satisfied conditions removed for the Court to enter without the need for a further hearing before the Court.

14. Counsel for the Township shall provide copies of this Order to the Township's Service List within seven (7) days of receipt.



HONORABLE CAMILLE M. KENNY, J.S.C.

APPENDIX H

JEFFREY R. SURENIAN AND ASSOCIATES, LLC

Brielle Galleria

707 Union Avenue, Suite 301

Brielle, NJ 08730

(732) 612-3100

Attorneys for Declaratory Plaintiff, Township of Berkeley Heights

Jeffrey R. Surenian (Attorney ID: 024231983)

Erik C. Nolan (Attorney ID: 014032006)

FILED

JAN 22 2018

**CAMILLE M. KENNY
J.S.C.**

**IN THE MATTER OF THE
APPLICATION OF THE TOWNSHIP
OF BERKELEY HEIGHTS, COUNTY
OF UNION**

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY**

DOCKET NO.: UNN-L-2405-15

**Civil Case
(Mount Laurel II)**

**ORDER REGARDING SATISFACTION
OF JUDGMENT OF COMPLIANCE AND
REPOSE CONDITIONS AND
EXTENDING CERTAIN DEADLINES**

THIS MATTER having been opened to the Court by Jeffrey R. Surenian and Associates, LLC, on behalf of declaratory plaintiff, Township of Berkeley Heights (hereinafter "the Township" or "Berkeley Heights") via a Declaratory Judgment Complaint filed on July 2, 2015 to approve the Township's Housing Element and Fair Share Plan (hereinafter "Fair Share Plan") in response to In re N.J.A.C. 5:96 & N.J.A.C. 5:97, 221 N.J. 1 (2015) ("Mount Laurel IV"); and the Court having held a Compliance Hearing on September 19, 2017; and the Court having entered a Judgment of Compliance and Repose Order on October 12, 2017 (hereinafter "JOR Order"), which approved the Township's Fair Share Plan, subject to the satisfaction of certain short and long term conditions set forth in the JOR Order; and the Township having satisfied the majority of the short term conditions; and the Township still needing additional time to satisfy two remaining short term conditions; and good cause having been shown;

It is hereby ordered on this 22nd day of December, 2018, as follows:

1. The following Conditions in Paragraph 10 of the Township's October 12, 2017 JOR Order have been fully satisfied:

- a. Condition 10(a): The Township entered into a Redevelopment Agreement and a Financial (PILOT) Agreement with Berkeley Developers, LLC for the Locust site project.
- b. Condition 10(b): The Township entered into a Redevelopment Agreement and a Financial (PILOT) Agreement with Berkeley Heights Developers, LLC for the Kings site project.
- c. Condition 10(d): The Township adopted its revised Development Fee Ordinance.
- d. Condition 10(e): The Township and the Connell Group entered into an Amended Developer's Agreement.
- e. Condition 10(f): The Township adopted an Ordinance rezoning the Connell site.
- f. Condition 10(g): The Township adopted an Ordinance approving the Hamilton Avenue Redevelopment Plan.
- g. Condition 10(h): The Township adopted an Ordinance establishing residential density and other regulations in the Downtown Zoning Districts (HB-2, HB-3 and DD zones) of the Township.

2. Condition 10(c) in Paragraph 10 of the JOR Order has not been satisfied to date, but will be satisfied as follows:

The Township and Lockhern Property, LLC will enter into a Redevelopment Agreement and a Financial (PILOT) Agreement within 90 days of the entry of this order regarding the project proposed for the movie theater site.

3. The Township and Elite Properties at Berkeley Heights, LLC (hereinafter "Elite") entered into a Settlement Agreement on December 19, 2017, which fully satisfies the condition set forth in Paragraph 12 of the JOR Order.

4. The Township and MCRT Investments, LLC (hereinafter "MCRT") entered into a Memorandum of Understanding ("MOU") on January 16, 2018. The time period for the Township and MCRT to enter into a Settlement Agreement, and provide same to the Court and

all parties, is hereby reset from the deadline established in Paragraph 12 of the JOR Order as follows:

The Township and MCRT Investments, LLC will enter into a Settlement Agreement and provide same to the Court and all parties within 90 days of the entry of this Order. If said Settlement Agreement is not entered into and submitted to the Court and all parties within 90 days, then the Township's Compliance Hearing will be continued on April 26, 2018 at 10 AM for the purpose of hearing the objections of MCRT to the JOR Order and the Township's Fair Share Plan. If the Settlement Agreement is entered into and submitted to the Court and all parties within 90 days of the entry of this Order, then no further appearance in Court will be necessary, and the condition in Paragraph 12 of the JOR Order will be deemed to have been fully satisfied.

5. All of the other terms and conditions set forth in the Township's October 12, 2017 JOR Order that are not modified by this Order remain in full force and effect, including the provision in Paragraph 2 that the Township has immunity from all Mount Laurel lawsuits until July 2, 2025.

6. Counsel for the Township shall provide copies of this Order to the Township's Service List within seven (7) days of receipt.



HONORABLE CAMILLE M. KENNY, J.S.C.

APPENDIX I

JEFFREY R. SURENIAN AND ASSOCIATES, LLC

Brielle Galleria

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Brielle, NJ 08730

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Attorneys for Declaratory Plaintiff, Township of Berkeley Heights

Jeffrey R. Surenian (Attorney ID: 024231983)

Erik C. Nolan (Attorney ID: 014032006)

RECEIVED OCT 27 2016

FILED

OCT 19 2016

CAMILLE M. KENNY
J.S.C.

**IN THE MATTER OF THE
APPLICATION OF THE TOWNSHIP
OF BERKELEY HEIGHTS, COUNTY
OF UNION**

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY

DOCKET NO.: UNN-L-002405-15

Civil Case
(*Mount Laurel II*)

**ORDER APPROVING SETTLEMENT
AGREEMENT BETWEEN THE
TOWNSHIP OF BERKELEY HEIGHTS
AND FAIR SHARE HOUSING CENTER**

THIS MATTER having been opened to the Court by Jeffrey R. Surenian and Associates, LLC, on behalf of declaratory plaintiff, Township of Berkeley Heights (hereinafter "the Township" or "Berkeley Heights") via a Declaratory Judgment Complaint filed on July 2, 2015 to approve the Township's Housing Element and Fair Share Plan (hereinafter "Fair Share Plan") in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) ("Mount Laurel IV"); and the Court having granted the Township immunity from Mount Laurel lawsuits from the time of the filing of the Township's Declaratory Judgment action (hereinafter "DJ Action"); and the Court having appointed Elizabeth C. McKenzie, A.I.C.P., P.P., as the Special Mount Laurel Court Master (hereinafter the "Court Master"); and, due to Ms. McKenzie's identification of a potential conflict involving one of the Intervenor (Berkeley Developers, LLC), Philip B. Caton, P.P., F.A.I.C.P., serving as the Court Master for the Berkeley Developers, LLC project only; and Fair Share Housing Center ("FSHC") having participated in the Township's DJ Action as an "interested party" and not as a formal Intervenor; and FSHC's expert, David Kinsey, PhD, P.P.,

F.A.I.C.P., having issued an expert report that calculated fair share obligations for all of the municipalities in the state; and the Township having hired Econsult Solutions, Inc., which produced its own expert report calculating fair share obligations for all municipalities in the state; and the Township's professionals and Kevin D. Walsh, Esq., of FSHC having entered into mediation supervised by the Court Master to try to agree on the magnitude of the Township's third round fair share obligation and how the Township would comply with same; and the Township's professionals and FSHC having agreed upon a form of Settlement Agreement (attached hereto as Exhibit P-1 and referred to hereinafter as the "FSHC Settlement Agreement"), which was executed by Kevin D. Walsh, Esq., on behalf of FSHC; and the Township Council having adopted a resolution on September 20, 2016 (attached hereto as Exhibit P-2) authorizing the Mayor of Berkeley Heights to execute the FSHC Settlement Agreement, which he subsequently did; and that at this point in the process resulting from the Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for FSHC and the Township to have arrived at a settlement regarding the Township's third round, present and prospective need, instead of doing so through plenary adjudication of the third round, present and prospective need; and the Township having prepared a Final Summary of its Fair Share Plan (which contains all of the major terms of the settlement, and is hereinafter referred to as "Final Summary of Plan"), along with a Vacant Land Analysis (hereinafter "VLA"), both of which are attached hereto as Exhibit P-3; and three developers (Berkeley Developers, LLC, Berkeley Heights Developers, LLC, and Lockhern Property, LLC) having intervened into the Township's DJ Action; and the Township having reached settlements with all three intervenor developers (see attached Exhibits P-4, P-6 and P-8), for projects that will produce affordable housing in the Township; and the Township also having entered into a Development Agreement with the Connell Company, attached hereto as Exhibit P-10, which will also produce affordable housing in the Township; and the Township Council having adopted

resolutions (attached hereto as Exhibits P-5, P-7, P-9 and P-11) authorizing the Mayor of Berkeley Heights to execute the agreements with the developers, which he subsequently did; and the Court having set a date of October 17, 2016 for a Fairness Hearing to entertain approval of the settlement between FSHC and the Township, and to determine whether said settlement is fair, reasonable and adequately protects the interest of low and moderate income households; and the Township having provided proper public and actual notice of the Fairness Hearing; and no objections to the settlement having been received; and counsel for the Township having prepared a Certification of Notice, attached hereto as Exhibit P-14, to document that proper notice of the Fairness Hearing had been given, and that no objections had been received; and the Court Master having submitted a report to the Court on October 10, 2016 (attached hereto as Exhibit P-12) regarding the proposed settlement between FSHC and the Township, as well as an evaluation of the settlements between the Township and Berkeley Heights Developers, LLC, and Lockhern Property, LLC; and Philip B. Caton, P.P., F.A.I.C.P., having prepared a report (attached hereto as Exhibit P-13) regarding the settlement between the Township and Berkeley Developers, LLC; and the Fairness Hearing having been held on October 17, 2016, during which Exhibits P-1 to P-14, which are attached hereto, were marked into evidence; and the Court having considered the testimony taken during the Fairness Hearing, as well as the comments of counsel; and the Court having reviewed all of the documents submitted into evidence during the Fairness Hearing; and the Court being satisfied that the parties are entitled to the relief sought; and good cause having been shown;

It is hereby ordered on this 17th day of October, 2016, as follows:

1. The Court finds and determines pursuant to the judicial standards prescribed by the Appellate Division in East/West Venture v. Bor. Of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996), and through analysis of the FSHC Settlement Agreement (attached hereto as Exhibit P-1), the Court Master's report (attached hereto as Exhibit P-12), and on the basis of the testimony

taken during a Fairness Hearing conducted on October 17, 2016; that the settlement between the FSHC and the Township is fair, reasonable and adequately protects the interest of low and moderate income households, and the Court hereby approves the FSHC Settlement Agreement, which is attached hereto as Exhibit P-1.

2. The Court also finds that after considering the Master's Reports of both Elizabeth C. McKenzie, A.I.C.P., P.P., and Philip B. Caton, P.P., F.A.I.C.P. (Exhibits P-12 and P-13), and considering the testimony of Elizabeth C. McKenzie, A.I.C.P., P.P., that the settlements between the Township and Berkeley Developers, LLC, Berkeley Heights Developers, LLC, and Lockhern Property, LLC (Exhibits P-4, P-6 and P-8), as well as the Development Agreement between the Township and the Connell Company (Exhibit P-10), are fair and reasonable to low and moderate income households and are hereby approved.

3. On April 17, 2017, the Court will hold a Compliance Hearing to consider approving the Township of Berkeley's Heights' Housing Element and Fair Share Plan. Prior to the Compliance Hearing the Township shall (a) prepare a Housing Element and Fair Share Plan, including a Spending Plan, reflecting all of the terms and conditions of the FSHC Settlement Agreement (Exhibit P-1), along with all necessary implementing ordinances and exhibits; (b) submit the Housing Element and Fair Share Plan to the Court Master and interested parties for review and comment; (c) have the Housing Element and Fair Share Plan adopted by the Township Planning Board; (d) have the Housing Element and Fair Share Plan endorsed by the Township Council; and (e) submit the Housing Element and Fair Share Plan, and all required supplementary documentation, including the Spending Plan, to the Court, the Court Master and interested parties for final review and recommendation by the Court Master and for approval by the Court. After the Compliance Hearing to approve the Township's Housing Element and Fair Share Plan is held, the Court will consider issuing a Judgment of Compliance and Repose, which

will provide the Township and its Planning Board with immunity from Mount Laurel lawsuits through July 1, 2025.

4. The temporary immunity from Mount Laurel lawsuits that is currently in place for the Township and its Planning Board will remain in place for a period of 220 days from the entry of this Order.

5. As a result of the Settlement between the Township and FSHC, the Township's Present Need or Rehabilitation Obligation is 11, the Township's Prior Round Obligation is 183 and the Township's third round Fair Share Obligation is 389.

6. The Township has undertaken a vacant land analysis, and, as a result of that analysis, the Township, FSHC and the Court Master have agreed that the Township is entitled to a vacant land adjustment such that it has a Realistic Development Potential ("RDP") of 359 units and a remaining portion of its allocation of the third round need of 30 units.

7. The Township shall continue to implement its rehabilitation program, currently being run by Mary M. Moody, P.P., to satisfy its 11-unit Rehabilitation Obligation.

8. The Township has satisfied its 183-unit Prior Round Obligation as follows:

- a. 91 RCA credits from the Township's 129-unit Regional Contribution Agreement ("RCA") with the City of Newark.
- b. 47 constructed and occupied affordable units.
- c. 45 rental bonuses.

9. The Township will satisfy its 359-unit RDP as follows:

- a. 119 units from six (6) new inclusionary redevelopment projects, including all three of the Intervenor sites.
- b. 57 units from two redevelopment projects in the DMX and DH-24 zones.
- c. 55 constructed and occupied affordable units.
- d. 38 remaining RCA credits (applied to 1999-2008 portion of obligation).
- e. 90 rental bonuses.

10. The Township will satisfy the 30-unit remaining portion of its allocation of the third round regional need via (a) 10 affordable units to be built through redevelopment within the

Township's HB-2, HB-3 and DD downtown districts and (b) a town wide Mandatory Set-Aside Ordinance.

11. All other terms and conditions in the FSHC Settlement Agreement (Exhibit P-1) shall be adhered to, and all such terms and conditions are hereby incorporated by reference.

12. Berkeley Heights shall pay \$15,000 to FSHC within 10 days after the entry of this Order.

13. Prior to the Compliance Hearing scheduled for April 17, 2017, the Township will satisfy all of the conditions and requirements found in the Court Master's October 10, 2016 report, which is attached hereto as Exhibit P-12.

14. Counsel for the Township shall provide copies of this Order to all counsel of record and to the Court Master within seven (7) days of receipt.

Reasons set forth on the record on 10/17/16.


HONORABLE CAMILLE M. KENNY, J.S.C.

APPENDIX J

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

**In the Matter of the Township of Berkeley Heights, County of Union,
Docket No. UNN-L-2405-15**

THIS SETTLEMENT AGREEMENT ("Agreement") made this 13th day of September 2016, by and between:

TOWNSHIP OF BERKELEY HEIGHTS, a municipal corporation of the State of New Jersey, County of Union, having an address at 22 Park Avenue, Berkeley Heights, New Jersey 07922 (hereinafter the "Township" or "Berkeley Heights");

And

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

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), the Township filed the above-captioned matter on July 2, 2015 seeking, among other things, a judicial declaration that its amended Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), as may be further amended in accordance with the terms of this settlement, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the Mount Laurel doctrine; and

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

WHEREAS, the immunity secured by Berkeley Heights remains in force as of the date of this Agreement; and

WHEREAS, the trial court appointed Elizabeth C. McKenzie, A.I.C.P., P.P., as the "Special Master" in this case as is customary in Mount Laurel matters; and

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

WHEREAS, through that process, the Township and FSHC agreed to settle the litigation and to present that settlement to the trial court, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households; and

WHEREAS, at this time and at this particular point in the process resulting from the Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round present and prospective need, instead of doing so through plenary adjudication of the present and prospective need.

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

Settlement Terms

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

1. Berkeley Heights' "Rehabilitation" obligation is 11.
2. Berkeley Heights' "Prior Round" obligation is 183.
3. Berkeley Heights' allocation of the Round 3 regional need is 389.
4. FSHC and the Township agree that Berkeley Heights does not accept the basis of the methodology or calculations proffered by FSHC's consultant, David N. Kinsey, PhD, P.P., F.A.I.C.P. The Parties agree to the terms in this agreement solely for purposes of settlement of this action. Although the Township does not accept the basis of the methodology or calculations proffered by FSHC's consultant, FSHC contends, and is free to take the position before the court, that the 389-unit obligation should be accepted by the court because it is based on the Prior Round methodology and reflects a 35-percent reduction of Dr. Kinsey's May 2016 calculation of the Township's Third Round fair share obligations.
5. Pursuant to N.J.A.C. 5:93-4.2, and as confirmed by Special Master McKenzie, Berkeley Heights' current Realistic Development Potential (hereinafter "RDP") is 359.
6. **Satisfaction of Rehabilitation Obligation:** The Township has an 11-unit rehabilitation obligation, and shall satisfy that obligation as follows:
 - a) The Township has an entity (Mary M. Moody, P.P.) in place that has recently rehabilitated 12 units in the Township.
 - b) Of the 12 units, all have been rehabilitated since July of 2010 (of which five (5) were rehabilitated since July of 2014).
 - c) There are six (6) more units in the pipeline to be rehabilitated in the near future.
 - d) The Township will continue to implement its rehabilitation program until the six (6) units in the pipeline have been completed or withdrawn, thereby fully satisfying the Township's 11-unit rehabilitation obligation, with up to seven (7) excess units rehabilitated.
7. **Satisfaction of Prior Round Obligation:** The Township has a 183-unit Prior Round obligation, and has satisfied that obligation as follows:

- a) The Township is entitled to secure all of the 129 credits from its Regional Contribution Agreement ("RCA") with the City of Newark. 91 RCA credits will be applied to the Township's Prior Round Obligation. The remaining 38 RCA credits will be applied towards the 1999 to 2008 time period.
- b) 47 existing affordable units from the following constructed and occupied units:
 - i. 13 affordable family rental units from the Station Court (Lockhern Assoc.) Sherman Avenue project.
 - ii. 14 affordable family rental units from the Villas on the Park (Glenside) Springholm project.
 - iii. 5 affordable family rental units from the Whispering Way Project.
 - iv. 3 age-restricted rental units from the Park Edge project.
 - v. 4 group home bedrooms from the Our House Project on 18 Whitney Dr.
 - vi. 5 group home bedrooms from the Our House Project on 135 Windsor Way
 - vii. 3 group home bedrooms from the Our House Project on 640 Plainfield Ave.
- c) 45 rental bonus credits.

8. **Satisfaction of RDP:** The Township has a 359-unit RDP, and intends to satisfy that obligation as follows:

- a) 119 units from the following six (6) new inclusionary redevelopment projects:
 - i. Kings Site Project (434 Springfield Ave. - Block 702, Lot 17). 150 total rental units, including 23 affordable family rental units. An MOU has been executed.
 - ii. Locust Ave. Project (100 Locust Ave., - Block 1901, Lot 35). 196 total rental age-restricted units, including 29 age-restricted affordable rental units. An MOU has been executed.
 - iii. Movie Theatre site project (450 Springfield Avenue, Block 702, Lot 13). 20 total rental units, including 3 affordable family rental units. An MOU has been executed.
 - iv. Former Hotel Site Project (Lone Pine Drive - Block 702, Lot 18). 62 total rental units including 9 affordable family rental units. To be included in Downtown Redevelopment Plan with zoning similar to Kings Site Project.
 - v. Connell Site Project (500 Connell Drive - Block 41, Lot 1). 312 total units, including 35 affordable units to be provided over and above the \$2,350,000 already paid towards the Township's RCA with Newark. The Township will provide documentation in the form of an MOU one week prior to the date of the Fairness Hearing.
 - vi. Hamilton Ave. Site (110 Roosevelt Ave - Block 1301, Lot 19). 100 total units - 80 market rate for-sale townhouses and 20 affordable family rental units, subject to and contingent upon acquisition of the property by the Township and adoption of a redevelopment plan by the Township. Negotiations are ongoing. Following the transfer of title to the Township, the Township will adopt a Redevelopment Plan on or before October 17,

2017 that will demonstrate that it creates a realistic opportunity in accordance with the terms of this Agreement.

- b) 57 units from two future redevelopment projects in the DMX and DH-24 zones. The DH-24 and DMX zones are to be identified as "future redevelopment projects" and shall be designed to the same building height and architectural design standards as the Kings Shopping Center redevelopment project. Within eighteen ("18") months of the entry of an Order granting a final Judgment in this matter, a Redevelopment Plan shall be adopted encompassing the area along both sides of Lone Pine Drive, including (but not necessarily limited to) the existing DMX and DH-24 zones, to provide for inclusionary residential development yielding 57 affordable housing units, along with such other uses as the Township sees fit to permit. Berkeley Heights agrees to send a copy of this Redevelopment Plan to FSHC at least 30 days prior to its consideration by the Planning Board or Council, whichever occurs first.
- c) 55 units from the following existing affordable housing projects:
 - i. 29 age-restricted rental units from the Park Edge Project.
 - ii. 11 for-sale units from the Highlands at Berkeley Heights Project.
 - iii. 3 for-sale units from the Cottage Lane I, Tudor Court I Project.
 - iv. 6 for-sale units from the Cottage Lane II, Tudor Court II Project.
 - v. 2 for-sale units from the 10 Cottage St., Lot 8 in Block 1301 Project.
 - vi. 4 for-sale units from the Berkeley Village, Helen Way (off Cottage St.) Project.
- d) 38 remaining RCA credits (applied to 1999-2008 portion of obligation).
- e) 90 rental bonus credits.

9. For the purposes of settlement, the Township agrees to address the 30-unit remaining portion of its allocation of the Round 3 regional need through the following mechanisms:

- a) 10 units to be built in the Downtown Districts (HB-2, HB-3 and DD).
- b) 20 units to be provided under the Mandatory Set-Aside Ordinance (MSO).

10. The projected 10-units from the as-of-right zoning in the Township's Downtown Districts (HB-2, HB-3 and DD), and the projected 20-units from the mandatory set-aside language from projects approved in the future, creates a 30-unit remaining portion of the Township's allocation of the Round 3 regional need. The Township's Affordable Housing Plan will fully address this 30-unit portion by: a) as-of-right zoning over the remainder of the Downtown Districts, which for the purposes of this agreement are defined as the HB-2, HB-3 and DD zoned districts, that will, conservatively, produce at least another 10 units as a result of the redevelopment of underutilized sites; and b) the adoption of the MSO requiring any site that benefits from a rezoning, variance or redevelopment plan approved by the Township that results in multi-family residential development of five (5) dwelling units or more to produce affordable housing at a set-aside rate of 20% for for-sale affordable units and at a set-aside rate of 15% for rental affordable units. These mechanisms are agreed to in order to fully satisfy the Township's 30-unit remaining portion of its allocation of the Round 3 regional need. The Township shall have the exclusive right to solve any gap associated with this remaining portion of its Round 3

obligation. The adoption of the MSO does not give any developer the right to any such rezoning, variance, redevelopment designation or other relief, or establish any obligation on the part of Berkeley Heights to grant such rezoning, variance, redevelopment designation or other relief. The MSO will remain in place through July of 2025, or until the Township's remaining portion of its Round 3 obligation is satisfied, whichever is later.

11. The Township's RDP shall not be revisited by FSHC or any other interested party absent a substantial changed circumstance and, if such a change in circumstance occurs with the RDP, the Township shall have the right to address the issue without negatively affecting its continuing entitlement to immunity from all Mount Laurel lawsuits through July 2, 2025.

12. All redevelopment projects in the Township's Affordable Housing Plan shall be constructed to satisfy the Township's Part 19 Design Standards.

13. The Township agrees to require 13% of all the affordable units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval as of July 1, 2008, to be very low income units (defined as units affordable to households earning 30 percent or less of the regional median income by household size), with half of the very low income units being available to families.

14. To the extent that Berkeley Heights is entitled to any "bonus credits" to be applied to its Round 3 obligation, such bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d). Furthermore, the Township will be entitled to additional rental bonus credits generated by projects that may be developed under Sections 9 and 10 of this Agreement up to the maximum of 97 rental bonuses for which it is eligible based on its third round obligation.

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

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

17. At least half of the units addressing the Third Round Prospective Need in total must be available to families.

18. The Township agrees to comply with COAH's Round 2 age-restricted cap of 25 percent, and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the Township claim credit toward its fair share obligation for age-restricted units that exceed 25 percent of all units developed or planned to meet its prior round and Round 3 fair share obligations.

19. The Township and/or its administrative agent shall add the following entities to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5): Fair Share Housing Center (510 Park Boulevard, Cherry Hill, NJ 08002), the New Jersey State Conference of the NAACP, the Latino Action Network (P.O. Box 943, Freehold, NJ 07728, East Orange NAACP (P.O. Box 1127, East Orange, NJ 07019), Newark NAACP (P.O. Box 1262, Newark, NJ 07101, Morris County NAACP (P.O. Box 2256, Morristown, NJ 07962, and Elizabeth NAACP (P.O. Box 6732, Elizabeth, NJ 07206). As part of its regional affirmative marketing strategies during implementation of its fair share plan, the Township and/or

its administrative agent shall also provide notice of all available affordable housing units to the above-referenced organizations.

20. All affordable housing units created pursuant to the measures set forth in this Agreement shall comply with the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be affordable to households earning at or below 35 percent of the regional median household income by household size, 13 percent of affordable units in such projects shall be required to be affordable to households earning at or below 30 percent of the regional median household income by household size subject to paragraph 13 herein, and all other applicable law. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law. The Township, as part of the Housing Element and Fair Share Plan that will be prepared, adopted and endorsed as a result of this Agreement, shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied.

21. Upon full execution of this Agreement, Berkeley Heights shall place this agreement on file in the Township's municipal building and file a copy with the Court for the upcoming scheduled Fairness Hearing, at which the Township will seek judicial approval the terms of this Agreement pursuant to the legal standard set forth in Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), *aff'd o.b.*, 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. City of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). Notice of the Fairness Hearing shall be published at least 30 days in advance of the Hearing. Berkeley Heights shall also apply to the Court for scheduling a "Compliance Hearing" seeking judicial approval of Berkeley Heights's Housing Element and Fair Share Plan, once same is prepared, adopted and endorsed. The Fairness and Compliance Hearings can be held concurrently or sequentially, which shall be decided by the Court with consultation by the Special Master, Berkeley Heights, and FSHC. Although it is expected that the Special Master will provide the majority of the required testimony, Berkeley Heights shall also make its consulting planner and any other relevant witnesses available for testimony at the Hearing(s). FSHC shall not challenge the validity of any of the documents attached hereto, or the validity of the Township's Fair Share Plan. If the Fairness and Compliance Hearing(s) result in approval of this Agreement and the Township's Fair Share Plan, the parties agree that the Township will be entitled to either a "Judgment of Compliance and Repose" ("JOR") or the "judicial equivalent of substantive certification and accompanying protection as provided under the FHA," 221 N.J. at 6, which shall be determined by the trial judge. Each party may advocate regarding whether substantive certification or repose should be provided by the court, with each party agreeing to accept either form of relief and to not appeal an order granting either repose or substantive certification. Among other things, the entry of such an Order shall maintain Berkeley Heights's immunity from all Mount Laurel lawsuits through July 2, 2025.

22. Subsequent to the signing of this Agreement, if a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch determines that Berkeley Heights's Round 3 obligation is decreased to 311 or less, with any relevant appeal periods having passed, the Township may file a proposed form of Order, on notice to FSHC and the Township's Service List, seeking to reduce its Round 3 obligation accordingly. Such relief shall be presumptively granted. Notwithstanding any such reduction, the Township shall be obligated to implement the Fair Share Plan prepared, adopted and endorsed as a result of this Agreement, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; maintaining all

mechanisms to address the remaining portion of the Township's allocation of the Round 3 regional need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Township's obligation below that established in this agreement does not provide a basis for seeking leave to amend this agreement or the fair share plan adopted pursuant to this agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Township prevails in reducing its prospective need for Round 3, the Township may carry over any resulting surplus credits to Round 4.

23. Berkeley Heights agrees to pay \$15,000 to FSHC within 10 days after the approval of this Agreement by the court at a Fairness Hearing.

24. The Township shall prepare a Spending Plan which shall be approved by the Court during, or prior to, a duly-noticed Compliance Hearing. FSHC reserves its right to provide any comments or objections on the Spending Plan to the Court upon review. Upon approval by the Court, the Township and Fair Share Housing Center agree that the expenditures of funds contemplated in the Township's Spending Plan shall constitute the "commitment" for expenditure required pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period contemplated therein commencing in accordance with the provisions of In re Tp. Of Monroe, 442 N.J.Super. 565 (Law Div. 2015) (aff'd 442 N.J.Super. 563). Upon approval of its Spending Plan the Township shall also provide an annual Mount Laurel Trust Fund accounting report to the New Jersey Department of Community Affairs, Council on Affordable Housing, Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services.

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

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

- a) For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether the mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether the mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.

- b) For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this agreement, and every third year thereafter, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.
- c) In addition to the foregoing postings, the Township may also elect to file copies of its reports with the Council on Affordable Housing or its successor agency at the State level.

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

28. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement. However, if an appeal of the Court's approval or rejection of the Settlement Agreement is filed by a third party, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division, and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved by the trial court unless and until an appeal of the trial court's approval is successful, at which point the Parties reserve their right to return to the *status quo ante*. In this regard, the Township and FSHC acknowledge that the parties have entered into this agreement to settle the litigation and that each is free to take such position as it deems appropriate should the matter return to the *status quo ante*. In no circumstance shall FSHC shall be required to return funds paid to it and the Township agrees not to seek the return of those funds.

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

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

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

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

33. The Township and FSHC acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each person to sign this Agreement is the proper person and possesses the authority to sign the Agreement, that this Agreement contains the entire understanding of the Township and FSHC and that there

are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

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

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

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

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

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

TO FSHC:

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

TO THE TOWNSHIP:

Erik C. Nolan, Esq.
Jeffrey R. Surenian & Associates, LLC
707 Union Avenue, Suite 301
Brielle, NJ 08730
Phone: (732) 612-3100
Telecopier: (732) 612-3101
Email: EN@Surenian.com

Joseph V. Sordillo, Esq.
McElroy, Deutsch, Mulvaney & Carpenter, LLP
1300 Mount Kemble Avenue

PO Box 2075
Morristown, NJ 07962-2075
Phone: (973) 425-4170
Telecopier: (973) 425-0161
Email: jsordillo@mdmc-law.com

**WITH A COPY TO THE
TOWNSHIP ADMINISTRATOR:**

John Bussiculo, Administrator
Township of Berkeley Heights
29 Park Avenue
Berkeley Heights, NJ 07922
Phone: (908) 464-2700 x2232
Telecopier: (908) 464-8150
Email: jbussiculo@bhtwp.com


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

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

Witness/Attest:



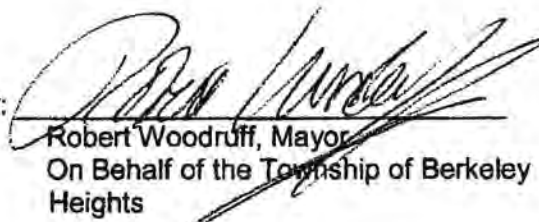
FAIR SHARE HOUSING CENTER:

By: 
Kevin D. Walsh, Esq.
On Behalf of Fair Share Housing Center
9/13/2016

Witness/Attest:


Joseph Sordillo, Esq.

TOWNSHIP OF BERKELEY HEIGHTS:

By: 
Robert Woodruff, Mayor
On Behalf of the Township of Berkeley Heights

Dated: 9/27/16

220 - 2016

Agenda Item No.: 2

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY****RESOLUTION**

WHEREAS, on March 24, 2015, the Township Council of the Township of Berkeley Heights adopted a resolution in which the Township reaffirmed its voluntary commitment satisfy its affordable housing obligations, however they may ultimately be defined by COAH or court; and

WHEREAS, in compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey, entitled In the Matter of the Application of the Township of Berkeley Heights, County of Union, Docket No. UNN-L-2405-15, seeking, among other things, a Judgment of Compliance and Repose declaration that its Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), to be amended, if necessary, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the "Mount Laurel doctrine" (the "Compliance Action"); and

WHEREAS, the Township simultaneously sought, and ultimately secured, a protective order providing Berkeley Heights immunity from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

WHEREAS, the Fair Share Housing Center ("FSHC") participated in the Township Compliance Action, with its Motion to Intervene currently pending before the Court; and

WHEREAS, the trial judge also appointed Elizabeth C. McKenzie, P.P., A.I.C.P. as the "Special Master," as is customary in Mount Laurel matters adjudicated in the courts; and

WHEREAS, with assistance from the Special Master, Berkeley Heights and FSHC engaged in good faith negotiations which resulted in an amicable accord on the various substantive terms and conditions as set forth in the Settlement Agreement attached hereto, which Agreement has been reviewed and approved by legal counsel for the Township and FSHC; and

WHEREAS, through this process, the Township and FSHC agreed upon the Township's affordable housing obligations and the compliance techniques necessary for Berkeley Heights to satisfy its "fair share" of the regional need for low- and moderate-income housing; and

WHEREAS, the Township and FSHC also agreed to present the Settlement Agreement to the Trial Judge for approval at a duly-noticed Mount Laurel Fairness Hearing; and

WHEREAS, although there is a well-established policy favoring the settlement of all forms of litigation, the settlement of Mount Laurel litigation is particularly favored because (1) it

avoids the expenditure of finite public resources; and (2) expedites the construction of safe, decent housing for the region's low- and moderate-income households; and

WHEREAS, in light of the above, the Township Council finds that it is in the best interest of Berkeley Heights to enter into the Settlement Agreement with FSHC and to take various other actions delineated below, which will ultimately result in approval of the Township's Fair Share Plan which, in turn, will maintain the Township's immunity from all Mount Laurel lawsuits during the ten-year period set forth in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 to 329.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, as follows:

1. The Township is hereby authorized to enter into the Settlement Agreement with FSHC, in substantial the form attached hereto, subject to the terms and conditions set forth therein.
2. The Mayor and Township Clerk are hereby authorized to execute the Settlement Agreement in the substantial form attached hereto.
3. The Township hereby directs its Special Mount Laurel Counsel, Township Planner and other appropriate Township official to take all actions to have the Settlement Agreement filed and approved by the Court and satisfy the terms set forth in the Settlement Agreement, including, without limitation, to: (a) file the fully-executed Settlement Agreement with the Court for review and approval at a duly-notice Fairness Hearing, (b) take all actions reasonable and necessary to secure an Order approving the Settlement Agreement, and (c) work towards ultimately securing judicial approval of the Township's Fair Share Plan, after it is drafted, adopted by the Township's Planning Board and endorsed by the Township Council.

BE IT FURTHER RESOLVED that this Resolution shall take effect pursuant to law.

APPROVED this 20th day of September, 2016.

ATTEST:

Ana Minkoff

Ana Minkoff
Township Clerk

ROLL CALL	AYE	NAY	ABSTAIN	ABSENT
D'AQUILA	✓			
DELIA		✓		
FAECHER				✓
KINGSLEY	✓			
PASTORE	✓			
PIRONE	✓			
TIE:				
MAYOR WOODRUFF				

APPENDIX K