



Borough of Allendale

Master Plan

# Housing Element and Fair Share Plan Amendment

Approved as Amended February 26, 2026



**B U R G I S**  
A S S O C I A T E S , I N C .





Community Planning  
Land Development and Design  
Landscape Architecture

**B U R G I S**  
ASSOCIATES, INC.

Principals:  
*Joseph H. Burgis PP, AICP*  
*Edward Snieckus, Jr. PP, LLA, ASLA*  
*David Novak PP, AICP*

## Housing Element and Fair Share Plan

Borough of Allendale  
Bergen County, New Jersey

Prepared for the Borough of Allendale  
Planning Board

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The original document was appropriately signed and sealed on February 26, 2026 in accordance with Chapter 41 of Title 13 of the State Board of Professional Planners

Joseph H. Burgis, AICP, PP  
Professional Planner #2450

Ed Snieckus, Jr. PP, LLA, ASLA  
Professional Planner #5442



## Members of the Borough of Allendale Land Use Board

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## Planning Board Attorney

Lawrene Calli, Esq.

Cali Law, LLC

## Planning Board Engineer

Michael Vreeland, PE PP, CME

Van Cleef Engineering

## Planning Board Planning Consultant

Edward Snieckus, Jr. PP, LLA, ASLA

Allison Fahey, PP, AICP

Burgis Associates, Inc

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# Executive Summary

The following 2026 Housing Element and Fair Share Plan (HE&FSP) of the Master Plan Amendment has been prepared for the Borough of Allendale. These amendments to the plan are designed to outline the manner in which the Borough will address its affordable housing obligations and the Borough's ordered Fourth Round agreement with Fair Share Housing Center ("FSHC"), executed on January 15, 2026, and the Borough's ordered agreement with AvalonBay Communities, Inc. ("AvalonBay"), executed on December 31, 2025. Ultimately, the Borough's obligations were derived from a variety of different sources, the New Jersey Fair Housing Act, as amended in March of 2024 (hereinafter "FHA II"), the New Jersey Council on Affordable Housing (COAH), and a prior settlement agreement with Fair Share Housing Center (FSHC).

These obligations can be summarized as follows:

Table 1: Affordable Housing Obligation Summary

Category	Obligation
Prior Round Obligation (1987-1999)	137
Third Round Obligation (1999-2025)	308
Fourth Round Obligation (2025-2035)	200
Present Need (Rehabilitation) Obligation	159

## Prior Round Obligation

The Borough received a First Round JOR on February 25, 1991.

COAH assigned the Borough a Prior Round Obligation of 137 units for Rounds 1 and 2. The Borough fully addressed this obligation with a combination of a Regional Contribution Agreement, inclusionary development, 100% affordable development, and supportive and special needs housing as summarized in Table 2.

Table 2: Prior Round (1987-2025) Affordable Housing Components

Project Description- Prior Round	Prior Round Units	Prior Round Bonus	Total	Surplus Credits
<u>Regional Contribution Agreements (RCAs)</u> - Completed <ul style="list-style-type: none"> <li>• 40 units to Jersey City</li> <li>• 4 units to Ridgely Borough</li> </ul>	44	-	44	-
<u>Allendale Brook Associates</u> project located on Carriage Court and Trotters Lane (Block 2101, Lot 9) – Completed	4	-	4	5
<u>Saddle Dale Builders</u> project located on Elm Street (Block 1809, Lot 8) – Completed	3	3	6	-
<u>Garden Homes/The Whitney</u> project (Block 2101, Lots 1, 2, 3, 5, 6, 7, 8) – Completed	-	-	0	12
<u>Allendale Senior Housing</u> project located on Cebak Court (Block 1708, Lots 1 and 9) – Completed	16	-	16	-
<u>Orchard Commons</u> supportive special needs housing project at (Block 1806, Lot 10.01) – Completed	10	10	20	-
<u>Crescent Commons</u> (Block 904, Lots 10.01, 10.02, 14, 31) 26 out of 33 affordable units – Completed	26	21	47	7
<b>Total: 137 Units Prior Round</b>	<b>103</b>	<b>34</b>	<b>137</b>	<b>+24</b>

All affordable units addressing the Prior Round are completed.

In 2008, COAH approved the Borough’s Housing Element and Fair Share Plan and adopted a resolution certifying that plan.

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### Third Round Obligation

On March 10, 2008, in a case commonly referred to as Mount Laurel IV, the Supreme Court declared COAH moribund and established a procedure for municipalities to secure approval of a Housing Element and Fair Share Plan for Round 3. Allendale voluntarily participated in the new procedure to pursue approval of a Round 3 plan for a second time based on the laws established in Mount Laurel IV.

In September 15, 2017, in the context of a declaratory relief action filed pursuant to Mount Laurel IV, the Borough entered into a Settlement Agreement with Fair Share Housing Center (FSHC). After the Planning Board adopted and the Borough endorsed a

Housing Element and Fair Share Plan in 2018, the Court entered a Judgment of Compliance and Repose June 27, 2019 approving this affordable housing plan.

The Housing Element and Fair Share Plan included an application for a Vacant Land Adjustment, which, if approved, would result in a Realistic Development Potential of 54 units and an unmet need of 254.

The Housing Element and Fair Share Plan set forth the various mechanisms to address the Borough's RDP of 54. As illustrated by the chart below, while there are some minor changes in how we apply the crediting from the implementation of the Third Round Plan, the Borough has fully satisfied its RDP for this Round.

Table 3: Third Round (1999-2025) Affordable Housing Components

Project Description	Third Round Units	Third Round Bonus	Total Third Round Credits	Surplus Credits
<u>Allendale Brook Associates</u> inclusionary for sale development- Carriage Court and Trotters Lane (Block 2101, Lot 9) – Completed <ul style="list-style-type: none"> <li>5 of the 9 units will be carried over as surplus to Third Round</li> </ul>	5	-	5	-
<u>Garden Homes/Whitney</u> project (Block 2101, Lots 1 through 3 & 5 through 8) – Completed <ul style="list-style-type: none"> <li>12 family affordable rental units</li> </ul>	12	12	24	-
<u>Former Farm</u> project (Block 506, Lots 4.07 and 4.08) – completed <ul style="list-style-type: none"> <li>2 family affordable rentals.</li> </ul>	2	1 cap	3	-
<u>Crescent Commons</u> project - completed <ul style="list-style-type: none"> <li>5 family affordable for sale units + 2 supportive shared living units</li> </ul>	7	-	7	-
<u>220 West Crescent Avenue</u> project (aka The Vale) – completed <ul style="list-style-type: none"> <li>6 total affordable non-age-restricted rental units</li> </ul>	5 applied	-	5	1
<u>Eastern Christian Group Home 1</u> project (Block 910, Lot 3) – completed <ul style="list-style-type: none"> <li>5 completed bedrooms</li> </ul>	5	-	5	-
<u>Eastern Christian Group Home 2</u> project (Block 1005, Lot 4) – completed <ul style="list-style-type: none"> <li>5 completed bedrooms</li> </ul>	5	-	5	-
<b>TOTAL: 54 credits to address RDP</b>	<b>41</b>	<b>13</b>	<b>54</b>	<b>+1</b>

While the Borough's received an adjustment to their 308 new construction obligation for Rounds 1 through 3 due to the lack of adequate vacant land, the applicable rules required the Third Round Plan to include various programs towards what is termed as unmet need. Unmet need is the remainder when the 54-unit RDP is subtracted from the total Third need of 308 which leaves a remainder of 254 units.

In the Third Round, the Borough implemented zoning programs of overlay zones and a mandatory set aside ordinance, to capture units towards this need if properties were residentially developed.

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#### Fourth Round Obligation

For the reasons set forth below, the Borough's rehabilitation obligation, also referred to as its Present Need is 10 and its Round 4 Prospective Need is 200.

##### *Present Need/Rehabilitation Obligation*

Although the Department of Community Affairs (DCA) determined a Present Need (Rehabilitation) obligation for the Round Four of 159 units, the Borough exercised its right to conduct a Structural Conditions Survey to more accurately reflect the number of units in need of rehabilitation in Allendale. Accordingly, the Borough conducted a Structural Conditions Survey based on the criteria established in N.J.A.C. 5:93-5.2 and N.J.A.C. 5:97-6.2, which reference "Appendix C" of the rule. Allendale's Construction Official completed an exterior survey of the Borough between 12/26/24 to 1/10/25. That survey demonstrated that only 10 units needed repair-not 159. Although Allendale submitted this survey to the Program and contended that its Present need, also known as its rehabilitation obligation, should be reduced to 10, the Program took the position that it would only consider adjustments to the Present Need when municipalities submitted their Housing Element and Fair Share Plans for review. Accordingly, this plan includes the structural conditions survey previously submitted in support of the proposition that its Present Need is 10.

##### *Round 4 Prospective Need Obligation*

As noted above, the Fair Housing Act was amended last year, and this plan refers to the amended FHA as FHA II. FHA II abolished COAH and created a new process that involved the creation of a new entity known as the Affordable Housing Dispute Resolution Program (the Program).

FHA-II directed the DCA to calculate the Present Need (also referred to as the Rehabilitation obligation) and the Prospective Need (also known as the new construction obligation) for Round Four based upon the standards set forth in the Act. The DCA issued its report on October 18, 2024, and, in accordance with the Act, made clear that the obligations generated by the report were advisory only and non-binding. For Allendale, the DCA Report identified a Present Need of 159 and a Prospective Round Four Need of 260.

Since the DCA report is non-binding, each municipality had the opportunity to study and define why its obligations should be different based on the standards in the Act. The Borough conducted such an analysis and determined that the DCA had overestimated the amount of developable land in the Land Capacity Factor calculation, which is one of three factors FHA II requires to be used to allocate the regional need to municipalities in each region. The Borough adopted a binding resolution on January 23, 2025, which identified an adjustment to the Present Need of 159 identified by DCA, to 10 units based upon a study by the Building Official in compliance with applicable rules for adjusting the rehabilitation obligation. In addition, the Borough contended that its Round 4 prospective need should be reduced to 182 based upon DCA's overestimate of land that is developable in conjunction with determining the Land Capacity Allocation Factor.

In accordance with the procedures established by FHA II, FSHC objected to the reduction in the Round 4 prospective need that would result if the Borough's 182 determination was approved. In accordance with FHA II, a judge assigned by "the Program"-an entity created by FHA II, oversaw mediation between the Borough and FSHC.

Mediation culminated in a mediation Agreement, dated April 21, 2025, setting the Borough's Round 4 Prospective Need at 200. On May 5, 2025, a vicinage area judge approved that number.

#### *Vacant Land Adjustment*

Rehabilitation obligation for the Round Four of 159 units, the Borough reserved the right to conduct a Structural Conditions Survey to more accurately reflect the number of units in need of rehabilitation. Furthermore, the January 23, 2025 resolution noted that the Borough reserved the right in accordance with applicable regulations, to seek an adjustment of its Fourth Round Prospective Need number based upon a lack of vacant, developable and suitable land. FHA II authorizes municipalities to rely on COAH standards that do not contradict FHA II and COAH permits municipalities to secure adjustments to their obligations. Moreover, in apparent recognition of the burdens created by the preparation of a vacant land adjustment, COAH permits municipalities to rely upon a prior vacant land adjustment. The Borough is exercising that right which resulted in the Court approving a vacant land adjustment that set the Borough's RDP at 26. In a further effort to eliminate any possible objection to its claim for an adjustment, the Borough investigated whether there were any changed circumstances that have occurred since the Court approved the Borough's entitlement to a vacant land adjustment that might warrant recalibrating the RDP.

Although there are no such changed circumstances, the Borough acknowledges that there is the potential to redevelop an existing restaurant property in the next housing cycle and so it will accept an RDP of 4 attributable to this site. This analysis is covered in more detail in Section 3.

The remainder of this 2025 HE&FSP is divided into the following sections:

❖ Section 1: Introduction

The first section of the 2025 HE&FSP provides an introduction to affordable housing. It summarizes what affordable housing is, offers an overview of the history of affordable housing in the state, and explains the role of a housing element and fair share plan.

❖ Section 2: Housing Element

Section 2 contains the Housing Element for the Borough of Allendale. It offers an overview of its community, as well as back information regarding its population, housing, and employment characteristics. It also provides a projection of the Borough's housing stock and its employment projections.

❖ Section 3: Fair Share Obligation

Next, Section 3 provides an overview of the Borough's fair share obligation. It includes a brief history of the methodologies utilized to calculate affordable housing obligations throughout the state.

❖ Section 4: Fair Share Plan

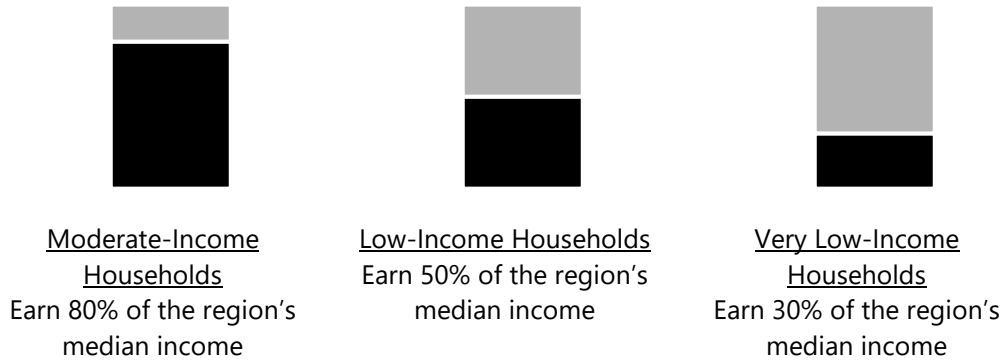
Finally, Section 4 details the manner in which the Borough has addressed its prior obligations and how it will address its Fourth Round prospective need obligations.

# Section 1: Introduction

The following section provides an introduction to affordable housing. It summarizes what affordable housing is, offers an overview of the history of affordable housing in the state, and explains the role of a housing element and fair share plan.

## What is Affordable Housing?

Affordable housing is income-restricted housing that is available for sale or for rent. Most often, affordable housing is restricted to very-low, low-, and moderate-income households. These categories are derived from the state’s median regional income limits. New Jersey is delineated into six different affordable housing regions. Allendale is located in Region 1 which includes Bergen, Hudson, Passaic, and Sussex Counties.



Regional income limitations are typically updated every year, with different categories established for varying household sizes. The table below identifies the 2024 regional income limits by household size for Region 1. As shown, a three-person family with a total household income of no greater than \$86,697 could qualify for affordable housing in the Borough's region.

Table 4: 2024 Affordable Housing Region 1 Income Limits by Household Size

Income Level	2 Person	3 Person	4 Person	5 Person
Median	\$96,329	\$108,371	\$120,412	\$130,045
Moderate	\$77,064	\$86,697	\$96,329	\$104,036
Low	\$48,165	\$54,185	\$60,206	\$65,022
Very-Low	\$28,899	\$32,511	\$37,568	\$39,013

One of the most common forms of affordable housing is inclusionary development, in which a certain percentage of units within a multifamily development are reserved for affordable housing. Nevertheless, affordable housing can be found in a variety of other forms, including but not limited to: one hundred percent affordable housing developments, deed-restricted accessory apartments, assisted living facilities, alternating

arrangements such as supportive housing or group homes, and age restricted housing.



What is the History of Affordable Housing in New Jersey?

The history of affordable housing in New Jersey can be traced back to 1975, when the Supreme Court first decided in *So. Burlington Cty. NAACP v. Borough of Mount Laurel* (known as Mount Laurel I) that every developing municipality throughout New Jersey had an affirmative obligation to provide for its fair share of affordable housing. In a subsequent decision in 1983 (known as Mount Laurel II), the Court acknowledged that the vast majority of municipalities had ignored their constitutional obligation to provide affordable housing.

As such, the Court refined this obligation to establish that every municipality had an obligation, although those within the growth area of the State Development and Redevelopment Plan (SDRP) had a greater obligation. The Court also called for the state legislature to enact legislation that would save municipalities from the burden of having the courts determine their affordable housing needs. This decision, along with the trial court decisions implementing this decision, resulted in the enactment of the New Jersey Fair Housing Act in 1985. This Legislation created the New Jersey Council on Affordable Housing (COAH), and assigned COAH primary jurisdiction" to implement the policies embodied in that Legislation. To implement its policies, the Legislature charged COAH with adopting regulations from "time to time." Since a grant of substantive certification by COAH, like the entry of a Judgment of Repose from a court, gave municipalities only six years or protection, it was particularly important for COAH to adopt regulations from time to time. In this way, at any time, a municipality would have available to it a body of regulations by which it could determine its obligations and select from a menu of techniques to comply with its obligations.

In 1986, COAH adopted regulations for the First Round obligation, which covered the years 1987 to

1993. In 1994, COAH adopted Second Round regulations that established cumulative fair share numbers for Rounds 1 and 2 (1987-1999). In 2004, COAH adopted the first set of Round 3 regulations. In contrast to the regulations in Rounds 1 and 2 that established fair shares based upon a determination of regions, the regional need and the allocation of the regional need, the Round 3 regulations took a "growth share" approach to determining a municipality's fair share.

In January 2007, the Appellate Division invalidated various aspects of these rules and remanded considerable portions of the rules to COAH with the directive to adopt revised regulations.

In May 2008, COAH adopted revised Third Round regulations which were published and became effective on June 2, 2008. Coincident to this adoption, COAH proposed amendments to the rules they had just adopted, which subsequently went into effect in October 2008. The second iteration of the Round 3 regulations, like the first, relied on a growth share approach.

On October 2010, the Appellate Division invalidated the second version of the Round 3 regulations largely because COAH had once again taken a growth share approach. The Appellate Division gave COAH five months to adopt new regulations that established fair share obligations in the manner that it established regulations in Rounds 1 and 2 and not through growth share.

In September 2013, the Supreme Court decided the challenges to the Appellate Division's rulings in October of 2010. The Supreme Court affirmed the Appellate Division's decision and again gave COAH five months to adopt new regulations that established fair share obligations in the manner that it established regulations in Rounds 1 and 2 and not through growth share.

COAH proposed regulations similar to those it adopted in Rounds 1 and 2 to establish fair share obligations. It considered thousands of comments to its proposed regulations, and it scheduled a hearing to consider the adoption of Round 3 regulations. However, when it came time to vote on the regulations, COAH deadlocked 3-3. More importantly, COAH took no action in the wake of that deadlock to break the deadlock.

In response to the deadlock and the Supreme Court's ruling that there would be consequences if COAH failed to adopt lawful Round 3 regulations, Fair Share Housing Center, who was a party in both the 2010 and 2013 cases, filed a motion in aid of litigants' rights with the New Jersey Supreme Court.

The Court heard the motion on January 6, 2015, and issued its ruling on March 10, 2015. In that decision, commonly referred to as "Mount Laurel IV", the Court ruled that COAH was "moribund" and consequently turned over the tasks of implementing the Fair Housing Act back to the trial courts where it had originally been prior to the creation of COAH in 1985. In addition, Mount Laurel IV created a process in which municipalities may

secure protection from exclusionary zoning suits by filing a declaratory judgment action seeking a declaration that a Housing Element and Fair Share Plan is constitutionally compliant and applying for immunity while the court is processing the application for approval of a Housing Element and Fair Share Plan.

On January 18, 2017, the Supreme Court addressed an issue unresolved up to that point: namely, what if any is the responsibility of municipalities with respect to the so-called "gap period." The gap period is the time between 1999 and 2015, when all agree Round 4 would commence. The Court expanded the obligation of municipalities to address the present and prospective needs by requiring them to accept an obligation for affordable housing for the gap period.

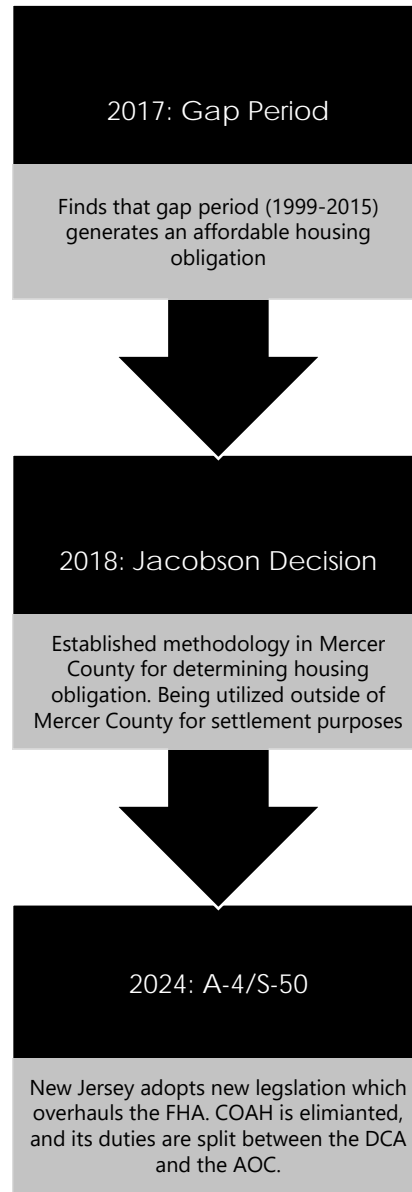
In Mount Laurel IV, the Supreme Court ended its opinion as follows:

*"It is our hope that an administrative remedy will again become an option for those proactive municipalities that wish to use such means to obtain a determination of their housing obligations and the manner in which those obligations can be satisfied."*

However, before COAH could be reconstituted and against the backdrop of litigation seeking to compel Governor Murphy to comply with the Fair Housing Act and nominate members to the COAH Board, the Senate President and Speaker of the House announced that there would be new legislation that would abolish COAH. That announcement was made in December of 2024.

On March 20, 2024, after enormous pressure was applied to support new legislation, the Legislature adopted, and the Governor signed an amendment to the Fair Housing Act to abolish COAH and make substantial changes. This plan refers to the Fair Housing act as amended as FHA II.

FHA II established standards for determining fair share obligations and assigned the DCA with the task of preparing a non-binding report setting forth the fair share of every municipality based on those standards. FHA II also created the Affordable Housing Dispute Resolution Program (the "Program") and tasked the Program with trying to



resolve disputes over the obligations generated by the fair share formula embedded in the Act in the first instances and then with the affordable housing plans municipalities adopted and endorsed to comply with their obligations in the second instance.

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### What is a Housing Element and Fair Share Plan?

A Housing Element and Fair Share Plan (HE&FSP) serves as the blueprint for how a municipality will address its fair share of affordable housing. It is designed to help a community broaden the accessibility of affordable housing.

While technically a discretionary component of a municipal master plan, a HE&FSP is nevertheless an effectively obligatory plan element. As established by NJSA 40:55D-62.a of the Municipal Land Use Law (MLUL), a municipality must have an adopted HE&FSP in order to enact its zoning ordinance. Thus, from a public policy perspective, a HE&FSP is an essential community document. Moreover, without a HE&FSP, a municipality may be susceptible to a builder's remedy lawsuit in which a developer could file suit and seek to force the municipality to rezone a specific parcel to permit housing at higher densities than a municipality would otherwise allow, provided a certain percentage of units are reserved as affordable.

The **Municipal Land Use Law (MLUL)** is the enabling legislation for municipal land use and development, planning, and zoning for the State of New Jersey.

The current version of the Fair Housing Act – FHA II – requires a housing element to include the following components:

1. 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;
2. 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;
3. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;
4. An analysis of the existing and probable future employment characteristics of the municipality;
5. 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;

6. A consideration of the lands that are most appropriate for construction of low- and moderate-income housing and 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;
7. 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;
8. For a municipality located within the jurisdiction of the Highlands Water Protection and Planning Council, 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;
9. 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.

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### Allendale's Affordable Housing History

The following summarizes the Borough's numerous efforts to address affordable housing in Allendale as obtained from the narrative provided in the 2018 Housing Plan report prepared by Clark Caton Hintz.

In 1988, Allendale prepared a Housing Element. On January 17, 1991, the Borough amended the Housing Element following a builder's remedy lawsuit. The Borough's amended First Round Housing Element and Fair Share Plan was reviewed by the Superior Court and the plan received a Judgment of Compliance on February 25, 1991, which granted the Borough a six-year period of repose.

Allendale Borough petitioned COAH with a Second-Round plan in 1997 and received Second Round Substantive Certification from COAH on October 1, 2003.

It received Third Round Substantive Certification from COAH for its Third Round Housing Element and Fair Share Plan on October 14, 2009. The Borough adopted its Third Round Housing Element and Fair Share Plan on December 29, 2008, and was granted Third Round Substantive Certification from COAH on October 14, 2009.

On April 15, 2010, the Borough adopted an amended Third Round Plan to increase the number of affordable housing units generated at the Crescent Commons site. Although the Borough petitioned COAH on May 7, 2010 with its amended Third Round plan, COAH failed to act on the plan amendment prior to the Appellate Division's 2010 invalidation of COAH's growth share regulations.

To comply with the March 10, 2015 Mt. Laurel IV decision, Allendale petitioned the Superior Court on July 7, 2015, for a Declaratory Judgment and temporary immunity from builder's remedy suits so it could secure approval of a Round 3 Housing Element and Fair Share Plan based upon the laws created by Mount Laurel IV. On December 10, 2015, in the context of this suit and pursuant to an order dated November 12, 2015 entered by Judge Toskos in this suit, the Borough submitted a Summary Third Round Fair Share Plan. On January 27, 2016, the Borough filed an amended Summary Plan to the Court to address the fair share obligation calculated by Econsult Solutions, Inc. ("Econsult" or "ESI") in its December 30, 2015 report.

In August and December of 2016, the Borough submitted motions to the Court for approval of second and third amendments to its 2010 amended Spending Plan in order to spend money from its Affordable Housing Trust Fund on the creation of affordable housing at sites that were not included in an approved Housing Element and Fair Share Plan, in accordance with N.J.A.C. 5:97-8.11. Those sites specifically included two new group homes operated by Eastern Christian Children's Retreat ("Eastern Christian") and the 220 West Crescent Avenue senior rental development. The Court approved both 2016 Spending Plan amendments on September 20, 2016 and January 5, 2017.

In summary, the Borough has a demonstrated history of compliance as evidenced by the receipt of a Judgment of Repose in Round 1, a grant of Substantive Certification in Round 2, a Judgment of Repose in Round 3 followed by the entry of a second Judgment of Repose in Round 3, dated June 27, 2019, based upon the laws established by Mount Laurel IV.

# Section 2: Housing Element

The following section provides the housing element for the Borough of Allendale. It offers an overview of its community, as well as back information regarding its population, housing, and employment characteristics. It also provides a projection of the Borough's housing stock and its employment projections.

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## *Information Regarding Data Sources*

*The information contained in Section 2.2 entitled "Population Demographics," Section 2.3 entitled "Inventory of Housing Stock," Section 24 entitled "Employment Demographics," and Section 2.5 entitled "Housing & Employment Projections" was obtained from a variety of publicly available data sources. These are summarized below:*

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1. United States Decennial Census

The US Census is described in Article I, Section 2 of the Constitution of the United States, which calls for an enumeration of the people every ten years for the apportionment of seats in the House of Representatives. Since the time of the first Census conducted in 1790, it has become the leading source of data about the nation's people and economy. Please note that all incomes reported in the Census are adjusted for inflation.
2. American Community Survey (ACS)

The American Community Survey is a nationwide ongoing survey conducted by the US Census Bureau. The ACS gathers information previously contained only in the long form version of the decennial census, such as age, ancestry, educational attainment, income, language proficiency, migration, disability, employment, and housing characteristics. It relies upon random sampling to provide ongoing, monthly data collection. Please note that all incomes reported in the ACS are adjusted for inflation.
3. New Jersey Department of Health

The New Jersey Department of Health is a governmental agency of the State of New Jersey. The department contains the Office of Vital Statistics and Registry, which gathers data regarding births, deaths, marriages, domestic partnerships, and civil unions.
4. New Jersey Department of Community Affairs (DCA)

The New Jersey Department of Community Affairs is a governmental agency of the State of New Jersey. Its function is to provide administrative guidance, financial support, and technical assistance to local governments, community development organizations, businesses, and individuals to improve the quality of life in New Jersey.
5. New Jersey Department of Labor and Workforce Development

The New Jersey Department of Labor and Workforce Development is a governmental agency of the State of New Jersey. One of its roles is to collect labor market information regarding employment and wages throughout the state.

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## 2.1: Community Overview

The Borough of Allendale is located in the northwesterly portion of Bergen County. It is bounded by five municipalities, including: the Borough of Ramsey to the north; the Borough of Saddle River to the east; the Borough of Waldwick to the south, the Borough of Wyckoff to the southwest and the Borough of Mahwah to the west. Borough is essentially a fully developed community with very little vacant land remaining for development.

The total land area of the Borough is 1994.13 acres (1683.14 acres without including streets/roads). The Borough currently contains 2,515 parcels. The majority of the Borough is primarily characterized by residential development. In fact, over 1153 acres of the municipality's total land area (58 percent) consists of residential uses.

Commercial land uses account for a total of 154.62 acres, or approximately 7.75 percent of the Borough's total land use area. Industrial land use constitutes the largest commercial use with 24 parcels covering 104 acres.

Land uses under the Public/Semi-Public classification comprise the second largest land use category in Allendale, accounting for 327 acres, or 16.4 percent of the Borough's total land area. Semi-public land uses, including places of worship and other non-profit organizations, account for 1 percent of the Borough's total land area, while schools comprise an additional 3 percent.

The Borough contains one Class I rail line that traverses the Borough from North to South. The rail line covers more than 21 acres in the Borough.

Table 5: Existing Land Uses

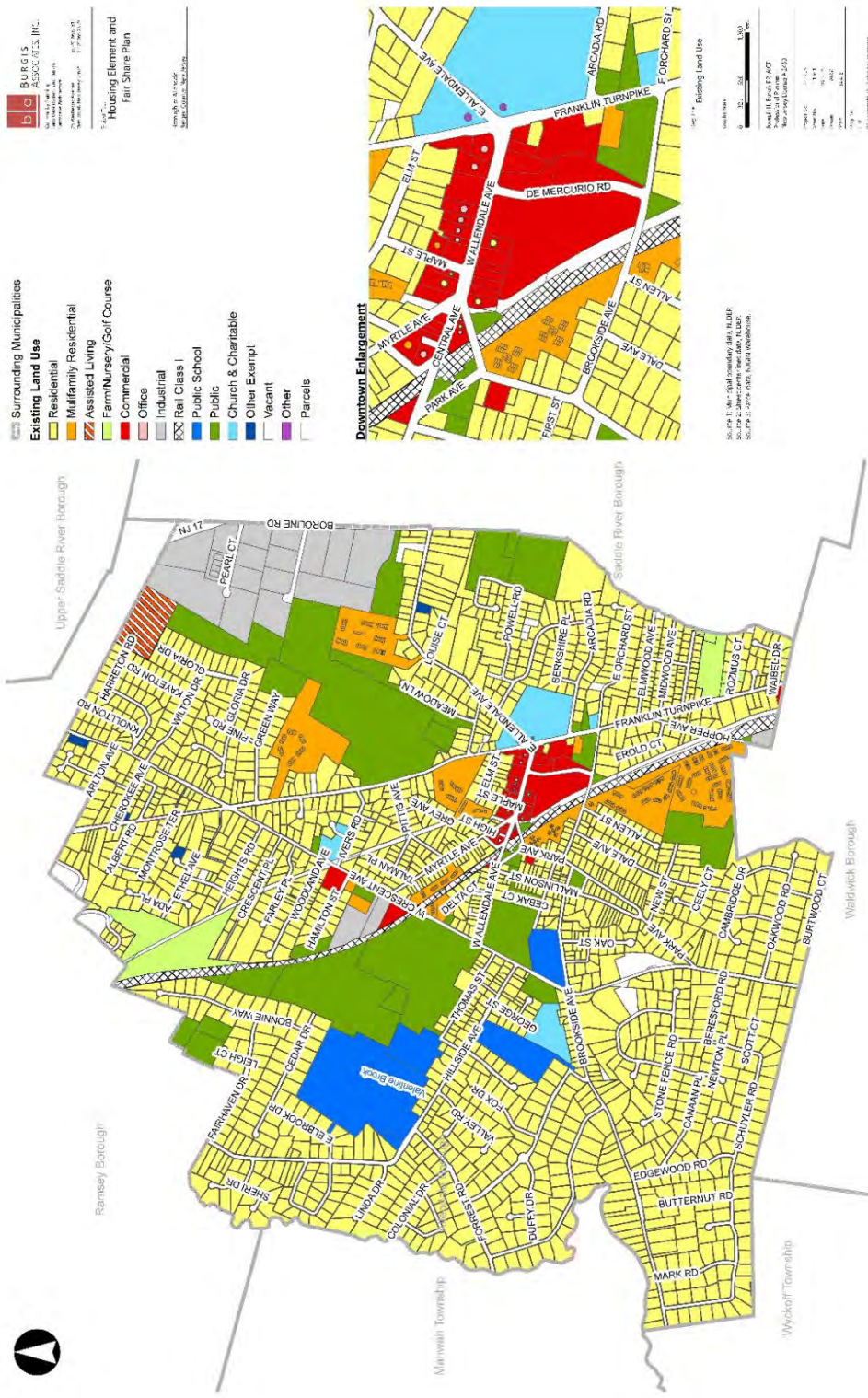
Land Use		Acres	% of Total Acres	Parcels	% of Total Parcels
Residential	Low Density	1136.22	56.98%	1884	74.9%
	Multifamily	6.20	0.31%	426	16.9%
	Multifamily Assisted Living	10.64	0.53%	1	0.0%
Commercial	Commercial	24.36	1.22%	41	1.6%
	Farm/Nursery/Golf Course	25.86	1.30%	9	0.4%
Public/Semi-Public	Municipal Property	241.15	12.09%	37	1.5%
	Public School	64.01	3.21%	6	0.2%
	Church & Charitable	21.77	1.09%	6	0.2%
Other	Vacant and other properties	25.30	1.27%	65	2.6%
	Industrial	104.40	5.24%	24	1.0%
	Rail	21.18	1.06%	9	0.4%
	Other Exempt	2.06	0.10%	7	0.3%

Source: ArcGIS Calculations

Regional access to the Borough is provided by several county and state roadways. Franklin Turnpike, Crescent Avenue, West Allendale Avenue are county roadways which provide access to the surrounding area. Linkages to the state's regional highway network are also provided by Route 17 to the east and Garden State Parkway in the Borough of Paramus to the south, Interstate Route 287 in the Borough of Mahwah to the north.



# Map 2: Existing Land Use



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## 2.2: Demographic and Population Data

Analyzing demographic and population data is a necessary and integral step in planning for the future needs and demands of a community. As such, the following section outlines the demographic changes experienced by the Borough of Allendale over the past several decades.

This section is an analysis of demographic information is obtained from the 2010 Decennial Census as well as the 2010 and 2023 American Community Survey (ACS) 5-year estimates. The ACS data consists of estimates based upon data averages across a five-year span, otherwise known as “period” estimates. They are not actual counts, rather they are representative of data collected over a period of time and thus may not be directly comparable to decennial census figures. For example, the 2023 ACS includes data collected from 2019, 2020, 2021, 2022 and 2023. The following provides an assessment of population size, rate of population growth, age characteristics, as well as household size and income levels. Each of these items is described in detail below. This information is vital for the Borough to carefully plan for the current and future needs of its residents and the community.

### Population Changes

The Borough experienced a slight decline in population from 1970 to the 1990s. The reduction in the population at that time could be attributable to the aging population and homes with children aging into adulthood and moving onto new locations. The Borough regained more than double the losses by the year 2000 only to lose half of them again between 2000 and 2010. The population slightly increased from then through the year 2023.

Table 6: Population Growth, 1950-2023

<b>Year</b>	<b>Population</b>	<b>Population Change</b>	<b>Percent Change</b>
1950	2,409		
1960	4,092	1,683	69.86%
1970	6,240	2,148	52.49%
1980	5,901	-339	-5.43%
1990	5,900	-1	-0.02%
2000	6,699	799	13.54%
2010	6,505	-194	-2.90%
2020	6,757	252	3.87%
2023	6,820	63	0.93%

*Source: US Census Bureau; 2023 American Community Survey Five-Year Estimate*

Age Characteristics

As shown in the age distribution table below, the Borough’s age characteristics show a slight increase in median age from 44.3 years in 2010 to 45.7 according to the 2023 ACS data. The largest age cohort in 2023 represented 20.1% of the population (45-54 age group) was also the largest cohort in 2010 (18.2%). The age groups showing declines between the 2010 census and the 2023 ACS data appear to be 5-9, 20-24, 35-44, 55-59, and 85 and older cohorts.

Table 7: Age Characteristics, 2010-2023

Age Group	2010		2023	
	Pop	%	Pop	%
Under 5	207	3.2%	350	5.1%
5 to 9	667	10.3%	514	7.5%
10 to 14	595	9.2%	600	8.8%
15 to 19	371	5.7%	615	9.0%
20 to 24	354	5.5%	121	1.8%
25 to 34	209	3.2%	316	4.6%
35 to 44	917	14.1%	753	11.0%
45 to 54	1,182	18.2%	1,368	20.1%
55 to 59	554	8.5%	533	7.8%
60 to 64	312	4.8%	414	6.1%
65 to 74	435	6.7%	641	9.3%
75 to 84	385	5.9%	404	5.9%
85 +	301	4.6%	191	2.8%
<b>Total</b>	6,489	95.2%	6,820	99.8%
<b>Median Age</b>	<b>44.3</b>		<b>45.7</b>	

Sources: 2010 & 2023 American Community Survey 5-Year Estimates.

Household Tenure and Occupancy

The data shown on the following table indicates that the breakdown between the share of owner occupied and rental occupied units has remained largely the same since 2010 with the majority of units being owner occupied. Housing vacancies have decreased over this time frame from 9.72% in 2010 to 5.30% in 2023.

Table 6: Owner-Occupied and Renter-Occupied Units, 2010-2023

Category	2010		2023	
	# of Units	%	# of Units	%
Owner Occupied	1,884	83.6%	1,805	72.1%
Renter Occupied	151	6.7%	527	21.0%
Vacant Units	219	9.7%	173	6.9%
<b>Total</b>	<b>2,254</b>	<b>100.0%</b>	<b>2,505</b>	<b>100.0%</b>

Source: US Census Bureau; 2023 American Community Survey Five-Year Estimate

Average Household Size

The census data shown below presents how the Borough’s average household size decreased from 3.0 in 2010 to 2.88 in 2023 while the Bergen County average household size remained somewhat steady at 2.66 over the same time period. The total population increased from 2010 to 2023, while the number of households slightly increased over the same span.

Table 7: Average Household Sizes, 2010-2023

Year	Total Population	Number of Households	Average Household Size	Average Household Size
			Allendale	Bergen County
2010	6,489	2,035	3.00	2.69
2023	6,820	2,332	2.88	2.66

Sources: 2010 & 2023 American Community Survey 5-Year Estimates.

Household Income

The following data from the 1999 census and the 2023 ACS indicates that the median household income in Allendale increased more than 50% from 1999 to 2023 increasing from \$105,704 to \$156,992.

Table 8: Household Incomes, 1999-2023

Income Category	1999		2023*	
	Number	%	Number	%
less than \$10,000	15	0.7%	132	5.6%
\$10,000 to \$14,999	20	0.9%	4	0.2%
\$15,000 to \$24,999	68	3.2%	121	5.2%
\$25,000 to \$ 34,999	95	4.5%	56	2.4%
\$35,000 to \$ \$49,999	219	10.4%	30	1.3%
\$50,000 to \$74,999	357	16.9%	177	7.6%
\$75,000 to \$99,999	205	9.7%	151	6.5%
\$100,000 to \$149,999	465	22.0%	444	19%
\$150,000 to \$199,000	207	9.8%	1217	52.2%
\$200,000 or more	462	21.9%		
Total	2,113	100.0%	2,332	100.0%
Median Income (Household)	<b>\$105,704</b>		<b>\$156,992</b>	

Source: US Census Bureau; 2023 American Community Survey 5-Year Estimates.

### 2.3: Inventory of Housing Stock

This section of the analysis provides an inventory of the Borough's housing stock. The inventory details housing characteristics such as age, condition, purchase/rental value and occupancy. It also details the number of affordable units available to low- and moderate-income households and the number of substandard housing units capable of being rehabilitated. As previously noted, the latest information from the American Community Survey consists of five-year estimates by the Census Bureau, not actual counts and may not be directly comparable to census figures.

#### Number of Housing Units

As illustrated in the table below, the overall number of housing units within the Borough has continued to increase from the 1980s through 2023. Understandably, the slowest percentage increase in numbers was between 2000 and 2010 during the Great Recession.

Table 9: Housing Units, 1980-2023

Year	Housing Units	Numerical Change	% Change
1980	1,700	-	-
1990	1,915	215	12.65%
2000	2,143	228	11.91%
2010	2,254	111	5.18%
2023	2,505	251	11.16%

Source: US Census Bureau, 2023 ACS Five-Year Estimate

**Units in Structure for Occupied Units**

Information regarding the number of dwelling units in housing structures provides insights into the types of housing which exist throughout the Borough. The following table offers insights into the unit-composition of the Borough's structures since 2010.

The Borough's housing stock has historically been comprised of single-family detached and attached dwellings. The 2023 ACS estimate data provided in the table below shows a total of 1,767 single-family detached dwellings which amounts to 71 percent of all housing units in the Borough. This percentage is a decrease from 2010 when single-family dwellings accounted for approximately 84 percent. There was an increase from 2010 to 2023 in the number of structures containing 10 units or more which represents 18 percent of overall units.

Table 10: Units in Structure, 2010-2023

Units in Structure	2010		2023	
	No.	%	No.	%
Single Family, Detached	1,705	83.80%	1,767	70.5%
Single Family, Attached	187	9.20%	203	8.1%
2	67	3.30%	38	1.5%
3 or 4	33	1.60%	12	0.5%
5 to 9	22	1.10%	14	0.6%
10 +	18	0.90%	471	18.8%
Mobile Home	0	0.00%	0	0.00%
Other	0	0.00%	0	0.00%

Source: US Census Bureau; 2023 American Community Survey Five-Year Estimates.

Purchase and Rental Value of Housing Units

The following two tables identify purchase values and rental values for the specified owner-occupied and renter-occupied units in Tenafly.

As shown in table 11, the purchase values of the Borough’s owner-occupied housing stock have typically exceeded those of the State of New Jersey and have been somewhat commensurate to those of Bergen County. Over the past twenty-three years, the median value of the Borough’s owner-occupied housing stock is estimated to have increased approximately 128.5%, from \$256,500 in 2000 to \$586,200 in 2023. This represents a lower percentage increase than that of the County (145.8%) and the State (169.9%).

Until recently, the median contract rental value in the borough has typically remained higher than both Bergen County and the State of New Jersey. However, the 2023 ACS estimates that the median contract rent for the County has surpassed that of the Borough’s. Over the past twenty-three years, the median gross rent increased approximately 65.7%. This represents a lower percentage increase than that experienced by the County (99.9%) and the State (99.8%).

Table 11: Value of Owner-Occupied Units, 2000-2023

Value Range	2000		2010		2023	
	Number	Percent	Number	Percent	Number	Percent
Less than \$50,000	0	0.0%	14	0.7%	24	1.1%
\$50,000 to \$99,999	0	0.0%	16	0.8%	0	0.0%
\$100,000 to \$149,999	47	2.6%	0	0.0%	0	0.0%
\$150,000 to \$199,999	313	17.5%	14	0.7%	0	0.0%
\$200,000 to \$299,999	899	50.3%	108	5.5%	72	3.5%
\$300,000 to \$499,999	500	28.0%	936	47.8%	566	27.2%
\$500,000 to \$999,999	29	1.6%	849	43.4%	1398	67.2%
\$1,000,000 or More	0	0.0%	22	1.1%	21	1.0%
Total	1,788	100.0%	1,959	100.0%	2,081	100.0%
Borough Median Value		\$256,500		\$484,100		\$586,200
Bergen County Median Value		\$250,300		\$482,300		\$615,300
New Jersey Median Value		\$170,800		\$357,000		\$461,000

Source: US Census Bureau; 2010 and 2023 American Community Survey Five-Year Estimates.

Table 12: Specified Renter Occupied Housing Units by Rent, 2000-2023

Value Range	2000		2010		2023	
	Number	Percent	Number	Percent	Number	Percent
Less than \$200	14	2.2%	0	0.0%	0	0.0%
\$200 to \$299	12	1.9%	0	0.0%	0	0.0%
\$300 to \$499	0	0.0%	0	0.0%	0	0.0%
\$500 to \$749	81	12.9%	0	0.0%	0	0.0%
\$750 to \$999	170	27.0%	90	12.9%	0	0.0%
\$1,000 to \$1,499	269	42.7%	230	32.9%	259	28.3%
\$1,500 to \$1,999	63	10.0%	234	33.4%	431	47.1%
\$2,000 or more	0	0.0%	88	12.6%	225	24.6%
No Cash Rent	21	3.3%	58	8.3%	0	0.0%
Total	630	100.0%	700	100.0%	915	100.0%
Borough Median Value		\$1,044		\$1,502		\$1,730
Bergen County Median Value		\$872		\$1,236		\$1,743
New Jersey Median Value		\$751		\$1,092		\$1,498

Source: US Census Bureau; 2010 and 2023 American Community Survey Five-Year Estimates.

### Deficient Housing Units

Neither the Census nor the ACS classify housing units as deficient. However, the Fair Housing Act defines a “deficient housing unit” as housing which: is over fifty years old and overcrowded; lacks complete plumbing, or; lacks complete kitchen facilities.

Accordingly, the following tables are intended to provide insights into the extent to which the Borough has deficient housing units. Table 15 examines the extent to which there is overcrowding in the Borough’s housing stock. Overcrowding is typically associated with housing units with more than one occupant per room. As shown, the estimated number of occupied housing units considered to be overcrowded is negligible

Table 13: Occupants Per Room (2023)

Occupants per Room	Owner-Occupied	Renter-Occupied
0.50 or Fewer	2,086	771
0.51 to 1.00	304	144
1.01 to 1.50	0	0
1.51 to 2.00	0	0
2.01 or More	0	0
Total	2,086	915

Source: 2023 American Community Survey Five-Year Estimates.

Table 14 below identifies housing units with complete plumbing and kitchen facilities. As shown, all occupied units in the Borough were identified as having complete plumbing and kitchen facilities.

Table 14: Plumbing and Kitchen Facilities (2023)

	Units with Complete Facilities	Units without Complete Facilities
Plumbing	3,001	0
Kitchen	3,001	0

Source: 2023 American Community Survey Five-Year Estimates.

This data is contrary and exhibits that the calculations from the DCA regarding overcrowding and deficient plumbing or kitchen facilities in the Borough for the Fourth Round Present Need calculations, is substantially overestimating the current conditions.

## 2.4: Housing and Employment Projection

The following section identifies the extent to which redevelopment housing and economic development has occurred in the community, which can assist in the determination of future residential and employment projections.

### Recent Residential Development Activity

One way of examining the stability of a community's housing stock is by comparing the number of residential building permits issued for new construction as well as demolition permits issued every year. Since 2013, the Borough has annually issued an average of 1.8 and 1.5 building permits and demolition permits, respectively. This results in an average positive net of 0.2 permits annually.

Table 15: Residential Building Permits and Demolition Permits

Year	Building Permits				Demos	Net
	1 & 2 Family	Multifamily	Mixed Use	Total		
2013	0	0	0	0	0	0
2014	1	0	6	7	4	3
2015	1	0	0	1	2	-1
2016	1	0	0	1	0	1
2017	1	0	0	1	0	1
2018	6	0	0	6	1	5
2019	1	0	0	1	2	-1
2020	0	0	0	0	2	-2
2021	1	0	0	1	3	-2
2022	2	0	0	2	0	2
2023	0	0	0	0	3	-3
Total	14	0	6	20	17	3

Source: Department of Community Affairs

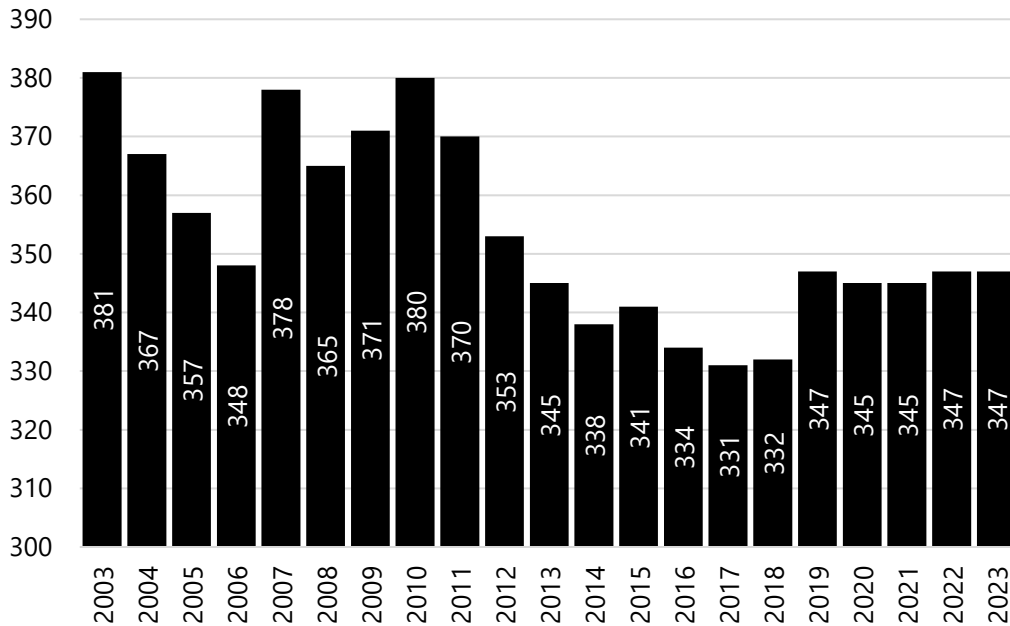
## Covered Employment

Figure 1 and Figure 2 below provide data on the Borough's covered employment trends between 2004 and 2023, as reported by the New Jersey Department of Labor and Workforce Development. "Covered employment" refers to any employment covered under the Unemployment and Temporary Disability Benefits Law. Generally, nearly all employment in the state is considered to be "covered employment."

Figure 1 depicts the number of reported "employment units" within the Borough. An "employment unit" is defined as an individual or organization which employs one or more workers. As shown, the Borough experienced a fairly consistent loss of employment units between 2003 and 2018. Since that time, however, the number of employment units has remained relatively stable. As of 2023, there were a reported 347 employment units in the Borough.

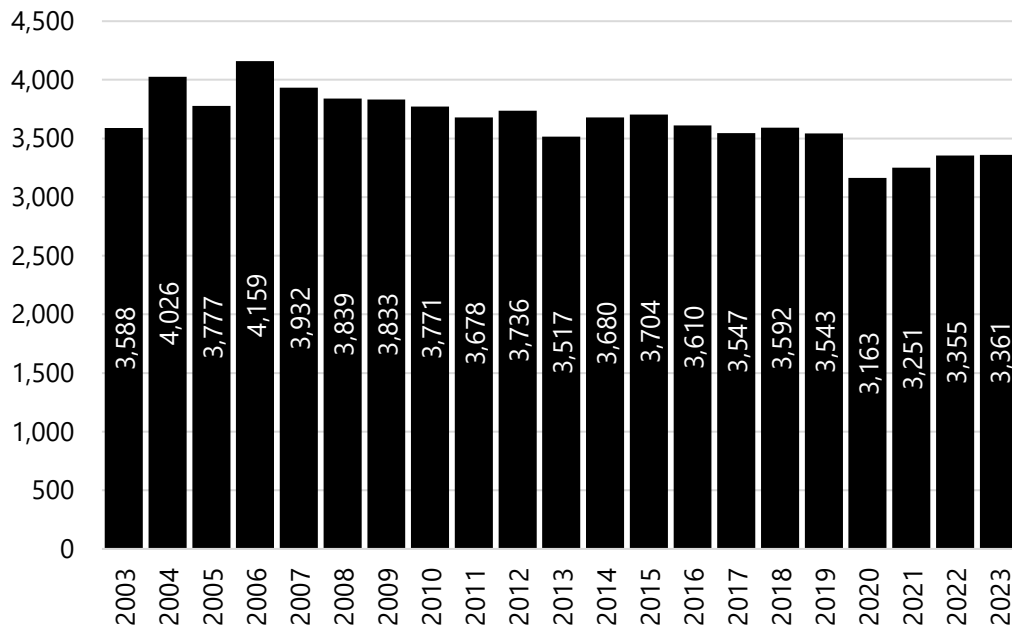
Similarly, employment levels have typically decreased since 2005. The most dramatic decrease occurred between 2019 and 2020, wherein employment in the Borough decreased by a reported 10.7%. This may be attributed to COVID-19 pandemic. Since that time, employment in the Borough has increased. As of 2023, the Borough's reported covered employment was 3,361 individuals.

Figure 1: Covered Employment Units, 2003-2023



Source: Department of Labor and Workforce Development

Figure 2: Covered Employment, 2003-2023



Source: Department of Labor and Workforce Development

# Section 3: Fair Share Obligation

The following section provides an overview of the Borough's fair share obligation. It includes a brief overview of the methodology utilized to calculate affordable housing obligations throughout the state.

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## 3.1: Summary of Fair Share Obligation

As explained above, the Borough's fair share obligation consists of a rehabilitation number of 10 and a new construction number of 645. The new construction number is the sum of the prior round obligation (137), the Round 3 obligation (308) and the Round 4 obligation (200).

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## 3.2: Structural Conditions Survey

The Borough bases its rehabilitation number, also known as its Present Need, on a structural survey. In this regard, as per NJAC 5:93-5.2:

*"Each municipality shall be provided with the Council's estimate for substandard units occupied by low and moderate income households. This estimate shall be the municipality's indigenous need, unless the municipality or an objector performs the Council's Structural Conditions Survey (see Appendix C, incorporated herein by reference). Where the municipality or objector performs the Structural Conditions Survey, the Council shall review the results of the data collected and shall modify the indigenous need if it determines a modification is warranted."*

A Structural Conditions Survey therefore was conducted as a first step by the Borough of Allendale Construction Official, Mr. Anthony Hackett. The Construction Official was guided by the available criteria established in N.J.A.C. 5:93-5.2 and N.J.A.C. 5:97-6.2 which reference "Appendix C" of the rules. Appendix C of N.J.A.C. 5:93 outlines the criteria and entities licensed to perform building and/or housing inspections.

In accordance with Appendix C, the total number of units found to be substandard was then factored for the estimated number of substandard units occupied by low- and moderate-income households census information and overcrowded that is available from the Public Use Micro-Data Sample (PUMS).

In calculating Round 4 Present Need obligations, the DCA did not rely on PUMS data for determining the percent of substandard units occupied by low and moderate income households in each municipality. Instead, the DCA relied on HUD's Comprehensive Housing Affordability Strategy (CHAS) dataset for this estimate. The DCA's Fourth Round Methodology Report provides the reasoning behind this as follows:

*"Previous approaches have calculated county-level LMI deficient housing shares from the American Community Survey Public Use Microdata Sample (PUMS) and used them to estimate the LMI-occupied portion of each municipality's deficient*

*housing. However, this approach essentially assumes that the LMI share of deficient housing is uniform in a county, which is not the case. For example, data from HUD's Comprehensive Housing Affordability Strategy (CHAS) dataset show that for 2017-21, the LMI share of housing lacking complete plumbing or kitchen facilities in Atlantic County was 69.1 percent. However, in Brigantine, it was 100 percent. Using the county LMI deficient share for Brigantine would result in underestimating city present need, undercounting the number of deficient housing units actually occupied by LMI households.*

*Therefore, the analysis utilizes data from HUD's Comprehensive Housing Affordability Strategy (CHAS) dataset, which has municipality-level data on the number and percentage of LMI households from a special tabulation of Census Bureau American Community Survey (ACS) data. The latest CHAS data release at the time of calculation corresponds to the 2017-2021 5 Year Estimates. To ensure data year and source consistency, the LMI deficient housing calculation relies on 2017-2021 data."*

Therefore, in order to conduct the second step in our Structural Conditions Survey (estimating the number of substandard units occupied by low/mod income households), we relied on the CHAS data and DCA's methodology.

The structural conditions survey performed by the Construction Official upon review of the entire Borough identified there are a total of 10 units that reflect a need for rehabilitation. To apply the second step, the aforementioned CHAS data for Allendale estimated the number of substandard units occupied by low- and moderate-income households was 100 percent of the identified substandard units calculated. Thus all 10 units from the survey represent the Borough's present need and may potentially need assistance through the affordable housing present need mechanisms.

This result is pending further guidance on other methods or means of adjusting the need based upon actual conditions as determined by the applicable state regulatory agency. The survey demonstrates that the data DCA utilized substantially overestimated the Present Need obligation. The Borough is committed to addressing the adjusted rehabilitation obligation.

The housing survey form is provided in the Appendix of this document.

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### 3.3: Realistic Development Potential (RDP)

#### *Rounds 1 through 3*

The Borough of Allendale lacked sufficient land to address its rehabilitation obligation and consequently secured approval of its application for a vacant land adjustment. The Court approved the Borough's Housing Element and Fair Share Plan which included a vacant land adjustment that set the Borough's realistic development potential is 54. The Courts approval of the Borough's Third Round Plan inclusive of the vacant land adjustment to 54 is attached hereto in the Appendix.

#### *Round 4*

Since the Borough lacked sufficient land to satisfy its new construction obligations through Round 3, it obviously lacks sufficient land to address its additional 200 Round 4 prospective need obligation. COAH's policy recognizes the burdens of a vacant land analysis and permits municipalities to rely upon an adjustment previously done and approved. The Borough is relying upon that previously approved adjustment.

The only question that remains regarding the Borough's right to an adjustment is whether there have been any changed circumstances since the court-approved adjustment that might require a recalibration of the RDP.

An inquiry was made regarding a property developed with an existing restaurant in the Borough. This site is currently operating as Savini's Restaurant on 168 West Crescent Avenue (B1005, L19). This site is developed and not in any state of disrepair that would be characterized as in need of redevelopment, as when the Court previously approved the Borough's RDP. Moreover, the inquirer did not express a commitment to constructing a project with any affordable housing. Therefore, there is no changed circumstance that might require a recalibration and, thus, the Borough has the right not to accept an RDP for the site. However, out of an excess of caution, the Borough will accept an RDP for the site and address that RDP.

The site consists of 1.76 acres. A reasonable maximum yield for the site is 20 units at 12 dwelling units per acre. If 20 units were to be developed at the site, the site would generate with a 20 percent set aside, 4 units ( $20 \times 0.20 = 4$ ). Therefore, the Borough will accept an RDP of 4 for the site and address the 4-unit RDP in this Fourth Round Housing Plan and have an unmet need of 196 ( $200 - 4 = 196$ ).

# Section 4: Fair Share Plan

The following Fair Share Plan outlines the components and mechanisms the Borough will utilize to address its affordable housing obligations. These obligations include are summarized as follows:

Table 16: Affordable Housing Obligation Summary

Category	Obligation
Prior Round Obligation (1987-1999)	137
Third Round Obligation (1999-2025)	308
Fourth Round Obligation (2025-2035)	200
Present Need (Rehabilitation) Obligation	159

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## 4.1: Present Need Obligation (10)

The Borough will address its 10-unit rehabilitation obligation by continuing to participate in the Bergen County Home Improvement Program (BCHIP) to help address its rehabilitation share, to the extent that funding is available for the County program. In addition, since the County program does not apply to rental units, the Borough will contract with a professional Affordable Housing Administrator to supplement the owner-occupied rehabilitation program with a rehabilitation program for rentals. If the Borough is unable to find a qualified administrator, it will seek a waiver of any obligation to provide a rehabilitation program for rental units.

To fully satisfy its Rehabilitation obligation, the Borough will commit \$160,000 of its trust fund to make sure the program is adequately funded. The Borough will make sure the program is well advertised and will reassess each year. If more resources are needed to fund rehabilitations to qualified LMI households, trust fund monies will be reallocated to this program. Conversely, if demands are low calling for less resources, trust fund monies will be reallocated to other permissible uses. The Borough's Rehabilitation Program is further described in the Fourth-Round Spending Plan contained in the Appendix of this plan.

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## 4.2: Prior Round Obligation

The Borough received a First Round JOR on February 25, 1991.

COAH assigned the Borough a Prior Round Obligation of 137 units for Rounds 1 and 2. The Borough fully addressed this obligation and exceeded this obligation with a combination of a Regional Contribution Agreement, inclusionary development, 100% affordable development, and supportive and special needs housing as summarized in Table 19 below.

Table 17: Prior Round (1987-2025) Affordable Housing Components (137)

Project Description- Prior Round	Prior Round Units	Prior Round Bonus	Total	Surplus Credits
<u>Regional Contribution Agreements (RCAs)</u> - Completed <ul style="list-style-type: none"> <li>• 40 units to Jersey City</li> <li>• 4 units to Ridgefield Borough</li> </ul>	44	-	44	-
<u>Allendale Brook Associates</u> project located on Carriage Court and Trotters Lane (Block 2101, Lot 9) – Completed	4	-	4	5
<u>Saddle Dale Builders</u> project located on Elm Street (Block 1809, Lot 8) – Completed	3	3	6	-
<u>Garden Homes/The Whitney</u> project (Block 2101, Lots 1, 2, 3, 5, 6, 7, 8) – Completed	-	-	0	12
<u>Allendale Senior Housing</u> project located on Cebak Court (Block 1708, Lots 1 and 9) – Completed	16	-	16	-
<u>Orchard Commons</u> supportive special needs housing project at (Block 1806, Lot 10.01) – Completed	10	10	20	-
<u>Crescent Commons</u> (Block 904, Lots 10.01, 10.02, 14, 31) 26 out of 33 affordable units – Completed	26	21	47	7
<b>Total: 137 Units Prior Round</b>	<b>103</b>	<b>34</b>	<b>137</b>	<b>24</b>

The Court approved the manner in which the Borough satisfied its Prior Round obligation as set forth above and the Borough has the right to rely on that approval.

### 4.3: Third Round Obligation

As noted earlier in this study, in the September 15, 2017 Settlement Agreement with Fair Share Housing Center (FSHC), and the June 27, 2019 Judgment of Compliance and Repose, Allendale had secured a Vacant Land Adjustment resulting in a Realistic Development Potential of 54 units, leaving it with remaining unmet need of the overall allocation of 254.

#### Third Round RDP Review

Allendale’s Third Round Housing Element & Fair Share Plan (HE&FSP), adopted June 20, 2018, set forth the various mechanisms to address the Borough’s RDP of 54. The chart below demonstrates that the Borough has fully satisfied its RDP for this Round and in fact recognizes the Borough had generated additional surplus credit in one project.

Table 18: Third Round (1999-2025) Affordable Housing Components

Project Description	Third Round Units	Third Round Bonus	Total Third Round Credits	Surplus Credits
<u>Allendale Brook Associates</u> inclusionary for sale development- Carriage Court and Trotters Lane (Block 2101, Lot 9) – Completed	5	-	5	-
<u>Garden Homes/Whitney</u> project (Block 2101, Lots 1 through 3 & 5 through 8) – Completed	12	12	24	-
<u>Former Farm</u> project (Block 506, Lots 4.07 and 4.08) – completed	2	1 <i>cap</i>	3	-
<u>Crescent Commons</u> project - completed	7	-	7	-
<u>220 West Crescent Avenue</u> project (aka The Vale) Completed.	5	-	5	+1
<u>Eastern Christian Group Home 1</u> project (Block 910, Lot 3) – Completed	5	-	5	-
<u>Eastern Christian Group Home 2</u> project (Block 1005, Lot 4) – Completed	5	-	5	-
<b>TOTAL: 54 credits to address RDP</b>	<b>41</b>	<b>13</b>	<b>54</b>	<b>+1</b>

#### Third Round Unmet Need Review

The difference between the Borough’s Prospective Need obligations and its RDP obligations is what is known as Unmet Need. Whereas a land-poor municipality must create a realistic opportunity for satisfaction of its realistic development potential, it is clear that a municipality has a much lower responsibility with respect to its unmet need.

Judge Padavano explained the standard applicable to the unmet need in the Judgement of Repose he entered in the Saddle River case as follows:

*The court notes that while COAH's Second Round and Third Round rules require all municipalities to satisfy their RDP, the rules do not require municipalities to "satisfy" their unmet need - the rules only require municipalities to "address" the unmet need through the use of certain mechanisms specified in the rules. See N.J.A.C. 5:93-4.2(-f) (COAH's Second Round rule); N.J.A.C. 5:97-5.3(b) (COAH's Third Round rule). Significantly, none of the mechanisms specified in the rules require zoning exclusively for affordable housing (overlay zoning which offers an option for affordable housing is one of the mechanisms). Additionally, no rule requires a municipally sponsored affordable housing development, let alone a 100% affordable municipally sponsored development, which will result in the guarantee of construction of affordable units. N.J.S.A. 52:27D-3 l Id provides: "Nothing in ... C.52:27D-301 et al. [the FHA] shall require a municipality to raise or expend municipal revenues in order to provide low and moderate-income housing." As set forth above, the court finds the fact that the amended settlement will produce the actual construction of 42% of the Borough's unmet need quite compelling and leads the court to find that the amended settlement agreement will result in construction of a substantial number of affordable units.*

The Court approved the following mechanisms to address the unmet need in Round 3 when it entered a Judgment of Repose:

Table 19: Plan Surplus, MSO and Overlay Programs for Unmet Need

Plan Component	Total Credits (possible)	Status/ Surplus
<b>Plan Surplus:</b>		
<u>220 West Crescent Avenue project (aka The Vale)</u> – completed 6 units-excess 1 unit	1	Excess credits
Cebak Court- Allendale Housing Inc. senior housing project on Cebak Court	4	Constructed
<b>MSO- Units captured during the Third-Round cycle:</b>		
<u>Park and Ivy:</u> Inclusionary project – approved 5 total units, 1 affordable	1	Approved, under construction
<b>Overlay Zoning:</b>		
<u>Ramsey Golf &amp; Country Club Overlay Zone,</u> B 301, Lot 37 and Block 406, Lot 21.01, 14.3ac total area, 10 du/ac, 20% set-aside.	29	Zoned

Plan Component	Total Credits (possible)	Status/ Surplus
<u>Allendale Corporate Center Overlay Zone</u> B 702, Lot 14, 9.8 ac total area, @12 du/ac, 20% set-aside.	23	Zoned
<u>Church of the Guardian Angel Overlay Zone</u> B 1803, Lot 1, 8.0 ac total area, @12 du/ac, 20% set-aside.	19	Zoned

Further the following programs also contribute to the Unmet Need requirements:

1. Mandatory Set-Aside Ordinance. Additionally, in order to capture future affordable housing opportunities in the Borough and address the remainder of Allendale’s Unmet Need, the Borough has to adopted a Borough-wide Mandatory Set-Aside Ordinance, which requires that any site that is developed with five or more new multi-family or single-family attached dwelling units shall provide an affordable housing set-aside at a rate of 20 percent for affordable ownership unit, 15% if affordable rental units are created. This requirement will ensure that new multi-family or single-family-attached development in Allendale will provide its fair share of affordable units and assist with the Borough’s continuous efforts to address its affordable housing obligation. The Borough will not, however, be under any obligation to grant subdivision and site plan approvals, rezonings, use variances, redevelopment or rehabilitation designations, and/or any other approvals for any such construction and development applications will be required to otherwise conform to the Borough’s zoning requirements. A copy of the Mandatory Set-Aside Ordinance is included in the Appendix of this plan. Any affordable units created pursuant to this ordinance will be applied toward Allendale’s Unmet Need.
2. Development Fee Ordinance. Lastly, as part of its 2017 Settlement Agreement with FSHC and 2018 HE&FSP, the Borough maintained its Development Fee Ordinance, set forth in Chapter 81 of the Borough Code, and its non-residential development fee of 2.5 percent of equalized assessed value, consistent with the Statewide Non-Residential Development Fee Act, and its residential fee at 1.5 percent of equalized assessed value. The Borough will continue to implement its Development Fee Ordinance, as adopted, through the Fourth Round, the funds from which will be applied directly toward the implementation of the Allendale’s Fourth Round Housing Element and Fair Share Plan.

As Table 21 shows, the Borough took all the actions required by the Judgment of Repose to address its unmet need through Round 3. In addition, several units have been realized

and the zoned areas for unmet need continue to represent reasonable zoning measures to help provide opportunities for future inclusionary residential development.

Map 3: Prior and Third Round Components



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#### 4.4: Fourth Round Obligation

As established in Section 3.3 of this plan, Allendale does not have any additional vacant land to add to the RDP obligation in the Fourth Round. In addition, there were no parcels that qualified as tracts developed such that they would be categorized as a “changed circumstance” of significance since the adoption of the Third-Round plan. Nonetheless, the Borough is accepting an RDP of 4 for the Savini parcel, leaving the Borough with an unmet need of 196 for Round 4.

##### Fourth Round RDP Obligation (4)

To address the RDP need of 4, the Borough will apply 2 units through the ongoing conversion of an existing residential 2-bedroom (currently a deed restricted affordable unit) located at 98 Elm Street to a special needs unit. The unit went into foreclosure and had fallen into a considerable state of disrepair. The Borough has intervened and coordinated the purchase and through Allendale Housing Inc., a non-for-profit organization in the Borough, is purchasing and rehabilitating the unit with the Borough committing up to \$90,000 towards its rehabilitation. In accordance with a Consent Order with FSHC, the property will be converted into two (2) special needs units and appropriate special needs generating credits.

This 2-bedrooms special needs project is eligible for 2 credits, plus up to 2 bonus credits. However, with an RDP of 4, no more than 25 percent or 1 bonus credit can be applied. The Borough will address the remaining unit of credit along with its family unit requirements, by extending the controls on at least two units, making sure the units are safe and habitable and then deed restricting the units for at least twenty years. In this regard, there are six units identified in Table 22 below with deed restrictions expiring between July 1, 2025 and June 30, 2035 (see the Allendale Extension of Controls Program for additional information in the Appendix of this document).

Table 20: Eligible Extension of Controls-

<b>Description</b>	<b>Unit type</b>	<b>Project</b>	<b>Expiration Date</b>
3 Trotters Lane B2101, L9, C0003	3 Bedroom	Allendale Brooke Estates	5/15/2032
7 Trotters Lane B2101, L9, C0007	1 Bedroom	Allendale Brooke Estates	11/04/2032
11 Trotters Lane B2101, L9, C0011	2 Bedroom	Allendale Brooke Estates	10/15/2032
86 Carriage Court B2101, L9, C0086	1 Bedroom	Allendale Brooke Estates	12/15/2031
96 Elm Street B1809, L8, C0096	3 Bedroom	Saddle Dale Park	10/25/2029
100 Elm Street B1809, L8, C00100	1 Bedroom	Saddle Dale Park	11/22/2029

The deed restrictions on these units provide the Borough with the right to extend the controls or buy the units at the restricted price at the first nonexempt sale following the expiration of the deed restriction on these units. The Borough will exercise its right to extend controls or buy at least two of these units in accordance with the provisions of the applicable deed restrictions. In addition, the Borough will buy the first low income unit that becomes available for sale and either rent the unit directly to a very low income family and lease the unit as an affordable unit for 40 years or enter into an agreement with a nonprofit or other entity to lease the unit to a qualifying very low income household for 40 years. Further, the Borough will make sure the units are safe and habitable through the continued certificate of conformance regulations and then lease or sell the units at an affordable price in accordance with regulations with an appropriate required deed restriction.

While the Borough needs only two units to satisfy its RDP, it reserves the right to buy all of the units noted above with trust fund monies, make sure the units are safe and habitable and sell the units at an affordable price with an appropriate 30-year deed restriction. In addition, it may well be that there are other units in the Borough that may have deed restrictions that may expire in the Fourth Round where the Borough may be able to secure further credits towards their needs. The Borough will continue to investigate the potential to secure these additional units and reserve rights to address these conditions.

The following summarizes the plan to address the 4-unit RDP.

Table 21: Credit Plan Towards Fourth Round RDP

<b>Project Description</b>	<b>Fourth Round Units</b>	<b>Third Round Bonus</b>	<b>Total Credits</b>
<u>98 Elm Street</u> - Unit conversion to 2-bedroom special needs unit and extension of controls (Block 1809, Lot 8) – Existing to be redeveloped, converted with extension of controls.	2	1	3
<u>Extension of Controls</u> - Extension of controls at Allendale Brook Estates.	2		2
<b><u>Total</u></b>	<b>4</b>	<b>1</b>	<b>5</b>

This plan would generate one applicable bonus for the special needs units equating to a total of 5 credits to satisfy a Fourth-Round RDP of 4.

Furthermore, FHA II provides as follows:

*Any municipality that receives an adjustment of its prospective need obligations for the fourth round or subsequent rounds based on a lack of vacant land shall as part of the process of adopting and implementing its housing element and fair share plan identify sufficient parcels likely to redevelop during the current round of obligations to address at least 25 percent of the prospective need obligation that*

*has been adjusted, and adopt realistic zoning that allows for such adjusted obligation, or demonstrate why the municipality is unable to do so.*

*[N.J.S.A. 52:27D-310.1]*

For the Fourth Round, Allendale's "prospective need obligation that has been adjusted" (i.e., its RDP obligation) is 1-unit. As such, the Borough's efforts and work towards the redevelopment of the unit at 98 Elm Street is such an effort to address this 25 percent standard to maintain this affordable unit that has fallen into foreclosure and significant disrepair to a new 2-bedroom special needs home.

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#### 4.5: Unmet Need (196)

As indicated above, the Borough faced an unmet need of 254 in Round 3 and the Court determined that the measures to address that 254 unmet need represented reasonable measures after obtaining input from FSHC. Therefore, it should be anticipated that a municipality that already has an unmet need of 256 and that has done all that the Court deemed reasonable to address that unmet need cannot reasonably be expected to do still more. Indeed, even if every mechanism the court approved to address the unmet need generated the maximum number of affordable units, we could not reach the 254 unmet need.

Notwithstanding the above, and as a result of mediation as noted herein, the Borough is willing to take a step over and above what the Court deemed reasonable in its Judgment of Repose for Round 3. It is willing to expand the existing Allendale Corporate Center overlay zone (MFRO-3) located at Allendale Corporate Center to include Block 702, Lot 15 at 90 Boroline Road in the northeast corner of the Borough. This additional area would add approximately 5.3 acres to the approximately 9.8-acre of lot 14 for a total of 15.1 acres at the Allendale Corporate Center site. Furthermore, the Borough as a result of mediation to address more of the Borough's allocation of Unmet Need, the MFRO-3 zone will be increased as outline to permit a maximum development density of 26 units per acre. The review below provides rationale for the suitability of this expanded overlay zone area.

The current MFRO-3 overlay zoning in this area mirrors the existing EM Zoning, which was intended to permit multifamily development of this portion of the industrial area along Boroline Road. The current zone would be expanded to this area at a density of 12 dwelling units per acre and any residential development will be required to set aside 20% of its units for affordable housing. The revised density at 26 units per acre with the expanded area could provide up to an additional 55 affordable units to address the Borough's Unmet Need.

Map 4: Proposed Expansion of Allendale Corporate Center Overlay Zone Block 702 Lot 15



Source NJDEP-NJ GeoWeb website- lot lines are approximate.

In addition to the above, the Borough will keep in place all the mechanisms in its Round 3 Housing Element and Fair Share Plan designed to address the Third Round 254-unit unmet need.

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#### 4.6: Other Provisions

The following additional requirements are noted:

1. Fourth Round Bonuses. Fourth-Round bonuses will be applied in accordance with N.J.A.C. 52:27d-311.k. wherein as noted herein they shall not exceed 25 percent of the RDP obligation.
2. Very-Low Income and Low-Income Units. At least 50 percent of the units addressing the Fourth Round Prospective Need obligation shall be affordable to very low-income and low-income households with the remainder affordable to moderate-income households. A minimum of 13 percent of the affordable units will be made available to very low-income households, defined as households earning 30 percent or less of the regional median income by household size.

3. Rental Component. At least 25 percent of the Fourth Round Prospective Need obligation shall be met through rental units, including at least half in rental units available to families.
4. Families. At least half of the actual units created to address the Fourth Round Prospective Need obligation must be available to families.
5. Age-Restricted Cap. No more than 30 percent of all units developed or planned to meet the Fourth Round Prospective Need obligation shall be met with age-restricted units.
6. Development Fees. The Borough will continue to impose development fees as permitted by COAH's prior round rules. The funds generated by the collection of development fees will be applied directly towards any activity approved by State regulations for addressing the municipal fair share.

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#### 4.7: Review of Rejected Development Sites

No developer came forward with a proposal in which it committed to provide affordable housing. Consequently, there is no requirement to consider any proposal that might generate affordable housing.

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#### 4.6: Consistency with State Planning Initiatives

As noted in Section 1, a HE&FSP must also include:

- ❖ 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, 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.

Accordingly, the following subsection analyzes the consistency of this HE&FSP to the above referenced state planning initiatives.

##### Multigenerational Family Housing Continuity Commission

The Multigenerational Family Housing Continuity Commission was established by the State of New Jersey in 2021. As noted in NJSA 52:27D-329.20, one of the primary duties of the Commission is to "prepare and adopt recommendations on how State government, local government, community organizations, private entities, and community members may most effectively advance the goal of enabling senior citizens to reside at the homes of their extended families, thereby preserving and enhancing multigenerational family

continuity, through the modification of State and local laws and policies in the areas of housing, land use planning, parking and streetscape planning, and other relevant areas.”

As of the date of this HE&FSP, the Multigenerational Family Housing Continuity Commission has not adopted any recommendations.

#### State Development and Redevelopment Plan

As established by NJSA 52:18A-200(f), the purpose of the State Development and Redevelopment Plan (SDRP) is to “coordinate planning activities and establish Statewide planning objectives in the following areas: land use, housing, economic development, transportation, natural resource conservation, agriculture and farmland retention, recreation, urban and suburban redevelopment, historic preservation, public facilities and services, and intergovernmental coordination.”

As such, the current 2001 SDRP establishes a number of goals and strategies related to a number of different topics, including economic redevelopment. One such goal is to revitalize existing urban centers by directing growth and development to those areas. Specifically, the SDRP seeks to revitalize the State’s cities and towns by protecting, preserving, and developing the valuable human and economic assets in cities, town, and other urban areas.

As indicated by the SDRP’s Policy Map, the entirety of the Borough is located in the PA-1 Metropolitan Planning Area, wherein development and redevelopment is intended to be directed. The intent of this Planning Area 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.

Accordingly, this HE&FSP is consistent with the intents of the PA-1. Specifically, it is designed to encourage redevelopment and growth in a compact form, while also protecting the character of the existing community.

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#### 4.7: Crediting Documentation and Ongoing Compliance

The Borough of Allendale is following the applicable requirements regarding unit monitoring and reporting. Specifically, the Borough completed the statutorily required updates to its housing project status report by the DCA deadline of February 15, 2025. These updates are included in the State’s new Affordable Housing Monitoring System and should be considered to fulfill the Borough obligation to specify the creditworthiness of all existing affordable units. Further, all crediting documentation submitted to and approved by the Court as part of the Borough’s Third Round Housing Element and Fair Share Plan remains on file with and accessible from the Court. All other crediting

documentation, for plan components that were not part of the Borough's Third Round HE&FSP, is included in the appendices of this plan.

## Appendices

1. Resolutions Adopting and Endorsing Housing Element and Fair Share Plan
2. Endorsing Resolution No. 25-71 Committing to Comply to Fourth-Round Present and Prospective Need.
3. Superior Court Decision and Order Fixing Municipal Obligations
4. Structural Conditions Survey and Calculation of Adjusted Present Need
5. Third Round Vacant Land Adjustment Table
6. Third Round Settlement Agreement
7. Chapter 81 Affordable Housing, Mandatory Set-Aside, Development Fees Amendment
8. Existing/Adopted Chapter 270, Article XXXIV, Ramsey Golf Course Inclusionary Overlay Residential District of Borough Code.
9. Proposed Amendment Chapter 270, Article XXXV Allendale Corporate Center Inclusionary Overlay Residential District of Borough Code.
10. Existing/Adopted Chapter 270, Article XXXVI Franklin Turnpike Inclusionary Overlay Residential District of Borough Code.
11. Allendale- 98 Elm Consent Order
12. Resolution Appointing Municipal Housing Liaison
13. Administrative Agents Contracts and Resolutions
14. Administrative Agent Manual and Affirmative Marketing Plan
15. Courts approval of the Borough's Third Round Plan
16. Fourth Round Spending Plan
17. Allendale Extension of Controls Program

**Appendix**

**1. Resolutions Adopting and Endorsing Housing Element  
and Fair Share Plan**

**RESOLUTION OF THE PLANNING BOARD OF THE BOROUGH OF ALLENDALE ADOPTING A HOUSING ELEMENT AND FAIR SHARE PLAN FOR ROUND FOUR**

**WHEREAS**, the Borough of Allendale (hereinafter the “Borough” or “ Allendale”) has a demonstrated history of voluntary compliance as evidenced by the receipt of a Round 2 Substantive Certification from COAH on October 1, 2003 and the entry of a Judgment of Repose, dated June 27, 2019, approving the Borough’s Housing Element and Fair Share Plan for Round 3; Third Round record; and

**WHEREAS**, in March of 2024, Governor Murphy signed an amendment to the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq. into law making radical changes to the legislation (hereinafter “FHA II”) and

**WHEREAS**, FHA II established a procedure by which municipalities can secure approval of a Housing Element and Fair Share Plan; and

**WHEREAS**, that procedure contemplated that municipalities would adopt a resolution by January 31, 2025 committing to a fair share number and filing a declaratory relief action within 48 hours from adoption of the resolution and then adopting a Housing Element and Fair Share Plan (hereinafter “HEFSP” or “Plan”) by June 30, 2025 and filing the adopted Plan within 48 hours of adoption with the Affordable Housing Dispute Resolution Program (the “Program”); and

**WHEREAS**, the Borough adopted a resolution by January 31, 2025 committing to a fair share number and filing a declaratory relief action within 48 hours from adoption of the resolution; and

**WHEREAS**, the Borough had its affordable housing planning consultant, Edward Snieckus, Jr. P.P., LLA, ASLA, of Burgis Associates, Inc. prepare a HEFSP to address the Borough’s affordable housing obligations under FHA II; and

**WHEREAS**, the Borough now wishes for the Allendale Planning Board to consider adopting the HEFSP that its affordable housing planner prepared;

**WHEREAS**, in accordance with the provisions of N.J.S.A. 40:55D-13 of the MLUL, the Planning Board scheduled a public hearing on the HEFSP for June 16, 2025 at 7:00 p.m. at Municipal Building 500 W Crescent Ave Allendale, NJ 07401; and

**WHEREAS**, in accordance with the provisions of N.J.S.A. 40:55D-13 of the MLUL, the Planning Board published a notice of this public hearing in the Borough’s official newspaper at least ten days before the scheduled date for the public hearing and served a copy of this notice upon the clerks of all municipalities adjoining the Borough, upon the clerk of the County Planning Board, and upon the New Jersey Office of Planning Advocacy; and

**WHEREAS**, a copy of the HEFSP was placed on file with the Planning Board Secretary and was available for public review at least ten days before the scheduled date for the public hearing; and

**WHEREAS**, upon notice duly provided pursuant to N.J.S.A. 40:55D-13, the Planning Board held a public hearing on the Housing Element and Fair Share Plan on June 16, 2025; and

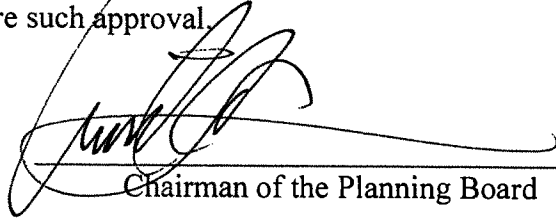
WHEREAS, at the public hearing, Edward Snieckus, Jr. P.P., LLA, ASLA, provided professional planning testimony regarding the HEFSP and the Board provided members of the public with the opportunity to provide their comments about the plan.

WHEREAS, the Planning Board determined that the attached Housing Element and Fair Share Plan is consistent with the goals and objectives of the current Master Plan of Allendale, and that adoption and implementation of the plan is in the public interest and protects public health and safety and promotes the general welfare.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of Allendale, County of Bergen, State of New Jersey, that the Planning Board hereby adopts the Housing Element and Fair Share Plan attached hereto.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board hereby directs the affordable housing attorney for Allendale to file the duly adopted Housing Element and Fair Share Plan with the Program, an entity created by the Amended FHA, within 48 hours of adoption and present the duly adopted Housing Element and Fair Share Plan to Allendale for endorsement.

BE IT FURTHER RESOLVED that Affordable Housing Counsel is authorized to pursue approval of the Housing Element and Fair Share Plan and submit such additional documents as may be necessary or desirable in an effort to secure such approval.



Chairman of the Planning Board

**CERTIFICATION**

I certify that the foregoing Resolution was duly adopted by the Planning Board of the Allendale at a regular meeting held on the 16th day of June, 2025.



Planning Board Secretary

**RESOLUTION  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ**

DATE: 06/26/2025

RESOLUTION# 25-174

Council	Motion	Second	Yes	No	Abstain	Absent
Yaccarino			✓			
O'Toole			✓			
Homan		✓	✓			
Lovisolo	✓		✓			
Daloisio			✓			
O'Connell						✓
Mayor Wilczynski	-----	-----				

- Carried
- Defeated
- Tabled
- Approved on Consent Agenda

**RESOLUTION OF THE MAYOR & COUNCIL OF THE BOROUGH OF ALLENDALE ENDORSING THE HOUSING ELEMENT AND FAIR SHARE PLAN ADOPTED BY THE ALLENDALE LAND USE BOARD**

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2, which amended the 1985 New Jersey Fair Housing Act; and

WHEREAS, for ease of reference, this resolution shall refer to the Fair Housing Act as amended as "FHA II"; and

WHEREAS, FHA II established a procedure by which municipalities can secure approval of a Housing Element and Fair Share Plan ("HEFSP") and secure immunity in the process; and

WHEREAS, that procedure contemplated that municipalities would adopt a resolution by January 31, 2025 committing to a fair share number and filing a declaratory relief action within 48 hours from adoption of the resolution and then filing a HEFSP by June 30, 2025 and filing that plan within 48 hours with the Affordable Housing Dispute Resolution Program (the "Program"); and

WHEREAS, by taking these actions, a municipality could secure and maintain immunity from all exclusionary zoning suits inclusive of builder's remedy suits; and

WHEREAS, in accordance with this statutory procedure, the Borough adopted a binding resolution on January 23, 2025 and filed a declaratory relief action within 48 hours from adoption of the resolution; and

**RESOLUTION  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ**

**DATE: 06/26/2025**

**RESOLUTION# 25-174**

WHEREAS, the Borough's affordable housing planning consultant, Edward Snieckus P.P., A.I.C.P, LLA of Burgis Associates, Inc has prepared a HEFSP to address the Borough's affordable housing obligations under FHA II; and

WHEREAS, the Allendale Borough Land Use Board adopted a HEFSP prepared by Mr. Snieckus on June 16, 2025, which is incorporated by reference; and

WHEREAS, in accordance with the procedure established by FHA II, the Borough's affordable housing counsel filed the duly adopted HEFSP with the Program created by FHA II within 48 hours from adoption; and


WHEREAS, the Borough Mayor & Council now wishes to endorse the Housing Element and Fair Share Plan adopted by the Allendale Land Use Board and seek approval of the HEFSP by the Program and Court.


NOW, THEREFORE, BE IT RESOLVED by the Mayor & Council of the Borough of Allendale, County of Bergen, State of New Jersey, as follows:

1. The Borough Mayor & Council hereby endorses the Fourth Round HEFSP previously adopted by the Allendale Land Use Board and attached hereto.
2. The Borough Mayor & Council hereby directs the Borough's Affordable Housing Counsel to (a) file this resolution with the Program, along with any additional documents the professionals deem necessary or desirable; and (b) seek a Compliance Certification from the Program or Vicinage area judge as may be appropriate formally approving the Plan.
3. The Borough reserves the right to further amend the HEFSP attached hereto, should that be necessary.

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I hereby certify the above to be a true copy of a Resolution adopted by the Governing Body of the Borough of Allendale on June 26, 2025.

  
Linda Louise Cervino, RMC  
Municipal Clerk



RESOLUTION

LAND USE BOARD  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ

DATE: March 18, 2026

RESOLUTION: LUB 26-13

Land Use Board	Motion	Second	Yes	No	Abstain	Absent
Dalo	✓					
Warzala	✓					
Putrino	A					A
Agugliaro	A					A
Yaccarino	✓					
Conte	A					A
Sirico	✓					
Wilczynski	✓					
Butler	✓	✓				
Ensenat - Alt.#1	✓					
Johnson - Alt. #2	A					A

Carried  Defeated  Tabled

RESOLUTION 26-13

LAND USE BOARD OF THE BOROUGH OF ALLENDALE  
RESOLUTION APPROVING

**AMENDMENT TO THE HOUSING ELEMENT AND FAIR SHARE PLAN ADOPTED ON JUNE 16, 2025 BY THE  
LAND USE BOARD FOR THE BOROUGH OF ALLENDALE**

**WHEREAS**, the Municipal Land Use Law (“MLUL”) at N.J.S.A. 40:55D-28(a)(2)(h) et seq. authorizes municipalities to consider and implement proposed amendments to the Housing Element and Fair Share Plan of the Borough Master Plan; and,

**WHEREAS**, the Borough and Fair Share Housing Center (FSHC) participated in mediation sessions before the Program, an entity created by FHA II, and negotiated a Mediation Agreement, dated December 31, 2025 resolving all issues raised by FSHC’s challenge; and

**WHEREAS**, to implement the Mediation Agreement, certain changes need to be made to the Borough’s HEFSP; and

**WHEREAS**, the Borough Planner, Ed Snieckus, PP, ALSA, of Burgis Associates, prepared a draft amendment to the Housing Element and Fair Share Plan of the Borough Master Plan, adopted by the Land Use Board of the Borough of Allendale on June 16, 2025, amended January 30, 2026, together with an Affordable Housing Trust Fund Spending Plan Amendment Summary (collectively “Amendment”); and,

**WHEREAS**, the Amendment will update the manner in which the Borough satisfies its obligations by increasing the density in the Borough’s MFRO-3 Zone; and,

RESOLUTION

LAND USE BOARD  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ

DATE: March 18, 2026

RESOLUTION: LUB 26-13

**WHEREAS**, the Amendment will update the manner in which the Borough implements its program to extend deed restrictions in accordance with regulations adopted by the New Jersey Housing and Mortgage Finance Agency on November 6, 2025 and other related, ancillary and associated changes; and,

**WHEREAS**, the Borough now wishes for the Allendale Planning Board to consider adopting the Amendment; and,

**WHEREAS**, in accordance with the provisions of N.J.S.A. 40:55D-12, -13, the Planning Board scheduled a public hearing on the Amendment for February 11, 2026, 7:00pm, at Municipal Building, located at 500 W Crescent Ave Allendale, NJ 07401, with the intent to take action on the Amendment; and,

**WHEREAS**, in accordance with the provisions of N.J.S.A. 40:55D-13 of the MLUL, the Planning Board published a notice of this public hearing in the Borough's official newspaper at least ten days before the scheduled date for the public hearing and served a copy of this notice upon the clerks of all municipalities adjoining the Borough, upon the clerk of the County Planning Board, and upon the New Jersey Office of Planning Advocacy; and

**WHEREAS**, the Borough planning consultant, Edward Snieckus, Jr. P.P., LLA, ASLA, of Burgis Associates, Inc. prepared a report dated January 30, 2026 on the Amendment and presented same to the Borough Planning Board ("Presentation"); and,

**WHEREAS**, a copy of the Presentation was placed on file with the Planning Board Secretary and was available for public review at least ten days before the scheduled date for the public hearing; and

**WHEREAS**, upon notice duly provided pursuant to N.J.S.A. 40:55D-12, 13, the Planning Board held a public hearing on the Housing Element and Fair Share Plan on February 11, 2026; and

**WHEREAS**, at the public hearing, Edward Snieckus, Jr. P.P., LLA, ASLA, provided professional planning testimony regarding the Amendment and the Board provided members of the public with the opportunity to provide their comments about the plan.

**WHEREAS**, the Planning Board determined that the Amendment is consistent with the goals and objectives of the current Master Plan of Allendale, and that adoption and implementation of the plan is in the public interest and protects public health and safety and promotes the general welfare; and,

**WHEREAS**, no members of the public appeared in connection with the matter.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of Allendale , County of Bergen, State of New Jersey, that the Planning Board hereby adopts the Amendment

RESOLUTION

LAND USE BOARD  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ

DATE: March 18, 2026

RESOLUTION: LUB 26-13

**NOW, THEREFORE, BE IT RESOLVED**, by the Planning Board of the Borough of Allendale that it hereby adopts the Amendment, without modification.

**BE IT FURTHER RESOLVED**, that the Planning Board Secretary is hereby authorized and directed to publish a notice of the adoption of the Study in an official newspaper of the Borough; to transmit copies by regular mail of this resolution and the report to the Bergen County Planning Board, and to send a notice that the report and resolution have been adopted to the municipal clerk of each adjoining municipality, who may request a copy of the report pursuant to N.J.S.A. 40:55D-1 et seq.

Approved:

ALLENDALE LAND USE BOARD



MICHAEL SIRICIO, Chairman

Attest:



JOHN DALO, Vice Chairman

Adopted: March 18, 2026

**RESOLUTION  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ**

DATE: 02/19/2026

RESOLUTION# 26-103

Council	Motion	Second	Yes	No	Abstain	Absent
O'Connell			✓			
O'Toole		✓	✓			
Lovisolo			✓			
Homan	✓		✓			
Daloisio						✓
Yaccarino			✓			
Mayor Wilczynski	-----	-----				

- Carried
- Defeated
- Tabled
- Approved on Consent Agenda

**A RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF ALLENDALE ENDORSING AN AMENDMENT TO THE HOUSING ELEMENT AND FAIR SHARE PLAN ADOPTED BY THE LAND USE BOARD ON FEBRUARY 11, 2026**

**WHEREAS**, on January 24, 2025, the Borough of Allendale (“Borough” or “Allendale”) filed a Declaratory Judgment Action pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.as amended (“FHA II”); and

**WHEREAS**, on May 5, 2025, the Superior Court entered an Order setting the Borough’s Fourth Round Present Need obligation at 159 and its Round 4 Prospective Need obligation at 200 and directing the Borough to file its Housing Element and Fair Share Plan (“HEFSP”) no later than June 30, 2025; and

**WHEREAS**, on or about June 17, 2025, the Borough filed a HEFSP duly adopted by the Land Use Board and sought approval of same; and

**WHEREAS**, on June 26, 2025, the Borough endorsed the HEFSP previously adopted by the Planning Board; and

**WHEREAS**, on August 31, 2025, Fair Share Housing Center (“FSHC”) and AvalonBay Communities, Inc (“AvalonBay”) (collectively “Objectors”) wrote a letter challenging the Borough’s plan pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b); and

**WHEREAS**, on November 7, 2025, the Borough provided responsive materials to FSHC; and

**WHEREAS**, the Borough and FSHC participated in mediation sessions before the Program, an entity created by FHA II, and negotiated a Mediation Agreement, dated December 31, 2025 resolving all issues raised by FSHC’s challenge; and

RESOLUTION  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ

DATE: 02/19/2026

RESOLUTION# 26-103

WHEREAS, to implement the Mediation Agreement, certain changes need to be made to the Borough's HEFSP; and

WHEREAS, accordingly, the Borough's professionals have prepared an amendment to the HEFSP the Borough endorsed and filed with the Program in June of 2025; and

WHEREAS, that Amendment is attached hereto as Exhibit A; and

WHEREAS, on February 11, 2026, the Allendale Borough Land use Board adopted the Amendment; and

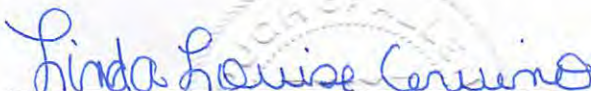
WHEREAS, after considering the comments of the public, the Borough of Allendale finds the Amendment to be in the best interest of the Borough;

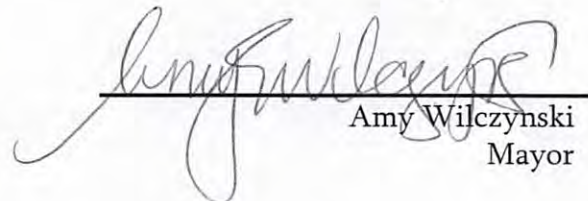
NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Allendale, County of Bergen, State of New Jersey, as follows:

1. The Borough of Allendale hereby endorses the Amendment to the Housing Element and Fair Share Plan adopted by the Land Use Board on February 11, 2026.
2. The Borough hereby authorizes the Borough's professionals to make any non-substantive or *de minimis* revisions or clarifications as may be reasonably required to effectuate the intent of this Resolution and to facilitate review and approval of the Housing Element and Fair Share Plan as amended.
3. The Borough's professionals are hereby authorized to file such supplementary material as they deem appropriate to secure approval of the HEFSP as amended.
4. This Resolution shall take effect immediately upon adoption.

---

I hereby certify the above to be a true copy of a Resolution adopted by the Governing Body of the Borough of Allendale on February 19, 2026.

  
Linda Louise Cervino, RMC  
Municipal Clerk

  
Amy Wilczynski  
Mayor



**Appendix**

**2. Endorsing Resolution No. 25-71 Committing to  
Comply to Fourth-Round Present and Prospective  
Need.**

**RESOLUTION  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ**

DATE: 01/23/2025

RESOLUTION# 25-71

Council	Motion	Second	Yes	No	Abstain	Absent
Yaccarino			✓			
O'Toole			✓			
Homan		✓	✓			
Lovisol	✓		✓			
Daloisio						✓
O'Connell			✓			
Mayor Wilczynski	-----	-----				

- Carried
- Defeated
- Tabled
- Approved on Consent Agenda

RESOLUTION OF THE BOROUGH OF ALLENDALE, COUNTY OF BERGEN, STATE OF NEW JERSEY COMMITTING TO COMPLY WITH PRESENT NEED (REHAB OBLIGATION) AND THE ROUND 4 PROSPECTIVE NEED SUBJECT TO CORRECTIONS OF DATA AND ALL APPLICABLE ADJUSTMENTS

WHEREAS, the Borough of Allendale, County of Camden, State of New Jersey, (hereinafter, "Borough" or "Allendale") has a demonstrated history of voluntary compliance with its constitutional affordable housing obligations; and

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2, an Amendment to the 1985 Fair Housing Act (hereinafter "Amended FHA" or "Act"); and

WHEREAS, the Amended FHA requires the Department of Community Affairs ("DCA") to provide an estimate of the present need, also referred to as the rehab obligation, and the Round 4 prospective need for all municipalities by October 20, 2024 based upon the criteria in the Amended FHA; and

WHEREAS, the DCA issued a report on October 18, 2024 ("DCA Report") wherein it reported its estimate of the present need and the Round 4 prospective need obligation for all municipalities based upon its interpretation of the standards in the Act; and

WHEREAS, the DCA Report calculates Present Need (Rehabilitation) Obligation to be 159 and its Round 4 Prospective Need to be 260; and

**RESOLUTION  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ**

**DATE: 01/23/2025**

**RESOLUTION# 25-71**

WHEREAS, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support revised calculations of Round 4 fair share affordable housing obligations; and

WHEREAS, the Amended FHA gives municipalities the opportunity to propose different obligations from those reported by the DCA on October 18, 2024 based upon the standards in Sections 6 and 7 of the Act; and

WHEREAS, the Amended FHA further provides that “[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing (“COAH”) unless those regulations are contradicted by statute, including P.L. 2024, c.2, or binding court decisions” (N.J.S.A 52:27D-311 (m)); and

WHEREAS, COAH regulations authorize municipalities to secure an adjustment to their rehabilitation obligation through a windshield survey and also empower municipalities to secure vacant land adjustments, durational adjustments and other adjustments; and

WHEREAS, the Borough has exercised its right to take advantage of that opportunity to propose a different rehabilitation obligation than reported by the DCA by conducting a windshield survey; and

WHEREAS, based upon the windshield survey included in the expert report of Edward Snieckus, Jr. PP, LLA, ASLA attached hereto (hereinafter “Snieckus Report”, the Borough has established that its rehabilitation obligation is 10; and

WHEREAS, the Borough is happy to address any issues that may arise with respect to the conducting the windshield survey in accordance with COAH standards and to address the needs of lower income households residing in affordable units if there is an application to participate in the rehab program for more than 10 lower income households residing in qualified units; and

WHEREAS, the Borough, through its professionals, has exercised its right to review the data that is the basis for the 3 allocation factors used to determine Allendale’s share of the regional need; and

**RESOLUTION  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ**

**DATE: 01/23/2025**

**RESOLUTION# 25-71**

WHEREAS, more specifically, Allendale has reviewed the data that the DCA used to compute the Land Capacity Allocation Factor that the DCA belatedly provided on or about November 27, 2024 instead of by October 20, 2024; and

WHEREAS, the Borough 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 an 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." (emphasis added)

WHEREAS, the Borough accepted the DCA's invitation to examine the data it used to compute this allocation factor and found that the DCA had indeed been over inclusive in the land it found to be developable; and

WHEREAS, more specifically, based upon the Sniekus Report, the Borough finds that fewer acres are developable than the DCA reported in computing the Land Capacity factor; and

WHEREAS, upon correcting the data used to determine the Land Capacity Factor, the correct Round 4 prospective need number is 182 not 260; and

WHEREAS, 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 Act; and

WHEREAS, Borough's calculation of need is entitled to a "presumption of validity" because it complies with Sections 6 and 7 of the Act; and

WHEREAS, in addition to setting forth its Round 4 fair share affordable housing obligations for the reasons summarized above, substantial activity has occurred and is ongoing that warrants the reservation of certain rights to avoid any claim that it has waived them; and

**RESOLUTION  
BOROUGH OF ALLENDALE  
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**DATE: 01/23/2025**

**RESOLUTION# 25-71**

WHEREAS, for example, the New Jersey Institute of Local Government Attorneys (“NJILGA”) has expressed its support for proposed legislation (hereinafter “NJILGA Legislation”) would reduce Allendale’s Round 4 Prospective Need to 53 and would give the Borough “90 days from receipt of revised fair share obligations from the [DCA] to provide an amended Housing Element and Fair Share Plan addressing the new number); and

WHEREAS, the Borough of Allendale supports the NJILGA Legislation and would have the right to reduce its Round 4 obligation in the event that the Legislature enacts it; and

WHEREAS, similarly, a number of municipalities, led by the Borough of Montvale, have filed suit (MER-L-1778-24) (hereinafter “Montvale Litigation”) challenging the Amended FHA and the outcome of this litigation is uncertain; and

WHEREAS, the process established by the Amended FHA creates an opportunity to object by interested parties opposing the obligations to which a municipality commits, thereby creating the potential for litigation over the obligations of the municipality; and

WHEREAS the court approved a vacant land adjustment and an RDP for the Borough in Round 3; and

WHEREAS, more specifically, on June 27, 2019, Judge Padavano entered a final Judgment of Compliance and Repose in which he approved the Borough’s application for a determination that the Borough’s realistic development potential is 54; and

WHEREAS, the Borough will be entitled to an adjustment in Round 4 since it lacked sufficient land to meet its fair share quota for Round 3; and

WHEREAS, the Borough will include the basis for its vacant land adjustment in in the Housing Element and Fair Share Plan it submits by the June 30, 2025 deadline established by the Amended FHA; and

WHEREAS, the Amended FHA requires municipalities to adopt a binding resolution no later than January 31, 2025 as to its obligations.

**RESOLUTION  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ**

**DATE: 01/23/2025**

**RESOLUTION# 25-71**

WHEREAS, in light of the above, the Borough of Allendale finds that it is in its best interest to declare its obligations in accordance with this binding resolution in accordance with the Act; and

WHEREAS, in addition to the above, the Acting Administrative Director issued Directive #14-24, dated December 13, 2024, and made the directive available later in the week that followed; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking a certification of compliance with the Act shall file an action in the form of a declaratory judgment complaint within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner; and

WHEREAS, the Borough of Allendale seeks a certification of compliance with the Act and, therefore, directs its Affordable Housing Counsel to file a declaratory relief action within 48 hours of the adoption of this resolution.

NOW, THEREFORE, BE IT RESOLVED on this 23rd day of January, 2025, by the Governing Body of the Borough of Allendale, County of Bergen, State of New Jersey, as follows:

1. The preamble of this resolution is incorporated into the operative clauses of this resolution as if set forth in full.

2. For the reasons set forth in this resolution and its attachments, the Borough of Allendale commits to a Round 4 Present Need (“Rehabilitation”) Obligation of 10 and a Round 4 Prospective Need (“New Construction”) obligation of 182, as set forth in the Sniekus Report, subject to all reservations of all rights, which specifically include, without limitation, the following:

- a. The right to a vacant land adjustment, durational adjustments, and all other applicable adjustments permitted in accordance with COAH regulations;
- b. The right to comply with the NJILGA Legislation if enacted, including the right to adjust its fair share obligations;

**RESOLUTION  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ**

DATE: 01/23/2025

RESOLUTION# 25-71

- c. The right to adjust its fair share obligation in the event of any future legislation that adjusts the fair share obligations that the DCA reported on October 18, 2024;
- d. The right to adjust its fair share obligations based upon any ruling in the Montvale Litigation or other litigation; and
- e. The right to adjust its fair share obligations in the event third party challenges the obligations to which the Borough has committed and the Borough of Allendale litigates or negotiates its obligations with a third party.

3. The Borough hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint in the appropriate venue within 48 hours after adoption this resolution attaching this resolution.

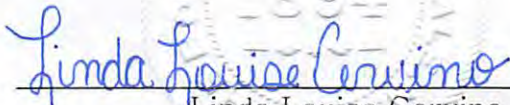
4. The Borough also hereby authorizes its Affordable Housing Counsel to file this resolution with the Program or any other such entity as may be determined to be appropriate.


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

CERTIFICATION

---

I hereby certify the above to be a true copy of a Resolution adopted by the Governing Body of the Borough of Allendale on January 23, 2025.

  
Linda Louise Cervino, RMC  
Municipal Clerk





Community Planning  
Land Development and Design  
Landscape Architecture

B U R G I S  
A S S O C I A T E S , I N C .

Principals:

*Joseph H. Burgis PP, AICP*  
*Edward Snieckus, Jr. PP, LLA, ASLA*  
*David Novak PP, AICP*

# Fourth Round Present and Prospective Need Analysis

Borough of Allendale  
Bergen County, New Jersey



# Fourth Round

## Present and Prospective Need

### Analysis

Borough of Allendale  
Bergen County, New Jersey

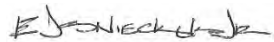
Prepared for the Borough of Allendale  
Mayor and Council

BA# 4127.03

The original document was appropriately signed and sealed on January 21, 2025, in accordance with Chapter 41 of Title 13 of the State Board of Professional Planners.



Joseph H. Burgis, AICP, PP  
Professional Planner #2450



Edward J. Snieckus Jr. PP, LLA, ASLA  
Professional Planner #5442



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# Executive Summary

The following Present and Prospective Need Analysis has been prepared for the Borough of Allendale in Bergen County, New Jersey.

By way of background, Governor Murphy signed A-40/S-50 into law on March 20, 2024 after the Senate and Assembly adopted it. This legislation (hereinafter "Amended FHA" or "Act") overhauled the Fair Housing Act (FHA) by abolishing the Council on Affordable Housing (COAH) and created a new process that involved the Department of Community Affairs (DCA) and the Administrative Office of the Courts (AOC).

The Amended FHA directed the New Jersey Department of Community Affairs ("DCA") to report the present need (also referred to as the rehab obligation) and the prospective need for Round Four based upon the standards set forth in the Act. The DCA issued its report on October 18, 2024; and, in accordance with the Act, made clear that the report was advisory only. For Allendale, the DCA Report identifies a Present Need of 159 and a Prospective Round Four Need of 260.

Since the DCA report is non-binding, each municipality has the opportunity to study and define why its obligations should be different based on the standards in the Act. However, the municipality must adopt a binding resolution by January 31, 2025, identifying the present and prospective need obligation to which it is committing.

As to the Present Need (also known as the rehab obligation), the Act allows municipalities to rely on COAH standards that the Act has not eliminated. N.J.S.A 52:27D-311 (m). Over each housing cycle, COAH permits municipalities to adjust their rehab obligation through a structural conditions survey. Accordingly, the Borough conducted a structural conditions survey pursuant to NJAC 5:93-5.2(a) to more accurately reflect those units in need of rehabilitation.

**Recommendation:** As a result of the structural conditions survey included herein, the Borough's Present Need Obligation should be adjusted from 159 to 10 units.

As to the Round Four Prospective Need of 260 units that the DCA Reported on October 18, 2024, the methodology used to determine a municipality's prospective fair share obligation requires an initial determination of the regional prospective need. The region that Allendale is in consists of all municipalities in Bergen, Passaic, Hudson and Sussex counties. To determine a municipality's share of the regional need, the Act requires a calculation of three factors: (1) the equalized nonresidential valuation factor; (2) the income capacity factor; and (3) the land capacity factor. The Act then requires these three factors to be averaged and applied to the regional need to determine the share of the regional need for each municipality that is not a Qualified Urban Aid Municipality ("QUAM"). The Act therefore imposes no prospective need obligation on QUAMs, it instead distributes the obligation to the other municipalities in the respective housing region.

The Borough does not dispute the DCA’s calculation of the Equalized Nonresidential Valuation Factor or the Income Capacity Factor. However, the Borough does dispute the calculation of the Land Capacity Factor. More specifically, the Borough accepts the DCA’s invitation to examine the Land Capacity Factor and the lands that the DCA deemed developable for purposes of calculating this factor.

**Recommendation:** For the reasons set forth herein, the DCA calculation under the Land Capacity Analysis was overinclusive. Once appropriate corrections are made to the land that is developable, the Borough’s Prospective Need Obligation should be adjusted from the 260 figure the DCA reported to 182 based upon the weighting criteria. With the findings in this report, the following summarizes the comparison of the three allocation factors as adjusted by the analysis provided herein.

Table 1: Summary of Adjusted Factors

	Equalized Nonresidential Valuation Factor	Income Capacity Factor	Land Capacity Factor
DCA Analysis	0.56%	1.05%	1.21%
Borough Analysis	0.56%	1.05%	0.36%

The basis for these conclusions are contained herein.

# Section 1: Present Need- Structural Conditions Survey

The following section reviews the Borough's Present Need as calculated by the DCA. The following is summarized:

1. The Borough finds that the methodology utilized by the DCA to calculate its Prospective Need Obligation is in accordance with the applicable regulations.
2. The Borough conducted a Structural Conditions Survey to more accurately identify its indigenous needs since the data sets excessively estimated for the actual need in the borough. This survey identified that 10 units have been identified as in need of rehabilitation in accordance with the applicable criteria as noted herein.

---

## 1.1: Present Need Background

The Amended Fair Housing Act provides that "[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing ("COAH") unless those regulations are contradicted by statute, including P.L. 2024, c.2, or binding court decisions". N.J.S.A 52:27D-311 (m).

As detailed below, COAH has adopted regulations to permit municipalities conduct a visual exterior survey to adjust their rehab obligation, which is also referred to as Present need in the Amended Fair Housing Act.

Since the Borough had a rehab obligation of 21 in Round 3, the 159 the DCA assigned to the Borough for its rehab obligation raised questions. Accordingly, in accordance with COAH regulations, the Borough conducted the windshield survey COAH regulations authorize. While many towns have reserved their right to conduct a windshield survey as part of preparing a Housing Element and Fair Share Plan for the June 30, 2025 deadline, the Borough conducted the survey up front.

If there are issues with the survey, we will address those issues in the process that lies ahead. In any event, the Borough will implement a rehabilitation program as it has in the past with Court approval. If more low and moderate income households with qualified units seek to participate in the program than our survey determines exist, the Borough will address the needs of the additional low and moderate income households.

---

## 1.2: Structural Conditions Survey

As per NJAC 5:93-5.2:

*"Each municipality shall be provided with the Council's estimate for substandard units occupied by low and moderate income households. This estimate shall be the municipality's indigenous need, unless the municipality or an objector performs the Council's Structural Conditions Survey (see Appendix C, incorporated herein by reference). Where the municipality or objector performs the Structural Conditions*

*Survey, the Council shall review the results of the data collected and shall modify the indigenous need if it determines a modification is warranted."*

A Structural Conditions Survey therefor was conducted as a first step by the Borough of Allendale Construction Official, Mr. Anthony Hackett. The Construction Official was guided by the available criteria established in N.J.A.C. 5:93-5.2 and N.J.A.C. 5:97-6.2 which reference "Appendix C" of the rules. Appendix C of N.J.A.C. 5:93 outlines the criteria and entities licensed to perform building and/or housing inspections.

In accordance with Appendix C, the total number of units found to be substandard was then factored for the estimated number of substandard units occupied by low- and moderate-income households census information and overcrowded that is available from the Public Use Micro-Data Sample (PUMS).

In calculating Round 4 Present Need obligations, the DCA did not rely on PUMS data for determining the percent of substandard units occupied by low and moderate income households in each municipality. Instead, the DCA relied on HUD's Comprehensive Housing Affordability Strategy (CHAS) dataset for this estimate. The DCA's Fourth Round Methodology Report provides the reasoning behind this as follows:

*"Previous approaches have calculated county-level LMI deficient housing shares from the American Community Survey Public Use Microdata Sample (PUMS) and used them to estimate the LMI-occupied portion of each municipality's deficient housing. However, this approach essentially assumes that the LMI share of deficient housing is uniform in a county, which is not the case. For example, data from HUD's Comprehensive Housing Affordability Strategy (CHAS) dataset show that for 2017-21, the LMI share of housing lacking complete plumbing or kitchen facilities in Atlantic County was 69.1 percent. However, in Brigantine, it was 100 percent. Using the county LMI deficient share for Brigantine would result in underestimating city present need, undercounting the number of deficient housing units actually occupied by LMI households.*

*Therefore, the analysis utilizes data from HUD's Comprehensive Housing Affordability Strategy (CHAS) dataset, which has municipality-level data on the number and percentage of LMI households from a special tabulation of Census Bureau American Community Survey (ACS) data. The latest CHAS data release at the time of calculation corresponds to the 2017-2021 5 Year Estimates. To ensure data year and source consistency, the LMI deficient housing calculation relies on 2017-2021 data."*

Therefore, in order to conduct the second step in our Structural Conditions Survey (estimating the number of substandard units occupied by low/mod income households), we relied on the CHAS data and DCA's methodology.

The structural conditions survey performed by the Construction Official upon review of the entire Borough identified there are a total of 10 units that reflect a need for rehabilitation. To apply the second step, the aforementioned CHAS data for Allendale estimated the number of substandard units occupied by low- and moderate-income

households was 100 percent of the identified substandard units calculated. Thus all 10 units from the survey represent the Borough's present need and may potentially need assistance through the affordable housing present need mechanisms.

This result is pending further guidance on other methods or means of adjusting the need based upon actual conditions as determined by the applicable state regulatory agency. The survey demonstrates that the data DCA utilized substantially overestimated the Present Need obligation. The Borough is committed to addressing any issues with its compliance with the COAH standards to adjust the rehab component fully implementing a rehab program and rehabbing more units than the survey substantiates if more than 10 low and moderate income households with units that qualify apply to participate in the program.

The housing survey form is provided in Appendix B of this document.

# Section 2: Equalized Nonresidential Valuation Factor

The following section reviews the equalized nonresidential valuation factor calculated by the DCA. The following is summarized:

1. The Borough finds that the methodology utilized by the DCA to calculate its nonresidential valuation factor is acceptable.
2. The Borough's change in equalized nonresidential valuation between 1999 and 2023 is \$180,676,233.
3. This results in the Borough's calculated share of the region's equalized nonresidential valuation of 0.56%.

---

## 2.1: Basis of Calculation

As per the adopted legislation, a municipality's equalized nonresidential valuation factor shall be determined as follows:

*"To determine this factor, 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 such, 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 the nonresidential valuations to determine the municipality's share of the regional change as the equalized nonresidential valuation factor."*

---

## 2.2: Analysis of Calculation

The calculation conducted by the DCA determined that the Borough has a 0.56% share of the region's equalized nonresidential valuation.

Table 2: DCA Equalized Nonresidential Valuation Calculation Summary

Year	Non-equalized Nonresidential Valuation	Equalization Ratio	Equalized Nonresidential Valuation
1999	\$100,574,900	0.8197	\$122,697,206
2023	\$279,376,600	0.9209	\$303,373,439
<i>Difference</i>			<i>\$180,676,233</i>

Source: DCA Fair Share Housing Obligations for 2025-2035 (Fourth Round) Workbook

The Borough has reviewed the methodology and data utilized by the DCA for this calculation. The methodology employed by the DCA is appropriate, the Borough finds that the equalization ratios employed by the DCA are accurate.

# Section 3: Income Capacity Factor

The following section reviews the income capacity factor calculated by the DCA. It finds that the data and methodology utilized by the DCA relating to the Borough's income capacity factor are both acceptable.

## 3.1: Basis of Calculation

As per the adopted legislation, a municipality's income capacity factor shall be determined by calculating the average of the following measures:

*"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*

*"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."*

## 3.2: Analysis of Calculation

The calculation conducted by the DCA determined that the Borough has a 1.05% share of the region's income capacity factor. Table 3 below summarizes the methodology utilized by the DCA to determine this share.

The Borough has reviewed the data and the methodology utilized by the DCA for this calculation and finds both to be acceptable.

Table 3: Income Capacity Factor

Number of Households	Median household income in the past 12 months (in 2022 inflation-adjusted dollars) *	\$100 Below Regional Median HH Income Floor	Diff. from Median Household Income Floor with Household Weight	HH Weighted Income Difference % of Region Total	Diff from Median Household Income Floor	Income Difference % of Region Total	Income Capacity Factor
2,271	\$163,875	\$51,992	254,086,293	0.8%	\$111,883	1.3%	1.05%

## Section 4: Land Capacity Factor

The DCA issued the data that was the basis for the land capacity factor on November 27<sup>th</sup>, over a month after the DCA deadline to issue its non-binding numbers under the Amended FHA.

The link to the DCA GIS data, and the description section (<https://njdca.maps.arcgis.com/home/item.html?id=12acdfe0a5104f8f8a2f604e96063e74>) includes the following language:

"The land areas identified in this dataset are based on an 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." (underlined for emphasis)

The areas identified as developable in the DCA's calculation of the Land Capacity factor is indeed overinclusive. Accordingly, we believe that the land capacity allocation factor should be adjusted from 23.8 acres to 7.063 acres . When this correction is made, Allendale's Round Four prospective need number should be 182 instead of the 260 unit figure identified by DCA.

While the basis for removing land treated as developable in the DCA's calculation is set forth below, it is important to note that the analysis to correct the land allocation factor is different than the analysis to use the determine a municipality's entitlement to vacant land adjustment. While the analysis to correct the Land Capacity factor focuses on developable land, the analysis to support a vacant land adjustment focuses on land suitable for inclusionary development. Therefore, just because a site was not removed for purposes of calculating the land capacity factor has no bearing on whether it should be removed to calculate entitlement to a vacant land adjustment.

In this regard, the Borough secured court approval of a vacant land adjustment in Round 3 and will necessarily seek an adjustment in Round Four in conjunction with its preparation of a Housing Element and Fair Share Plan. Nothing herein should be construed as a waiver of those rights that are explicitly reserved.

An analysis of the lands identified by the DCA as being "developable" revealed several inaccuracies. In summary, these inaccuracies generally included lands which were: artifacts of error as described by the DCA; located on developed properties or those inaccessible due to environmental constraints; located on open space or common element properties; located on properties presently under construction; and located on properties with active site plan or approvals.

Correcting these inaccuracies adjusts the Borough's weighted land area from 23.8 acres to 7.063 acres. This adjustment to the Borough's weighted land area also adjusts the region's weighted land area from 1980 acres to 1964 acres. This results in an adjustment of the Borough's calculated share of the region's land capacity from 1.21% to 0.36%.

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#### 4.1: Basis of Calculation

As per the adopted legislation, a municipality's 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. Developable land that may accommodate development shall be weighted based on the planning area type in which such land is located."*

The legislation identifies the primary data sources and weighing factors to utilize in calculating a municipality's land capacity factor. However, unlike the equalized nonresidential valuation factor and the income capacity factor, the legislation did not establish a delineated process to combine the aforementioned data sources into one comprehensive and coherent formula.

The DCA subsequently released a workbook entitled "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background" (herein referred to as the "DCA Workbook" or the "Workbook") which established that department's interpretation on how to calculate the land capacity factor. In summary, that workbook identified the following steps:

1. First, the DCA divided the weighing regions established by the legislation by municipality.
2. Next, land use/land cover areas were used to identify vacant, developable lands. The workbook identifies the codes and descriptions of the land use/land cover data used in this process. In short, they include: cropland and pastureland; orchards/vineyards/nurseries/horticultural areas; deciduous forest areas; coniferous forest areas; plantations; mixed forest areas; old field areas; phragmites dominate old field areas; deciduous brush/shrubland; coniferous brush/shrubland; mixed deciduous/coniferous brush/shrubland; severe burned upland vegetation; and undifferentiated barren lands.

3. These initial vacant, developable lands were then refined to remove rights-of-way as well as developed properties. For the latter, the DCA utilized MOD-IV tax data and selected underlying tax parcels with property class codes for residential, commercial, industrial, apartment, railroad, and school.
4. Construction permit data was then analyzed to capture more recent development activities that may not have otherwise been reflected by the land use/land cover data or MOD-IV tax data.
5. Other limiting factors were utilized to remove initial vacant, developable lands. These include open space, preserved farmland, category 1 waterways and wetlands (and associated buffers based on special area restrictions), steep slopes exceeding 15 percent, and open waters.
6. Due to limitations resulting from inconsistencies between data sources, the resulting DCA mapping included instances of small land areas caused by an incongruous alignment of geospatial layers. To eliminate these “slivers” of leftover land, DCA eliminated any segment with an area of less than 2,500 square feet. This presumed that a sliver with a minimum dimension of 25 by 100 feet could be a developable property.
7. Finally, the resulting land area for each municipality was summed with the resulting land areas for all other municipalities within each housing region to then determine the municipal percentage of land capacity for the housing region.

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## 4.2: Analysis of Calculation

The calculation conducted by the DCA determined that the Borough has 23.870 acres of developable land which accounts for a 1.21% share of the region's land capacity factor. Overall, the Borough finds the general methodology utilized by the DCA to calculate its land capacity factor acceptable. However, an analysis of the DCA's resultant mapping discovered the following:

1. Several of the lands identified as "developable" by the DCA represent slivers which "are considered artifacts of error that are common when overlaying polygons and vectors from non-coincident data sources." The DCA initially tried to eliminate these slivers by deleting any feature parts with an area of less than 2,500 square feet.
2. Other lands identified as "developable" by the DCA are located on properties with development. To eliminate "developable" lands on developable properties, the DCA had removed any lands where the underlying tax parcels had property class codes for residential, commercial, industrial, apartments, railroad, and school. However, the property classifications identified by the DCA did not account for houses of worship, properties developed with nonprofit facilities, and residential dwellings with associated farmland.
3. Several lands identified as "developable" by the DCA were in fact located on open space, common elements for homeowner's associations, or properties containing infrastructure (e.g. detention basins, utility improvements, rights-of-way, etc.).
4. Some developable areas did not account for areas restricted by regulated 100-year floodway areas of streams and other mapped watercourses.
5. There were several instances of lands identified as "developable" by the DCA being located on properties which are presently under construction. This is likely due to a lag in construction permit reporting.
6. Finally, lands identified as "developable" by the DCA are located on properties with active site plan or general development plan (GDP) approvals which are no longer available for development.

These discrepancies are summarized in Table 4 utilizing the Land Capacity Analysis and are detailed in Appendix A of this analysis. Removing these lands would adjust the Borough's weighted land area from 23.870 acres to 7.063 acres. This results in an adjustment of the Borough's calculated share of the region's land capacity from 1.21% to 0.36%.

Irrespective of the land capacity factor analysis established herein, the Borough reserves the right to conduct a vacant land adjustment (VLA) to determine its realistic development potential (RDP) at a later date.

Table 4: Summary of Land Capacity Factor Analysis

ID #	Shapefile Object ID*	Block	Lot	Initial Weighted Area	Status	Weighted Area Recalculated
1	28149	2004	10	0.251	Not Develop	0.000
2	28150	2001	1	0.096	Developable	0.096
3	28151	2003	19	1.212	Not Developable	0.000
4	28152	2004	34	0.183	Developable	0.183
5	28153	2101	4	2.383	Not Developable	0.000
6	28154	2101	4	0.196	Not Developable	0.000
7	28155	2101	4	0.358	Not Developable	0.000
8	28156	2008	11	0.095	Developable	0.095
9	28157	1503.01	14	0.805	Not Developable	0.000
10	28158	2103	4	2.555	Not Developable	0.000
11	28159	1406	19	0.186	Not Developable	0.000
12	28160	2103	32	0.690	Not Developable	0.000
13	28161	2103	30	0.378	Not Developable	0.000
14	28162	1604	15	3.928	Developable	3.928
15	28163	915	1	0.643	Not Developable	0.000
16	28164	912	3	1.026	Not Developable	0.000
17	28165	201	9	0.195	Not Developable	0.000
18	28166	301	28	0.262	Not Developable	0.000
19	28167	301	31	0.338	Not Developable	0.000
20	28168	303	14	0.799	Not Developable	0.000
21	28169	602	1	0.061	Not Developable	0.000
22	28170	301	33	0.313	Not Developable	0.000
23	28171	406	21.01	0.077	Not Developable	0.000
24	28172	203	1, 1.01	4.363	Not Developable	0.000
25	28172	303	1	2.600	Developable	2.600
26	28173	406	21.01	0.377	Constrained-reduced area	0.060
27	28174	411	21.01	0.101	Developable	0.101
					<b>TOTAL</b>	<b>7.063</b>

\* Object ID and area computations identified were obtained from the NJDCA published Vacant and Developable Land Analysis.

## Appendix A: Land Capacity Factor Detailed Review

The following illustrations show in more detail the specific mapping of all land capacity areas as identified in the DCA analysis provided through the Land Capacity Analysis for P.L. 2024, c.2. They are obtained from the web based ARCGIS online mapping utilizing feature layers (hosted) by NJDCA and incorporating other layer features available through NJDEP and ARCGIS Online services.

**ID #1**



Map 1: ID #1 (scale: 1" = 400')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
1	0.251	Not Developable	0.00
<b>Analysis</b>	ID #1 is undevelopable: Isolated lot no frontage and isolated by Saddle River tributary.		

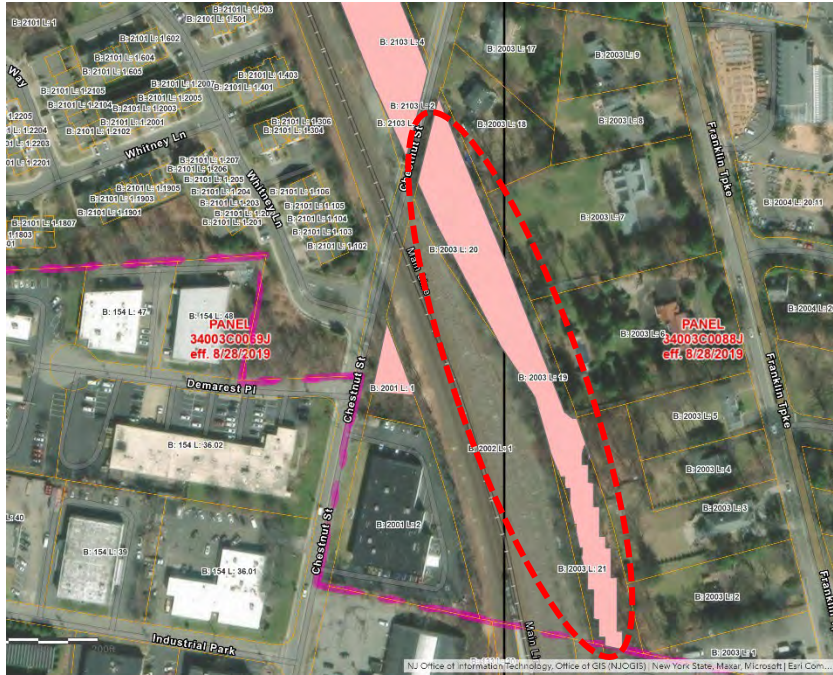
**ID #2**



Map 2: ID #2 (scale: 1" = 400')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
2	0.096	Developable	0.096
<b>Analysis</b>	ID #2 is this area is developable in accordance with the relevant land capacity criteria.		

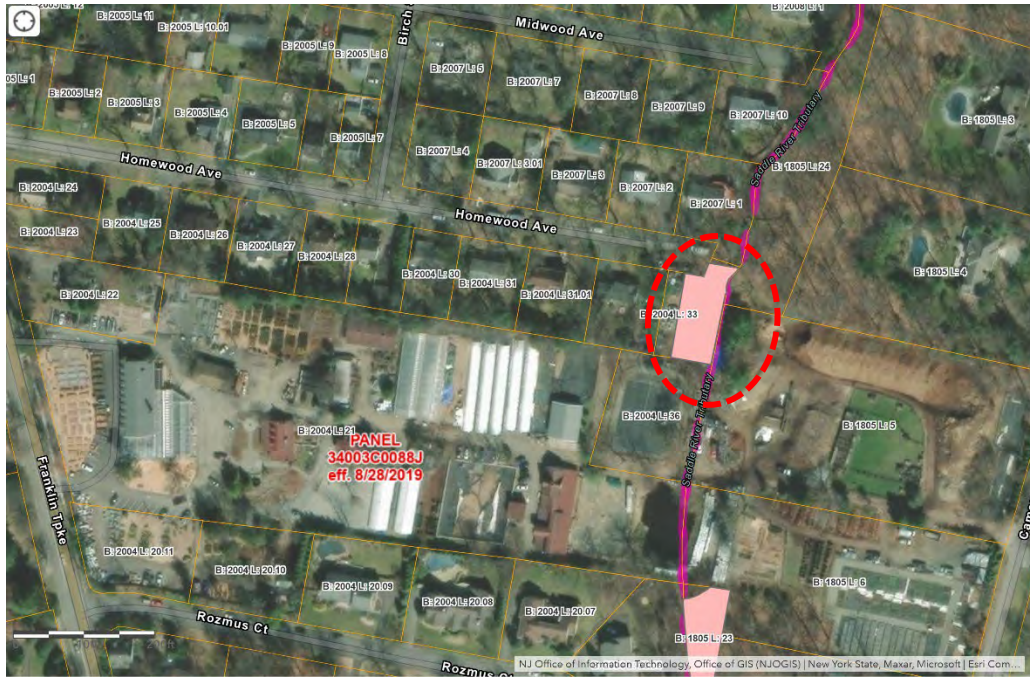
**ID #3**



Map 3: ID #3 (scale: 1" = 400')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
3	1.212	Not Developable	0.000
<b>Analysis</b>			
ID #3 is undevelopable Rockland Electric transmission line ROW.			

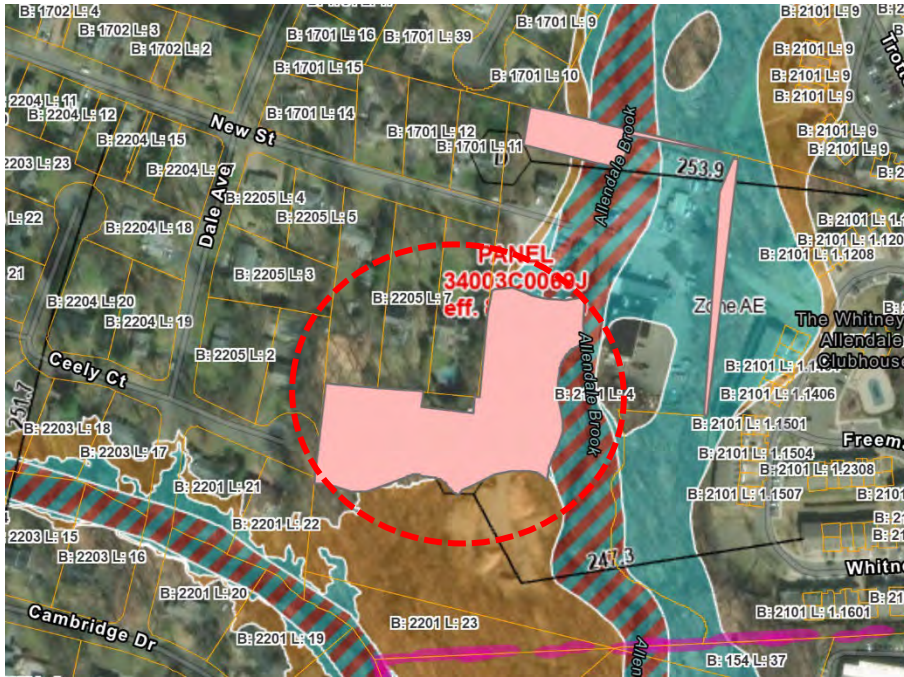
**ID #4**



Map 4: ID #4 (scale: 1" = 400')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
4	0.183	Developable	0.183
<b>Analysis</b>	ID #4 is developable area on Block 2004 Lot 34 in accordance with the relevant land capacity criteria.		

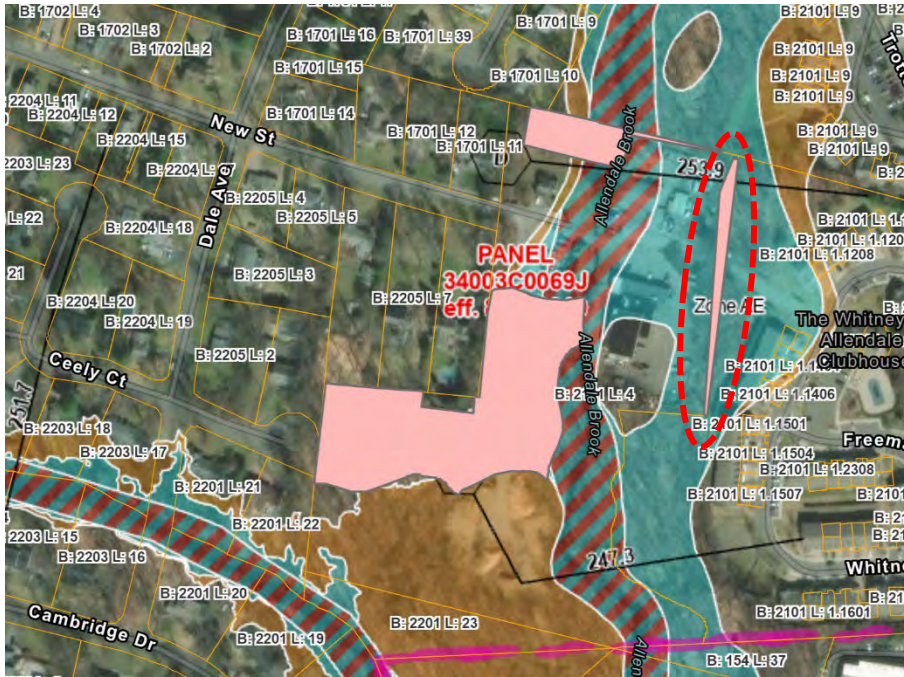
**ID #5**



Map 5: ID #5 (scale: 1" = 400')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
5	2.383	Not Developable	0.000
<b>Analysis</b>			
	ID #5 is undevelopable- owned by water utility and portion in floodway.		

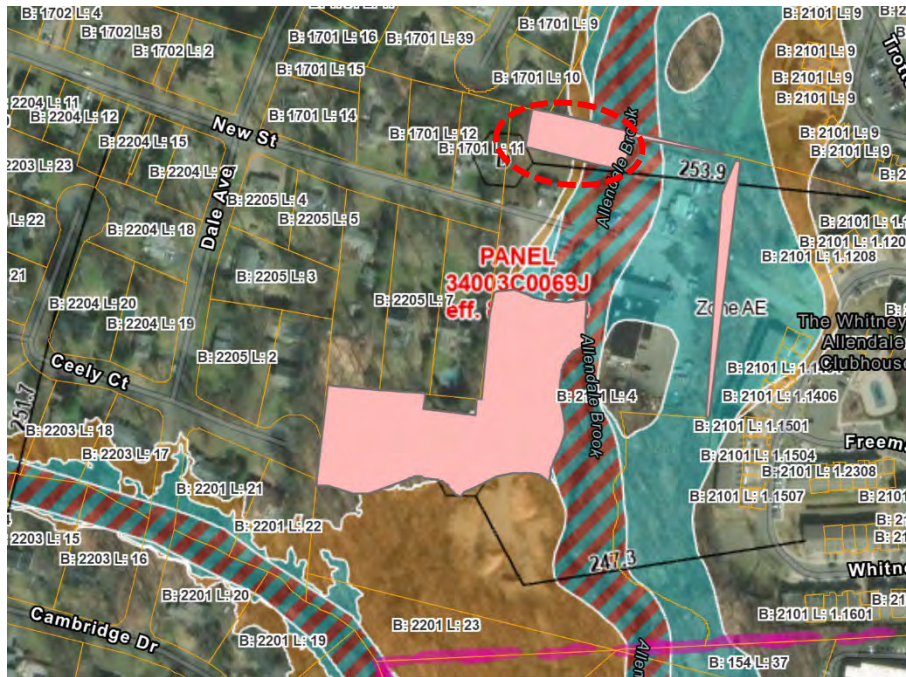
**ID #6**



Map 6: ID #6 (scale: 1" = 400')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
6	0.195	Not Developable	0.000
Analysis	ID #6 is undevelopable- water utility property and small isolated area no frontage.		

**ID #7**



Map 7: ID #7 and #8 (scale: 1" = 400')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
7	0.358	Not Developable	0.000
<b>Analysis</b>	ID #7 is undevelopable- water utility owned property and small isolated area no frontage, portion in floodway.		

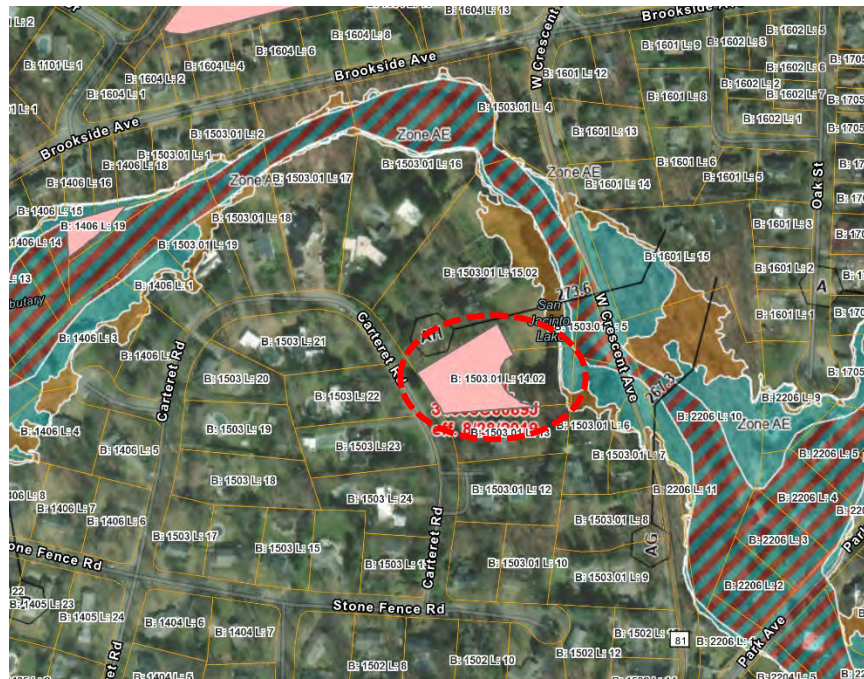
**ID #8**



Map 8: ID #9

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
8	0.095	Developable	0.095
<b>Analysis</b>	ID #8 is located on Block 2008 Lot 11. This area is vacant and developable in accordance with the relevant land capacity criteria.		

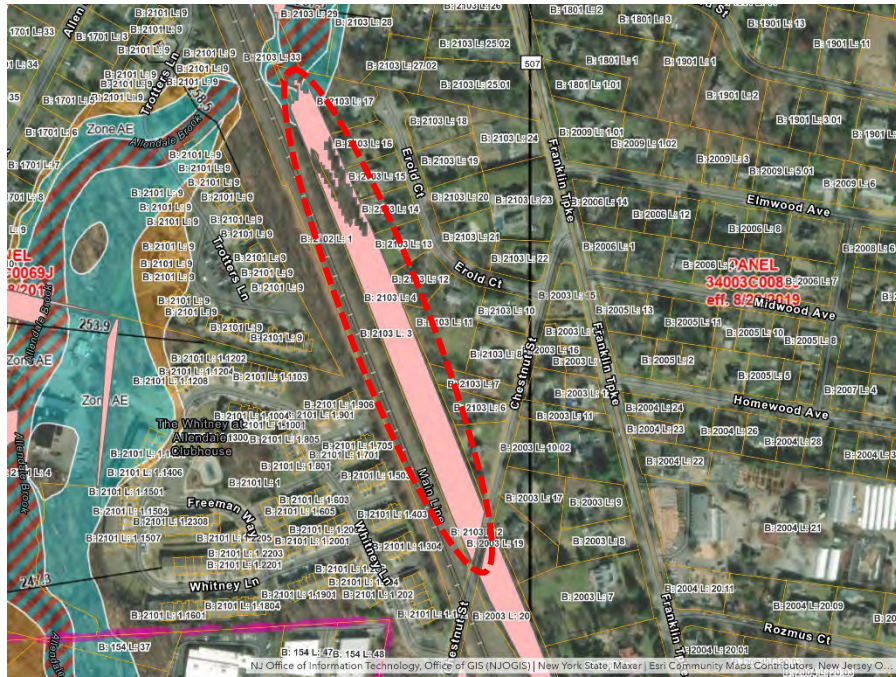
**ID #9**



Map 9: ID #10 (scale: 1" = 400')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
9	0.805	Not Developable	0.000
<b>Analysis</b>	ID #9 is located on Block 1503 Lot 14. This property is currently under construction. Therefore, this land is not available as a developable area.		

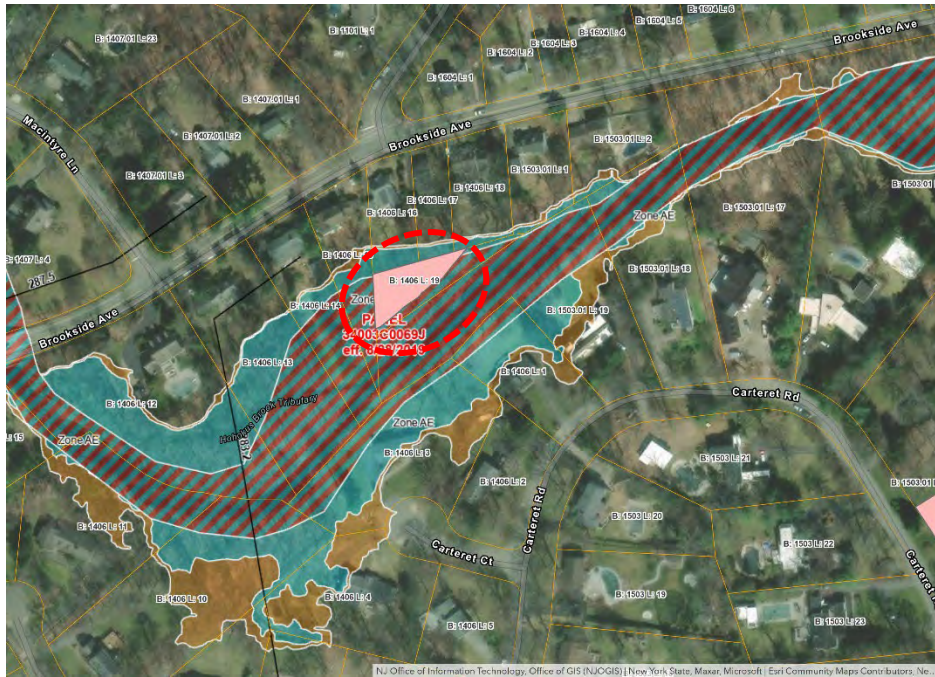
ID #10



Map 10: ID #11 (scale: 1" = 400')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
10	2.555	Not Developable	0.00
<b>Analysis</b>			
	ID #10 is undevelopable Rockland Electric transmission line ROW.		

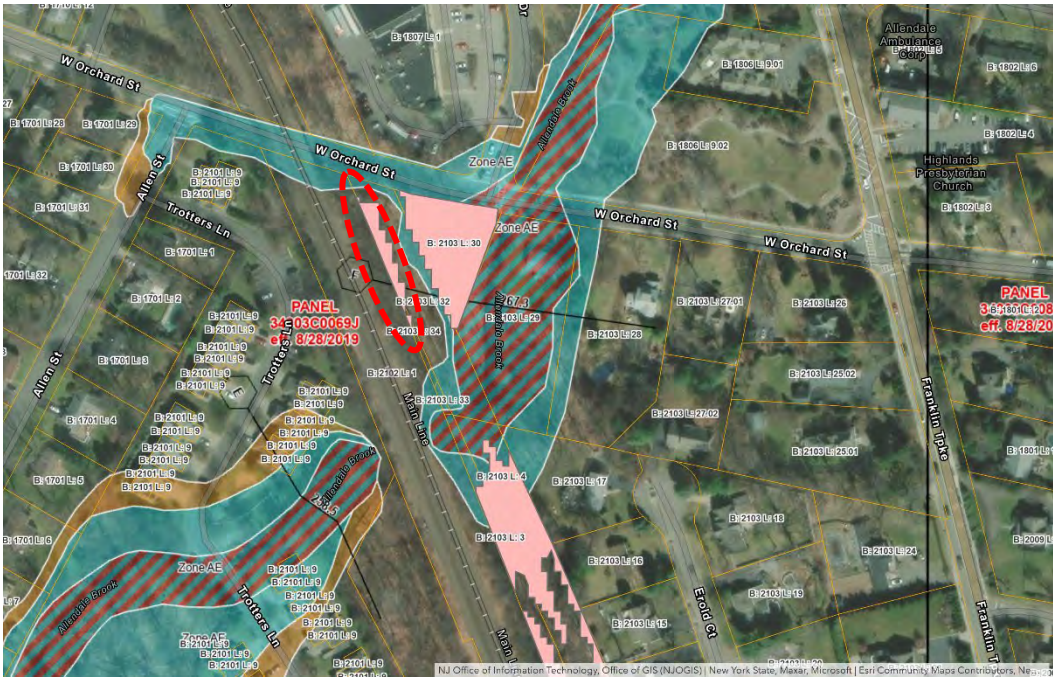
**ID #11**



Map 11: ID #12 (scale: 1" = 400')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
11	0.186	Not Developable	0.000
Analysis	ID #11 is undevelopable- isolated no frontage and mostly in floodway.		

**ID #12**



Map 12: ID #13 (scale: 1" = 400')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
12	0.069	Not Developable	0.000
<b>Analysis</b>			
	ID #12 is undevelopable- Rockland Electric transmission Line ROW.		

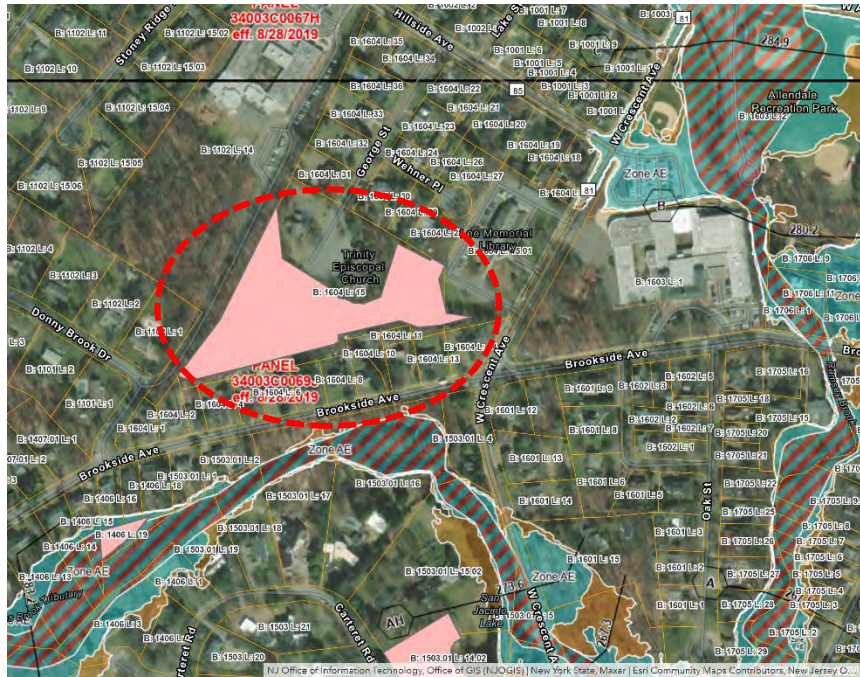
**ID #13**



Map 13: ID #4 (scale: 1" = 400')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
13	0.378	Not Developable	0.000
Analysis	ID #13 is water utility property and portion in floodway.		

**ID #14**

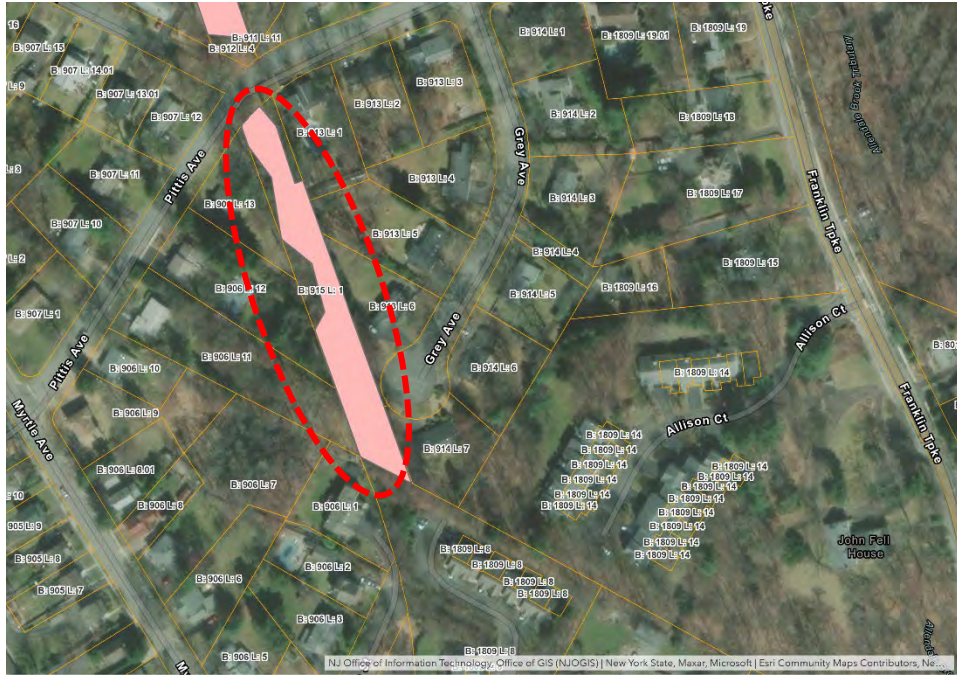


Map 14: ID #15, #6, and #17 (scale: 1" = 600')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
14	3.928	Developable	3.928

**Analysis** The ID #14 is a developable portion of existing religious institution under the relevant land capacity criteria.

**ID #15**



Map 15: ID #18 (scale: 1" = 400')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
15	0.643	Not Developable	0.000
<b>Analysis</b>			
	ID #15 is undevelopable Rockland Electric transmission line ROW.		

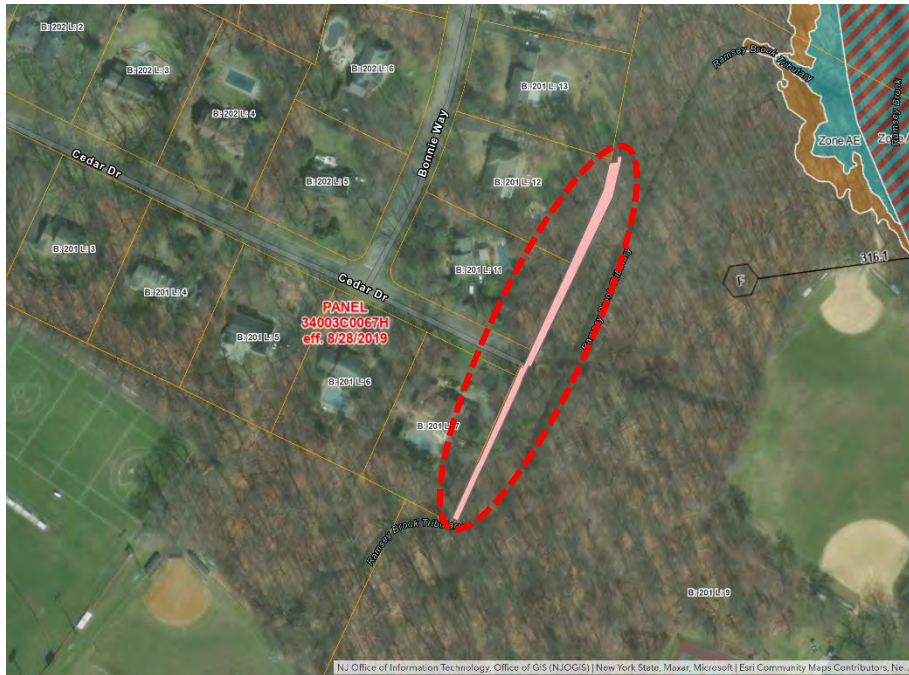
**ID #16**



Map 16: ID #16 (scale: 1" = 2,400')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
16	1.026	Not Developable	0.000
<b>Analysis</b>	The ID #16 is undevelopable Rockland Electric transmission line ROW.		

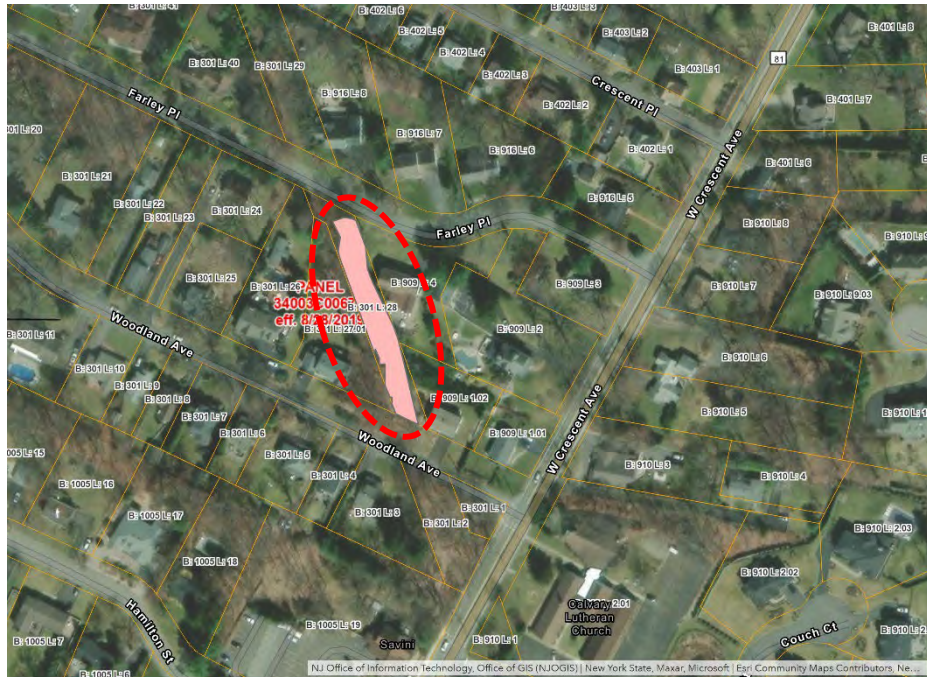
**ID #17**



Map 17: ID #20 (scale: 1" = 500')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
17	0.195	Not Developable	0.000
<b>Analysis</b>	ID #17 is undevelopable- preserved on ROSI list -Crestwood Park.		

**ID #18**



Map 18: ID #18

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
18	0.262	Not Developable	0.000
Analysis	ID #18 is undevelopable Rockland Electric transmission line ROW.		

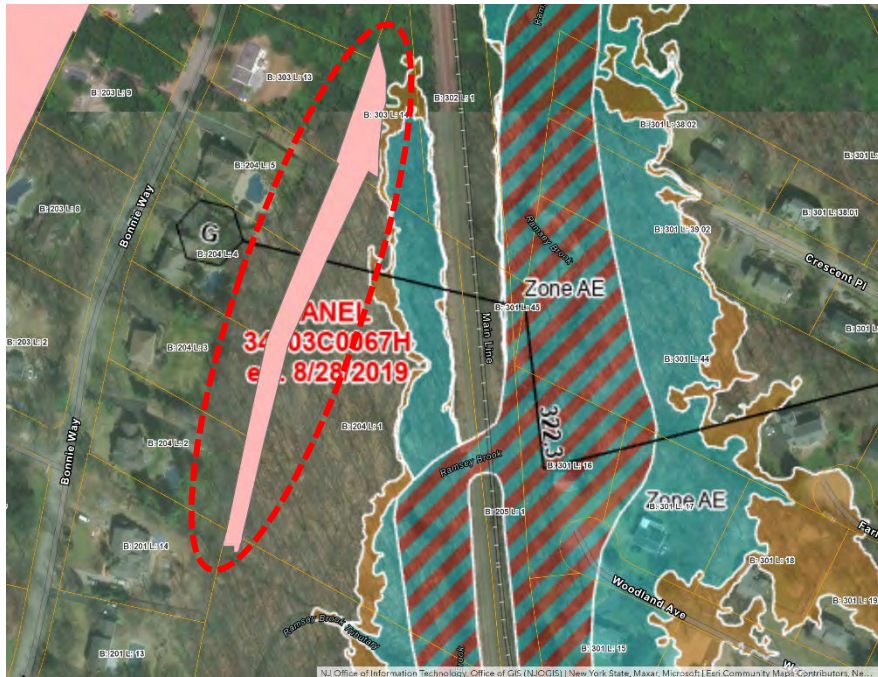
**ID #19**



Map 19: ID #19 (scale: 1" = 400')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
19	0.338	Not Developable	0.000
<b>Analysis</b>	ID #19 is undevelopable Rockland Electric transmission line ROW.		

**ID #20**



Map 20: ID #20

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
20	0.799	Not Developable	0.000
<b>Analysis</b>	ID #20 is undevelopable- open space on ROSI space.		

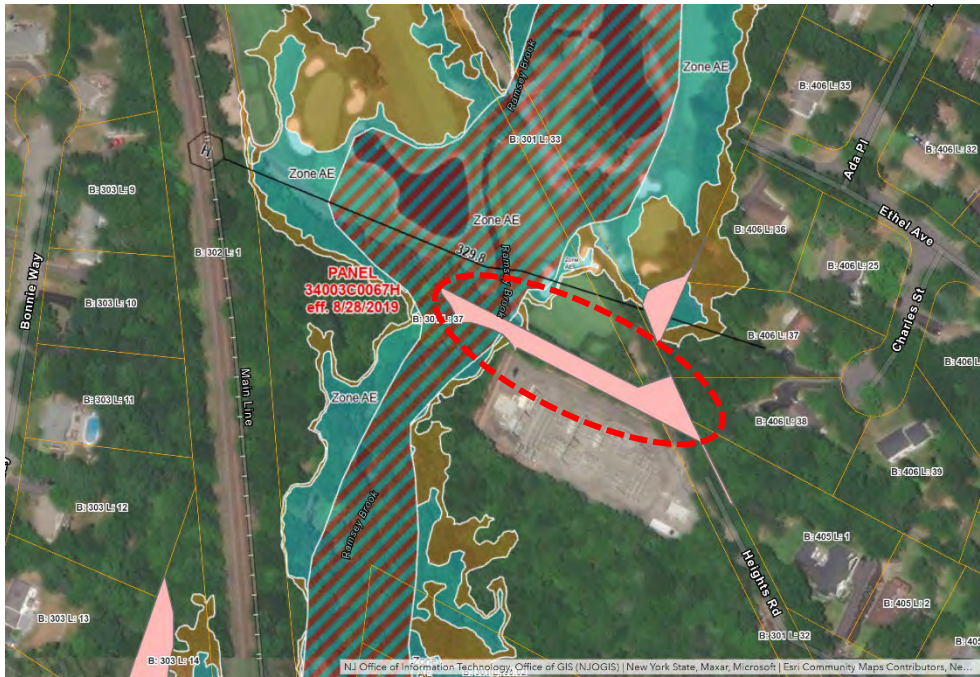
ID #21



Map 21: ID #21

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
21	0.061	Not developable	0.000
Analysis	ID #21 is undevelopable a small portion of fully developed gas station lot fronting Route 17.		

**ID #22**



Map 22: ID #22

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
22	0.313	Not Developable	0.000
<b>Analysis</b>	ID #22 is undevelopable on a portion Rockland Electric transmission line ROW and extends into a narrow lot that is also impacted by floodway.		

**ID #23**



Map 23: ID #23 (scale: 1" = 400')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
23	0.077	Not Developable	0.000
<b>Analysis</b>	ID #23 is located on Block 406 Lot 21.018. This property is small, isolated portion of larger lot significantly impacted by environmental restrictions.		

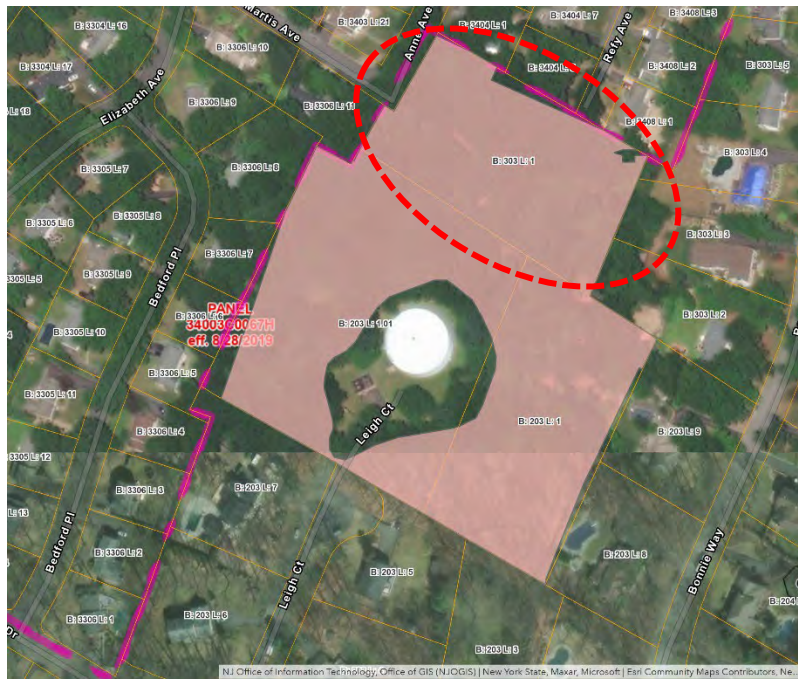
**ID #24**



Map 24: ID #24

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
24	4.363	Not Developable	0.000
<b>Analysis</b>	ID #24 is located on Block 203 Lots 1 and 1.01. This property is part of a water utility company, water tank and related infrastructure.		

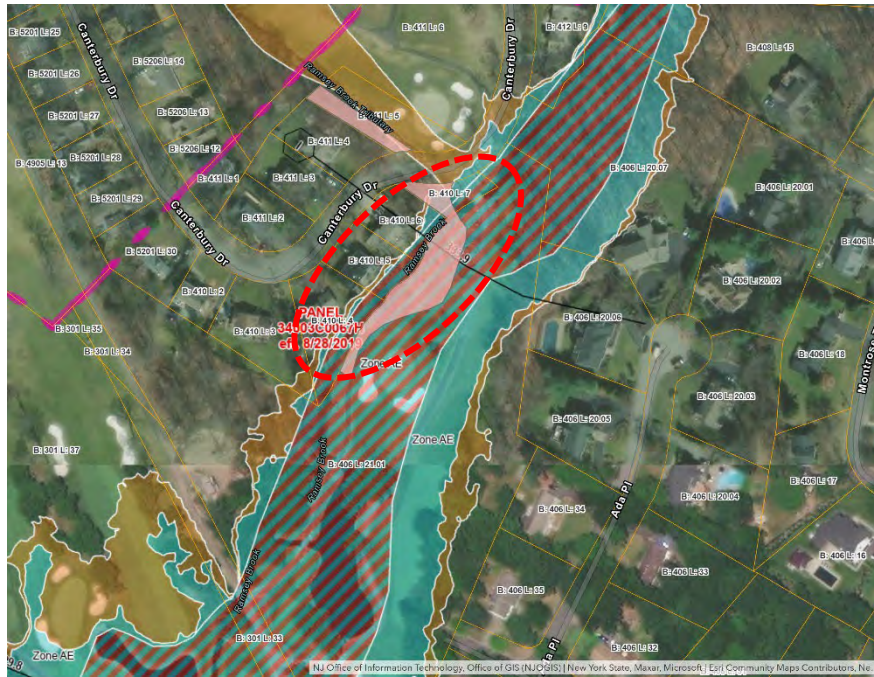
**ID #25**



Map 25: ID #29, #31, #32, #36, #38 (scale: 1" = 400')

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
25	2.600	Developable	2.600
<b>Analysis</b>	ID #25 is located on Block 303 Lot 1 which is owned by the Borough at the terminus of Refy Avenue and developable under the relevant land capacity criteria.		

**ID #26**



Map 26: ID #26

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
26	0.377	Constrained	0.060
<b>Analysis</b>	The ID #26 is largely limited by floodway although a small area is developable as identified under the relevant land capacity criteria.		

**ID #27**



Map 27: ID #27

ID #	Weighted Acres	Status	Weighted Acres - Recalculated
27	0.101	Developable	0.101
<b>Analysis</b>	ID #27 is located on Block 411 Lot 21.01. This property is part of a lot on the Ramsey Country Club property and is considered developable under the relevant land capacity criteria.		

# Appendix B: Structural Conditions Survey

The following is the structural conditions survey performed by the Allendale Construction Official, Mr. Anthony Hackett.

EXTERIOR HOUSING SURVEY

Municipality: Borough of Allendale

County: Bergen

Date of Survey: 12/26/24 - 1/10/25

Performed By: Anthony Hackett

Title: Construction Official

Areas of municipality surveyed:

All, except Areas Listed Below.

Areas of municipality not surveyed:

- 1) Pearl Ct, Commerce Dr., Bordline Rd.
- 2) Weimer Ct
- 3) Couch Ct

Reason(s) for not surveying these areas:

- 1) All Commercial Buildings
- 2) Subdivision Built 2018 - 2020
- 3) Subdivision Built 2018 - 2020

Based upon my experience in the Borough of Allendale, I am thoroughly familiar with the housing stock in the Borough and undertook a thorough investigation of the existing housing stock using the forms prepared by COAH utilizing the available criteria established in N.J.A.C. 5:93-5.2 and N.J.A.C. 5:97-6.2 which reference "Appendix C" of the rules.

Signature: 

Title: Construction official

Served since: 2018

EXTERIOR HOUSING SURVEY

MUNICIPALITY Allendale COUNTY Bergen DATE 12/26/24 - 1/3/25

Street Address	Block/Lot	Number of Dwelling Units	Tenure of Units i.e. owner occupied/ rental/ mixed occupancy	Year Built	MAJOR SYSTEMS				MINOR SYSTEMS				Structure in Need of Repair (Mark "Yes" or "No")	If Yes, Provide Details	
					One major system is required to indicate that the structure is in need of repair				Two minor systems are required to indicate that the structure is in need of repair						
					Foundation	Siding and Walls	Windows and Doors	Roof and Chimney	Eaves/Soffits/Gutters/Leader	Rails/Stairs/Steps/Porch	Fire Escape				
330 Brookside		1				old windows				Gutters MISSING				NO	
90 Edge wood		1				old windows								NO	
46 Oakwood		1				peeling paint	MISSING SHINGLES			Soffits Family, steps				YES	Needs Roof Repairs
170 Mallinson		1				old windows								YES	Needs Roof Repairs
42 Mallinson		1												YES	Needs Roof Repairs
274 W Allendale		1				Siding Family				All Family	SPAIRS Family			YES	House Needs A Lot of Repairs in Poor Condition
150 W Orchard		1				Siding Family								YES	Needs Roof Repair
39 Elmwood		1				MISSING PLASTER	old windows			FACIA MISSING	FRONT STEPS			YES	Needs Front Steps Refinished + MISSING Siding Refinished
11 Albert		1				Siding Family				Leaking Gutter				YES	Needs Gutter Siding Refinished Repair / Paint Siding Refinish
57 Meeker		1				Plaster Family								YES	Plaster Family? Needs

I verify that I have conducted this exterior housing survey according to COAH criteria

Signature: Anthony Hockett

Print Name and Title: Anthony Hockett 11/0/25

**Appendix**

**3. Superior Court Decision and Order Fixing Municipal Obligations**

**The Hon. Lina P. Corriston, J.S.C.**  
Superior Court of New Jersey  
Bergen County Justice Center  
10 Main Street  
Hackensack, New Jersey 07601

**PREPARED BY THE COURT:**

**IN THE MATTER OF THE  
DECLARATORY JUDGMENT  
ACTION OF THE BOROUGH  
OF ALLENDALE, BERGEN  
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  
BERGEN COUNTY  
DOCKET NO. BER-L-594-25

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 24, 2025 (“DJ Complaint”) by the Petitioner, **BOROUGH OF ALLENDALE** (“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 25-71 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 159 affordable housing units, a “prospective need” obligation of 260 affordable housing units, which calculations have been deemed “presumptively valid” for purposes of the FHA - and based on the Municipality planners’ recommendation for 10 affordable housing units for “present need” and 182 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 Brogan, P.J.Cv.(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 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 31, 2025, a settlement conference was 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 conference, with the guidance and assistance of the Program Member and the Special Adjudicator;

**AND IT APPEARING** that, as a result of the settlement conference conducted, the Municipality and FSHC reached a resolution (“Settlement”); 2025; the Program consequently directed the parties to circulate a settlement agreement that was uploaded to eCourts on April 21, 2025; and the Program further directed that the governing body of the Municipality adopt a resolution to accept and confirm the Settlement, which resolution shall also be uploaded to eCourts;

**AND THE COURT**, having received the Program Member’s report dated April 7, 2025, since posted to the eCourts jacket for this matter at Trans. ID: LCV20251062919, 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 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 (ii) 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 5th day of **MAY, 2025 ADJUDGED AND ORDERED**, that the Program Member's Report and Recommendations for approval of the Settlement, be, and the same hereby **ACCEPTED** and **ADOPTED** in their entirety; and to that end, more specifically, it is further

**ORDERED**, as follows:

1. That any dispute over the "present need" obligation of the Municipality, will be resolved at the compliance stage of the process.

2. That the "prospective need" obligation of the Municipality, be, and hereby is fixed as two hundred (200) 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:



**HON. LINA P. CORRISTON, J.S.C.**

*Designated Mt. Laurel Judge – Bergen 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 the Mediation Agreement entered into by the parties and uploaded to eCourts on April 21, 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**

### **4. Structural Conditions Survey and Calculation of Adjusted Present Need**

# Appendix B: Structural Conditions Survey

The following is the structural conditions survey performed by the Allendale Construction Official, Mr. Anthony Hackett.

EXTERIOR HOUSING SURVEY

Municipality: Borough of Allendale

County: Bergen

Date of Survey: 12/26/24 - 1/10/25

Performed By: Anthony Hackett

Title: Construction Official

Areas of municipality surveyed:

All, except Areas Listed Below.


Areas of municipality not surveyed:

- 1) Pearl Ct, Commerce Dr., Bordline Rd.
- 2) Weimer Ct
- 3) Couch Ct

Reason(s) for not surveying these areas:

- 1) All Commercial Buildings
- 2) Subdivision Built 2018 - 2020
- 3) Subdivision Built 2018 - 2020

Based upon my experience in the Borough of Allendale, I am thoroughly familiar with the housing stock in the Borough and undertook a thorough investigation of the existing housing stock using the forms prepared by COAH utilizing the available criteria established in N.J.A.C. 5:93-5.2 and N.J.A.C. 5:97-6.2 which reference "Appendix C" of the rules.

Signature: 

Title: Construction official

Served since: 2018

EXTERIOR HOUSING SURVEY

MUNICIPALITY Allendale COUNTY Bergen DATE 12/26/24 - 1/3/25

Street Address	Block/Lot	Number of Dwelling Units	Tenure of Units i.e. owner occupied/ rental/ mixed occupancy	Year Built	MAJOR SYSTEMS				MINOR SYSTEMS				Structure in Need of Repair (Mark "Yes" or "No")	If Yes, Provide Details	
					One major system is required to indicate that the structure is in need of repair				Two minor systems are required to indicate that the structure is in need of repair						
					Foundation	Siding and Walls	Windows and Doors	Roof and Chimney	Eaves/Soffits/Gutters/Leader	Rails/Stairs/Steps/Porch	Fire Escape				
330 Brookside		1					old windows			Gutters MISSING				NO	
90 Edge wood		1					old windows							NO	
46 Oakwood		1					peeling paint	MISSING SHINGLES		Soffits Family, steps				YES	Needs Roof Repairs
170 Mallinson		1					old windows		MISSING SHINGLES					YES	Needs Roof Repairs
42 Mallinson		1						Roof Failing						YES	Needs Roof Repairs
274 W Allendale		1					Siding Failing	Failed		All Failing	SPAIRS Failing			YES	House Needs A Lot of Repairs in Poor Condition
150 W Orchard		1					Siding Failing	MISSING SHINGLES						YES	Needs Roof Repair
39 Elmwood		1					MISSING PLASTER	old windows		FACIA MISSING	FRONT STEPS			YES	Needs Front Steps Replaced + MISSING Siding Replaced
11 Albert		1					Siding Failing	Roof Failing	Roof Failing	Leaking Gutter				YES	Needs Gutter Siding Replaced Repair / Paint Siding
57 Meeker		1					Plaster Failing		Curby	Gutters have work				YES	Paints Faded + Needs Repl?

I verify that I have conducted this exterior housing survey according to COAH criteria

Signature: Anthony Hockett

Print Name and Title: Anthony Hockett 11/025

**Appendix**

**5. Third Round Vacant Land Adjustment Table**

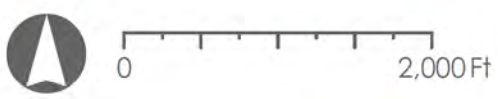
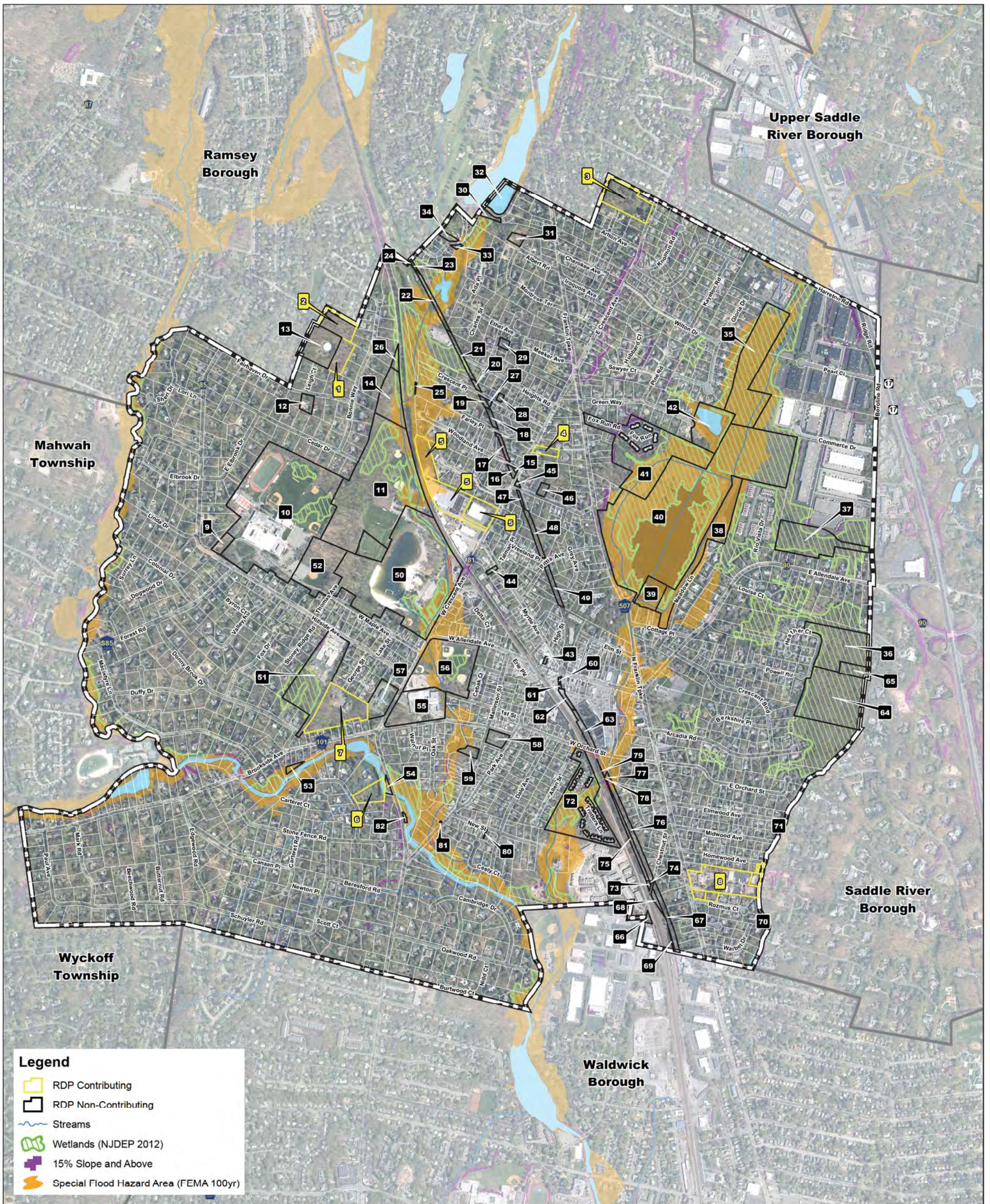
## Allendale Borough – RDP Non-Contributing Sites

May 15, 2017

ID	BLOCK	LOT	Location	Owner	Area (Acres)	Unconstrained Acres	Comments
9	103	1	300 HILLSIDE AVE	FABER, DANIEL & PHYLLIS	0.91	0.84	Sold to the North Highlands Regional H.S. District in 2014. Part of High School Property
10	201	8	280 HILLSIDE AVE	NORTHERN HIGHLANDS REG HIGH SCHOOL	40.68	37.64	Developed with a school building and athletic fields.
11	201	9	RR WEST SIDE	BOROUGH OF ALLENDALE	31.13	23.29	On ROSI.
12	201	10	HILLSIDE AVE RR	BOROUGH OF ALLENDALE	2.14	2.14	On ROSI.
13	203	1.01	REAR LEIGH COURT	BOROUGH OF ALLENDALE	4.44	4.44	Water tank.
14	204	1	REAR BONNIE WAY	BOROUGH OF ALLENDALE	4.36	2.67	On ROSI. 100 Year Floodway, Wetlands
15	301	1	WOODLAND AVE	RONALDO L.L.C.	0.05	0.05	Lot size is too small.
16	301	2	WOODLAND AVE	ROCKLAND ELECTRIC	0.21	0.21	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
17	301	28	WOODLAND AVE. & FARLEY PL	ROCKLAND ELECTRIC	0.38	0.38	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
18	301	29	FARLEY PLACE	ROCKLAND ELECTRIC	0.37	0.37	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
19	301	30	CRESCENT PLACE	ROCKLAND ELECTRIC	0.21	0.21	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
20	301	31	CRESCENT PL	ROCKLAND ELECTRIC	0.18	0.18	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
21	301	32	REAR CRESCENT PLACE	ROCKLAND ELECTRIC	0.73	0.62	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
22	301	33	REAR CRESCENT PL.	ROCKLAND ELECTRIC	0.88	0.60	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
23	301	34	REAR CRESCENT PL.	ROCKLAND ELECTRIC	0.12	0.12	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
24	301	35	REAR CRESCENT PL.	ROCKLAND ELECTRIC	0.03	0.03	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
25	301	45	REAR FARLEY PLACE	UNKNOWN	0.04	0.00	Lot size is too small. 100 Year Floodway, Wetlands.
26	303	14	REAR BONNIE WAY RR	BOROUGH OF ALLENDALE	0.47	0.23	Lot size is too small. Wetlands.
27	402	9	17 CRESCENT PL	MALARCZUK, GEORGE & LIEW, SHIRLEYN	0.10	0.10	Lot size is too small.
28	403	8	14 CRESCENT PL	DRAPER, BARBARA E.	0.16	0.16	Lot size is too small.
29	404	13	41 BEATRICE ST	BALLAERA, JOSEPH	0.35	0.35	Lot size is too small.
30	408	14	271 LAKEVIEW DR	NESS, WILLIAM G & DONNA J	0.38	0.28	Lot size is too small. 100 Year Floodway, Wetlands, Steep Slopes.
31	408	16	4 ALBERT RD.	SEBASTIAN, JOHN	0.58	0.58	Building permit issued for single-family detached house
32	409	1	SPRING LAKE	RAMSEY GOLF & COUNTY CLUB	2.28	0.06	100 Year Floodway.
33	410	7	CANTERBURY DR	ZOCCOLI, CHARLES C	0.13	0.03	Lot size is too small. 100 Year Floodway, Wetlands.
34	411	5	LAKEVIEW DR	RAMSEY COUNTRY CLUB	0.37	0.36	Lot size is too small.
35	605	16	REAR GLORIA DR	BOROUGH OF ALLENDALE	12.82	0.16	On ROSI. 100 Year Floodway, Wetlands.
36	701	19	<Null>	<Null>	7.99	0.25	Wetlands.
37	702	8	10 BOROLINE ROAD	BOROUGH OF ALLENDALE	7.33	1.70	On ROSI. Wetlands.
38	801	1.09	MEADOW LANE	BOROUGH OF ALLENDALE	7.27	0.15	On ROSI. 100 Year Floodway, Wetlands.

ID	BLOCK	LOT	Location	Owner	Area (Acres)	Unconstrained Acres	Comments
39	801	14	1 COTTAGE PL	BOROUGH OF ALLENDALE	2.59	0.00	On ROSI. 100 Year Floodway, Wetlands.
40	801	18	FRANKLIN TPKE	BOROUGH OF ALLENDALE	58.05	0.52	On ROSI. 100 Year Floodway, Wetlands.
41	801	31	<Null>	<Null>	16.82	7.86	HOA common space.
42	801	42	REAR GREEN WAY	BOROUGH OF ALLENDALE	5.61	0.90	On ROSI. 100 Year Floodway, Wetlands.
43	902	6	134 W. ALLENDALE AVE.	AVAD LLC	0.09	0.09	Lot size is too small.
44	905	19	173 MYRTLE AVE	KARVELLAS, MICHAEL	0.18	0.18	Lot size is too small.
45	910	1	ALL TROLLEY TRACKS	ROCKLAND ELECTRIC CO C/O DALLAND	0.09	0.09	Lot size is too small.
46	910	18	IVERS RD	CALVARY LUTHERN CHURCH	0.44	0.44	Lot size is too small.
47	912	1	IVERS ROAD	ROCKLAND ELECTRIC	0.17	0.17	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
48	912	3	REAR PITTS AVE	ROCKLAND ELECTRIC	0.90	0.90	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
49	915	1	PITTS AVENUE	ROCKLAND ELECTRIC	0.77	0.77	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
50	1003	6	300 W. CRESCENT AVE.	BOROUGH OF ALLENDALE	36.02	30.54	On ROSI.
51	1102	14	105 HILLSIDE AVE	BOARD OF EDUCATION	10.45	7.01	Developed with a school building.
52	1104	1	280 HILLSIDE AVE	BOARD OF EDUCATION NO REG H S DIST	7.83	7.83	BOE owned property. Part of High School Property.
53	1406	19	REAR BROOKSIDE AVE	UNKNOWN	0.30	0.02	100 Year Floodway.
54	1503.01	5	611 W CRESCENT AVE	MARTIN, BARBARA J	0.29	0.01	100 Year Floodway, Wetlands.
55	1603	1	100 BROOKSIDE AVE.	BOARD OF EDUCATION	6.68	6.43	Developed with a school building.
56	1603	2	CRESCENT AVE	BOROUGH OF ALLENDALE	11.39	2.75	On ROSI.
57	1604	15.01	500 W CRESCENT AVE	BOROUGH OF ALLENDALE	2.82	2.82	Contains administrative building.
58	1704	1	PARK AVE	BOROUGH OF ALLENDALE	1.07	1.07	Not Developable. On ROSI list.
59	1705	9.02	140 MALLISON ST.	SZYMCZAK, MARK & SABRINA	0.59	0.42	Existing single family home
60	1712	1	DE MERCURIO DR	ROCKLAND ELECTRIC	0.07	0.07	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
61	1712	2	REAR DE MERCURIO DR	ROCKLAND ELECTRIC	0.04	0.04	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
62	1712	3	REAR ORCHARD ST	ROCKLAND ELECTRIC	0.36	0.36	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
63	1712	4	W ORCHARD ST	ROCKLAND ELECTRIC	0.90	0.87	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
64	1906	17	NO FRONTAGE	PASSAIC RIVER COALITION	12.32	0.54	Wetlands. ROSI.
65	1906	18	NO FRONTAGE	BOROUGH OF ALLENDALE	1.36	0.00	Wetlands.
66	2001	1	165A CHESTNUT ST	BOROUGH OF ALLENDALE	0.19	0.19	Lot size is too small.
67	2003	19	CHESTNUT ST	ROCKLAND ELECTRIC	1.31	1.31	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
68	2003	20	CHESTNUT ST	SQUIRES, FRANCIS H	0.33	0.33	Lot size is too small.
69	2003	21	CHESTNUT ST	WILKING, HP	0.11	0.02	Lot size is too small.
70	2004	10	NO FRNOTAGE	DAVIES, RICHARD J. & MARY K.	0.24	0.24	Lot size is too small.
71	2008	11	ELMWOOD AVE	GUARNACCIA, MICHAEL E & REGINA P.	0.28	0.28	Lot size is too small.

ID	BLOCK	LOT	Location	Owner	Area (Acres)	Unconstrained Acres	Comments
72	2101	9	<Null>	<Null>	11.04	5.92	HOA common space.
73	2103	1	CHESTNUT ST	SQUIRES, FRANCIS M	0.10	0.10	Lot size is too small.
74	2103	2	CHESTNUT ST	ROCKLAND ELECTRIC	0.02	0.02	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
75	2103	3	CHESTNUT ST	ROCKLAND ELECTRIC CO	1.06	1.05	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
76	2103	4	CHESTNUT ST	ROCKLAND ELECTRIC	1.93	1.73	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
77	2103	32	WEST ORCHARD	ROCKLAND ELECTRIC	0.14	0.00	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
78	2103	33	REAR WEST ORCHARD ST	ROCKLAND ELECTRIC	0.01	0.00	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
79	2103	34	WEST ORCHARD ST	ROCKLAND ELECTRIC	0.02	0.01	Undevelopable. Electric transmission lines. Narrow Lot Configuration.
80	2204	15	NEW STREET	UNKNOWN	0.02	0.01	Lot size is too small.
81	2206	6	PARK AVE	BOROUGH OF ALLENDALE	0.01	0.01	100 Year Floodway.
82	2206	11	W CRESCENT AVE	BOROUGH OF ALLENDALE	0.10	0.02	100 Year Floodway, Wetlands, Steep Slopes.



**Clarke Caton Hintz** ● ● ●

Architecture  
 Planning  
 Landscape Architecture

# Vacant Land Analysis Map

LOCATION:  
 Allendale Borough, Bergen County, NJ

DATE:  
 May 2017

**Appendix**

**6. Third Round Settlement Agreement**



Peter J. O'Connor, Esq.  
Kevin D. Walsh, Esq.  
Adam M. Gordon, Esq.  
Laura Smith-Denker, Esq.  
David T. Rammler, Esq.  
Joshua D. Bauers, Esq.

September 14, 2017

Raymond Wiss, Esq.  
Wiss & Bourgey, P.C.  
345 Kidnerkamack Road  
Westwood, NJ 07675

**Re: In the Matter of the Borough of Allendale, County of Bergen,**  
Docket No. BER-L-6162-15

Dear Mr. Wiss:

This letter memorializes the terms of an agreement reached between the Borough of Allendale (the Borough or "Allendale"), the declaratory judgment plaintiff, and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015)(Mount Laurel IV) and, through this settlement, a defendant in this proceeding.

#### **Background**

In accordance with Mt. Laurel IV, Allendale Borough was deemed to be a 'certified' municipality as it received third round substantive certification from the Council on Affordable Housing ("COAH") on October 14, 2009. Allendale filed the above-captioned matter on July 7, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. As required by the Court, the Borough submitted its preliminary compliance plan summary in December 2015 and submitted a revised plan summary in January 2016. The Borough received temporary immunity from the Honorable Menelaos W. Toskos, J.S.C., which immunity has been extended through October 31, 2017. FSHC and the Borough participated in a number of court case management conferences and specifically met on August 24, 2016 and May 22, 2017 to attempt to settle the matter. Through that process, the Borough and FSHC, under the guidance of the special master, Elizabeth C. McKenzie, PP, AICP, agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, 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.

#### **Settlement terms**

The Borough and FSHC hereby agree to the following terms:

1. FSHC agrees that the Borough, through the adoption of a Housing Element and Fair Share Plan ("the Plan") consistent with this Agreement, and the proposed implementation of the Plan and this Agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
2. At this time and at this particular point in the process resulting from the Supreme Court's 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.

3. FSHC contends that Allendale's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report <sup>1</sup> )	21
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	137
Third Round (1999-2025) Obligation (per Kinsey Report, subsequently adjusted through this settlement agreement to 308 units)	513

The Parties have agreed, by this Agreement, to reduce Allendale's Third Round Obligation to 308 units, as more particularly provided herein.

The Borough's Third Round obligation of 308 units will be adjusted through a vacant land adjustment ("VLA") to a 54-unit realistic development potential ("RDP") and a 254-unit unmet need.

4. For purposes of this agreement, the Third Round obligation shall be deemed to include both the Prospective Need obligation (from 2015-2025) and the Expanded Gap Period Present Need new construction obligation, which is a measure of households formed from 1999-2015 that need affordable housing, that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).
5. The Borough's efforts to meet its present need include the following: participation in Bergen County's Home Improvement Program and funding a rental rehabilitation program to be administered by contract with Bergen County Community Development. This is sufficient to satisfy the Borough's present need obligation of 21 units.
6. As noted above, the Borough has a Prior Round obligation of 137 units, which has been fully met through the completed compliance mechanisms as outlined in the following table:

---

<sup>1</sup> David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, May, 2016.

Allendale Borough's Prior Round Compliance Mechanisms: 137-Unit Prior Round	Credits	Bonuses	Total
<b>RCA's – Funds Transferred</b>			
Jersey City	40	0	40
Borough of Ridgefield	4	0	4
<b>Inclusionary Developments – Completed</b>			
Allendale Brook Estate – Family Affordable Sales	9	0	9
Saddle Dale – Family Affordable Sales	3	0	3
Garden Homes/Whitney – Off-Site Supportive Shared Living Rentals on Crescent Commons	11	11	22
<b>100% Affordable Developments – Completed</b>			
Allendale Senior Housing – Senior Affordable Rentals (includes completed 1-unit expansion)	16	0	16
<b>Alternative Living Arrangements – Completed</b>			
Orchard Commons – Supportive Shared Living Rentals (6 units/10 bedrooms)	10	10	20
Crescent Commons – Supportive Shared Living Rentals (11 of 13)	11	11	22
Crescent Commons – Permanent Supportive Rentals	3	3	6
<b>Total</b>	<b>107</b>	<b>35</b>	<b>142</b>
<b>Prior Round Surplus</b>			<b>5</b>

**Prior Round Minimum Rental, Maximum Rental Bonus, and Maximum Age-Restricted Requirements**

Age-Restricted Cap:  $(0.25 \times 137 - 44 \text{ RCAs}) = 0.25 \times 93 = 23$

Rental Minimum / Bonus Cap:  $(0.25 \times 137) = 34.25$ , round up to 35

7. The Borough has implemented or will implement the following mechanisms to address its Third Round obligation of 308 units:

As noted above, the Borough's Third Round (1999-2025) obligation will be adjusted through a VLA. The municipality has a Third Round realistic development potential (RDP) of 54 units, as calculated in Exh. A. That RDP will be satisfied as outlined in the table below.

Allendale Borough's Third Round Compliance Mechanisms: 54-Unit RDP	Credits	Bonuses	Total
<b>Prior Round Surplus</b>			
Built Surplus	5	0	5
<b>Inclusionary Developments – Under Construction</b>			
Garden Homes/Whitney – On-Site Family Affordable Rentals	12	12	24

Allendale Borough's Third Round Compliance Mechanisms: 54-Unit RDP		Credits	Bonuses	Total
Former Farm – Family Affordable Rentals		2	2	4
100% Affordable Developments – Completed, Proposed				
Crescent Commons – Family Affordable Sales, Built		6	0	6
220 West Crescent Avenue – Affordable Rentals, Proposed		4	cap	4
Alternative Living Arrangements – Affordable Units: Completed, Proposed				
Crescent Commons – Supportive Shared Living Rentals (2 of 13), Built		2	cap	2
Eastern Christian Group Home I – 5 BRs, Built		5	cap	5
Eastern Christian Group Home II – 5 BRs, Agreement		5	cap	5
<b>Total</b>		<b>41</b>	<b>14</b>	<b>55</b>

**Third Round Minimum Rental, Maximum Rental Bonus, and Maximum Age-Restricted Requirements 54-Unit RDP**

Age-Restricted Cap:  $(0.25 \times \text{RDP}) = 0.25 \times 54 = 13.5$ , round down to 13

Rental Minimum / Bonus Cap:  $(0.25 \times \text{RDP}) = 0.25 \times 54 = 13.5$ , round up to 14

Family Rental Minimum:  $(0.5 \times \text{rental minimum}) = 0.5 \times 14 = 7$

Family Minimum:  $(0.5 \times (\text{RDP} - \text{bonuses})) = 0.5 \times (54 - 14) = 0.5 \times 40 = 20$

The RDP of 54, subtracted from the Third Round obligation of 308 units, results in an unmet need of 254 units, which shall be addressed through the following mechanisms, as more fully described in the fair share plan to be adopted by the Borough:

Proposed Unmet Need Mechanisms, Allendale Borough						
ID	Block	Lot	Location	Owner	Comments	Area (Acres)
1	301	37	200 HEIGHTS ROAD	ROCKLAND ELECTRIC CO	1. Northern portion is part of the Ramsey Golf and Country Club. Unmet Need Overlay Zoning: 10 du/ac 2. Southern half of parcel contains an electric substation and related equipment.	14.09
2	406	21.01	ALBERT ROAD	RAMSEY GOLF & COUNTRY CLUB	Unmet Need Overlay Zoning: 10 du/ac	7.86
3	702	14	40 BOROLINE ROAD	ALLENDALE CORPORATE CENTER, LLC	Unmet Need Overlay Zoning: 12 du/ac	9.48

Proposed Unmet Need Mechanisms, Allendale Borough						
ID	Block	Lot	Location	Owner	Comments	Area (Acres)
4	1803	1	320 FRANKLIN TURNPIKE	CHURCH OF THE GUARDIAN ANGEL	Unmet Need Overlay Zoning: 12 du/ac	11.30
5	Mandatory Affordable Housing Set-Aside Ordinance				Triggered if Borough adopts multi-family rezoning, "d" variance, etc., at 6 du/ac	Borough-wide
6	Affordable Housing Development Fee Ordinance				Existing	Borough-wide
7	Third Round RDP surplus				Proposed	surplus

8. The Borough will provide a realistic opportunity for the development of affordable housing that will be developed or created through means other than inclusionary zoning in the following ways:
- 220 West Crescent Avenue – (Affordable Rentals) – municipally sponsored per NJAC 5:93-5.5; and
  - Eastern Christian Group Home II (ALA) – alternative living arrangement per NJAC 5:93-5.8.

In accordance with N.J.A.C. 5:93-5.5, the Borough recognizes that it must provide evidence that the municipality has adequate and stable funding for any non-inclusionary affordable housing developments. The municipality is required to provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved. The Borough meets this obligation as follows: The Borough anticipates that affordable housing developers will apply for outside affordable housing subsidies from federal, state and county sources that may include Low Income Housing Tax Credits, Bergen County HOME funds, Federal Home Loan Bank funds, and private financing. The Borough shall adopt a resolution of its intent to fund each of the programs listed above including through its affordable housing trust account and, if needed, through municipal bonding.

In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The schedule shall provide for construction to begin within two years of the entry of an order of the court approving the Borough's Plan. The municipality shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The Borough meets those obligations as follows:

- 220 West Crescent Avenue – (Affordable Rentals) – construction schedule in accordance with NJAC 5:93-5.5 will be included in the Borough’s revised third round plan; and
  - Eastern Christian Group Home II (ALA) – a deed restriction shall be placed on the group home.
9. The Borough agrees to require 13% of all units referenced in this plan, with the exception of units subject to preliminary or final site plan approval or constructed prior to July 17, 2008, to be very low income units, with half of the very low income units being available to families. The municipality will comply with those requirements in the preparation and implementation of its revised third round plan.
10. The Borough shall meet its Third Round obligation in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 7 above:
- a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
  - b. At least 50 percent of the units addressing the Third Round RDP and unmet need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
  - c. At least twenty-five percent of the Third Round RDP and unmet need shall be met through rental units, including at least half in rental units available to families.
  - d. At least half of the units addressing the Third Round RDP and unmet need in total must be available to families.
  - e. The Borough agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.
11. The Borough shall add 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, the New Jersey State Conference of the NAACP, the Latino Action Network, Bergen County NAACP, Bergen County Urban League, and Bergen County Housing Coalition, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.
12. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law. The Borough as part of its HEFSP shall adopt and/or update appropriate implementing

ordinances in conformance with standard ordinances and guidelines developed by COAH and approved by the Court to ensure that this provision is satisfied.

13. 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.
14. As an essential term of this settlement, within one hundred-twenty (120) days of the Court's entry of an order approving this Settlement Agreement, the Borough shall prepare and adopt an updated Housing Element and Fair Share Plan consistent with this Agreement and introduce and adopt an ordinance providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this settlement agreement and the zoning contemplated herein.
15. The parties agree that if a decision of a court of competent jurisdiction in Bergen County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Borough for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total prospective Third Round need obligation established in this agreement, and if that calculation is memorialized in an unappealable final judgment, the Borough may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Borough shall be obligated to implement the mechanisms proposed in this settlement agreement, and that will be adopted as part of the Borough's revised Housing Element and Fair Share Plan, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough's obligation below that established in this agreement does not provide a basis for seeking leave to amend this agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its prospective need for the Third Round, the Borough may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.
16. The Borough shall prepare a spending plan, which will be submitted to the Court for review and approval within 120 days of the entry of an order by the Court approving this Agreement. FSHC may comment on or object to this spending plan. The Borough reserves the right to request the Court's approval that the expenditures of funds contemplated under the agreement constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement 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). On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Borough agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or 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. The reporting shall include an

accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

17. Within 30 days of the entry of an order approving this settlement agreement at a duly-noticed Fairness Hearing, the Borough agrees to pay FSHC's reasonable attorney's fees of \$4,000.
18. On the first anniversary of the execution of this agreement, and every anniversary thereafter through the end of this agreement, the Borough 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 Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.
19. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in this agreement. The Borough 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 Borough 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 any 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 any 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 Borough 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.
20. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.
21. This settlement agreement must be approved by the Court following a fairness hearing as required by 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. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Borough shall present its planner as a witness at this hearing. FSHC agrees not to challenge the Borough's Plan as to be revised, so long as it is consistent with the terms of this

agreement, at the fairness hearing. FSHC contends that the municipality should receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The Borough contends that it is entitled to a Judgment of Compliance and Repose through July 1, 2025. Both parties agree to let the trial judge make a final determination as to the form of judgment entered at the fairness hearing and/or compliance hearing and to not appeal any such determination. The judgment and its protections from builder remedy lawsuits shall remain in effect through July 1, 2025. If the settlement agreement is rejected by the Court at a fairness hearing it shall be null and void.

22. If an appeal is filed of the Court's approval or rejection of the Settlement Agreement, 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 before 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 rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.
23. This settlement agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Bergen County.
24. 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.
25. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
26. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
27. 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.
28. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.
29. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.

30. 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 Parties.
31. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.
32. No member, official or employee of the Borough shall have any direct or indirect interest in this Settlement Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
33. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.
34. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties 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 BOROUGH:**

Mayor Liz White  
500 West Crescent Avenue  
Allendale, NJ 07401  
Telecopier: 201-825-1913  
Email: lizwhite@allendalenj.gov

**WITH A COPY TO THE  
MUNICIPAL CLERK:**

Anne Dodd, RMC  
Borough Clerk  
500 West Crescent Avenue  
Allendale, NJ 07401  
Telecopier: 201-825-1913  
Email: AnneDodd@Allendalenj.gov

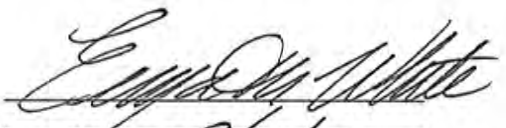
Please sign below if these terms are acceptable.

Sincerely,



Kevin D. Walsh, Esq.  
Counsel for Intervenor/Interested Party  
Fair Share Housing Center

On behalf of the Borough of Allendale, with the authorization  
of the governing body:



Dated: 9/15/17

**FILED**

**JAN 10 2018**

**MENELAOS W. TOSKOS  
J.S.C.**

**RAYMOND R. WISS, ESQ. – (Attorney ID: 021361976)**  
**WISS & BOUREGY, P.C.**  
345 Kinderkamack Road  
Westwood, NJ 07675  
(201) 497-6680  
Attorneys for Declaratory Plaintiff, Borough of Allendale

**IN THE MATTER OF THE  
APPLICATION OF THE BOROUGH OF  
ALLENDALE, COUNTY OF BERGEN**

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

**DOCKET NO.: BER-L-6162-15**

**CIVIL ACTION – MOUNT LAUREL**

**ORDER APPROVING SETTLEMENT  
AGREEMENT BETWEEN THE  
BOROUGH OF ALLENDALE AND FAIR  
SHARE HOUSING CENTER**

THIS MATTER having been opened to the Court by Wiss & Bouregy, P.C., Raymond R. Wiss, Esq. appearing on behalf of declaratory plaintiff, Borough of Allendale (hereinafter “the Borough” or “Allendale”) via Declaratory Judgment Complaint filed on July 7, 2015 to approve the Borough’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 Borough immunity from Mount Laurel lawsuits from the time of the filing of the Borough’s Declaratory Judgment action (hereinafter “DJ Action”); and the Court having appointed Elizabeth McKenzie, A.I.C.P., P.P., as the Special Mount Laurel Court Master (hereinafter the “Court Master”); 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, Ph.D., 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 Raymond R. Wiss, Esq., of Wiss & Bouregy, P.C., and Josh Bauers, Esq., of FSHC, having entered into mediation supervised by the Court Master to

try to agree on the magnitude of the Borough's third round fair share obligation and how the Borough would comply with same; and the Borough and FSHC having agreed upon a form of Settlement Agreement (Exhibit J-2 and referred to hereinafter as the "FSHC Settlement Agreement"), which was executed by Kevin D. Walsh, Esq., on behalf of FSHC; and the Borough Council having adopted a resolution on September 14, 2017 (Exhibit J-5) authorizing the Mayor of Allendale to execute the FSHC Settlement Agreement, which she subsequently did; and that at this point in the process resulting from the Mount Laurel IV decision, it is appropriate for FSHC and the Borough to have arrived at a settlement regarding the Borough's third round present and prospective need, instead of doing so through plenary adjudication of the third round present and prospective need and prior round need; and the Court having set a date of November 29, 2017 for a Fairness Hearing to entertain approval of the settlement between FSHC and the Borough, and to determine whether said settlement is fair, reasonable and adequately protects the interests of low and moderate-income households and to determine whether the Borough's proposed means of addressing its agreed-upon fair share obligations, including its request for a vacant land adjustment that divides the Borough's obligation into a realistic development potential (RDP) and an unmet need, are preliminarily approved by the Superior Court; and the Borough having provided proper public and actual notice of the Fairness Hearing; and no objections to the settlement having been received; and counsel for the Borough having prepared an Affidavit of Public Notice, Exhibit J-4 to document that proper notice of the Fairness Hearing has been given; and the Court Master having submitted a report to the Court on November 16, 2017 (Exhibit J-1) regarding the proposed settlement between FSHC and the Borough and recommending approval of the settlement and preliminary approval of the Borough's proposed compliance Plan; and the Fairness Hearing having been held on November 29, 2017, during which Exhibits J-1 to J-5 were presented to the Court,

and the Court having considered the testimony taken during the Fairness Hearing, as well as to 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** 10 day of *January* 2018 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, 289 N.J. Super. 311 (App. Div. 1996), and through analysis of the FSHC Settlement Agreement (Exhibit J-2) and the Court Master's report (Exhibit J-1), and on the basis of the testimony taken during a Fairness Hearing conducted on November 29, 2017, that the settlement between FSHC and the Borough is fair, reasonable and adequately protects the interest of low and moderate-income households, and the Court hereby approves the FSHC Settlement Agreement and the Borough's preliminary compliance mechanisms included within it, presented as Exhibit J-2.

2. Within 120 days of the entry of this Order, or such later date as may be agreed to by the Borough and FSHC, the Borough 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 J-2) as well as the 'Recommended Requirements for Final Affordable Housing Compliance Plan' prepared by the Master in her Nov. 16, 2017 Report and attached hereto, along with any and all necessary supporting documents; (b) submit the Housing Element and Fair Share Plan, and any and all supporting documents, to the Court Master and FSHC for review and comment; (c) have the Housing Element and Fair Share Plan adopted by the Borough Planning Board; (d) have the Housing Element and Fair Share Plan endorsed by the Borough Council and have all required Resolutions and Ordinances needed to implement the Housing

Element and Fair Share Plan adopted by the Borough Council; and (e) submit the Housing Element and Fair Share Plan, and all required supplementary documentation, including the Spending Plan, and all adopted Resolutions and Ordinances implementing the Housing Element and Fair Share 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. Within 60 days of the completion of all of these tasks, the Court will schedule a Compliance Hearing for the Court to consider approval of the Borough's submission and the issuance of a Judgment of Compliance and Repose, which will provide the Borough and its Planning Board with immunity from Mount Laurel lawsuits through July 1, 2025.

3. The temporary immunity from Mount Laurel lawsuits that is currently in place for the Borough and its Planning Board will remain in place through the Borough's Compliance Hearing in Superior Court.

4. As a result of the Settlement between the Borough and FSHC, the Borough's Present Need or Rehabilitation Obligation is 21, the Borough's Prior Round Obligation is 137 and the Borough's Third Round Fair Share Obligation is 308.

5. The parties agree that the Borough lacks sufficient land to meet its obligation and therefore agree that the Borough's RDP is 54 units.

6. The Borough intends to satisfy its RDP as follows:

- a. Excess affordable units from prior round (5 affordable units)
- b. Units approved and currently under construction at the following 2 sites: Garden Homes/Whitney (12 affordable family rental units) and Former Farm (2 affordable family rental units)
- c. Completed or proposed 100% Affordable Developments at the following 2 sites: Crescent Commons (6 affordable family sale units) and 220 West Crescent Avenue (4 affordable units)

- d. Completed or proposed alternative living arrangement units/bedrooms in the following 3 projects: Crescent Commons (2 of 13 affordable units), Eastern Christian Group Home I (5 bedroom credits) and Eastern Christian Group Home II ((5 bedroom credits))
- e. Third Round Rental Bonus Credits (14 rental bonus credits)

7. In addition, the Borough shall take the following measures to address its 254-unit unmet need:

- (a) Overlay zoning at densities of 10-12 units per acre on the following four (4) sites totaling 42-43 acres of land – 200 Heights Road, Albert Road, 40 Boroline Road and 320 Franklin Turnpike;
- (b) Adoption of a Borough-wide Mandatory Set Aside Ordinance requiring any site that benefits from a rezoning, variance or redevelopment plan approved by the Borough, that results in multi-family residential development at a minimum density of six (6) dwelling units per acre, to produce affordable housing at a set-aside rate of 20 percent for for-sale affordable units and at a set-aside rate of 15 percent for rental affordable units;
- (c) Continued implementation of the Borough's Development Fee Ordinance, with said Ordinance to be amended to reflect the jurisdiction of this Court, rather than COAH, and
- (d) Potential surplus affordable units resulting from the implementation of the Borough's plan for satisfying the RDP.

8. Counsel for the Borough shall provide all parties on the Service/Notice List with a copy of this Order within seven (7) days of receipt.



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**HONORABLE MENELAOS W. TOSKOS, J.S.C.**

ELIZABETH C. MCKENZIE, P.P., P.A.

COMMUNITY PLANNING AND DEVELOPMENT

9 MAIN STREET

FLEMINGTON, NEW JERSEY 08822

TELEPHONE (908) 782-5564

TELEFAX (908) 782-4056

ecmcke@gmail.com

November 16, 2017

The Honorable Menelaos Toskos, J.S.C.  
New Jersey Superior Court, Law Division  
Bergen County Justice Center  
10 Main Street, 4th Floor  
Hackensack, New Jersey 07601

Re: In the Matter of the Application of the Borough of  
Allendale, Docket No. BER-L-6162-15

Dear Judge Toskos:

The purpose of this letter is to provide the Court with a review and recommendations regarding the settlement reached between the plaintiff Borough of Allendale ("Allendale" or "Borough") and interested party Fair Share Housing Center ("FSHC") in the above-captioned matter as to the extent of Allendale's third round low and moderate income housing fair share obligation and how the Borough proposes to address that obligation. This litigation has no intervening parties.

Although FSHC has been an interested party in this case, and not an intervenor, the Settlement Agreement includes a provision (at paragraph 20) granting FSHC status henceforth as a defendant/intervenor. The parties agree to the entry of an Order declaring FSHC to be an intervening party, but the absence of such Order is not intended to impact the rights conferred by the Agreement.

The Settlement Agreement fully describes not only the agreed-upon affordable housing fair share obligation for Allendale, but also, in paragraphs 5-8, how such obligation will be addressed in the fully developed, adopted and implemented Housing Element and Fair Share Plan that is required to be prepared as a condition of the Settlement Agreement.

I am unaware of the filing of any written objection(s) to the settlement.

ELIZABETH C. MCKENZIE, P.P., P.A.

The Honorable Menelaos Toskos, J.S.C.  
New Jersey Superior Court, Law Division, Bergen County  
November 16, 2017  
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This letter reviews the salient points of the Settlement Agreement reached between Allendale and FSHC and addresses the question of whether the outline of Allendale's proposed Housing Element and Fair Share Plan ("the Plan"), as described in paragraphs 5-8 of the executed Settlement Agreement is facially compliant with the Fair Housing Act, the terms of the Settlement Agreement, and applicable COAH and UHAC Rules.

It is my finding and recommendation to the Court that the Settlement Agreement is indeed fair to the interests of the region's low and moderate income households. Moreover, it is my opinion that the Borough's proposals for addressing its fair share obligation (as that obligation has been negotiated between the Borough and FSHC) will be able to satisfy Allendale's fair share obligation in a constitutionally compliant manner.

Attached to this letter is a summary of the recommended requirements for the preparation of the final Housing Element and Fair Share Plan. The adopted final Plan, and all of the adopted implementing ordinances and resolutions that will accompany it, will become the basis for an eventual final Compliance Hearing and, it is hoped, the grant of a Judgment of Compliance and Repose to Allendale extending through July 1, 2025.

Terms of Settlement

FSHC and the Borough have agreed, for settlement purposes, that Allendale's third round fair share obligation shall be 308 units (covering both the "gap period" present need for new construction and the prospective fair share obligation), with a rehabilitation share of 21 units and a prior round obligation of 137 units.

The agreed-upon third round fair share obligation is based on a report and calculations prepared by the expert for FSHC, David N. Kinsey, PhD, PP, FAICP, in May of 2016, in which Allendale was allocated a third round fair share obligation covering the entire period from 1999 to 2025 of 513 units. In an effort to settle

ELIZABETH C. MCKENZIE, P.P., P.A.

The Honorable Menelaos Toskos, J.S.C.  
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the litigation, however, and in recognition of Allendale's consistent efforts to create additional affordable housing opportunities throughout the "gap period", including by expending municipal funds to do so, the parties have agreed to a number that is 40 percent less than the number Kinsey had calculated. The 308 unit third round fair share obligation established by the settlement provides an incentive for Allendale to move forward with the planning and production of affordable housing instead of continuing to litigate the extent of its fair share obligation.

Allendale has demonstrated its eligibility for a further adjustment to its third round new construction obligation based on insufficient vacant developable land and readily re-developable sites to accommodate the entirety of the agreed-upon 308 unit third round obligation within the repose period. A vacant land adjustment does not reduce the fair share obligation, but it separates that obligation into the number of units that can realistically be expected to be built within the repose period (the Realistic Development Potential or "RDP") and the remainder, that portion of the obligation for which the Borough will continue to be liable, but which is not expected to be satisfied before July 1, 2025 (the Unmet Need).

Allendale's Plan proposes to address a third round RDP of 54 units with 5 excess affordable units from the prior round (presumably affordable family sales units); 14 affordable family rental units approved and currently under construction on two separate sites; 12 completed or proposed alternative living arrangement units/bedrooms in three separate projects; 6 completed affordable family sales units; 4 proposed affordable family or age-restricted rental units on a site owned by Allendale at 220 West Crescent Avenue; and 14 rental bonuses.

The balance of the 308 unit third round obligation, the 254 unit Unmet Need, is proposed to be addressed through a combination of:

ELIZABETH C. MCKENZIE, P.P., P.A.

The Honorable Menelaos Toskos, J.S.C.  
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1. Overlay zoning at densities of 10-12 units per acre on four (4) sites totaling 42-43 acres of land.
2. Adoption of a Borough-wide Mandatory Set Aside Ordinance. The Mandatory Set-Aside Ordinance will require any site that benefits from a rezoning, variance or redevelopment plan approved by the Borough, that results in multi-family residential development at a minimum density of six (6) dwelling units per acre, to produce affordable housing at a set-aside rate of 20 percent for for-sale affordable units and at a set-aside rate of 15 percent for rental affordable units. It is recommended that the language of the MSAO provide that sites shall not be permitted to be subdivided (into smaller developments) to avoid compliance with its terms. The adoption of the MSAO would not give any developer the right to any such rezoning, variance, redevelopment designation or approval or other relief, nor would it establish any obligation on the part of Allendale to grant such rezoning, variance, redevelopment designation or approval or other relief. What it provides is a mechanism for the Borough to capture affordable housing opportunities in the future, as previously unanticipated redevelopment occurs.
3. Continued implementation of the Borough's Development Fee Ordinance (although the Ordinance should be amended to reflect the Court's and not COAH's jurisdiction).
4. Potential surplus affordable units resulting from the implementation of the Plan for satisfying the RDP.

The 137 unit prior round obligation has been fully satisfied with 44 units created elsewhere in the housing region through the transfer of funds via Regional Contribution Agreements with Jersey City and the Borough of Ridgefield (during the time such agreements were still valid); 16 affordable age restricted rental units at Allendale Senior Housing; 12 affordable family sales units; 22 supportive shared living (group home) bedrooms (out of a total of 24) at Crescent Commons; 10 supportive shared living (group home) bedrooms at Orchard Commons; 3 units of permanent

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supportive living rentals at Crescent Commons; and 35 rental bonuses.

The 21 unit rehabilitation share will be addressed through the Borough's continuing participation in the Bergen County Home Improvement Program in addition to the Borough's funding of a rental rehabilitation program to be implemented by Bergen County Community Development, an experienced administrator of affordable housing programs, pursuant to an inter-local services agreement.

There are a number of important additional terms and conditions that are included in the Settlement Agreement. These will all be discussed as part of the evaluation of the fairness of the settlement. The ensuing section of this letter briefly evaluates the components of the Borough's preliminary Plan as described in the Settlement Agreement.

Evaluation of Plan Components

*Prior Round and Third Round Fair Share Obligations*

Allendale's prior round (1987-1999) fair share obligation of 137 units has been fully satisfied in a constitutionally compliant manner and consistent with COAH's prior round Rules. The prior round Plan focuses heavily, although certainly not exclusively, on age-restricted units and special needs bedrooms, which are important components of the need for affordable housing, but do not address the needs of families with children. Fortunately, the Borough's third round Plan contains more of a balance of family units, notably family rental units, in addition to more special needs units and, perhaps, a handful of additional age-restricted units at 220 West Crescent Avenue.

The Plan for addressing the third round fair share obligation is designed to satisfy all of the parameters set forth in the Settlement Agreement as to the age-restricted cap, rental obligation, family rental obligation, very low income and family

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very low income obligations and the required low/moderate/very low income split.

Most of the sites being used to satisfy the RDP are either built, approved or under construction, with two exceptions, both of which involve either development of municipally-owned land or a funding agreement with an affordable housing provider. The two unbuilt sites appear to be suitable for their intended purpose - they have access to public utilities and roadways; the surrounding land uses are not incompatible; they are neither historic sites nor preserved farms; there is no reason to believe that they cannot be developed in compliance with acceptable municipal standards and RSIS requirements (with provisions for *de minimis* exceptions or the use of alternative parking standards where appropriate); and, clearly, they are (or were) available for such development.

As part of the final adopted Housing Element and Fair Share Plan, the Borough will need to provide, in an Appendix to the Plan, all of the mapping and analysis supporting the vacant land adjustment and RDP calculation. It will also need to provide more detailed documentation as to the bedroom and income distributions of the affordable units in the projects that have already been built, along with the start dates/lengths of time covered by the affordability controls for each unit and copies of the applicable affordable housing agreements or deed restrictions for each development. Additionally, the final Plan will need to include a brief confirmation of the suitability of any proposed but unbuilt affordable housing site addressing the RDP and of any site that is proposed to receive overlay zoning for inclusionary residential development or re-development to address the Unmet Need, based on the criteria that COAH had established in its prior round Rules. Finally, the Plan should include a discussion of any sites that were proposed for inclusionary residential development by their owners or contract purchasers and rejected by the Borough. In Allendale's case, I do not believe that there were any, and, if so, a simple statement to that effect is sufficient. Based on the currently available information, and

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subject to the caveats set forth in this paragraph, it is my opinion that the Borough's Plan is solid and will fulfill the terms of the Settlement Agreement.

*Rehabilitation Share Implementation*

As previously indicated, the Borough proposes to address its rehabilitation share through the Bergen County Home Improvement Program supplemented with a rental rehabilitation program that will be administered by Bergen County Community Development under contract to Allendale. This is an appropriate and valid mechanism for meeting the rehabilitation share.

Documentation (in the form of a Rehabilitation Manual) will need to be provided regarding the rental rehabilitation program to ensure that it will be consistent with COAH's third round rules for rehabilitation (which were upheld by the Courts even though most other aspects of COAH's third round rules were not), to wit: requiring 10 year affordability controls; involving at least one major system; and involving an average expenditure on hard costs per unit of at least \$10,000. Additionally, the proposed means of advertising the program must be identified.

The Spending Plan will also need to include assurances as to the program's ability to be adequately funded, and a Resolution of Intent to Fund Shortfall must also be adopted. Based on the information presented to date, however, the approach to meeting the rehabilitation share that is outlined in the Settlement Agreement is satisfactory.

Evaluation of Fairness of Settlement

The various components of the Allendale settlement are evaluated here in light of the criteria set forth in East/West Venture v. Borough of Fort Lee, 286 N.J. Super 311, 328 (App. Div. 1996) for approving a settlement of Mount Laurel litigation.

East/West was addressing a settlement between a municipality and a builder/plaintiff. We have a different situation in this case.

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The municipality is the plaintiff and FSHC has been an interested party (granted status as an intervenor in the Settlement Agreement) advocating on behalf of low and moderate income households. Despite the differing roles of the participants in this case as compared to a traditional builder's remedy lawsuit, the overarching concern of the Court in East/West is applicable to any settlement of a case involving a municipality's constitutional obligation to create a realistic opportunity for the construction of its fair share of affordable housing, and that is whether or not the "the settlement adequately protects the interests of the lower-income persons on whose behalf the affordable units proposed by the settlement are to be built".

In East/West, the determination of whether or not that standard was being met was based upon a five-part analysis, which is applied here to the Allendale settlement:

1. ***Consideration of the number of affordable units being constructed.*** The Settlement Agreement contemplates a 308 unit third round (1999-2025) new construction fair share obligation, including both the prospective (2015-2025) third round fair share obligation and the new construction obligation associated with an expanded calculation of the present need (1999-2015). The Plan proposes to address this obligation through a balanced variety of mechanisms, previously outlined in this letter, that will fulfill the entire RDP and appropriately address the Unmet Need.

A comparison of the third round obligation agreed to as part of the settlement (308 units) to the most recent sets of calculations for Allendale proposed by other experts in the field is useful in evaluating the fairness of the settlement number.

An April, 2017, Econsult report had assigned Allendale a rehabilitation share of 14 units as well as a third round fair share obligation of 180 units, consisting of both the

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present need (1999-2015) new construction obligation and the prospective need (2015-2025).

In July of 2016, Richard Reading, the Court-appointed Regional Special Master in several vicinages, had also calculated Allendale's rehabilitation share to be 14 units. Reading's prospective (2015-2025) third round fair share allocation for Allendale was 249 units, about 80 percent of the settlement number. The Reading allocation, however, did not include any new construction obligation for the "gap period" (1999-2015), now required by the Supreme Court to be included in the determination of the third round obligation.

In light of the disparity in the fair share numbers generated by various experts and the ongoing uncertainty as to the determination of municipal third round fair share obligations in Bergen County, Allendale's agreement with FSHC to settle now on a number that is 60 percent of that proffered by FSHC's expert in May of 2016, but still higher than the last Reading number and significantly higher than the most recent number projected by Econsult, is clearly fair to the region's low and moderate income households in the current context, and will result in a substantial contribution to the region's stock of low and moderate income housing.

2. ***The methodology by which the number of affordable units provided is derived.*** The rehabilitation share was calculated by the expert for FSHC, Dr. Kinsey, based on surrogate data derived from the U.S. Census, in a manner similar to, although not exactly the same as, the approach used in COAH's prior round Rules.

The methodology used by Dr. Kinsey to calculate municipal third round fair share obligations was designed to follow, quite literally, the methodology used by COAH in 1994 to determine cumulative 1987-1999 prior round fair share obligations.

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In April, 2017, Dr. Kinsey had modified his earlier calculations to separate out the calculation of the prospective need (2015-2025) from the calculation of the new construction obligation for the "gap period" (1999-2015), in response to the Supreme Court's directive. As a result, his calculation of the total 1999-2025 fair share obligation for Allendale went up from the 513 units cited in his May, 2016, report (the basis for the number agreed upon in the Settlement Agreement) to 642 units. While this recalculation has no effect at all on the terms of the settlement, it is noteworthy as an indication of the continuing uncertainty surrounding municipal third round fair share obligations that exists more than two and a half years after the Supreme Court's decision, In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015).

While Kinsey's decisions with respect to the data sources relied upon, factors considered and assumptions made in the process of updating COAH's prior round methodology can certainly be (and have been) debated, there is no question that the methodology used by Kinsey finds its roots in a methodology that has been upheld by the Courts.

3. **Other contributions by the plaintiff.** The terms of the Settlement Agreement include the following:
  - a) Agreement that at least half of all affordable housing units shall be available to family households. (*paragraph 10.d.*)
  - b) Agreement that the Borough will require at least 13 percent of all of the affordable housing units in its Plan, excluding those already constructed or granted preliminary or final approval as of July 1, 2008, to be affordable to very low income households earning 30 percent or less of the regional median household income by household size and that at least half of these units will be available to families. (*paragraph 9*)

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- c) Agreement that at least 25 percent of the obligation shall be met with rental units, of which at least 50 percent shall be available to families. (*paragraph 10.c.*)
- d) Agreement that no more than 25 percent of affordable units used to fulfill the cumulative prior round and third round fair share obligations (this would include both the RDP and the Unmet Need) shall be age-restricted. (*paragraph 10.e.*)
- e) Agreement that rental bonuses shall be applied in accordance with N.J.A.C. 5:93. (*paragraph 10.a.*)
- f) Agreement that at least 50 percent of all affordable units in each inclusionary site shall be affordable to low and very low income households with the remainder affordable to moderate income households. (*paragraph 10.b.*)
- g) Agreement to abide by the affirmative marketing and affordability regulations set forth at N.J.A.C. 5:80-26.1, *et seq.* (UHAC) except that in lieu of the requirement at N.J.A.C. 5:80-26.3(d) for 10 percent of all low and moderate income rental units to be affordable to households earning 35 percent or less of median income, the requirement shall be that 13% of all low and moderate income rental units shall be affordable to households earning 30 percent or less of median income. (*paragraph 12*)
- h) Agreement to add to the Affirmative Marketing Plan the following regional and community organizations that will also receive notice of the availability of affordable housing units in Allendale: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Bergen County NAACP, the Bergen County Urban League, and the Bergen County Housing Coalition. (*paragraph 11*)

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- i) Agreement that all new construction units will be adaptable in conformance with P.L.2005,c.350/N.J.S.A. 52:27D-311(a) and 311(b) and other applicable law.  
(paragraph 13)
  - j) Agreement that the Borough will pay a sum of \$4,000.00 to Fair Share Housing Center within 30 days of the Court's entry of an Order approving the fairness of the settlement.  
(paragraph 17)
4. **Other components of the settlement that contribute to the satisfaction of the constitutional obligation.** Allendale's Plan exceeds its 25 percent minimum rental obligation. Rental affordable units tend to be more accessible to very low, low and moderate income households than for sale units, as it is often difficult for such households to qualify for mortgages. Allendale also proposes to satisfy both its very low income and very low income family obligations.
5. **Other factors that may be relevant to the fairness of the settlement.** The Settlement Agreement provides that, in the event that there is an administrative or legislative or judicial determination of municipal third round fair share obligations that would directly apply within the Bergen County vicinage, which determination is memorialized in an unappealable final judgment, and if that determination would reduce Allendale's fair share obligation for the period from 1999-2025 by more than 20 percent of the 1999-2025 new construction number on which it has settled with FSHC), Allendale may seek to amend the Judgment to reduce its fair share number, provided that it shall retain the zoning of all of the inclusionary sites in its Court-approved Plan, take all steps necessary to support the development of the 100 percent affordable projects in its Court-approved Plan, and implement all other affordable housing programs and initiatives in its Court-approved Plan, but may carry over any extra units and credits earned to a future round. This provision ensures that Allendale will not be disadvantaged

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in the future for having settled its case and that prospective developers and prospective occupants of inclusionary residential developments will not be disadvantaged by the removal of the affordable housing programs and projects that have been approved by the Court.

The Settlement Agreement also includes "look-back" provisions every three (3) years with respect to the provision of very low income (and family very low income) housing and at the midway point (or, in this case, by July 1, 2020) with respect to the realistic opportunity afforded by any un-built sites in the Plan. It also includes annual reporting requirements on affordable housing progress and on affordable housing trust fund activity and the Borough's implementation of its Spending Plan, once that document has been prepared and approved by the Court.

Reporting requirements will include posting on the municipal website, with copies provided to Fair Share Housing Center, and, with respect to the affordable housing trust fund/Spending Plan activity, also to COAH, Local Government Services or other agency designated by the State of New Jersey. These reporting requirements will ensure that the public is continuously informed of Allendale's progress in implementing its Plan, so that an aggrieved party can file a complaint with the Court, if necessary, but will also ensure that the Court does not have to be involved in the ongoing monitoring and evaluation of Allendale's affordable housing compliance.

In conclusion, the Court is being asked to make a determination as to the fairness of the settlement reached between Allendale and FSHC based on whether the interests of the region's low and moderate income households will be served if the Settlement Agreement is approved and implemented.

***This letter recommends the Court's approval of the fairness of the settlement*** on the grounds that the interests of low and

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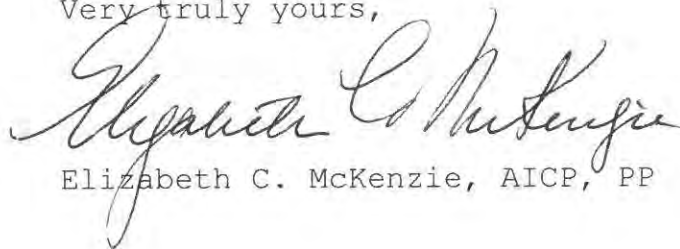
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moderate income households will be advanced by its terms. This letter also recommends the Court's preliminary approval of the Borough's Plan, conditioned on the preparation and adoption of a final third round Housing Element and Fair Share Plan that is fully consistent with all of the terms of the Settlement Agreement; that includes all necessary crediting documentation as to existing affordable units (as previously noted); that includes the requisite confirmation of site suitability for the proposed new inclusionary and 100 percent affordable sites, including those addressing the Unmet Need; and that provides details of the Borough's rehabilitation program. Additionally, the Borough will be required to prepare and adopt a new Spending Plan and to prepare, introduce and adopt all of the ordinances and resolutions needed to ensure implementation of the final Plan as envisioned by the terms of the settlement, all within 120 days of the Court's approval of the fairness of the settlement.

Attached to this letter is a summary of the documents and supplementary materials that are recommended to be required prior to the grant of a final Judgment of Compliance and Repose.

I hope that this letter is helpful to the Court and to the parties.

Very truly yours,



Elizabeth C. McKenzie, AICP, PP

Enclosure

cc: Raymond R. Wiss, Esquire  
Kevin D. Walsh, Esquire  
Joshua D. Bauers, Esquire  
Adam M. Gordon, Esquire  
Mary Beth Lonergan, PP, AICP

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RECOMMENDED REQUIREMENTS FOR  
FINAL AFFORDABLE HOUSING COMPLIANCE PLAN  
Borough of Allendale, Bergen County  
November 16, 2017

The Settlement Agreement includes a summary of the crediting allocations and proposals for meeting the Borough's affordable housing fair share obligations that will be included in Allendale's final adopted Housing Element and Fair Share Plan. The Housing Element and Fair Share Plan will need to be prepared reflecting all of the terms of the Settlement Agreement and in full compliance with the statutory requirements for such documents.

Once the amended Housing Element and Fair Share Plan has been prepared, it must be reviewed by FSHC and the Special Master for compliance with the terms of the executed Settlement Agreement, the Fair Housing Act and applicable UHAC regulations, and then adopted.

1. The Housing Element will need to include, in an Appendix, all of the background data and mapping for the vacant land analysis and RDP calculation. As well, it will need to include confirmation of the suitability of each un-built affordable housing or inclusionary residential site addressing the RDP and the Unmet Need, as well as consideration of any site that was proposed for inclusionary residential development but that was not included in the Plan (and the reasons therefor, if applicable).

An analysis of how the Housing Element and Fair Share Plan complies or will comply with all of the terms of the executed Settlement Agreement must be included. This is particularly important with respect to the documentation of the income and bedroom distributions and continued creditworthiness of all of the existing affordable units in the Plan, including the start dates and lengths of the affordability controls applicable to these units, as well as copies of the Affordable Housing Agreement and/or deed restriction for each development.

2. The Fair Share Plan must include all of the adopted ordinances and resolutions needed to implement the Plan, including all as-of-right and overlay zoning amendments; an

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updated and amended Affordable Housing Ordinance reflecting all of the provisions of the Settlement Agreement; an amended Development Fee Ordinance reflecting the Court's (and not COAH's) jurisdiction; an Affirmative Marketing Plan resolution with an amended Affirmative Marketing Plan attached to it that specifically reflects the affirmative marketing provisions of the Settlement Agreement; the documentation described in the body of the letter to which this list is attached regarding the Borough's rental Rehabilitation Program; an updated and amended Spending Plan indicating how the Borough intends to allocate funds and detailing with specificity how it proposes to expend funds for affordability assistance, especially funds earmarked for very low income affordability assistance; a resolution of intent to fund any shortfall in the costs of any municipally sponsored affordable housing programs; the resolution and/or contract appointing the Administrative Agent(s); the ordinance creating the position of, and resolution appointing, the Municipal Affordable Housing Liaison; a resolution from the Planning Board adopting the Housing Element and Fair Share Plan, and, if a Final Judgment is sought before all of the implementing ordinances and resolutions can be adopted, a resolution of the governing body endorsing the Housing Element and Fair Share Plan.

3. In accordance with N.J.A.C. 5:93-5.5, the Borough is required to provide evidence that there is adequate and stable funding for any 100 percent affordable housing developments in its Plan. The Borough is required to provide a *pro forma* of total development costs and anticipated sources of funds available to the municipality and/or project sponsor, including from any still pending funding applications. In cases where an application for outside funding is still pending, the municipality must provide a stable alternative source of funds, such as municipal bonding, in the event that the funding application is not approved. The Borough must also provide, for each 100 percent affordable housing development in its Plan, a construction or implementation schedule, or timetable, for each step in the development process: preparation of the site plan; obtaining required municipal approvals and State and Federal permits; selection of the contractor; and start of construction. The schedule must provide for construction to begin within two years of the Court's entry of the final Judgment approving the Borough's Plan. The municipality must also name the entity responsible for undertaking and monitoring the construction and overall development activity.

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These requirements apply to the affordable housing development proposed for the 220 West Crescent Avenue site. For the new Eastern Christian Children's Retreat (ECCR) group home, the Borough will be required to provide a copy of the deed restriction and agreement with ECCR.

4. The Settlement Agreement provides that the Borough will have a period of 120 days in which to comply with all of these requirements. Upon the Borough's timely compliance with the foregoing, and subject to a favorable review and recommendation as to the final submission by FSHC and the Special Master, and its approval by the Court, I am confident that Allendale will be entitled to receive the final Judgment of Compliance and Repose through July 1, 2025, that it seeks.

**Appendix**

**7. Chapter 81 Affordable Housing, Mandatory Set-Aside,  
Development Fees Amendment**

**BOROUGH OF ALLENDALE  
COUNTY OF BERGEN  
STATE OF NEW JERSEY**

**ORDINANCE #26-05**

**AN ORDINANCE IMPLEMENTING THE BOROUGH'S FOURTH ROUND HOUSING PLAN ELEMENT AND FAIR SHARE PLAN CONSISTENT WITH THE TERMS OF A MEDIATION AGREEMENT REACHED BETWEEN THE BOROUGH OF ALLENDALE AND THE FAIR SHARE HOUSING CENTER IN ACCORDANCE WITH THE NEW JERSEY FAIR HOUSING ACT AND RELEVANT REGULATIONS AND POLICIES AND TO AMEND, SUPPLEMENT AND REVISE THE CODE OF THE BOROUGH OF ALLENDALE, CHAPTER 81 "AFFORDABLE HOUSING" TO AMEND THE FOLLOWING PARTICULARS OF THE CHAPTER.**

**WHEREAS**, the Borough of Allendale (the "Borough" or "Allendale") having filed a declaratory judgment action pursuant to N.J.S.A. 52:27D-301 et. seq. (the "Fair Housing Act") on January 15, 2025; and

**WHEREAS**, the Court entered an order on May 5, 2025 setting the Borough's Fourth Round fair share obligations as a Present Need of 159 units and a Prospective Need of 200 units, and ordering the Borough to file a Housing Element and Fair Share Plan ("HEFSP") by June 30, 2025; and

**WHEREAS**, the Borough having filed its HEFSP on June 17, 2025 ("Adopted HEFSP"); and

**WHEREAS**, Fair Share Housing Center ("FSHC") and AvalonBay having filed challenges to the Borough's application for approval of its Housing Element and Fair Share Plan; and

**WHEREAS**, the dispute resolution program ("Program") created by the Fair Housing Act having appointed Judge Toskos as the program judge and Christine Cofone as the adjudicator to help mediate the disputes; and

**WHEREAS**, mediation culminated in a Mediation Agreement with FSHC and with Avalon Bay withdrawing its objection; and

**WHEREAS**, the Borough is committing to fulfilling its agreement with FSHC and implementing its Housing Element and Fair Share Plan as amended.

**NOW, THEREFORE, BE IT ORDAINED** by the Borough Council of the Borough of Allendale, County of Bergen, and State of New Jersey that Chapter 270 Zoning of the Zoning Ordinance of the Borough of Allendale is and shall be amended in its entirety with the following:

**Section 1.**

**ARTICLE I  
General Purposes and Procedures**

**§ 81-1. Affordable housing obligation.**

- A. This section of the Code sets forth regulations regarding the very low-, low- and moderate-income housing units in Borough of Allendale consistent with the provisions outlined in P.L 2024, Chapter 2, including the amended Fair Housing Act (“FHA”) at N.J.S.A. 52:27D-301 et seq., as well as the Department of Community Affairs, Division of Local Planning Services (“LPS”) at N.J.A.C. 5:99 et seq., statutorily upheld existing regulations of the now-defunct Council on Affordable Housing (“COAH”) at N.J.A.C. 5:93 and 5:97, the Uniform Housing Affordability Controls (“UHAC”) at N.J.A.C. 5:80-26.1 et seq., and as reflected in the adopted municipal Fourth Round Housing Element and Fair Share Plan (“HEFSP”).
- B. This Ordinance is intended to ensure that very low-, low- and moderate-income units (“affordable units”) are created with controls on affordability over time and that very low-, low- and moderate-income households shall occupy these units pursuant to statutory requirements. This Ordinance shall apply to all inclusionary developments, individual affordable units, and 100% affordable housing developments except where inconsistent with applicable law. Low-Income Housing Tax Credit financed developments shall adhere to the provisions set forth below in item 5.c. below.
- C. The Borough of Allendale Land Use Board has adopted a HEFSP pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan describes the ways the municipality shall address its fair share of very low-, low- and moderate-income housing as approved by the Superior Court and documented in the Housing Element.
- D. This Ordinance implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of P.L 2024, Chapter 2, the FHA, N.J.A.C. 5:99, NJ Supreme Court upheld COAH regulations at N.J.A.C. 5:93 and 5:97, and UHAC at N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- E. Applicability
  - (1) The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created pursuant to the municipality’s most recently adopted HEFSP.
  - (2) This Ordinance shall apply to all developments that contain very low-, low- and moderate-income housing units included in the Municipal HEFSP, including any unanticipated future developments that will provide very low-, low- and moderate-income housing units.

- (3) Projects receiving federal Low Income Housing Tax Credit financing and are proposed for credit shall comply with the low/moderate split and bedroom distribution requirements, maximum initial rents and sales prices requirements, affirmative fair marketing requirements of UHAC at N.J.A.C. 5:80-26.16 and the length of the affordability controls applicable to such projects shall be not less than a 30-year compliance period plus, pursuant to the current Low Income Housing Tax Credit program, a 15-year extended-use period, for a total of not less than 45 years.

**F. Monitoring and Reporting Requirements**

- (1) The municipality shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its court-approved Housing Element and Fair Share Plan:
  - (a) The municipality shall provide electronic monitoring data with the Department pursuant to P.L. 2024, Chapter 2 and N.J.A.C. 5:99 through the Affordable Housing Monitoring System (AHMS). All monitoring information required to be made public by the FHA shall be available to the public on the Department's website at <https://www.nj.gov/dca/dlps/hss/MuniStatusReporting.shtml>.
  - (b) On or before February 15 of each year, the municipality shall provide annual reporting of its municipal Affordable Housing Trust Fund activity to the Department on the AHMS portal. The reporting shall include an accounting of all municipal Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended, for the previous year from January 1st to December 31st.
  - (c) On or before February 15 of each year, the annual reporting of the status of all affordable housing activity shall be provided to the Department on the AHMS portal, for the previous year from January 1st to December 31st.

**§ 81-2. Definitions.**

As used herein the following terms shall have the following meanings:

“Accessory apartments” means a residential dwelling unit that provides complete independent living facilities with a private entrance for one or more persons, consisting of provisions for living, sleeping, eating, sanitation, and cooking, including a stove and refrigerator, and is located within a proposed preexisting primary dwelling, within an existing or proposed structure that is an accessory to a dwelling on the same lot, constructed in whole or part as an extension to a proposed or existing primary dwelling, or constructed as a separate detached structure on the same lot as the existing or proposed primary dwelling. Accessory apartments are also referred to as “accessory dwelling units”.

“Act” means the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

“Adaptable” means constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the “State Uniform Construction Code Act,” P.L.1975, c. 217 (C.52:27D-119 et seq.) and in accordance with the provisions of section 5 of P.L.2005, c. 350 (C.52:27D-123.15).

“Administrative agent” means the entity approved by the Division responsible for the administration of affordable units, in accordance with N.J.A.C. 5:99-7, and UHAC at N.J.A.C. 5:80-26.15.

“Affirmative marketing” means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.16.

“Affirmative Marketing Plan” means the municipally adopted plan of strategies from which the administrative agent will choose to implement as part of the Affirmative Marketing requirements.

“Affirmative Marketing Process” or “Program” means the actual undertaking of Affirmative Marketing activities in furtherance of each project with very low- low- and moderate-income units.

“Affordability assistance” means the use of funds to render housing units more affordable to low- and moderate-income households and includes, but is not limited to, down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner’s association or condominium fees and special assessments, common maintenance expenses, and assistance with emergency repairs and rehabilitation to bring deed-restricted units up to code, pursuant to N.J.A.C. 5:99-2.5.

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

“Affordable” means, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.7 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.13.

“Affordable housing development” means a development included in a municipality’s housing element and fair share plan, and includes, but is not limited to, an inclusionary development, a municipally sponsored affordable housing project, or a 100 percent affordable development. This includes developments with affordable units on-site, off-site, or provided as a payment in-lieu of construction only if such a payment-in-lieu option has been previously approved by the Program or Superior Court as part of the HEFSP.

“Affordable Housing Dispute Resolution Program” or “the Program” refers to the dispute resolution program established pursuant to N.J.S.A. 52:27D-313.2.

“Affordable Housing Monitoring System” or “AHMS” means the Department’s cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund.

“Affordable Housing Trust Fund” or “AHTF” means that non-lapsing, revolving trust fund established in DCA pursuant to N.J.S.A. 52:27D-320 and N.J.A.C. 5:43 to be the repository of all State funds appropriated for affordable housing purposes. All references to the “Neighborhood Preservation Nonlapsing Revolving Fund” and “Balanced Housing” mean the AHTF.

“Affordable unit” means a housing unit proposed or developed pursuant to the Act, including units created with municipal affordable housing trust funds.

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

“Agency” means the New Jersey Housing and Mortgage Finance Agency established by P.L.1983, c. 530 (C.55:14K-1 et seq.).

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

“Barrier-free escrow” means the holding of funds collected to adapt affordable unit entrances to be accessible in accordance with N.J.S.A. 52:27D-311a et seq. Such funds shall be held in a municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-2.6.

“Builder’s remedy” means court-imposed site-specific relief for a litigant who seeks to build affordable housing for which the court requires a municipality to utilize zoning techniques, such as mandatory set-asides or density bonuses, including techniques which provide for

the economic viability of a residential development by including housing that is not for low- and moderate-income households.

“Certified household” means a household that has been certified by an administrative agent as a very-low-income household, a low-income household, or a moderate-income household.

“CHOICE” means the no-longer-active Choices in Homeownership Incentives for Everyone Program, as it was authorized by the Agency.

“COAH” or the “Council” means the Council on Affordable Housing established in, but not of, DCA pursuant to the Act and that was abolished effective March 20, 2024, pursuant to section 3 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1).

“Commissioner” means the Commissioner of the Department of Community Affairs.

“Compliance certification” means the certification obtained by a municipality pursuant to section 3 of P.L.2024, c. 2 (C.52:27D-304.1), that protects the municipality from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of the year the next round begins, which is also known as a “judgment of compliance” or “judgment of repose.” The term “compliance certification” shall include a judgment of repose granted in an action filed pursuant to section 13 of P.L.1985, c. 222 (C.52:27D-313).

“Construction” means new construction and additions, but does not include alterations, reconstruction, renovations, conversion, relocation, or repairs, as those terms are defined in the State Uniform Construction Code promulgated pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217(N.J.S.A. 52:27D-119 et seq.).

“County-level housing judge” means a judge appointed pursuant to section 5 at P.L. 2024, c. 2, to resolve disputes over the compliance of municipal fair share affordable housing obligations and municipal Fair Share plans and housing elements with the Act.

“DCA” and “Department” mean the State of New Jersey Department of Community Affairs.

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

“Department” means the New Jersey Department of Community Affairs.

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

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

“Development fee” means money paid by a developer for the improvement of residential and non-residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and 40:55D-8.1 through 40:55D-8.7 and N.J.A.C. 5:99-3.

“Dispute Resolution Program” means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-313.2).

“Division” means the Division of Local Planning Services within the Department of Community Affairs.

“Emergent opportunity” means a circumstance that has arisen whereby affordable housing will be able to be produced through a delivery mechanism not originally contemplated by or included in a fair share plan that has been the subject of a compliance certification.

“Equalized assessed value” or “EAV” means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 at P.L. 1973, c. 123 (N.J.S.A. 54:1-35a, 54:1-35b, and 54:1-35c). Estimates at the time of building permit may be obtained by the tax assessor using construction cost estimates. Final EAV shall be determined at project completion by the municipal assessor.

“Equity share amount” means the product of the price differential and the equity share, with the equity share being the whole number of years that have elapsed since the last non-exempt sale of a restricted ownership unit, divided by 100, except that the equity share may not be less than five percent and may not exceed 30 percent.

“Exit sale” means the first authorized non-exempt sale of a restricted unit following the end of the control period, which sale terminates the affordability controls on the unit.

“Exclusionary zoning litigation” means litigation challenging the fair share plan, housing element, ordinances, or resolutions that implement the fair share plan or housing element of a municipality based on alleged noncompliance with the Act or the Mount Laurel

doctrine, which litigation shall include, but shall not be limited to, litigation seeking a builder's remedy.

"Extension of expiring controls" means extending the deed restriction period on units where the controls on the deed restriction imposed at the closing of the first purchaser of the affordable unit will expire in the current round of a housing obligation, so that the total years of a deed restriction is at least 60 years.

"Fair share obligation" means the total of the present need and prospective need, including prior rounds, as determined by the Affordable Housing Dispute Resolution Program, or a court of competent jurisdiction.

"Fair share plan" means the plan or proposal, with accompanying ordinances and resolutions, by which a municipality proposes to satisfy its constitutional obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the municipal housing element, and which addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations.

"FHA" means the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

"Green Building Strategies" means the strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

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

"Household income" means a household's gross annual income calculated in a manner consistent with the determination of annual income pursuant to section 8 of the United States Housing Act of 1937 (Section 8), not in accordance with the determination of gross income for Federal income tax liability.

"Housing element" means the portion of a municipality's master plan adopted in accordance with the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-28.b(3) and the Act consisting of reports, statements proposals, maps, diagrams, and text designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low- and moderate-income housing, which shall include the

municipal present and prospective obligation for affordable housing, determined pursuant to subsection f. at N.J.S.A. 52:27D-304.1.

“Housing region” means a geographic area established pursuant to N.J.S.A. 52:27D-304.2b.

“Inclusionary development” means a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate- income households.

“Judgment of compliance” or “judgment for repose” means a determination issued by the Superior Court approving a municipality’s housing element and fair share plan to satisfy its affordable housing obligation for a particular 10-year round.

“Low-income household” means a household with a household income equal to 50 percent or less of the regional median income.

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

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

“Mixed use development” means any development that includes both a non-residential development component and a residential development component, and shall include developments for which: (1) there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities maybe considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and non-residential developments are located on the same lot or adjoining lots, including, but not limited to, lots separated by a street, a river, or another geographical feature.

“Moderate-income household” means a household with a household income in excess of 50 percent but less than 80 percent of the regional median income.

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

“MONI” means the no-longer-active Market Oriented Neighborhood Investment Program, as it was authorized by the Agency.

“Municipal housing liaison” or “MHL” means an appointed municipal employee who is, pursuant to N.J.A.C. 5:99-6, responsible for oversight and/or administration of the affordable units created within the municipality.

“Municipal affordable housing trust fund” means a separate, interest-bearing account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing previously approved prior to March 20, 2024 (per P.L. 2024, c.2), barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and this chapter.

“Municipal development fee ordinance” means an ordinance adopted by the governing body of a municipality that authorizes the collection of development fees.

“New construction” means the creation of a new housing unit under regulation by a code enforcement official regardless of the means by which the unit is created. Newly constructed units are evidenced by the issuance of a certificate of occupancy and may include new residences created through additions and alterations, adaptive reuse, subdivision, or conversion of existing space, and moving a structure from one location to another.

“New Jersey Affordable Housing Trust Fund” means an account established pursuant to N.J.S.A. 52:27D-320.

“New Jersey Housing Resource Center” or “Housing Resource Center” means the online affordable housing listing portal, or its successor, overseen by the Agency pursuant to N.J.S.A. 52:27D-321.3 et seq.

“95/5 restriction” means a deed restriction governing a restricted ownership unit that is part of a housing element that received substantive certification from COAH pursuant to N.J.A.C. 5:93, as it was in effect at the time of the receipt of substantive certification, before October 1, 2001, or any other deed restriction governing a restricted ownership unit with a seller repayment option requiring 95 percent of the price differential to be paid to the municipality or an instrument of the municipality at the closing of a sale at market price.

“Non-exempt sale” means any sale or transfer of ownership of a restricted unit to one’s self or to another individual other than the transfer of ownership between spouses or civil union partners; the transfer of ownership between former spouses or civil union partners

ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary; and the transfer of ownership by court order.

"Nonprofit" means an organization granted nonprofit status in accordance with section 501(c)(3) of the Internal Revenue Code.

"Non-residential development" means:

Any building or structure, or portion thereof, including, but not limited to, any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code, N.J.A.C. 5:23, promulgated to effectuate the State uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., including any subsequent amendments or revisions thereto;

Hotels, motels, vacation timeshares, and child-care facilities; and

The entirety of all continuing care facilities within a continuing care retirement community which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A.52:27D-330 et seq.

"Non-residential development fee" means the fee authorized to be imposed pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

"Order for repose" means the protection a municipality has from exclusionary zoning litigation including a builder's remedy lawsuit for a period of time from the entry of a judgment of compliance by the Superior Court. A judgment of compliance often results in an order for repose.

"Payment in lieu of constructing affordable units" means the prior approval of the payment of funds to the municipality by a developer when affordable units are were not produced on a site zoned for an inclusionary development.

"Prospective need" means a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. Prospective need shall be determined by the methodology set forth pursuant to sections 6 and 7 of P.L.2024, c. 2 (C.52:27D-304.2 and C.52:27D-304.3) for the fourth round and all future rounds of housing obligations.

"Qualified Urban Aid Municipality" means a municipality that meets the criteria established pursuant to N.J.S.A. 52:27D-304.3.c(1).

“Person with a disability” means a person with a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, aging, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, the inability to speak or a speech impairment, or physical reliance on a service animal, wheelchair, or other remedial appliance or device.

“Price differential” means the difference between the controlled sale price of a restricted unit and the contract price at the exit sale of the unit, determined as of the date of a proposed contract of sale for the unit. If there is no proposed contract of sale, the price differential is the difference between the controlled sale price of a restricted unit and the appraised value of the unit as if it were not subject to UHAC, determined as of the date of the appraisal. If the controlled sale price exceeds the contract price or, in the absence of a contract price, the appraised value, the price differential is zero dollars.

“Prior round unit” means a housing unit that addresses a municipality’s fair share obligation from a round prior to the fourth round of affordable housing obligations, including any unit that: (1) received substantive certification from COAH; (2) is part of a third-round settlement agreement or judgment of compliance approved by a court of competent jurisdiction, inclusive of units created pursuant to a zoning designation adopted as part of the settlement agreement or judgment of compliance to create a realistic opportunity for development; (3) is subject to a grant agreement or other contract with either the State or a political subdivision thereof entered into prior to July 1, 2025, pursuant to either item (1) or (2) above; or (4) otherwise addresses a municipality’s fair share obligation from a round prior to the fourth round of affordable housing obligations. A unit created after the enactment of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) on March 20, 2024, is not a prior round unit unless: (1) it is created pursuant to a prior round development plan or zoning designation that received COAH or court approval on or before the cutoff date of June 30, 2025, or the date that the municipality adopts the implementing ordinances and resolutions for the fourth round of affordable housing obligations, whichever occurs sooner; and (2) its siting and creation are consistent with the form of the prior round development plan or zoning designation in effect as of the cutoff date, without any amendment or variance.

“Program” means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L.2024, c. 2 (C.52:27D-313.2).

“Random selection process” means a lottery process by which currently income-eligible applicant-households are selected, at random, for placement in affordable housing units such that no preference is given to one applicant over another, except in the case of a

veterans' preference where such an agreement exists; for purposes of matching household income and size with an appropriately priced and sized affordable unit; or another purpose allowed pursuant to N.J.A.C. 5:80-26.7(k)3. This definition excludes any practices that would allow affordable housing units to be leased or sold on a first-come, first-served basis.

"RCA administrator" means an appointed municipal employee who is responsible for oversight and/or administration of affordable units and associated revenues and expenditures within the municipality that were funded through regional contribution agreements.

"RCA project plan" means a past application, submitted by a receiving municipality in an RCA, delineating the manner in which the receiving municipality intended to create or rehabilitate low- and moderate-income housing.

"Receiving municipality" means, for the purposes of an RCA, a municipality that contractually agreed to assume a portion of another municipality's fair share obligation.

"Reconstruction" means any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied, pursuant to the Rehabilitation Subcode of the uniform Construction Code, N.J.A.C. 5:23-6. Reconstruction shall not include projects comprised only of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings. Asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted.

"Recreational facilities and community centers" means any indoor or outdoor buildings, spaces, structures, or improvements intended for active or passive recreation, including, but not limited to, ballfields, meeting halls, and classrooms, accommodating either organized or informal activity.

"Regional contribution agreement" or "RCA" means a contractual agreement, pursuant to the Act, into which two municipalities voluntarily entered into and was approved by COAH and/or Superior Court prior to July 18, 2008, to transfer a portion of a municipality's affordable housing obligation to another municipality within its housing region.

"Regional median income" means the median income by household size for an applicable housing region, as calculated annually in accordance with N.J.A.C. 5:80-26.3.

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

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

“Residential development fee” means money paid by a developer for the improvement of residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and N.J.A.C. 5:99-3.2.

“Restricted unit” means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of this subchapter but does not include a market-rate unit that was financed pursuant to UHORP, MONI, or CHOICE.

“Spending plan” means a method of allocating funds contained in an affordable housing trust fund account, which includes, but is not limited to, development fees collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to N.J.S.A. 52:27D-329.1 et seq., for the purpose of meeting the housing needs of low- and moderate-income individuals.

“State Development and Redevelopment Plan” or “State Plan” means the plan prepared pursuant to sections 1 through 12 of the “State Planning Act,” P.L.1985, c. 398 (C.52:18A-196 et al.), designed to represent a balance of development and conservation objectives best suited to meet the needs of the State, and for the purpose of coordinating planning activities and establishing Statewide planning objectives in the areas of land use, housing, economic development, transportation, natural resource conservation, agriculture and farmland retention, recreation, urban and suburban redevelopment, historic preservation, public facilities and services, and intergovernmental coordination pursuant to subsection f. of section 5 of P.L.1985, c. 398 (C.52:18A-200).

“Supportive housing household” means a very low-, low- or moderate-income household certified as income eligible by an administrative agent in accordance with N.J.A.C. 5:80-26.14, in which at least one member is an individual who requires supportive services to maintain housing stability and independent living and who is part of a population identified by federal or state statute, regulation, or program guidance as eligible for supportive or special needs housing. Such populations include, but are not limited to: persons with intellectual or developmental disabilities, persons with serious mental illness, person with head injuries (as defined in Section 2 of P.L. 1977), persons with physical disabilities or chronic health conditions, persons who are homeless as defined by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 578, survivors of domestic violence, youth aging out of foster care, and other special needs populations recognized under programs administered by the U.S. Department of Housing and Urban

Development, the Low-Income Housing Tax Credit Program, the McKinney–Vento Act, or the New Jersey Department of Human Services. A supportive housing household may include family members, unrelated individuals, or live-in aides, provided that the household meets the income eligibility requirements of this subchapter, except that in the case of unrelated individuals not operating as a family unit, income eligibility shall be tested on an individual basis rather than in the aggregate; the unit is leased or sold subject to the affordability controls established herein; and the supportive services available to the household are designed to promote housing stability, independent living, and community integration. The determination of whether unrelated individuals are operating as a family unit shall be made based on the applicant’s self-identification of household members on the affordable housing application.

“Supportive housing sponsoring program” means grant or loan program which provided financial assistance to the development of the unit.

“Supportive housing unit” means a restricted rental unit, as defined by N.J.S.A. 34:1B-21.24, that is affordable to very low-, low- or moderate-income households and is reserved for occupancy by a supportive housing household. Supportive housing units are also referred to as permanent supportive housing units.

“Transitional housing” means temporary housing that: (1) includes, but is not limited to, single-room occupancy housing or shared living and supportive living arrangements; (2) provides access to on-site or off-site supportive services for very low-income households who have recently been homeless or lack stable housing; (3) is licensed by the department; and (4) allows households to remain for a minimum of six months.

“Treasurer” means the Treasurer of the State of New Jersey.

“UHAC” means the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26.

“UHORP” means the Agency’s Urban Homeownership Recovery Program, as it was authorized by the Agency Board.

“Unit type” means type of dwelling unit with various building standards including but not limited to single-family detached, single-family attached/townhouse, stacked townhouse (attached building containing 2 units each with separate entrances), duplex (detached building containing 2 units each with separate entrances), triplex (3 units each with separate entrance), quadplex (4 units each with separate entrance), multifamily / flat (2 or more units with a shared entrance). Inclusion of a garage, or not, shall not define the unit type.

“Very-low-income household” means a household with a household income less than or equal to 30 percent of the regional median income.

“Very-low-income housing” means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 30 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

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

“Veteran” means a veteran as defined at N.J.S.A. 54:4-8.10.

“Veterans’ preference” means the agreement between a municipality and a developer or residential development owner that allows for low- to moderate-income veterans to be given preference for up to 50 percent of rental units in relevant projects, as provided for at N.J.S.A. 52:27D-311.j.

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

**§ 81-3. Borough-wide mandatory set-aside.**

- A. A development, other than single-family detached, providing a minimum of five new housing units created through any municipal rezoning or Zoning Board action, use or density variance, redevelopment plan, or rehabilitation plan that provides for densities at or above six units per acre, is required to include an affordable housing set-aside of 20%.
- B. Any affordable units generated through such mandatory set-aside shall be subject to all other provisions of this ordinance.
- C. All such affordable units shall be governed by this ordinance the controls on affordability, including bedroom distribution, and affirmatively marketed to the housing region in conformance with UHAC at N.J.A.C. 5:80-26.1 et seq., any successor regulation, and all other applicable laws.
- D. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement. Developers cannot, for example, subdivide a project into two lots and then make each of them a number of units just below the threshold.
- E. The mandatory set-aside requirements of this section do not give any developer the right to any rezoning, variance or other relief, or establish any obligation on the part of the

municipality to grant such rezoning, variance or other relief.

- F. This municipality-wide mandatory set-aside requirement does not apply to any sites or specific zones otherwise identified in the HEFSP, for which density and set-aside requirements shall be governed by the specific standards as set forth therein.
- G. In the event that the inclusionary set-aside of 20% of the total number of residential units does not result in a full integer, the set-aside shall round up to ensure that at least 20 percent of the units are affordable.

**§ 81-4. New Construction.**

A. New Construction (per N.J.A.C. 5:93 as may be updated per various sections in N.J.A.C. 5:97 and N.J.S.A. 52:27D-301 et seq.). Per the definition of “New Construction,” this section governs the creation of new affordable housing units regardless of the means by which the units are created. Newly constructed units may include new residences constructed or created through other means.

- (1) The following requirements shall apply to all new or planned developments that contain very low-, low- and moderate-income housing units. To the extent possible, details related to the adherence to the requirements below shall be outlined in the resolution granting municipal subdivision or site plan approval of the project to assist municipal representatives, developers and Administrative Agents.
- (2) Completion Schedule (previously known as phasing). Final site plan or subdivision approval shall be contingent upon the affordable housing development meeting the following completion schedule for very low-, low- and moderate-income units whether developed in a single-phase development, or in a multi-phase development:

Maximum Percentage of Market-Rate Units Issued a Temporary or Final Certificate of Occupancy	Minimum Percentage of Affordable Units Issued a Temporary or Final Certificate of Occupancy
25+1	10
50	50
75	75
90	100

(3) Design. The following design requirements apply to affordable housing developments, excluding prior round units.

(a) Design of 100 percent affordable developments:

- [1] Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum

square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.

- [2] Each bedroom in each restricted unit must have at least one window.
  - [3] Restricted units must include adequate air conditioning and heating.
- (b) Design of developments comprising market-rate rental units and restricted rental units. The following does not apply to prior round units, unless stated otherwise.
- [1] Restricted units must use the same building materials and architectural design elements (for example, plumbing, insulation, or siding) as market-rate units of the same unit type (for example, flat or townhome) within the same development, except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.
  - [2] Restricted units and market-rate units within the same affordable development must be sited such that restricted units are not concentrated in less desirable locations.
  - [3] Restricted units may not be physically clustered so as to segregate restricted and market-rate units within the same development or within the same building, but must be interspersed throughout the development, except that age-restricted and supportive housing units may be physically clustered if the clustering facilitates the provision of on-site medical services or on-site social services. Prior round affordable units shall be integrated with market rate units to the extent feasible.
  - [4] Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.
  - [5] Restricted units must include adequate air conditioning and heating and must use the same type of cooling and heating sources as market-rate units of the same unit type. This shall apply to prior round units.
  - [6] Each bedroom in each restricted unit must have at least one window.
  - [7] Restricted units must be of the same unit type as market-rate units within the same building.
  - [8] Restricted units and bedrooms must be no less than 90 percent of the minimum size prescribed by the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.

(c) Design of developments containing for-sale units, including those with a mix of rental and for-sale units. Restricted rental units shall meet the requirements of section b above. Restricted sale units shall comply with the below:

- [1] Restricted units must use the same building standards as market-rate units of the same unit type (for example, flat, townhome, or single-family home), except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.
- [2] Restricted units may be clustered, provided that the buildings or housing product types containing the restricted units are integrated throughout the development and are not concentrated in an undesirable location or in undesirable locations. Prior round affordable units shall be integrated with market rate units to the extent feasible.
- [3] Restricted units may be of different unit housing product types than market-rate units, provided that there is a restricted option available for each market rate housing type. Developments containing market-rate duplexes, townhomes, and/or single-family homes shall offer restricted housing options that also include duplexes, townhomes, and/or single-family homes. Penthouses and higher priced end townhouses may be exempt from this requirement. The proper ratio for restricted to market-rate unit type shall be subject to municipal ordinance or, if not specified, shall be determined at the time of site plan approval.
- [4] Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.
- [5] Penthouse and end units may be reserved for market-rate sale, provided that the overall number, value, and distribution of affordable units across the development is not negatively impacted by such reservation(s).
- [6] Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.
- [7] Each bedroom in each restricted unit must have at least one window; and
- [8] Restricted units must include adequate air conditioning and heating.

#### B. Utilities.

- (1) Affordable units shall utilize the same type of cooling and heating source as market-rate units within the affordable housing development.

- (2) Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance in accordance with N.J.AC 5:80-26.13(e).

C. Low/moderate split and bedroom distribution.

- (1) Affordable units shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.
- (2) In each affordable housing development, at least 50% of the restricted units within each bedroom distribution rounded down to the nearest whole number shall be very low- or low-income units.
- (3) Within rental developments, of the total number of affordable rental units, at least 13%, rounded up to the nearest whole number, shall be affordable to very low-income households. The very low-income units shall be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count, and counted as part of the required number of low-income units within the development.
- (4) Affordable housing developments that are not age-restricted or supportive housing shall be structured such that:
  - (a) At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;
  - (b) Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;
  - (c) The combined number of efficiency and one-bedroom units shall be no greater than 20%, rounded up, of the total number of low- and moderate-income units.
  - (d) At least 30% of all low- and moderate-income units, rounded down shall be two-bedroom units.
  - (e) At least 20% of all low- and moderate-income units, rounded down shall be three-bedroom units.
  - (f) The remaining units may be allocated among two- and three- bedroom units at the discretion of the developer.
- (5) Affordable housing developments that are age-restricted or supportive housing, except those supportive housing units whose sponsoring program determines the unit arrangements, shall be structured such that, at a minimum, the number of bedrooms shall equal the number of age-restricted or supportive housing low- and moderate-income units within the inclusionary development. Supportive housing units whose sponsoring program determines the unit arrangement shall comply with all requirements of the sponsoring program, the standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency

unit. In affordable housing developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom units must comprise at least 5% of those restricted units.

**D. Accessibility requirements.**

- (1) Any new construction shall be adaptable; however, elevators shall not be required in any building or within any dwelling unit for the purpose of compliance with this section. In buildings without elevator service, only ground floor dwelling units shall be required to be constructed to conform with the technical design standards of the barrier free subcode. "Ground floor" means the first floor with a dwelling unit or portion of a dwelling unit, regardless of whether that floor is at grade. A building may have more than one ground floor.
- (2) Notwithstanding the exemption for townhouse dwelling units in the barrier free subcode, the first floor of all townhouse dwelling units and of all other multifloor dwelling units that are attached to at least one other dwelling unit shall be subject to the technical design standards of the barrier free subcode and shall include the following features:
  - (a) An adaptable toilet and bathing facility on the first floor;
  - (b) An adaptable kitchen on the first floor;
  - (c) An interior accessible route of travel however an interior accessible route of travel shall not be required between stories;
  - (d) An adaptable room that can be used as a bedroom, with a door, or the casing for the installation of a door that is compliant with the Barrier Free Subcode, on the first floor;
  - (e) If not all of the foregoing requirements in b.i. through b.iv. can be satisfied, then an interior accessible route of travel shall be provided between stories within an individual unit; and
  - (f) An accessible entranceway as set forth in P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the municipality has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
    - [1] Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
    - [2] To this end, the builder of restricted units shall deposit funds within the Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.

- [3] The funds deposited shall be expended for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
  - [4] The developer of the restricted units shall submit to the Construction Official a design plan and cost estimate for the conversion from adaptable to accessible entrances.
  - [5] Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meets the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Affordable Housing Trust Fund and earmarked appropriately.
- (g) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is “site-impracticable” to meet the requirements. If full compliance with this section would be site impracticable, compliance with this section for any portion of the dwelling shall be required to the extent that it is not site impracticable. Determinations of site impracticability shall comply with the Barrier Free Subcode at N.J.A.C. 5:23-7.

#### **§ 81-5. Affordable Housing Programs.**

- A. Pursuant to amended UHAC regulations at N.J.A.C. 5:80-26.1 et seq. and, in addition, pursuant to P.L. 2024, c.2 and specifically to the amended FHA at N.J.S.A. 52:27D-311.m, “All parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by statute, including but not limited to P.L. 2024, c.2, or binding court decisions.” The following are many of the main provisions of the COAH regulations at either N.J.A.C. 5:93 or 5:97 that have been upheld by the NJ Supreme Court. Municipalities should consult the cited full COAH regulations when preparing the HEFSP for required documentation, etc. Additional compliance details may also be included in the specific municipal program manual.
- B. Rehabilitation Programs (per N.J.A.C. 5:93-5.2 with updated provisions herein per N.J.A.C. 5:97-6.2 related to credit towards a municipal present need obligation).
  - (1) The rehabilitation program shall be designed to renovate deficient housing units occupied or intended to be occupied by very low-, low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28-1.1 et seq or the Rehabilitation Subcode, N.J.A.C. 5:23-6 to the extent applicable.
  - (2) Both ownership and rental units shall be eligible for rehabilitation funds.
  - (3) All rehabilitated units shall remain affordable to very low-, low- and moderate-income households for a period of 10 years (the control period). For owner-

occupied units, the control period shall be enforced with a mortgage and note and for renter-occupied units the control period will be enforced with a deed restriction.

- (4) The municipality shall dedicate a minimum average hard cost of \$10,000 for each unit to be rehabilitated through this program and in addition shall dedicate associated rehabilitation program soft costs such as case management, inspection fees and work write-ups.
  - (5) The municipality shall designate, subject to the approval of the Department, one or more Administrative Agents to administer the rehabilitation program in accordance with P.L 2024, Chapter 2. The Administrative Agent(s) shall provide rehabilitation manuals for ownership and rental rehabilitation programs. Manuals shall be adopted by resolution of the governing body. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and on the municipal affordable housing web page.
  - (6) Households determined to be very low-, low-, or moderate-income may participate in a rehabilitation program. Rehabilitated units shall be exempt from the very low-income requirements, low/mod split, and bedroom distribution requirements of UHAC, but shall be administered in accordance with the following:
    - (a) If a unit is vacant at the time of rehabilitation, or if a rehabilitated unit becomes vacant and is re-rented before the expiration of the affordability controls, the deed restriction shall require that the unit be rented to a low- or moderate-income household at an affordable rent.
    - (b) If a rental unit is occupied by a tenant at the time rehabilitation is completed, the rent charged after rehabilitation shall not exceed the lesser of the tenant's current rent or the maximum rent permitted under UHAC.
    - (c) Rents in rehabilitated units may increase annually based on the standards in UHAC.
  - (7) At the time of application, applicant households and/or tenant households shall be subject to income eligibility determinations in accordance with UHAC.
- C. Market to Affordable program (per N.J.A.C. 5:97-6.9).
- (1) The market to affordable program permits the purchase or subsidization of unrestricted units through a mortgage write-down provided to an income-certified buyer or through a sale or rental as a low- or moderate-income unit to an income-eligible household. The market to affordable program may produce both low- and moderate-income units.
  - (2) At the time they are offered for sale or rental, eligible units may be new, pre-owned or vacant.

- (3) The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.
- (4) A minimum subsidy of \$25,000 per moderate-income unit and/or \$30,000 per low-income unit shall be provided, with additional subsidy depending on the market prices or rents in a municipality.
- (5) The units shall comply with UHAC with the following exceptions:
  - (a) Bedroom distribution (N.J.A.C. 5:80-26.4).
  - (b) Low/moderate income split (N.J.A.C. 5:80-26.4).
- (6) Affordability average (N.J.A.C. 5:80-26.4); however:
  - (a) The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60 percent of median income and the maximum rent for a low-income unit shall be affordable to households earning no more than 44 percent of median income; and
  - (b) The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70 percent of median income and the maximum sales price for a low-income unit shall be affordable to households earning no more than 40 percent of median income.

D. Assisted Living Residence (per N.J.A.C. 5:97-6.11).

- (1) An assisted living residence is a facility licensed by the New Jersey Department of Health to provide apartment-style housing and congregate dining and to assure that assisted living services are available. All or a designated number of apartments in the facility shall be restricted to low- and moderate-income households.
- (2) The unit of credit shall be the apartment. However, a two-bedroom apartment shall be eligible for two units of credit if it is restricted to two unrelated individuals.
- (3) A recipient of a Medicaid waiver shall automatically qualify as a low- or moderate-income household.
- (4) Assisted living units are considered age-restricted housing in a HEFSP and shall be included with the maximum number of units that may be age-restricted.
- (5) Low- and moderate-income residents cannot be charged any upfront fees.
- (6) The units shall comply with UHAC with the following exceptions:
  - (a) Affirmative marketing (N.J.A.C. 5:80-26.16); provided that the units are restricted to recipients of Medicaid waivers;
  - (b) The deed restriction may be on the facility, rather than individual apartments or rooms;

- (c) Low/moderate income split and affordability average (N.J.A.C. 5:80-26.4); only if all of the affordable units are affordable to households at a maximum of 60 percent of median income; and
  - (7) Tenant income eligibility (N.J.A.C. 5:80-26.14); up to 80 percent of an applicant's gross income may be used for rent, food and services based on occupancy type and the affordable unit must receive the same basic services as required by the Agency's underwriting guidelines and financing policies. The cost of non-housing related services shall not exceed one and two-thirds times the rent established for each unit.
- E. Supportive Housing and Group Homes (per N.J.A.C. 5:97-6.10).
- (1) The following provisions shall apply to group homes, residential health care facilities, and supportive shared living housing:
    - (a) Units are subject to Affirmative Marketing requirements, household certification, and administrative agent oversight; and may, with the approval of the municipal housing liaison and the administrative agent, be leased either by the bedroom or to a single household in the case of multi-bedroom configurations, provided such arrangement is consistent with the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968).
    - (b) Units may, with the approval of the administrative agent, be subject to a master lease by an approved supportive housing operator, provided that all subleases are to be certified supportive housing households and remain fully subject to the affordability controls of this subchapter. Rents for supportive housing units shall not exceed the rent standards established and published by the New Jersey Department of Human Services.
    - (c) The unit of credit shall be the bedroom. However, the unit of credit shall be the unit if occupied by a single person or household.
    - (d) Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to the Act.
    - (e) Occupancy shall not be restricted to youth under 18 years of age.
    - (f) In affordable developments with 20 or more restricted units that are supportive housing, two-bedroom units must compose at least five percent of those restricted units.
    - (g) The bedrooms and/or units shall comply with UHAC with the following exceptions:
      - [1] Affirmative marketing; however, group homes, residential health care facilities, permanent supportive housing, and supportive shared living housing shall be affirmatively marketed to broadest possible population of qualified individuals with special needs in accordance with a plan approved by the sponsoring program;

[2] Affordability average and bedroom distribution (N.J.A.C. 5:80-26.4).

- (h) With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, group homes, residential health care facilities, supportive shared living housing and permanent supportive housing shall have the appropriate controls on affordability in accordance with the Act. In the event that a supportive housing provider is unable to record or execute a long-term deed restriction, the units shall be subject to annual recertification by the Municipal Housing Liaison to confirm continued occupancy and compliance with this Section.
- (i) Objective standards shall be applied in the selection of tenants for supportive housing units and shall be designed to ensure that individuals are not excluded in an arbitrary or capricious manner.
- (j) The following documentation shall be submitted by the sponsor to the municipality prior to marketing the completed units or facility:
  - [1] An Affirmative Marketing Plan in accordance with D1 above; and
  - [2] If applicable, proof that the supportive and/or special needs housing is regulated by the New Jersey Department of Health and Senior Services, the New Jersey Department of Human Services or another State agency in accordance with the requirements of this section, which includes validation of the number of bedrooms or units in which low- or moderate-income occupants reside.
- (k) The sponsor/owner shall complete annual monitoring as directed by the MHL.

#### F. Regional Income Limits.

- (1) Administrative agents shall use the current regional income limits for the purpose of pricing affordable units and determining income eligibility of households.
- (2) Regional income limits are based on regional median income, which is established by a regional weighted average of the “median family incomes” published by HUD. The procedure for computing the regional median income is detailed in N.J.A.C. 5:80-26.3.
- (3) Updated regional income limits are effective as of the effective date of the regional Section 8 income limits for the year, as published by HUD, or 45 days after HUD publishes the regional Section 8 income limits for the year, whichever comes later. The new income limits may not be less than those of the previous year.

#### G. Maximum Initial Rents And Sales Prices.

- (1) In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC N.J.A.C. 5:80-26.4.

- (2) The average rent for all restricted units within each affordable housing development shall be affordable to households earning no more than 52 percent of regional median income.
- (3) The maximum rent for restricted rental units within each affordable housing development shall be affordable to households earning no more than 60% of regional median income.
- (4) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income. These very low-income units shall be part of the low-income requirement and very-low-income units should be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count.
- (5) The maximum sales price of restricted ownership units within each affordable housing development shall be affordable to households earning no more than 70% of median income, and each affordable housing development must achieve an affordability average that does not exceed 55% for all restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type when the number of low- and moderate-income units permits.
- (6) The master deeds and declarations of covenants and restrictions for affordable developments may not distinguish between restricted units and market-rate units in the calculation of and condominium or homeowner association fees and special assessments to be paid by low- and moderate-income purchasers and those to be paid by market-rate purchasers. Notwithstanding the foregoing sentence, condominium units subject to a municipal ordinance adopted before December 20, 2004, which ordinance provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection are governed by the ordinance.
- (7) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted family units, the following standards shall be met:
  - (a) A studio or efficiency unit shall be affordable to a one-person household;
  - (b) A one-bedroom unit shall be affordable to a one and one-half person household;
  - (c) A two-bedroom unit shall be affordable to a three-person household;
  - (d) A three-bedroom unit shall be affordable to a four and one-half person household; and

- (e) A four-bedroom unit shall be affordable to a six-person household.
- (8) In determining the initial rents and sales prices for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted and special needs and supportive housing developments, the following standards shall be met:
- (a) A studio or efficiency unit shall be affordable to a one-person household;
  - (b) A one-bedroom unit shall be affordable to a one and one-half person household;  
and
  - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households. Where pricing is based on two one-person households, the developer shall provide a list of units so priced to the Municipal Housing Liaison and the Administrative Agent.
- (9) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the FreddieMac 30-Year Fixed Rate-Mortgage rate of interest), property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 30 percent of the eligible monthly income of the appropriate size household as determined pursuant to N.J.A.C. 5:80-26.7, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented.
- (10) The initial rent for a restricted rental unit shall be calculated so that the total monthly housing expense, including an allowance for tenant-paid utilities, does not exceed 30 percent of the gross monthly income of a household of the appropriate size whose income is targeted to the applicable percentage of median income for the unit, as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented. The rent shall also comply with the average affordability requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented. The initial rent for a restricted rental unit shall be calculated so the eligible monthly housing expenses/income, including an allowance for tenant-paid utilities does not exceed 30 percent of gross income of and the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (11) At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, following proper notice provided to the occupant household pursuant to N.J.S.A. 2A:18-61.1.f, the rent may be increased to an amount commensurate with the annual percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), specifically U.S. Bureau of Labor Statistics Series CUUR0100SAH, titled "Housing in Northeast urban, all urban consumers, not seasonally adjusted." Rent increases for units constructed pursuant to Low-Income

Housing Tax Credit regulations shall be indexed pursuant to the regulations governing Low-Income Housing Tax Credits.

**§ 81-6. Extension of Controls.**

The Fair Housing Act permits credit for extension of controls and UHAC establishes standards for this mechanism

Extension of Controls Program (for ownership units per UHAC at N.J.A.C. 5:80-26.6(h) through (k) and (m); and for rental units N.J.A.C. 5:80-26.12(h) through (k)).

- (1) An extension of affordability controls program is established to maintain and extend the affordability of deed restricted units scheduled to come out of their affordability control period, UHAC, including the following:
  - (a) The affordable unit meets the criteria for prior cycle (April 1, 1980 - December 15, 1986) or post December 15, 1986 credits.
  - (b) The affordability controls for the unit measured from the date that the initial certified household takes title, are scheduled to expire in the current round; or in the next round of housing obligations if the municipal election to extend controls is made no earlier than one year before the end of the current round;
  - (c) The municipality shall obtain a continuing certificate of occupancy or a certified statement from the municipal building inspector stating that the restricted unit meets all code standards.
  - (d) If a unit requires repair and/or rehabilitation work in order to receive a continuing certificate of occupancy or certified statement from the municipal building inspector, the municipality shall fund and complete the work.
  - (e) The municipality shall adhere to the process for extending controls pursuant to UHAC for extending ownership units and rental units, either inclusionary or 100% affordable developments.
  - (f) The deed restriction for the extended control period shall be filed with the County Clerk.

**81-7 Condominium and homeowners' association fees.**

- A. For any affordable housing unit that is part of a condominium association and/or homeowners' association, the master deed shall reflect that the association fee assessed for each affordable housing unit shall be established at 100% of the market rate fee.

**ARTICLE II**

**Affordable Unit Controls and Requirements**

**§ 81-10. Purpose.**

- A. For any affordable housing unit that is part of a condominium association and/or

homeowners' association, the master deed shall reflect that the association fee assessed for each affordable housing unit shall be established at 100% of the market rate fee.

**§ 81-11. Affirmative Marketing.**

- A. The municipality shall adopt, by resolution, an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.
- B. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age, or number of children, to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward Housing Region 1 comprising Bergen, Hudson, Passaic and Sussex Counties and is required to be followed throughout the period of deed restriction.
- C. The Affirmative Marketing Plan provides the following preferences, provided that units that remain unoccupied after these preferences are exhausted may be offered to households without regard to these preferences.
  - (1) Where the municipality has entered into an agreement with a developer or residential development owner to provide a preference for very-low-, low-, and moderate-income veterans who served in time of war or other emergency, pursuant to N.J.S.A. 52:27D-311.j, there shall be a preference for veterans for up to 50 percent of the restricted rental units in a particular project.
  - (2) There shall be a regional preference for all households that live and/or work in Housing Region 1.
  - (3) Subordinate to the regional preference, there shall be a preference for households that live and/or work in New Jersey.
- D. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Process, including the marketing of initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the municipality shall implement the Affirmative Marketing Process to ensure the Affirmative Marketing of all affordable units, with the exception of affordable programs that are exempt from Affirmative Marketing as noted herein.
- E. The Affirmative Marketing Process shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Process, the Administrative Agent shall consider the use of language translations where

appropriate.

- F. Applications for affordable housing or notices thereof, if offered online, shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and municipal library in the municipality in which the units are located; and the developer's rental or sales office. The developer shall mail applications to prospective applicants upon request and shall make applications available through a secure online website address.
- G. In addition to other Affirmative Marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units on the New Jersey Housing Resource Center website. Any other entities, including developers or persons or companies retained to implement the Affirmative Marketing Process, shall comply with this paragraph.
- H. In implementing the Affirmative Marketing Process, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- I. The Affirmative Marketing Process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- J. The cost to affirmatively market the affordable units shall be the responsibility of the developer, sponsor or owner, with the exception of Affirmative Marketing for resales.

**§ 81-12. Selection of Occupants of Affordable Housing Units.**

- A. The Administrative Agent shall use a random selection process to select occupants of very low-, low- and moderate-income housing.
- B. A pool of interested households will be maintained in accordance with the provisions of N.J.A.C. 5:80-26.16.

**§ 81-13. Occupancy Standards.**

- A. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
- B. Ensure each bedroom is occupied by at least one person, except for age-restricted and supportive and special needs housing units;
- C. Provide a bedroom for every two adult occupants;
- D. With regard to occupants under the age of 18, accommodate the household's requested arrangement, except that such arrangement may not result in more than two occupants under the age of 18 occupying any bedroom; and
- E. Avoid placing a one-person household into a unit with more than one bedroom.

**§ 81-14. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.**

- A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80- 26.6, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years subject to the requirements of N.J.A.C. 5:80-26.6, as may be amended and supplemented.
- B. Rehabilitated housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years (crediting towards present need only).
- C. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit. For all transactions going forward, the date of commencement shall be identified in the deed restriction.
- D. If existing affordability controls are being extended, the extended control period for a restricted ownership unit commences on the effective date of the extension, which is the end of the original control period.
- E. After the end of any control period, the restricted ownership unit remains subject to the affordability controls set forth in this subchapter until the owner gives notice of their intent to make an exit sale, at which point:
  - (1) If the municipality exercises the right to extend the affordability controls on the unit, no exit sale occurs and a new control period commences; or
  - (2) If the municipality does not exercise the right to extend the affordability controls on the unit, the affordability controls terminate following the exit sale.
  - (3) Notwithstanding the foregoing, nothing herein is intended to eliminate the right of a municipality with a 95/5 deed to allow the unit to be sold at fair market value and to capture 95 percent of the differential for affordable housing.
- F. Prior to the issuance of any building permit for the construction/rehabilitation of restricted ownership units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.
- G. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- H. At the time of the initial sale of the unit and upon each successive price-restricted sale, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obliging the purchaser, as well as the purchaser's heirs, successors, and assigns, to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-

restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.

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

**§ 81-15. Price Restrictions for Restricted Ownership Units and Resale Prices.**

- A. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.7, as may be amended and supplemented, including:
  - (1) The initial purchase price and affordability percentage for a restricted ownership unit shall be set by the Administrative Agent.
  - (2) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the standards set forth in N.J.A.C 5:80-26.7.
    - (a) If the resale occurs prior to the one-year anniversary of the date on which title to the unit was transferred to a certified household, the maximum resale price for a is the most recent non-exempt purchase price.
    - (b) If the resale occurs on or after such anniversary date, the maximum resale price is the most recent non-exempt purchase price increased to reflect the cumulative annual percentage increases to the regional median income, effective as of the same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3
  - (3) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be:
    - (a) those that render the unit suitable for a larger household or the addition of a bathroom.
    - (b) The maximum resale price may be further increased by an amount up to the cumulative dollar value of approved capital improvements made after the last non-exempt sale for improvements and/or upgrades to the unit, excluding capital improvements paid for by the entity favored on the recapture note and recapture lien described at N.J.A.C. 5:80-26.6(d);
  - (4) No increase for capital improvements is permitted if the maximum resale price prior to adjusting for capital improvements already exceeds whatever initial purchase price the unit would have if it were being offered for purchase for the first time at the initial affordability percentage. All adjustments for capital improvements are subject to 10-year, straight-line depreciation.
- B. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting)

shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase but shall be separate and apart from any contract of sale for the underlying real estate. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price of the air conditioning equipment, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The seller and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

**§ 81-16. Buyer Income Eligibility.**

- A. Buyer income eligibility for restricted ownership units shall be established pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented, such that very low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 30% of median income, low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for occupancy by households with a gross household income less than 80% of median income.
- B. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the municipality, and subject to the Division's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit. Similarly, the administrative agent may permit low-income purchasers to buy very-low-income units in housing markets where, as determined by the Division, units are reserved for very-low-income purchasers, but there is an insufficient number of very-low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a very-low-income unit and sold at a very-low-income price point such that on the next resale the unit will still be affordable to very-low-income households and able to be purchased by a very-low-income household. A very-low-income unit that is seeking bonus credit pursuant to N.J.S.A. 52:27D-311.k(9) must first be advertised exclusively as a very-low-income unit according to the Affirmative Marketing requirements at N.J.A.C. 5:80-26.16, then advertised as a very-low-income or low-income unit for at least 30 additional days prior to referring any

low-income household to the unit.

- C. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- D. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 35 percent of the household's eligible monthly income; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
  - (1) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for housing expenses, and the proposed housing expenses will reduce its housing costs;
  - (2) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for housing expenses in the past and has proven its ability to pay; or
  - (3) The household is currently in substandard or overcrowded living conditions;
  - (4) The household documents the existence of assets, within the asset limitation otherwise applicable, with which the household proposes to supplement the rent payments.

**§ 81-17. Limitations on Indebtedness Secured by Ownership Unit; Subordination.**

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
- B. With the exception of original purchase money mortgages, neither an owner nor a lender shall at any time during the control period cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of that unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C. 5:80-26.7(c).
- C. Control Periods for Restricted Rental Units.
  - (1) Control periods for units that meet the definition of prior round units shall be pursuant to the 2001 UHAC rules originally adopted October 1, 2001, 33 N.J.R.

3432, and amended December 20, 2004, 36 N.J.R. 5713 and shall remain subject to the requirements of this ordinance for a period of at least 30 years as applicable unless otherwise indicated.

- (2) Other than for prior round units, control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.12, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least 40 years. Restricted rental units created as part of developments receiving 9% Low-Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period for a total of 45 years.
- (3) The affordability control period for a restricted rental unit shall commence on the first date that a unit is issued a certificate of occupancy following the execution of the deed restriction or, if affordability controls are being extended, on the effective date of the extension, which is the end of the original control period.
- (4) Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years.
- (5) Prior to the issuance of any building permit for the construction/rehabilitation of restricted rental units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.
- (6) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property. The deed restriction shall be recorded by the developer with the county records office, and provided as filed and recorded, to the Administrative Agent within 30 days of the receipt of a certificate of occupancy.
- (7) A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:
  - (a) Sublease or assignment of the lease of the unit;
  - (b) Sale or other voluntary transfer of the ownership of the unit;
  - (c) The entry and enforcement of any judgment of foreclosure on the property containing the unit; or
  - (d) The end of the control period, until the occupant household vacates the unit, or is certified as over-income and the controls are released in accordance with UHAC.

**§ 81-18. Rent Restrictions for Rental Units; Leases and Fees.**

- A. The initial rent for a restricted rental unit shall be set by the Administrative Agent.
- B. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the

full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be retained on file by the Administrative Agent.

- C. No additional fees, operating costs, or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
  - (1) Operating costs, for the purposes of this section, include certificate of occupancy fees, move-in fees, move-out fees, mandatory internet fees, mandatory cable fees, mandatory utility submetering fees, and for developments with more than one and a half off-street parking spaces per unit, parking fees for one parking space per household.
- D. Any fee structure that would remove or limit affordable unit occupant access to any amenities or services that are required or included for market-rate unit occupants is prohibited. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.
- E. Fees for unit-specific, non-communal items that are charged to market-rate unit tenants on an optional basis, such as pet fees for tenants with pets, storage spaces, bicycle-share programs, or one-time rentals of party or media rooms, may also be charged to affordable unit tenants, if applicable.
- F. Pet fees may not exceed \$30.00 per month and associated one-time payments for optional fees pertaining to pets, such as a pet cleaning fee, are prohibited.
- G. Fees charged to affordable unit tenants for other optional, unit-specific, non-communal items shall not exceed the amounts charged to market-rate tenants.
- H. For any prior round rental unit leased before December 20, 2024, elements of the existing fee structure that are consistent with prior rules, but inconsistent with 5:80-26.13(c)1, may continue until the occupant household's current lease term expires or that occupant household vacates the unit, whichever occurs later.

#### **§ 81-19. Tenant Income Eligibility.**

- A. Tenant income eligibility shall be determined pursuant to N.J.A.C. 5:80-26.14, as may be amended and supplemented, and shall be determined as follows:
  - (1) Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of the regional median income by household size.
  - (2) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of the regional median income by household size.

- (3) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of the regional median income by household size.
- B. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income or moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
- (1) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
  - (2) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  - (3) The household is currently in substandard or overcrowded living conditions;
  - (4) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
  - (5) The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- C. The applicant shall file documentation sufficient to establish the existence of any of the circumstances in 2.a. through 2.e. above with the Administrative Agent, who shall counsel the household on budgeting.

### ARTICLE III

#### Administration

#### § 81-20. Municipal Housing Liaison.

- A. The Municipal Housing Liaison shall be approved by municipal resolution.
- B. The Municipal Housing Liaison shall be approved by the Division, or is in the process of getting approval, and fully or conditionally meets the requirements for qualifications, including initial and periodic training as set forth in N.J.A.C. 5:99-1 et seq.
- C. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program, including the following responsibilities, which may not be contracted out to the Administrative Agent:
  - (1) Serving as the primary point of contact for all inquiries from the Affordable Housing Dispute Resolution Program, the State, affordable housing providers, administrative

agents and interested households.

- (2) The oversight of the Affirmative Marketing Plan and affordability controls.
- (3) When applicable, overseeing and monitoring any contracting Administrative Agent.
- (4) Overseeing the monitoring of the status of all restricted units listed in the Fair Share Plan.
- (5) Verifying, certifying and providing annual information within AHMS at such time and in such form as required by the Division.
- (6) Coordinating meetings with affordable housing providers and administrative agents, as needed.
- (7) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division.
- (8) Overseeing the recording of a preliminary instrument in the form set forth at N.J.A.C. 5:80-26.1 for each affordable housing development.
- (9) Coordinating with the Administrative Agent, municipal attorney and municipal Construction Code Official to ensure that permits are not issued unless the document required in C.8. above has been duly recorded.
- (10) Listing on the municipal website contact information for the MHL and Administrative Agents.

**§ 81-21. Administrative Agent.**

- A. All municipalities that have created or will create affordable housing programs and/or affordable units shall designate or approve, for each project within its HEFSP, an administrative agent to administer the affordable housing program and/or affordable housing units in accordance with the requirements of the FHA, NJAC 5:99-1 et seq. and UHAC.
- B. The fees for administrative agents shall be paid as follows:
  - (1) Administrative agent fees related to rental units shall be paid by the developer/owner.
  - (2) Administrative agent fees related to initial sale of units shall be paid by the developer.
  - (3) Administrative agent fees related to resales shall be paid by the seller of the affordable home.
  - (4) Administrative agent fees related to ongoing administration and enforcement shall be paid by the municipality.
- C. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s). The Operating Manual(s) shall be available for public

inspection in the Office of the Clerk and in the office(s) of the Administrative Agent(s). Operating manuals shall be adopted by resolution of the Governing Body.

- D. Subject to the role of the Administrative Agent(s), the duties and responsibilities as are set forth in N.J.A.C. 5:99-7 and which are described in full detail in the Operating Manual, including those set forth in UHAC, include:
- (1) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division;
  - (2) Affirmative marketing:
    - (a) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the municipality and the provisions of N.J.A.C. 5:80-26.16.
    - (b) Providing counseling, or contracting to provide counseling services, to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements; and landlord/tenant law.
  - (3) Household certification.
    - (a) Soliciting, scheduling, conducting and following up on interviews with interested households.
    - (b) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
    - (c) Providing written notification to each applicant as to the determination of eligibility or non-eligibility within 5 days of the determination thereof.
    - (d) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in the Appendices J and K of N.J.A.C. 5:80-26.1 et seq.
    - (e) Creating and maintaining a referral list of eligible applicant households living in the housing region, and eligible applicant households with members working in the housing region, where the units are located.
    - (f) Employing a random selection process as provided in the Affirmative Marketing Plan when referring households for certification to affordable units.
- E. Affordability controls.
- (1) Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for the recording at the time of conveyance of title of each restricted unit.
  - (2) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and filed properly with the County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit in accordance with UHAC.

- (3) Communicating with lenders and the Municipal Housing Liaison regarding foreclosures.
- (4) Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.11.

F. Records retention.

- (1) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded recapture mortgage, and note, as appropriate.
- (2) Records received, retained, retrieved, or transmitted in furtherance of crediting affordable units of a municipality constitute public records of the municipality as defined by N.J.S.A. 47:3-16, and are legal property of the municipality.

G. Resales and re-rentals.

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

H. Processing requests from unit owners.

- (1) Reviewing and approving requests from owners of restricted units who wish to refinance or take out home equity loans during the term of their ownership to determine that the amount of indebtedness to be incurred will not violate the terms of this ordinance.
- (2) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems.
- (3) Notifying the municipality of an owner's intent to sell a restricted unit.
- (4) Making determinations on requests by owners of restricted units for hardship waivers.

I. Enforcement.

- (1) Securing annually from the municipality a list of all affordable ownership units for which property tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
- (2) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement

of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;

- (3) Sending annual mailings to all owners of affordable dwelling units reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.19(d)4;
  - (4) Establishing a program for diverting unlawful rent payments to the municipal Affordable Housing Trust Fund; and
  - (5) Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent setting forth procedures for administering the affordability controls.
- J. The Administrative Agent(s) shall, as delegated by the municipality, have the authority to take all actions necessary and appropriate to carry out its/their responsibilities, herein.
- K. Responsibilities of The Owner of a development containing affordable units.
- (1) The owner of all developments containing affordable units subject to this subchapter or the assigned management company thereof shall provide to the administrative agent:
    - (a) Site plan, architectural plan, or other plan that identifies the location of each affordable unit, if subject to the site plan approval, settlement agreement, or other applicable document regulating the location of affordable units. The administrative agent shall determine the location of affordable units if not set forth in the site plan approval, settlement agreement, or other applicable document.
    - (b) The total number of units in the project and the number of affordable units.
    - (c) The breakdown of the affordable units by or identification of affordable unit locations by bedroom count and income level, including street addresses / unit numbers, if subject to the site plan approval, settlement agreement, or other applicable document regulating the breakdown of affordable units. The administrative agent shall determine the bedroom and income distribution if not set forth in the site plan approval, settlement agreement, or other applicable document.
    - (d) Floor plans of all affordable units, including complete and accurate identification of all rooms and the dimensions thereof.
    - (e) A projected construction schedule.
    - (f) The location of any common areas and elevators.
    - (g) The name of the person who will be responsible for official contact with the administrative agent for the duration of the project, which must be updated if

the contact changes.

- (2) In addition to A above, the owner of rental developments containing affordable rental units subject to this subchapter or the assigned management company thereof shall:
  - (a) Send to all current tenants in all restricted rental units an annual mailing containing a notice as to the maximum permitted rent and a reminder of the requirement that the unit must remain their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year, together with the telephone number, mailing address, and email address of the administrative agent to whom complaints of excess rent can be issued.
  - (b) Provide to the administrative agent a description of any applicable fees.
  - (c) Provide to the administrative agent a description of the types of utilities and which utilities will be included in the rent.
  - (d) Agree and ensure that the utility configuration established at the start of the rent-up process not be altered at any time throughout the restricted period.
  - (e) Provide to the administrative agent a proposed form of lease for any rental units.
  - (f) Ensure that the tenant selection criteria for the applicants for affordable units not be more restrictive than the tenant selection criteria for applicants for non-restricted units.
  - (g) Strive to maintain the continued occupancy of the affordable units during the entire restricted period.
- (3) In addition to A, above, the owner of affordable for-sale developments containing affordable for-sale units subject to this subchapter or the assigned management company thereof shall provide the administrative agent:
  - (a) Proposed pricing for all units, including any purchaser options and add-on items.
  - (b) Condominium or homeowner association fees and any other applicable fees.
  - (c) Estimated real property taxes.
  - (d) Sewer, water, trash disposal, and any other utility assessments.
  - (e) Flood insurance requirement, if applicable.
  - (f) The State-approved planned real estate development public offering statement and/or master deed, where applicable, as well as the full build-out budget.

#### **§ 81-22. Enforcement of Affordable Housing Regulations.**

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines,

a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

B. After providing written notice of a violation to an owner, developer or tenant of an affordable unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

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

(a) A fine of not more than \$500/day or imprisonment for a period not to exceed 90 days, or both, unless otherwise specified below, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;

(b) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the municipal Affordable Housing Trust Fund of the gross amount of rent illegally collected;

(c) In the case of an owner who has rented his or her affordable unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.

C. The municipality shall have the authority to levy fines against the owner of the development for instances of noncompliance with NJHRC advertising requirements (N.J.S.A. 52:27D-321.6.e.(2)), following written notice to the owner. The fine for the first offense of noncompliance shall be \$5,000, the fine for the second offense of noncompliance shall be \$10,000, and the fine for each subsequent offense of noncompliance shall be \$15,000.

D. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.

(1) Such judgment shall be enforceable, at the option of the municipality, by means of

an execution sale by the Sheriff, at which time the affordable unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality , including attorney's fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.

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

acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser that may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- or moderate-income unit as permitted by the regulations governing affordable housing units.

- (6) The affordable unit owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.
- E. It is the responsibility of the municipal housing liaison and the administrative agent(s) to ensure that affordable housing units are administered properly. All affordable units must be occupied within a reasonable amount of time and be re-leased within a reasonable amount of time upon the vacating of the unit by a tenant. If an administrative agent or municipal housing liaison becomes aware of or suspects that a developer, landlord, or property manager has not complied with these regulations, it shall report this activity to the Division. The Division must notify the developer, landlord, or property manager, in writing, of any violation of these regulations and provide a 30-day cure period. If, after the 30-day cure period, the developer, landlord, or property manager remains in violation of any terms of this subchapter, including by keeping a unit vacant, the developer, landlord, or property manager may be fined up to the amount required to construct a comparable affordable unit of the same size and the deed-restricted control period will be extended for the length of the time the unit was out of compliance, in addition to the remedies provided for in this section. For the purposes of this subsection, a reasonable amount of time shall presumptively be 60 days, unless a longer period of time is required due to demonstrable market conditions and/or failure of the municipal housing liaison or the administrative agent to refer a certified tenant.
- F. Banks and other lending institutions are prohibited from issuing any loan secured by owner occupied real property subject to the affordability controls set forth in this subchapter if such loan would be in excess of amounts permitted by the restriction documents recorded in the deed or mortgage book in the county in which the property is located. Any loan issued in violation of this subsection is void as against public policy.
- G. The Agency and the Department hereby reserve, for themselves and for each administrative agent appointed pursuant to this subchapter, all of the rights and remedies available at law and in equity for the enforcement of this subchapter, including, but not limited to, fines, evictions, and foreclosures as approved by a county-level housing judge.
- H. Appeals
- (1) Appeals from all decisions of an administrative agent appointed pursuant to this subchapter must be filed, in writing, with the municipal housing liaison. A decision by the municipal housing liaison may be appealed to the Division. A written

decision of the Division Director upholding, modifying, or reversing an administrative agent's decision is a final administrative action.

#### ARTICLE IV

#### Development Fees

##### § 81-23. Purpose.

- A. This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with the amended Fair Housing Act (P.L.2024, c.2), N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing very low-, low- and moderate-income housing in accordance with a Court-approved Spending Plan.

##### § 81-24. Basic Requirements

- A. The municipality previously adopted a development fee ordinance, which established the Municipal Affordable Housing Trust Fund.
- B. The municipality shall not spend development fees until the court has approved a plan for spending such fees. Approval of a Round 3 Spending Plan shall suffice to satisfy this requirement until such time as a Round 4 Spending Plan or subsequent amendments is/are approved.

##### § 81-25. Residential Development Fees

###### A. Imposed fees

- (1) Residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
- (2) When an increase in residential density is permitted pursuant to a "d" variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a "bonus" development fee of 6.0% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5% of the equalized assessed value on the first two units; and the specified higher percentage of 6% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

**B. Eligible exactions, ineligible exactions and exemptions for residential development**

- (1) Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made an eligible payment in lieu of on-site construction of affordable units, if permitted by ordinance, or by agreement with the municipality and if approved by a municipality.
- (2) Developments that have received preliminary or final site plan approval prior to the adoption of this ordinance and any preceding ordinance permitting the collection of development fees shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval does not apply, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the development fee ordinance in effect on the date that the construction permit is issued.
- (3) Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- (4) No development fee shall be collected for the demolition and replacement of a residential building resulting from a fire or natural disaster.

**§ 81-26. Non-Residential Development Fees**

**A. Imposition of fees**

- (1) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
- (2) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.

- (3) Development fees shall be imposed and collected when an existing non-residential structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure; i.e., land and improvements; and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
- B. Eligible exactions, ineligible exactions and exemptions for non-residential development
- (1) The non-residential portion of a mixed-use inclusionary or market-rate development shall be subject to a 2.5% development fee, unless otherwise exempted below.
- (2) The 2.5% fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- C. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.
- D. A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
- E. If a property that was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the municipality as a lien against the real property of the owner.
- F. Notwithstanding anything to the contrary, if there are any inconsistencies between these regulations and the Statewide Non-residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7), the Act controls.

## **§ 81-27. Collection Procedures**

- A. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF, "State of New Jersey Non-Residential Development Certification/Exemption," to be completed by the developer as per the instructions provided in the Form N-RDF. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided on Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The construction official responsible for the issuance of a building permit shall notify the tax assessor of the issuance of the first construction permit for a development that is subject to a development fee.
- D. Within 90 days of receipt of that notice, the tax assessor shall provide an estimate, based on the plans filed, of the equalized assessed value of the development.
- E. The construction official responsible for the issuance of a final certificate of occupancy shall notify the tax assessor of any and all requests for the scheduling of a final inspection on property that is subject to a development fee.
- F. Within 10 business days of a request for the scheduling of a final inspection, the tax assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. Should the municipality fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of section 37 of P.L.2008, c.46 (N.J.S.A. 40:55D-8.6).
- H. Fifty percent (50%) of the development fee shall be collected at the time of issuance of the construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of certificate of occupancy.

## **§ 81-28. Appeal of development fees**

- A. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by that board, collected fees shall be placed in an interest-bearing escrow account by the municipality. Appeals from a determination of the board may be made to the Tax Court in accordance

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

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

#### **§ 81-29. Affordable Housing Trust Fund**

- A. A separate, interest-bearing Municipal Affordable Housing Trust Fund shall be maintained by the chief financial officer of the municipality for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- B. The following additional funds shall be deposited in the Municipal Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  - A. Payments in lieu of on-site construction of an affordable unit, where previously permitted by ordinance or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2;
  - B. Funds contributed by developers to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
  - C. Rental income from municipally operated units;
  - D. Repayments from affordable housing program loans;
  - E. Recapture funds;
  - F. Proceeds from the sale of affordable units; and
  - G. Any other funds collected in connection with the municipal affordable housing program including but not limited to interest earned on fund deposits.
- C. The municipality shall provide the Division with written authorization, in the form of a tri-party escrow agreement(s) between the municipality, the Division and the financial institution in which the municipal affordable housing trust fund has been established to permit the Division to direct the disbursement of the funds as provided for in N.J.A.C. 5:99-2.1 et seq.

- D. Occurrence of any of the following deficiencies may result in the Division requiring the forfeiture of all or a portion of the funds in the municipal Affordable Housing Trust Fund:
- A. Failure to meet deadlines for information required by the Division in its review of a development fee ordinance;
  - B. Failure to commit or expend development fees within four years of the date of collection in accordance with N.J.A.C. 5:99-5.5;
  - C. Failure to comply with the requirements of the Non-Residential Development Fee Act and N.J.A.C. 5:99-3;
  - D. Failure to submit accurate monitoring reports pursuant to this subchapter within the time limits imposed by the Act, this chapter, and/or the Division;
  - E. Expenditure of funds on activities not approved by the Superior Court or otherwise permitted by law;
  - F. Revocation of compliance certification or a judgment of compliance and repose;
  - G. Failure of a municipal housing liaison or administrative agent to comply with the requirements set forth at N.J.A.C. 5:99-6, 7, and 8;
  - H. Other good cause demonstrating that municipal affordable housing funds are not being used for an approved purpose.
- E. All interest accrued in the housing trust fund shall only be used on eligible affordable housing purposes approved by the Court.

**§ 81-30. Use of Funds**

- A. The expenditure of all funds shall conform to a Spending Plan approved by Superior Court. Funds deposited in the municipal Affordable Housing Trust Fund may be used for any activity approved by the Court to address the fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market-to-affordable program; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost-saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by Superior Court and specified in the approved Spending Plan.
- B. Funds shall not be expended to reimburse the municipality or activities that occurred prior to the authorization of a municipality to collect development fees.

- C. At least a portion of all development fees collected and interest earned shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the municipal Fair Share Plan. A portion of the development fees which provide affordability assistance shall be used to provide affordability assistance to very low-income households.
  - A. Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, infrastructure assistance, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.
  - B. Affordability assistance for very low income households may include producing very low-income units or buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income.
- D. No more than 20% of all affordable housing trust funds, exclusive of those collected to fund an RCA prior to July 17, 2008, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare and implement a Housing Element and Fair Share Plan, administer an Affirmative Marketing Program and for compliance with the Superior Court and the Program including the costs to the municipality of resolving a challenge.

### **§ 81-31. Monitoring**

- A. On or before February 15 of each year, the municipality shall provide annual electronic data reporting of trust fund activity for the previous year from January 1st to December 31st through the AHMS Reporting System. This reporting shall include an accounting of all Municipal Affordable Housing Trust Fund activity, including the sources and amounts of all funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, previously eligible payments in lieu of constructing affordable units on site (if permitted by ordinance or by agreement with the municipality prior to the March 20, 2024 statutory elimination per P.L. 2024, c.4), funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income from municipally-owned affordable housing units, repayments from affordable housing program loans, interest and any other funds collected in connection with municipal housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

**§ 81-32. Ongoing Collection of Fees**

- A. The ability to impose, collect and expend development fees shall continue so long as the municipality retains authorization from the Court in the form of Compliance Certification or the good faith effort to obtain it.
- B. If the municipality fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 (C. 52:27D-320).

**§ 81-33. Emergent Affordable Housing Opportunities.**

- A. Requests to expend affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan shall be made to the Division and shall be in the form of a governing body resolution. Any request shall be consistent with N.J.A.C. 5:99-4.1.

**ARTICLE V**

**Waivers**

A waiver may be granted of any provision of this ordinance if it would advance the interests of low- and moderate-income households or if strict compliance would cause an unreasonable result.

**Section 2**

All Ordinances of the Borough of Allendale which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

**Section 3**

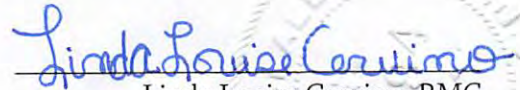
If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

**Section 4**

This Ordinance shall take effect immediately upon final passage, approval and publication as required by law.

Council	Motion	Second	Yes	No	Abstain	Absent
O'Connell			✓			
O'Toole			✓			
Lovisol			✓			
Homan						✓
Daloisio		✓	✓			
Yaccarino	✓		✓			
Mayor Wilczynski	-----	-----				

I hereby certify the above to be a true copy of an Ordinance introduced by the Governing Body of the Borough of Allendale on February 5, 2026.

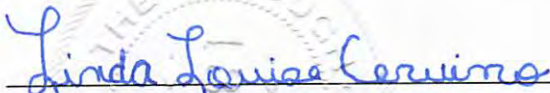


Linda Louise Cervino, RMC  
Municipal Clerk



ATTEST:

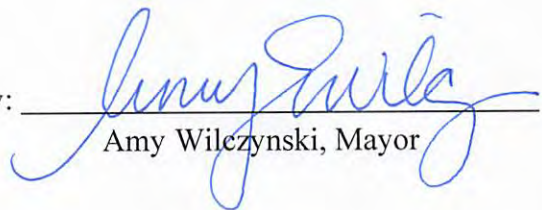
BOROUGH OF ALLENDALE  
COUNTY OF BERGEN  
STATE OF NEW JERSEY



Linda Louise Cervino, Borough Clerk



By:



Amy Wilczynski, Mayor

**Appendix**

**8. Existing/Adopted Chapter 270, Article XXXIV, Ramsey Golf Course Inclusionary Overlay Residential District of Borough Code**

**§ 270-185. Purpose and area of application.**

To address its affordable housing unmet need obligation, the Borough shall implement an Inclusionary Overlay Zone Ordinance that creates a realistic opportunity for housing that is affordable to low- and moderate-income households in the portion of the Ramsey Country Club and Golf Course located within the Borough of Allendale, also known as Block 301, Lot 37, and Block 406, Lot 21.01. This article establishes the Ramsey Golf Course Inclusionary Overlay Zone (the MFRO-2 District) and permits multifamily and townhouse development on the properties identified above, provided that such housing complies with a required 20% inclusionary set-aside requirement and with the requirements of this article. This article shall not take effect unless the golf course/country club use ceases, or portions thereof located within the Borough become released for residential development. In such an event, the golf course/country club use may not be changed to any other nonresidential use.

**§ 270-186. Special rules.**

- A. In any inclusionary development permitted by this article, at least 20% of the residential units must be affordable to low- and moderate-income households. In the event that 20% of the total number of residential units does not result in a full integer, the developer (as defined in § 81-2) shall refer to § 81-3C with regard to addressing the fractional unit.
  - (1) In any development having five or more residential units, at least one unit must be established as affordable to low- and moderate-income households
- B. Where this article contradicts § 81-3 of the Borough's Affordable Housing Ordinance, the effects and requirements of this article shall supersede the requirements of § 81-3.

**§ 270-187. Primary intended uses.**

The following principal uses and structures shall be permitted in the MFRO-2 Zone District:

- A. Single-family attached dwellings, also known as townhouses.
- B. Multifamily buildings, also known as apartment buildings.
- C. Apartments located in the same building with townhouse dwellings.

**§ 270-188. Accessory uses.**

Permitted accessory uses shall be limited to those uses customarily incidental to the permitted principal uses in the district, and in the case of townhouses and apartments, including but not limited to clubhouses, pools, tennis courts and similar personal recreation facilities for the exclusive use of the residents and guests of the development, etc.

**§ 270-189. Prohibited uses.**

Any use other than the uses permitted by § 270-187 and § 270-188 shall be prohibited.

**§ 270-190. Lot, bulk and intensity of use regulations.**

- A. The maximum density of any development in the MFRO-2 District shall not exceed 10 units per acre.
- B. All residential buildings in the MFRO-2 District shall be subject to the following regulations:
- (1) Minimum front yard. There shall be provided a front yard abutting all public streets at least 40 feet in depth, measured perpendicular to the street right-of-way line. Principal buildings shall be located at least 20 feet from the traveled way of private internal streets, roadways, etc.
  - (2) Minimum side and rear yards. There shall be provided yards at least 30 feet in depth adjacent to all property lines, except for front yards as set forth in Subsection B(1) above.
  - (3) Maximum height of principal buildings. No building shall exceed 35 feet in height or 2 1/2 stories. For purposes of administering this provision, "one-half story" shall mean the top floor of a building directly beneath a sloping roof, such that the habitable floor area is not more than 1/2 of the habitable floor area of the story below.
  - (4) Accessory buildings. Accessory buildings and structures shall comply with the following minimum setback requirements:
    - (a) Forty feet from public streets; 20 feet from the traveled way of private internal streets, roadways, etc.
    - (b) Thirty feet from all property lines other than public street right-of-way lines.
    - (c) Forty feet from residential buildings located in the MFRO-2 District.
- C. Maximum impervious coverage by improvements. Not more than 60% of the tract area may be occupied by buildings, paved areas and other improvements. At least 40% of the tract area shall be landscaped or, in the case of wetlands, wetland transition areas, water bodies or other undevelopable areas, preserved in a natural condition.
- D. Minimum buffer. There shall be provided a buffer along all property lines, other than along public streets, which adjoin any property zoned for residential purposes, regardless of whether the residential zone is developed for residential use or not. The buffer shall be designed to effectively screen the view of the MFRO-2 Zone property from such adjoining residential zone during all seasons.
- (1) The buffer shall be at least 20 feet in depth in front yards and 25 feet in depth for side or rear yards of a tract.
  - (2) No improvements shall be permitted within the buffer other than plantings, berms, walls, fences or a combination of the foregoing, and when determined necessary by the Joint Land Use Board utility structures, drainage pipes and related structures, etc., provided that such utility and drainage structures shall not reduce the effectiveness of the buffer.
  - (3) In the event that berms, walls and fences are the primary method used for screening, plantings shall also be required within the buffer for aesthetic reasons, as determined by

the Joint Land Use Board, as applicable. Plantings shall be provided between the tract boundary and any walls or fences used for buffers in order to improve the appearance of the wall or fence from outside the tract.

- (4) In the event that plantings are the primary method used for screening, the plantings shall include evergreen trees at least six feet in height at the time of planting. Additional plantings may be included or required, as determined by the Joint Land Use Board as applicable. The precise type, quantity and spacing of plantings in the buffer shall be determined as part of any site plan review required by the Joint Land Use Board as necessary to achieve the intent of this subsection.
- (5) In the event that wetlands or other undevelopable areas exist in the location of a required buffer, and such areas do not provide an effective buffer in their natural state, plantings and/or berms and/or fencing, etc., sufficient to meet the intent of the buffer, as determined by the Joint Land Use Board, shall be required to be provided outside of such undevelopable areas. The foregoing shall not be construed to require that such additional plantings, etc., have a minimum depth as required herein. The nature and extent of the buffer in such case shall be determined by the Joint Land Use Board based upon field conditions.

#### **§ 270-191. Other requirements.**

A. Minimum distance between buildings. The following minimum dimensions shall separate principal buildings:

- (1) Front wall facing front wall: 60 feet.
- (2) Front wall facing rear wall: 50 feet.
- (3) Front wall facing end/side wall: 35 feet.
- (4) End/side wall facing end/side wall: 25 feet.
- (5) End/side wall facing rear wall: 30 feet.
- (6) Rear wall facing rear wall: 50 feet.
- (7) In case of uncertainty as to the definition of "front," "rear," "end/side" wall or in case the angle of the walls facing each other make interpretation of the required setbacks uncertain, the more restrictive of possible interpretations shall apply.

B. Building design.

- (1) Apartment flat units may be located in buildings containing townhouse units. In such buildings containing more than six total units, a minimum of 40% shall be townhouse units. In such buildings containing up to six total units, a minimum of 33% shall be townhouse units. There shall not be more than six buildings in the development combining apartment flats and townhouse units that contain six or fewer total units.
- (2) Apartment-only buildings and buildings containing townhouses and apartment flats shall be designed in a manner that does not distinguish between the exterior design and

appearance of apartment and townhouse units.

- (a) In buildings containing apartment flats and townhouses, apartment flats must be incorporated into the building in a manner consistent with overall architectural theme of the building and shall emulate the facade design and treatment of the townhouse units in order to create the exterior appearance of a townhouse unit. If apartment flats are stacked one unit over the other, the units must be accessed via a common interior hallway with a single front and single rear door.
- (b) Buildings containing apartment flats with or without attached townhouses shall contain a minimum of two and a maximum of 12 dwelling units.
- (3) Buildings containing all townhouse units shall contain a minimum of two and a maximum of six dwelling units.
- (4) No building facade shall exceed 150 feet in length.
- (5) All residential buildings shall provide a staggered front-wall building setback of at least five feet for every two units, so as to avoid a flat, continuous facade. Additionally, each unit shall have not fewer than two walls with window exposure. For the purposes of regulating facade articulation pursuant to this section, stacked apartment flats shall constitute a single unit, so that multifamily buildings without townhouses appear similar to buildings with townhouses.

C. Landscaping.

- (1) Attractive landscape plantings shall be provided and maintained.
- (2) Existing trees shall be retained wherever possible. Removal and preservation of trees shall comply with all applicable regulations of the Borough of Allendale and any other entity having jurisdiction.
- (3) Shade trees shall be provided along both sides of roadways at a ratio of at least one tree for each 30 feet of roadway center line length (one tree for each 60 feet on each side). All shade trees shall be at least three inches in caliper at the time of planting.
- (4) Shade trees and shrubs shall be provided within and/or around the perimeter of parking areas, except driveway parking. Shade trees shall be provided at a ratio of at least one tree for each 10 parking spaces.

D. Access and circulation. The design of access and circulation improvements serving development within the MFRO-2 District shall be in accordance with the New Jersey Residential Site Improvement Standards (N.J.A.C. 5:21-1 et seq.), and shall minimize detrimental impacts to area streets and residential neighborhoods. The following additional provisions shall apply:

- (1) Location of access. Any development in the MFRO-2 District shall provide two means of access; one at Canterbury Drive in Ramsey Borough and one at Ethel Avenue in Allendale Borough. If feasible, access to Heights Road should be considered. Traffic controls and limitations as to vehicular ingress and egress at such locations will be determined by the Joint Land Use Board during the course of its site plan review, as

provided by the Municipal Land Use Law, local ordinances and applicable law. The Board may require traffic studies, as it deems appropriate, in order to address issues relating to traffic safety and the distribution and impact of traffic. The site's internal circulation design shall incorporate measures designed to prevent through traffic by nonresidents.

- (2) Private streets. Private streets, roadways and other means of access shall be designed to comply with all applicable laws, statutes, rules and regulations.
- E. Parking. The amount and design of on-site parking shall be provided in accordance with the requirements of the New Jersey Residential Site Improvement Standards (N.J.A.C. 5:21-1 et seq.). In addition, the following provisions shall apply:
- (1) Parking areas shall not be located in the front yard between townhouse or apartment buildings and public streets. Individual driveways serving townhouses or apartment housing units shall not have direct access to a public street, but may have direct access to an internal street, roadway, etc.
  - (2) Parking areas shall not be located between townhouse or apartment buildings and internal streets, roadways, etc., except that parking spaces in the individual driveways located in front of garage doors shall be permitted in such locations. Furthermore, parking areas containing a single row (i.e., one side of the access aisle only) of up to 10 spaces shall be permitted in such locations.
  - (3) Parking areas and driveways shall be set back at least five feet from all property lines abutting a nonresidential zone, and at least 20 feet from all other property lines, except as may otherwise be required for buffers as set forth in § 270-190D.
  - (4) Parking areas shall be set back at least seven feet from building walls, except parking spaces in driveways located in front of garage doors.
  - (5) Parking areas shall be set back at least 10 feet from the traveled way of internal streets, roadways, etc., except that parking spaces adjacent to the traveled way and which use the traveled way for direct access to the space shall be exempt from this requirement.
  - (6) Parking spaces and private driveways shall be paved in accordance with the requirements for the same in the New Jersey Residential Site Improvement Standards (N.J.A.C. 5:21-1 et seq.).
- F. Lighting. All exterior lighting shall be arranged to direct light away from all adjoining premises.
- (1) Unless specifically approved as part of a submitted site plan development application by the applicable approving board, no lighting shall be attached to the roof of a building.
  - (2) Any lighting within a building shall be of an intensity and shall be designed and focused to eliminate, to the maximum extent practicable, any emission of lighting outside of the building; all lighting outside of a building shall be provided via lighting fixtures approved by the applicable approving board, as part of an approval for a submitted site plan development application. The applicant is required to submit a lighting plan

indicating the location of the lighting fixtures, the direction of illumination, the wattage and isolux curves for each fixture, the hours of operation of the lighting and the details of the lighting poles and the luminaries, all in accordance with the following:

- (a) The lighting is to be provided by fixtures with a mounting height not higher than 15 feet, measured from the ground level to the centerline of the light source;
- (b) The lighting fixtures are to include nonglare lights with recessed lenses focused downward and with cut-off shields as appropriate in order to mitigate against adverse impacts upon adjacent and nearby properties, the safety of traffic along adjacent roadways and overhead sky glow;
- (c) The light intensity provided at ground level shall be indicated in footcandles on the submitted plans and shall average not more than 5/10 footcandle throughout the area to be illuminated. The reviewing board may adjust these light levels where deemed appropriate to reduce the effects of the light levels on surrounding properties.

**§ 270-192. Review requirements.**

Prior to the issuance of any construction permit, the Joint Land Use Board, as applicable, shall review and approve a final site plan for the entire project in accordance with the provisions of the Land Subdivision and Site Plan Ordinance<sup>1</sup> and all other applicable ordinances of the Borough of Allendale.

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1. Editor's Note: See Ch. 147, Land Subdivision and Site Plan Review.

**Appendix**

**9. Amendment Chapter 270, Article XXXV Allendale  
Corporate Center Inclusionary Overlay Residential  
District of Borough Code**

**BOROUGH OF ALLENDALE  
COUNTY OF BERGEN  
STATE OF NEW JERSEY**

**ORDINANCE #26-04**

**AN ORDINANCE IMPLEMENTING THE BOROUGH’S FOURTH ROUND HOUSING PLAN ELEMENT AND FAIR SHARE PLAN CONSISTENT WITH THE TERMS OF A MEDIATION AGREEMENT REACHED BETWEEN THE BOROUGH OF ALLENDALE AND THE FAIR SHARE HOUSING CENTER IN ACCORDANCE WITH THE NEW JERSEY FAIR HOUSING ACT AND RELEVANT REGULATIONS AND POLICIES AND TO AMEND, SUPPLEMENT AND REVISE THE CODE OF THE BOROUGH OF ALLENDALE, CHAPTER 275 “ZONING” TO AMEND THE FOLLOWING PARTICULARS OF THE ALLENDALE CORPORATE CENTER OVERLAY ZONE (MFRO-3).**

**WHEREAS**, the Borough of Allendale (the “Borough” or “Allendale”) having filed a declaratory judgment action pursuant to N.J.S.A. 52:27D-301 et. seq. (the “Fair Housing Act”) on January 15, 2025; and

**WHEREAS**, the Court entered an order on May 5, 2025 setting the Borough’s Fourth Round fair share obligations as a Present Need of 159 units and a Prospective Need of 200 units, and ordering the Borough to file a Housing Element and Fair Share Plan (“HEFSP”) by June 30, 2025; and

**WHEREAS**, the Borough having filed its HEFSP on June 17, 2025 (“Adopted HEFSP”); and

**WHEREAS**, Fair Share Housing Center (“FSHC”) and AvalonBay having filed challenges to the Borough’s application for approval of its Housing Element and Fair Share Plan; and

**WHEREAS**, the dispute resolution program (“Program”) created by the Fair Housing Act having appointed Judge Toskos as the program judge and Christine Cofone as the adjudicator to help mediate the disputes; and

**WHEREAS**, mediation culminated in a Mediation Agreement with FSHC and with Avalon Bay withdrawing its objection; and

**WHEREAS**, the Borough is committing to fulfilling its agreement with FSHC and implementing its Housing Element and Fair Share Plan as amended.

**NOW, THEREFORE, BE IT ORDAINED** by the Borough Council of the Borough of Allendale, County of Bergen, and State of New Jersey that Chapter 270 Zoning of the Zoning Ordinance of the Borough of Allendale is and shall be amended in the following particulars only:

**Section 1.** Section 275-5 Zone Map is hereby amended to include a new lot within the MFRO-3 overlay zone. More specifically, the following property shall retain their existing district designation but shall also be subject to the overlay district by their inclusion within the MFRO-3 overlay district:

Block 702, Lot 15.

**Section 2.** Section 270-198 MFRO-3 Allendale Corporate Center Overlay Zone shall be amended and is hereby adopted with following particulars only:

A. Maximum density. The maximum density of housing units shall be 26 units per acre.

**Section 3**

All Ordinances of the Borough of Allendale which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

**Section 4**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

**Section 5**

This Ordinance shall take effect immediately upon final passage, approval and publication as required by law.

Council	Motion	Second	Yes	No	Abstain	Absent
O'Connell	✓		✓			
O'Toole		✓	✓			
Lovisolo			✓			
Homan						✓
Daloisio			✓			
Yaccarino			✓			
Mayor Wilczynski	-----	-----				

I hereby certify the above to be a true copy of an Ordinance introduced by the Governing Body of the Borough of Allendale on February 5, 2026.

*Linda Louise Cervino*  
 Linda Louise Cervino, RMC  
 Municipal Clerk

ATTEST:

*Linda Louise Cervino*  
 Linda Louise Cervino, Borough Clerk

BOROUGH OF ALLENDALE  
 COUNTY OF BERGEN  
 STATE OF NEW JERSEY

By: *Amy Wilczynski*  
 Amy Wilczynski, Mayor

**Appendix**

**10. Existing/Adopted Chapter 270, Article XXXVI  
Franklin Turnpike Inclusionary Overlay Residential  
District of Borough Code Allendale-**

**§ 270-200. Purpose and area of application.**

To address its affordable housing unmet need obligation, the Borough shall implement an Inclusionary Overlay Zone Ordinance that creates a realistic opportunity for housing that is affordable to low- and moderate-income households on Block 1803, Lot 1 also known as the Church of the Guardian Angel, at 320 Franklin Turnpike. This article establishes the Franklin Turnpike Inclusionary Overlay Zone - the MFRO-4 District, and permits the creation of townhouse and multifamily housing on the property identified above provided that such housing complies with a required 20% inclusionary set-aside requirement and with the requirements of this article. This article will not take effect unless the church use ceases, or portions of the property become released for residential development. In such an event, the church use may not be changed to any other nonresidential use.

**§ 270-201. Special rules.**

A. In any inclusionary development permitted by this article, at least 20% of the residential units must be affordable to low- and moderate-income households. In the event that 20% of the total number of residential units does not result in a full integer, the developer/property owner shall refer to § 81-3C with regard to addressing the fractional unit.

(1) In any development having five or more residential units, at least one unit must be established as affordable to low- and moderate-income households

B. Where this article contradicts § 81-3 of the Borough's Affordable Housing Ordinance, the effects and requirements of this article shall supersede the requirements of § 81-3.

**§ 270-202. Primary intended uses.**

The following principal uses and structures shall be permitted in the MFRO-4 Zone District:

A. Multifamily development, also known as apartments or flats.

B. Single-family attached dwellings, also known as townhouses.

**§ 270-203. Accessory uses.**

Permitted accessory uses shall be limited to those uses customarily incidental to the uses permitted in this District, including but not limited to clubhouses, pools, tennis courts and similar personal recreation facilities for the exclusive use of the residents and guests of the development, etc.

**§ 270-204. Prohibited uses.**

Any use other than the uses permitted by §§ 270-202 and 270-203 shall be prohibited.

**§ 270-205. Lot, bulk and intensity of use regulations.**

All buildings shall be subject to the following regulations:

A. Maximum density: 12 units per acre.

B. Principal building standards

- (1) Maximum height of principal buildings: 35 feet in height or 2 1/2 stories.
  - (2) Minimum front yard from Franklin Turnpike: 35 feet.
  - (3) Minimum front yard setback from interior driveways and roads: 20 feet from the traveled way of private internal streets, roadways, etc.
  - (4) Minimum side yard to interior driveways and roads: 10 feet.
  - (5) Setback to residential zone districts: 50 feet.
  - (6) Rear yard setback: 25 feet.
- C. Accessory building standards. Accessory buildings and structures shall comply with the following minimum setback requirements:
- (1) Forty feet from public streets; 20 feet from the traveled way of private internal driveways and roads.
  - (2) Thirty feet from all property lines other than public street right-of-way lines.
  - (3) Forty feet from residential buildings located in the MFRO-4 District.
- D. Maximum coverage by improvements. Not more than 65% of the tract area may be occupied by buildings, paved areas and other improvements. At least 35% of the tract area shall be landscaped or, in the case of wetlands, wetland transition areas, water bodies or other undevelopable areas, preserved in a natural condition.
- E. Minimum distance between buildings. The following minimum dimensions shall separate principal buildings:
- (1) Front wall facing front wall: 60 feet.
  - (2) Front wall facing rear wall: 50 feet.
  - (3) Front wall facing end/side wall: 35 feet.
  - (4) End/side wall facing end/side wall: 25 feet.
  - (5) End/side wall facing rear wall: 30 feet.
  - (6) Rear wall facing rear wall: 50 feet.
  - (7) In case of uncertainty as to the definition of "front," "rear," "end/side" wall or in case the angle of the walls facing each other make interpretation of the required setbacks uncertain, the more restrictive of possible interpretations shall apply.
- F. Building design.
- (1) Apartment flat units may be located in buildings containing townhouse units. In such buildings containing more than six total units, a minimum of 40% shall be townhouse units. In such buildings containing up to six total units, a minimum of 33% shall be townhouse units. There shall not be more than six buildings in the development

combining apartment flats and townhouse units that contain six or fewer total units.

- (2) Apartment-only buildings and buildings containing townhouses and apartment flats shall be designed in a manner that does not distinguish between the exterior design and appearance of apartment and townhouse units.
  - (a) In buildings containing apartment flats and townhouses, apartment flats must be incorporated into the building in a manner consistent with overall architectural theme of the building and shall emulate the facade design and treatment of the townhouse units in order to create the exterior appearance of a townhouse unit. If apartment flats are stacked one unit over the other, the units must be accessed via a common interior hallway with a single front and single rear door.
  - (b) Buildings containing apartment flats with or without attached townhouses shall contain a minimum of two and a maximum of 12 dwelling units.
- (3) Buildings containing all townhouse units shall contain a minimum of two and a maximum of six dwelling units.
- (4) No building facade shall exceed 150 feet in length.
- (5) All residential buildings shall provide a staggered front-wall building setback of at least five feet for every two units, so as to avoid a flat, continuous facade. Additionally, each unit shall have not fewer than two walls with window exposure. For the purposes of regulating facade articulation pursuant to this section, stacked apartment flats shall constitute a single unit, so that multi family buildings without townhouses appear similar to buildings with townhouses.

G. Buffer standards.

- (1) Minimum buffer from residential zones: 25 feet
- (2) No improvements shall be permitted within the buffer other than plantings, berms, walls, fences or a combination of the foregoing, and when determined necessary by the Joint Land Use Board utility structures, drainage pipes and related structures, etc., provided that such utility and drainage structures shall not reduce the effectiveness of the buffer.
- (3) In the event that berms, walls and fences are the primary method used for screening, plantings shall also be required within the buffer for aesthetic reasons, as determined by the Joint Land Use Board, as applicable. Plantings shall be provided between the tract boundary and any walls or fences used for buffers in order to improve the appearance of the wall or fence from outside the tract.
- (4) In the event that plantings are the primary method used for screening, the plantings shall include evergreen shrubs or trees at least six feet high at the time of planting. Additional plantings may be included or required, as determined by the Joint Land Use Board, as applicable. The precise type, quantity and spacing of plantings in the buffer shall be determined as part of any site plan review required by the Joint Land Use Board as necessary to achieve the intent of this subsection.

- (5) In the event that wetlands or other undevelopable areas exist in the location of a required buffer, and such areas do not provide an effective buffer in their natural state, plantings and/or berms and/or fencing, etc., sufficient to meet the intent of the buffer, as determined by the Joint Land Use Board shall be required to be provided outside of such undevelopable areas. The foregoing shall not be construed to require that such additional plantings, etc., have a minimum depth as prescribed herein. The nature and extent of the buffer in such case shall be determined by the Joint Land Use Board based upon field conditions.
- H. Parking. The amount and design of on-site parking shall be provided in accordance with the requirements of the New Jersey Residential Site Improvement Standards (N.J.A.C. 5:21-1 et seq.). In addition, the following provisions shall apply:
- (1) Parking areas shall not be located in the front yard between townhouse or apartment buildings and public streets. Individual driveways serving townhouses or apartment housing units shall not have direct access to a public street, but may have direct access to an internal street, roadway, etc.
  - (2) Parking areas shall not be located between townhouse or apartment buildings and internal streets, roadways, etc., except that parking spaces in the individual driveways for townhouse and apartment units located in front of garage doors shall be permitted in such locations, and furthermore parking areas containing a single row (i.e., one side of the access aisle only) of up to 10 spaces shall be permitted in such locations.
  - (3) Parking areas and driveways shall be set back at least five feet from all property lines abutting a nonresidential zone, and at least 20 feet from all other property lines, except as may otherwise be required for buffers as set forth in § 270-205G.
  - (4) Parking areas shall be set back at least seven feet from building walls, except parking spaces in driveways located in front of garage doors.
  - (5) Parking areas shall be set back at least 10 feet from the traveled way of internal streets, roadways, etc., except that parking spaces adjacent to the traveled way and which use the traveled way for direct access to the space shall be exempt from this requirement.
  - (6) Parking spaces and private driveways shall be paved in accordance with the requirements for the same in the New Jersey Residential Site Improvement Standards (N.J.A.C. 5:21-1 et seq.).
- I. Lighting. All exterior lighting shall be arranged to direct light away from all adjoining premises.
- (1) Unless specifically approved as part of a submitted site plan development application by the applicable approving board, no lighting shall be attached to the roof of a building.
  - (2) Any lighting within a building shall be of an intensity and shall be designed and focused to eliminate, to the maximum extent practicable, any emission of lighting outside of the building; all lighting outside of a building shall be provided via lighting fixtures approved by the applicable approving board, as part of an approval for a submitted site plan development application. The applicant is required to submit a lighting plan

indicating the location of the lighting fixtures, the direction of illumination, the wattage and isolux curves for each fixture, the hours of operation of the lighting and the details of the lighting poles and the luminaries, all in accordance with the following:

- (a) The lighting is to be provided by fixtures with a mounting height not higher than 15 feet, measured from the ground level to the centerline of the light source;
- (b) The lighting fixtures are to include nonglare lights with recessed lenses focused downward and with cut-off shields as appropriate to mitigate against adverse impacts upon adjacent and nearby properties, the safety of traffic along adjacent roadways and overhead sky glow;
- (c) The light intensity provided at ground level shall be indicated in footcandles on the submitted plans and shall average not more than 5/10 footcandle throughout the area to be illuminated. The reviewing board may adjust these light levels where deemed appropriate to reduce the effects of the light levels on surrounding properties.

#### **§ 270-206. Site plan review and approval.**

Prior to the issuance of any construction permit, the Joint Land Use Board shall review and approve a final site plan for the entire project in accordance with the provisions of the Land Subdivision and Site Plan Ordinance<sup>1</sup> and all other applicable ordinances of the Borough of Allendale.

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1. Editor's Note: See Ch. 147, Land Subdivision and Site Plan Review.

**Appendix**

**11. Allendale- 98 Elm Street Consent Order.**

**SURENIAN, EDWARDS, BUZAK & NOLAN LLC**

311 Broadway, Suite A  
Point Pleasant Beach, NJ 08742  
(732) 612-3100

By: Jeffrey R. Surenian, JRS@Surenian.com; Attorney ID: 024231983  
Michael C. Borneo, MCB@Surenian.com; Attorney ID: 006101999

*Attorneys for Declaratory Plaintiff, Borough of Allendale*

IN THE MATTER OF THE  
APPLICATION OF THE  
BOROUGH OF ALLENDALE,  
COUNTY OF BERGEN, STATE  
OF NEW JERSEY

**SUPERIOR COURT OF NEWJERSEY  
LAW DIVISION: BERGEN COUNTY**

DOCKET NO.: BER-L-6162-15

CONSENT ORDER RE 98 ELM

**FILED**

**MAR 27 2025**

**CREC A. PASOVANO, J.S.C.**

**THIS MATTER** having been opened to the Court by Surenian, Edwards, Buzak & Nolan, LLC, Jeffrey R. Surenian, Esq. appearing for the Borough of Allendale (hereinafter "Allendale" or "Borough"); and the Borough seeking court approval of an agreement that would result in the acquisition of an affordable unit located at 98 Elm Street, Allendale, New Jersey 07401 (Lot 8 C0098 Block 1809) currently owned by Wells Fargo by a non-profit named Allendale Housing Inc ("AHI"); the rehabilitation of the unit to bring it up to code with trust fund money from the Borough; and the use of the unit as a two bedroom special needs unit; and the Borough having sought consent from Fair Share Housing Center to proceed in this way to cure a problem that has arisen with its Third Round Housing Element and Fair Share Plan and to secure credits and rental bonuses for Round 4; and for good cause shown;

IT IS on this 27<sup>TH</sup> day of MARCH 2025 ORDERED as follows:

1. Allendale Housing, Inc., a non-profit organization, may purchase the unit from Wells Fargo Bank, N.A.;
2. The Borough will spend up to \$90,000 from its Affordable Housing Trust Fund to rehabilitate the unit and convert it into two (2) special needs rental units and will update the Spending Plan accordingly;
3. If the cost to rehabilitate the unit exceeds \$90,000, the balance of rehabilitation costs shall be paid by AHI.
4. This rehabilitation and reuse of the unit shall cure any issues with the unit concerning the Borough's Third Round Housing Element and Fair Share Plan
5. The units shall be deed restricted and marketed in compliance with N.J.A.C. 5:80-26.1.
6. The units shall provide the Borough credit and eligible bonuses toward the municipal affordable housing obligations. The application of credits toward these units shall be confirmed and addressed in the updated and forthcoming Fourth Round Housing Element and Fair Share Plan.

By: \_\_\_\_\_

Honorable Gregg A. Padovano, J.S.C.

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

The undersigned hereby consent to the form, entry and content of the within Consent Order.

**SURENIAN, EDWARDS, BUZAK & NOLAN LLC**  
Attorney for Declaratory Plaintiff, Borough of Allendale

By: \_\_\_\_\_

Jeffrey R. Surenian, Esq.

**ARIELA RUTBECK-GOLDMAN, ESQ.**  
Counsel for Fair Share Housing Center

By: *Ariela Rutbeck-Goldman*  
Ariela Rutbeck-Goldman, Esq.

**Appendix**

**12. Resolution Appointing Municipal Housing Liaison**

**RESOLUTION  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ**

DATE: 01/05/2026

RESOLUTION# 26-38

Council	Motion	Second	Yes	No	Abstain	Absent
O'Connell			✓			
O'Toole			✓			
Lovisollo			✓			
Homan		✓	✓			
Daloisio						✓
Yaccarino	✓		✓			
Mayor Wilczynski	-----	-----				

- Carried
- Defeated
- Tabled
- Approved on  
Consent Agenda

**APPOINTMENT OF AFFORDABLE HOUSING REPRESENTATIVE –  
AMY WILCZYNSKI**

**BE IT RESOLVED** by the Mayor and Borough Council of the Borough of Allendale, County of Bergen, State of New Jersey that Amy Wilczynski be and is hereby appointed the Affordable Housing Representative for the Borough of Allendale effective January 1, 2026 through December 31, 2026.

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I hereby certify the above to be a true copy of a Resolution adopted by the Governing Body of the Borough of Allendale on January 5, 2026.

  
 Linda Louise Cervino, RMC  
 Municipal Clerk

**Appendix**

**13. Administrative Agent Resolutions**

**RESOLUTION  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ**

DATE: 01/05/2026

RESOLUTION# 26-05

Council	Motion	Second	Yes	No	Abstain	Absent
O'Connell			✓			
O'Toole		✓	✓			
Lovisololo			✓			
Homan	✓		✓			
Daloisio						✓
Yaccarino					✓	
Mayor Wilczynski	---	---				

- Carried
- Defeated
- Tabled
- Approved on Consent Agenda

**APPOINTMENT OF BOROUGH PROFESSIONALS**

**WHEREAS**, the Borough of Allendale requires the service of professionals for the calendar year 2026; and,

**WHEREAS**, it is contemplated that the temporary and permanent budgets will contain the necessary appropriations estimated to be reasonably required for each such professional service; and,

**WHEREAS**, the professionals named herein will be required to execute a contract for the services to be rendered which shall set forth the compensation for such services therein; and,

**WHEREAS**, a Certification of availability of funds has been received from the Chief Financial Officer or that such funds will be encumbered by Purchase Order on an as-needed basis pursuant to the provisions of NJAC 5:30-5.4 et seq; and,

**WHEREAS**, in any instance where it is anticipated that the expenditure for each such professional service will exceed the sum of \$17,500 for said calendar year, the named professionals have completed, submitted and filed a Business Entity Certification Disclosure which certifies that the above named persons and/or entities have not made any reportable contributions to any political or candidate committee including (Republicans for Responsible Government, Allendale Republican Club, Allendale Democratic Club, Candidates for Allendale Municipal Government, Bergen County Democratic Organization, Bergen County Republican Organization) in the previous one (1) year, and that the contract will prohibit the above named professionals/business entities from making any reportable contributions through the term of the contract.

**RESOLUTION  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ**

**DATE: 01/05/2026**

**RESOLUTION# 26-05**

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of Allendale that the following appointments below be and they are hereby made for the year.

**BE IT FURTHER RESOLVED** that these contracts are being awarded as a non-fair and open contract, pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

**BE IT FURTHER RESOLVED** that the Business Disclosure Entity Certification and the determination of value be placed on file with this Resolution.

<b>BOROUGH PROFESSIONALS</b>	
<b>Animal Control</b>	Tyco Animal Control Service
<b>Appraisal Firm</b>	BBG Real Estate Services
<b>Appraisal Firm</b>	Appraisal Systems, Inc.
<b>Affordable Housing Consultant</b>	Burgis Associates
<b>Affordable Housing Special Counsel</b>	Surenian, Edwards, Buzak & Nolan, LLC
<b>Bond Counsel</b>	Rogut McCarthy, LLC
<b>Environmental Consultant</b>	RTP Environmental Associates, Inc.
<b>Grant Writer</b>	Bruno Associates
<b>Municipal Auditor</b>	Lerch Vinci and Bliss
<b>Municipal &amp; Labor Attorney</b>	Wiss Law, LLC
<b>Planning Services</b>	Burgis Associates
<b>Risk Management Consultant</b>	Eifert, French & Company
<b>Municipal Engineer</b>	Van Cleef Engineering- Michael Vreeland
<b>Engineer/Special Projects</b>	Neglia Engineering
<b>Tax Appeal Attorney</b>	Huntington Bailey- JoAnn Riccardi-Schuman
<b>Engineer/Special DEP Project</b>	Dewberry Engineers Inc.
<b>IT Services Consultant</b>	Coban Computers
<b>Borough Architect</b>	Z+ Architects, LLC
<b>Leckington Advisors, LLC</b>	Affordable Housing Administrative Agent Services

**BE IT FURTHER RESOLVED** that the compensation for the aforesaid positions to be established by the salary ordinance or the contract for such services which shall be executed by each of the professionals named herein; and,

RESOLUTION  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ

DATE: 01/05/2026

RESOLUTION# 26-05

BE IT FURTHER RESOLVED that the aforesaid appointments were made without competitive bidding under the provisions of N.J.S.A. 40A:11-5(1)(a) which excepts from competitive bidding Professional Services rendered by persons authorized by law to practice a recognized profession and whose practice is regulated by law; and,

BE IT FURTHER RESOLVED that the appropriate Borough Officials be and they are hereby authorized to execute contracts with each of the professionals named herein for the services to be rendered; and,

BE IT FURTHER RESOLVED that the compensation to be paid for the professionals named herein shall not exceed the budget appropriation for such services unless properly ordained in accordance with law; and,

BE IT FURTHER RESOLVED that each of the contracts shall contain a clause of "not to exceed" the total fees without prior written approval of the Governing Body; and

BE IT FURTHER RESOLVED that a copy of this resolution be filed with the Borough Clerk and made available for inspection and that a brief notice of the passage thereof be published in The Record within ten days of the passage as required by law.

---

I hereby certify the above to be a true copy of a Resolution adopted by the Governing Body of the Borough of Allendale on January 5, 2026.

  
*Linda Louise Cervino*  
Linda Louise Cervino, RMC  
Municipal Clerk

**Appendix**

**14. Administrative Agent Manual and Affirmative  
Marketing Plan**

**RESOLUTION  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ**

DATE: 02/19/2026

RESOLUTION# 26-104

Council	Motion	Second	Yes	No	Abstain	Absent
O'Connell			✓			
O'Toole		✓	✓			
Lovisollo			✓			
Homan	✓		✓			
Daloisio						✓
Yaccarino			✓			
Mayor Wilczynski	-----	-----				

- Carried
- Defeated
- Tabled
- Approved on  
Consent Agenda

**RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF ALLENDALE, COUNTY OF BERGEN, STATE OF NEW JERSEY, ADOPTING THE AFFIRMATIVE MARKETING PLAN PREPARED BY LECKINGTON ADVISORS, LLC**

WHEREAS, the Borough of Allendale (“Borough”) is required to administer its affordable housing programs in accordance with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26.1 et seq., applicable court orders, and the Borough’s Court-approved Housing Element and Fair Share Plan; and

WHEREAS, the proper implementation of affordable housing programs requires that all housing opportunities be affirmatively marketed to low- and moderate-income households in compliance with State regulations, including targeted outreach to racial and ethnic minorities, persons with disabilities, and other protected classes; and

WHEREAS, Leckington Advisors, LLC, serving as the Borough’s affordable housing consultant, has prepared a comprehensive Affirmative Marketing Plan outlining procedures for public outreach, advertising methods, eligibility guidelines, referral networks, application intake, lottery protocols, and compliance monitoring; and

WHEREAS, the Borough Council has reviewed the Affirmative Marketing Plan and finds it compliant with UHAC requirements, consistent with the Borough’s affordable housing obligations, and in the best interest of ensuring fair and equal access to all affordable housing opportunities within the Borough; and

WHEREAS, the Borough Council desires to formally adopt the Affirmative Marketing Plan and authorize its use by Borough officials, staff, and the Borough’s Administrative Agent.

RESOLUTION  
BOROUGH OF ALLENDALE  
BERGEN COUNTY, NJ

DATE: 02/19/2026

RESOLUTION# 26-104

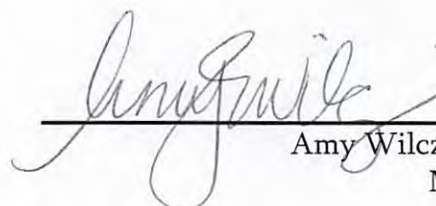
NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Allendale, County of Bergen, State of New Jersey, as follows:

1. The Borough Council hereby adopts the Affirmative Marketing Plan, as prepared by Marc Leckington of Leckington Advisors, LLC, for implementation in the administration of all affordable housing units and programs within the Borough.
2. The Borough Administrator, Municipal Housing Liaison, and the Borough's Administrative Agent are hereby authorized and directed to implement and enforce the policies and procedures contained in the Affirmative Marketing Plan.
3. The Affirmative Marketing Plan may be updated from time to time to ensure ongoing compliance with applicable law, provided such updates are approved by the Borough Council.
4. This Resolution shall take effect immediately upon adoption.

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I hereby certify the above to be a true copy of a Resolution adopted by the Governing Body of the Borough of Allendale on February 19, 2026.

  
\_\_\_\_\_  
Linda Louise Gervino, RMC  
Municipal Clerk

  
\_\_\_\_\_  
Amy Wilczynski  
Mayor



## AFFIRMATIVE FAIR HOUSING MARKETING PLAN BOROUGH OF ALLENDALE For Affordable Housing in **(REGION 1)**

### I. APPLICANT AND PROJECT INFORMATION

*Complete Section I individually for all developments or programs within the municipality.*

Administrative Agent Name, Address, Phone Number		Development or Program Name, Address	
Number of:		Affordable Rental Units	Affordable For-Sale Units
Affordable Units Total			
Affordable Age Restricted Units			
Affordable Non-Age Restricted Units			
Affordable Supportive Housing Units			
Price or Rental Range	Approximate Starting Dates		
From:	Advertising:		Occupancy:
To:			
Counties: <b>Bergen, Hudson, Passaic, Sussex</b>		Preferences, if any (veteran, regional, NJ):	
Accessibility Features, if any:			
Managing/Sales Agent's Name, Address, Phone Number			
Application Fees and Credit Score Requirement (if any):			

**Attach a copy of the pricing calculator and a spreadsheet with information about all units, including number of bedrooms, income level, accessibility features, and square footage to this plan.**

(Sections II through V should be consistent for all affordable housing developments and programs within the municipality and with the municipal Affordable Housing Ordinance. Sections that differ must be described in the approved contract between the municipality and the administrative agent and in the approved Operating Manual.)

### II. RANDOM SELECTION

<p>Describe the random selection process that will be used once applications are received.</p> <p>Prior to the first Random Selection for a given project, the following marketing efforts must be completed:</p> <ul style="list-style-type: none"> <li>• Units listed on the NJHRC website and affirmative marketing efforts must be underway;</li> <li>• A web-based pre-application portal is live and paper copies of the application have been made available according to the AMP.</li> <li>• All affirmative marketing identified in this Plan have been implemented.</li> </ul> <p>The purpose of random selection is to ensure “that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit.”</p>
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The steps involved in conducting the randomization are as follows:

1. Download the complete database of all pre-applications in the applicant pool into Excel.
2. Identify and remove any duplicate records. When a duplicate record is found, the oldest record or records will be deleted, leaving the most recent record.
3. Using a Random Sequence Generator at Random.org, generate a set of random numbers beginning with 1 and ending with the total number of pre-applications. Select Get Sequence.
4. Print or save as PDF the resulting page as evidence of the random selection.
5. Paste the column of random numbers into a new column in the pre-application database, assigning each pre-applicant one of the randomly generated numbers.
6. Sort the spreadsheet based on the random number column.

### III. MARKETING

Direction of Marketing Activity: (indicate which group(s) in the housing region are least likely to apply for the housing without special outreach efforts because of its location and other factors)

White (non-Hispanic)   
  Black (non-Hispanic)   
  Hispanic   
  American Indian or Alaskan Native  
 Asian or Pacific Islander   
  Other group:

**REQUIRED**

5:80-26.16(g)1 requires you to advertise your project on the New Jersey Housing Resource Center for at least sixty days before conducting the random selection.

**HOUSING RESOURCE CENTER** ([www.njhousing.gov](http://www.njhousing.gov)) A free, online listing of affordable housing

**Regional Newspapers**

5:80-26.16(g)3 requires you to advertise your project in at least one regional newspaper (either online or in print). You may also select several papers with partial regional coverage, as long as all counties in the region are covered.

TARGETS ENTIRE HOUSING REGION 1			D-Digital or ND-Non-Digital
<input checked="" type="checkbox"/>	The Star Ledger	Entire Region	Both

**Housing Search Websites – D – Digital**

5:80-26.16(g)4 requires you to advertise your project on at least one housing search website in addition to the NJHRC. "Housing search website" means any publicly accessible internet-based platform used to advertise residential dwelling units to the general public, including but not limited to:

- Online real estate sections of newspapers or news organizations;
- Internet websites operated or maintained by a municipal AA or affordable housing service provider that advertise affordable units in one or more municipalities;
- Commercial real estate listing platforms; and
- Other comparable online platforms customarily used to market rental or ownership housing.

List below all housing search websites to be used:

NJ.com Real Estate Classifieds Page (<https://classifieds.nj.com/nj/category/real-estate>)

**ELECTIVES**

If you selected a print newspaper(s) as your regional paper above, select TWO additional strategies below with AT LEAST ONE NON-DIGITAL MARKETING STRATEGY.

If you selected a digital newspaper(s) as your regional paper above, select AT LEAST TWO NON-DIGITAL MARKETING STRATEGIES below.

<b>Paid Targeted Digital Advertising (must be selected in addition to stations above) – D - Digital</b>	
<i>5:80-26.16(e)1 offers paid targeted digital advertising as an option. Some common platforms are listed below.</i>	
<input type="checkbox"/>	Google Ads
<input type="checkbox"/>	Microsoft Ads
<input type="checkbox"/>	Bing Ads
<input type="checkbox"/>	Other (please list)
<input type="checkbox"/> <b>Employers Throughout the Housing Region – ND – Non-Digital</b>	
<i>5:80-26-16(e)3 offers outreach to regional employers as an option. A comprehensive and regularly updated list of employers is available in the Marketing Outreach Tool. Please reach out to each listed employer in the region; you may add more if desired. If an employer no longer exists or has moved, please inform DCA.</i>	
<input type="checkbox"/> <b>Community Organizations Throughout the Housing Region – ND – Non-Digital</b>	
<i>5:80-26-16(e)4 offers community and regional organizations as an option, including nonprofit, religious, governmental, fraternal, civic, and other organizations. A comprehensive and regularly updated list of organizations is available in the Marketing Outreach Tool. Please reach out to each listed organization in the region. You may add more if desired. If an organization no longer exists or has moved, please inform DCA.</i>	
The Fair Share Housing Center The Latino Action Network New State Conference of NAACP Bergen County NAACP Bergen Urban League Bergen County Housing Corporation	
<input type="checkbox"/> <b>Municipal and County Websites – D – Digital</b>	
<i>5:80-26-16(e)5 offers municipal and county website advertising as an option. Insert the URL for the municipality. To ensure regional outreach, advertise on all county websites listed below.</i>	
Municipality: Borough of Allendale ( <a href="https://www.allendalenj.gov">https://www.allendalenj.gov</a> )	
Bergen County ( <a href="https://www.bergencountynj.gov">https://www.bergencountynj.gov</a> )	
Passaic County ( <a href="https://www.passaiccountynj.org">https://www.passaiccountynj.org</a> )	
Sussex County ( <a href="https://www.sussex.nj.us">https://www.sussex.nj.us</a> )	
Hudson County ( <a href="https://www.hcnj.us">https://www.hcnj.us</a> )	
<input type="checkbox"/> <b>Social Media– D – Digital</b>	
<i>5:80-26.16(e)6 offers social media as an option. Some common platforms are listed below. You may place ads on these platforms or market for free on your own page.</i>	
<input type="checkbox"/>	Facebook
<input type="checkbox"/>	TikTok
<input type="checkbox"/>	Instagram

<input type="checkbox"/>	Reddit
<input type="checkbox"/>	YouTube
<input type="checkbox"/>	Snapchat
<input type="checkbox"/>	Other (please list)
<input type="checkbox"/> <b>Public Transit Stops – ND – Non-Digital</b>	
A comprehensive and regularly updated list of NJ Transit stops is available at <a href="https://www.nj.gov/dca/hmfa/about/has/">https://www.nj.gov/dca/hmfa/about/has/</a> , or in map form at <a href="http://njogis-newjersey.opendata.arcgis.com">njogis-newjersey.opendata.arcgis.com</a> . Note that you must get permission from NJ Transit to post flyers.	
<input type="checkbox"/> <b>Other Advertising Efforts to Groups Least Likely to be Reached</b>	

**IV. SUMMARY**

*Add additional outreach efforts chosen from the options above to supplement these mandatory efforts:*

Non-Digital Outreach	Digital Outreach
The Fair Share Housing Center The Latino Action Network New State Conference of NAACP Bergen County NAACP Bergen Urban League Bergen County Housing Corporation	NJ.com Real Estate Classifieds Page ( <a href="https://classifieds.nj.com/nj/category/real-estate">https://classifieds.nj.com/nj/category/real-estate</a> ) NJ Housing Resource Center

**V. APPLICATIONS**

Applications for affordable housing or notices thereof, if offered online, for the above units will be available in all County Administration Buildings and Libraries for all counties in the housing region:	
<b>BUILDING</b>	<b>LOCATION</b>
<input checked="" type="checkbox"/> Sussex County Main Library	125 Morris Turnpike, Newton, NJ 07860
<input checked="" type="checkbox"/> Hudson County Administration Building	595 Newark Avenue, Jersey City, NJ 07306
<input checked="" type="checkbox"/> Passaic County Administration Building	401 Grand Street, Paterson, NJ 07505
<input checked="" type="checkbox"/> Bergen County Administration Building	One Bergen County Plaza, Hackensack, NJ 07601
Municipality in which the units are located (list municipal building and municipal library and address)	
Allendale Borough (500 W Crescent Ave, Allendale, NJ 07401)	
Lee Memorial Library (500 W Crescent Ave, Allendale, NJ 07401)	
Sales/Rental Office for units (if applicable)	

**V. CERTIFICATIONS AND ENDORSEMENTS**

I hereby certify that the above information is true and correct to the best of my knowledge. I understand that knowingly falsifying the information contained herein may affect the Municipality's compliance and/or any state funding.

\_\_\_\_\_  
Name (Type or Print)

\_\_\_\_\_  
Title/Municipality

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Appendix**

**15. Courts approval of the Borough's Third Round Plan**

# Wiss & Bouregy, P.C.

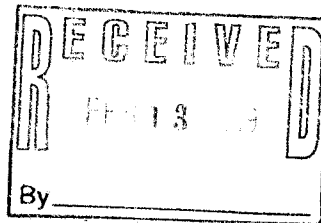
*Counsellors at Law*

**Raymond R. Wiss\***  
*Certified Civil Trial Attorney*

**Thomas K. Bouregy, Jr.**

**Timothy J. Wiss\***

*\*Also Member New York Bar*



## NEW JERSEY OFFICE

345 KINDERKAMACK ROAD  
WESTWOOD, NEW JERSEY 07675  
PHONE No. (201) 497-6680  
FAX No. (201) 497-6677

## NEW YORK OFFICE

815 ROUTE 211 EAST  
MIDDLETOWN, NY 10941  
PHONE No. (845) 638-1415

E-MAIL. [WISSBOUREGY@WISS-LAW.COM](mailto:WISSBOUREGY@WISS-LAW.COM)

January 28, 2019

TO: Allendale Supreme Court Service List (see attached)

**RE: Mount Laurel Declaratory Action and Notice of Motion for  
Temporary Immunity from Exclusionary Zoning Lawsuits**

Dear Sir or Madam:

Attached please find an Order dated January 25, 2019 appointing Farnk Banishch, P.P. as Special Master in the above matter. Also enclosed, please find a Final Judgment of Mount Laurel Compliance and Repose with Conditions dated January 25, 2019.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Raymond R. Wiss".

Raymond R. Wiss

01-046

ALLENDALE SUPREME COURT SERVICE LIST

Edward J. Buzak, Esq. The Buzak Law Group Montville Office Park 150 River Road, Ste. N-4 Montville, NJ 07045	Stephen M. Dahl Vice President & Chief Legal Counsel K. Hovnanian Homes 110 Fieldcrest Avenue Edison, NJ 08837	David R. Oberlander, Esq. Bisgaier Hoff, LLC 25 Chestnut St., Ste. 3 Haddonfield, NJ 08033
Jonathan Drill, Esq. Stickel, Koenig, Sullivan & Drill 571 Pompton Avenue Cedar Grove, NJ 07009	Henry L. Ken-Smith, Esq. Fox Rothschild Princeton Pike Corporate Ctr 997 Lenox Dr, Bldg 3, Ste 204 Lawrenceville, NJ 08648	Mr. Connie M. Pascale Legal Services of New Jersey 100 Metroplex Dr., Ste. 402 PO Box 1357 Edison, NJ 08818
Jeffrey Kantowitz, Esq. Law Office of Abe Rappaport 195 Route 46 W., Ste. 6 Totowa, NJ 07512	Kevin J. Moore, Esq. Sills Cummis & Gross 600 College Road East Princeton, NJ 08040	Christopher Norman, Esq. Norman Kingsbury & Norman 30 Jackson Road, Ste. A-2 Medford, NJ 08055
Ronald C. Morgan, Esq. Parker McCay 9000 Midlantic Drive, Ste. 300 Mount Laurel, NJ 08054	Kevin D. Walsh, Esq. Joshua D. Bauers, Esq. Fair Share Housing Center 510 Park Boulevard Cherry Hill, NJ 08002	Geraldine Callahan, DAG Office of the Attorney General Richard Hughes Justice Complex 8 <sup>th</sup> Floor West Wing 25 W. Market St. Box 112 Trenton, NJ 08625
Alexander Shalom Edward Barocas ACLU of NJ Foundation 89 Market St., PO Box 32159 Newark, NJ 07102	Tracy A. Siebold, Esq. Nehmad, Perillo & Davis 4030 Ocean Heights Avenue Egg Harbor Twp, NJ 08234	Lawrence S. Lustberg, Esq. Gibbons PC One Gateway Center Newark, NJ 07102
Susan M. Scott, DAG Personnel Com. Affairs 25 W. Market St. PO Box 112 Trenton, NJ 08625	Ronald K. Chen Constitutional Litigation Clinic Center for Law & Justice 123 Washington St. Newark, NJ 07102	Jeffrey R. Surenian, Esq. Jeffrey R. Surenian & Associates 707 Union Avenue, Suite 301 Brielle, NJ 08730
Thomas F. Carroll, Esq. Stephen M. Eisdorfer, Esq. Hill Wallack 21 Roszel Road Princeton, NJ 08540	Martin F. McKernan, Jr., Esq. McKernan, McKernan & Godino 113 North Sixth St. Camden, NJ 08012	

**INTERESTED PARTIES**

Advance Housing, Inc. 100 Hollister Road, Unit #7 Teterboro, NJ 07608	Peter Kortright, III, PP Bergen County Dept. Planning & Economic Development 1 Bergen County Plaza, 4 <sup>th</sup> Fl. Hackensack, NJ 07601	Landmark Urban Fund 675 Garfield Avenue Jersey City, NJ 07305
St. Joseph's Home/York St. Project 81 York Street Jersey City, NJ 07302	Tom Toronto Bergen County United Way 6 Forest Avenue, Suite 210 Paramus, NJ 07652	Elizabeth McKenzie Elizabeth C. McKenzie PP PA 9 Main Street Flemington, NJ 08822

Mary Beth Lonergan PP AICP Clarke Caton & Hintz 100 Barrack Street Trenton, NJ 08608	Volunteers of America Greater New York, Inc. 340 West 85 <sup>th</sup> Street New York, NY 10024	Susan Witkowski Township of Washington 350 Hudson Terrace Washington Twp., NJ 07676
Community Options 41 William Street Wayne, NJ 07470	Paterson Habitat for Humanity 146 North 1 <sup>st</sup> Street P.O. Box 2585 Paterson, NJ 07509	Hopes Cap, Inc. 532 Jackson Street, Unit 1B Hoboken, NJ 07030
Denise Kohan, Clerk Borough of Hillsdale 380 Hillsdale Avenue Hillsdale, NJ 07642	Urban Affordable Housing & CDC 253 Martin Luther King drive Jersey City, NJ 07305	New Jersey Community Development Corporation P.O. Box 6976 Paterson, NJ 07509
Paterson Housing Authority 60 Van Houten Street P.O. Box H Paterson, NJ 07509	Frasco Realty c/o Chamberlain Developers, Inc. 479 State Route 17 North Mahwah, NJ 07430	Jacey Raimondo Habitat for Humanity of Bergen County 121 Carver Avenue Westwood, NJ 07675
St. Paul's Community Development Corporation 451 Van Houten Street Paterson, NJ 07501	Heather Mailander, Clerk Village of Ridgewood 131 North Maple Avenue Ridgewood, NJ 07450	Joy Convertini, Clerk Borough of Saddle River 100 East Saddle River Road Saddle River, NJ 07458
Paula Jaegge Municipal Clerk Borough of Waldwick 63 Franklin Turnpike Waldwick, NJ 07463	Columbia Bank 19-01 Route 208 North Fair Lawn, NJ 07410	Women Rising 270 Fairmont Avenue Jersey City, NJ 07306
Eastern Christian Children's Retreat 700 Mountain Avenue Wyckoff, NJ 07481	Church of the Guardian Angel 320 Franklin Avenue Allendale, NJ 07401	Ramsey Golf & Country Club Lakeside Drive Ramsey, NJ 07446
Allendale Corporate Center 359 Veterans Blvd. Rutherford, NJ 07070	Fair Share Housing Center 510 Park Boulevard Cherry Hill, NJ 08002	NJ State Conf. of the NAACP 13 E Front Street Trenton, NJ 08608
Latino Action Network PO Box 943 Freehold, NJ 07728	Bergen County Urban League #104, 12 Tenafly Rd Englewood, NJ 07631	Bergen County Housing Coalition 389 Main St #215 Hackensack, NJ 07601
Bergen County NAACP 17 Bennett Rd. Englewood, NJ 07631	Planning Board Borough of Allendale 500 West Crescent Avenue Allendale, NJ 07401	Ron Kistner Borough Director of Operations 500 West Crescent Avenue Allendale, NJ 07401
Rockland Electric Co. One Blue Hill Plaza Pearl River, NJ 10965		

**FILED**

**JAN 25 2019**

**BONNIE J. MIZDOL, A.J.S.C.**

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

Docket No. BER-L-6162-15

**CIVIL ACTION**

**ORDER**

*Prepared by the Court*

IN THE MATTER OF THE  
APPLICATION OF THE BOROUGH OF  
ALLENDALE, COUNTY OF BERGEN,

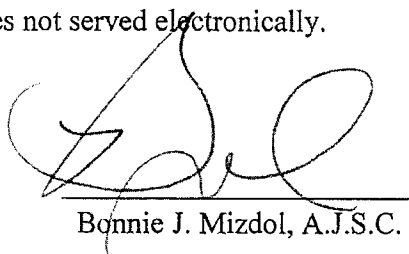
**THE COURT** having been advised that Elizabeth C. McKenzie has sought to resign as the previously appointed Special Master in this action;

**IT IS ON THIS** 25<sup>th</sup> **DAY OF JANUARY 2019;**

**ORDERED** the court accepts the resignation of Elizabeth C. McKenzie as Special Master; and it is further

**ORDERED** that Frank Banisch, P.P., is hereby appointed as Special Master in the Matter of the Borough of Allendale; and it is further

**ORDERED** that the court provides a copy of this order shall be served to all counsel of record by eCourts. Counsel for petitioner/applicant is directed to serve a copy of this order within 7 days of the date hereof on all interested parties not served electronically.



Bonnie J. Mizdol, A.J.S.C.

Raymond R. Wiss, Esq. (Attorney ID: 021361976)  
WISS & BOUREGY, P.C.  
345 Kinderkamack Road  
Westwood, New Jersey 07675  
Telephone: 201-497-6680  
Fax: 201-497-6677  
*Attorneys for Plaintiff,  
Borough of Allendale*

**FILED**  
JAN 25 2019  
GREGG A. PADOVANO, J.S.C.

-----  
IN THE MATTER OF THE  
APPLICATION OF THE BOROUGH  
OF ALLENDALE, COUNTY OF  
BERGEN

: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION:BERGEN COUNTY  
: DOCKET NO: BER-L-6162-15

: Civil Case  
: (Mount Laurel)

:  
: **FINAL JUDGMENT OF**  
: **MOUNT LAUREL COMPLIANCE AND**  
: **REPOSE WITH CONDITIONS**

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THIS MATTER having been opened to the Court upon the filing of a Verified Complaint for Declaratory Judgment in accordance with In re Adoption of N.J.A.C. 5:96 & 5:07 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”), filed by Wiss & Bouregy, P.C., attorneys for Petitioner, the Borough of Allendale (Raymond R. Wiss, Esq. appearing), Fair Share Housing Center (Joshua D. Bauers, Esquire appearing) participating in this action as an Interested Party by virtue of the Settlement Agreement dated September 14, 2017 and fully executed September 15, 2017, (the “Settlement Agreement”); and the Court having appointed Elizabeth C. McKenzie, P.P., P.A., as the Special Master; and the Parties having reached agreement that the Borough’s entire Mount Laurel affordable housing obligation is comprised of a Present Need / Rehabilitation Share obligation of 21 units, a Prior Round obligation of 137 units, and a Third Round Fair Share Obligation (gap and prospective need) of

308 units (including the “Gap Present Need” and “Prospective Need”); and the Third Round 308-unit obligation will be adjusted through a vacant land adjustment (“VLA”) to a 54-unit realistic development potential (“RDP”) and a 254-unit unmet need; and on November 29, 2017, the Court having conducted a Fairness and Preliminary Compliance Hearing pursuant to East/West Venture vs. Borough of Fort Lee, 286 N.J. Super 311 (App. Div. 1996), and by Order entered January 10, 2018, the Court finding that the settlement reached in this matter is fair and reasonable to low and moderate income persons and that the Borough’s preliminary compliance measures are generally compliant subject to certain changes, supplementary materials and conditions recommended by the Special Master in her report dated November 16, 2017 including the adoption of a full housing element and fair share plan as called for by the Settlement Agreement; and the Planning Board of the Borough of Allendale (the “Planning Board” or “Board”) having adopted a Third Round Housing Element and Fair Share Plan (the “Plan”) on June 20, 2018, endorsed by the Borough of Allendale Borough Council on June 28, 2018, to satisfy the Borough’s third round fair share obligations; and the Court having held a Compliance Hearing on November 29, 2018 for the purposes of reviewing the Borough’s adopted Plan and to make a determination as to the Borough’s entitlement to a Judgment of Compliance and Repose; and the Borough having properly caused notice to be published of the Compliance Hearing, with said notice providing an opportunity for any interested party to file an objection on or before November 21, 2018; and no parties having entered objection; and the Special Master having prepared a comprehensive report dated November 19, 2018; and the Court having considered the moving papers, the matters of record submitted by the parties, the reports of the Special Master, the testimony of Borough’s Affordable Housing Planning Consultant, Mary Beth

Lonergan, AICP, PP, and Special Master McKenzie, and the representations of counsel; and the Court having provided an opportunity for the parties and members of the public to ask questions and provide comments on the Plan and matters addressed in the proceedings; and good and sufficient cause having been shown for entry of this Judgment; and for the reasons placed on the record during the November 29, 2018 Compliance Hearing;

IT IS ON this 25<sup>TH</sup> day of January, 2019,

ORDERED AND ADJUDGED as follows:

1. Judgment is hereby entered in favor of Petitioner, the Borough of Allendale (“Borough”) for a Final Judgment of Compliance and Repose (“Judgment”) pursuant to East/West Venture and Mount Laurel IV, subject to the conditions set forth herein.
2. As set forth in the Settlement Agreement and established at the November 29, 2017 Fairness Hearing, the Borough’s Fair Share Obligation 1987 – 2025 Mount Laurel affordable housing obligation is comprised of:
  - a. A Present Need / Rehabilitation Share obligation of 21 units;
  - b. A Prior Round obligation of 137 units;
  - c. A Third Round Fair Share Obligation (including the “Gap Present Need” and “Prospective Need”) obligation of 308 units;
  - d. The Third Round 308-unit obligation will be adjusted through a VLA to a 54-unit RDP and a 254-unit unmet need;

- e. Subject to the terms and conditions of the Settlement Agreement and the Court's January 10, 2018 Order Pursuant to Fairness and Preliminary Compliance Hearing; and
  - f. As set forth in Paragraph 15 of the Settlement Agreement, if a decision of a court of competent jurisdiction in Bergen County, the Appellate Division of the Superior Court, or New Jersey Supreme Court, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Borough for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total Third Round need obligation established above, and if that calculation is memorialized in an unappealable final judgment, the Borough may seek to amend this Judgment to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Borough shall remain obligated to complete and leave in place any site specific zoning change made in connection with the plan approved pursuant to the Settlement Agreement and continue to implement all aspects of the plan approved pursuant to the Settlement Agreement and this Judgment. The Borough may carry over any resulting extra credits to its unmet need and/or future rounds.
3. Having reviewed the Borough's Housing Element and Fair Share Plan and implementing ordinances, the Court finds and declares that the Borough has demonstrated that it has met its prior round obligation and has in place a plan to

meet its present need / rehabilitation share obligation and its third round (gap present need and prospective need) obligations as adjusted to a third round RDP and unmet need. As such, subject to the conditions set forth in this Final Judgment, the Court finds that the Borough's Plan and implementing ordinances are constitutionally compliant and satisfy the Borough's cumulative third round Mount Laurel affordable housing obligations and are therefore approved.

4. The findings, conclusions and grant of Judgment set forth herein are conditioned upon satisfaction of the following requirements:
  - a. The Borough shall fully implement its Housing Element and Fair Share Plan.
  - b. The Borough's compliance, within 120 days from the entry of this Judgment, with the conditions and requirements set forth in the November 19, 2018 Special Master Report. The Borough shall, within 135 days of entry of this Judgment, file proof of such compliance with the Court and Special Master.
  - c. Within 135 days of the entry of this Judgment, the Borough shall submit a draft order documenting that the conditions noted herein above have been met along with a certification from the Borough's Affordable Housing Planner.
  - d. On the second anniversary of the execution of the FSHC Settlement Agreement (September 15, 2019) and every anniversary thereafter, the Borough shall:

- i. Report on trust fund activity to the Department of Community Affairs, New Jersey Council on Affordable Housing or Division of Local Government Services or other entity designated by the State of New Jersey. The report shall also be posted on the Borough's website and a copy of the report forwarded to Fair Share Housing Center.
  - ii. Prepare a report on the status of all affordable housing activity in the municipality. The report shall be posted on the Borough's website and a copy provided to Fair Share Housing Center.
- e. By July 1, 2020, the Borough shall provide a status report of its plan implementation efforts for the midpoint realistic opportunity review required by the Fair Housing Act and the Settlement Agreement. The report shall be posted on the Borough's website and a copy provided to Fair Share Housing Center. The report shall address whether any unbuilt site still creates a realistic opportunity and will invite any interested party to submit comments to the Borough.
- f. Within 30 days of the Settlement Agreement's third anniversary (no later than September 15, 2020), the Borough shall prepare a status report regarding its efforts to produce very low income units. The report shall be posted on the Borough's website and a copy provided to Fair Share Housing Center. The posting will invite any interested party to submit

comments to the Borough and Fair Share Housing Center as to the Borough's efforts to comply with its affordable housing obligation.

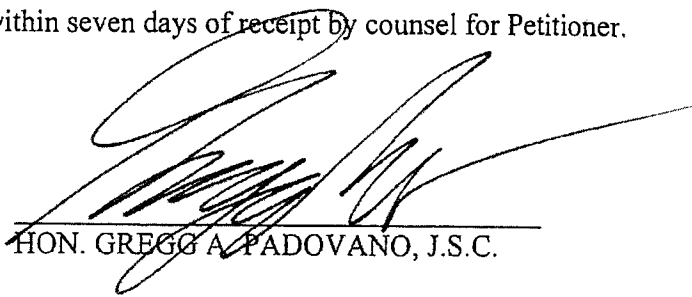
5. The Borough's Affordable Housing Spending Plan has been reviewed and is hereby approved.

a. The Borough is authorized to impose and collect affordable housing development fees, to deposit and maintain those fees in the Borough's Affordable Housing Trust Fund, and to expend those fees in accordance with its approved Spending Plan and this Judgment, subject to applicable law.

b. The proposed expenditure of funds from the Borough's Affordable Housing Trust Fund is found and determined to be consistent with and authorized by the Fair Housing Act, and as such, those funds are properly committed for expenditure as required by the 2008 amendments to the Fair Housing Act, P.L. 2008, c.46.

6. The Borough is authorized and directed to use the regional income limits as set forth in the "2018 Affordable Housing Regional Income Limits by Household Size" summary chart prepared by the Affordable Housing Professionals of New Jersey ("AHPNJ"), and the methodology developed thereto by AHPNJ that replicate's COAH's procedures for annually updating and establishing said income limits, for use in establishing annual eligibility and qualification levels and the maximum rental levels and sales prices for affordable housing units.

7. Subject to the conditions set forth herein, the Borough is entitled to this Judgment of Compliance and Repose and immunity from exclusionary zoning lawsuits, including but not limited to “builder’s remedy” lawsuits, for its third round Mount Laurel affordable housing obligations for a period of ten (10) years, retroactive to the date of the Borough’s filing of the instant action on July 7, 2015, with said protections extending through and expiring on July 7, 2025. Once the above conditions called for to be addressed within 120 days of the entry of this order have been met, the Borough will be granted final repose and immunity from exclusionary zoning litigation through July 7, 2025.
8. A copy of this Order shall be served on the Special Master, all counsel of record and the official service list within seven days of receipt by counsel for Petitioner.



HON. GREGG A. PADOVANO, J.S.C.

**Appendix**

**16. Fourth Round Spending Plan**

Amended January 23, 2026  
Borough of Allendale  
Affordable Housing Trust Fund Spending Plan

## INTRODUCTION

The Borough of Allendale (hereinafter the "Borough"), Bergen County, has prepared a Housing Element and Fair Share Plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Amended Fair Housing Act (N.J.S.A. 52:27D-301) and the proposed new Fair Housing Act Rules promulgated by the New Jersey Department of Community Affairs (DCA) (N.J.A.C. 5:99) and the regulations of the Council on Affordable Housing ("COAH"), N.J.A.C. 5:93-1 et seq. and N.J.A.C. 5:91 Second Round and N.J.A.C. 5:97-8.10 Third Round procedural and substantive regulations. The Borough began collecting development fees in 2005 to be put towards their affordable housing trust fund.

On September 20, 2016, the Superior Court approved a second amendment to the Spending Plan to spend \$50,000 from the Borough's affordable housing trust fund toward the creation of the Eastern Christian Children's Retreat ("ECCR") group home at 135 West Crescent Avenue. The Court approved a third amendment to the Spending Plan on January 5, 2017 to spend \$20,000 of the Borough's trust fund toward the second ECCR group home at 200 West Crescent Avenue and \$325,000 toward the then proposed municipally sponsored development at 220 West Crescent Avenue.

On May 30, 2019, the Borough amended its 2018 spending plan as part of its June 4, 2019 Certification addressing the Court's conditions of compliance set forth in the Court Order dated January 25, 2019. The Borough's amended the May 2019 spending plan to reflect that the Borough no longer proposed to sponsor or direct trust funds towards affordable units at 220 West Crescent; instead, the Borough elected to grant a density bonus to a developer to construct an inclusionary development including very-low-income family affordable rental units.

Ultimately, the Court approved the Borough's May 30, 2019 amended spending plan in its Final Order of Repose dated June 27, 2019. As part of its June 4, 2019 Certification to the Court, the Borough had committed to further amend its spending plan by the mid-point review date of July 1, 2020 to reflect a minimum 30-year subsidy for a very low-income three-bedroom family rental unit at the Bergen County United Way/Former Farm development ("Former Farm") to reflect the minimum 30-year affordability control period. The June 2020 spending plan addressed the Borough's 2019 commitment to find this program.

This Spending Plan amends the prior Spending Plan funding allocated for a low income tenant/units at the Bergen County United Way/Former Farm development ("Former Farm"). This development has since secured additional funding from a project base voucher for the low-income tenant/units and no longer needs the subsidy funds from the Borough's affordable Housing Trust Fund. The Borough therefore reallocated the projected \$311,443 previously committed.

This plan allocates \$90,000 towards a rehabilitation project to a current affordable unit at 98 Elm Street which was built during the second round. The Borough has secured a Consent Order to support this unit obtained by Allendale Housing Inc. ("Allendale Housing"), a non-for-profit organization who purchased and is rehabilitating the unit with the Borough committing up to \$90,000 towards its rehabilitation. The property will be converted into two (2) special needs units and deed restricted, marketed in accordance with N.J.A.C. 5:80-26.1. and extend affordability controls on the property.

Further this Spending Plan includes the identification of the Borough's prior funding towards the construction of 4 additional affordable units constructed by Allendale Housing Inc. senior housing project on Cebak Court. The funding for this project was \$50,000 per unit for a total of \$200,000. This funding is creditable to the Borough's ongoing efforts to make units affordable through the affordability assistance category of funding from the trust fund.

The Borough adopted a development fee ordinance on December 9, 1992, creating a dedicated revenue source for affordable housing. The ordinance was amended and approved by COAH in December of 2008 and amended again in October of 2018 to reflect the Court's jurisdiction. The ordinance establishes the Borough's affordable housing trust fund for which this spending plan is prepared and sets development fees at 1.5% and 2.5% of equalized assessed property value, for residential development and non-residential development, respectively.

Through the end of 2024, the Borough has collected a total of \$4,665,235.64 in development fees, payments in-lieu of construction, interest, and other income. It has spent a total of \$4,098,674.91, leaving a balance of \$566,560.73. All development fees, payments in-lieu of constructing affordable units on site, "other" income, and interest generated by the fees are deposited in separate interest-bearing affordable housing trust fund account for affordable housing purposes. These funds shall be spent in accordance with N.J.A.C. 5:93-8.16, as described in the sections that follow.

In order to implement its prior Court-approved spending plans, the Borough expended an additional \$30,000 (for a total of \$50,000) from its trust fund to help construct a group home at 200 West Crescent Avenue in 2020, pursuant to an agreement with Eastern

Christian Children’s Retreat. The Borough reallocated \$200,000 of funding not needed towards the Former Farm project towards the additional 4 units at Allendale Senior Housing Inc. Cebak Court 100 percent affordable housing project.

Per the Borough's Settlement Agreement with Fair Share Housing Center ("FSHC") dated September 15, 2017, the Borough received the Court's approval on June 27, 2019 that the expenditures of funds contemplated under the Borough's HEFSP and Spending Plans constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and - 329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving the Borough's HEFSP and Spending Plan 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).

On June 27, 2019, the Borough received its Final Judgment of Compliance and Repose. As noted above, the Borough had committed and amended the 2019 Spending Plan on June 9, 2020. This Amended Spending Plan acknowledges that funds designated for the Former Farm project are no longer needed for affordability assistance. Instead, funding was committed towards the additional 4-unit affordable senior housing development at Cebak Court. Further this plan allocates funding towards the rehabilitation program of an existing affordable housing unit at 98 Elm Street in Allendale to be converted to a 2-bedroom special needs residence being purchased by Allendale Housing Inc. and extending affordability controls for this unit.

This plan also includes an adjustment in spending in response to the mediated settlement agreement with FSHC to include allocations towards an affordable housing affordability assistance program as identified herein. Further the plan includes funding certain extensions of controls that are scheduled to become available in the Fourth Round Housing cycle.

## REVENUES FOR CERTIFICATION PERIOD

It is estimated that during the period of December 31, 2024 through June 30, 2035 (10 year cycle), which is the period that the Borough will have a Fourth Round Judgment of Compliance and Repose (hereinafter "Fourth Round JOR"), the Borough will add an additional \$750,000 to its Affordable Housing Trust Fund. This is detailed below.

- (a) Development fees: Based on development fee collection trends in the Borough of Allendale since June of 2020, all of which have been from residential development fees, the Borough anticipates that approximately \$1,500,000 in development fees will be generated between January 1, 2025 and June 30, 2035. This figure assumes that,

on average, the Borough will collect approximately \$6,250 in development fees per month during the Fourth Round.

- (b) Payment in lieu (PIL): The Borough of Allendale does not currently anticipate the contribution of any payments in lieu toward the municipal Affordable Housing Trust Fund during the remainder of the Fourth Round.
- (c) Other Funds: The Borough of Allendale does not anticipate the contribution of any other funds toward the municipal Affordable Housing Trust Fund during the remainder of the Fourth Round.
- (d) Projected interest: It is estimated that the Borough of Allendale will collect approximately \$15,000 in interest between January 1, 2025 and June 30, 2035. This figure assumes that, on average, the Borough will collect approximately \$125 in interest per month during the Fourth Round.

PROJECTED REVENUES – AFFORDABLE HOUSING TRUST FUND												
JANUARY 1, 2025 THROUGH JUNE 30, 2035												
SOURCE OF FUNDS	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	1/1/2035- 6/30/2035	Total
(a) Development fees:	\$37,500.00	\$75,000.00	\$75,000.00	\$75,000.00	\$75,000.00	\$75,000.00	\$75,000.00	\$75,000.00	\$75,000.00	\$75,000.00	\$37,500.00	\$750,000.00
(b) Payments in Lieu of Construction	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
(c) Other Funds	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
(d) Interest	\$750	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$750	\$15,000
<b>Total</b>	<b>\$38,250.00</b>	<b>\$76,500.00</b>	<b>\$76,500.00</b>	<b>\$76,500.00</b>	<b>\$76,500.00</b>	<b>\$76,500.00</b>	<b>\$76,500.00</b>	<b>\$76,500.00</b>	<b>\$76,500.00</b>	<b>\$76,500.00</b>	<b>\$38,250.00</b>	<b>\$765,000.00</b>

In sum, the Borough of Allendale projects a total of \$765,000 in revenue to be collected between January 1, 2025 and June 30, 2035. This projected amount, when added to Allendale's current trust fund balance of \$566,560.73, results in a total anticipated trust fund balance of \$1,331,560.73 available to fund and administer the Borough's affordable housing plan. All interest earned on the account shall be used only for the purposes of affordable housing.

## 2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

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

- (a) Collection of development fee revenues: Collection of development fee revenues shall be consistent with Allendale's development fee ordinance for both residential and non-residential developments in accordance with applicable COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.8), and as may be amended.
- (b) Distribution of development fee revenues: The administration of Allendale's development fee spending plan will be undertaken by the governing body and the Borough Chief Financial Officer. The governing body will approve the expenditure of all development fee revenues and will first review the development fee request for consistency with the spending plan. If consistent with the plan, the governing body will adopt a resolution authorizing the use and release of trust fund monies by the Borough Chief Financial Officer.

## 3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

- (a) Rehabilitation. Allendale Senior Housing was projected at the time of the last Spending Plan to utilize capital reserves (not trust funds, as was originally planned) to renovate or repair at least one (1) major system in 15 of the 16 rental units. The 16th rental unit is newly converted and received new construction credit. Allendale Senior Housing has since renovated these 15 units utilizing separate funding sources and did not need separate allocations from the Borough or the trust fund. Thus, the Borough has addressed 15 of its 21-unit rehabilitation share at that time (completely fulfilling its rental rehabilitation requirements) and will continue to rely on the HOME-funded County program for additional Fourth Round rehabilitations.

In addition, the Borough proposes in the Fourth Round to rehabilitate a unit located at 98 Elm Street established during the second round. This unit was purchased by Allendale Housing Inc. ("Allendale Housing"), a non-for-profit organization who will be purchasing and rehabilitating the unit with the Borough committing up to \$90,000 towards this rehabilitation. As noted, the property will be converted into two (2) special needs units and deed restricted, marketed in accordance with N.J.A.C. 5:80-26.1. and extend affordability controls on the property.

Further, the Borough has a rehabilitation obligation as outlined in the HEFSP of 10 units. The Borough has and will continue to participate in the Bergen County Home Improvement Program (BCHIP), to rehabilitate income qualified units in the Borough. Since this BCHIP does not provide funding to rental units, the Borough will contract with a professional Affordable Housing Administrator to administer a Allendale's Rental Municipal Home Improvement Program – which will be open to both owners and renters –and will utilize funds appropriated from the Borough's Affordable Housing Trust Fund towards this program.

The Borough will set aside additional funding of \$120,000 in the first two years of the 10 year cycle for a total allocation of \$120,000 by the end of year 2035 initially and continue to monitor interest in this rehabilitation program in the allocation of funding from the Trust Fund. This program shall be reassessed annually to identify if sufficient funds are available to possibly increase the amount of funding available for this program.

- (b) Affordability Assistance. In prior spending plans, N.J.A.C. 5:93-8.16(c), required an allocation for affordability assistance, although as amended by the FHA-2 and N.J.A.C. 5:99-2.5, the spending plan no longer required to set aside a minimum amount of funding for this program. While the Borough has continued to satisfy the minimum amount of spending towards affordability assistance in prior plans, the Borough plans to continue to fund its affordability assistance program with funds projected in this plan. "Affordability assistance" means the use of funds to render housing units more affordable to low- and moderate-income households and includes, but is not limited to, down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner's association or condominium fees and special assessments, common maintenance expenses, and assistance with emergency repairs and rehabilitation to bring deed-restricted units up to code, pursuant to N.J.A.C. 5:99-2.5.

This allocation of funding is planned to fund the Borough's proposed affordability assistance program as detailed above and noted in the Appendix to this Plan. An allocation of \$22,788 per year or a total of \$399,468.22 by the end of 2035 is allocated to these programs. Further the Borough may seek to expand this program to assist affordability towards affordable housing options should discretionary funding become available as identified below in the category identified herein under emergent opportunities.

### Projected Minimum Affordability Assistance

Actual development fees + interest through 5/15/25		\$ 566,560.73
Development fees + interest projected through 2025-2035	+	\$765,000.00
Less housing activity expenditures through 5/15/25		\$0.00
Less housing activity expenditures 5/15/25		\$0.00
<b>Total</b>	=	\$1,331,560.73
30 percent requirement	x 0.30 =	\$399,468.22
Less total affordability assistance expenditures through 12/31/24	-	\$0.00
<b>PROJECTED MINIMUM Affordability Assistance Requirement 2025-2035</b>	=	<b>\$ 399,468.22</b>
Very low-income requirement (30 percent requirement ÷ 3)	=	\$133,156.07
<b>PROJECTED MINIMUM Very Low-Income Requirement 2024-2025</b>	=	<b>\$133,156.07</b>

(c) Administrative Expenses. The Borough may use affordable housing trust fund revenue for related administrative costs up to a 20 percent limitation pending funding availability after programmatic and affordability assistance expenditures. The Roberts Bill (P.L. 2008, c. 46), which was adopted on July 17, 2008, amended the FHA to differentiate between payments in-lieu of construction ("PILs") from development fees, among other things. Historically, municipalities counted PILs received prior to July 17, 2008 as revenues that can be spent toward administration, while subtracting past spending on RCA programs from the gross revenue basis of the administrative expenses cap calculation.

### Administrative Expenses Analysis

Actual development fees + interest through 5/15/25		\$1,968,312.72
Payment-in-lieu of construction through July 17, 2008	+	\$1,842,486.00
Development fees + interest projected 2025-2035	+	\$765,000.00
Less RCA Expenditures	-	\$240,000.00
<b>Total</b>	=	\$4,335,798.72
20 percent requirement	x 0.20 =	\$867,159.74
Less administrative expenditures through 12/31/24	-	\$639,273.62
<b>PROJECTED MAXIMUM Administrative Expenses Requirement 2025-2035</b>	=	<b>\$227,886.12</b>

The Borough projects that \$227,886.12 may be available from the affordable housing trust fund to be used for administrative purposes through 2035. Projected administrative expenditures, subject to the 20 percent cap, are as follows:

- Borough Attorney, Engineer, Planner, and other consultant fees related to plan preparation and implementation. Pursuant to N.J.S.A.52:27D-329.2 c. (2) (b) (i) , administrative expenses include “court costs to obtain a judgment of repose; (ii) to contest a determination of the municipality’s fair share obligation; or (iii) on costs of any challenger in connection to a challenge to the municipality’s obligation, housing element, or fair share plan.”

- (d) Extensions of Controls - Subsidies. The Borough will set aside trust funds in order to pay funds/subsidies to owners of affordable housing units whose affordability controls will expire during the Fourth Round to support the preservation of the unit for an additional 30-year term. For units defined under UHAC as a 95/5 unit, the Borough will fund up to \$10,000 per unit. It is estimated that a total of \$60,000 will need to be set aside for this purpose during the Fourth Round.
- (e) Extensions of Controls - Certificates of Habitability. For any units whose affordability controls are being extended for an additional term during the Fourth Round, the Borough proposes to utilize trust funds to fund and complete repair and/or rehabilitation work on such units when such work exceeds the per unit amount set forth in 3(d) above in order to issue a Certificate of Habitability or certified statement from the Borough’s assigned inspector. The Township will set aside \$30,000 for such work.
- (f) Purchase of Units Subject to Foreclosure. The Borough will set aside trust funds in order to purchase affordable housing units that may become subject to foreclosure during the Fourth Round in order to maintain the affordability controls on such units. The Township will set aside \$400,000 for this purpose.

#### 4. EXPENDITURE SCHEDULE

The Borough of Allendale intends to use affordable housing trust fund revenues for rehabilitation activities, housing activity related to affordability assistance and administrative costs. Where applicable, the funding schedule below parallels the implementation schedule set forth in the Housing Element and Fair Share Plan and is summarized as follows.

PROJECTS / PROGRAMS	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Rehabilitation	\$0.0	\$24,000	\$24,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$0.00	\$120,000.00
Affordability Assistance	\$39,946.82	\$39,946.82	\$39,946.82	\$39,946.82	\$39,946.82	\$39,946.82	\$39,946.82	\$39,946.82	\$39,946.82	\$39,946.82	\$399,468.22
Administration	\$22,788.61	\$22,788.61	\$22,788.61	\$22,788.61	\$22,788.61	\$22,788.61	\$22,788.61	\$22,788.61	\$22,788.61	\$22,788.61	\$227,886.12
<b>Subtotal</b>	<b>\$62,735.43</b>	<b>\$86,735.43</b>	<b>\$86,735.43</b>	<b>\$74,735.43</b>	<b>\$74,735.43</b>	<b>\$74,735.43</b>	<b>\$74,735.43</b>	<b>\$74,735.43</b>	<b>\$74,735.43</b>	<b>\$62,735.43</b>	<b>\$747,354.34</b>
Extension of Expiring Controls	\$0.00	\$0.00	\$0.00	\$20,000.00	\$0.00	\$0.00	\$40,000.00	\$0.00	\$0.00	\$0.00	\$60,000.00
Extensions: Cert. of Habitability	\$0.00	\$0.00	\$0.00	\$10,000.00	\$0.00	\$0.00	\$20,000.00	\$0.00	\$0.00	\$0.00	\$30,000.00
Purchase of Units Subject to Foreclosure	\$0.00	\$0.00	\$0.00	\$200,000.00	\$200,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$400,000.00
Reserved for Additional Affordability Assistance and/or Affordable Housing	\$0.00	\$9,420.64	\$9,420.64	\$9,420.64	\$9,420.64	\$9,420.64	\$9,420.64	\$9,420.64	\$9,420.64	\$9,420.64	\$94,206.39
<b>Total Allocated</b>	<b>\$72,156.07</b>	<b>\$96,156.07</b>	<b>\$96,156.07</b>	<b>\$314,156.07</b>	<b>\$284,156.07</b>	<b>\$84,156.07</b>	<b>\$144,156.07</b>	<b>\$84,156.07</b>	<b>\$84,156.07</b>	<b>\$72,156.07</b>	<b>\$1,331,560.73</b>

## 5. EXCESS OR SHORTFALL OF FUNDS

In the event of any expected or unexpected shortfall of funds necessary to implement the Fair Share Plan, the Borough of Allendale will handle the shortfall of funds through an alternative funding source to be identified by the Borough and/or by adopting a resolution with an intent to bond. The Borough also reserves the right to amend its spending plan to reduce the amount of funds available for affordability assistance if actual development fee revenues during the remainder of the Fourth Round fall short of the amount anticipated herein. In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be dedicated toward the Borough's rehabilitation program and/or additional affordability assistance as noted in the Other Emergent Opportunities line item.

## 6. BARRIER FREE ESCROW

Collection and distribution of barrier free funds shall be consistent with the Borough's Affordable Housing Ordinance and in accordance with applicable regulations. A process describing the collection and distribution procedures for barrier free escrow is detailed within the Borough's Affordable Housing Ordinance.

## SUMMARY

The Borough of Allendale intends to spend Affordable Housing Trust Fund revenues pursuant to N.J.A.C. 5:93-8.16 and N.J.S.A.52:27D-329.2 c. (2) (b) (i) and FHA as amended and consistent with the housing programs outlined in the Borough's Housing Element and Fair Share Plan.

The Borough intends to spend affordable housing trust fund revenues pursuant to the extant regulations governing such funds and consistent with the Borough's 2025 Fourth Round Housing Element and Fair Share Plan. The Borough had a balance of \$566,560.73 as of December 31, 2024. The Borough anticipates an additional \$765,000 in revenues with interest before the expiration of its Fourth Round Judgment of Repose for a total of \$1,331,560.73.

The Borough at this time has exceeded its minimum 30 percent affordability assistance expenditure requirement through previous spending toward the creation of very low-income units.

The Borough desires to expend additional trust funds towards rehabilitation with the expenditure of \$90,000 of trust funds to further assist the renovation of two (2) special needs very-low-income bedrooms at 98 Elm Street. In addition, the Borough has allocated a total of \$120,000 towards rehabilitation for 10 units. The plan also includes an allocation of \$60,000 towards exercising the extension of controls associated with two family units in Allendale Brook Estates that will come due in the Fourth Round and another 4 such existing units. The Borough may also expend up to \$227,886 of trust funds on administrative costs during the period of repose.

Any shortfall of funds will be offset by an alternative funding source to be identified by the Borough and/or, the Borough of Allendale will bond to provide the necessary funding. However, the Borough also reserves the right to amend its spending plan to reduce the amount of funds available for affordability assistance if a shortfall of revenues occurs. The Borough will dedicate any excess funds or balance toward the Borough's rehabilitation program and/or its accessory apartment program and/or additional affordability assistance.

<b>SPENDING PLAN SUMMARY</b>		
Balance as of May 15, 2025		<b>\$566,560.73</b>
<b>PROJECTED REVENUE THROUGH 6/30/35</b>		
Development fees	+	\$750,000.00
Payments in lieu of construction	+	\$0.00
Other funds	+	\$0.00
Interest	+	\$15,000.00
SUBTOTAL REVENUE	=	\$765,000.00
<b>TOTAL REVENUE = \$1,331,560.73</b>		
<b>EXPENDITURES THROUGH 6/30/35</b>		
Rehabilitation Program	-	\$120,000.00
Affordability Assistance	-	\$399,468.22
Extension of Expiring Controls	-	\$60,000.00
Extensions: Cert. of Habitability	-	\$30,000.00
Purchase of Units Subject to Foreclosure	-	\$400,000.00
Administration	-	\$227,886.12
Other Emergent Opportunities	-	\$94,206.39
TOTAL PROJECTED EXPENDITURES	=	\$1,331,560.73
REMAINING BALANCE	=	\$0.00

**17. Allendale Extension of Controls Program**

## ALLENDALE

### EXTENSION OF CONTROLS PROGRAM

Allendale Borough proposes to satisfy 2 units of its RDP and to generate a surplus of four to use as the Borough deems appropriate. In addition, the Borough will continue to monitor the other affordable units in the Borough and reserves the right to extend additional controls (beyond the 6 noted below), or as applicable, purchase other units should they be available due to foreclosure to maintain affordability. Funding for these programs are allocated for in the Borough's Spending Plan.

***The Restriction Initially Imposed on the 6 Units Will Expire Between June 30, 2025, and July 1, 2035 if the Restrictions Are Not Extended***

The chart below shows the initial date of the 30-year deed restriction and the final date that restriction would expire before June 30, 2035.

Description	Unit type	Project	Expiration Date
3 Trotters Lane B2101, L9, C0003	3 Bedroom	Allendale Brooke Estates	5/15/2032
7 Trotters Lane B2101, L9, C0007	1 Bedroom	Allendale Brooke Estates	11/04/2032
11 Trotters Lane B2101, L9, C0011	2 Bedroom	Allendale Brooke Estates	10/15/2032
86 Carriage Court Trotters Lane B2101, L9, C0086	1 Bedroom	Allendale Brooke Estates	12/15/2031
96 Elm Street B1809, L8 C00096	3 Bedroom	Saddle Dale Park	9/29/2029
100 Elm Street B1809, L8 C00100	1 Bedroom	Saddle Dale Park	11/22/2029

***The Borough Will Provide Notice to the Households Residing In the 6 Units Within The Time Specified by the New Regulations***

The new regulations the NJHMFA adopted on November 6, 2025, and signed by Governor Murphy on December 15, 2025 provide as follows:

*If the municipality has not received notice of any intent by the owner to make an exit sale, the municipality notifies the owner, by certified mail and, if known, by email, of its election to extend affordability controls no earlier than one year and no later than 180 days before the execution of a new deed restriction extending affordability controls, during which time the owner shall have the opportunity to seek and provide notice of intent for an exit sale and/or obtain an appraisal of the value of their unit as if it were not subject to UHAC;*

[N.J.A.C. 5:80-26.6(h) 4]

Accordingly, the Borough will notify the households residing in the units “no earlier than one year and no later than 180 days before the execution of a new deed restriction extending affordability controls”. The Borough will send a certified letter notifying the household that the Borough is exercising its right under the owner’s deed to extend the restriction. In addition, the Borough will adopt a resolution identifying the 6 units and seek to record the resolution further, putting all would be purchasers on notice that the unit is an affordable unit for a total of 60 years.

***In Accordance with Ordinance §270-103C The Borough Will Ensure That All Units Transferred After the Deed Restrictions Expire Are Safe and Habitable***

Allendale adopted Ordinance **§270-103C**, setting forth the requirements to obtain a Certificate of Compliance to resell or extend controls on an applicable residential unit. The Seller must not only provide a Certificate of Compliance in accordance with Ordinance **§270-103C** but also must produce the State mandated smoke detector/carbon monoxide inspection certificate and install a prescribed fire extinguisher. The Borough will offer to inspect the units owned the low- or moderate-income households listed above and to pay all reasonable expenses the household may incur to obtain a Certificate of Occupancy, and to comply with State laws on smoke /carbon monoxide detectors and to install a prescribed fire extinguisher. Funding for such rehabilitation is allocated in the Spending Plan.

***The Borough Will Use the Form of Deed Restriction Required By the New HMFA Regulations When Extending the Deed Restrictions on the 6 Units***

The regulations the HMFA adopted on November 6, 2025, and Governor Murphy signed on December 15, 2025 require the use of new forms of deed restrictions for units under the extension of controls program. Accordingly, when extending deed restrictions on the 20 units set forth above, the Borough will use the form of deed restriction required by the new regulations.

**Monetary Compensation**

The new regs include the following language:

*iii. If the restricted unit is governed by a deed restriction executed prior to November 6, 2025, extends affordability controls pursuant to the terms of the governing deed restriction, provided that a new deed restriction is executed according to the requirements of this subchapter.*

[N.J.A.C. 5:80-26.6(h) 6 (iii)]

The deeds for the 6 units do not require Allendale to pay anything to extend restrictions. Nevertheless, the Borough will pay \$10,000 to extend the deed restriction on each unit provided the household provides access to inspect the unit and otherwise cooperates with the Borough's efforts to extend the deed restriction.

**EXCEPTION**

The Borough will buy the first low-income unit that becomes available and either rent the unit directly to a very low income family and lease the unit as an affordable unit for 40 years or enter into an agreement with a nonprofit or other entity to lease the unit to a very low income household for 40 years.