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June 17, 2020

Michael Edwards, Esq.  
SURENIAN, EDWARDS & NOLAN, LLC  
707 Union Avenue  
Brielle, New Jersey 08730

**Re: In the Matter of the Township of West Caldwell, County of Essex**  
Docket No. ESX-L-4910-15

Dear Mr. Edwards:

This letter memorializes the terms of an agreement reached between the Township of West Caldwell (the "Township" or "West Caldwell"), 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**

West Caldwell 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. Through the declaratory judgment process, the Township and FSHC 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 Township and FSHC hereby agree to the following terms:

1. FSHC agrees that the Township, through the adoption of a Housing Element and Fair Share Plan conforming with the terms of this Agreement (hereafter "the Plan") and through the 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 Third Round 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 and West Caldwell hereby agree that West Caldwell's affordable housing obligations are as follows:

Rehabilitation Share	48
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	200
Third Round (1999-2025) (Per Mercer County Opinion)	406

4. For purposes of this Agreement, the Third Round Prospective Need shall be deemed to include the Gap Period Present Need, 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). The parties agree for purposes of settlement to establish 406 units as the Borough's Third Round Prospective Need Fair Share Obligation as the number that multiple experts have used as an extrapolation pursuant to the methodology established by the Honorable Mary C. Jacobson, A.J.S.C., decision in the consolidated declaratory judgment proceedings: In the Matter of the Municipality of Princeton, Docket No. MER-L-1550-15 and in the Matter of West Windsor Township, Docket No. MER-L01561-15, Superior Court of New Jersey, which is not otherwise binding on either party except by way of this Settlement Agreement.
5. The Township's efforts to meet its present need include the following:
- One unit rehabilitated in 2015 through the Essex County Home Improvement Program
  - A municipally-sponsored rehabilitation program for 8 units, which will be available for both sale and rental units.
  - Continued participation in the Essex County Home Improvement Program

This is sufficient to satisfy the Township's present need obligation of 48 units.

6. As noted above, the Township has a Prior Round prospective need of 200 units. The municipality participated in the Court Process in the Prior Round, as demonstrated by the 2007 Special Master's Report, which was presented along with testimony at a subsequent hearing. That 2007 Special Master's Report is attached hereto as Exhibit A (the "2007 Master's Report") and is relied upon for purposes of Settlement only as described in the body of this Settlement Agreement. As part of the Prior Round process and as shown in Exhibit A, the Township received a vacant land adjustment of its Prior Round obligation. The Prior Round realistic development potential (RDP) is 18 units. The Prior Round RDP will be satisfied as follows:

<b>Existing Prior Round RDP Credits (18-Unit RDP)</b>						
Mechanism	Credit Type	Tenure	Age-Restricted	Credit	Bonus	
ARC of Essex	Alternative Living	Rental		5	5	10
Jewish Assoc - 7 Essex Pl	Alternative Living	Rental		4		4
Jewish Assoc - 249 Passaic Ave	Alternative Living	Rental		4		4
<b>Total</b>				<b>13</b>	<b>5</b>	<b>18</b>

The Township agrees, as part of its annual monitoring requirements pursuant to Paragraph 19 below, that it will annually demonstrate that ARC of Essex is still in existence and serving low- and moderate-income households.

7. The Prior Round RDP of 18, subtracted from the Prior Round obligation of 200 units, results in a Prior Round unmet need of 182 units, which shall be addressed through the following mechanisms, as more fully described in the Judgement of Repose attached as Exhibit A to this Agreement:
  - a. Mountain Ridge Country Club – Per the 2007 Master’s Report, the Township was required to adopt overlay inclusionary zoning entitled “Affordable Housing Overlay Zone” to Block 1402 Lot 15 and Block 1500 Lot 7 to permit residential uses at 6 dwelling units per acre and requiring a 15% set-aside for rental housing and a 20% set-aside for for-sale housing. The Township did not previously adopt this required zoning, but will do so within one hundred twenty (120) days of the court’s approval of this agreement.
  
8. As noted above, the Township has a Third Round prospective need of 406 units. The Township, as calculated in Exhibit B, has a Third Round realistic development potential (RDP) of 72 units. That RDP will be satisfied as follows:

Mechanism	Credit Type	Tenure	Age-Restricted	Credit	Bonus	Total
<b>Existing Third Round RDP Credits (72-Unit RDP)</b>						
Heritage at West Caldwell	Inclusionary	For-Sale		9		9
Universal Institute	Alternative Living	Rental		4		4
<b>Proposed Third Round RDP Credits (72-Unit RDP)</b>						
Block 1700, Lots 8 (Durkin)	Inclusionary	Rental		24	18	42
Block 1600, Lots 11, 12, and 22	Inclusionary	TBD		4		4
Pio Costa	Inclusionary	TBD		8		8
75 Clinton Road (Block 1502, Lot 1)	Inclusionary	TBD		5		5
<b>Total</b>				<b>54</b>	<b>18</b>	<b>72</b>

9. The Township will provide a realistic opportunity for the development of affordable housing through the adoption of inclusionary zoning on the following sites:
  - a. Durkin site – The Township agrees to adopt inclusionary zoning on the Durkin site at Block 1700 Lot 8 requiring multi-family residential up to 30 du/a and requiring a 20% set-aside, regardless of tenure, which would produce 120+/- total units with 24 affordable housing units. The Township shall demonstrate prior to the fairness hearing that it has an agreement with the property owner that the property owner will cease the existing use on the site and utilize the zoning on this site within two (2) years of the court’s approval of this agreement. Additionally, the Township will demonstrate prior to the fairness hearing that it has an agreement or otherwise has a firm commitment with the property owner that these units will ultimately be rental.
  - b. Block 1600 Lots 11, 12, and 22 – The Township agrees to adopt inclusionary zoning on the site requiring multi-family residential up to 12 du/a and requiring a

20% set-aside, regardless of tenure, which would produce 20+/- total units with 4 affordable housing units. The Township shall demonstrate prior to the fairness hearing that it has an agreement with the property owner that the property owner will cease the existing uses on the site and utilize the zoning on this site within two (2) years of the court's approval of this agreement. Additionally, the Township will demonstrate that it has an agreement with the property owner that these units will ultimately be rental.

- c. Pio Costa – The Township agrees to rezone the site at Block 1700 Lot 2 permitting a maximum of 40 residential units with a minimum 20% set-aside. This site shall produce 40 total units with an affordable housing set-aside of 8 units.
  - d. 75 Clinton Road: The Township agrees to rezone the site at Block 1502 Lot 1 permitting residential up to a maximum of 25 total units with an affordable housing set-aside of 5 units.
10. The RDP of 72, subtracted from the Third Round obligation of 406 units, results in an unmet need of 334, which shall be addressed through the following mechanisms, as depicted in Exhibit C to this Agreement:
- a. Caldwell Nursery – the Township agrees to adopt inclusionary overlay zoning over the property located at Block 2802 Lot 14.01 permitting residential up to 10 du/a and requiring a 20% set-aside, regardless of tenure.
  - b. Passaic and Bloomfield Avenue B-2, B-3, M-1 and M-2 Zones – As shown by the map in Exhibit C, these four zones will be revised to permit a conditional use, which would allow for mixed-use structures. The first floor would be commercial uses and/or parking and the floors above would be residential. Conditions would include, but not be limited to: frontage on Bloomfield Avenue or Passaic Avenue, minimum lot size of four acres (which may be achieved by submitting an application for multiple existing lots), maximum building height of four stories, maximum density of 20 units to the acre, and a minimum set-aside of 20% regardless of tenure. Any additional conditions shall reasonably permit the development of the property as intended by the settlement and shall be provided to FSHC in advance of adoption, which adoption shall occur prior to final judgment being issued in this matter.
  - c. The Township shall adopt an ordinance requiring a mandatory affordable housing set aside for all new multifamily residential developments of five (5) units or more. The set aside shall be twenty percent (20%) regardless of tenure. The provisions of the ordinance shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five or more. The form of the Ordinance shall be finalized prior to final judgment being issued in this matter through collaboration between FSHC, the Special Master, and representatives of the Township.
11. The Township agrees to require 13% of all units referenced in this Agreement, excepting those units that were constructed or granted preliminary or final site plan approval prior to July 1, 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 as follows:

Affordable Housing Units Created after 7/1/2008	# of Units
Heritage at West Caldwell	9
Durkin Site	24

Block 1600 Lot 11, 12, and 22	4
Pio Costa (Block 1700 Lot 2)	8
75 Clinton Road	5
Total	50
Minimum VLI Required (13% of Total)	7
Minimum Family VLI Units (50% of Total VLI)	4
<b>Addressing VLI</b>	
Durkin Site	4
Block 1600 Lot 11, 12, and 22	1
Pio Costa (1700 Lot 2)	1-2
75 Clinton Road	1
Total VLI	7-8
Total Family VLI	7-8

- a. The Township will also require that 13 percent of any affordable units produced from any site resulting from the mechanisms in Paragraphs 10 (a) through (c) of this agreement shall be very low income units.
12. The Township shall meet its Third Round RDP and unmet need in accordance with the following standards as agreed to by the Parties and reflected in the table in Paragraph 8 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 Township 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.
13. The Township 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, East Orange Family Success Center, Essex County Housing Authority, HANDS, Inc. and the Supportive Housing Association. As part of its regional affirmative marketing strategies during its implementation of the affirmative marketing plan, the Township and/or its administrative agent shall also provide notice of all available affordable housing units to the above-referenced organizations. The Township also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.

14. 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 Township as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. Income limits for all units that are part of the Plan required by this Agreement and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Township annually within 30 days of the publication of determinations of median income by HUD as follows:
- a. Regional income limits shall be established for the region that the Township is located within (i.e. Region 2) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Township's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
  - b. The income limits attached hereto as Exhibit D are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2019 and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
  - c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Township annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
  - d. The parties agree to request the Court prior to or at the fairness hearing in this matter to enter an order implementing this paragraph of this Agreement.
15. 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.

16. As an essential term of this Agreement, within one hundred and twenty (120) days of Court's approval of this Agreement, the Township shall introduce and adopt an ordinance or ordinances providing for the amendment of the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning contemplated herein and adopt a Housing Element and Fair Share Plan and Spending Plan in conformance with the terms of this Agreement.
17. The parties agree that if a decision of a court of competent jurisdiction in Essex 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 Township for the period 1999-2025 that would be lower by more than fifteen (15%) 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 Township may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Township shall be obligated to adopt a Housing Element and Fair Share Plan that conforms to the terms of this Agreement and to implement all compliance mechanisms included in this Agreement, including by adopting or leaving in place any site specific zoning adopted or relied upon in connection with the Plan adopted pursuant to this 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 Township'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 Township prevails in reducing its prospective need for the Third Round, the Township may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.
18. The Township shall prepare a Spending Plan within the period referenced above, subject to the review of FSHC and approval of the Court, and reserves the right to seek approval from the Court that the expenditures of funds contemplated under the Spending Plan 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 Judgment of Compliance and Repose and on every anniversary of that date thereafter through the end of the period of protection from litigation referenced in this Agreement, the Township 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.
19. On the first anniversary of the Judgment of Compliance and Repose, and every anniversary thereafter through the end of this Agreement, the Township agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting

provided to 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.

20. The Fair Housing Act includes two provisions regarding action to be taken by the Township during the ten-year period of protection provided in this Agreement. The Township agrees to comply with those provisions as follows:
  - a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of the 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 the Judgment of Compliance and Repose, and every third year thereafter, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.
21. 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.
22. This 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 Township shall present its planner as a witness at this hearing. FSHC agrees to support this Agreement at the fairness hearing. In the event the Court approves this proposed settlement, the parties contemplate the municipality will 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 "accompanying protection" shall remain in effect through July 1, 2025. If this Agreement is rejected by the Court at a fairness hearing it shall be null and void.
23. The Township agrees to pay FSHC's attorneys fees and costs in the amount of \$15,000 within ten (10) days of the Court's approval of this Agreement pursuant to a duly-noticed fairness hearing.

24. If an appeal is filed of the Court's approval or rejection of this 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 this 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.
25. This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Essex County. A prevailing movant or plaintiff in such a motion or separate action shall be entitled to reasonable attorney's fees.
26. 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.
27. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
28. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
29. 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.
30. 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.
31. 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.
32. 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.
33. 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.

34. No member, official or employee of the Township shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
35. 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.
36. 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:**

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**TO THE TOWNSHIP:**

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

Mary Donovan  
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West Caldwell, NJ 07006  
Phone: (973) 226-2300  
Telecopier: (973) 226-2396  
Email: mdonovan@westcaldwell.com

Please sign below if these terms are acceptable.

Sincerely,

Adam M. Gordon, Esq.  
Counsel for Intervenor/Interested Party  
Fair Share Housing Center

On behalf of the Township of West Caldwell, with the authorization  
of the governing body:

Joseph L. Tempertini  
Dated: 6/17/2020

**EXHIBIT A: 2007 SPECIAL MASTER'S REPORT**

MASTER'S REPORT  
FOR A *MOUNT LAUREL*  
FAIRNESS & COMPLIANCE PLAN HEARING  
TOWNSHIP OF WEST CALDWELL  
ESSEX COUNTY, NEW JERSEY

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*The Villas at West Caldwell*

v.

*Township of West Caldwell*

Docket No. ESX-L-11345-00

August 24, 2007

◆ ◆ ◆  
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## 1.0 INTRODUCTION

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This Master's Report is submitted to the Superior Court in a matter captioned The Villas at West Caldwell (hereinafter the "Villas" or the "Plaintiff") v. The Township of West Caldwell (hereinafter the "Township" or "West Caldwell"), Docket No. ESX-L-11345-00. This is an exclusionary zoning case, in which the Plaintiff sought to develop an inclusionary housing project in West Caldwell Township. The litigation has been settled, as evidenced by a Settlement Agreement, dated May 5, 2005.

This Report evaluates two issues relating to affordable housing in West Caldwell: the fairness to the interests of low and moderate income households of the Settlement Agreement between the above listed parties and the compliance of the Township's second round Housing Element and Fair Share Plan, adopted in May 2006 (hereinafter the "Plan") with the second round substantive rules of the Council on Affordable Housing (hereinafter "COAH").

The Settlement Agreement evaluated by this Master's Report states that the Township is requesting a Judgment of Repose through December 20, 2007. However, due to the recent Appellate Division decision, *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing*, which invalidated a portion of COAH's rules, it is recommended that the Township seek first and second round Judgment of Repose with Court protection until such time frame as COAH provides for municipalities under its jurisdiction to comply with its revised third round rules, anticipated to be released at the end of 2007.

## 2.0 THE CONTEXT FOR REVIEW

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Before addressing the Township's plan and the documents that have been submitted for the Court's consideration, I would like to acknowledge the parties' efforts in achieving settlement in this litigation. Settlement of *Mount Laurel* litigation – so long as it meets the appropriate standards for judicial approval – is clearly preferable to the adjudication of a builder's remedy dispute.

Among the most prominent advantages to settlement is that it creates a more civil atmosphere for the further interactions between the parties, such as the processing of applications by inclusionary developers for various development-related permits by local boards and officials. Cooperative working relationships increase the likelihood that the developer and the municipal land use regulators will be able to resolve differences during the approval process without resorting to Court action. In

this way settlements typically facilitate the local approval/ permitting process and thereby expedite the delivery of affordable housing.

The Agreement must be evaluated according to guidelines established by the Court for a "Fairness Hearing". The scope of the Fairness Hearing was determined by the Appellate Division in a decision that upheld the hearing process conducted by then-Assignment Judge Peter Ciolino in *East-West Venture v. Borough of Fort Lee*, a case in which I was privileged to serve as Special Master. In its 1996 decision, the Appellate Court ruled that a settlement between a builder plaintiff and municipal defendant in a *Mount Laurel* case may be approved by the Trial Court after a hearing which establishes that the settlement "adequately protects the interest of lower-income persons on whose behalf the affordable units proposed by the settlement are to be built" 286 N.J. Super.311, 329 (App. Div. 1996). The Court provided specific factors for Trial Courts to consider in making fairness determinations. These factors will be detailed below.

In addition, I have utilized the regulations of the NJ Council on Affordable Housing (COAH) to the greatest extent practicable in the course of this review for the Court. This approach will encourage uniformity in the interpretation of the *Mount Laurel* doctrine and is consistent with both legislative and judicial directives. The Fair Housing Act (P.L. 1985, c.222) states,

*"The interest of all citizens, including low and moderate income families in need of affordable housing, would be best served by a comprehensive planning and implementation response to this constitutional obligation."  
(N.J.S.A. 52:27D-302(c))*

*Furthermore, the New Jersey Supreme Court, in its decision in The Hills Development Co. v. Township of Bernards, 103 NJ 1 (1986) (commonly known as Mount Laurel III) upheld the constitutionality of the Fair Housing Act, and stated,*

*"Instead of varying and potentially inconsistent definitions of total need, regions, regional need, and fair share that can result from the case-by-case determinations of courts involved in isolated litigation, an overall plan for the entire state is envisioned, with definitions and standards that will have the kind of consistency that can result only when full responsibility and power are given to a single entity." (103 N.J. at 25)*

Lastly, in the *Mount Laurel III* decision the Supreme Court also stated that to the extent that *Mount Laurel* cases remained before the courts,

*"...any such proceedings before a court should conform wherever possible to the decisions, criteria and guidelines of the Council." (103 N.J. at 63)*

I have been guided by these principles of uniformity and consistency in the review of this Agreement.

### 3.0 THE SETTLEMENT AGREEMENT

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I have reviewed the Settlement Agreement between the Villas at West Caldwell and the Township of West Caldwell in the context of the required fairness analysis.

The property which is the subject of this Settlement Agreement is known as Block 2000, Lots 2, 3, 5 and 6 (hereinafter the "site"). The site has frontage along Passaic Avenue and consists of 28.51 acres. At the rear of the site is a Public Service Electric & Gas Co. right-of-way and single family homes are located to either side and across Passaic Avenue from the site.

The Settlement Agreement provides for the construction of 30 age-restricted condominium units in a single building in accordance with Exhibit B to the Settlement Agreement, the Villas at West Caldwell Conceptual Plan, dated January 10, 2005 and revised May 10, 2005 (hereinafter the "Conceptual Plan"). The Settlement Agreement also "encourages" the Plaintiff to submit a plan that does not require variance relief. The plaintiff will not provide on-site affordable housing; instead, a payment in lieu of construction in the amount of \$210,000 will be paid to the Township's Affordable Housing Trust Fund. Half of the payment in lieu shall be paid at the time the first building permit is issued and the remaining half shall be paid at the time the fifth certificate of occupancy is issued.

In order to help facilitate construction in accordance with the Conceptual Plan, the Planning Board has agreed to adopt the Ordinance in Exhibit C to the Settlement Agreement in support of the Conceptual Plan within 90 days of the Settlement Agreement's execution. Additionally, the Planning Board has agreed to adopt, "as soon as practicable" (and prior to site plan / subdivision approval of the project) a Master Plan amendment that supports the Ordinance. The Plaintiff is not bound by a time line for submission of plans to the Planning Board and instead, may do so at its discretion. The Township has agreed not to modify any aspect of the zoning which impacts the project during the time which it is under construction or a period of ten years, whichever is longer. Furthermore, the parties have agreed to enter into a Developer's Agreement.

The Township has agreed to provide the necessary public water and sewer service to the site prior to construction of the building. The Plaintiff is responsible for constructing and connecting the sewer and water infrastructure, including if necessary the design and construction of a pump station. The Township Administrator and Municipal Engineer, Benedict Martorana, PE, has indicated that there is adequate sewer and water capacity to service the project<sup>1</sup>.

The Plaintiff shall pay all normal Township fees, including but not limited to sewer and water connection fees. However, no additional fees shall be required, other than normal fees required by law for all other similarly situated applicants.

The Township is required to meet the timelines for project review as set forth in the Municipal Land Use Law, with the exception that completeness shall be determined within 30 days and public hearings shall be scheduled within 30 days following submission of a complete application.

The Township has agreed to endorse all permit applications necessary for construction of the project and both parties have agreed to dispose of all issues related to the litigation.

In addition to obligations regarding development of the Plaintiff's site, the Township has agreed to prepare a housing element and fair share plan. Accordingly, the Township is seeking a second round Judgment of Repeal for a Housing Element and Fair Share Plan adopted in May 2006. The Settlement Agreement further specifies that no funds from the Affordable Housing Trust Fund shall be spent until the Housing Element is approved by the Court.

Since its execution, the Plaintiff and the Township have taken several steps toward implementation of the Settlement Agreement. The zoning to facilitate construction of the project, the R-3C zone district, was adopted on November 1, 2005. The ordinance adding the zone district to the zoning map was adopted on November 17, 2005. The Township did not revise the Master Plan prior to adopting the zoning amendment since it determined that the R-3C zone district was consistent with the existing Master Plan.

The Plaintiff's project received preliminary and final site plan and subdivision approval from the West Caldwell Planning Board on January 8, 2007. It was approved without variances or site plan exceptions and the Board found that it "substantively complies with the requirements of Chapters 18, 18A, 20, and 21 of the Code of the Township of West Caldwell as well as the terms of the Settlement

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<sup>1</sup> May 15, 2007 telephone conversation with Elizabeth K. McManus of Clarke Caton Hintz.

Agreement." Condition 10 of the Planning Board approval requires that the applicant comply with all terms and conditions of the Settlement Agreement.

The Developer's Agreement has not yet been executed. It is my understanding that an agreement is being negotiated by the Township and the Plaintiff. The Developer's Agreement should be finalized and executed before Court approval of the Settlement Agreement. [Condition 1]

### Site Suitability

Despite that the Plaintiff is to provide a payment in lieu of construction of affordable housing units, in order for these payments to be made and thereby for the Settlement Agreement to be fair to the interests of low and moderate income persons, the site intended for development must be suitable for that purpose. COAH has adopted rules which specify that inclusionary development sites must be "approvable", "available", "developable" and "suitable" as those terms are defined in *N.J.A.C. 5:93-1.3*, and as excerpted below:

*"Approvable site means a site that may be developed for low and moderate income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate income housing."*

*"Available site means a site with clear title, free of encumbrances which preclude the development of low and moderate income housing."*

*"Developable site means a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable areawide water quality management plan (including the wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by NJ DEP."*

*"Suitable site means a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in *N.J.A.C. 5:93-4*."*

The site is approvable. The Settlement Agreement requires that the Plaintiff submit a site plan that is consistent with the Conceptual Plan included as Exhibit B to the Housing Element. While the site does contain wetlands at the rear, these environmental constraints will not preclude development of the site in accordance with Exhibit B of the Settlement Agreement. The site's approvability is further supported by the fact that on January 8, 2007 the Planning Board granted the site

preliminary and final site plan and subdivision approval, without variances or site plan exceptions, and also found that the plan was substantially in compliance with the terms of the Settlement Agreement.

The site is available. The Plaintiff has represented that it possesses clear title to the land and that there are no encumbrances that would preclude development of the site in accordance with Exhibit B of the Settlement Agreement.

The site is developable. The site is within a public water service area, operated by the West Caldwell Water Department, and a sewer service area, operated by the Caldwell Township Wastewater Treatment Plant. Under the Settlement Agreement the Township shall provide the necessary sewer and water capacity for the project while the Plaintiff is responsible for constructing the necessary infrastructure.

The site is suitable. While the site is adjacent to modest sized single family detached homes, it is within a tenth of a mile of a substantial commercial district at the intersection of Bloomfield Avenue and Passaic Avenue. The commercial district consists of retail and services uses, including a supermarket, small shops and restaurants. While the proposed building is certainly larger than the nearby homes, it is comparable in scale to the commercial buildings to the east to a continuing care retirement facility located .4 miles to the west on Passaic Avenue. Additionally, the appearance of the building will be softened with a landscape buffer to be installed along the periphery of the site.

The site is located in Planning Area 1, consistent with *N.J.A.C. 5:93-5.4(a)*, which encourages inclusionary developments to be located in Planning Area 1 or 2 pursuant to the State Development and Redevelopment Plan. The wetlands located on the rear of the property will not impact the ability of the site to be developed in accordance with the Conceptual Plan. Furthermore, the site does not contain nor is it in proximate distance to any historic resources, it is not located within a flood plain and is not under the jurisdiction of any of New Jersey's regional planning entities, such as the New Jersey Meadowlands or New Jersey Highlands Commission. The site's suitability is further supported by the fact that on January 8, 2007 the Planning Board granted the site preliminary and final site plan and subdivision approval, without variances or site plan exceptions, and also found that the plan was substantially in compliance with the terms of the Settlement Agreement.

### **Fairness Analysis**

First, the number and rationale for the affordable housing units to be provided by the developer must be evaluated. As discussed above, the Plaintiff will be providing a \$210,000 payment in lieu of construction rather than providing

affordable housing. This payment will provide adequate funding for 6 RCA units at \$35,000 each, in accordance with *N.J.A.C. 5:94-5.4(a)*<sup>2</sup>. The cost of RCA transfers (which has more than doubled since the COAH rules were first adopted in 1986) has been routinely used as a benchmark for the payment of developer fees, both in settlement of litigation and as part of negotiated developer agreements in non-litigated matters. Consequently, I find the RCA standard reasonable to utilize as a rationale for the amount of the contribution in this case.

As a 30 unit development, this payment in lieu of constructing 6 units is equivalent to a 20% affordable housing set-aside. This set-aside is at or above the standard recommended by COAH for a project at this density, *N.J.A.C. 5:93-5.6(b)2*. Consequently, the number and rationale for the Affordable Housing Trust Fund contribution to be made by the Plaintiff is reasonable and consistent with COAH rules and Court practice.

Second, under the fairness analysis any other contributions being made by the developer must be considered. In addition to the payment in lieu of construction, the Plaintiff will also be providing the necessary public water and sewer infrastructure, including if necessary, a sewer pump station.

Lastly, the Court is to consider any other components of the Agreement that contribute to the municipality's satisfaction of its Mount Laurel obligation. As part of the Settlement Agreement, the Township agreed to prepare a housing element and fair share plan. Accordingly, the Township adopted a second round Housing Element and Fair Share Plan in May 2006 and is currently seeking a Judgment of Repose from Superior Court. In this respect, the Settlement Agreement is advancing the principles of the Mt. Laurel doctrine. Furthermore, the Township is obligated to fast track the project's approval process, therefore expediting the Plaintiff's contribution to affordable housing. As discussed above, the site has already received preliminary and final site plan and subdivision approval in accordance with the Settlement Agreement.

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<sup>2</sup> While this report is being evaluated under COAH's second round substantive rules, it is COAH's policy to require that the RCA payment amount for any RCA included in a Housing Element submitted for substantive certification or a Judgment of Repose on or after December 20, 2004 be made in accordance with the minimum price of \$35,000 contained in the third round substantive rules.

#### 4.0 HOUSING ELEMENT & FAIR SHARE PLAN

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West Caldwell Township has not previously petitioned COAH for substantive certification or requested a Judgment of Repose from Superior Court. Consequently, the Township's second round housing element should be subject to COAH's second round substantive rules, *N.J.A.C. 5:93*. The Township's affordable housing obligation for the second round (1987-1999) is set forth below:

Category	Fair Share Obligation	Number of Units
Rehabilitation Share		0
<u>New Construction Obligation</u>		<u>200</u>
<i>Total:</i>		<i>200</i>

#### The Rehabilitation Obligation

West Caldwell Township's first and second round rehabilitation obligation is 0 units.

#### The New Construction Obligation

West Caldwell Township's first and second round new construction obligation is 200 units. However, the Township has requested a vacant land adjustment, which is a downward adjustment in the new construction obligation based on the lack of available land for the production of affordable housing. This downward adjustment is based on a determination of the realistic development potential (hereinafter "RDP") and it is this number of new construction affordable housing units that the municipality must satisfy in order to receive a Judgment of Repose from Superior Court or substantive certification from COAH.

#### *The Vacant Land Adjustment*

The vacant land analysis for this second round plan is properly based on conditions in 2000, when the litigation was filed. It therefore does not necessarily represent the vacant land and other conditions present in the Township today.

In its RDP Analysis, West Caldwell identified 139 lots that are undeveloped or developable. However in accordance with *N.J.A.C. 5:93-4.2*, West Caldwell excluded

126 lots and found that only 13 lots located in 6 tracts were appropriate for contributing toward the Township's RDP.

COAH's second round substantive rules permit several land uses to be excluded from contributing to a municipality's RDP. The following is a summary of said exclusions and how they relate to West Caldwell's vacant land analysis:

- *Any land that is owned by a local government entity that as of January 1, 1997, has adopted, prior to the filing of a petition for substantive certification, a resolution authorizing the execution of an agreement that such land shall be utilized for a public purpose other than housing, pursuant to N.J.A.C. 5:93-4.(c)1.;*

West Caldwell has excluded 8 undeveloped or developable sites because they are owned and in use by the municipality. Such lands include but are not limited to, the municipal firehouse, civic center, library and public works. However, these lots have not been the subject of a resolution indicating that they shall be used for a purpose other than housing. The Township should submit such a resolution in order to formalize the exclusion of these lots. **[Condition 3]**

The following sites were excluded pursuant to the above: Block 800, Lot 10; Block 901, Lot 15; Block 1000, Lot 3; Block 1000, Lot 9; Block 1000, Lot 4; Block 1000, Lot 1; Block 1903, Lot 6; Block 2600, Lot 18.

- *Any vacant contiguous parcels of land in private ownership of a size which would accommodate less than five dwelling units as per the COAH standard in N.J.A.C. 5:93-4.(f), pursuant to N.J.A.C. 5:93-4.(c)2.;*

West Caldwell has properly excluded 35 undeveloped or developable sites because they cannot accommodate five or more dwelling units. The minimum size required to accommodate 5 dwelling units is dependent on the density used to determine the residential capacity of the site, based on COAH's rules, N.J.A.C. 5:93-5.6(b)2., which provide a range of acceptable densities from generally 4 to 6 dwelling units an acre (however, the appropriate density may be more than 6 dwelling units an acre depending on conditions of the surrounding area). The range of minimum lot sizes for inclusion as part of the RDP is 1.25 acres for a density of 4 dwelling units an acre and 0.83 acres for a density of 6 dwelling units an acre.

The following sites were excluded because the gross acreage is too small to support 5 or more dwelling units: Block 101, Lot 26; Block 101, Lot 35; Block 208, Lot 11; Block 304, Lot 10; Block 401, Lot 10; Block 401, Lot 12; Block 506, Lot 18; Block 506, Lot 27; Block 603, Lot 30; Block 800, Lot 26; Block 801, Lot 41; Block 803, Lot 21; Block 803, Lot 25; Block 900, Lot 5;

Block 900, Lot 12; Block 901, Lot 3; Block 901, Lot 22; Block 1002, Lot 29; Block 1101, Lot 42; Block 1300, Lot 6; Block 1900, Lot 14; Block 1901, Lot 8; Block 2000, Lots 11 and 12; Block 2000, Lot 20; Block 2100, Lot 7; 2101, Lot 4; Block 2203, Lot 33; Block 2203, Lot 37; Block 2301, Lot 24; Block 2301, Lot 25; Block 2401, Lot 2; Block 2401, Lot 10; Block 2500, Lot 15; Block 2608, Lot 13; Block 2608, Lot 15; Block 2608, Lot 17.

- *Historic and architecturally important sites and buffer areas, pursuant to N.J.A.C. 5:93-4.(e)1.;*

None of the lots included in West Caldwell's vacant land analysis were excluded for this reason.

- *Environmentally sensitive lands, pursuant to N.J.A.C. 5:93-4.(e)2.;*

West Caldwell properly excluded 29 sites due environmental constraints that reduce the contiguous developable area of a lot to that which cannot support 5 or more dwelling units and/or the environmental constraints eliminate access to the site.

The following sites were excluded because of the presence of environmental constraints: Block 1101, Lots 59 and 60; Block 1201, Lot 21; Block 1300, Lot 11; Block 1600, Lot 1; Block 1600, Lot 2; Block 1600, Lot 3; Block 1700, Lot 9-11, 14 and 16; Block 1813, Lot 8; Block 1903, Lot 5; Block 1903, Lot 7; Block 2401, Lot 44; Block 2500; Block 11; Block 3100, Lot 3; Block 3100, Block 4; Block 3100, Lot 6; Block 3101, Lot 6; Block 3101, Lot 7; Block 3101, Lot 8; Block 3101, Lot 9; Block 3101, Lot 10; Block 3101, Lot 12; Block 3101, Lot 13; Block 3101, Lot 14; Block 3200, Lot 1; Block 3200, lots 3, 4 and 5; Block 3200, Lots 6, 7 and 8; Block 3304, Lot 1.

- *Agricultural lands whose development rights have been purchased or restricted by covenant, pursuant to N.J.A.C. 5:93-4.(e)3.;*

None of the lots included in West Caldwell's vacant land analysis were excluded for this reason.

- *Future active recreational lands pursuant to N.J.A.C. 5:93-4.(e)4.;*

West Caldwell has excluded one (1) lot, Block 102, Lot 7, for future active recreation. Pursuant to the above citation, municipalities are permitted to exclude future active recreation lands from the list of undeveloped and developable lands. However, a municipality may only reserve up to 3% of the total undeveloped and developable lands, after deducting from the area of the municipality land owned by nonprofit organizations, counties, the

State or the Federal government, as well as historic and architecturally important sites, agricultural lands and environmentally sensitive lands. Additionally, the site(s) to be reserved must be designated for active recreation in the municipal master plan. The Township's Plan calculates that, after excluding the above-listed lands, there are 2,586 acres of undeveloped and developable lands. Therefore, the permitted three (3) percent that may be devoted to active recreation is seventy-eight (78) acres. The Township currently owns 9 sites totaling sixty-seven (67) acres of active recreation land and therefore they may use an additional twelve (12) acres for this purpose. The Plan identifies one site for reservation, Block 102, Lot 7. At eleven (11) acres, this site together with the Township's existing active recreation lands is within the three (3) percent cap. The Township's Master Plan documents do not identify these 9 sites as recreation areas, pursuant to N.J.A.C. 5:93-4.2(e)4. However, they are included in the Township's 2005 Recreation and Open Space Inventory. The Township should amend the Master Plan to identify these sites. **[Condition 4]** Pursuant to N.J.A.C. 5:93-4.(e)4.ii., the Township must purchase this reserved site and limit it to active recreation within one year of receiving a Judgment of Repose or amend the Housing Element and Fair Share Plan to include the additional acreage in the RDP calculation. **[Condition 5]** Also, the Township should report quarterly as to the status of purchase of Block 102, Lot. **[Condition 6]**

Those 9 sites that are excluded as active recreation include Block 308, Lot 14; Block 800, Lot 23; Block 901, Lot 19; Block 901, Lot 21; Block 1000, Lot 8; Block 1700, Lot 21; Block 2000, Lot 1; Block 2205, Lot 14; Block 2302, Lot 6.

- *Conservation, parklands and open space lands, pursuant to N.J.A.C. 5:93-4.(e)5.;*

None of the lots included in West Caldwell's vacant land analysis were excluded for this reason.

- *Individual sites that COAH, or the Court, determines are not suitable for low and moderate income housing, pursuant to N.J.A.C. 5:93-4.(e)6.;*

There were 33 additional sites excluded because they were, for reasons other than the above, deemed not appropriate for affordable housing. The most common reasons are their designation as a utility right-of-way and/or location within a commercial or manufacturing district that is inappropriate for residential development.

The following sites were excluded because they were deemed inappropriate for affordable housing for reasons other than those cited

above: Block 101, Lots 4.01 and 4.02; Block 101, Lots 6.01 and 6.02, Block 407, Lot 14; Block 409, Lot 12; Block 603, Lot 35; Block 603, Lot 36; Block 701, Lot 10; Block 701, Lot 26; Block 706, Lot 26; Block 901, Lot 5; Block 901, Lot 14; Block 1002, Lot 27; Block 1103, Lot 15; Block 1201, Lot 2; Block 1201, Lot 15; Block 1400, Lot 7; Block 1402, Lot 15 and Block 1500, Lot 7; Block 1501, Lot 5; Block 1502, lot 1; Block 1502, Lot 2; Block 1503, Lot 2; Block 1700, Lot 2; Block 1700, Lot 28; Block 1903, Lot 8; Block 2000, Lot 21; Block 2100, Lot 6; Block 2704, Lot 13; Block 2900, Lot 35; Block 3100, Lot 7; Block 3101, Lot 3; Block 3101, Lot 11; Block 3200, Lot 2.

In summary, pursuant to *N.J.A.C. 5:93-4.2*, the Township has determined that the residential capacity of these sites is 101 units with a resulting RDP of 20 affordable units. However, this office has reviewed the RDP and has found that one site identified by the Township is not appropriate for affordable housing.

Block 1101, Lots 59 and 60 is included in the Township's RDP as contributing 2.43 affordable units. However, review by this office of updated wetlands mapping indicates that the wetlands located on the site obstruct access to the site from its only road frontage and there is no other available point of access to the site. Accordingly, it is recommended that the Township's vacant land analysis be amended to eliminate Block 1101, Lots 59 and 60 from contributing to the RDP.

In accordance with the following table, West Caldwell's RDP should be reduced from 20 to 18 affordable units. The Township's Plan should be revised to reflect this corrected figure and vacant land analysis. **[Condition 2]**

Block/ Lot	Total Acreage	Developable Acreage	Net Density	Development Capacity	Set- aside	Affordable Units
1101 \\ 59, 60	5.50	1.52	8	n/a	20%	n/a
1600 / 24	1.00	1.00	6	6	20%	1.20
1602 / 22	2.33	2.33	6	13.98	20%	2.80
2000 / 2, 3, 5, 6	30.60	4.40	n/a	30	20%	6.00
2101 / 8, 9, 10, 12	4.90	3.69	8	29.52	20%	5.90
2802 / 14.02	3.01	1.64	6	9.84	20%	1.97
<b>Total</b>						<b>17.87</b>

### *The New Construction Obligation*

An RDP of 18 units requires that the Township provide 18 new construction affordable units in order to satisfy the second round obligation. However, *N.J.A.C. 5:93-4.2(h)* states the municipality should enact other measures to provide for the unmet need, which can be defined as the remaining affordable housing obligation after the RDP and the rehabilitation obligation have been subtracted from the pre-credited need. West Caldwell's unmet need is discussed on page 16 of this Master's Report.

The Township's RDP of 18 units requires the Township to meet the following minimum rental obligation, maximum number of Regional Contribution Agreement units, and the maximum number of age-restricted units:

- Rental Obligation: 5 units

Pursuant to *N.J.A.C. 5:93-5.15(a)*, for municipalities requesting a vacant land adjustment, the rental obligation shall be equal to twenty-five (25) percent of the RDP =  $.25(18) = 4.50$ , rounded up to 5

- ✓ A municipality shall receive two units (2.0) of credit for rental units available to the general public.
- ✓ A municipality shall receive one and one-third (1.33) units of credit for age restricted rental units.
- ✓ No more than 50 percent of the rental obligation defined in (a) and (b) shall receive a bonus for age restricted rental units.
- ✓ No rental bonus shall be granted for rental units in excess of the rental obligation.

- Maximum Permitted RCA Units: 9 units

Pursuant to *N.J.A.C. 5:93-6.1(a)2.*, for municipalities requesting a vacant land adjustment, the maximum number of RCA units shall be equal to:  $.5$  (realistic development potential + rehabilitation component - credits pursuant to *N.J.A.C. 5:93-3.4*) - any units transferred as a result of a previously approved RCA =  $.5(18 + 0 + 0 - 0) = 9.00$ .

- Maximum Permitted Age-Restricted Units: 4 units

Pursuant to *N.J.A.C. 5:93-6(b)2.*, for municipalities proposing RCA units and that received or are receiving a vacant land adjustment: age restricted units =  $.25$  (RDP - transferred or proposed RCA units) - any first round age-restricted units =  $.25(18 - 2) - 0 = 4.00$

The Township's plans should be revised to reflect these figures. [Condition 7]

### The Fair Share Plan

West Caldwell proposes to satisfy the new construction obligation using three group homes, a Regional Contribution Agreement with the City of Orange and funding from the Plaintiff's site.

### Alternative Living Facilities

The Township's Plan indicates that there are 3 alternative living facilities in the Township that are eligible for credit. However, the documentation submitted to this office as support for the credit request includes 4 alternative living facilities. Pursuant to COAH's second round substantive rules, *N.J.A.C.* 5:93-5.8, alternative living facilities may be used to satisfy a municipality's new construction obligation, including the rental obligation, provided the units are for rent. Additionally, *N.J.A.C.* 5:93-5.8.(b) requires that the unit of credit for group homes is the bedroom. These facilities must have affordability controls in place for ten years in order to receive credit; if the affordability controls are in place for 30 or more years, the facilities are also eligible for rental bonus credits. Below is a summary of the facilities and the credit requested for each:

Location	Sponsoring Organization	Number of Bedrooms
11 Twin Brook Road*	Universal Institute Inc.	5
21 Beechtree Road	Association of Retarded Citizens of Essex County	5
249 Passaic Avenue	Jewish Services for the Developmentally Disabled	4
7 Essex Place	Jewish Services for the Developmentally Disabled	4
	<i>Total Requested Credits</i>	18

\*Not included in the Township's Housing Element and Fair Share Plan

The Universal Institute, Inc. operates a group home at 11 Twin Brook Road on Block 1103, Lot 14. This facility offers 5 bedrooms for rent to low or moderate income adults with brain injuries. The facility was initially licensed in January 2006 by the New Jersey Division of Developmental Disabilities. The Alternative Living

Arrangement Survey submitted for this group home did not provide adequate information on the source(s) of funding, the date of certificate of occupancy, the affirmative marketing strategy or the affordability controls. Furthermore, no verification of the affordability controls was submitted. This information must be submitted before the facility can be eligible for credit. **[Condition 8]**

ARC of Essex County operates a group home at 21 Beechtree Road on Block 3301, Lot 4. This facility offers 5 bedrooms for rent to low or moderate income adults with developmental disabilities. The facility was initially licensed in January 2006 by the New Jersey Division of Developmental Disabilities. The Alternative Living Arrangement Survey submitted for this group home did not provide adequate information on the source(s) of funding, whether there are separate bedrooms, the date of certificate of occupancy or the affordability controls. Furthermore, no verification of the affordability controls was submitted. This information must be submitted before the facility can be eligible for credit. **[Condition 9]**

Jewish Services for the Developmentally Disabled of Metrowest operates a group home on Passaic Avenue at Block 3301, Lot 32. This facility provides 4 bedrooms for low or moderate income developmentally disabled adults and received a certificate of occupancy and the initial license in December 2000. The facility is licensed by the Division of Developmental Disabilities. The alternative living arrangement survey completed for this facility must be revised to provide information on the facility's funding source(s) and affordability controls. Furthermore, the alternative living survey indicates that the facility is age-restricted, whereas the Plan and other documentation submitted to this office indicates that the facility is only restricted to persons 21 years and older. The term "age-restricted" is commonly misunderstood to mean restricted to those 18 or 21 years of age, rather than restricted to those 55 years or older as the term is used in COAH's rules and the Fair Housing Act. The submitted verification of affordability controls for this facility, a HUD Regulatory Agreement, does not indicate the address of the facility or the length of the affordability controls. The revised alternative living arrangement survey, including clarification on the age persons restriction, and supplemental information regarding the HUD Regulatory Agreement must be submitted before the facility can be eligible for credit. **[Condition 10]**

Jewish Services for the Developmentally Disabled of Metrowest also operates a group home on Essex Place at Block 1902, Lot 1. This facility provides 4 bedrooms for low or moderate income developmentally disabled elderly adults and received a certificate of occupancy and the initial license in December 2000. The facility is licensed by the Division of Developmental Disabilities. The affordability controls for this facility are for 40 years. The alternative living survey indicates that the facility is age-restricted, whereas the Plan and Capital Advance Agreement indicates that it is not. The term "age-restricted" is commonly misunderstood to mean restricted to

those 18 or 21 years of age, rather than restricted to those 55 years or older as the term is used in COAH's rules and the Fair Housing Act. Clarification of the age of residents should be provided and the Housing Element should be revised if necessary. [Condition 11]

#### *Regional Contribution Agreement*

The Township proposes a 2 unit RCA with the City of Orange. In accordance with *N.J.A.C. 5:94-5.4(a)*, each unit will be transferred at a cost of \$35,000 for a total cost of \$70,000. The Draft RCA Agreement provided as Appendix C of the Housing Element provides for West Caldwell to make one payment of \$70,000 to the City of Orange within 60 days of Court approval of the Township's Housing Element and COAH's approval of the RCA. Both municipalities have submitted an adopted resolution of intent to enter into the RCA.

#### *Inclusionary Zoning*

The Plaintiff's property, located at Block 2000, Lots 2, 3, 5 and 6 (hereinafter the "site") along Passaic Avenue is included in the Housing Element as a site that will provide a contribution in lieu of construction, rather than one that will provide on-site affordable housing. As discussed above, the site will provide a \$210,000 payment in lieu of construction and meets COAH's requirements for site suitability. Also as discussed above, the site has received preliminary and final site plan and subdivision approval.

#### *Unmet Need*

West Caldwell's unmet need is 182 units (200 unit pre-credited need – 18 unit RDP – 0 unit rehabilitation obligation). COAH's substantive rules, *N.J.A.C. 5:93-4.2(h)* state that additional methods of providing affordable housing may be considered to satisfy the unmet need. A development fee ordinance is recommended by COAH as a means to generate revenue for affordable housing purposes from non-inclusionary development. Examples of lands which may be developed or redeveloped with affordable housing and are included in COAH's rules are "a private club owned by its members [such as a golf course]; publicly owned land; downtown mixed use areas; high density residential areas surrounding the downtown; areas with a large aging housing stock appropriate for accessory apartments; and properties that may be subdivided and support additional development".

Accordingly, West Caldwell is proposing three methods to satisfy the unmet need:

1. Development Fee Ordinance;
2. Growth Share Ordinance; and
3. Overlay inclusionary zoning on a member owned golf course.

The Township adopted a development fee ordinance in 2001, which the Court subsequently approved. The Township submitted to this office a draft development fee ordinance to replace the former ordinance. The Development Fee Ordinance states that residential developers which are required to provide a percentage of affordable housing shall be permitted to make a contribution in lieu of construction equal to the minimum cost of an RCA. However, the Township should note that while this may be used as a basis for calculating the amount of a payment in lieu of construction, a payment in lieu of construction may not be used to fund RCA's in the third round.

The Township submitted a draft growth share ordinance as part of the Plan. As discussed above, the Appellate Division recently invalidated a portion of COAH's rules, including certain aspects of the growth share methodology. However, included in this decision was a Stay on all growth share ordinances in effect at that time until COAH adopts its revised rules. It does not appear that West Caldwell's growth share ordinance was in place at the time of the Stay. Therefore, it cannot be used to satisfy the unmet need. The Plan should be amended accordingly. **[Condition 12]**

Also included in the Plan was a draft ordinance for overlay inclusionary zoning, entitled "Affordable Housing Overlay Zone". The district applies to the Mountain Ridge Country Club on Block 2402, Lot 15 and Block 1500, Lot 7. There is a discrepancy in the acreage of the zone district: the Plan indicates the site is 186.2 acres where the mapping and the draft ordinance submitted to this office indicate the district is 90 acres. The appropriate document(s) should be revised to indicate the correct acreage of the proposed zone district. **[Condition 13]** The ordinance permits the construction of an inclusionary townhouse and condominium development, as well as an associated clubhouse and recreation facilities. Utilization of an inclusionary overlay zone to satisfy a portion of the unmet need complies with COAH's substantive rules governing vacant land adjustments, *N.J.A.C. 5:93-4.2(h)*.

The draft Affordable Housing Overlay ordinance requires a maximum density of 5.5 dwelling units an acre and an affordable housing set-aside of 17.5% if all affordable units are for-sale or 15% if all affordable units are for-rent. While this is in compliance with COAH's general rules regarding zoning for inclusionary development, *N.J.A.C. 5:93-5.6(d)*, it does not meet *N.J.A.C. 5:93-5.6(b)1.*, which states the following:

*“When a municipality is receiving an adjustment pursuant to N.J.A.C.5:93-4.2, the municipality shall be required to zone inclusionary sites at a minimum gross density of six (6) units per acre with a 20 percent set-aside.”*

In order for this zone district to contribute toward the unmet need, West Caldwell should revise the draft ordinance to increase the minimum gross density to 6 dwelling units per acre or provide a planning rationale for the 5.5 units per acre proposal. The 15% set-aside for affordable rental housing is in line with COAH rules; if the density is increased to 6 units per acre the set-aside for for-sale affordable housing should be 20%. **[Condition 14]**

#### *Fair Share Documents*

West Caldwell has included a draft Affordable Housing Ordinance, which governs all affordable housing units in the Township. I have reviewed the ordinance against the Uniform Housing Affordability Control rules, N.J.A.C. 5:80-26.1 et. al. (hereinafter “UHAC”), and offer the following comments:

1. Section 20-27.5 should be revised for compliance with the Administrative Agent’s responsibilities listed in the UHAC rules, N.J.A.C. 5:80-26.14. **[Condition 15]** The Township’s ordinance does not include all of the required responsibilities. Additionally, the Township may wish to amend the Ordinance to state that it intends to contract with an experienced affordable housing administrator who will carry out a specified portion of the responsibilities listed in N.J.A.C. 5:80-26.14.
2. Section 20-27.7.A.14.C. should be revised to eliminate the standard of occupancy that eligible households must comply with which states, “Unrelated adults or person of the opposite sex other than husband and wife in separate bedrooms.”. **[Condition 16]**
3. Section 20-27.9.B.3. and Section 20-27.11.A. should be amended to eliminate reference to COAH’s second round rules, N.J.A.C. 5:93, and instead reference the UHAC rules, N.J.A.C. 5:80-26.1 et. al. **[Condition 17]** This ordinance will be applicable to affordable housing units constructed under the third round as well as those constructed under the second round and should therefore reference the UHAC rules.
4. Section 20-27.11.A. and 20-27.11.B. should be revised to indicate that accessory apartments and alternative living facilities with 10 year affordability controls are only eligible for credit if they are used to satisfy the second round obligation. **[Condition 18]**

Additional fair share documents should be submitted to this office for review before any Judgment of Repose can be perfected. These documents include the following:

1. Planning Board resolution adopting the Plan. A model document can be found on COAH's website under "Third Round Resources". **[Condition 19]**
2. Governing Body resolution endorsing the Plan and requesting a Judgment of Repose. A model document can be found on COAH's website under "Third Round Resources". **[Condition 20]**
3. Spending Plan. Please note that the Township may not spend money from the Affordable Housing Trust Fund until the Court has approved a Spending Plan. A model document can be found on COAH's website under "Third Round Resources". **[Condition 21]**
4. Governing Body resolution requesting approval of a spending plan. A model document can be found on COAH's website under "Third Round Resources". **[Condition 22]**
5. Escrow Agreement for the Affordable Housing Trust Fund between The Township, COAH and the bank. This document should be submitted to COAH for its review and approval. A model document can be found on COAH's website under "Third Round Resources". **[Condition 23]**
6. Governing Body resolution of intent to bond for any shortfall. **[Condition 24]**
7. Ordinance establishing the position of Housing Liaison. A model document can be found on COAH's website under "Third Round Resources". **[Condition 25]**
8. Resolution appointing a municipal staff member to the position of Housing Liaison. A model document can be found on COAH's website under "Third Round Resources". **[Condition 26]**
9. If necessary, an executed contract with an administrative entity that will administer the Township's affordable housing programs. **[Condition 27]**
10. Updated service list. **[Condition 28]**

*Summary*

In accordance with the following table, if all of the alternative living facilities have a minimum of 10 year affordability controls in place and meet COAH's other requirements West Caldwell will actually exceed its 18 unit RDP using the four alternative living facilities and the 2 unit RCA.

Project	Rental	Senior	Units	2 <sup>nd</sup> Round Bonus	2 <sup>nd</sup> Round Credits
Alternative living arrangements					
Universal Institute Inc.	x		5	0	5
Association of Retarded Citizens of Essex County	x		5	0	5
Jewish Services for the Developmentally Disabled (Passaic Avenue)	x		4	0	4
Jewish Services for the Developmentally Disabled (Essex Place)	x		4	0	4
Regional Contribution Agreement					
City of Orange			2	0	2
Total			20	0	20

However, if one or more of the alternative living facilities is not eligible for credit, West Caldwell may be deficient in meeting the 18 unit RDP. It may be possible to use rental bonus credits to offset any deficit; however, this cannot be determined until additional documentation on these facilities is submitted.

The Township should revise the Plan to reflect those alternative living facilities which are eligible for credit. **[Condition 19]**

## 5.0 CONCLUSION

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This report to the Superior Court has evaluated the fairness of a Settlement Agreement among the parties in the *Villas at West Caldwell v. the Township of West Caldwell* matter and the compliance of the Township's Housing Plan Element with COAH's substantive rules, N.J.A.C. 5:93 and with the *Mount Laurel* doctrine. I find that the Settlement Agreement is fair to the interests of low and moderate income households and recommend it to the Court for Approval. As for the Township's Housing Element and Fair Share Plan, I endorse those documents for the Court's approval subject to 29 conditions which are set forth in this report. In consideration of the Appellate Division Decision, *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing*, I further recommend that any Court approval be conditioned upon West Caldwell Township submitting a third round Housing Element and Fair Share Plan within such time frame as COAH provides for municipalities under its jurisdiction to comply. This timeframe will be set forth in COAH's revised rules, which are anticipated to be released at the end of 2007.

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**EXHIBIT B: Third Round Vacant Land Analysis**

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Block	Lot	Address	Owner	Class	Planning Area	Zoning	Sewer	Total Acres	Constrained Acres	Buildable Acres	Constraint Description	Comments	Units/Acre	Include in RDP	Potential Units	RDP	
101	35	FOREST AVENUE	TOWNSHIP OF WEST CALDWELL	15C	PA1	R-4	Yes	0.46	0.00	0.46	Stream	Potential Infill Development		No			
102	7	MOUNTAIN AVENUE	TOWNSHIP OF WEST CALDWELL	15C	PA1	R-4	Yes	10.44	5.40	5.04	Steep Slopes, Water tower and associated pipe system	Potential Development	8	Yes	40.3	8.1	
208	11	101 FOREST AVENUE	GABRIEL GEORGE	1	PA1	R-4	Yes	0.28	0.00	0.28	Stream	Potential Infill Development		No			
304	10	51 ELMWOOD TERRACE	GARDNER JAMES F & KELLY L	1	PA1	R-4	Yes	0.15	0.00	0.15		Potential Infill Development		No			
400	18			1	PA1	R-4	Yes	0.02	0.00	0.02		Undersized		No			
506	18			1	PA1	R-4	Yes	0.18	0.00	0.18		Potential Infill Development		No			
506	27	22 LAUREL PLACE	HOWLEY JOSEPH & NANCY	1	PA1	R-4	Yes	0.16	0.00	0.16		Potential Infill Development		No			
801	41	122 RAVINE AVENUE	BOROUGH OF ESSEX FELS	1	PA1	R-4	Yes	0.20	0.00	0.20		Public Utility		No			
803	21	8 GRAY STREET	BOROUGH OF ESSEX FELS	1	PA1	R-4	Yes	0.16	0.00	0.16		Public Utility		No			
803	25	GRAY STREET	BOROUGH OF ESSEX FELS	1	PA1	R-4	Yes	0.15	0.00	0.15		Public Utility		No			
900	5	145 RAVINE AVENUE	TOWNSHIP OF WEST CALDWELL	15C	PA1	R-4	Yes	0.27	0.00	0.27		Potential Infill Development		No			
901	3	WOODSIDE AVENUE	TOWNSHIP OF WEST CALDWELL	15C	PA1	R-3	Yes	0.20	0.00	0.20		Potential Infill Development		No			
901	20	GROVE STREET	TOWNSHIP OF WEST CALDWELL	15C	PA1	R-3	Yes	0.33	0.00	0.33	Wetlands	Potential Infill Development		No			
901	22	STONYBROOK ROAD	BOROUGH OF ESSEX FELS	1	PA1	R-2	Yes	0.32	0.00	0.32		Public Utility		No			
1101	42	138 FAIRFIELD AVENUE	TOWNSHIP OF WEST CALDWELL	15C	PA1	R-3	Yes	0.26	0.00	0.26		Potential Infill Development		No			
1101	59	FAIRFIELD AVENUE	GREAT NOTCH VILLAGE ASSOCIATES	1	PA1	R-3	Yes	2.59	1.44	1.15	Stream, Wetlands	Included in Prior Round RDP		No			
1101	60	FAIRFIELD AVENUE	GREAT NOTCH VILLAGE ASSOCIATES	1	PA1	R-3	Yes	2.14	1.01	1.12	Stream, Wetlands	Included in Prior Round RDP		No			
1201	2	PASSAIC AVENUE	H LANE ENTERPRISES	1	PA1	M-1	Yes	7.91	6.74	1.17	SFHA, Stream, Wetlands	A stream and wetlands bisect the parcel, There are three areas free of environmental constraints. The first is along Passaic Avenue and contains 0.059 acres. The second is landlocked and contains 0.867 acres. The third is along the rear lot line and is landlocked containing 0.22 acres.		No			
1201	3	780 PASSAIC AVENUE	KEARNY FEDERAL SAVINGS BANK	1	PA1	M-1	Yes	3.60	2.56	1.04	SFHA, Wetlands	Potential Development	8	Yes	8.3	1.7	
1201	21	FAIRFIELD AVENUE REAR	CALI LESHOWITZ DAUNNO ET AL	1	PA1	R-3A	Yes	10.69	8.75	1.94	SFHA, Stream, Wetlands	Inaccessible		No			
1300	6	783 PASSAIC AVENUE	TIGER TENNIS HOLDING COMPANY, LLC	1	PA1	M-1	Yes	0.22	0.00	0.22		Potential Infill Development		No			
1300	11	256 FAIRFIELD AVENUE	TOWNSHIP OF WEST CALDWELL	15C	PA1	M-1	Yes	0.89	0.75	0.14	SFHA	Potential Infill Development		No			
1502	1	75 CLINTON ROAD	SUBURBAN CORP	1	PA1	M-2	Yes	2.87	0.25	2.62	Wetlands	Potential Development		Yes	25.0	5.0	
1600	1	1213 BLOOMFIELD AVENUE	WARREN MANUFACTURING	1	PA1	B-3	Yes	2.16	1.82	0.34	SFHA, Wetlands	Potential Infill Development		No			
1600	2	1191 BLOOMFIELD AVENUE	DEGUZMAN DANILO & DAISY	1	PA1	B-3	Yes	1.06	0.99	0.07	SFHA	Environmentally Constrained		No			
1600	3	1183 BLOOMFIELD AVENUE	GIZMO REALTY LLC	1	PA1	B-3	Yes	1.10	0.20	0.90	SFHA	Potential Development		8	Yes	7.2	1.4
1700	2	1200 BLOOMFIELD AVENUE	CARANT LTD PARTNERSHIP	3B	PA1	B-3	Yes	1.72	0.27	1.46	SFHA, Wetlands	Potential Development		Yes	40	8.0	
1700	9	1164 BLOOMFIELD AVENUE	CARANT LTD PARTNERSHIP	3B	PA1	OP	No	3.32	2.73	0.59	SFHA, Wetlands	Inaccessible		No			
1700	10	BLOOMFIELD AVENUE	PIO COSTA, ANTHONY III	3B	PA1	OP	No	12.57	7.53	5.05	SFHA, Wetlands	Inaccessible		No			
1700	11	BLOOMFIELD AVENUE	CARANT LTD PARTNERSHIP	3B	PA1/PA5	OP	No	11.74	11.71	0.03	SFHA, Wetlands	Environmentally Constrained		No			
1700	14	BLOOMFIELD AVENUE	PIO COSTA, ANTHONY III	3B	PA5	OP	No	6.64	6.64	0.00	SFHA, Stream, Wetlands	Environmentally Constrained		No			
1700	15			1	PA5	OP	No	0.22	0.17	0.04	SFHA, Wetlands	Environmentally Constrained		No			
1700	16	HATFIELD SWAMP	CARANT LTD PARTNERSHIP	3B	PA5	OP	No	18.33	16.07	2.26	SFHA, Stream, Wetlands	Inaccessible		No			
1700	17			1	PA5	OP	No	0.13	0.09	0.04	SFHA, Wetlands	Environmentally Constrained		No			
1813	8	55 PARKVIEW AVENUE	TOWNSHIP OF WEST CALDWELL	15C	PA1	R-4	No	0.14	0.03	0.11	SFHA	Environmentally Constrained		No			
1900	14	28 DISTLER AVENUE	ESSEX FIELDS INC	1	PA1	R-4	Yes	0.05	0.00	0.05		Undersized		No			
1903	5	BLOOMFIELD AVENUE REAR	SR BLOOMFIELD PROPERTIES LLC	1	PA1	OS	No	10.20	8.79	1.41	SFHA, Stream, Wetlands	Inaccessible		No			
1903	6	BLOOMFIELD AVENUE	TOWNSHIP OF WEST CALDWELL	15C	PA1	OS	No	19.78	13.80	5.98	SFHA, Stream, Wetlands	Potential Development (5.98 acres developable per Special Master Caton)	10	Yes	59.8	12.0	
1903	7	ALDRIN DRIVE	TOWNSHIP OF WEST CALDWELL	15C	PA1	OS	No	2.83	2.73	0.11	SFHA, Wetlands	Environmentally Constrained		No			
2000	2	475 PASSAIC AVENUE	VILLAS AT WEST CALDWELL LLC	1	PA1	R-3/R-3-A - R-3C	No	15.53	14.63	0.91	SFHA, Wetlands	Constructed Development, Included in Prior Round RDP		No			
2000	3	509 PASSAIC AVENUE	VILLAS AT WEST CALDWELL LLC	1	PA1	R-3/R-3-A - R-3C	Yes	2.53	2.05	0.48	SFHA, Stream, Wetlands	Constructed Development, Included in Prior Round RDP		No			
2000	5	517 PASSAIC AVENUE	VILLAS AT WEST CALDWELL LLC	1	PA1	R-3/R-3-A - R-3C	Yes	3.04	1.34	1.70	SFHA, Stream, Wetlands	Constructed Development, Included in Prior Round RDP		No			

Block	Lot	Address	Owner	Class	Planning Area	Zoning	Sewer	Total Acres	Constrained Acres	Buildable Acres	Constraint Description	Comments	Units/Acre	Include in RDP	Potential Units	RDP
2000	6	521 PASSAIC AVENUE	VILLAS AT WEST CALDWELL LLC	1	PA1	R-3/R-3-A - R-3C	No	7.21	3.18	4.03	Stream, Wetlands	Constructed Development, Included in Prior Round RDP		No		
2000	11	7 KIRKPATRICK LANE	BLUMENFELD LOUIS ET AL	1	PA1	R-3/R-3-A - R-3C	Yes	0.15	0.00	0.15		Potential Infill Development		No		
2000	12	9 KIRKPATRICK LANE	BLUMENFELD LOUIS ET AL	1	PA1	R-3/R-3-A - R-3C	Yes	0.20	0.00	0.20		Potential Infill Development		No		
2000	20	PASSAIC AVENUE	BELL ALEXANDER M	1	PA1	R-3/R-3-A - R-3C	No	0.21	0.15	0.06	Stream, Wetlands	Environmentally Constrained		No		
2101	4	806 BLOOMFIELD AVENUE	BLOOMFIELD 804/810 LLC	1	PA1	B-3	Yes	0.34	0.00	0.34		Potential Infill Development		No		
2101	8	536 PASSAIC AVENUE	CLAREMONT SUPERMARKET PARTNERS LLC	1	PA1	R-3	Yes	0.48	0.00	0.48		Included in Prior Round RDP		No		
2101	9	524 PASSAIC AVENUE	CLAREMONT SUPERMARKET PARTNERS LLC	1	PA1	R-3	Yes	1.04	0.00	1.04		Included in Prior Round RDP		No		
2101	10	520 PASSAIC AVENUE	CLAREMONT SUPERMARKET PARTNERS LLC	1	PA1	R-3	Yes	0.38	0.00	0.38		Included in Prior Round RDP		No		
2101	12	512 PASSAIC AVENUE	CLAREMONT SUPERMARKET PARTNERS LLC	1	PA1	R-3	Yes	3.45	1.39	2.06	Wetlands	Included in Prior Round RDP		No		
2203	33	8 LIDDY PLACE	TOWNSHIP OF WEST CALDWELL	15C	PA1	R-4	Yes	0.37	0.00	0.37		Potential Infill Development		No		
2203	37	MELROSE PLACE	TOWNSHIP OF WEST CALDWELL	15C	PA1	R-4	Yes	0.21	0.00	0.21		Potential Infill Development		No		
2301	24	CANFIELD STREET	TOWNSHIP OF WEST CALDWELL	15C	PA1	R-4	Yes	0.11	0.00	0.11		Undersized		No		
2301	25	CANFIELD STREET	TOWNSHIP OF WEST CALDWELL	15C	PA1	R-4	Yes	0.18	0.00	0.18		Potential Infill Development		No		
2401	10	15 PARK TERRACE	BERGER HELGA	1	PA1	R-4	Yes	0.14	0.08	0.06	Steep Slopes	Environmentally Constrained		No		
2401	44	PARK TERRACE	TOWNSHIP OF WEST CALDWELL	15C	PA1	R-4	Yes	1.66	0.82	0.84	Steep Slopes	This lot is irregular in shape. The Lot has a 10-foot wide access, which is insufficient for multi-family access.		No		
2500	11	220 RUNNYMEDE ROAD	TOWNSHIP OF WEST CALDWELL	15C	PA1	R-4	Yes	1.33	0.78	0.55	Steep Slopes	This lot is too narrow for development. Additionally, steep slopes bisect the site.		No		
2500	15	186 RUNNYMEDE ROAD	BOCK ERNEST F & MARIE E	1	PA1	R-4	Yes	0.24	0.10	0.14	Steep Slopes	Potential Infill Development		No		
2608	13	30 BOND PLACE	HOLLAND SUSAN L	1	PA1	R-4	Yes	0.24	0.00	0.24		Approved Development, Under Construction		No		
2608	15	26 BOND PLACE	HOLLAND SUSAN L	1	PA1	R-4	Yes	0.21	0.00	0.21		Approved Development, Under Construction		No		
2608	17	20 BOND PLACE	RYBLEWSKI GEORGE J & CAROL A	1	PA1	R-4	Yes	0.11	0.00	0.11		Approved Development, Under Construction		No		
2704	13	WALDEN PLACE REAR	TOWNSHIP OF WEST CALDWELL	15C	PA1	R-3	Yes	1.07	0.00	1.07		Inaccessible		No		
2802	14.02	3 HARRISON AVENUE	MAC NEARY DORIS F	1	PA1	R-3	Yes	3.11	1.58	1.53	Wetlands	Included in Prior Round RDP		No		
2900	35	336 PASSAIC AVENUE	LEHMAN THOMAS C JR	1	PA1	R-3	Yes	1.31	0.19	1.11	Wetlands	The lot is narrow and wetlands jut into the site. Therefore, the site is only suitable for a single-family home.		No		
3100	6	HATFIELD SWAMP	TOWNSHIP OF WEST CALDWELL	15C	PA1/PA5	R-3/R-3B	No	1.65	1.65	0.00	SFHA, Stream, Wetlands	Environmentally Constrained		No		
3101	6	PASSAIC AVENUE REAR	TOWNSHIP OF WEST CALDWELL	15C	PA1	R-3	No	7.50	7.48	0.02	SFHA, Wetlands	Environmentally Constrained		No		
3101	7	PASSAIC AVENUE REAR	LA MURA ANTHONY & RUSSO PEGGY L	1	PA1	R-3	No	1.88	1.88	0.00	SFHA, Wetlands	Environmentally Constrained		No		
3101	8	PASSAIC AVENUE REAR	LA MURA SALVATORE & MARY	1	PA1	R-3	No	0.74	0.74	0.00	SFHA, Wetlands	Environmentally Constrained		No		
3101	9	PASSAIC AVENUE REAR	AMIN GHANASHYAM & KAILAS	1	PA1	R-3	No	0.98	0.98	0.00	SFHA, Stream, Wetlands	Environmentally Constrained		No		
3101	12	HATFIELD SWAMP	TOWNSHIP OF WEST CALDWELL	15C	PA5	OS	No	3.79	3.79	0.00	SFHA, Wetlands	Environmentally Constrained		No		
3101	13	PASSAIC AVENUE REAR	BOROUGH OF CALDWELL	15C	PA5	OS	No	18.73	18.73	0.00	SFHA, Stream, Wetlands	Environmentally Constrained		No		
3200	3	BEECHTREE ROAD REAR	GALLINSON HAROLD ET AL	1	PA1/PA5	R-3	No	2.26	2.26	0.00	SFHA, Wetlands	Environmentally Constrained		No		
3200	4	BEECHTREE ROAD REAR	GALLINSON HAROLD ET AL	1	PA1/PA5	R-3	No	4.22	3.99	0.23	SFHA, Wetlands	Inaccessible		No		
3200	5	BEECHTREE ROAD REAR	GALLINSON HAROLD ET AL	1	PA1	R-3	No	7.08	3.78	3.31	SFHA, Wetlands	Inaccessible, Mr. Gallinson does not own any other adjacent parcels with street access.		No		
3200	6	BEECHTREE ROAD REAR	BEECHTREE GLEN INC	1	PA1	R-3	No	2.61	2.61	0.00	SFHA, Stream, Wetlands	Environmentally Constrained		No		
3200	7	BEECHTREE ROAD REAR	BEECHTREE GLEN INC	1	PA1	R-3	No	1.20	0.70	0.51	SFHA, Stream, Wetlands	Environmentally Constrained		No		
3200	8	BEECHTREE ROAD REAR	BEECHTREE GLEN INC	1	PA1	R-3	No	3.75	3.24	0.51	SFHA, Stream, Wetlands	Environmentally Constrained		No		
3304	1	VAN NESS PLACE REAR	TOWNSHIP OF WEST CALDWELL	15C	PA1	R-3	No	1.20	0.70	0.50	Wetlands	Inaccessible		No		
<b>Total</b>								<b>238.94</b>		<b>59.67</b>					<b>180.6</b>	<b>36.2</b>

Redevelopment																
Block	Lot	Address	Owner	Class	Planning Area	Zoning	Sewer	Total Acres	Constrained Acres	Buildable Acres	Constraint Description	Comments	DU/Acres	Include in RDP	Potential Units	RDP
1600	11, 12 & 22	1085-1091 BLOOMFIELD AVE & 204 CLINTON RD	1089-01 BLOOMFIELD AVE, LLC; CHNAPKO FAMILY L.P II & 204 CLINTON ROAD, LLC	2	PA1	B-3/R-3	Yes	1.84	0.00	1.84		Potential Redevelopment		Yes	20.0	4.0
1600	23, 24, 25, 26 & 27	CLINTON ROAD				Heritage Site - Existing Inclusionary Development						Lot 24 was included in the Prior Round RDP. This site was developed with a total of 50 units. 41 are market-rate and 9 are affordable. Therefore, the site only provides an 18% set-aside, which should have been a 20% set-aside. Lot 24 encompassed 1.35 acres. The entire tract totaled 6.25 acres. Lot 24 was 21.6% of the total tract acreage. Therefore, by multiplying 78.4% by 10 (the number of affordable units that should have been built) results in an RDP of 7.8.		Yes		7.8
1700	8	1120 BLOOMFIELD AVE*	DURKIN & DURKIN REALTY, LLC	4A	PA1	B-3/OP	Yes	4.07	0.00	4.07		Potential Redevelopment	30	Yes	120.0	24.0
<b>Total</b>								<b>5.91</b>		<b>5.91</b>					<b>140.0</b>	<b>35.8</b>
													<b>Grand Total**</b>		<b>320.6</b>	<b>72.0</b>

\* GIS indicates 3.70 acres, but the tax card states 4.07 acres.

\*\* Note that the 72-unit RDP does not equal 20% of the 320 Potential Units since the completed Heritage Site is not included in the Potential Units but is included in the RDP.

Notes:

Property Class 1 = Vacant                      SFHA = FEMA Special Flood Hazard Area  
 Property Class 15C = Public Property      Undersized = 0 - 0.125 acres  
 PA1 = Metropolitan Planning Area          Infill = 0.125 - 0.625 acres  
 PA5 = Environmentally Sensitive Planning Area      Developable = 0.625 acres and greater

"Potential Infill Development" means a site with less than 0.625 acres. A site with less than 0.625 acres, developed at 8 units to the acre would produce less than 5 total units. Consequently, a development of less than 5 total units would not generate an affordable unit.

**EXHIBIT C: Third Round Unmet Need Mechanisms**

# PARCEL ANALYSIS OF BUSINESS (B-2 & B-3) AND MANUFACTURING DISTRICTS

TOWNSHIP  
OF  
WEST CALDWELL

ESSEX COUNTY  
NEW JERSEY



0 450 900  
Feet

1 inch = 900 feet

This map was developed using NJDEP and County GIS digital data, but this secondary product has not been verified by NJDEP and is not state-authorized.



March 2020



- Zone Districts
- R-2 - Single-Family Residence
- R-3 - Single-Family Residence
- R-3A - Single-Family Residence and Cluster
- R-4 - Single-Family Residence
- B-1 - Special Business and Multi-Family Residence
- B-2 - Planned Commercial Shopping Center
- B-3 - General Business
- M-1 - Limited Manufacturing
- M-2 - Limited Industry, Office Building and Research Laboratory
- OP - Office and Professional Building
- OS - Open Space
- R-3B - Single-Family Residence and Continuing Care Retirement Community
- R-3A/R-3C - Single-Family Residence and Cluster/Multiple Family Adult Community Residence
- Parcels in Business (B-2 & B-3) and Manufacturing Districts along Bloomfield and Passaic Avenues and not split-lot zoned
- Parcels greater than 4 acres
- - - Future Conditional Use

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EXHIBITD:: 2019 INCOME LIMITS

Prepared by Affordable Housing Professionals of New Jersey (AHPNJ) - April 24, 2020

## 2020 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE

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

		1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8+ Person	Max Increase		Regional Asset
												Rents**	Sales***	Limit****
Region 1 Bergen, Hudson, Passaic and Sussex	Median	\$67,166	\$71,964	\$76,761	\$86,357	\$95,952	\$99,790	\$103,628	\$111,304	\$118,980	\$126,656	1.9%	0.84%	\$185,539
	Moderate	\$53,733	\$57,571	\$61,409	\$69,085	\$76,761	\$79,832	\$82,902	\$89,043	\$95,184	\$101,325			
	Low	\$33,583	\$35,982	\$38,381	\$43,178	\$47,976	\$49,895	\$51,814	\$55,652	\$59,490	\$63,328			
	Very Low	\$20,150	\$21,589	\$23,028	\$25,907	\$28,786	\$29,937	\$31,088	\$33,391	\$35,694	\$37,997			
Region 2 Essex, Morris, Union and Warren	Median	\$73,857	\$79,132	\$84,408	\$94,959	\$105,510	\$109,730	\$113,951	\$122,391	\$130,832	\$139,273	1.9%	4.71%	\$202,419
	Moderate	\$59,085	\$63,306	\$67,526	\$75,967	\$84,408	\$87,784	\$91,160	\$97,913	\$104,666	\$111,418			
	Low	\$36,928	\$39,566	\$42,204	\$47,479	\$52,755	\$54,865	\$56,975	\$61,196	\$65,416	\$69,636			
	Very Low	\$22,157	\$23,740	\$25,322	\$28,488	\$31,653	\$32,919	\$34,185	\$36,717	\$39,250	\$41,782			
Region 3 Hunterdon, Middlesex and Somerset	Median	\$83,650	\$89,625	\$95,600	\$107,550	\$119,500	\$124,280	\$129,060	\$138,620	\$148,180	\$157,740	1.9%	1.01%	\$227,546
	Moderate	\$66,920	\$71,700	\$76,480	\$86,040	\$95,600	\$99,424	\$103,248	\$110,896	\$118,544	\$126,192			
	Low	\$41,825	\$44,813	\$47,800	\$53,775	\$59,750	\$62,140	\$64,530	\$69,310	\$74,090	\$78,870			
	Very Low	\$25,095	\$26,888	\$28,680	\$32,265	\$35,850	\$37,284	\$38,718	\$41,586	\$44,454	\$47,322			
Region 4 Mercer, Monmouth and Ocean	Median	\$76,469	\$81,931	\$87,393	\$98,317	\$109,242	\$113,611	\$117,981	\$126,720	\$135,460	\$144,199	1.9%	5.96%	\$205,486
	Moderate	\$61,175	\$65,545	\$69,915	\$78,654	\$87,393	\$90,889	\$94,385	\$101,376	\$108,368	\$115,359			
	Low	\$38,235	\$40,966	\$43,697	\$49,159	\$54,621	\$56,806	\$58,990	\$63,360	\$67,730	\$72,099			
	Very Low	\$22,941	\$24,579	\$26,218	\$29,495	\$32,772	\$34,083	\$35,394	\$38,016	\$40,638	\$43,260			
Region 5 Burlington, Camden and Gloucester	Median	\$67,620	\$72,450	\$77,280	\$86,940	\$96,600	\$100,464	\$104,328	\$112,056	\$119,784	\$127,512	1.9%	7.21%	\$179,028
	Moderate	\$54,096	\$57,960	\$61,824	\$69,552	\$77,280	\$80,371	\$83,462	\$89,645	\$95,827	\$102,010			
	Low	\$33,810	\$36,225	\$38,640	\$43,470	\$48,300	\$50,232	\$52,164	\$56,028	\$59,892	\$63,756			
	Very Low	\$20,286	\$21,735	\$23,184	\$26,082	\$28,980	\$30,139	\$31,298	\$33,617	\$35,935	\$38,254			
Region 6 Atlantic, Cape May, Cumberland, and Salem	Median	\$57,458	\$61,562	\$65,666	\$73,874	\$82,083	\$85,366	\$88,649	\$95,216	\$101,782	\$108,349	1.9%	6.97%	\$153,730
	Moderate	\$45,966	\$49,250	\$52,533	\$59,100	\$65,666	\$68,293	\$70,919	\$76,173	\$81,426	\$86,679			
	Low	\$28,729	\$30,781	\$32,833	\$36,937	\$41,041	\$42,683	\$44,325	\$47,608	\$50,891	\$54,175			
	Very Low	\$17,237	\$18,469	\$19,700	\$22,162	\$24,625	\$25,610	\$26,595	\$28,565	\$30,535	\$32,505			

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

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

\*\*This column is used for calculating the pricing for rent increases for units (as previously calculated under N.J.A.C. 5:97-9.3 (Consumer price Index for All Urban Consumers (CPI-U): Regions by expenditure category and commodity and service group). Landlords who did not increase rents in 2015, 2016, 2017, 2018 or 2019 because of the lack of authority to do so, may increase rent by up to the applicable combined percentage including 2020 or 9.0% whichever is less in accordance with N.J.A.C. 5:97-9.3(c). In no case can rent for any particular apartment be increased more than one time per year.

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

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

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