



# **THIRD ROUND HOUSING ELEMENT AND FAIR SHARE PLAN**

OCEANPORT BOROUGH | MONMOUTH COUNTY, NEW JERSEY

February 2020



## THIRD ROUND HOUSING ELEMENT AND FAIR SHARE PLAN

ADOPTED BY THE PLANNING BOARD: February 11, 2020

ENDORSED BY THE MAYOR & COUNCIL: February 20, 2020

PREPARED BY:

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A SIGNED AND SEALED ORIGINAL IS ON FILE WITH THE BOROUGH CLERK



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## **INTRODUCTION & EXECUTIVE SUMMARY**

Since the 1975 New Jersey Supreme Court decision known as “Mount Laurel I”, New Jersey municipalities have had a constitutional obligation to provide opportunities for creation of low and moderate housing units. This 1975 decision led to a body of case law, legislative changes and rulemaking by a state agency that, collectively, is now referred to as the “Mount Laurel doctrine”. Through these actions, New Jersey municipalities have been assigned a specific number of affordable housing units that must be created or planned for creation in order to have “satisfied” their constitutional obligation, commonly referred to as their affordable housing obligation. The purpose of this Housing Element and Fair Share Plan (hereinafter the “Plan”) is to present how Oceanport Borough will satisfy its constitutional obligation.

Affordable housing in New Jersey is defined as housing units which are reserved for households with incomes not more than 80% of the regional median income. Each affordable unit, with limited exceptions, must remain reserved for low- and moderate-income households for not less than 30 years and it is typically enforced by a deed restriction. Each affordable unit is eligible for one “credit” against the obligation and certain units are eligible for “bonus credits”, which provide more than one credit per unit. In addition to providing the minimum number of credits, municipalities must ensure diversity in the level of affordability – meaning very low, low- and moderate-income units – and diversity in the size of affordable units – meaning one, two- and three-bedroom units.

Participation in this process, and therefore satisfaction of the affordable housing obligation, can be achieved voluntarily or involuntarily. However, voluntary compliance is heavily incentivized. Municipalities that do not successfully participate may be vulnerable to “builder’s remedy” litigation. A builder’s remedy is a litigation tool that grants a developer the right to develop what is typically a multi-family project on land that was not zoned to permit the use or the residential density desired by the developer, provided a “substantial” percentage of the units are reserved for low and moderate income households. Oceanport Borough seeks to avoid this possibility and has already taken substantial steps to do so.

This Plan supersedes all previously adopted housing plans. It has been prepared pursuant to a 2019 Settlement Agreement between the Oceanport Borough and Fair Share Housing Center (hereinafter “FSHC”) that set forth the Borough’s affordable housing obligation and a preliminary plan for how it would be satisfied. FSHC is an interested party in the Borough’s Declaratory Judgment filed in Superior Court on July 7, 2015 as permitted by the March 10, 2015 NJ Supreme Court decision known as “Mount Laurel IV.” This Supreme Court decision rendered COAH “moribund” and created a transitional process for municipalities to determine their affordable housing obligation and seek compliance in the State’s trial courts, as opposed to the Council on Affordable Housing (“COAH”) performing that function. This Plan will serve as the foundation for the Borough’s application to Superior Court for that approval, referred to as a Judgment of Compliance and Order of Repose.



This Plan reflects a Settlement Agreement between the Oceanport Borough and Fair Share Housing Center. The Oceanport Borough filed a complaint for Declaratory Judgement in Superior Court on July 7, 2015, seeking a declaration of compliance with the Mount Laurel Doctrine and the Fair Share Housing Act of 1985. The Borough agreed to settle the litigation with FSHC and negotiate for revised zoning with the intervenors in an effort to avoid delays and move forward with the construction of housing units for low and moderate-income households. After much negotiation, the Borough entered into an Agreement that set forth the affordable housing obligations pursuant to Mount Laurel IV and determined The Third Round Obligation.

As detailed in this Housing Plan, Oceanport Borough – like all New Jersey municipalities – has three components of its affordable housing obligation. Each component of the obligation is identified below.

- Rehabilitation Obligation: 2 units  
The rehabilitation obligation can be defined as an estimate of the number of deteriorated housing units existing in Oceanport Borough occupied by low- and moderate-income households.
- Prior Round Obligation: 149 units  
The Prior Round obligation can be defined as the cumulative 1987 through 1999 new construction affordable housing obligation.
- Third Round Obligation: 142 units  
The Third Round obligation can be defined as the cumulative 1999 through 2025 new construction affordable housing obligation. This includes the “gap present need” from 1999 through 2015 and the “prospective need” from 2015 through 2025.

Due to the total Prior Round and Third Round obligations being outsized as compared to the availability of developable land in Oceanport Borough, the Borough received a vacant land adjustment that reflects a realistic development potential (hereinafter “RDP”) and an unmet need. The RDP represents the portion of the new construction affordable housing obligation that can theoretically be addressed with inclusionary development (defined as a mix of market and affordable units) on lots identified as being developable in the vacant land analysis. The unmet need is calculated as the difference between the total obligation and the RDP.

The Borough’s vacant land adjustment resulted in a combined Prior Round and Third Round RDP and unmet need of the following:

- RDP: 33 units
- Unmet Need: 258 units

The Borough fully satisfies the rehabilitation obligation through participation in the Monmouth County Mount Laurel Indigenous Need Housing Rehabilitation program.



As detailed in this Plan and summarized below, the Borough will utilize a variety of sites and housing types to meet the 33-unit RDP.

- Oceanport Village: An existing multi-family project along East Main Street that consists of twelve (12) affordable family rental units.
- Oceanport Manor: An existing 100% affordable multi-family project consisting of twelve (12) affordable family rental units. Nine (9) of the units are applied to the RDP and the remaining three (3) units are applied to the unmet need. The Borough is able to claim nine (9) rental bonus credits to the RDP obligation.
- Borough Hall Redevelopment (Martelli at Oceanport): An inclusionary housing project at the intersection of Monmouth Boulevard and Myrtle Avenue that was granted site plan approval to provide twelve (12) total family for-sale market rate units with three (3) affordable rental units provided at an off-site location along East Main Street.

Adoption of this Housing Element and Fair Share Plan and complete implementation of the mechanisms described above to meet the affordable housing obligation will yield a Judgment of Compliance and Order of Repose from Superior Court and protect the Borough from builder's remedy litigation through July 2025, the maximum time available.

## **AFFORDABLE HOUSING IN NEW JERSEY**

In its landmark 1975 decision, now referred to as "Mount Laurel I", the NJ Supreme Court ruled that developing municipalities have a constitutional obligation to provide a variety and choice of housing types affordable to low- and moderate-income households. In its 1983 "Mount Laurel II" decision, the NJ Supreme Court extended the regional fair share obligation to all municipalities with any "growth area" as designated in the State Development Guide Plan (NJDCG 1978) and determined that each municipality would have to establish its fair share obligation and provide zoning mechanisms to create a realistic opportunity for fulfillment of the fair share obligation. Mount Laurel II also gave developers, under appropriate circumstances, the opportunity to secure a builder's remedy. A builder's remedy is a litigation tool that grants a developer the right to develop what is typically a multi-family project on land that was not zoned to permit the use or the residential density desired by the developer, provided a "substantial" percentage of the units are reserved for low and moderate income households.

In 1985, the Legislature enacted the Fair Housing Act in response to Mount Laurel II. The Fair Housing Act created the Council on Affordable Housing (hereinafter "COAH") and an administrative alternative to compliance in a court proceeding. The Legislature conferred "primary jurisdiction" on COAH and charged COAH with promulgating regulations to establish housing regions, to estimate the state's low- and moderate-income housing needs, set criteria and guidelines for municipalities to determine and satisfy their affordable housing obligation, and to create a process for the review and approval of appropriate housing elements and fair share plans. Approval of a municipal housing element and fair share plan by



COAH is referred to as “substantive certification” and it provides protection from exclusionary zoning litigation during the time period which the housing element and fair share plan addresses (i.e. the round).

### **Activity From 1987 - 1993**

COAH created the criteria and guidelines for municipalities to determine and address their respective affordable housing obligation. COAH originally established a formula for determining municipal affordable housing obligation for the six-year period between 1987 and 1993 (N.J.A.C. 5:92-1 et seq.), which became known as the “First Round.” These rules established the First Round rehabilitation obligation (also referred to as the “present need”) and the first round new construction obligation.

The First Round formula was superseded by COAH regulations in 1994 (N.J.A.C. 5:93-1.1 et seq.). The 1994 regulations recalculated a portion of the first round 1987-1993 affordable housing obligations for each municipality and computed the additional municipal affordable housing need from 1993 to 1999 using 1990 U.S. Census data. The regulations COAH adopted in 1994 to identify a municipality’s “cumulative” obligations for the First and Second Rounds are known as “the Second Round” regulations. Under regulations adopted for the Third Round, the obligation of municipalities to create new affordable housing for the First and Second Rounds is referred to as the “Prior Round” obligation. This Plan refers to the new construction obligation for the First and Second housing cycles as the “Prior Round” obligation.

### **Activity From 1999 - 2011**

On December 20, 2004, COAH’s first version of the Third Round rules became effective some five years after the end of the Second Round in 1999. At that time, the Third Round was defined as the time period from 1999 to 2014 but condensed into an affordable housing delivery period from January 1, 2004 through January 1, 2014. The Third Round rules marked a significant departure from the methods utilized in COAH’s Prior Round. Previously, COAH assigned an affordable housing obligation as an absolute number to each municipality. These Third Round rules implemented a “growth share” approach that linked the production of affordable housing to residential and non-residential development within a municipality.

However, on January 25, 2007, the New Jersey Appellate Court decision, *In re Adoption of N.J.A.C. 5:94 and 5:95*, 390 N.J. Super. 1, invalidated key elements of the first version of the Third Round rules, including the growth share approach. The Court ordered COAH to propose and adopt amendments to its rules within six months to address the deficiencies identified by the Court. COAH missed this deadline but did issue revised rules effective on June 2, 2008 (as well as a further rule revision effective on October 20, 2008). COAH largely retained the growth share approach, but implemented several changes intended to create compliance with the 2007 Appellate Court decision. Additionally, the Third Round was expanded from 2014 to 2018.

Just as various parties challenged COAH’s initial Third Round regulations, parties challenged COAH’s 2008 revised Third Round rules. On October 8, 2010, the Appellate Division issued its decision, *In re Adoption of N.J.A.C. 5:96 and 5:97*, 416 N.J. Super. 462, with respect to the challenge to the second iteration of COAH’s third round regulations. The Appellate Division upheld the COAH Prior Round regulations that



assigned rehabilitation and Prior Round numbers to each municipality but invalidated the regulations by which the agency assigned housing obligations in the Third Round. Specifically, the Appellate Division ruled that COAH could not allocate obligations through a “growth share” formula. Instead, COAH was directed to use similar methods that had been previously used in the First and Second rounds. The Court gave COAH five months to address its ruling and provide guidance on some aspects of municipal compliance.

In addition to the State agency activity and judicial decisions, the New Jersey Legislature has amended the Fair Housing Act in recent years. On July 17, 2008, Governor Corzine signed P.L. 2008, c. 46 (referred to as the “Roberts Bill”, or “A500”), which amended the Fair Housing Act. Key provisions of the legislation included the following:

- It established a statewide 2.5% nonresidential development fee instead of requiring nonresidential developers to provide affordable housing;
- It eliminated new regional contribution agreements (hereinafter “RCAs”) as a compliance technique available to municipalities whereby a municipality could transfer up to 50% of its fair share to a so called “receiving” municipality;
- It added a requirement that 13% of all affordable housing units and 13% of all similar units funded by the state’s Balanced Housing Program and its Affordable Housing Trust Fund be restricted to very low-income households (30% or less of median income); and
- It added a requirement that municipalities had to commit to spend development fees within four (4) years of the date of collection after its enactment, which commenced on the four-year anniversary of the law (July 17, 2012).

These amendments to the Fair Housing Act are not promulgated in any valid COAH regulations. However, the requirement to expend development fees within four-years of their collection was determined in a Middlesex County Superior Court case to instead have the first four-year period to begin upon a Judgment of Repose, or upon a finding by the Court that the municipality is determined to be non-compliant (IMO of the Adoption of the Monroe Township Housing Element and Fair Share Plan and Implementing Ordinances). Superior Courts around the State have been guided by this decision.

### **Activity from 2011 to the Present**

COAH sought a stay from the NJ Supreme Court of the March 8, 2011 deadline that the Appellate Division imposed in its October 2010 decision for the agency to issue new Third Round housing rules. The NJ Supreme Court granted COAH’s application for a stay and granted petitions and cross-petitions to all of the various challenges to the Appellate Division’s 2010 decision. The NJ Supreme Court heard oral argument on the various petitions and cross-petitions on November 14, 2012.

On September 26, 2013, the NJ Supreme Court upheld the Appellate Court decision in *In re Adoption of N.J.A.C. 5:96 and 5:97 by New Jersey Council On Affordable Housing*, 215 N.J. 578 (2013), and ordered



COAH to prepare the necessary rules. Subsequent delays in COAH’s rule preparation and ensuing litigation led to the NJ Supreme Court, on March 14, 2014, setting forth a schedule for adoption.

Although ordered by the NJ Supreme Court to adopt revised new rules on or before October 22, 2014, COAH deadlocked 3-3 at its October 20th meeting and failed to adopt the draft rules it had issued on April 30, 2014. In response, FSHC filed a motion in aid of litigant’s rights with the NJ Supreme Court, and oral argument on that motion was heard on January 6, 2015.

On March 10, 2015, the NJ Supreme Court issued a ruling on the Motion In Aid of Litigant’s Rights (In re Adoption of N.J.A.C. 5:96 & 5:97, 221 NJ 1, aka “Mount Laurel IV”). This long-awaited decision provides a new direction for how New Jersey municipalities are to comply with the constitutional requirement to provide their fair share of affordable housing. The Court transferred responsibility to review and approve housing elements and fair share plans from COAH to designated Mount Laurel trial judges. The implication of this is that municipalities may no longer wait for COAH to adopt Third Round rules before preparing new Third Round housing elements and fair share plans and municipalities must now apply to the Courts, instead of COAH, if they wish to be protected from exclusionary zoning lawsuits. These trial judges, with the assistance of an appointed Special Master to the Court, review municipal plans much in the same manner as COAH previously did.

While the NJ Supreme Court’s decision set a process in motion for towns to address their Third Round obligations, it did not assign those obligations. Instead, that must be done by the trial courts. However, the NJ Supreme Court did direct that the method of determining municipal affordable housing obligations were to be “similar to” the methodologies used in the First and Second Round rules. Additionally, the Court stated that municipalities should rely on COAH’s Second Round rules (N.J.A.C. 5:93) and certain components of COAH’s 2008 regulations that were specifically upheld (including but not limited to Redevelopment Bonuses), as well as the Fair Housing Act (N.J.S.A. 52:27D – 301 et seq.), in their preparation of Third Round housing elements and fair share plans. This plan is prepared in response to and in compliance with the March 10, 2015 NJ Supreme Court decision.

FSHC, the only public interest advocacy organization in New Jersey devoted exclusively to promoting the production of housing affordable to low- and moderate-income households, was permitted to serve as an interested party in every municipal Declaratory Judgment Action. In this role the organization calculated municipal affordable housing obligations and offered to settle with municipalities. Such settlements addressed the municipal affordable housing obligation, compliance mechanisms and other terms intended to promote affordable housing production. Most municipalities that filed a Declaratory Judgment Action have found settlement with FSHC to be in their interest. The alternative to settlement with FSHC is conducting a trial in Superior Court to determine the municipal affordable housing obligation.

On January 17, 2017, the NJ Supreme Court rendered a decision, In Re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017), that found that the “gap period,” defined as 1999-2015, generates an affordable housing obligation. This obligation requires an expanded definition of the municipal Present Need obligation to include low- and moderate-income households formed during the



gap period; however, this component of the obligation is a new-construction obligation rather than a rehabilitation obligation.

Accordingly, the municipal affordable housing obligation is now composed of the following 4 parts:

- Present Need (rehabilitation),
- Prior Round (1987-1999, new construction),
- Gap Present Need (Third Round, 1999-2015, new construction), and
- Prospective Need (Third Round, 2015 to 2025, new construction).

While the structure of the obligation established through the Borough's Settlement Agreement with FSHC is different from the findings of this recent Supreme Court decision (i.e. no redefined Present Need (1999-2015) and a Prospective Need specific to 2015-2025), the Borough's obligation therein reflects that which was calculated for the entire third round period (1999-2025).

## **The Compliance Process**

With the Supreme Court's direction that such responsibility must transfer from COAH to Superior Court Trial Judges, municipalities may no longer seek substantive certification. Instead, municipalities now seek a Judgment of Compliance and an Order of Repose from Superior Court or the judicial equivalent of substantive certification. Doing so first requires that a complaint for Declaratory Judgment be filed in Superior Court.

The majority of municipalities who filed for Declaratory Judgment, including Oceanport Borough, settled with FSHC. This means a Settlement Agreement, agreed to by both parties, sets forth the affordable housing obligation, preliminary compliance mechanisms and other terms intended to promote affordable housing production. This Settlement Agreement must be approved by Superior Court at a "Fairness Hearing" where the Settlement Agreement is evaluated to determine if it is fair to the interests of low- and moderate-income households<sup>1</sup>.

Once determined to be "fair" via the issuance of a Court Order, a municipality must adopt and endorse a housing element and fair share plan that reflects the terms of the Settlement Agreement. This housing plan must be subsequently submitted to Superior Court for its review and approval. Should the Court find the plan acceptable, the municipality will receive a Judgment of Compliance and an Order of Repose and immunity from builder's remedy litigation for the remaining portion of the third round, which ends on July 1, 2025. This is similar to COAH's substantive certification. To maintain the validity of the Order, the municipality is required to conduct the necessary continued implementation and monitoring.

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<sup>1</sup> These settlement agreements are evaluated according to guidelines established by the Court in two principal cases: Morris County Fair Housing Council v. Boonton Twp. 197 N.J. Super. 359, 369-71 (Law Div. 1984) and East/West Venture v. Borough of Fort Lee 286 N.J. Super. 311 (App. Div. 1996). T



Aiding in the Judge's evaluation of the Settlement Agreement is a Special Master appointed by the Judge. This person serves at the direction of the Judge, including preparation of reports at each step in the process, and may serve as a mediator between the municipality, FSHC and/or other intervenors.

## **AFFORDABILITY REQUIREMENTS**

Affordable housing is defined under New Jersey's Fair Housing Act as a dwelling, either for sale or rent, that is within the financial means of households of low- or moderate-income, as is measured within each housing region. Oceanport Borough is in COAH's Region 4, which includes Mercer, Monmouth and Ocean counties. Moderate-income households are those with annual incomes greater than 50%, but less than 80% of the regional median income. Low-income households are those with annual incomes that are 50% or less than the regional median income. Very low-income households are a subset of "low-income" households and are defined as those with incomes 30% or less than the regional median income.

The Uniform Housing Affordability Controls (hereinafter "UHAC") at N.J.A.C. 5:80-26.3(d) and (e) requires that the maximum rent for a qualified unit be affordable to households with incomes 60% or less than the median income for the region. The average rent must be affordable to households with incomes no greater than 52% of the median income. The maximum sale prices for affordable units must be affordable to households with incomes 70% or less than the median income. The average sale price must be affordable to a household with an income of 55% or less than the median income.

The regional median income is defined by COAH using the federal income limits established by Department of Housing and Urban Development (hereinafter "HUD") on an annual basis. In the spring of each year, HUD releases updated regional income limits, which COAH reallocates to its regions. It is from these income limits that the rents and sale prices for affordable units are derived. However, COAH has not published updated income limits or rent increases since 2014.

To update income limits, the Borough will rely on the methodology set forth and approved by the Superior Court that establishes the criteria to follow to annually update income limits. The criteria adhere to COAH's Prior Round methodologies, the key aspects of which are outlined below and are to be utilized by Oceanport pursuant to the Settlement Agreement.

Income limits for all units that are part of the Borough's Housing Element and Fair Share Plan, excluding those which income limits are already established through a federal program, shall be updated by the Borough as HUD publishes median incomes and income limits as follows:

- Regional income limits shall be established for the region that the Borough is located within (i.e. Region 4) 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 (4) 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 Borough’s housing region. This quotient represents the regional weighted average of median income for a household of four (4).

- The income limit for a moderate-income unit for a household of four (4) shall be 80% of the regional weighted average median income for a family of four (4). The income limit for a low-income unit for a household of four (4) shall be 50% of the HUD determination of the regional weighted average median income for a family of four (4). The income limit for a very low-income unit for a household of four (4) shall be 30% of the regional weighted average median income for a family of four (4). 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.
- 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 Borough annually by taking the percentage increase of the income limits calculated pursuant to the methodology outlined 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.

For 2019, the Affordable Housing Professionals of New Jersey (“AHPNJ”) and FSHC have jointly developed updated income limits for all housing regions in New Jersey, which were calculated using the methodology outlined above. As approved by the Court, these income limits for Region 4 will be utilized for Oceanport. See Table 1 for 2019 income limits for Region 4.

<b>Table 1: 2019 Income Limits for Region 4</b>					
<b>Household Income Levels</b>	<b>1-Person Household</b>	<b>2-Person Household</b>	<b>3-Person Household</b>	<b>4-Person Household</b>	<b>5-Person Household</b>
Moderate	\$57,732	\$65,979	\$74,226	\$82,474	\$89,072
Low	\$36,082	\$41,237	\$46,392	\$51,546	\$55,670
Very Low	\$21,649	\$24,742	\$27,835	\$30,928	\$33,402
<i>Source: 2019 Income Limits prepared by Affordable Housing Professionals of New Jersey.</i>					

The following tables provide illustrative sale prices and gross rents for 2019. The sample rents and sale prices are illustrative and are gross figures, which do not account for the specified utility allowances for rental units or for specific mortgage rates, taxes, etc. for sales units. As a note, rents have increased by a collective 5.1% in 2015, 2016 and 2017, by 2.2% in 2018 and 2.6% in 2019.



<b>Table 2: Illustrative 2019 Affordable Gross Rents for Region 4</b>			
<b>Household Income Levels (% of Median Income)</b>	<b>1-Bedroom Unit Rent</b>	<b>2-Bedroom Unit Rent</b>	<b>3-Bedroom Unit Rent</b>
Moderate	\$1,160	\$1,392	\$1,608
Low	\$966	\$1,160	\$1,340
Very Low	\$580	\$696	\$804

*Source: 2019 Affordable Housing Professionals of New Jersey Affordable Housing Regional Income Limits; Maximum rent increases per the proposed 2019 income limits table.*

<b>Table 3: Illustrative 2019 Affordable Sales Prices for Region 4</b>			
<b>Household Income Levels (% of Median Income)</b>	<b>1 Bedroom Unit Price</b>	<b>2 Bedroom Unit Price</b>	<b>3 Bedroom Unit Price</b>
Moderate	\$152,831	\$186,509	\$217,941
Low	\$124,767	\$152,831	\$179,025
Very Low	\$96,702	\$119,154	\$140,109

*Source: 2019 Affordable Housing Professionals of New Jersey Affordable Housing Regional Income Limits; Maximum rent increases per the proposed 2019 income limits table.*

## **AFFORDABLE HOUSING IN OCEANPORT BOROUGH**

On May 26, 2005, Oceanport Holdings filed an exclusionary zoning lawsuit against the Borough. The plaintiff sought to construct 60 units on Block 1, Lot 18 and Block 61, Lot 6 in a six-story building. Pursuant to a dispositive motion filed by the Borough, Judge Coogan dismissed the plaintiff’s complaint. The Planning Board adopted a third round housing element and fair share plan in October 2005 (the “2005 Plan”) and submitted it to Superior Court as part of a request for a Judgment of Compliance and an Order of Repeal.

On December 7, 2007, the Appellate Division reversed the trial judge’s dismissal in a reported opinion entitled Oceanport Holding, L.L.C. v. Borough of Oceanport, 396 N.J. Super. 622 (App. Div. 2007). In its decision, the Appellate Division scrupulously avoided reversing the trial court’s decision on substantive grounds. Rather, the Appellate Division ruled – as a procedural matter – that the trial court should have first decided whether the plaintiff had demonstrated a cause of action by proving that the Borough was



non-compliant, before deciding plaintiff's entitlement to the remedy it sought. Consequently, the Appellate Division remanded the case to the trial judge for further processing.

After the Appellate Division invalidated, in part, the first iteration of round three regulations, COAH adopted a second iteration of third round rules. COAH proposed these regulations and then had the proposed regulations published in the New Jersey Register on January 22, 2008. COAH adopted these regulations later that year as well as amendments to the new regulations.

On December 18, 2008, in response to COAH's publication of new proposed round three regulations on January 22, 2008, the Borough Planning Board adopted the Amended Third Round Housing Element and Fair Share Plan (the "2008 Plan"). The Borough Council endorsed the 2008 Plan on the same day. The Borough then submitted the 2008 Plan to the Court and sought its approval of same. The 2008 Plan found that the Oceanport Holdings site was not necessary to satisfy the Borough's affordable housing obligation and it was therefore not included as an affordable housing site.

Subsequent to adoption of the 2008 Plan, the Borough entered confidential settlement discussions with the plaintiff through the assistance of a court-appointed special master. The Borough and Plaintiff worked towards an agreement. In anticipation that the negotiations would culminate in a Settlement Agreement, on October 14, 2009, the Borough Planning Board adopted the Amendment to the Amended Third Round Housing Element and Fair Share Plan (the "2009 Plan"). On October 15, 2009, the Borough Council endorsed the 2009 Plan and thereafter filed it with the Court. As explained below, however, the Court never reached the point of commencing a review of a settlement.

From 2009 to 2012, the Borough continued negotiations with the Plaintiff in an effort to reach a settlement with Oceanport Holdings, LLC property consistent with the 2009 Plan. In July 2012, the Plaintiff indicated they no longer wished to participate in the litigation and stated support for a dismissal of the builder's remedy lawsuit. On September 4, 2012, the Honorable Jamie S. Perri, J.S.C. of the New Jersey Superior Court entered an order dismissing the Oceanport Holdings, LLC lawsuit and requiring the Borough to submit a revised Housing Element and Fair Share Plan addressing the prior round and rehabilitation obligations within 60 days.

The Borough adopted the 2012 Amendment to the Amended Housing Element and Fair Share Plan (hereinafter the "2012 Plan") in response to the September 4, 2012 order issued by Judge Perri and sought approval of same. On July 12, 2013, in response to the Borough's application for plan approval, FSHC submitted an objection to the 2012 Affordable Housing Plan.



On August 26, 2013, the Court conducted a Compliance Hearing during which the Borough provided testimony and argument in support of the 2012 Plan and FSHC provided argument against said plan. The Borough and FSHC agreed to attempt to amicably resolve their disputes during a February 12, 2014 continuation of the August 26, 2013 Compliance Hearing. The Borough adopted a 2015 Plan and executed a Settlement Agreement with FSHC which was the result of the amicable resolution of the disputes. On June 15, 2015, Special Master Planner Elizabeth McKenzie, AICP, PP submitted a report to the Court endorsing the fairness of the Settlement Agreement to low- and moderate-income households.

To comply with the March 10, 2015 Mt. Laurel IV decision, Oceanport Borough petitioned the Superior Court on July 7, 2015, for a Declaratory Judgment and temporary immunity from builder's remedy suits. This action entered the Borough into the process of determining its affordable housing obligation and how it would be satisfied. Additionally, the Borough later received immunity from builder's remedy litigation while doing so.

To avoid a lengthy trial on the Borough's affordable housing obligation and, potentially, a second trial on how that obligation would be satisfied, the Borough and FSHC came to terms in a May 17, 2019 Settlement Agreement that set forth the Borough's affordable housing obligation and preliminary compliance plan. This Settlement Agreement was approved by the Honorable Jamie S. Perri, J.S.C. on July 17, 2019.

This Housing Plan implements the Borough's settlement agreement with FSHC.

## **CONSIDERATION OF LAND MOST APPROPRIATE FOR AFFORDABLE HOUSING**

As part of this Plan, the Borough has considered land that is appropriate for the construction of low- and moderate-income housing. Although the Borough has limited available and developable land, the Borough successfully satisfied its affordable housing obligation using the vacant land adjustment process and a variety of zoning mechanisms that have or will create low- and moderate-income housing.

In addition to considering vacant land for the creation of affordable housing, the Borough will amend the zoning to create overlay zones that will create low- and moderate-income housing and contribute toward the Borough's unmet need. Additionally, adoption of the mandatory set-aside ordinance will ensure unforeseen opportunities for affordable housing are captured.

Aside from the sites and projects described in the Fair Share Plan, no property owner or developer offered a site for inclusion in the Borough's Housing Element and Fair Share Plan. The Borough believes that the mechanisms proposed in this document represent the best options for affordable housing in Oceanport Borough. The mechanisms satisfy the Borough's affordable housing obligation as established through the Settlement Agreement. While the Borough recognizes that developers may, in the future, present sites that possess characteristics that could lend themselves to affordable housing development, additional sites are not needed to satisfy the obligation at this time. Additionally, the Borough may consider appropriate sites or projects in the future for an inclusionary or 100% affordable housing project.



## **OCEANPORT BOROUGH'S AFFORDABLE HOUSING OBLIGATION**

Since the January 2017 New Jersey Supreme Court ruling on the “gap period”, housing plans must address four main components of a municipality’s affordable housing obligation. These include the Rehabilitation Obligation to improve substandard housing occupied by low and moderate income households, the Prior Round for new construction from 1987 to 1999, the Gap Period Present Need for new construction from 1999 to 2015, and the Prospective Need, or the Third Round’s future new construction demand from 2015 to -2025. In this housing plan, the Gap Period Present Need and Prospective Need are collectively referred to as the Third Round Obligation.

### **Rehabilitation Obligation**

The rehabilitation obligation can be defined as an estimate of the number of deteriorated housing units existing in Oceanport Borough that are occupied by low- and moderate-income households. The Settlement Agreement with FSHC establishes the Borough’s rehabilitation obligation as 2 units. The basis for this obligation is FSHC’s May 2015 calculations, which used the most recent decennial census year, 2010, as the point in time in determining the number of deteriorated housing units.

### **Prior Round Obligation**

The Prior Round obligation can be defined as the cumulative 1987 through 1999 new construction affordable housing obligation. This time period corresponds to the First and Second Rounds of affordable housing. The Settlement Agreement with FSHC establishes the Borough’s Prior Round obligation as 149 units. The Settlement Agreement adheres to the Prior Round obligations, as calculated in 1993-1994, and published by COAH in 2008.

### **Third Round Obligation**

The future demand for affordable housing includes the portion of the Third Round (1999- 2015) that has already passed – referred to as Gap Period Present Need, as well as a 10-year projection into the future (2015-2025) – referred to as the Prospective Need. As established by the Borough’s 2019 Settlement Agreement with FSHC, Oceanport Borough’s total Third Round obligation (1999-2025) is 142 units.

### **Vacant Land Adjustment**

Through the Settlement Agreement with FSHC and the associated Order approving said Settlement Agreement, the Borough received a vacant land adjustment. The vacant land adjustment divided the combined Prior Round and Third Round obligations (149-units and 142-units respectively) into a 33-unit Realistic Development Potential and a 258-unit Unmet Need. This vacant land adjustment was performed consistent with the applicable COAH rules (N.J.A.C. 5:93-4.2) and reflects the amount of developable land in the Borough, as defined by COAH, that could be theoretically developed with inclusionary housing.



However, due to limited vacant and developable land that is within the Borough's land use jurisdiction, the Borough qualifies for a vacant land adjustment. A vacant land adjustment is an adjustment to the prior round obligation (the new construction affordable housing obligation) due to a lack of vacant and developable land. The downward adjusted new construction affordable housing obligation that results from a vacant land adjustment is known as the realistic development potential or RDP. The RDP represents the portion of the new construction affordable housing obligation that can realistically be addressed with inclusionary development on lots identified in the vacant land adjustment.

In order to calculate the Borough's potential vacant land adjustment, all vacant properties, and underutilized properties must be analyzed. Those lands within the jurisdiction of the Fort Monmouth Economic Revitalization Authority (hereinafter "FMERA") and the Sports and Exposition Authority (hereinafter "SEA") were excluded from the analysis because the Borough does not have jurisdiction over the zoning of those properties.

### **Exclusion of Fort Monmouth and Sports and Exposition Authority from the Vacant Land Adjustment**

Approximately 436 acres or 17% of Oceanport Borough lands are located within the jurisdiction of the Fort Monmouth Economic Revitalization Authority (FMERA). FMERA's jurisdiction encompasses those lands previously occupied by the Fort Monmouth Army Base in portions of the municipalities of Oceanport, Tinton Falls and Eatontown. The Fort Monmouth Army Base has been closed since September 2011.

FMERA was created by the "Fort Monmouth Economic Revitalization Authority Act", signed by the Governor on August 17, 2010. It is established in, but not of, the Department of the Treasury as a public body corporate and politic as an office of the New Jersey Economic Development Authority (EDA). The Act states FMERA is "constituted as an instrumentality of the State exercising public and essential governmental functions to provide for the public safety, convenience, benefit, and welfare". FMERA was established as the successor to the Fort Monmouth Revitalization and Planning Authority (FMERPA) which was established in 2006 to create the Reuse and Redevelopment Plan for Fort Monmouth. FMERA is charged with, among other tasks, implementing the Reuse and Redevelopment Plan.

The purpose of FMERA, as stated in the Fort Monmouth Economic Revitalization Authority Act is as follows:

*"It shall be the purpose of the authority to oversee, administer, and implement the [Reuse and Redevelopment] plan as provided in this act, in a manner that will promote, develop, encourage, and maintain employment, commerce, economic development, and the public welfare; to conserve the natural resources of the State; to provide housing, including housing to address identified needs related to homelessness; and to advance the general prosperity and economic welfare of the people in the host municipalities, the county, and the entire State by cooperating and acting in conjunction with other organizations, public and private, to promote and advance the economic use of the facilities located at Fort Monmouth."*



The Reuse and Redevelopment Plan was adopted by FMERPA in 2008. This document prescribes land use, density and infrastructure (road, sewer, etc.) for the Fort Monmouth lands and supersedes local zoning power. The Fort Monmouth Economic Revitalization Authority Act states the following (C.52:271-34 Development and design guidelines, land use regulations; variances):

*“The authority shall propose and adopt development and design guidelines and land use regulations consistent with and in furtherance of the plan. Provisions may be made by the authority for the waiver, according to definite criteria, of strict compliance with the standards promulgated, where necessary to alleviate hardship. The plan and the development and design guidelines and land use regulations adopted by the authority shall supersede the master plans, the zoning and land use ordinances and regulations, and the zoning maps of the host municipalities adopted pursuant to the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.) insofar as the same may pertain to the project area, except with respect to the procedures to be followed for submitting and processing applications for subdivision or site plan approvals.” (Emphasis added)*

The Reuse and Redevelopment Plan provides for 720 residential units within Oceanport. Application of the 20% affordable housing set-aside required by the Land Use rules as well as the Reuse and Redevelopment Plan would yield approximately 144 low- and moderate-income housing units, unless the developer(s) demonstrate that it would be economically unfeasible to maintain a 20 percent set-aside.

FMERA adopted Land Use rules on June 20, 2013. These also state, at N.J.A.C. 19-31C-3.1(b), that the Reuse Plan the rules therein “supersede the master plans, the zoning and land use ordinances and regulations, and the zoning maps of the host municipalities adopted pursuant to the Municipal Land Use Law and county development regulations”. Note that an exception to this in the case of density variances where FMERA may only grant a density variance if first approved by the municipality.

As shown by the language in the Fort Monmouth Economic Revitalization Authority Act and FMERA’s recently adopted Land Use rules, the Borough has no power to zone those lands under the jurisdiction of FMERA for affordable housing, or any other use, independent of FMERA. As such, Oceanport has no right to compel FMERA to provide affordable housing.

Due to this lack of jurisdiction, all lands under the jurisdiction of Fort Monmouth have been excluded from the vacant land adjustment.

Similar to Fort Monmouth, the Borough does not have jurisdiction over the zoning of the lands under control of the Sports and Exposition Authority (SEA). These lands consist of the Monmouth Park Racetrack along Oceanport Avenue, as well as surrounding streets. The Monmouth Racetrack recently, in 2012, signed a 40-year lease with the SEA for the continued use of the site. The statute that created the SEA speaks directly to the power to zone. Specifically, the powers of the authority (5:10-5 Powers of Authority) states the following:



x. To determine the location, type and character of a project or any part thereof and all other matters in connection with all or any part of a project, notwithstanding any land use plan, zoning regulation, building code or similar regulation heretofore or hereafter adopted by the State, any municipality, county, public body politic and corporate...

This same statute provides the following authority to the SEA (5:10-6 Authority of Projects)

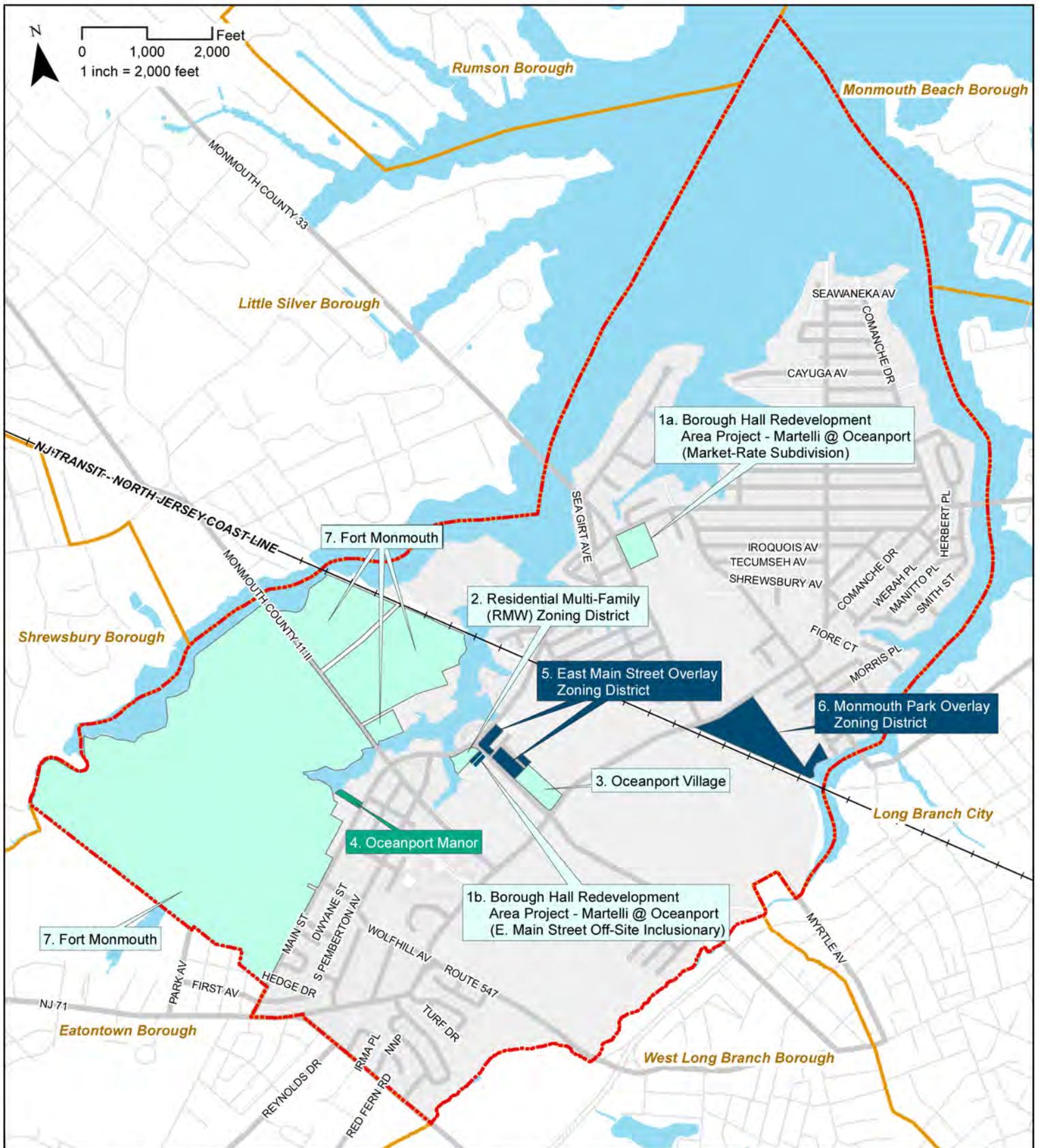
(5) To establish, develop, construct, acquire, own, operate, manage, promote, maintain, repair, reconstruct, restore, improve and otherwise effectuate, either directly or indirectly through lessees, licensees or agents, projects consisting of (a) racetrack facilities located within the State of New Jersey, but outside of the meadowlands complex, (b) their contiguous properties, and (c) their auxiliary facilities, including, without limitation, pavilions, stands, field houses, clubhouses, training tracks for horses, racetracks for the holding of horse race meetings, fairgrounds, other exposition facilities, and other buildings, structures, facilities, properties and appurtenances related to, incidental to, necessary for, or complementary to a complex suitable for the holding of horse race meetings, other sporting events, or trade shows, exhibitions, spectacles, public meetings, entertainment events or other expositions, including, but not limited to, driveways, roads, approaches, parking areas, parks, recreation areas, lodging facilities, vending facilities, restaurants, transportation structures, systems and facilities, equipment, furnishings, and all other structures and appurtenant facilities related to, incidental to, necessary for, or complementary to the purposes of any of those projects or any facility thereof.

Due to this lack of jurisdiction, all lands under the jurisdiction of the SEA have been excluded from the vacant land adjustment.

The second step is to narrow the list of identified properties to only those that contain sufficient developable area to create five (5) dwelling units where there is a density of eight (8) units an acre (.63 ac). Developable land is generally defined as lands free of wetlands, other site constraints or historic structures. A determination was made that a density of eight (8) units an acre is appropriate.

The analysis conducted by this office found 7 lots which should contribute toward the RDP. The development potential on these lots, assuming 8 units an acre and a 20% set-aside, yields 31 affordable units. The vacant land analysis provides for 31 units of RDP plus an additional two (2) unit RDP generated by the Borough Hall property redevelopment equates to a total of a 33-unit RDP which is acknowledged in the Settlement Agreement.

The vacant land analysis can be found in Appendix 10 of the Borough's Settlement Agreement with Fair Share Housing Center.



## HOUSING ELEMENT AND FAIR SHARE PLAN

OCEANPORT BOROUGH  
MONMOUTH COUNTY, NJ

Map Prepared by:  
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Data Sources:  
Oceanport Borough Fair Share Plan, NJ Office of  
Information Technology, Office of Geographic Information Systems

## COMPLIANCE PLAN MAP

### Map Legend

#### Affordable Housing Type

- Inclusionary
- 100% Affordable
- Overlay Zone

### Affordable Housing Site Index

1. Borough Hall Redevelopment Area Project - Martelli@ Oceanport
  - 1a. Market-Rate Subdivision
  - 1b. E. Main St. Off-Site Inclusionary
2. Residential Multi-Family Waterfront (RMW) Zoning District
3. Oceanport Village
4. Oceanport Manor
5. East Main Street Overlay Zoning District
6. Monmouth Park Overlay Zoning District
7. Fort Monmouth



## **SATISFACTION OF THE AFFORDABLE HOUSING OBLIGATION**

The Borough is addressing its affordable housing obligation through a variety of mechanisms that include existing affordable units, inclusionary housing and overlay zones.

### **Satisfaction of the Rehabilitation Obligation**

Oceanport Borough's rehabilitation obligation is two (2) units. The Borough will address this obligation through participation in the Monmouth County Mount Laurel Indigenous Need Housing Rehabilitation Program, which provides a no-interest loan to income-eligible homeowners to repair major systems in their home. This County program is funded by the federal Community Development Block Grant (CDBG) program. The loans need not be repaid until the home is sold or the title is transferred. All rehabilitated units will comply with the definition of a substandard unit in N.J.A.C. 5:93-5.2(b), which states, "a unit with health and safety code violations that require the repair or replacement of a major system." Major systems include weatherization, roofing, plumbing, heating, electricity, sanitary plumbing, lead paint abatement and/or load bearing structural systems. All rehabilitated units shall meet the applicable construction code. Additionally, all rehabilitated units shall be occupied by low- or moderate-income households and subject to 10-year affordability controls, which shall be placed on the property in the form of a lien or deed restriction. The average hard cost will be at least \$10,000.

### **Satisfaction of the RDP**

The Borough is addressing its RDP obligation with a mix of unit types and projects throughout the Borough.

#### ***Oceanport Village (Existing) – 12 family rental units***

This project, formerly known as the New Jersey Sports and Exposition (NJSEA) site, is a mixed-use development located on Block 88, Lot 26.01 at the corner of Main Street and Port Au Peck Avenue. The site is 4 acres located in the VC district. The original approval for 36 total residential units, of which nine (9) shall be affordable rental units, above approximately 32,000 square feet of retail and office space was granted in August 2004. The developer and the Borough executed a development agreement setting forth the terms of the development in 2006. The Planning Board granted an amended site plan approval in 2008 to permit a change to the bedroom distribution. The project was constructed in 2014 and 2015. In 2015, the Planning Board granted another approval for amended site plan in 2015 which included the conversion of 16,202 square feet of non-residential space into fourteen (14) residential rental units including an additional three (3) affordable family rental units. The project now provides a total of 50 residential units with twelve (12) affordable family rental units including five (5) one-bedroom units, four (4) two-bedroom units and three (3) 3-bedroom units.

Pursuant to the Developer's Agreement, the affordable units will be developed and occupied in accordance with the Uniform Housing Affordability Control rules, N.J.A.C. 5:26-1 et seq., including but not limited to the bedroom distribution requirements and affordability controls of at least 30 years.



Additionally, the affordable units will comply with N.J.A.C. 5:97-3.14, accessible and adaptable affordable units. See the Fair Share Plan Appendices for additional detail on this project and supporting documentation.

***Oceanport Manor (Existing) – 9 of 12 family rental***

The Oceanport Manor Apartments is a 100% affordable housing project which is comprised of twelve (12) affordable family rental units located on Block 110, Lot 18.01 in the R-5 district. Six (6) of the units were approved and occupied in 2001. The other six (6) units were approved in August 2008 and constructed in 2016. The property is .902 acres. The project is owned and administered by the Affordable Housing Alliance. The property has 30- year affordability controls consistent with a PILOT agreement between the Affordable Housing Alliance and the Borough. The affordable units are accessible and adaptable as required by the Fair Housing Act and the Barrier Free Subcode. See the Fair Share Plan Appendices for additional detail on this project and supporting documentation. The Borough is applying nine (9) of the family rental units toward the RDP and the remaining three (3) family rental units toward the Unmet Need. In addition, the Borough is eligible for nine (9) rental bonuses for the family rental units within this project.

***Borough Hall Redevelopment (Martelli at Oceanport) (Approved) – 3 family rental***

An inclusionary housing project at the intersection of Monmouth Boulevard and Myrtle Avenue (Block 65, Lot 1) was granted site plan approval on May 14, 2019 to provide twelve (12) total family for-sale market rate units with three (3) affordable rental units provided at an off-site location along East Main Street (Block 121, Lot 4). The required affordable units are part of a mixed-use development at 282 East Main Street which includes a commercial use and eight (8) residential apartments. The commercial use (bakery) and two (2) apartments were approved for the first floor, with the remaining six (6) apartments located on the second and third floors. There will be four (4) affordable family rental units within the projects including three (3) affordable units for the twelve (12) unit subdivision and one (1) affordable unit for the five (5) market rate rental units within the mixed-use development.

The Borough entered into a Redevelopment Agreement with the Redeveloper on May 1, 2018 which requires the developer to provide three (3) affordable units of a size and type approved by the Borough with affordability controls. To ensure the three (3) affordable units are provided off-site a cash bond is required as insurance that the units are completed within 36 months of the commencement of construction of the twelve (12) market rate for-sale development. In accordance with the Settlement Agreement, the Borough will ensure that the affordable units will consist of one very-low income unit, one low-income unit and one moderate-income unit and either one 1-bedroom unit, one two-bedroom unit and one 3-bedroom unit or three 2-bedroom units and otherwise be governed by controls on the affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls.



Block 65, Lot 1  
(Market-Rate Subdivision)

Block 121, Lot 4  
(E. Main St. Off-Site Units)

## HOUSING ELEMENT AND FAIR SHARE PLAN

OCEANPORT BOROUGH  
MONMOUTH COUNTY, NJ

**KMA**  
KENDRA LELIE & ASSOCIATES  
Map Prepared by:  
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## Borough Hall Redevelopment Area Project - Martelli @ Oceanport

### Map Legend

-  Borough Hall Redevelopment Area Project - Martelli @ Oceanport
-  Wetlands (NJDEP 2012)
-  Special Flood Hazard Area (FEMA 100yr)

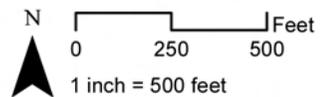




Table 4: Satisfaction of the 33 Total Unit RDP				
Program	Unit Type	Units	Bonus Credits	Total Credits
Oceanport Village	Inclusionary Family Rental	12	0	12
Oceanport Manor	100% Family Rental	9 of 12	9	18
Borough Hall Redevelopment (Martelli at Oceanport)	Inclusionary Family Rental	3	0	3
<b>Total</b>		<b>24</b>	<b>9</b>	<b>33</b>

In addition to meeting the total 33-unit RDP, the Borough must also meet a rental obligation, total family unit obligation, the very low-income obligation and not exceed the maximum senior unit cap.

Minimum Rental = 9 units

$.25 \text{ (RDP)} = 9 \text{ units} \quad | \quad .25 \text{ (33)} = 8.25, \text{ rounded up to } 9$

This obligation is satisfied with 24 credits associated with Oceanport Village (12), Oceanport Manor (9) and Borough Hall off-site rental units (3).

Maximum Senior = 8 units

$.25 \text{ (RDP)} = 8 \text{ units} \quad | \quad .25 \text{ (33)} = 8.25, \text{ rounded down to } 8$

The Borough does not include senior units in the satisfaction of the RDP. While the affordable housing projects providing credit toward the RDP do not include senior units, there are three projects contributing to the unmet need including AcuteCare (17) and Lodging Area (16) within the Fort Monmouth area and the overlay age-restricted zoning district on the Monmouth Park Racetrack (37) for a total of 70 senior units built and planned within the Borough. The combined maximum senior cap permitted for the RDP and the Unmet need is 72 units ( $33+258 = 291 \cdot .25 = 72 \text{ units}$ ). The Borough does not exceed the overall maximum senior units permitted.



Minimum Family = 17 units

.50 (RDP) = 17 units | .50 (33) = 16.5, rounded up to 17

This obligation is satisfied with 24 credits associated with Oceanport Village (12), Oceanport Manor (9) and Borough Hall off-site units (3).

Minimum Family Rental: 5 units

.50 (rental obligation) = 5 units | .50 (9) = 4.5, rounded up to 5

This obligation is satisfied with 24 credits associated with Oceanport Village (12), Oceanport Manor (9) and Borough Hall off-site rental units (3).

Minimum Very Low Income = 2 units

.13 (units created or approved on or after July 1, 2008 including 3 units from Oceanport Village, 6 units from Oceanport Manor and 3 units from Borough Hall Redevelopment for a total of 12) = 2 units | .13 (12) = 1.5, rounded up to 2

This obligation is satisfied with 3 credits associated with Oceanport Manor (2) and the Borough Hall Redevelopment Plan off-site unit (1).



## **Satisfaction of the Unmet Need**

The RDP of 33, subtracted from the agreed upon combined Prior Round and Third Round Obligation of 291 units, results in an Unmet Need of 258 units. The Borough will apply surplus affordable units and will adopt overlay zone districts and a mandatory set-aside ordinance as its strategy to satisfy the unmet need.

### ***Elizabeth Drive (Existing) – 4 special needs bedrooms***

This facility is a 4-bedroom group home administered by Allies Inc. The site is a .25 acre property on Elizabeth Drive at Block 130, Lot 23. The property received funding from the New Jersey Department of Developmental Disabilities in exchange for 20-year affordability controls. This 20-year period is an acceptable affordability control pursuant to N.J.A.C. 5:97-4.3(c)2.i. The site was first occupied in 2007. See the Fair Share Plan Appendices for additional detail on this project and supporting documentation.

### ***Oceanport Manor (Existing) – 3 of 12 family rental***

The Oceanport Manor Apartments is a facility with 12 affordable family rental units located on Block 110, Lot 18.01 in the R-5 district. Six (6) of the units were approved and occupied in 2001. The other six (6) units were approved in August 2008 and constructed in 2016. The property is .902 acres. The project is owned and administered by the Affordable Housing Alliance. The property has 30- year affordability controls consistent with a PILOT agreement between the Affordable Housing Alliance and the Borough. The affordable units will be accessible and adaptable as required by the Fair Housing Act and the Barrier Free Subcode. The Borough is applying nine (9) of the family rental units toward the RDP and the remaining three (3) family rental units toward the Unmet Need. See the Fair Share Plan Appendices for additional detail on this project and supporting documentation.

### ***Fort Monmouth (Existing Zoning, Approved and Under Construction)***

Approximately 436 acres or 17% of Oceanport Borough lands are located within the jurisdiction of the Fort Monmouth Economic Revitalization Authority (FMERA). FMERA's jurisdiction encompasses those lands previously occupied by the Fort Monmouth Army Base in portions of the municipalities of Oceanport, Tinton Falls and Eatontown. The Fort Monmouth Army Base has been closed since September 2011.

FMERA was created by the "Fort Monmouth Economic Revitalization Authority Act", signed by the Governor on August 17, 2010. It is established in, but not of, the Department of the Treasury as a public body corporate and politic as an office of the New Jersey Economic Development Authority (EDA). The Act states FMERA is "constituted as an instrumentality of the State exercising public and essential governmental functions to provide for the public safety, convenience, benefit, and welfare". FMERA was established as the successor to the Fort Monmouth Revitalization and Planning Authority (FMERPA) which was established in 2006 to create the Reuse and Redevelopment Plan for Fort Monmouth. FMERA is charged with, among other tasks, implementing the Reuse and Redevelopment Plan.



The Reuse and Redevelopment Plan was adopted by FMERPA in 2008. This document prescribes land use, density and infrastructure (road, sewer, etc.) for the Fort Monmouth lands and supersedes local zoning power.

The Reuse and Redevelopment Plan provides for 720 residential units within Oceanport. Application of the 20% affordable housing set-aside required by the Land Use rules as well as the Reuse and Redevelopment Plan would yield a minimum of 144 low- and moderate-income housing units, unless the developer(s) demonstrate that it would be economically unfeasible to maintain a 20 percent set-aside.

FMERA adopted Land Use rules on June 20, 2013. In compliance with N.J.S.A. 52:27D-329.9 (a), the FMERA Land Use rules include a requirement to provide an affordable housing set-aside where residential housing is constructed. N.J.A.C. 19:31C-3.23 states the following:

*“(a) Development within the Fort Monmouth Project Area shall ensure that affordable housing units are constructed and comply with applicable provisions of the Fair Housing Act of 1985 and implementing rules and guidelines. As used in this section, “low or moderate income” shall have the meaning in the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., and implementing rules and guidelines.*

*(b) For developments consisting of newly-constructed residential units located, or to be located, within the Fort Monmouth Project Area, at least 20 percent of the residential units constructed shall be required to be reserved for occupancy by low or moderate income households, to the extent this is economically feasible.*

*(c) A developer of a project consisting of newly-constructed residential units within the Fort Monmouth Project Area being financed in whole or in part with State funds, including, but not limited to, transit villages designated by the Department of Transportation and units constructed on State-owned property, shall be required to reserve at least 20 per-cent of the residential units constructed for occupancy by low or moderate income households.*

*(d) Affordable housing units constructed within the Fort Monmouth Project Area in accordance with COAH rules and guidelines and this subchapter may be utilized by the host municipality where such units are located toward fulfilling its COAH obligation (if such obligation specifically includes the host municipality's obligation attributable to development within the boundaries of the Fort Monmouth Project Area).*

*(e) The Authority shall identify and coordinate regional affordable housing opportunities in cooperation with the host municipalities in areas with convenient access to infrastructure, employment opportunities, and public transportation. Coordination of affordable housing opportunities may include methods to regionally provide housing in line with regional concerns, such as transit needs or opportunities, environmental*



concerns, or such other factors as COAH may permit; provided, however, that such provision by the Authority may not result in more than a 50 percent change in the fair share obligation of any municipality.

(f) *Notwithstanding any other law or provision of this subchapter to the contrary, no development fees assessed within the Fort Monmouth Transportation Planning District (as defined in the Fort Monmouth Economic Revitalization Authority Act) shall be assessed for any low and moderate income housing units which are constructed within the Fort Monmouth Project Area pursuant to this subchapter.” (Emphasis added)*

In accordance with N.J.S.A. 52:271-34, the Borough is required to review each development in FMERA’s jurisdiction and through this development review process the Borough will ensure that the overall development when viewed from a global perspective within FMERA complies with UHAC and the terms of the FSHC Settlement Agreement including that in each development at least 13% of the units will be dedicated to very low income households.

Officer Housing: This development is under construction and includes a total of 116 dwelling units of which 16 dwelling units are family rental and 16 units are special needs bedrooms and are affordable to low- and moderate-income households.

Lodging Area: This 185-unit development includes 36 affordable housing units and is currently under contract with Somerset Development for purchase.

Barker Circle: FMERA is in negotiations with a potential developer of this site which will yield a total of 75 dwelling units including 15 units for low- and moderate-income households.

AcuteCare: This 81-unit age-restricted development is currently under construction and includes 17 affordable housing units.

Nurses Quarters: FMERA is currently in negotiations with a potential developer of this site which includes a total of 34 dwelling units including 7 units affordable to low- and moderate-income households.

400 Area: 229 dwelling units are planned for this area of FMERA of which 46 units will be affordable to low-and moderate-income households.

***Old Wharf Inclusionary Zoning- RMW Residential Multi-Family Waterfront District (Existing)***

This site, known as Block 121, Lots 1.01 and 2, is zoned for family inclusionary housing that will consist of 20 units, of which 4 will be affordable sale or rental units. The 1.88-acre site is located along East Main Street in the RMW-Residential Multi-Family Waterfront district. The Oceanport Creek borders the site to the west. The property was formerly used as a restaurant site, the Old Wharf, and a single-family home. However, the site is currently vacant and the structures have been demolished, with the exception of the foundation of the restaurant, and much of the paving which existed.



# HOUSING ELEMENT AND FAIR SHARE PLAN

OCEANPORT BOROUGH  
MONMOUTH COUNTY, NJ

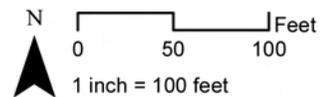

 Map Prepared by:  
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## Residential Multi-Family Waterfront (RMW) Zoning District

### Map Legend

-  Residential Multi-Family Waterfront (RMW) Zoning District
-  Wetlands (NJDEP 2012)
-  Special Flood Hazard Area (FEMA 100yr)

Data Sources:  
 Oceanport Borough Fair Share Plan, NJ Office of  
 Information Technology, Office of Geographic Information Systems





The zoning permits a maximum of 20 residential units, a residential density not to exceed 11 units per acre, with a 20% affordable housing set-aside – therefore creating 4 affordable units.

In 2006 the site was approved by the Oceanport Planning Board for the construction of a 4-story building containing 27 senior units, a clubhouse and tenant storage spaces, as well as 72 parking spaces. This project was known as Holiday at Oceanport. Subsequent to receiving site plan approval from the Borough, the applicant proceeded with obtaining outside agency permits.

The applicant was denied the necessary CAFRA permits for the construction of the Holiday at Oceanport project. The NJDEP found that the site contained illegal fill in areas previously mapped as coastal wetlands without demonstrating that the proposed project met the criteria for filling coastal wetlands and the application proposed to disturb existing wetland areas without demonstrating the project could not be redesigned around the existing wetlands. The applicant did not attempt to remedy the deficiencies in the site plan after receiving the denial.

Notwithstanding the CAFRA denial, this site is developable as currently proposed. The proposed density has been reduced by approximately 25% below that for Holiday at Oceanport; this will not only reduce the building footprint, but also the required parking which will further reduce the development footprint. Additionally, the previous application included 18 excess parking spaces, beyond that which was required by NJ R.S.I.S. These changes to the site plan will allow the project to be developed consistent with CAFRA regulations.

In order to avoid having to obtain a CAFRA permit, the development must avoid areas within the 50-foot wetlands buffer and within the 150 feet mean high water line buffer. Excluding those areas provides .75 acre of developable land. This area is adequate for the development of a 20-unit building and associated parking. Note however that similar to the 2006 application, it is anticipated that development of the site will include first floor parking. While it may be most desirable to avoid triggering the need for a permit, it is not uncommon for developments to obtain waivers from these NJDEP permits.

The affordable units will be developed and occupied in accordance with COAH's rules and the Uniform Housing Affordability Control rules, N.J.A.C. 5:26-1 et seq., including but not limited to bedroom distribution and affordability controls of at least 30 years. Additionally, the affordable units will be accessible and adaptable as required by the Fair Housing Act and the Barrier Free Subcode. The administrative agent for the project has not yet been selected. See the Fair Share Plan Appendices for additional detail on this project and supporting documentation.

The site is available, approvable, developable and suitable. The site meets COAH's site suitability standards, pursuant to N.J.A.C. 5:93-5.3(b).

- The site has a clear title and is free of encumbrances which preclude development of affordable housing. The site is free of encumbrances which would preclude its development as an inclusionary housing project.



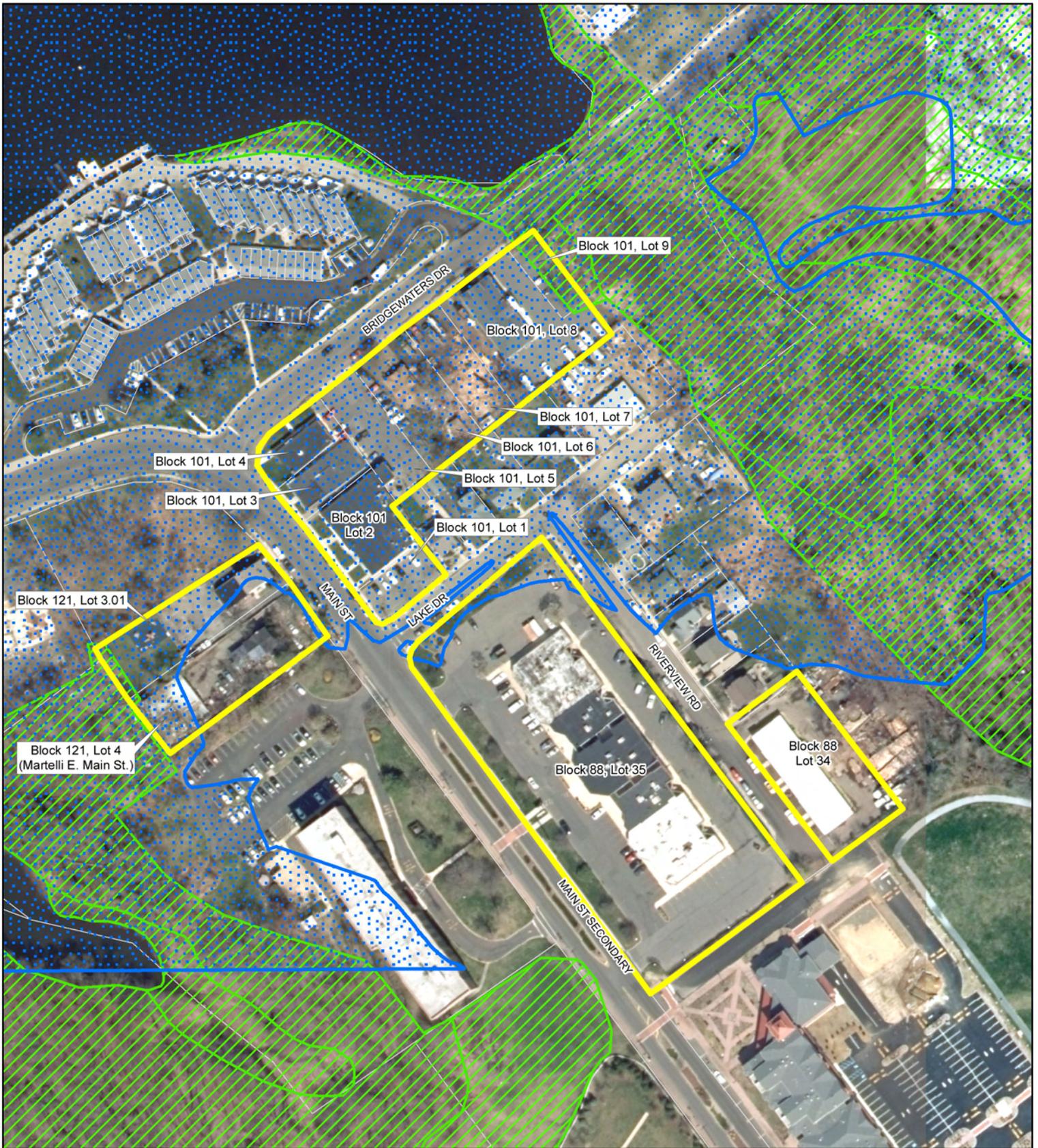
- The site is adjacent to compatible land uses and has access to appropriate streets. The site has over 600 feet of frontage along East Main Street. North of the site is a townhouse development in the RM Multi-family district. Immediately west of the site is the Oceanport Creek; further west is a residential neighborhood and the Old Wharf park. South of the site, along East Main Street are commercial uses in the VC district and the Oceanport Gardens senior affordable housing project.
- Adequate sewer and water capacity is available. Adequate public water capacity and sewer are available.
- The site can be developed in accordance with R.S.I.S. Development of the site is consistent with the Residential Site Improvement Standards, N.J.A.C. 5:21-1 et seq.

Development of the site is consistent with the State Development and Redevelopment Plan (hereinafter the “State Plan”) and the rules and regulations of all agencies with jurisdiction over the site.

- The site is located in a “Smart Growth Planning Area”. The 2001 State Plan designates the property as the Metropolitan Planning Area (PA 1).
- The development is consistent with Regional Planning Agency and CAFRA regulations. The site is located outside of the Pinelands, Highlands and Meadowlands. The Coastal Areas Facilities Review Act (CAFRA) regulations have jurisdiction over many portions of the Borough; however, as discussed above, the zoning creates a development opportunity that does not require a CAFRA permit.
- The site will comply with all applicable environmental regulations. The site contains environmentally constrained land; however, it remains developable for 20 residential units. Wetlands and buffers are located along the west and south property lines and the required 150-foot buffer to the mean high-water line is located along the western property line. As discussed above, the proposed rezoning will create a development opportunity that does not include improvements in these areas and therefore does not require a CAFRA permit. An area of isolated wetlands is located within the otherwise developable portion of the site; similar to the 2006 application, this area will be filled and developed. Additionally, the site is located within the floodplain; however, as was proposed in the 2006 application and elsewhere in the Borough, the first floor of habitable space will be raised outside of the flood elevation (8.4 feet). The inclusionary zoning will permit the ground floor of the development to consist of parking.
- The site will not impact any historic or architecturally important sites and districts. There are no historic or architecturally important districts or sites in the immediate vicinity or on the property that will preclude the site’s use for affordable housing.

### ***East Main Street Overlay Zoning (Proposed)***

This 5.27-acre area along East Main Street will receive overlay zoning that permits inclusionary housing at a maximum density of 20 du/ac and an affordable housing set-aside of 15% where the affordable units are for rent and 20% where the affordable units are for sale. Fractional affordable unit requirements shall be rounded down where the fraction is .49 or less and rounded up for those .50 or greater. Any



# HOUSING ELEMENT AND FAIR SHARE PLAN

OCEANPORT BOROUGH  
MONMOUTH COUNTY, NJ

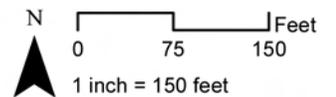
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Data Sources:  
Oceanport Borough Fair Share Plan, NJ Office of  
Information Technology, Office of Geographic Information Systems

## East Main Street Overlay Zoning District

### Map Legend

-  East Main Street Overlay Zoning District
-  Wetlands (NJDEP 2012)
-  Special Flood Hazard Area (FEMA 100yr)





development utilizing the overlay zoning option will be required to create a minimum of one affordable unit.

The overlay zoning will apply to the following properties:

Property	Lot Area
Block 88, Lot 34	0.46 acres
Block 88, 35	2.40 acres
Block 101, Lot 1	0.11 acres
Block 101, Lot 2	0.23 acres
Block 101, Lot 3	0.12 acres
Block 101, Lot 4	0.12 acres
Block 101, Lot 5	0.18 acres
Block 101, Lot 6	0.26 acres
Block 101, Lot 7	0.17 acres
Block 101, Lot 8	0.40 acres
Block 101, Lot 9	0.08 acres
Block 121, Lot 3.01	0.33 acres
Block 121, Lot 4	0.41 acres
<b>Total Area</b>	<b>5.27 acres</b>

All affordable units shall be restricted, regulated and administered consistent with the Borough's affordable housing regulations, the Uniform Housing Affordability Controls rules (N.J.A.C. 5:80-26.1 et seq.) and the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.). This shall include but is not limited to income distribution, bedroom distribution, and phasing.



### ***Monmouth Park Racetrack Overlay Zoning (Proposed)***

This 15.2-acre area will receive overlay zoning on Block 122, Lot 28 to permit age-restricted inclusionary housing at a maximum density of 12 du/ac and an affordable housing set-aside of 15% where the units are for rent and 20% where the units are for sale. Fractional affordable unit requirements shall be rounded down where the fraction is .49 or less and rounded up for those .50 or greater. The overlay zoning will only be triggered and relied upon if there is a complete cessation of live horse racing activity of any kind at the Monmouth Park Racetrack.

All affordable units shall be restricted, regulated and administered consistent with the Borough's affordable housing regulations, the Uniform Housing Affordability Controls rules (N.J.A.C. 5:80-26.1 et seq.) and the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.). This shall include but is not limited to income distribution, bedroom distribution, and phasing.

### ***Mandatory Set-aside Ordinance***

The Borough will adopt a mandatory set-aside ordinance that requires, where via use variance, rezoning, or redevelopment, the Borough permits multi-family housing with 5 units or greater that an affordable housing set-aside will be imposed on the development. The Ordinance shall require a 15% set-aside where the affordable units are for rent and 20% set-aside where the affordable units are for sale. Fractional affordable unit requirements shall be rounded down where the fraction is .49 or less and rounded up for those .50 or greater. All affordable units shall be restricted, regulated and administered consistent with the Borough's affordable housing regulations, the Uniform Housing Affordability Controls rules (N.J.A.C. 5:80-26.1 et seq.) and the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.). This shall include but is not limited to income distribution, bedroom distribution, and phasing.

## **AFFORDABLE HOUSING ADMINISTRATION & AFFIRMATIVE MARKETING**

Oceanport Borough will adopt an Affordable Housing Ordinance in accordance with COAH's substantive rules and UHAC. The Affordable Housing Ordinance will govern the establishment of affordable units in the Borough as well as regulating the occupancy of such units. The Borough's Affordable Housing Ordinance covers the phasing of affordable units, the low/moderate income split, bedroom distribution, occupancy standards, affordability controls, establishing rents and prices, affirmative marketing, income qualification, etc.

The Borough has established the position of the Municipal Housing Liaison and has appointed a staff member to the position. The Borough relies on an affordable housing administrator to conduct the administration and affirmative marketing of its affordable housing sites. However, the Borough will permit developers who demonstrate the appropriate experience and expertise to administer their own units as both are experienced affordable housing administrators. The affirmative marketing plans are designed to



# HOUSING ELEMENT AND FAIR SHARE PLAN

OCEANPORT BOROUGH  
MONMOUTH COUNTY, NJ

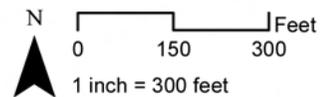
Map Prepared by:  
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## Monmouth Park Overlay Zoning District

### Map Legend

- Monmouth Park Overlay Zoning District
- Wetlands (NJDEP 2012)
- Special Flood Hazard Area (FEMA 100yr)

Data Sources:  
Oceanport Borough Fair Share Plan, NJ Office of  
Information Technology, Office of Geographic Information Systems





attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to the affordable units located in the Borough. Additionally, the affirmative marketing plan is intended to target those potentially eligible persons who are least likely to apply for affordable units and who reside in the Borough's housing region, Region 4, consisting of Monmouth, Mercer and Ocean counties.

The affirmative marketing plans include regulations for qualification of income eligibility, price and rent restrictions, bedroom distribution, affordability control periods, and unit marketing in accordance to N.J.A.C. 5:80-26.1 et seq. All newly created affordable units will comply with the 30-year affordability control required by UHAC, N.J.A.C. 5:80-26.5 and 5:80-26.11. This plan must be adhered to by all private, non-profit, and municipal developers of affordable housing units and must cover the period of deed restriction or affordability controls on each affordable unit.

## **AFFORDABLE HOUSING TRUST FUND**

A development fee ordinance creating a dedicated revenue source for affordable housing was originally adopted by Oceanport Borough in 2005.

The Spending Plan included in the Appendices to this Housing Plan, which discusses anticipated revenues, collection of revenues, and the use of revenues, was prepared in accordance with COAH's applicable substantive rules. All collected revenues will be placed in the Borough's Affordable Housing Trust fund and may be dispensed for the use of eligible affordable housing activities including, but not limited to:

- Rehabilitation program;
- New construction of affordable housing units and related development costs;
- Extensions or improvements of roads and infrastructure directly serving affordable housing development sites;
- Acquisition and/or improvement of land to be used for affordable housing;
- Purchase of affordable housing units for the purpose of maintaining or implementing affordability controls,
- Maintenance and repair of affordable housing units;
- Repayment of municipal bonds issued to finance low- and moderate-income housing activity; and
- Any other activity as specified in the approved spending plan.

However, the Borough is required to fund eligible programs in a Court-approved Housing Element and Fair Share Plan, as well as provide affordability assistance.



At least 30% of collected development fees, excluding expenditures made since July 17, 2008, when affordability assistance became a statutory requirement in the Fair Housing Act, shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in a municipal Fair Share Plan. At least one-third (1/3) of the affordability assistance must be expended on very-low income units. Additionally, no more than 20% of the revenues collected from development fees each year, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to prepare or implement a rehabilitation program, a new construction program, a housing element and fair share plan, and/or an affirmative marketing program.

## **MONITORING**

The Borough's settlement agreement with FSHC put in place monitoring provisions consistent with those required by the Fair Housing Act and similar to those required by COAH. The monitoring requires regular tracking of progress toward meeting the affordable housing obligation and ensuring the affordable units and affordable housing trust fund are administered properly. The agreement requires the following:

- On the first anniversary of the entry of final judgment, and every anniversary thereafter through the end of this Agreement, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC. In addition to the foregoing, the Borough may also post such activity on the CTM system and/ or file a copy of its report with the COAH or its successor agency at the State level.
- For the midpoint realistic opportunity review date, the parties agree that the midpoint for purposes of this agreement will be July 1, 2020 pursuant to N.J. S. A. 52: 27D- 313, and a second review shall occur by July 1, 2022. The Borough will post the review on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled RDP mechanisms continue to present a realistic opportunity and whether the mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether the mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues.
- 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 entry of final judgment, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to FSHC, 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 FSHC on the issue of whether the municipality has complied with its very low-income housing obligation under the terms of this settlement.

## **COST GENERATION**

The Oceanport Borough's Land Development Ordinance has been reviewed to eliminate unnecessary cost generating standards; it provides for expediting the review of development applications containing affordable housing. Such expedition may consist of, but is not limited to, scheduling of pre-application conferences and special monthly public hearings. Furthermore, development applications containing affordable housing shall be reviewed for consistency with the Land Development Ordinance, Residential Site Improvement Standards (N.J.A.C. 5:21-1 et seq.) and the mandate of the FHA regarding unnecessary cost generating features. Oceanport Borough shall comply with COAH's requirements for unnecessary cost generating requirements, N.J.A.C. 5:93-10.1, procedures for development applications containing affordable housing, N.J.A.C. 5:93-10.4, and requirements for special studies and escrow accounts where an application contains affordable housing.