

Housing Element and Fair Share Plan

**Borough of North Caldwell
Essex County, New Jersey**

August 2, 2019

Adopted: _____





Community Planning
Land Development and Design
Landscape Architecture

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


HOUSING ELEMENT AND FAIR SHARE PLAN


BOROUGH OF NORTH CALDWELL
ESSEX COUNTY, NEW JERSEY

PREPARED FOR:

BOROUGH OF NORTH CALDWELL PLANNING BOARD
BA# 3040.01

The original document was appropriately signed and sealed on August 2, 2019 in accordance with Chapter 41 of Title 13 of the State Board of Professional Planners.


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


Thomas Behrens, Jr., P.P., AICP
Professional Planner #6323

MEMBERS OF THE BOROUGH OF NORTH CALDWELL PLANNING BOARD

Joseph Brower, Chairman
Joseph Alessi, Mayor
Kevin O'Sullivan, Borough Administrator
Joseph Barba
James Campbell
Scott Fishbone
Sandra Nathans
Arthur Rees
Carl Spinelli

Planning Board Secretary
Kevin O'Sullivan

Planning Board Attorney
John Dusinberre, Esq.

Borough Planning Consultant
Joseph H. Burgis, P.P., A.I.C.P.
Burgis Associates, Inc.

Affordable Housing Special Counsel
Erik C. Nolan, Esq.
Jeffrey R. Surenian and Associates, LLC

TABLE OF CONTENTS

INTRODUCTION	1
SECTION I: HOUSING ELEMENT	5
SECTION II: FAIR SHARE OBLIGATION	21
SECTION III: FAIR SHARE PLAN.....	24
APPENDICES	36

LIST OF TABLES

TABLE 1: DWELLING UNITS (1970-2017)	8
TABLE 2: HOUSING UNITS BY TENURE AND OCCUPANCY STATUS (2000 AND 2017)	8
TABLE 3: UNITS IN STRUCTURE (1990-2017)	9
TABLE 4: YEAR STRUCTURE BUILT (2017).....	9
TABLE 5: OCCUPANTS PER ROOM (2000- 2017).....	10
TABLE 6: EQUIPMENT AND PLUMBING FACILITIES (2000 AND 2017)	10
TABLE 7: GROSS RENT OF SPECIFIED RENTER-OCCUPIED UNITS (1990-2014)	11
TABLE 8: VALUE OF SPECIFIED OWNER-OCCUPIED HOUSING UNITS (2000 AND 2017)	11
TABLE 9: NUMBER OF RESIDENTIAL BUILDING PERMITS ISSUED FOR NEW CONSTRUCTION (2008-2017)	13
TABLE 10: POPULATION GROWTH (1940-2017)	14
TABLE 11: AGE CHARACTERISTICS (2000-2017)	15
TABLE 12: AVERAGE HOUSEHOLD SIZE (1980-2017)	15
TABLE 13: HOUSEHOLD INCOME DISTRIBUTION (1999 AND 2017).....	16
TABLE 14: EMPLOYMENT STATUS- POPULATION 16 & OVER (2000 AND 2017)	17
TABLE 15: EMPLOYED RESIDENTS AGE 16 AND OVER, BY OCCUPATION (2000 AND 2017)	18
TABLE 16: EMPLOYED RESIDENTS AGE 16 AND OVER, BY INDUSTRY (2000 AND 2017).....	18
TABLE 17: AVERAGE COVERED EMPLOYMENT TRENDS (2004-2017).....	19
TABLE 20: RDP MINIMUMS AND MAXIMUMS	26
TABLE 21: PLAN COMPONENTS SATISFYING RDP OBLIGATION	28

INTRODUCTION

History of Affordable Housing in New Jersey

In 1975, the New Jersey Supreme Court decided So. Burl. Cty. N.A.A.C.P. v. Tp. Of Mt. Laurel, 67 N.J. 151 (1975) ("Mount Laurel I"), in which it held that every developing municipality in the State had an affirmative constitutional obligation to provide for its fair share of affordable housing. After there was little movement by municipalities to produce affordable housing, the Supreme Court issued a second decision known as So. Burlington Ct. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983) ("Mount Laurel II"), in which it created the builder's remedy lawsuit in an effort to get municipalities to comply with their constitutional affordable housing obligations. The Supreme Court also refined the constitutional obligation to primarily focus on municipalities with portions of their boundaries within designated growth areas as delineated in the State Development and Redevelopment Plan. In addition, the Supreme Court called for the State legislature to enact legislation that would spare municipalities from the burden of having the courts determine their affordable housing needs.

As a result, the State legislature adopted the Fair Housing Act in 1985 , and this was followed by the establishment of the New Jersey Council on Affordable Housing (COAH), the State agency responsible for overseeing the manner in which the State's municipalities address their low and moderate income housing needs. In 1986, the New Jersey Supreme Court affirmed the validity of the Fair Housing Act in its Mount Laurel III decision.

COAH adopted First Round affordable housing regulations and corresponding housing need numbers (obligations) based on a "fair share" methodology covering the period 1987 to 1993, followed by the adoption of the Second Round regulations for the period 1993 to 1999. In 2004, COAH adopted the first iteration Third Round regulations based on a new "growth share" methodology. The regulations were challenged, and in January of 2007, the Appellate Division invalidated various aspects of the regulations and ordered COAH to adopt revised regulations.

In 2008, COAH adopted and later amended revised Third Round regulations, which were again challenged and invalidated by the Appellate Division, specifically for the use of the growth share methodology, and also because the revised regulations suffered from many of the same deficiencies as the first attempt. This decision was affirmed by the Supreme Court in 2013, and on March 14, 2014, the Supreme Court issued an order which required COAH to adopt new Third Round regulations by October of 2014.

Unfortunately, COAH failed to adopt their newly revised Third Round regulations, deadlocking with a 3-3 vote in October of 2014. Fair Share Housing Center ("FSHC"), who was a party in both the 2010 and 2013 cases, responded by filing a motion in aid of litigants' rights with the New Jersey Supreme Court. The Supreme Court heard the motion in January 2015, and on March 10,

2015 issued In the Matter of the adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV"). In this decision, the Supreme Court held that COAH was effectively dysfunctional, and consequently, returned jurisdiction of affordable housing issues back to the trial courts, where it had been prior to the creation of COAH in 1986.

The Mount Laurel IV decision also created a process for municipalities, including North Caldwell, that have endeavored to address their fair share obligations in the past, but could not obtain Third Round substantive certification of their Housing Element and Fair Share Plan (HE&FSP) because of COAH's inaction, to instead work towards getting its plan approved via a Third Round Judgment of Compliance and Repose. These municipalities were entitled to file Declaratory Judgment actions seeking to declare their affordable housing plans constitutionally compliant, and were also entitled to apply for temporary immunity from all Mount Laurel lawsuits, including builder's remedy lawsuits, while they prepared a new or revised affordable housing plan.

In response to the Mount Laurel IV decision, the Borough of North Caldwell filed a Declaratory Judgment Complaint, along with a simultaneous motion for temporary immunity, on July 2, 2015. The Court granted temporary immunity to the Borough on November 30, 2015, which has been subsequently extended via the entry of a series of court orders through the present date.

As the Court provided a process for Third Round compliance with some regulatory guidance, the Third Round methodology and housing need numbers continued to be contested. Finally, in January 2017, the New Jersey Supreme Court affirmed in its 'Gap Period' Decision ("Mount Laurel V") that municipalities had an obligation to address their fair share of affordable housing for the 'Gap Period' extending from the beginning of the Third Round in 1999 to the Supreme Court's March 2015 decision during which COAH was unable to adopt valid Third Round Rules. As such, where the First and Second Rounds covered six-year periods, this decision extended the Third Round from 1999 to 2025.

The Borough's Response to Its Affordable Housing Obligations

The Borough did not receive substantive certification for COAH's First or Second Rounds primarily due to its decades long status as a nearly fully developed community. In response to COAH adopting revised Third Round regulations in 2008, North Caldwell adopted a Housing Element and Fair Share Plan ("HE&FSP") in December of 2008 to address its affordable housing obligations. However, the invalidation of the Third Round growth share methodology necessitated the Borough to adopt a new plan based upon COAH's prior round fair share methodology.

As COAH ultimately failed to adopt valid Third Round Rules by the Court deadline of October 2014, the Supreme Court's Mount Laurel IV decision returned jurisdiction of affordable housing matters to the trial courts and prescribed a new interim process by which municipalities could

pursue substantive certification for Third Round housing plans. In accordance with the new court process, the Borough filed its declaratory judgment complaint and motion for temporary immunity on July 2, 2015, initiating its participation in the process.

There is yet to be a definitive set of Third Round housing need numbers that has been universally accepted, and there will likely not be at this point as most of the participating municipalities have executed settlement agreements with Fair Share Housing Center, are working toward settlement or are in litigation. To date, two sets of housing need numbers have been widely promulgated. These include the numbers prepared by Econsult Solutions, Inc. on behalf of a consortium of municipalities known as the Municipal Joint Defense Group, of which North Caldwell is a part, and numbers prepared by Dr. David Kinsey on behalf of Fair Share Housing Center. These two sets of statewide affordable housing need vary dramatically.

On March 8, 2018, an opinion was entered by the Honorable Mary C. Jacobson, A.J.S.C., 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-L-1561-15, Superior Court of New Jersey, Law Division, Mercer County (collectively, the “Mercer Proceeding”). The opinion rendered in the Mercer Proceeding is titled: Opinion on Fair Share Methodology to Implement the Mount Laurel Affordable Housing Doctrine for the Third Round (the “Jacobson Opinion”). The Jacobson Opinion considered, analyzed and, ultimately, determined the appropriateness of the competing methodologies advocated by Econsult Solutions and Dr. Kinsey to determine New Jersey state-wide, regional and municipal present need rehabilitation and present need Gap + Prospective Need (1999-2015) affordable housing obligations. On March 28, 2018, state-wide and municipal obligations using the methodology found to be most appropriate by Judge Jacobson in the Jacobson Opinion (the “Jacobson Methodology”) were released.

The following table compares the latest Econsult report’s fair share obligation numbers for North Caldwell, dated April 12, 2017, against those assigned to North Caldwell in FSHC’s May 2016 report and the affordable housing obligations for Fairfield as calculated by Econsult in their March 28, 2018 report using the Jacobson Methodology:

	<u>Econsult</u>	<u>FSHC</u>	<u>Jacobson</u>
1. Rehabilitation Obligation:	35	20	35
2. Prior Round Obligation (1987-1999):	63	63	63
3. Gap + Prospective Need Obligation (1999-2025):	111	461	305

Since the Borough lacks vacant land, it made an effort to settle with FSHC, rather than engage in a trial to determine housing need numbers. With the Court assigned Special Master mediating the process, the Borough and FSHC first entered into a Settlement Agreement in September 2017 and subsequently an amended Settlement Agreement on December 11, 2018 (hereinafter “FSHC Settlement Agreement”). The FSHC Settlement Agreement is attached hereto as Appendix

A. Under the terms of the FSHC Settlement Agreement, FSHC and the Borough agreed, for settlement purposes, that North Caldwell would accept the following affordable housing obligations:

1. Rehabilitation Obligation: 20
2. Prior Round (1987-1999) Obligation: 63
3. Gap (1999-2015) + Prospective Need (2015-2025) Obligation: 360

The FSHC Settlement Agreement also affirms, irrespective of the above, that the Borough's combined Prior and Third Round Realistic Development Potential ("RDP") is 64 units. The RDP was determined via a Vacant Land Analysis prepared by Burgis Associates, which is attached hereto as Appendix B. The Borough's combined 'unmet need' is therefore 359 units (63-unit Prior Round Obligation + 360-unit Third Round Obligation – 64-unit Combined Prior and Third Round RDP = 359-unit Unmet Need). In addition, the FSHC Settlement Agreement details the manner in which the Borough will address its affordable housing obligations.

The Borough also entered into a Settlement Agreement with Green Brook Realty Associates, LLC on December 11, 2018 (hereinafter the "Green Brook Settlement Agreement"). See attached Appendix C. This project contemplated by the Green Brook Settlement Agreement, if constructed, will address a portion of the Borough's remaining unmet need.

On January 25, 2019, a properly noticed Fairness Hearing was held, which resulted in the Court approving the FSHC Settlement Agreement and the Green Brook Settlement Agreement, which was memorialized via an Order entered by the Court on February 15, 2019. See attached Appendix D.

The Borough will address its affordable housing obligations through a fifty (50) unit one hundred percent (100%) affordable housing family rental project and applicable bonus credits, three overlay zones including affordable housing components, and the adoption of a Borough-wide mandatory affordable housing set-aside ordinance, which are discussed in greater detail herein.

In addition, the Borough intends to address its 20-unit rehabilitation obligation through participation in the Essex County Home Improvement Program (or hiring of a separate entity), with funding from the Borough's affordable housing trust fund, consistent with COAH's Second Round Rules. This is also discussed further in the Fair Share Plan included herein.

This Housing Element and Fair Share Plan is organized into three sections. The first part, the Housing Element, contains background data on North Caldwell's population, housing, and employment characteristics. The second part, the Fair Share Obligation, describes the Borough's obligation for the provision of affordable housing. Finally, the third part, the Fair Share Plan details the Township's plan for meeting its affordable housing obligations.

SECTION I: HOUSING ELEMENT

A. COMMUNITY OVERVIEW

The Borough of North Caldwell is located in northwestern Essex County, bound by eight other municipalities. These municipalities include the Townships of Wayne, Little Falls, Fairfield, West Caldwell, Cedar Grove, Verona, and the Boroughs of Essex Fells and Caldwell. North Caldwell occupies an area of approximately 1,967 acres, or 3.1 square miles.

As noted previously, the Borough is essentially a fully developed community. Land use data reveals that the Borough is characterized by several distinct land use patterns. The Borough's residential areas are typified by a detached single-family development pattern which are distributed throughout the community. Commercial and business uses are generally dispersed throughout the community with some concentration of nonresidential uses along the Borough's Bloomfield Avenue corridor. The Borough's existing land uses are illustrated on the accompanying Existing Land Use Map below.

B. INVENTORY OF MUNICIPAL HOUSING STOCK

This section of the Housing Element provides an inventory of the Borough's housing stock, as required by the Municipal Land Use Law. The inventory details housing characteristics such as age, condition, purchase/rental value, and occupancy. It also details the number of affordable units available to low- and moderate-income households and the number of substandard housing units capable of being rehabilitated.

1. Number of Dwelling Units. As shown in the table below, the rate of growth of the Borough's housing stock has increased for several decades. The housing stock grew by almost one quarter in the 1980s and then by almost a third during the following decade. The growth slowed significantly in the 2000s. Since 2010, the Borough's housing stock has grown by approximately 5% to a high of 2,378 dwelling units.

TABLE 1: DWELLING UNITS (1970-2017)
NORTH CALDWELL, NJ

Year	Dwelling Units	Change (#)	Change (%)
1970	1,549	-	-
1980	1,608	59	3.8%
1990	1,996	388	24.1%
2000	2,108	500	31.1%
2010	2,252	144	6.8%
2017	2,378	126	5.6%

Source: U.S. Decennial Census; American Community Survey (2013-17)

The following table provides details regarding the tenure and occupancy of the Borough's housing stock. Since 2000, there has been a slight decrease in rental occupancy, a slight increase in owner occupancy, and an increase in the number of vacant units.

TABLE 2: HOUSING UNITS BY TENURE AND OCCUPANCY STATUS (2000 AND 2017)
NORTH CALDWELL, NJ

Characteristics	2000		2010		2017	
	Number	Percent	Number	Percent	Number	Percent
Owner-occupied	1,994	94.6%	2,025	94.9%	2,289	96.3%
Renter-occupied	76	3.6%	67	3.1%	28	1.1%
Vacant units	38	1.8%	42	2.0%	61	2.6%
Total	2,108	100.0%	2,134	100.0%	2,378	100

Source: U.S. Decennial Census; American Community Survey (2013-17)

2. Housing Characteristics. The following data provides additional information on the characteristics of the Borough's housing stock. Single-family detached units have for several decades accounted for approximately 90% of the Borough's housing stock. Less than 1% of the Borough's housing stock consists of multifamily units.

TABLE 3: UNITS IN STRUCTURE (1990-2017)
NORTH CALDWELL, NJ

Units in Structure	1990		2000		2010		2017	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Single-Family, Detached	1,830	91.7%	1,957	92.8%	2,003	88.9%	2,163	91.0%
Single-Family, Attached	114	5.7%	116	5.5%	106	4.7%	198	8.3%
2	7	0.4%	18	0.9%	27	1.2%	0	0.0%
3 or 4	40	2.0%	9	0.4%	54	2.4%	0	0.0%
5 to 9	5	0.3%	0	0.0%	24	1.1%	0	0.0%
10 or more	0	0.0%	8	0.4%	38	1.7%	17	0.7
Other	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Total	1,996	100.0%	2,108	100.0%	2,252	100.0%	2,378	100.0

Source: U.S. Decennial Census; American Community Survey (2013-17)

3. Housing Age. Table 4 shows that more than two-thirds of the Borough's occupied housing units were built prior to 1980 and approximately 94% were built prior to 2000. Since 2000, 148 units (6.4% of all housing units) have been built.

TABLE 4: YEAR STRUCTURE BUILT (2017)
NORTH CALDWELL, NJ

Year Units Built	Number	Percent
2014 or Later	36	1.6
2010 to 2013	0	0
2000 to 2009	112	4.8
1980 to 1999	604	26.1
1960 to 1979	634	27.4
1940 to 1959	638	27.5
1939 or earlier	293	12.6
Total	2,317	100.0

Source: US Census American Community Survey (2013-17)

4. Housing Conditions. Table 5 provides the number of occupants per room within housing units. Housing units containing more than one occupant per room are considered to be overcrowded. The data indicates that none of the housing units in North Caldwell are considered overcrowded as of 2017.

TABLE 5: OCCUPANTS PER ROOM (2000- 2017)
NORTH CALDWELL, NJ

Occupants Per Room	2000		2010		2017	
	Number	Percent	Number	Percent	Number	Percent
1.00 or less	2,059	99.5%	2,168	94.9%	2,317	100.0%
1.01 to 1.50	11	0.5%	0	0.0%	0	0.0%
1.51 or more	0	0.0%	0	0.0%	0	0.0%
Total Occupied Units	2,070	100%	2,168	100.0%	2,317	100.0%

Source: U.S. Decennial Census; American Community Survey (2013-17)

Table 6 presents additional detail regarding housing conditions, including the presence of complete plumbing and kitchen facilities and the type of heating equipment used. As shown below, no units lacked complete plumbing or kitchen facilities in 2017. All units use standard means of heating.

TABLE 6: EQUIPMENT AND PLUMBING FACILITIES (2000 AND 2017)
NORTH CALDWELL, NJ

Facilities	2000		2017	
	Number	Percent	Number	Percent
<u>Kitchen:</u>				
With Complete Facilities	2,108	100%	2,317	100%
Lacking Complete Facilities	0	0%	0	0%
<u>Plumbing:</u>				
With Complete Facilities	2,108	100%	2,317	100%
Lacking Complete Facilities	0	0%	0	0%
<u>Heating Equipment (Occupied Units):</u>				
Standard Heating Facilities	2,108	100%	2,317	100%
Other Means, No Fuel Used	0	0%	0	0%

Source: U.S. Decennial Census; American Community Survey (2013-17)

5. Purchase and Rental Values. The Borough has experienced a rise in rental and purchase housing prices between 2000 and 2017, as shown in Tables 7 and 8. As shown below, the median gross rent for the Borough's rental housing stock increased 93 percent between 2000 and 2017, from \$988 in 2000 to \$1,907 in 2017. The individual numbers for the rent categories in 2017 have not been included due to apparent inaccuracies in the data.

TABLE 7: GROSS RENT OF SPECIFIED RENTER-OCCUPIED UNITS (1990-2014)
NORTH CALDWELL, NJ

Rent	1990		2000		2017	
	Number	Percent			Number	Percent
Less than \$500	0	0.0%	0	0.0%	-	-
\$500 to \$749	7	9.3%	0	0.0%	-	-
\$750 to \$999	24	32.2%	26	34.2%	-	-
\$1,000 to \$1,499	*36	48.0%	50	65.8%	-	-
\$1,500 or more	34	22.4	0	0.0%	-	-
No cash rent	8	10.7%	0	0.0%	-	-
Total	75	100.0%	76	100.0%	-	-
Median Gross Rent	\$984		\$1,759		\$1,907	

Source: U.S. Decennial Census; American Community Survey (2013-17)

The median value of owner-occupied units increased 83% between 2000 and 2017, from \$399,000 in 2000 to \$730,900 to 2017. The number of homes valued at \$1,000,000 or more increased 23% where there were no units at that value in 2000.

TABLE 8: VALUE OF SPECIFIED OWNER-OCCUPIED HOUSING UNITS (2000 AND 2017)
NORTH CALDWELL, NJ

Value	2000		2017	
	Number	Percent	Number	Percent
Less than \$50,000	0	0.0%	0	0.0
\$50,000 to \$99,999	0	0.0%	0	0.0
\$100,000 to \$149,999	58	3.0%	0	0.0
\$150,000 to \$199,999	72	3.7%	0	0.0
\$200,000 to \$299,999	372	19.2%	43	1.9
\$300,000 to \$499,999	825	42.6%	359	15.7
\$500,000 to \$999,999	610	31.5%	1,361	59.5
\$1,000,000 or more	0	0.0%	526	23.0
Total	1,937	100.0%	2,289	100.0
Median Value	\$399,000		\$730,900	

Source: U.S. Decennial Census; American Community Survey (2013-17)

6. Number of Units Affordable to Low- and Moderate-Income Households. Based on the Affordable Housing Professionals of New Jersey (AHPNH) 2019 regional income limits, the median household income for a three-person household in COAH Region 2, North Caldwell's housing region comprised of Essex, Morris, Union and Warren Counties, is \$90,691. A three-person moderate-income household, established at no more than 80 percent of the median income, would have an income not exceeding \$72,553. A three-person low-income household, established at no more than 50 percent of the median income, would have an income not exceeding \$45,345.

An affordable sales price for a three-person moderate-income household earning 80 percent of the median income is estimated at approximately \$270,000. An affordable sales price for a three-person low-income household earning 50 percent of the median income is estimated at approximately \$145,000. These estimates are based on the UHAC affordability controls outlined in N.J.A.C. 5:80-26.1 et seq. Approximately 1.9% of North Caldwell's owner-occupied housing units are valued at less than \$300,000 and none valued less than \$200,000 according to the 2017 American Community Survey.

For renter-occupied housing, an affordable monthly rent for a three-person moderate-income household is estimated at approximately \$1,700. An affordable monthly rent for a three-person low-income household is estimated at approximately \$1,000. The 2017 American Community Survey data is inconclusive in determining how many of the Borough's rental units have rents that meet the income qualifications of low and moderate-income households. However, the data does indicate North Caldwell's gross rent was \$1,907 in 2017.

7. Substandard Housing Capable of Being Rehabilitated. COAH provides the formula for calculating the number of units in a community that are in need of rehabilitation and are not likely to experience "spontaneous rehabilitation." As per the FSHC Settlement Agreement, North Caldwell's rehabilitation share has been determined to be 20 units. The Borough's rehabilitation share is further explored in the Fair Share Plan section of this document.

C. PROJECTION OF MUNICIPAL HOUSING STOCK

The COAH regulations require a projection of the community's housing stock, including the probable future construction of low- and moderate-income housing, for the ten years subsequent to the adoption of the Housing Element. This projection shall be based upon an assessment of data which minimally must include the number of residential construction permits issued, approvals of applications for residential development, and probable residential development of lands. Each of these items are identified and outlined below.

1. Housing Units Constructed During the Last Ten Years. The table below provides data concerning residential building permits issued for new construction during the past ten years. During this period, a total of 312 residential building permits were issued for new construction, 288 of which were issued for one- and two-family residences and 24 were issued for multi-family units. As such, the Borough of North Caldwell has issued, on average, approximately 31.2 residential building permits per year since 2008.

TABLE 9: NUMBER OF RESIDENTIAL BUILDING PERMITS ISSUED FOR NEW CONSTRUCTION (2008-2017)
NORTH CALDWELL, NJ

Year Issued	One & Two Family	Multi-Family	Mixed-Use	Total
2008	19	0	0	19
2009	8	0	0	8
2010	40	0	0	4
2011	36	0	0	36
2012	60	24	0	84
2013	77	0	0	77
2014	25	0	0	25
2015	7	0	0	7
2016	10	0	0	10
2017	6	0	0	6
Total	288	24	0	276

Source: New Jersey Construction Reporter

2. Probable Residential Development of Lands. Considering the rate of residential growth experienced in North Caldwell over the past decade, it is anticipated that North Caldwell will continue to see a modest increase in one- and two-family residential development over the next decade. Given the scarcity of vacant land, this may include the replacement of older houses with newer ones with minimal increase to the Borough's number of housing units. The Borough anticipates more multi-family residential development than North Caldwell has experienced over the past decade due to the presence of a proposed fifty (50) unit one hundred percent affordable project, and possible inclusionary projects that may be approved and constructed in the Borough's proposed overlay zones. This will all be discussed in more detail in the Fair Share Plan section of this document.

D. POPULATION ANALYSIS

The MLUL requires that the Housing Element of this plan provide data on the municipality's population, including population size, age and income characteristics.

1. Population Size. As seen in the table below, the Borough's population saw tremendous growth between 1950 and 1980, particularly during the 1950s and 60s. After reaching its census peak in 2000, the population decreased into 2010 with only a slight increase of approximately 7% to 2017.

TABLE 10: POPULATION GROWTH (1940-2017)
NORTH CALDWELL, NJ

Year	Population	Change (#)	Change (%)
1930	1,492	-	-
1940	1,572	80	5.4%
1950	1,781	209	13.3%
1960	4,163	2,382	133.7%
1970	6,425	2,262	54.3%
1980	5,832	-593	-9.2%
1990	6,706	874	15.0%
2000	7,375	669	10.0%
2010	6,183	-1,192	-16.2%
2017	6,637	454	7.3

Source: U.S. Decennial Census; American Community Survey (2013-17)

2. Age Characteristics. The Borough's age characteristics are represented in the table below. The largest population decline since 2000 occurred in the age cohort from 20 to 34 years. The Borough's largest increases occurred in the 55-74 age cohort. The median age of Borough residents increased from 34.7 years in 2000 to 45.7 years in 2017.

TABLE 11: AGE CHARACTERISTICS (2000-2017)
NORTH CALDWELL, NJ

Age Group	2000		2010		2017	
	Total	% Total	Total	% Total	Total	% Total
Under 5	431	5.8%	350	5.7%	156	2.4%
5-19	1,395	18.9%	1,453	23.5%	1,634	24.6%
20-24	515	7.0%	202	3.3%	195	2.9%
25-34	1,092	14.8%	353	5.7%	214	3.2%
35-44	1,196	16.2%	856	13.8%	989	14.9%
45-54	1,223	16.6%	1,094	17.7%	1,304	19.6%
55-64	722	9.8%	1,005	16.3%	900	13.5%
65-74	458	6.2%	487	7.9%	851	12.8%
75-84	295	4.0%	268	4.3%	318	4.8%
85 +	48	0.7%	115	1.9%	76	1.1%
Total	7,375	100.0%	6,183	100.0%	6,637	100.0%
Median Age	34.7		43.8		45.7	

Source: U.S. Decennial Census; American Community Survey (2013-17)

3. Average Household Size. The average household size in North Caldwell has decreased every decade since 1980 except between 1990 and 2000. At 2.86 persons per households in 2017, this figure is historically low for the Borough.

TABLE 12: AVERAGE HOUSEHOLD SIZE (1980-2017)
NORTH CALDWELL, NJ

Year	Average Household Size
1980	3.67
1990	3.47
2000	3.56
2010	2.96
2017	2.86

Source: U.S. Decennial Census; American Community Survey (2013-17)

4. Household Income. The median household income for North Caldwell households increased by approximately 60 percent between 1999 and 2017, rising from \$117,395 to \$187,470. Detailed household income figures are shown in the table below.

TABLE 13: HOUSEHOLD INCOME DISTRIBUTION (1999 AND 2017)
NORTH CALDWELL, NJ

Income Category	1999		2017	
	Number	Percent	Number	Percent
Less than \$10,000	7	4.1%	37	1.6
\$10,000 to \$14,999	25	2.7%	25	1.1
\$15,000 to \$24,999	70	5.2%	60	2.6
\$25,000 to \$34,999	63	7.1%	37	1.6
\$35,000 to \$49,999	91	14.4%	88	3.8
\$50,000 to \$74,999	264	21.5%	96	4.1
\$75,000 to \$99,999	315	16.6%	134	5.8
\$100,000 to \$149,999	416	17.7%	399	17.2
\$150,000 to \$199,999	834	10.7%	423	18.3
\$200,000 or more	0	-	1,018	43.9
Total	2,085	100.0	2,317	100.0
Median	\$117,395		\$187,470	

Source: U.S. Decennial Census; American Community Survey (2013-17)

E. EMPLOYMENT ANALYSIS

The MLUL requires that a Housing Element include data on employment levels in the community. The following tables present information on the Borough's employment characteristics.

1. Employment Status. Table 14 provides information on North Caldwell's employment status for the segment of the population 16 and over. Approximately 72 percent of the Borough's working age population was in the labor force in 2017, which represents an increase from 55 percent in 2000. Between 2000 and 2017, the proportion of the Borough's population that was unemployed increased slightly from 1.3% to 2.7%.

TABLE 14: EMPLOYMENT STATUS- POPULATION 16 & OVER (2000 AND 2017)
NORTH CALDWELL, NJ

Employment Status	2000		2017	
	Number	Percent	Number	Percent
In labor force	3,196	54.6	3,718	72.2
Civilian labor force	3,196	54.6	3,718	72.2
Employed	3,118	53.3	3,580	69.5
Unemployed	78	1.3	138	2.7
Armed Forces	0	0.0	0	0.0
Not in labor force	2,653	45.4	1,434	27.8
Total Population 16 and Over	5,849	100.0	5,152	100.0

Source: U.S. Decennial Census; American Community Survey (2013-17)

2. Employment Characteristics of Employed Residents. The following two tables detail information on the employment characteristics of North Caldwell residents. Table 15 details employment by occupation and Table 16 details employment by industry. The majority of residents in the Borough are employed in management, professional and related occupations. The representation within this occupation category increased between 2000 and 2017 along with the sales and office industries. Representation decreased among the service occupation as well as the natural resources, construction, and maintenance occupations and the production, transportation, and material moving occupations. The largest percentage of residents are employed in the education, health and social services industry as well as the professional and related services industries. The largest decrease was in the manufacturing industry.

TABLE 15: EMPLOYED RESIDENTS AGE 16 AND OVER, BY OCCUPATION (2000 AND 2017)
NORTH CALDWELL, NJ

Occupation	2000		2017	
	Number	Percent	Number	Percent
Management, professional, and related	1,967	47.1%	2,011	56.2%
Service	482	9.0%	217	6.1%
Sales and office	513	28.6%	1,120	31.3%
Natural resources, construction, and maintenance	79	6.1%	65	1.8%
Production, transportation, and material moving	77	9.2%	168	4.7%
Total	3,118	100.0	3,580	100.0%

Source: U.S. Decennial Census; American Community Survey (2013-17)

TABLE 16: EMPLOYED RESIDENTS AGE 16 AND OVER, BY INDUSTRY (2000 AND 2017)
NORTH CALDWELL, NJ

Industry	2000		2017	
	Number	Percent	Number	Percent
Agriculture, Forestry, Fisheries & Mining	15	0.1%	0	0.0
Construction	85	4.0%	101	2.8
Manufacturing	235	17.0%	308	8.6
Wholesale Trade	214	5.2%	258	7.2
Retail Trade	296	11.5%	255	7.1
Transportation, Warehousing, and Utilities	51	4.6%	45	1.3
Information	0	5.6%	148	4.1
Finance, Insurance & Real Estate	503	10.0%	435	12.2
Professional & Related Services	548	15.1%	771	21.5
Education, Health and Social Services	715	15.2%	961	26.8
Arts, Entertainment & Recreational Services	129	5.5%	168	4.7
Public Administration	113	2.7%	60	1.7
Other Services	214	3.5%	70	2.0
Total	3,118	100.0	3,580	100.0

Source: U.S. Decennial Census; American Community Survey (2013-17)

3. Employment Projections. A projection of the Borough's probable future employment characteristics is based on an assessment of historic employment trends, the number of non-residential construction permits issued, and probable non-residential development of lands. Each of these items are identified and outlined below.
 - a. Historic Employment Trends. Employment in North Caldwell decreased from 2005 to 2010 and increased since 2010, with a significant period of growth between 2011 and 2012.

TABLE 17: AVERAGE COVERED EMPLOYMENT TRENDS (2004-2017)
NORTH CALDWELL, NJ

Year	Number of Jobs	Change in Number of Jobs	Percent Change
2004	529	-	-
2005	792	263	49.7
2006	781	-11	-1.4
2007	770	-11	-1.4
2008	760	-10	-1.3
2009	739	-21	-2.8
2010	753	14	1.9
2011	756	3	0.4
2012	837	81	10.7
2013	841	4	0.5
2014	849	8	1.0
2015	855	6	0.7
2016	875	20	2.3
2017	940	65	7.4

Sources: Department of Labor and Workforce Development

- b. Non-Residential Square Footage Constructed During the Last Ten Years. Table 18 below depicts the minimal non-residential development with permits issued between 2007 and 2017 according to the Borough Office of the Construction Official. The total number of permits during this time period was 15. The only Certificates of Occupancy issued during this time was for the construction of a convenience store at an existing gas station and the conversion of a clothing store to a restaurant.

Table 18: Non-Residential Permits, 2007-2017
Borough of North Caldwell, New Jersey

Year	Number of Permits
2007	0
2008	0
2009	0
2010	4
2011	1
2012	1
2013	0
2014	3
2015	1
2016	1
2017	4
Total	15

Source: Borough of North Caldwell, New Jersey.

- c. Probable Non-Residential Development of Lands. The potential for future nonresidential development is limited based on past trends and the amount of existing land and facilities zoned and dedicated for such types of uses. Given the weak office market, fall-out from the recession, changes in the retail space market and limited developable land, the Borough anticipates modest non-residential growth to occur over the next ten-year period.
- d. Probable Future Employment Characteristics. The Borough's growing employment trend combined with modest expectations for new non-residential development suggests that future employment within the Borough will increase only modestly over the next ten years.

SECTION II: FAIR SHARE OBLIGATION

A. SUMMARY OF FAIR SHARE OBLIGATION

The state of the Third Round affordable housing obligations for municipalities throughout New Jersey continues to be in flux, given the fact that neither the Courts, COAH, nor the legislature has come up with a definitive set of housing-need numbers that has been universally accepted. However, as discussed previously, two sets of numbers have prevailed in the negotiations for determining individual municipal affordable housing need numbers. These were prepared by Econsult Solutions, Inc. on behalf of the consortium of municipalities, of which North Caldwell is a part, and Dr. David Kinsey on behalf of FSHC. In addition, the 2018 Judge Jacobson ruling in Mercer County has provided further guidance in calculating need numbers and has resulted in a third set of housing numbers for North Caldwell.

The following table compares the latest Econsult report's fair share obligation numbers for North Caldwell, dated April 12, 2017, against those assigned to North Caldwell in FSHC's May 2016 report and the affordable housing obligations for Fairfield as calculated by Econsult in their March 28, 2018 report using the Jacobson Methodology:

	<u>Econsult</u>	<u>FSHC</u>	<u>Jacobson</u>
1. Rehabilitation Obligation:	35	20	35
2. Prior Round Obligation (1987-1999):	63	63	63
3. Gap + Prospective Need Obligation (1999-2025):	111	461	305

As set forth in the FSHC Settlement Agreement, which is attached hereto as Appendix A, and due to the community's fully developed character, North Caldwell has accepted the following affordable housing obligations:

1. Rehabilitation Obligation: 20
2. Prior Round (1987-1999) Obligation: 63
3. Gap (1999-2015) + Prospective Need (2015-2025) Obligation: 360

Since the Borough is essentially fully developed, it is entitled to adjust its Prior Round (1987-1999) and Gap + Prospective Need (1999-2025) obligations in accordance with the procedures set forth in COAH's Second Round rules. As provided therein, a Realistic Development Potential ("RDP") Analysis is intended to determine which sites in a municipality are the most likely sites to develop for low- and moderate-income housing. Accordingly, the FSHC Settlement Agreement, and the Vacant Land Analysis attached hereto as Appendix B, establishes the Borough's combined Prior Round and Third Round RDP at 64. The calculation of the Borough's RDP is discussed in greater detail below.

B. VACANT LAND ADJUSTMENT

The Borough's Prior Round (1987-1999) and Third Round Gap + Prospective Need (1999-2025) affordable housing obligations have been adjusted by a Vacant Land Adjustment (VLA), which includes an RDP analysis. The Vacant Land Adjustment was established as a result of Vacant Land Analysis, which is attached hereto as Appendix B, the terms and conditions of the FSHC Settlement Agreement, which is attached hereto as Appendix A, and the Order entered by the Court on February 15, 2019 approving the FSHC Settlement Agreement, which is attached hereto as Appendix D. The Vacant Land Analysis, which was prepared pursuant to COAH's Second Round Rules, N.J.A.C. 5:93-4.2, reveals that the Borough has an RDP of 64 units, and a remaining combined Prior and Third Round unmet need of 359 units. See attached Appendix B.

The Vacant Land Analysis reviewed all vacant parcels in the Borough of minimally 0.83-acre in size (based on a presumptive minimum density of 6 units per acre) and subtracted out environmentally constrained land (wetlands, steep slopes, riparian zones, and flood plains) pursuant to the applicable COAH Prior Round regulations at N.J.A.C. 5:93-4.2. Eight parcels, which contain 53.62 total developable acres, were determined to have development potential and therefore contributed to the Borough's RDP. Based on a presumed density of 6 units per acre and a 20 percent (20%) set-aside for affordable units as applied to these parcels, an RDP of 64 units was established for North Caldwell. See attached Appendix B.

SECTION III: FAIR SHARE PLAN

A. PLAN SUMMARY

The Fair Share Plan identifies the manner in which the Borough's fair share affordable housing obligations – inclusive of a Rehabilitation obligation of 20-units, a Prior Round (1987-1999) obligation of 63 units, and a Gap + Prospective Need (1999-2025) obligation of 360 – are to be addressed. This is summarized below.

1. Rehabilitation Obligation. The Borough intends to satisfy its 20-unit Rehabilitation obligation through cooperation with Essex County, or the Borough will hire a separate entity to rehabilitate at least 20 units in the Borough.
2. Prior Round Obligation (1987-1999) and Gap + Prospective Need Obligation (1999-2025). Pursuant to the FSHC Settlement Agreement, the Borough has a combined Prior Round and Third Round obligation of 423 units. This figure is comprised of a 63-unit combined Prior Round obligation and Third Round obligation of 360 units. The calculated RDP of 64 units results in an unmet need of 359-units (423 units of Prior and Third Round obligations - 64 unit RDP = 359 units of unmet need).

The Borough proposes to address its RDP and a portion of its unmet need with a 50-unit, one hundred percent (100%) affordable family rental development, three overlay zones and a Borough-wide mandatory affordable housing set-aside ordinance.

As detailed above, the Housing Element and Fair Share Plan can accommodate the entirety of the community's affordable housing obligations through 2025 in a manner that affirmatively addresses need, while at the same time maintaining the overall character of the community.

B. MINIMUMS/MAXIMUMS TO BE ADDRESSED

This plan seeks to address the Borough's affordable housing obligation by application of COAH's Second Round regulations. The Supreme Court in its March 2015 Mount Laurel IV decision endorsed the use of COAH's Second Round regulations. The plan has also been drafted in accordance with the terms and conditions of the FSHC Settlement Agreement. As such, the following minimum requirements and maximum limitations are addressed in this plan.

1. RDP Obligation:
 - a. Age-Restricted Units. Pursuant to N.J.A.C. 5:93-5.14(a)2, the Borough is permitted to age-restrict up to twenty five percent (25%) of its 64-unit RDP obligation, which equates to a maximum of 16 age-restricted units that can be used to address the Borough's RDP.

- b. Rental Units. Pursuant to N.J.A.C. 5:93-5.15(a), the Borough is required to address at least twenty five percent (25%) of its 64-unit RDP obligation with rental housing. This equates to a minimum of 16 rental units. At least half of the 16 rental units have to be available to families.
- c. Rental Bonus Credits. Pursuant to N.J.A.C. 5:93-5.15(d), the Borough shall receive a 2:1 rental bonus credit for rental units made available to the general public, up to the 16-unit rental obligation. Age-restricted rental units may be eligible for rental bonus credits at a ratio of 1.33:1; however, no more than fifty percent (50%) of the rental obligation shall receive a bonus for age restricted rental units.

The table below summarizes the above parameters for the Borough's combined Prior Round and Third Round RDP obligation:

**TABLE 20: RDP MINIMUMS AND MAXIMUMS
NORTH CALDWELL, NJ**

Requirement	RDP Obligation
Max. Age-Restricted Units	16
Min. Rental Units	16
Max. Rental Bonus Credits (Total, Including Age-Restricted)	16
Max. Rental Bonus Credits (Age-Restricted)	8

2. Very Low Income Requirement: As per the terms of the FSHC Settlement Agreement, the Borough is required to ensure that thirteen percent (13%) of all affordable units referenced in this plan, with the exception of units constructed prior to July 1, 2008, and units subject to preliminary or final site plan approval prior to July 1, 2008, will be very low income units (defined as units affordable to households earning thirty percent (30%) or less of the regional median income by household size), and half of said very low income units will be units available to families. The Borough will satisfy this requirement as follows: Thirteen percent (13%) of the proposed RPM project, will be very low-income units, and thirteen percent (13%) of the affordable units in the Green Brook project, if it is constructed, will be very low-income units. In addition, both the Fairfield Road and Bloomfield Avenue overlay zones require all projects to deliver thirteen percent (13%) very low-income units.

C. SUITABILITY ANALYSIS

Pursuant to N.J.A.C. 5:93-1.3, sites that are designated to produce affordable housing in the Borough shall be available, approvable, developable, and suitable according to the following criteria:

- "Available site" means a site with clear title, free of encumbrances which preclude development for low and moderate-income housing. N.J.A.C. 5:93-1.3.
- "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 agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate-income housing. Ibid.
- "Development site" means a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable area wide water quality management plan (including the wastewater plan) or is included in an amendment to the area wide water quality management plan submitted to and under review by the DEP. Ibid.
- "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. Ibid.

In addition to the above qualifications, it is also sound planning for sites to be consistent with the State Development and Redevelopment Plan. Sites that are located in Planning Area 1: Metropolitan or Planning Area 2: Suburban of the State Development and Redevelopment Plan, or are located in an existing sewer service area, are the preferred location for municipalities to address their fair share obligations.

D. PLAN COMPONENTS

This section of the plan details the projects, mechanisms and funding sources which will be used to meet the Borough's affordable housing obligations, as discussed above.

1. Rehabilitation Obligation. The Borough has a Rehabilitation obligation of 20 units. The Borough plans to address this obligation through participation in the Essex County Home Improvement Program, or will hire a separate entity, and will utilize funds from the Borough's affordable housing trust fund to help fund these programs. The Borough will commit an average of \$10,000 per unit, consistent with COAH's Second Round Rules. This will require a total contribution of approximately \$200,000.

Pursuant to COAH's regulations that allow municipalities to utilize money collected from development fees for this purpose, the Borough shall set aside the required \$200,000 from its Affordable Housing Trust Fund account to be made available to income-qualified households to participate in the program. This will be documented in the Borough's Spending Plan.

2. RDP Obligation. As established in Section II of this plan, North Caldwell has a combined Prior Round and Third Round RDP of 64 units for the period extending from 1987 to 2025. The Borough proposes to address this obligation with 48 units from a proposed 50-unit, one hundred percent (100%) affordable development, along with 16 rental bonus credits as permitted by COAH Second Round regulations.

**TABLE 21: PLAN COMPONENTS SATISFYING RDP OBLIGATION
NORTH CALDWELL, NJ**

Plan Component	# of Units	Rental Bonus Credits	Total Credits	Status
<i>100% Affordable Development, RPM</i>	48	16	64	Proposed
Total	48	16	64	

50-unit, 100% Affordable RPM Project

The Borough executed a Redevelopment Agreement on December 20, 2016, which was amended in 2019, with developer RPM Development, LLC to construct a 50-unit, one hundred percent (100%) affordable family rental development on 5-acres located at the Hilltop site within the Borough on Block 104, Lot 1. The agreement includes the conveyance of the Borough owned property to the redeveloper, which was transferred to the redeveloper via deed on February 5, 2019. A separate PILOT (Payment In Lieu of Taxes) agreement has also been entered into between the Borough and RPM, and the project has received Preliminary Site Plan Approval from the Borough's Planning Board. The Borough will contribute \$1,194,962.49 from its Affordable Housing Trust Fund to the project for construction costs and affordability assistance. In addition, RPM has already been awarded competitive 9% tax credits from the New Jersey Home Mortgage and Finance Agency (HMFA) to assist with the financing the project. At least fifty percent (50%) of the 50 units from the project will qualify as low-income housing, and thirteen percent (13%) will qualify as very low-income housing. Since the project will consist of 50 family rental units, the Borough can claim 16 rental bonus credits from the project, which is twenty five percent (25%) of the Borough's RDP of 64. Development of the site has already begun, and is anticipated to be completed by the end of 2020.

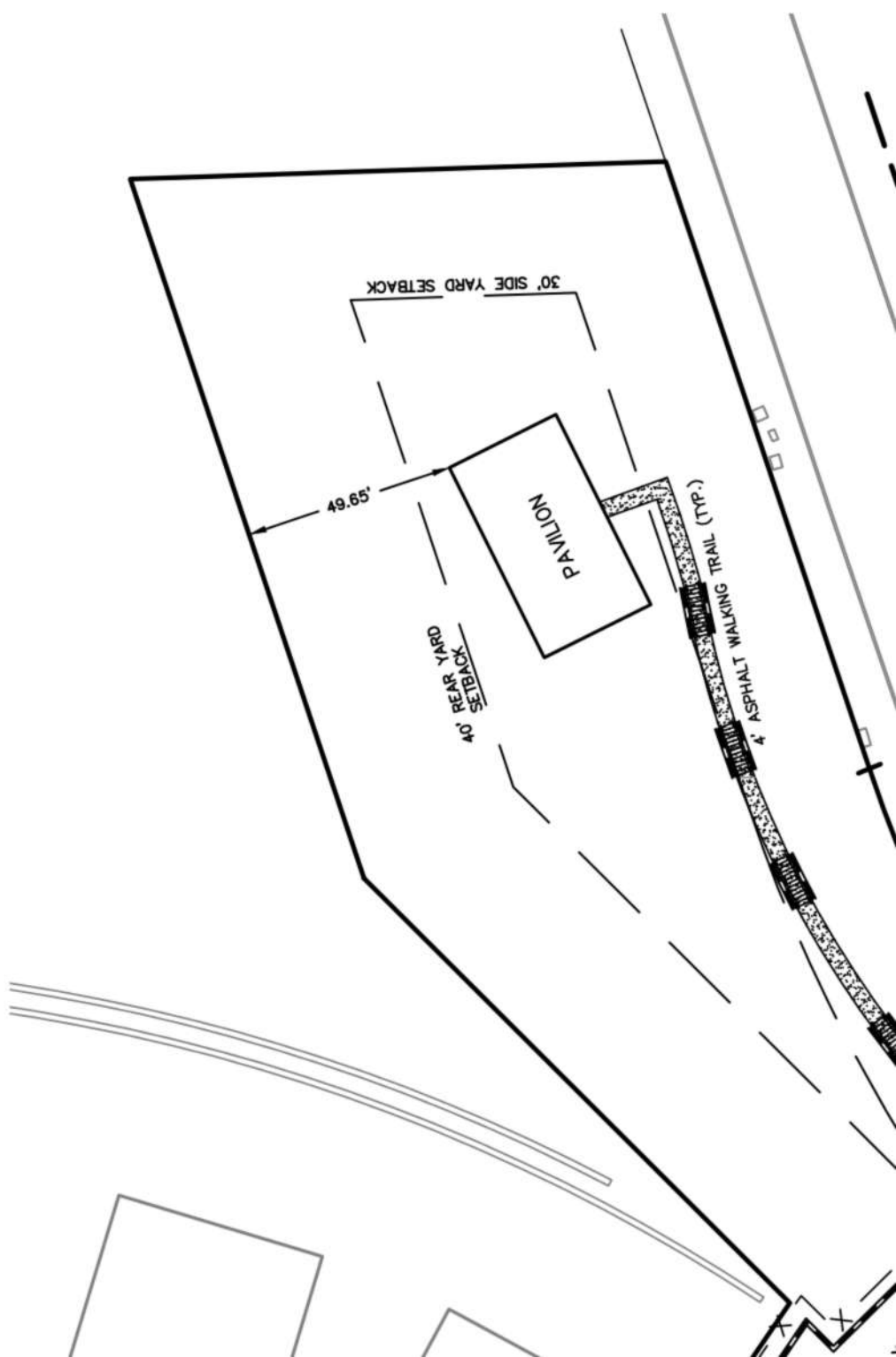
Finally, the RPM project site is available, approvable, developable and suitable, and is appropriate for multi-family housing:

- a. There are no known encumbrances that will prohibit or otherwise impact the development of the property in general.
- b. In accordance with the 2012 New Jersey Department of Environmental Protection's Land Use Land Cover (LULC), no wetlands or surface water resources on the subject property or within 50 feet of the subject property will impact the development of the project.

- c. The site is not located within a FEMA 100-year floodplain, and the site does not have any steep slopes.
- d. The site is surrounded by compatible uses, including residential uses, and has access to an appropriate right-of-way.
- e. The site is served by both public water and public sewer.

The following map depicts the approved site plan for the 50-unit development.

DRAWN BY: KAO		CHECKED BY: <i>KES</i>	RELEASED BY: <i>KES</i>	DATE: 02/07/17	HORIZONTAL SCALE: 1"=40'	VERTICAL SCALE: N/A	PROJECT No.: RPM-164		DRAWING NAME: 03-Layout.dwg
							10/08/18	ISSUED FOR CONSTRUCTION - REV. 1	KES
							08/28/18	ISSUED FOR CONSTRUCTION	KES
							7/27/18	RESOLUTION COMPLIANCE	KES
							12/15/17	RESOLUTION COMPLIANCE	KES
								REVISIONS	DRAWN BY
									CHECKED BY



3. Unmet Need. The difference between the Borough's combined Prior Round and Third Round need number of 423 units and its RDP obligation of 64 units yields a remaining unmet need of 359 units. Whereas the RDP obligation must be affirmatively addressed by the Borough (as outlined above), addressing unmet need involves a lower standard, as the entire unmet need obligation does not have to be fully satisfied by 2025. The Borough proposes to address unmet need as follows:

Bloomfield Avenue Overlay Zone

The Bloomfield Avenue Overlay District (BAO) constitutes the entirety of Block 100. This overlay zone permits residential development above the first floor with a maximum prescribed density of 10 units per acre and required affordable housing set-asides of twenty percent (20%) of for sale units and fifteen percent (15%) of rental units. The underlying Office District uses shall continue to be permitted. The Borough will adopt an ordinance to create this overlay zone.



Fairfield Road Overlay Zone

The Fairfield Road Overlay Zone is comprised of Block 2200, Lots 3, 4, 5 and 6 and Block 2201 Lots 1 and 2. The ordinance for this overlay zone allows for single-family attached as well as multifamily development with a maximum permitted density of 10 units per acre. It requires affordable housing set-asides of 20% of for sale units and 15% of rental units. The underlying zoning district shall remain in effect. The Borough will adopt an ordinance to create this overlay zone



Green Brook Golf Course Overlay Zone

North Caldwell entered into a Settlement Agreement with Green Brook Realty Associates, LLC on December 11, 2018 outlining the development parameters of the existing Green Brook Golf Course, identified as Block 1600 Lot 1, comprising approximately 100 acres located at the Borough's western border, should the golf course cease to function in the future. See attached Appendix C. The FSHC Settlement Agreement, and the Green Brook Realty Associates, LLC Settlement Agreement, both require the Borough to adopt an ordinance creating an overlay zone over the section of the golf course located in the Borough. The rest of the golf course is located in Fairfield Township and is subject to a separate Settlement Agreement between the developer and the Township of Fairfield.

The overlay zone over the North Caldwell portion of the golf course permits a variety of residential development including an assisted living/memory care facility with 80 to 130 beds, 160 market-rate age-restricted (55 and over) apartment and/or townhouse units and 89 to 99 market rate townhouses. In addition, the overlay zone requires a minimum of 50 affordable units, 25 of which shall be developed as family rental units in one building, and 25 age-restricted units in another building. Thirty seven percent (37%) of the affordable units from family rental and age restricted buildings will be low income units, thirteen percent (13%) will be very low income units and fifty percent (50%) will be moderate income units. Ten percent (10%) of assisted living beds in a separate third building will also qualify as age restricted affordable housing. The total number of units on the site will not exceed 299 units, excluding all assisted living beds. In addition, the overlay zone permits the operation of a banquet facility similar in size and scope to the existing operation, and a sit-down restaurant of no more 150 indoor patrons and 50 outdoor patrons.

The Green Brook Golf Course Settlement Agreement prohibits the developer from filing a site plan application until November 1, 2019 and commencing construction until February 1, 2021, and also requires the developer to dedicate up to 12 contiguous buildable open space acres of the site to the Borough for future municipal use.

It is noted that even though an overlay zone will be created over the golf course as an unmet need mechanism, pursuant to the FSHC Settlement Agreement, in the event that the golf course ceases to remain a golf course and Green Brook Realty Associates, LLC, initiates development of the property, the Borough will revisit its Third Round RDP obligation, accept an RDP on the golf course property, and satisfy the increased Third Round RDP with units from the golf course development and/or other mechanisms deemed appropriate by the Borough and FSHC.

BOROUGH OF NORTH CALDWELL
180 AGE RESTRICTED UNITS
95 AGE TARGETED TOWNHOMES
30 AFFORDABLE HOUSING UNITS
130-BED ASSISTED LIVING

20+ ACRE PARCEL TO INCLUDE
AFFORDABLE HOUSING, ASSISTED LIVING
AND 12 ACRES DEDICATED TO THE
BOROUGH OF NORTH CALDWELL

200' ROAD BETBACK

100' ROAD BETBACK

AGE
RESTRICTED
HOMES

EXISTING
CLUBHOUSE
TO REMAIN

RESTAURANT

AGE TARGETED
TOWNHOMES

BOROUGH OF NORTH CALDWELL
TOWNSHIP OF FAIRFIELD

200' ROAD BETBACK

100' ROAD BETBACK

Mandatory Set-Aside Ordinance

To further address unmet need, the Borough is also in the process of adopting an ordinance which requires that any site that benefits from a subdivision or site plan approval, rezoning, use variance, redevelopment plan or rehabilitation plan approved by the Borough or a Borough land use board which results in multi-family residential development containing five or more new dwelling units shall provide an affordable housing set-aside at a rate of fifteen percent (15%), where affordable units will be for rent, or twenty percent (20%), where affordable units will be for sale. This requirement will ensure that new multi-family residential development in the Borough will provide its fair share of affordable units and assist with the Borough's continuing efforts to address its unmet need affordable housing obligation. The Borough will not, however, be under any obligation to grant subdivision and site plan approvals, rezonings, use variances, or redevelopment/ rehabilitation designations for any such construction, and development applications will be required to conform to the Borough's zoning requirements.

E. REJECTED DEVELOPMENT SITES

There are not sites for which inclusionary development was considered that were rejected and not included in this Plan.

F. DEVELOPMENT FEES

The Borough is in the process of amending its development fee ordinance, which, as provided by COAH's Second Round regulations, permits the Borough to impose such fees on new development. The development fee ordinance will require a residential development fee of 1.5% of the equalized assessed value for all residential development wherein new dwelling units will be created, and 2.5% of the equalized assessed value of all non-residential development, with the exception of those types of developments specifically exempted, as required per the Statewide Non-Residential Development Fee Act. The funds generated by the collection of development fees will be applied directly toward implementation of Fairfield's Housing Element and Fair Share Plan.

APPENDIX

AMENDED SETTLEMENT AGREEMENT TO RESOLVE ISSUES BETWEEN THE BOROUGH OF NORTH CALDWELL AND FAIR SHARE HOUSING CENTER CONCERNING THE BOROUGH'S MOUNT LAUREL FAIR SHARE OBLIGATIONS AND THE MEANS BY WHICH THE BOROUGH SHALL SATISFY SAME.

In the Matter of the Borough of North Caldwell, County of Essex,
Docket No. ESX-L-4696-15

THIS SETTLEMENT AGREEMENT ("Agreement") made this 11th day of December 2018, by and between:

BOROUGH OF NORTH CALDWELL, a municipal corporation of the State of New Jersey, County of Essex, having an address at 141 Gould Avenue, North Caldwell, New Jersey 07006-4213 (hereinafter the "Borough" or "North Caldwell");

And

FAIR SHARE HOUSING CENTER, having an address at 510 Park Boulevard, Cherry Hill, New Jersey 08002, (hereinafter "FSHC");

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), the Borough filed the above-captioned matter on July 2, 2015 seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), as may be further amended in accordance with the terms of this settlement, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the Mount Laurel doctrine; and

WHEREAS, the Borough simultaneously sought and ultimately secured an Order protecting North Caldwell from all exclusionary zoning lawsuits, while it pursues approval of its Fair Share Plan; and

WHEREAS, the immunity secured by North Caldwell remains in place as of the date of this Agreement; and

WHEREAS, the Trial Court appointed Francis J. Banisch, III, P.P., A.I.C.P., as the "Special Master" in this case as is customary in Mount Laurel matters; and

WHEREAS, with Mr. Banisch's assistance, North Caldwell and FSHC engaged in good faith negotiations and reached an amicable accord on various substantive provisions, terms and conditions, which were agreed to in a Settlement Agreement that was entered into in September of 2017 (hereinafter "2017 Settlement Agreement"); and

WHEREAS, the 2017 Settlement Agreement was fully executed, submitted to the Court and a Fairness Hearing was scheduled to be held in late fall of 2017; and

WHEREAS, before the Fairness Hearing was held, the Borough was approached by the new contract purchaser of the Green Brook Golf Course (located in the Borough) regarding a possible proposed project on the golf course, and the Fairness Hearing was adjourned so that the Borough and the developer could negotiate some type of project for the site in the event that a Golf Course use was no longer viable a few years from now; and

WHEREAS, the Borough and the Developer have subsequently reached an agreement regarding a possible proposed project on the site, and the 2017 Settlement Agreement has now been amended to incorporate the Green Brook Golf Course project; and

WHEREAS, this Amended Settlement Agreement replaces the 2017 Settlement Agreement in its entirety; and

WHEREAS, the Borough and FSHC have agreed to settle the litigation and to present this Amended Settlement Agreement to the Trial Court, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households; and

WHEREAS, at this time and at this particular point in the process resulting from the Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's present and prospective need, instead of doing so through plenary adjudication of the present and prospective need.

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties hereto, each binding itself, do hereby covenant and agree, each with the other, as follows:

Settlement Terms

The Borough and FSHC hereby agree to the following general terms, subject to any relevant conditions set forth in more detail below:

1. North Caldwell's "Rehabilitation" obligation is 20.
2. North Caldwell's "Prior Round" obligation is 63.
3. North Caldwell's allocation of the Round 3 regional need is 360 ("Third Round fair share obligation").
4. FSHC and the Borough agree that North Caldwell does not accept the basis of the methodology or calculations proffered by FSHC's consultant, David N. Kinsey, PhD, P.P., F.A.I.C.P. The Parties agree to the terms in this agreement solely for purposes of settlement of this action. Although the Borough does not accept the basis of the methodology or calculations proffered by FSHC's consultant, FSHC contends, and is free to take the position before the Court, that the 360-unit obligation should be accepted by the Court because it is based on the Prior Round methodology and reflects a thirty percent (30%) reduction of Dr. Kinsey's May 2016 calculation of the Borough's Gap (1999-2015) and Third Round (2015-2025) fair share obligations.
5. Pursuant to N.J.A.C. 5:93-4.2, and as confirmed by Special Master Banisch, North Caldwell's initial combined Prior Round and Third Round Realistic Development Potential (hereinafter "RDP") was 21. As part of this Agreement, the Parties agree to include the Hilltop Parcel in the RDP calculation, which increases the RDP from 21 to 64. See attached Exhibit A. This will allow the Borough to obtain additional bonus credits. With the increased RDP of 64, the Borough's combined Prior Round and Third Round "unmet need" is 359.

6. **Satisfaction of Rehabilitation Obligation:** The Borough has a 20-unit rehabilitation obligation, and will work with Essex County or hire a separate entity to rehabilitate units in the Borough to address the Borough's rehabilitation obligation. In addition, the Borough may conduct a housing survey, as is allowed in COAH regulations, to try to reduce its rehabilitation obligation, subject to the review of the Special Master and FSHC and approval by the Court.

7. **Satisfaction of the Borough's RDP:** The Borough has a combined Prior Round and Third Round RDP of 64, which it will satisfy as follows:

- a. Forty-eight (48) family rental units from the Borough's 50-unit 100 percent affordable family rental project to be constructed by RPM Development, LLC ("RPM") on a five-acre parcel currently owned by the Borough. The Borough has entered into a Redevelopment Agreement and a PILOT Agreement with RPM, RPM has received Preliminary Site Plan Approval from the Borough Planning Board, and RPM applied for and received nine percent (9%) tax credits from the HMFA in 2017. The RPM project shall have at least fifty percent (50%) of its units as low income including thirteen percent (13%) very low income.
- b. Sixteen (16) rental bonus credits.

8. **Satisfaction of "unmet need":** For the purposes of settlement, the Borough agrees to address the 359-unit combined Prior Round and Third Round "unmet need" through the following mechanisms:

- a. Two (2) family rental affordable units from the RPM one hundred percent (100%) affordable family rental housing project.
- b. Bloomfield Avenue Overlay Zone: This overlay zone will be set at ten (10) units per acre, and will provide a twenty percent (20%) affordable housing set-aside for for-sale units and a fifteen (15%) affordable housing set-aside for rental units. See attached Exhibit B.
- c. Fairfield Road Overlay Zone: This overlay zone will be set at ten (10) units per acre, and will provide a twenty percent (20%) affordable housing set-aside for for-sale units and a fifteen percent (15%) affordable housing set-aside for rental units. See attached Exhibit C.
- d. Green Brook Golf Course Overlay Zone: FSHC and the Borough agree that if the Green Brook Country Club (Block 1600, Lot 1) ceases to remain a golf course and the owner, Green Brook Realty Associates, LLC (hereinafter "Green Brook"), advises the Borough of plans to develop said property, which would represent a changed circumstance, the Borough will then revisit its RDP, accept an RDP on the Green Brook Country Club property, and satisfy the increased RDP with units from the golf course development and/or other appropriate mechanisms consistent with this Agreement. It is noted that although building applications may be filed on or after November 1, 2019, no actual site improvements will be undertaken until on or after February 1, 2021. In the meantime, the Borough will enter into a Settlement Agreement

and adopt an overlay zone over the Green Brook Country Club site that will allow for the following proposed project:

- i. An assisted living/memory care facility, with a maximum of 130 beds and a minimum of 80 beds to be provided. Ten percent (10%) of the beds shall qualify as affordable under applicable COAH regulations.
- ii. 160 market-rate age-restricted units (55 years old +) to be designed as either stacked condo flats over parking or townhomes, and deed restricted accordingly.
- iii. No fewer than 89, and no more than 99, market-rate townhomes. Townhomes shall be defined as being "for sale" units without age restriction and including no more than three bedrooms as required by the Settlement Agreement between Green Brook Realty Associates, LLC and the Borough.
- iv. In addition to the market-rate units provided for above, Green Brook shall provide fifty (50) total affordable units as part of the proposed project. Twenty-five (25) of the affordable units shall be family rental units in one building and twenty-five (25) units shall be age-restricted senior affordable rental units restricted to seniors (55 and over) located in a second building. Ten percent (10%) of the assisted living beds in the Assisted Living Facility, in a third building, shall qualify as affordable units and each of those beds shall count toward the required twenty-five (25) senior rental affordable units. In the event the number of assisted living beds qualifying for affordable housing credits drops below thirteen (13), Green Brook shall construct one senior rental affordable unit for each unit below thirteen (13) generated by the Assisted Living Facility, to assure that the Borough receives credit for fifty (50) total affordable units. The affordable units shall be located on a separate lot. The rules governing the affordable housing residents' use of the amenities in the proposed project shall be determined collectively between Green Brook, the Borough and FSHC at the time of site plan application.
- v. In accordance with N.J.A.C. 5:93-5.6(d), the proposed project will be phased properly to ensure that the affordable units are created during the same time period as the market rate units. In addition, for each of the family and senior components of the affordable units and cumulatively, the affordable units will be thirteen percent (13%) very low income units, thirty-seven percent (37%) low income units and fifty percent (50%) moderate income units. Moreover, for any family rental units created, at least twenty percent (20%) of the affordable units will be three-bedroom units, and no more than twenty percent (20%) of the affordable units will be one bedroom units. As to the age restricted rental units, not including the Assisted Living Facility beds, said units may be any combination of one and two bedroom units. Also, (1) each affordable unit will be subject to at least a thirty (30) year affordable housing deed restriction consistent with UHAC, (2) Green Brook will contract with an experienced Administrative Agent, which may or may not be the Borough's Administrative Agent, to ensure that all of the affordable units are properly

affirmatively marketed, and (3) all other requirements detailed in the Settlement Agreement between the Borough and Green Brook regarding the affordable units will be followed.

- vi. A separate Settlement Agreement between Green Brook and the Borough, consistent with the terms of this Agreement, will be approved via a Court Order entered after a properly noticed Fairness or Compliance Hearing.
- e. The Borough will adopt a Borough-wide Mandatory Set-Aside Ordinance ("MSO"), which will require that any site that benefits from a rezoning, variance or redevelopment plan approved by the Borough that results in multi-family residential development of five (5) dwelling units or more to produce affordable housing at a set-aside rate of 20 percent for for-sale affordable units and at a set-aside rate of 15 percent for rental affordable units. The adoption of the MSO does not give any developer the right to any such rezoning, variance, redevelopment designation or other relief, or establish any obligation on the part of North Caldwell to grant such rezoning, variance, redevelopment designation or other relief. The parties agree that the MSO will not apply to the proposed single family project on the Walker property (Block 606, Lot 1).

9. Other than the possible future development of the Green Brook Country Club (Block 1600, Lot 1) as described in Paragraph 8d. herein, the Borough's RDP shall not be revisited by FSHC or any other interested party absent a substantial changed circumstance and, if such a change in circumstance occurs with the RDP, the Borough shall have the right to address the issue without negatively affecting its continuing entitlement to immunity from all Mount Laurel lawsuits through July 2, 2025.

10. The Borough agrees to require thirteen (13%) of all the affordable units referenced in this plan, with the exception of units constructed prior to July 1, 2008, and units subject to preliminary or final site plan approval prior to July 1, 2008, to be very low income units (defined as units affordable to households earning thirty percent (30%) or less of the regional median income by household size), with half of the very low income units being available to families.

11. North Caldwell will apply "rental bonus credits" in accordance with N.J.A.C. 5:93-5.15(d).

12. At least fifty percent (50%) of the units addressing the Borough's Third Round fair share obligation shall be affordable to a combination of very-low-income and low-income households, while the remaining affordable units shall be affordable to moderate-income households.

13. At least twenty five percent (25%) of the Borough's Third Round fair share obligation shall be met through rental units, including at least half in rental units available to families.

14. At least half of the units addressing the Borough's Third Round fair share obligation in total must be available to families.

15. The Borough agrees to comply with COAH's Round 2 age-restricted cap of twenty five percent (25%), and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the Borough claim credit toward its fair share obligation for age-restricted units that exceed twenty five percent (25%) of all units developed or planned to meet its Prior Round and Third Round fair share obligations.

16. The Borough and/or its administrative agent shall add the following entities to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5): Fair Share Housing Center (510 Park Boulevard, Cherry Hill, NJ 08002), the New Jersey State Conference of the NAACP, the Latino Action Network (P.O. Box 943, Freehold, NJ 07728), East Orange NAACP (P.O. Box 1127, East Orange, NJ 07019), Newark NAACP (P.O. Box 1262, Newark, NJ 07101), Morris County NAACP (P.O. Box 2256, Morristown, NJ 07962), Elizabeth NAACP (P.O. Box 6732, Elizabeth, NJ 07206), and the Supportive Housing Association. As part of its regional affirmative marketing strategies during implementation of its fair share plan, the Borough and/or its administrative agent shall also provide notice of all available affordable housing units to the above-referenced organizations.

17. All affordable housing units created pursuant to the measures set forth in this Agreement shall comply with the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of ten percent (10%) of affordable units in rental projects being required to be affordable to households earning at or below thirty five percent (35%) of the regional median household income by household size, thirteen percent (13%) of affordable units in such projects shall be required to be affordable to households earning at or below thirty percent (30%) of the regional median household income by household size subject to Paragraph 10 herein, and all other applicable law. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law. The Borough, as part of the Housing Element and Fair Share Plan that will be prepared, adopted and endorsed as a result of this Agreement, shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied.

18. Upon full execution of this Agreement, North Caldwell will place this Agreement on file in the Borough's municipal building and file a copy with the Court thirty (30) days prior to the Fairness Hearing, at which the Borough will seek judicial approval the terms of this Agreement pursuant to the legal standard set forth in Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), *aff'd o.b.*, 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. City of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). Notice of the Fairness Hearing shall be published at least thirty (30) days in advance of the Hearing. Within one hundred and twenty (120) days of the approval of this Agreement by the Court after a Fairness Hearing, North Caldwell will adopt a Housing Element and Fair Share Plan, along with a Spending Plan, and adopt all ordinances required to be adopted as part of this Agreement, and will submit same to the Court and the Court Master for review. The Borough, FSHC, the Court Master and the Court may agree to extend this period of time for good cause shown. The Borough will then apply to the Court for the scheduling of a "Compliance Hearing" seeking judicial approval of North Caldwell's adopted Housing Element and Fair Share Plan and other required documents. Although it is expected that the Special Master will provide the majority of the required testimony at both the Fairness Hearing and the Compliance Hearing, North Caldwell shall also make its consulting planner and any other relevant witnesses available for testimony at the Hearings. FSHC shall not challenge the validity of any of the documents attached hereto, or the validity of the Borough's Fair Share

Plan. If the Fairness and Compliance Hearings result in approval of this Agreement and the Borough's Fair Share Plan, the parties agree that the Borough will be entitled to either a "Judgment of Compliance and Repose" ("JOR") or the "judicial equivalent of substantive certification and accompanying protection as provided under the FHA," 221 N.J. at 6, which shall be determined by the trial judge. Each party may advocate regarding whether substantive certification or repose should be provided by the Court, with each party agreeing to accept either form of relief and to not appeal an order granting either repose or substantive certification. Among other things, the entry of such an Order shall maintain North Caldwell's immunity from all Mount Laurel lawsuits through July 2, 2025.

19. Subsequent to the signing of this Agreement, if a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch determines that North Caldwell's Round 3 obligation is decreased to 288 or less, with any relevant appeal periods having passed, the Borough may file a proposed form of Order, on notice to FSHC and the Borough's Service List, seeking to reduce its Round 3 obligation accordingly. Such relief shall be presumptively granted. Notwithstanding any such reduction, the Borough shall be obligated to implement the Fair Share Plan prepared, adopted and endorsed as a result of this Agreement, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement, maintaining all mechanisms to continue to address the remaining portion of the Borough's allocation of the Round 3 regional need, and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough's obligation below what is established in this Agreement does not provide a basis for seeking leave to amend this Agreement or the Fair Share Plan adopted pursuant to this Agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its prospective need for Round 3, the Borough may carry over any resulting surplus credits to Round 4.

20. The Borough shall prepare a Spending Plan for approval by the Court during, or prior to, the duly-noticed Compliance Hearing. FSHC reserves its right to provide any comments or objections on the Spending Plan to the Court upon review. Upon approval by the Court, the Borough and FSHC agree that the expenditures of funds contemplated in the Borough's Spending Plan shall constitute the "commitment" for expenditure required pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period contemplated therein commencing in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). Upon approval of its Spending Plan, the Borough shall also provide an annual Mount Laurel Trust Fund accounting report to the New Jersey Department of Community Affairs, Council on Affordable Housing, Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to FSHC 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.

21. On the first anniversary of the approval of the Borough's Housing Element and Fair Share Plan after a Compliance Hearing, 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 Council on Affordable Housing or its successor agency at the State level.

22. The Fair Housing Act includes two provisions regarding actions to be taken by the Borough during the ten-year period of protection provided in this agreement. The Borough agrees to comply with those provisions as follows:

- a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether the mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to 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.
- b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within thirty (30) days of the third anniversary of the approval of the Borough's Housing Element and Fair Share Plan at a Compliance Hearing, 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.
- c. In addition to the foregoing postings, the Borough may also elect to file copies of its reports with the Council on Affordable Housing or its successor agency at the State level.

23. This Agreement may be enforced by the Borough or FSHC through a motion to enforce litigant's rights or a separate action filed in Superior Court, Essex County. If FSHC determines that such action is necessary, the Borough consents to the entry of an order providing FSHC party status as an intervenor solely for purposes of its motion to enforce litigant's rights.

24. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement. However, if an appeal of the Court's approval or rejection of the Settlement Agreement is filed by a third party, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division, and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved by the Trial Court unless and until an appeal of the Trial Court's approval is successful, at which point the Parties reserve their right to return to the *status quo ante*. In this regard, the Borough and FSHC acknowledge that the parties have entered into this Agreement to settle the litigation and that each is free to take such position as it deems appropriate should the matter return to the *status quo ante*.

25. The Borough agrees to pay \$7,500 to FSHC, payable no later than January 15, 2019.

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 both the Borough and FSHC.

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 Borough and FSHC acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each person to sign this Agreement is the proper person and possesses the authority to sign the Agreement, that this Agreement contains the entire understanding of the Borough and FSHC and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

31. The Borough and FSHC acknowledge that this Agreement was not drafted by the Borough and FSHC, but was drafted, negotiated and reviewed by representatives of the Borough and FSHC and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. The Borough and FSHC expressly represent that: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the persons executing it.

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 the Borough and FSHC.

33. This Agreement constitutes the entire Agreement between the Borough and FSHC hereto and supersedes all prior oral and written agreements between the Borough and FSHC with respect to the subject matter hereof except as otherwise provided herein.

34. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which representatives of the Borough and FSHC have executed and delivered this Agreement.

35. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the Borough and FSHC by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to

change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

TO FSHC:

Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
Email: adamgordon@fairsharehousing.org

TO THE BOROUGH:

Erik C. Nolan, Esq.
Jeffrey R. Surenian & Associates, LLC
707 Union Avenue, Suite 301
Brielle, NJ 08730
Phone: (732) 612-3100
Telecopier: (732) 612-3101
Email: EN@Surenian.com

David M. Paris, Esq.
Piro, Zinna, Cifelli, Paris, & Genitempo
360 Passaic Avenue
Nutley, NJ 07110
Phone: (973) 661-0710 x 32
Telecopier: (973) 661-5157
Email: dparis@pirozinnalaw.com

**TO GREEN BROOK
COUNTRY CLUB:**

Thomas P. Scrivo, Esq.
O'Toole Scrivo Fernandez Weiner Van Lieu, LLC
14 Village Park Road
Cedar Grove, New Jersey 07009
Phone: (973) 239-5700
Telecopier: (973) 239-3400
Email: tscrivo@oslaw.com

**WITH A COPY TO THE
BOROUGH ADMINISTRATOR:**

Frank Zichelli, Administrator
Borough of North Caldwell
141 Gould Avenue
North Caldwell, NJ 07006-4213
Phone: (973) 228-6016
Telecopier: (973) 228-7984
Email: ncadmin@northcaldwell.org

**WITH A COPY TO THE
SPECIAL MASTER:**

Francis J. Banisch, III, PP/AICP
Banisch Associates
111 Main Street

Flemington, NJ 08822
Phone: (908) 782-0835
Telecopier: (908) 782-7636
Email: frankbanisch@banisch.com

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Witness/Attest:



FAIR SHARE HOUSING CENTER:

By: 

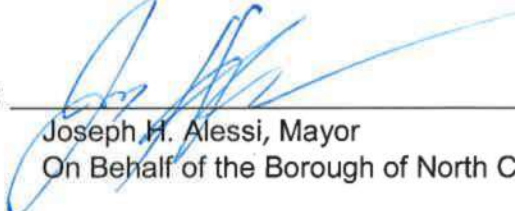
Adam M. Gordon, Esq.
On Behalf of Fair Share Housing Center

Dated: Dec 5, 2018

Witness/Attest:



BOROUGH OF NORTH CALDWELL:

By: 

Joseph H. Alessi, Mayor
On Behalf of the Borough of North Caldwell

Dated: Dec 11, 2018

Exhibit A
Vacant Land Adjustment



COMMUNITY PLANNING,
LAND DEVELOPMENT AND DESIGN,
LANDSCAPE ARCHITECTURE

BURGIS
ASSOCIATES, INC.

PRINCIPALS
JOSEPH H. BURGIS, PP, AICP
EDWARD STECKEL, A PP, IIA, ASLA

EXHIBIT A

BOROUGH OF NORTH CALDWELL: VACANT LAND ASSESSMENT

ID #	Block	Lot	Property Location	Owner	Comments	Total Area (ac)	Developable Area (ac)	Developable?
1	101	3	HILLTOP DRIVE	K. HOVNANIAN AT HILLTOP, LLC	Lot qualifies for RDP Analysis pursuant to settlement agreement	36.029	36.029	Yes
2	801	11	620 MOUNTAIN AVENUE	CUOZZO A & M % CALDWELL TOYOTA	Deed restricted to one unit	6.322	0	No
3	400	14	HARDING AVENUE	LA SERRA FARM LLC	Lot qualifies for RDP Analysis. Environmental constraints limiting developable area	1.803	1.65	Yes
4	1800	22	31 GRANDVIEW AVENUE	PAYDAR SAEED & NAHID	Lot qualifies for RDP Analysis	0.999	0.999	Yes
5	1100	7	68 BROOKSIDE TERRACE	PSEG SERVICES CORP	Lot does not qualify for RDP Analysis. Identified utility corridor	0.644	0	No
6	100	11	ELM ROAD	K. HOVNANIAN AT NORTH CALDWELL III	Lot too small to qualify for RDP Analysis	0.51	0	No
7	401	2	25 FOX RUN	FOX HOLLOW HOMEOWNERS C/O J FARNESE	Lot does not qualify for RDP Analysis due to environmental constraints limiting developable area	4.4	0	No
8	400	10	5 FOX RUN	FOX HOLLOW BUILDERS, LLC	Lot has been subdivided into Lots 10 & 12. Both individually and combined, lots are too small to qualify for RDP Analysis	0.627	0	No
9	400	13	9 FOX RUN	FOX HOLLOW BUILDERS LLC	Lot too small to qualify for RDP Analysis	0.347	0	No
10	500	11	THERESA STREET	BOROUGH OF NORTH CALDWELL	Lot too small to qualify for RDP Analysis. Could be combined with Lot 11, but steep slopes limiting developable area	0.047	0	No
11	1100	1	17 CANTERBURY DRIVE	PSEG SERVICES CORP	Lot does not qualify for RDP Analysis. Identified utility corridor	0.499	0	No
12	1100	5	MOUNTAIN AVENUE REAR	PSEG SERVICES CORP	Lot does not qualify for RDP Analysis. Identified utility corridor	10.989	0	No
13	1100	6	67 BROOKSIDE TERRACE	PSEG SERVICES CORP	Lot does not qualify for RDP Analysis. Identified utility corridor	2.569	0	No
14	801	14	640 MOUNTAIN AVENUE	MANNING DANIEL A & KATHERINE	Lot too small to qualify for RDP Analysis	0.707	0	No
15	801	15	MOUNTAIN AVENUE REAR	TOZZO DOMINICK & JENNIE L	Lot too small to qualify for RDP Analysis	0.107	0	No
16	1100	2	257 PARK AVENUE	PSEG SERVICES CORP	Lot does not qualify for RDP Analysis. Identified utility corridor	5.326	0	No
17	1100	4	123 GOULD AVENUE	PSEG SERVICES CORP	Lot does not qualify for RDP Analysis. Identified utility corridor	2.238	0	No
18	1100	3	258 PARK AVENUE	PSEG SERVICES CORP	Lot does not qualify for RDP Analysis. Identified utility corridor	3.317	0	No
19	2107	2	56 LINDSLEY ROAD	DEANGELIS GERALD & NICOLAOU, ISABE	Lot too small to qualify for RDP Analysis	0.097	0	No
20	1109	6	7 MILL STREET	BRUNNER ROBERT	Lot too small to qualify for RDP Analysis	0.059	0	No
21	2103	18	STEPHANIE DRIVE	LINDSLEY HEIGHTS CONDO ASSOCIATION	Lot identified as Common Area	0.567	0	No
22	2103	19	STEPHANIE DRIVE	LINDSLEY HEIGHTS CONDO ASSOCIATION	Lot identified as Common Area	0.729	0	No
23	2102	3	17 BIRCHWOOD ROAD	BEACHMONT DEVELOPMENT CORPORATION	Lot too small to qualify for RDP Analysis	0.69	0	No
24	2002	16	20 BIRCHWOOD ROAD	BEACHMONT DEVELOPMENT CORPORATION	Lot does not qualify for RDP Analysis due to environmental constraints limiting developable area	0.915	0	No
25	2201	2	6 FAIRFIELD ROAD	STEPPING RIDGE % COMMUNITY MGMT CO	Lot too small to qualify for RDP Analysis	0.254	0	No
26	2201	1	2 FAIRFIELD ROAD	KALYOUSSEF JOSEPH & JOUMANA	Lot too small to qualify for RDP Analysis	0.688	0	No
27	2200	1	GRANDVIEW AVENUE REAR	CHATLOS, WILLIAM (TR)	Lot does not qualify for RDP Analysis due to environmental constraints limiting developable area	0.835	0	No
28	2002	27	61 BEACHMONT TERRACE	QUINN DIANE	Lot too small to qualify for RDP Analysis	0.728	0	No

ID #	Block	Lot	Property Location	Owner	Comments	Total Area (ac)	Developable Area (ac)	Developable?
29	2111	8	70 STANLEY ROAD	ELKAY REAL ESTATE DEVELOPMENT CORP	Lot too small to qualify for RDP Analysis	0.159	0	No
30	1508	12	19 BEACHMONT TERRACE	NELSON FAMILY TRUST	Lot too small to qualify for RDP Analysis	0.23	0	No
31	2106	4	80 VERANDA AVENUE	BORDEN, L MICHELLE	Lot too small to qualify for RDP Analysis	0.14	0	No
32	2111	1	52 STANLEY ROAD	RESTUCCIA, MILDRED	Lot too small to qualify for RDP Analysis	0.009	0	No
35	1508	19	659 MOUNTAIN AVENUE	UHRYNOWICH JOHN & DORIS	Lot too small to qualify for RDP Analysis	0.294	0	No
36	2006	20	165 GRANDVIEW AVENUE	CHATLOS WILLIAM (TR)	Lot does not qualify for RDP Analysis due to environmental constraints limiting developable area	2.241	0	No
37	500	14	16 HEMLOCK DRIVE	16 HEMLOCK DRIVE LLC	Lot too small to qualify for RDP Analysis	0.568	0	No
38	700	3.01	466 MOUNTAIN AVENUE	FOST, ARTHUR & RUTH	Lot too small to qualify for RDP Analysis	0.52	0	No
39	801	9	600 MOUNTAIN AVENUE	FALCON CUSTOM HOMES, LLC	Part of 5 lot subdivision with Lot 10: under construction	5.89	0	No
40	801	10	610 MOUNTAIN AVENUE	FALCON CUSTOM HOMES, LLC	Part of 5 lot subdivision with Lot 9: under construction	2.24	0	No
41	1200	45	399 MOUNTAIN AVENUE	REIS, ANTHONY & AMY	Under construction for one single-family dwelling: does not qualify for RDP Analysis	4.03	0	No
42	1900	14	55 GRANDVIEW AVENUE	PAYDAR, SAED	Lot qualifies for RDP Analysis	0.831	0.831	Yes
43	1901	1	4 ALLEN ROAD	ALLEN ROAD DEVELOPERS, LLC	Under construction for 5 lot subdivision: does not qualify for RDP Analysis	5.19	0	No
44	2100	5	220 GRANDVIEW AVENUE	JERSEY CITY UTILITY AUTH % D SARPA	Does not qualify for RDP Analysis: utility line	1.7	0	No
45	2100	7	SUMMIT DRIVE	HIDDEN RIDGE @ NORTH CALDWELL, LLC	Does not qualify for RDP Analysis: Hidden Ridge townhouses under construction	13.05	0	No
46	2100	21	LINDSLEY ROAD	HIDDEN RIDGE @ NORTH CALDWELL, LLC	Does not qualify for RDP Analysis: common element for Hidden Ridge	0.84	0	No
47	101	1	ELM ROAD	BOROUGH OF NORTH CALDWELL	Does not qualify for RDP Analysis: Park	2.293	0	No
48	102	39	FERNDALE ROAD	BOROUGH OF NORTH CALDWELL	Lot is too small to qualify for RDP Analysis	0.04	0	No
49	103	8	87 MOUNTAIN AVENUE	BOROUGH OF NORTH CALDWELL	Lot is too small to qualify for RDP Analysis	0.095	0	No
50	200	10	16 GLENVIEW ROAD	BOROUGH OF NORTH CALDWELL	Lot is too small to qualify for RDP Analysis	0.5	0	No
51	204	1	ARBOR ROAD	BOROUGH OF NORTH CALDWELL	Does not qualify for RDP Analysis: retention basin	1.41	0	No
52	204	4	150 MOUNTAIN AVENUE	BOROUGH OF NORTH CALDWELL	Lot is too small to qualify for RDP Analysis	0.173	0	No
53	204	5	MOUNTAIN AVENUE	BOROUGH OF NORTH CALDWELL	Does not qualify for RDP Analysis: Green Acres preserved recreation area	7.26	0	No
54	204	6	HILLTOP DRIVE	COUNTY OF ESSEX	Does not qualify for RDP Analysis: part of Hilltop Preserve (Green Acres)	5.57	0	No
55	202	18	HILLTOP DRIVE	ESSEX COUNTY IMPROVEMENT AUTHORITY	Does not qualify for RDP Analysis: part of Hilltop Preserve (Green Acres)	9.01	0	No
56	206	1	MOUNTAIN AVENUE REAR	ESSEX COUNTY IMPROVEMENT AUTHORITY	Does not qualify for RDP Analysis: part of Hilltop Preserve (Green Acres)	14.18	0	No
57	300	27	MOUNTAIN AVENUE REAR	ESSEX COUNTY IMPROVEMENT AUTHORITY	Does not qualify for RDP Analysis: part of Hilltop Preserve (Green Acres)	20.54	0	No
58	300	34	ARBOR ROAD	BOROUGH OF NORTH CALDWELL	Does not qualify for RDP Analysis: retention basin	0.97	0	No
59	301	10	WIND RIDGE DRIVE	BOROUGH OF NORTH CALDWELL	Does not qualify for RDP Analysis: drainage	4.21	0	No
60	405	32	1 ROSE AVENUE	BOROUGH OF NORTH CALDWELL	Lot is too small to qualify for RDP Analysis	0.422	0	No
61	500	10	THERESA STREET	BOROUGH OF NORTH CALDWELL	Portion constrained by steep slopes, but remainder qualifies for RDP Analysis	1.38	1.3	Yes
62	500	12	THERESA STREET	BOROUGH OF NORTH CALDWELL	Lot is too small to qualify for RDP Analysis and constrained by steep slopes	0.47	0	No
63	504	20	DEER TRAIL ROAD REAR	COUNTY OF ESSEX	Does not qualify for RDP Analysis: part of Hilltop Preserve (Green Acres)	4.3	0	No
64	504	35	AMELIA STREET REAR	BOROUGH OF NORTH CALDWELL	Lot is too small to qualify for RDP Analysis	0.12	0	No
65	706	19	MOUNTAIN AVENUE REAR EAST	BOROUGH OF NORTH CALDWELL	Does not qualify for RDP Analysis: water tower	1.37	0	No
66	801	12	630 MOUNTAIN AVENUE	BOROUGH OF NORTH CALDWELL	Majority of site constrained by steep slopes, but portions qualify for RDP Analysis	10.46	3.285	Yes
67	801	13	650 MOUNTAIN AVENUE	BOROUGH OF NORTH CALDWELL	Lot is too small to qualify for RDP Analysis	0.12	0	No
68	905	23	SMULL AVENUE	BOROUGH OF NORTH CALDWELL	Lot is too small to qualify for RDP Analysis	0.2	0	No

ID #	Block	Lot	Property Location	Owner	Comments	Total Area (ac)	Developable Area (ac)	Developable?
69	1003	35	257 SMULL AVENUE	BOROUGH OF NORTH CALDWELL	Lot is too small to qualify for RDP Analysis	0.26	0	No
70	1102	1	PARK AVENUE	BOROUGH OF NORTH CALDWELL	Does not qualify for RDP Analysis: inadequate street frontage to support development	2.33	0	No
71	1103	9	136 GOULD AVENUE	BOROUGH OF NORTH CALDWELL	Does not qualify for RDP Analysis: police station	0.678	0	No
72	1200	39	141 GOULD AVENUE	BOROUGH OF NORTH CALDWELL	Does not qualify for RDP Analysis: municipal complex	29.49	0	No
73	1201	3	115 GOULD AVENUE	BOROUGH OF NORTH CALDWELL	Lot is too small to qualify for RDP Analysis	0.24	0	No
74	1307	12	EVERGREEN DRIVE	BOROUGH OF NORTH CALDWELL	Lot is too small to qualify for RDP Analysis	0.06	0	No
75	1505	22	OAK PLACE	BOROUGH OF NORTH CALDWELL	Lot is too small to qualify for RDP Analysis	0.09	0	No
76	2006	19	GRANDVIEW AVENUE	BOROUGH OF NORTH CALDWELL	Lot is too small to qualify for RDP Analysis	0.13	0	No
77	2105	1	42 LINDSLEY ROAD	BOROUGH OF NORTH CALDWELL	Lot is too small to qualify for RDP Analysis	0.05	0	No
78	1903	2	68 GRANDVIEW AVENUE	DEVRIES JR JOHN A & BRIAN R DEVRIES	Lot qualifies for RDP Analysis	2.686	2.686	Yes
79	606	1	400 MOUNTAIN AVENUE	WALKER BN & AW & CE & D O'NEILL	10.66 acres (environmentally constrained) have been purchased/preserved with Green Acres funding (purchase completed in Dec. 2016). Remaining 6.84 acres qualify for RDP Analysis. **Note, however, that this calculation is for RDP purposes only. Lot has been deed-restricted to 1 ac lots as a condition of purchase; therefore no inclusionary zoning shall be applied hereon. **	17.5	6.84	Yes

Land Categorization		Acreage
Total Vacant, Public, or Potentially Developable Land (ac.)		259.58 ac
Total Developable Area Qualifying for RDP Analysis		53.62 ac
Total RDP (at 6 units/acre and 20% set-aside)		64 units

W:\PUBLIC\PB-3000series\PB-3040 01\Nov :2018 Final VLA for Settlement Agreement 3040 01 VLA 11-6-18 Per Settlement.docx



Legend

Vacant or Public Parcels
Lot Qualifies for RDP Analysis?

- Yes
- No
- Potential

North Caldwell Boundary

- City Boundary
- City Buffer
- Wetlands
- 50 ft Wetland Buffer

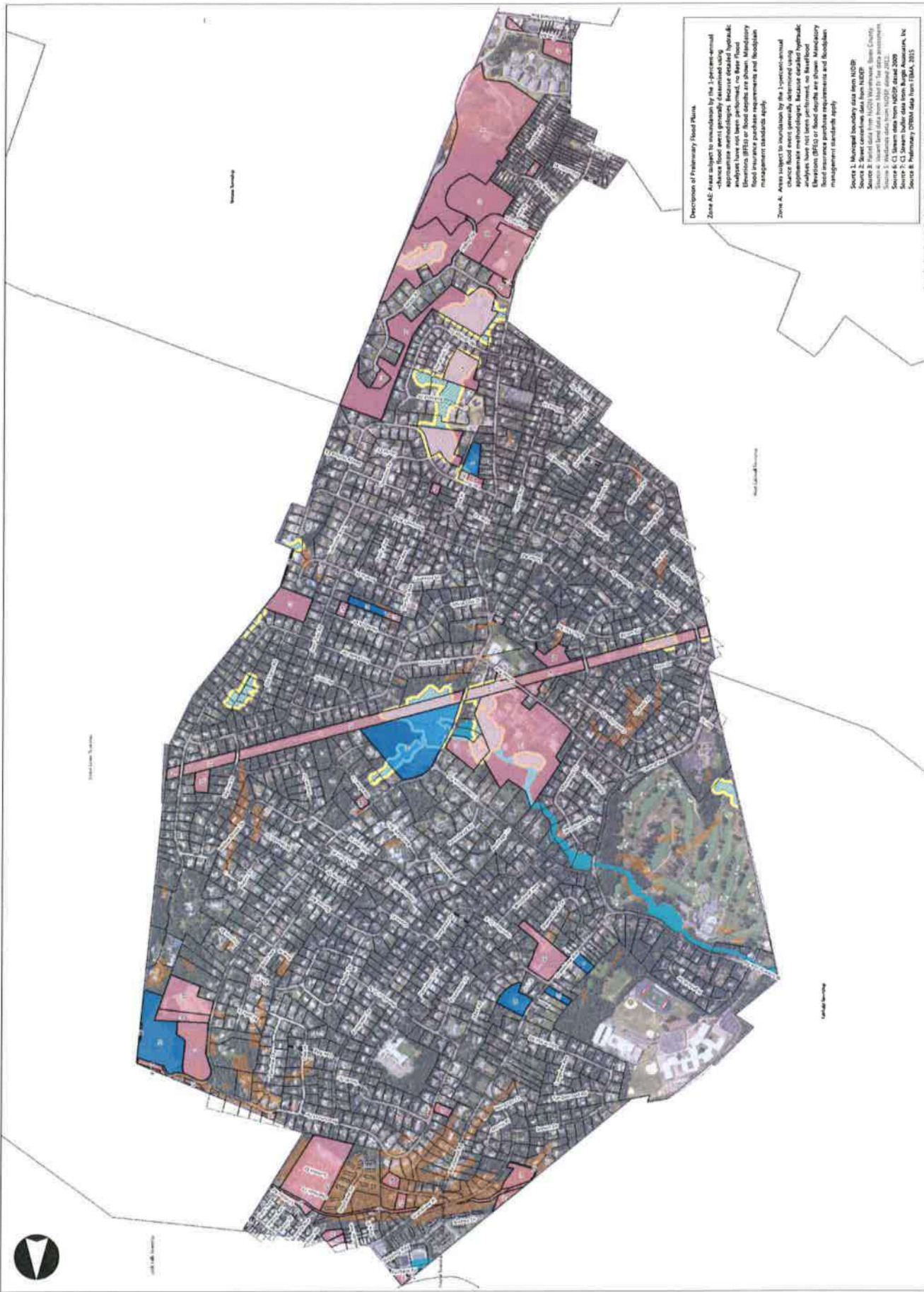
Primary Flood Hazard Zones

- A
- AE
- Steep Slopes
- <1%
- >1%

Sheet	1	2	3	4	5	6	7	8	9	10	11	12
Sheet	1	2	3	4	5	6	7	8	9	10	11	12

Sheet	1	2	3	4	5	6	7	8	9	10	11	12
Sheet	1	2	3	4	5	6	7	8	9	10	11	12

Sheet	1	2	3	4	5	6	7	8	9	10	11	12
Sheet	1	2	3	4	5	6	7	8	9	10	11	12



Decision of Preliminary Flood Plans

Zone A: Areas subject to inundation by the 1-percent annual flood. Areas that are subject to inundation by the 1-percent annual flood were generally determined using approximate methodologies. Because detailed hydraulic analysis has not been performed, no Base Flood Elevation (BFE) or flood depths are shown. Mandatory flood insurance purchase requirements and floodplain management standards apply.

Zone AE: Areas subject to inundation by the 1-percent annual flood. Areas that are subject to inundation by the 1-percent annual flood were generally determined using approximate methodologies. Because detailed hydraulic analysis has not been performed, no Base Flood Elevation (BFE) or flood depths are shown. Mandatory flood insurance purchase requirements and floodplain management standards apply.

Source 1: Municipal boundary data from NCDP
Source 2: Street centerline data from NCDP
Source 3: Wetland boundary data from NCDP
Source 4: Steep slope data from NCDP
Source 5: Wetland data from NCDP dated 2011
Source 6: C-1 stream data from NCDP dated 2009
Source 7: Flood hazard data from NCDP dated 2009
Source 8: Preliminary FEMA data from FEMA, 2015

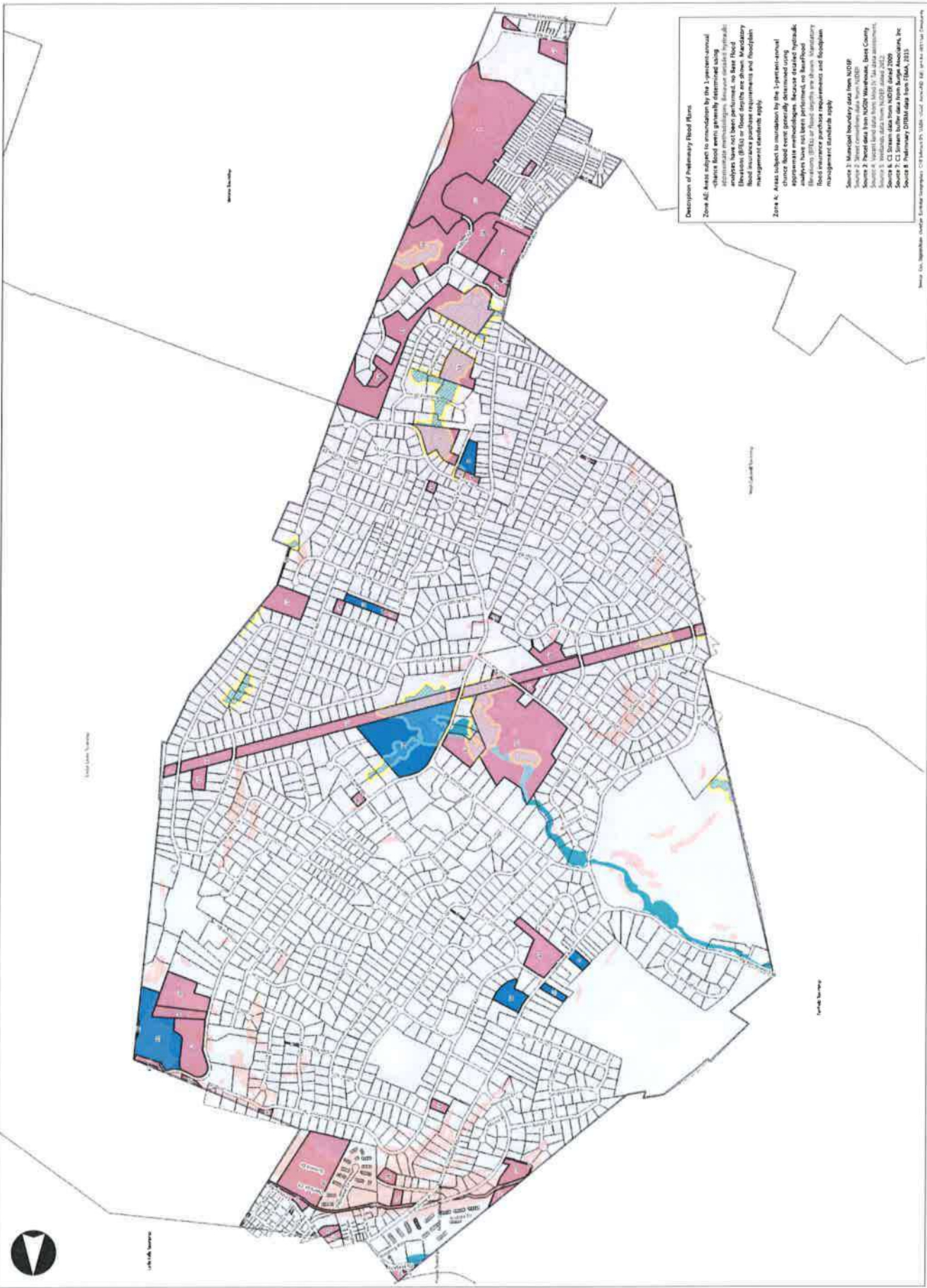


Exhibit B

Bloomfield Avenue Overlay Zone



Exhibit C

Fairfield Road Overlay Zone



BURGIS ASSOCIATES, INC.
 10000 Old York Road, Suite 200
 York, PA 17403
 Tel: 717.334.1234 Fax: 717.334.1235
 Email: info@burgis.com

**Exhibit B to
 FSHC Settlement
 Agreement**
 BOROUGH OF NORTH CALDWELL,
 CHESTER COUNTY, PA
 19380



MUN Municipal Boundaries
P Parcels

Fairfield Rd Overlay Zone
 Block 2200 Lots 3 - 6
 Block 2201 Lots 1 & 2
 Total acreage 4.73 ac



Only 1/4" = 100'
 Exhibit B to
 FSHC Settlement Agreement

Scale: 0 25 50 100 Feet

APPROVED BY BOROUGH OF NORTH CALDWELL
 PROFESSIONAL PLANNER
 NEW JERSEY LIC. NO. 2403

Project No. 2018-001
 Date: 10/1/2018
 Drawn By: J. Smith
 Checked By: J. Smith
 Project Engineer: J. Smith



APPENDIX A: SETTLEMENT AGREEMENT WITH FAIR SHARE HOUSING CENTER, DATED
DECEMBER 11, 2018



APPENDIX B: VACANT LAND ADJUSTMENT



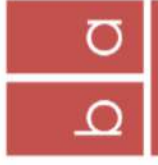
TOWNSHIP OF NORTH CALDWELL: VACANT LAND ASSESSMENT

	Comments	Total Area (ac)	Developable Area (ac)	Developable?
LLC	Lot does not qualify for RDP Analysis. Development approved	34.791	0	No
TOYOTA	Deed restricted to one unit	6.322	0	No
	Lot qualifies for RDP Analysis. Environmental constraints limiting developable area	1.803	1.65	Yes
	Lot qualifies for RDP Analysis	0.999	0.999	Yes
	Lot does not qualify for RDP Analysis. Identified utility corridor	0.644	0	No
ALDWELL III	Lot too small to qualify for RDP Analysis	0.51	0	No
S C/O J FARNESE	Lot does not qualify for RDP Analysis due to environmental constraints limiting developable area	4.4	0	No
	Lot has been subdivided into Lots 10 & 12. Both individually and combined, lots are too small to qualify for RDP Analysis	0.627	0	No
	Lot too small to qualify for RDP Analysis	0.347	0	No
VELL	Lot too small to qualify for RDP Analysis. Could be combined with Lot 11, but steep slopes limiting developable area	0.047	0	No
	Lot does not qualify for RDP Analysis. Identified utility corridor	0.499	0	No
	Lot does not qualify for RDP Analysis. Identified utility corridor	10.989	0	No
	Lot does not qualify for RDP Analysis. Identified utility corridor	2.569	0	No
ERINE	Lot too small to qualify for RDP Analysis	0.707	0	No
L	Lot too small to qualify for RDP Analysis	0.107	0	No
	Lot does not qualify for RDP Analysis. Identified utility corridor	5.326	0	No
	Lot does not qualify for RDP Analysis. Identified utility corridor	2.238	0	No
	Lot does not qualify for RDP Analysis. Identified utility corridor	3.317	0	No
AOU, ISABE	Lot too small to qualify for RDP Analysis	0.097	0	No
	Lot too small to qualify for RDP Analysis	0.059	0	No
SSOCIATION	Lot identified as Common Area	0.567	0	No
SSOCIATION	Lot identified as Common Area	0.729	0	No
CORPORATION	Lot too small to qualify for RDP Analysis	0.69	0	No

	Comments	Total Area (ac)	Developable Area (ac)	Developable?
MENT CORP	Lot too small to qualify for RDP Analysis	0.159	0	No
	Lot too small to qualify for RDP Analysis	0.23	0	No
	Lot too small to qualify for RDP Analysis	0.14	0	No
	Lot too small to qualify for RDP Analysis	0.009	0	No
	Lot too small to qualify for RDP Analysis	0.294	0	No
S	Lot does not qualify for RDP Analysis due to environmental constraints limiting developable area	2.241	0	No
C	Lot too small to qualify for RDP Analysis	0.568	0	No
	Lot too small to qualify for RDP Analysis	0.52	0	No
	Part of 5 lot subdivision with Lot 10: under construction	5.89	0	No
	Part of 5 lot subdivision with Lot 9: under construction	2.24	0	No
	Under construction for one single-family dwelling: does not qualify for RDP Analysis	4.03	0	No
	Lot qualifies for RDP Analysis	0.831	0.831	Yes
	Under construction for 5 lot subdivision: does not qualify for RDP Analysis	5.19	0	No
D SARPA	Does not qualify for RDP Analysis: utility line	1.7	0	No
LDWELL, LLC	Does not qualify for RDP Analysis: Hidden Ridge townhouses under construction	13.05	0	No
LDWELL, LLC	Does not qualify for RDP Analysis: common element for Hidden Ridge	0.84	0	No
VELL	Does not qualify for RDP Analysis: Park	2.293	0	No
VELL	Lot is too small to qualify for RDP Analysis	0.04	0	No
VELL	Lot is too small to qualify for RDP Analysis	0.095	0	No
VELL	Lot is too small to qualify for RDP Analysis	0.5	0	No
VELL	Does not qualify for RDP Analysis: retention basin	1.41	0	No
VELL	Lot is too small to qualify for RDP Analysis	0.173	0	No
VELL	Does not qualify for RDP Analysis: Green Acres preserved recreation area	7.26	0	No
NT AUTHORITY	Does not qualify for RDP Analysis: part of Hilltop Preserve (Green Acres)	5.57	0	No
	Does not qualify for RDP Analysis: part of Hilltop Preserve (Green Acres)	9.01	0	No
	Does not qualify for RDP Analysis: part of Hilltop Preserve (Green Acres)	14.18	0	No
	Does not qualify for RDP Analysis: part of Hilltop Preserve (Green Acres)	20.54	0	No
	Does not qualify for RDP Analysis: retention basin	0.97	0	No
VELL	Does not qualify for RDP Analysis: drainage	4.21	0	No
VELL	Lot is too small to qualify for RDP Analysis	0.422	0	No
VELL	Portion constrained by steep slopes, but remainder qualifies for RDP Analysis	1.38	1.3	Yes
VELL	Lot is too small to qualify for RDP Analysis and constrained by steep slopes	0.47	0	No
VELL	Does not qualify for RDP Analysis: part of Hilltop Preserve (Green Acres)	4.3	0	No

	Comments	Total Area (ac)	Developable Area (ac)	Developable?
VELL	Lot is too small to qualify for RDP Analysis	0.26	0	No
VELL	Does not qualify for RDP Analysis: inadequate street frontage to support development	2.33	0	No
VELL	Does not qualify for RDP Analysis: police station	0.678	0	No
VELL	Does not qualify for RDP Analysis: municipal complex	29.49	0	No
VELL	Lot is too small to qualify for RDP Analysis	0.24	0	No
VELL	Lot is too small to qualify for RDP Analysis	0.06	0	No
VELL	Lot is too small to qualify for RDP Analysis	0.09	0	No
VELL	Lot is too small to qualify for RDP Analysis	0.13	0	No
VELL	Lot is too small to qualify for RDP Analysis	0.05	0	No
R DEVRIES	Lot qualifies for RDP Analysis	2.686	2.686	Yes
O'NEILL	Borough is in process of purchasing tract from Walker family. 10.66 acres will be purchased with Green Acres funding and preserved (environmentally constrained). Remaining 6.84 acres will be restricted to 1 ac lots as a condition of purchase, allowing for a 5 lot subdivision. Therefore, assuming 20% set-aside, site can contribute 1 unit to RDP.	17.5	0.83	Yes

Categorization	Acreage
vacant, Public, or Potentially Developable Land (ac.)	258.34 ac
Developable Area Qualifying for RDP Analysis	11.581 ac
DP	14 units



BURGIS
ASSOCIATES, INC.

COMMUNITY PLANNING
LAND DEVELOPMENT AND DESIGN
LANDSCAPE ARCHITECTURE

25 Westwood Avenue p: 201.666.1811
Westwood, New Jersey 07675 f: 201.666.2599

Project Title:

Housing Plan

BOROUGH OF NORTH CALDWELL
ESSEX COUNTY, NEW JERSEY



Legend

Vacant or Public Parcels

Verona Township

APPENDIX C: SETTLEMENT AGREEMENT WITH GREEN BROOK REALTY ASSOCIATES, LLC,
DATED DECEMBER 11, 2018



SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") made this 11th day of December, 2018, by and between:

BOROUGH OF NORTH CALDWELL, a municipal corporation of the State of New Jersey, County of Essex, having an address at 141 Gould Avenue, North Caldwell, New Jersey 07006-4213 (hereinafter the "Borough" or "North Caldwell");

And

GREEN BROOK REALTY ASSOCIATES, LLC, a New Jersey limited liability company, having an address at 100 Passaic Avenue, Suite 240, Fairfield, New Jersey 07004 (hereinafter "Green Brook");

Collectively, the Borough and Green Brook shall be referred to as the "Parties."

WHEREAS, in response to the New Jersey Supreme Court's decision In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015 ("Mount Laurel IV"), the Borough filed an action with the Superior Court of New Jersey ("Court"), entitled In the Matter of the Application of the Borough of North Caldwell, County of Essex, Docket No. ESX-L-4696-15 (the "Compliance Action"), seeking a Judgment of Compliance and Repose approving its Housing Element and Fair Share Plan (hereinafter "Affordable Housing Plan"), in addition to related relief, and simultaneously filed a motion for temporary immunity, which was subsequently granted by the Court and is still in full force and effect; and

WHEREAS, the Borough and Fair Share Housing Center ("FSHC") subsequently negotiated and entered into a Settlement Agreement dated as of September 12, 2017 (hereinafter "FSHC Settlement Agreement") to globally settle the Compliance Action, and a Fairness Hearing was scheduled by the Court to approve the FSHC Settlement Agreement; and

WHEREAS, before the Fairness Hearing could be held, Green Brook became an "interested party" in the Compliance Action, and the Fairness Hearing was adjourned to allow time for Green Brook and the Borough to negotiate a settlement; and

WHEREAS, Green Brook is the property owner of the current Green Brook Country Club (the "Property"), which is described on the Borough's tax map as Block 1600, Lot 1; and consists of 99.96 total acres in North Caldwell, 87.05 acres of which are developable, and an additional 71.2 acres located in the adjacent Township of Fairfield; and

WHEREAS, the Parties engaged in good faith negotiations regarding inclusion of Green Brook in the Borough's Affordable Housing Plan, and the Parties having agreed to settle the Action and to present this settlement to the trial court with jurisdiction over this matter to review and approve, 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.

NOW THEREFORE, the Parties agree to be mutually bound and hereby agree as follows:

1. Through the crediting described in this Agreement and through the adoption and implementation of an Affordable Housing Plan that is consistent with this Agreement, and if the golf course is developed in the way described herein, the Borough will partially satisfy its obligations for the Prior Round (1987-1999) and for the Gap + Prospective Need (1999-2025) under the Mount Laurel doctrine, the Mount Laurel IV decision, and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. ("FHA").
2. The Borough and FSHC will amend the FSHC Settlement Agreement to incorporate the proposed project described below, and said agreement will be approved via an Order entered after a properly noticed Fairness Hearing is held.
3. Green Brook intends to operate the Property as a country club for a minimum of three (3) years through October 2020, and agrees not to file for any municipal site plan approval under the overlay zoning detailed below prior to November 1, 2019, and agrees not to commence construction prior to February 1, 2021.
4. In order to achieve the total number of units agreed to in this Agreement, maximum building height shall be permitted as follows:

Assisted Living
Active Adult (Age Restricted)

3 Stories
4 Stories over parking where building is located greater than 500 feet from an existing public street.
3 Stories over parking where building is located less than 500 feet from an existing public street. In no event shall any building be greater than 55 feet in height if located more than 500 feet from a public street or 45 feet in height if located less than 500 feet from a public street which heights shall be measured from first floor finished grade to midpoint of roof.

Townhomes
Affordable Housing Buildings

3 Stories
3 Stories

5. The affordable units shall be located in two or more buildings to improve both finance options and efficient management. The buildings containing the affordable units shall utilize the same exterior building materials as the market rate buildings. The rules governing the affordable housing residents' use of the amenities for the proposed project shall be determined collectively between Green Brook, the Borough and FSHC at the time of site plan application.

The governing bulk standards are as set forth below:

Borough of North Caldwell	
<u>Proposed Zoning – Residential Excluding Assisted Living</u>	
Minimum Lot Area	75 acres
	25 feet
<u>Minimum Building Setbacks</u>	(excluding
<u>Internal Roadways</u>	sidewalk and
	driveways)
	100 feet (THs)
Greenbrook Road and Central Ave.	200 feet (Age
	Restricted)
Building to Building	20 feet
Internal Lot Lines	25 feet
Parking (minimum)	
Age Restricted Housing	2.0 spaces/unit
Affordable Housing	1.5 spaces/unit
Market Rate Townhouses	2.3 spaces/unit
Buffer distance to existing residential zones	To be set forth in
	Ordinance
<u>Assisted Living Zoning</u>	
Minimum Site Area	4 acres
<u>Minimum Setbacks</u>	
Central Avenue	50 feet
Internal Property Lines	25 feet
Maximum Density	35 beds per acre
Buffer distance to existing residential zones	To be set forth in
	Ordinance

Maximum Impervious Cover

Maximum impervious cover shall be 33% and shall be calculated on a site wide basis. In calculating impervious cover, the denominator shall be the site's gross acreage (approximately 100 acres) and the numerator shall be all impervious surfaces except roads and streets.

6. The Borough hereby confirms support for the Green Brook submissions and applications for all utilities (specifically including water and sewer service) and all necessary government agency or private utility approvals related to all aspects of the Development (defined below) and will express such written support within thirty (30) days of a written request for such support from Green Brook. Specifically, the Borough shall assist Green Brook in their dealings with Essex County, NJDOT, NJDEP, Caldwell Sewerage Authority, and any other public or private entity or utility with which Green Brook must deal in order to develop the Property consistent with the terms herein. The Borough will not, however, provide support or assistance for applications to the North Caldwell Planning Board, the North Caldwell Zoning Board of Adjustment or the Essex County Planning Board for applications that modify or deviate from this Agreement.
7. Consistent with N.J.S.A. 52:27D-301 et seq. (Section 14(b)), Green Brook shall not be subject to cost generative land use ordinances in order to achieve the number of units set forth in this Agreement or to achieve a superior development layout. Green Brook shall be responsible for creating, extending or improving on and off-site infrastructure necessary to provide adequate potable water, waste water and stormwater service to the site, including control of storm water generated by the development of this site.
8. **Affordable Housing Requirements:** All affordable units in the Green Brook proposed project shall comply with the FHA, applicable Council on Affordable Housing ("COAH") regulations, Uniform Housing Affordability Controls, N.J.A.C. 5:80:26.1 et. seq. ("UHAC"), the Borough's Affordable Housing Ordinance, any applicable order of the Court (including any Judgment of Compliance and Repose Order entered by the Court), and other applicable laws as may be amended and supplemented. Green Brook will also comply with the following provisions regarding the affordable units in its proposed project, which provisions will prevail in the case of a conflict with UHAC:
 - a. **Deed Restriction Period:** Green Brook shall have an obligation to deed restrict the affordable units in the proposed project as very low, low or moderate income affordable units for a period of at least thirty (30) years from the date of the initial occupancy of each affordable unit (the "Deed-Restriction Period"), until the Borough takes action to release the controls on affordability, so that the Borough may count each affordable unit against its obligation to provide affordable housing. The Parties

agree that the affordability controls shall not expire until such time, after thirty (30) years from the date of initial occupancy that the Borough takes action to release the controls on affordability, and that, thereafter, the affordability controls shall continue in effect until the date on which the individual affordable rental unit shall become vacant, provided that the occupant household continues to earn a gross annual income of less than 80 percent of the applicable median income. See N.J.A.C. 5:80-26.11(b). If, at any time after the release of the affordability controls by the Borough, a rental household's income is found to exceed 80 percent of the regional median income, the rental rate restriction shall expire at the later of either the next scheduled lease renewal or sixty (60) days. See Ibid.

- b. **Deed Restriction:** Green Brook shall execute and record a Deed Restriction for the affordable units in a form agreed upon between the Parties before the first Certificate of Occupancy is issued for the Inclusionary Development. The Deed Restriction will be recorded in the Essex County Clerk's office. The Borough shall take all actions necessary to release and discharge the Deed Restriction with respect to each affordable unit upon the expiration of the Deed Restriction Period with respect to such unit, subject to the terms of 8a. hereof.
- c. **Income Distribution Requirements:** Thirteen percent (13%) of the total number of the affordable rental units must be very low-income units, thirty-seven (37%) of the total number of affordable rental units must be low income units, and the remaining fifty percent (50%) must be moderate income rental units. These percentages shall be met both cumulatively across all of the affordable housing units in the entire development and separately for the family and age-restricted components of the affordable housing units.
- d. **Bedroom Mix:** For the family rental units in the proposed affordable housing project, at least twenty percent (20%) of the affordable units shall be three-bedroom units, and no more than twenty percent (20%) of the affordable units shall be one-bedroom units. The remainder of the affordable family rental units shall be two- or three-bedroom units. As to the affordable age restricted rental units, not including the Assisted Living Facility beds, said units may be any combination of one- and two-bedroom units.
- e. **Other Affordable Housing Unit Requirements:** Green Brook will also comply with all of the other requirements of UHAC and the Borough's Affordable Housing Ordinance, including, but not limited to, (1) affirmative marketing requirements, (2) candidate qualification and screening requirements, and (3) unit phasing

requirements. As to phasing requirements, Green Brook will follow the phasing requirements found in COAH regulation N.J.A.C. 5:93-5.6(d).

- f. **Administrative Agent:** Green Brook shall contract with a qualified and experienced third party administrative agent, which may be the Borough's administrative agent (the "Administrative Agent") for the administration of the affordable units and shall have the obligation to pay all costs associated with properly deed restricting the affordable units in accordance with this Agreement for the Deed-Restriction Period. Green Brook and its Administrative Agent shall work with the Borough and the Borough's administrative agent, should Green Brook's and the Borough's administrative agent not be one and the same, regarding any affordable housing monitoring requirements imposed by COAH or the Court. Green Brook shall provide, within thirty (30) days after written notice, detailed information reasonably requested by the Borough or the Borough's Administrative Agent, should Green Brook's and the Borough's Administrative Agent not be one and the same, concerning Green Brook's compliance with UHAC, the Borough's Affordable Housing Ordinance, the Borough's Affordable Housing Plan, all applicable Court orders (including the Borough's JOR), and other applicable laws.
 - g. **Inclusion Of Affordable Units In The Borough's Amended Affordable Housing Plan:** The Parties agree that all of the affordable units in the proposed project are to be included in the Borough's Affordable Housing Plan, which will be approved by the Court via a Judgment of Compliance and Repose after a properly noticed Compliance Hearing, and that the affordable housing credits generated by this proposed project will be applied against the Borough's gap (1999-2015) and Prospective Need (2015-2025) obligations.
 - h. **UHAC.** Notwithstanding anything to the contrary contained herein, to the extent there is any discrepancy between UHAC and the Borough's Affordable Housing Ordinance and/or UHAC and this Agreement, the terms of the Borough's Affordable Housing Ordinance and/or this Agreement, not UHAC, shall control.
 - i. **Adaptability Requirement:** 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.
9. As an essential term of this settlement, within sixty (60) days after the Court enters a Judgment of Compliance and Repose approving the Township's Housing Element and Fair Share Plan and this Agreement, the Borough shall adopt an ordinance establishing an overlay zone of the Green Brook Property (the "Rezoning Ordinance"), which is

materially consistent with the concept plan attached hereto as Exhibit A, and permit the development of the Property consistent with Sections 4 and 5 above, and the following provisions:

- a. Assisted living/memory care facility (the "Assisted Living Facility"), with a maximum of 130 beds and a minimum of 80 beds to be provided. Ten percent (10%) of the beds shall qualify as affordable under applicable COAH regulations.
- b. 160 market-rate age restricted units (55 years old and over) to be designed as either stacked condo flats over parking or townhomes.
- c. No fewer than 89, and no more than 99, market-rate townhomes. Townhomes shall be defined as being "for sale" units without age restriction and including no more than three bedrooms. All townhome units shall have either a first-floor master suite or an elevator. Second floor master suites shall be at least 500 square feet including bathrooms and closets. All such townhomes shall contain/offer no more than three bedrooms in any configuration.
- d. In addition to the market rate units provided for above, Green Brook shall provide fifty (50) affordable units as part of the proposed project. Twenty-five (25) of the affordable units shall be family rental units in one building and twenty-five (25) units shall be age-restricted senior rental units restricted to seniors (55 and over) located in a second building. Ten percent (10%) of the assisted living beds in the Assisted Living Facility shall qualify as affordable units and each of those beds shall count toward the required twenty-five (25) senior rental units. In the event the number of assisted living beds qualifying for affordable housing credits drops below thirteen (13), Green Brook shall construct one senior rental affordable unit for each unit below thirteen (13) generated by the Assisted Living Facility, to assure that the Borough receives credit for fifty (50) total affordable units.
 - (i) the affordable units shall be located on a separate lot; and
 - (ii) all of the affordable units shall be subject to the affordable housing requirements detailed in Section 8 herein; and
 - (iii) in addition to the deed restriction for the age-restricted affordable units, a separate deed restriction shall be entered into for each of the age-restricted market rate units.

- e. In no event shall the total number of units, excluding all assisted living beds, exceed 299 units. The assisted living use, age-restricted use, market rate use and affordable housing may each be located on their own separate lot and there shall be no requirement that each lot have frontage on a public road.
- f. The Development shall include amenities remaining from the existing country club or added or relocated as necessary, including, but not limited to:
 - (i) the clubhouse, or some portion thereof;
 - (ii) outdoor swimming pool;
 - (iii) fitness center;
 - (iv) outdoor patio/BBQ area;
 - (v) tennis courts; and
 - (vi) dog park.
- g. In the overlay zone, the Borough shall require the dedication to the Borough by Green Brook of up to 12 contiguous acres of buildable open space ("municipal site") suitable for future municipal use, including but not limited to, potential school construction. Green Brook and the Borough shall negotiate in good faith to establish the location of the municipal site as part of the site planning process.
- h. The overlay zone shall also permit the operation of a (i) banquet facility similar in size and scope to the existing operation and (ii) first class, sit-down public restaurant operation (the "Restaurant"). The Restaurant shall have seating for no more than 150 indoor patrons and 50 outdoor patrons when weather permits. No amplified music shall be played outdoors after 10:00pm as part of the Restaurant operation, and no outdoor seating shall be located within 100 feet of a private residence. The Borough shall have approval rights over any Restaurant operator, which approval shall be granted by either the governing body or the Planning Board, and shall not be unreasonably withheld.
- i. Upon introduction of the Rezoning Ordinance, the Borough shall refer the Rezoning Ordinance to the Planning Board for review and recommendation at the Planning Board's next regularly scheduled meeting. At the next regularly scheduled Borough Council meeting after a recommendation has been made to the Borough by the Planning Board regarding the Rezoning Ordinance, or after the expiration of the thirty-five (35) day referral period, whichever is earlier, the Borough will vote on the approval of the Rezoning Ordinance. In the event that the Borough votes "No" at any time, the Parties shall be restored to the *status quo ante*, and all claims and defenses available now shall be available to the Parties. Notwithstanding anything to the

contrary herein, Green Brook shall have the right to apply to the Court to become an intervenor in the Compliance Action, and if such application is unsuccessful, Green Brook shall remain an "interested party" in the Compliance Action, which shall not impact Green Brook's rights under this Agreement.

10. Prior to becoming effective, this Agreement must be approved by the Court via an Order entered after a properly noticed Fairness or Compliance Hearing. In the event the Court does not approve this Agreement, it shall be null and void. The Borough's obligation to Green Brook with respect to the Rezoning Ordinance is separate and apart from the Court's ultimate determination of the Borough's compliance with its obligations pursuant to Mt. Laurel IV, unless this Agreement is not approved by Court Order after a properly noticed Fairness or Compliance Hearing.
11. If an appeal is filed of the Court's approval or rejection of this Agreement, the Parties agree to defend this 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 this 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.
12. This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Essex County.
13. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
14. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
15. 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.
16. 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 this 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.

17. 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.
18. 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.
19. 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.
20. No member, official or employee of the Borough shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
21. 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.
22. 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 THE COURT MASTER:

Francis J. Banisch, III, PP/AICP
Banisch Associates
111 Main Street
Flemington, NJ 08822

TO THE BOROUGH:

Erik C. Nolan, Esq.
Jeffrey R. Surenian & Associates, LLC
707 Union Avenue
Brielle, New Jersey 08730

WITH A COPY TO:

David M. Paris, Esq.
Piro Zinna Cifelli Paris & Genitempo, LLC
360 Passaic Avenue
Nutley, New Jersey 07110

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

Tami Michelotti
Acting North Caldwell Borough Clerk
141 Gould Avenue
North Caldwell, New Jersey 07006

TO WOODMONT PROPERTIES:

Thomas P. Scrivo, Esq.
O'Toole Scrivo Fernandez Weiner Van Lieu, LLC
14 Village Park Road
Cedar Grove, New Jersey 07009

WITH A COPY TO:

Stephen A. Santola, Esq.
Woodmont Properties, LLC
100 Passaic Avenue, Suite 240
Fairfield, New Jersey 07004


23. Green Brook has heretofore presented a Conceptual Development Plan to the Borough and its professionals to develop the Property, which is attached hereto as Exhibit A.
24. Green Brook shall have the right to assign any portion of this Agreement to an Affiliated Entity without consent of the Borough. An Affiliated Entity shall be any entity owned or controlled by either Eric Witmond or Bruce Schonbraun. Green Brook shall have the right to assign its rights under this Agreement to any individual, entity, or organization that is not an Affiliated Entity with the prior approval of the Borough, which approval shall not be unreasonably withheld. The Borough shall not be permitted to unreasonably prevent or delay an assignment by Green Brook to any party not an Affiliated Entity of any of its rights under this Agreement in any manner. The assignee shall be bound by each and every term of this Agreement and the Exhibit hereto as though they were a signatory hereto. Proposed assignments to non-Affiliated Entities shall be provided to the Borough for review and approval together with (i) financial information and

experience of the proposed assignee and (ii) the proposed assignee's time table for development, at least 30 days prior to the anticipated execution of the assignment.


25. The parties hereto understand and agree that the within Settlement Agreement shall be subject to the terms of a Developers Agreement between the parties regarding the construction phase of the potential project, including, but not limited to the incorporation of the terms and conditions of resolutions and approvals granted by the Governing Body and Planning Board of the Borough of North Caldwell or any other governmental entity with jurisdiction herein, hours and terms of construction on the site, and Green Brook's indemnification, defense and responsibility for off-site impacts encountered or caused during construction.

By signing below, each party acknowledges that the signatory was authorized to execute this Agreement by the entity for which he or she signs.

Green Brook Realty Associates LLC

By: 
Name: Eric Whitnordt
Title: Manager
Date: 12/17/18

Borough of North Caldwell, Essex County

By: 
Name: Joseph H. Alessi
Title: Mayor
Date:

Attest:


By: 
Name: Tami Michelotti
Title: Acting Municipal Clerk
Date:

Exhibit A

Conceptual Development Plans

APPENDIX D: COURT ORDER APPROVING SETTLEMENT AGREEMENTS BETWEEN THE
BOROUGH AND FAIR SHARE HOUSING CENTER AND GREEN BROOK REALTY ASSOCIATES, LLC



JEFFREY R. SURENIAN AND ASSOCIATES, LLC

Brielle Galleria

707 Union Avenue, Suite 301

Brielle, NJ 08730

(732) 612-3100

Attorneys for Declaratory Plaintiff, Borough of North Caldwell

By: Jeffrey R. Surenian (Attorney ID: 024231983)

Erik C. Nolan (Attorney ID: 014032006)

FILED

11:10 am, Feb 15, 2019

IN THE MATTER OF THE
APPLICATION OF THE BOROUGH OF
NORTH CALDWELL, COUNTY OF
ESSEX

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

DOCKET NO: ESX-L-4696-15

Civil Action - *Mount Laurel*

**ORDER APPROVING SETTLEMENT
AGREEMENTS BETWEEN THE
BOROUGH OF NORTH CALDWELL
AND FAIR SHARE HOUSING CENTER
AND THE BOROUGH OF NORTH
CALDWELL AND GREEN BROOK
REALTY ASSOCIATES, LLC**

THIS MATTER having been opened to the Court by Jeffrey R. Surenian and Associates, LLC, on behalf of declaratory plaintiff, Borough of North Caldwell (hereinafter "the Borough" or "North Caldwell") via a Declaratory Judgment Complaint filed on July 2, 2015 to approve the Borough's Housing Element and Fair Share Plan (hereinafter "Fair Share Plan") in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) ("Mount Laurel IV"); and the Court having granted the Borough immunity from Mount Laurel lawsuits from the time of the filing of the Borough's Declaratory Judgment action (hereinafter "DJ Action"); and the Court having appointed Francis J. Banisch, P.P., A.I.C.P., as the Special Mount Laurel Court Master (hereinafter the "Court Master"); and Fair Share Housing Center ("FSHC") having participated in the Borough's DJ Action as an "interested party", and later as an intervenor for settlement purposes only; and FSHC's expert, David Kinsey, Ph.D., P.P., F.A.I.C.P., having issued an

expert report that calculated fair share obligations for all of the municipalities in the state; and the Borough having hired Econsult Solutions, Inc., which produced its own expert report calculating fair share obligations for all municipalities in the state; and the Borough's professionals and Adam M. Gordon, Esq., of FSHC having entered into mediation supervised by the Court Master to try to agree on the magnitude of the Borough's Round 3 fair share obligation, and how the Borough would comply with same; and the Borough and FSHC having initially negotiated and entered into a settlement agreement in September of 2017; and before a Fairness Hearing could be held to approve the settlement agreement, Green Brook Associates, LLC (hereinafter "Green Brook") having approached the Borough about a possible project on the Green Brook Golf Course; and Green Brook and the Borough having entered into settlement negotiations, which eventually led to the execution of a settlement agreement between the parties on December 11, 2018 (attached hereto as Exhibit P-3, and referred to hereinafter as the "Green Brook Settlement Agreement"); and the Borough and FSHC having amended its settlement agreement to include a possible project on the Green Brook Golf Course (attached hereto as Exhibit P-1, and referred to hereinafter as the "FSHC Settlement Agreement"); and that at this point in the process resulting from the Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for FSHC and the Borough to have arrived at a settlement regarding the Borough's Rehabilitation, Prior Round (1987-1999), Gap (1999-2015) and Prospective Need (2015-2025) obligations, instead of doing so through the plenary adjudication of same; and the Court having set a date of January 25, 2019 for a Fairness Hearing to entertain approval of the FSHC Settlement Agreement and the Green Brook Settlement Agreement, and to determine whether said settlements are fair, reasonable and adequately protects the interest of low and moderate income households; and the Borough

having provided proper public and actual notice of the Fairness Hearing; and no objections to the settlements having been received; and counsel for the Borough having prepared a Notice Certification, (attached hereto as Exhibit P-5), to document that proper notice of the Fairness Hearing had been given and that no objections had been received; and the Court Master having submitted a report to the Court on January 18, 2019 (attached hereto as Exhibit P-6), in which he recommended that the Court approve the FSHC Settlement Agreement; and the Fairness Hearing having been held on January 25, 2019, during which Exhibits P-1 to P-6, which are attached hereto, were marked into evidence; and the Court having considered the testimony taken during the Fairness Hearing, as well as the comments of counsel; and the Court having reviewed all of the documents submitted into evidence during the Fairness Hearing; and the Court being satisfied that the parties are entitled to the relief sought; and good cause having been shown;

It is hereby ordered on this 15TH day of FEBRUARY, 2019 as follows:

1. The Court finds and determines, pursuant to the judicial standards prescribed by the Appellate Division in East/West Venture v. Bor. Of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996), and through analysis of the FSHC Settlement Agreement (attached hereto as Exhibit P-1) and the Green Brook Realty Associates, LLC Settlement Agreement (attached hereto as Exhibit P-3), the Court Master's report (attached hereto as Exhibit P-6), and on the basis of the testimony taken during a Fairness Hearing conducted on January 25, 2019; that the settlement between FSHC and the Borough, as well as the settlement between Green Brook and the Borough, are fair, reasonable and adequately protect the interest of low and moderate income households, and the Court hereby approves both the FSHC Settlement Agreement, which is attached hereto as Exhibit P-1, and the Green Brook Settlement Agreement, which is attached hereto as Exhibit P-3.

2. Within 120 days of the date of the Fairness Hearing, the Borough and its Planning Board shall (a) prepare, adopt and endorse a Housing Element and Fair Share Plan, which shall include a Spending Plan, and shall reflect all of the terms and conditions of the FSHC Settlement Agreement (Exhibit P-1), and will also satisfy the conditions listed in the Court Master's January 18, 2019 report (Exhibit P-6); and shall (b) submit the adopted and endorsed Housing Element and Fair Share Plan, with all required supplementary documentation and adopted ordinances and resolutions needed to implement the plan, to the Court, the Court Master and FSHC for final review and recommendation by the Court Master and for approval by the Court. A Compliance Hearing to consider approval of the Borough's Housing Element and Fair Share Plan and the issuance of a Judgment of Compliance and Repose, which will provide the Borough and its Planning Board immunity from all Mount Laurel lawsuits through July 2, 2025 other than those brought to enforce the terms of the Settlement Agreements or the court's orders, is scheduled for July 12, 2019 at 1:30 p.m.

3. The temporary immunity from Mount Laurel lawsuits that is currently in place for the Borough and its Planning Board will remain in place until one month after a final Compliance Hearing is held.

4. As a result of the Settlement between the Borough and FSHC, the Borough's Rehabilitation Obligation is 20, the Borough's Prior Round Obligation (1987-1999) is 63 and the Borough's Gap (1999-2015) + Prospective Need (2015-2025) or Round 3 Obligation is 360.

5. The Borough will address its Rehabilitation Obligation of 20 by working with Essex County, or by hiring a separate entity to rehabilitate units in the Borough. The Borough may conduct a housing survey, as is allowed in COAH regulations, to try to reduce its

Rehabilitation Obligation, subject to the review of the Court Master and FSHC, and the approval of the Court.

6. The Borough has prepared a Vacant Land Analysis for its combined Prior Round and Round 3 Obligation, and, as a result of that analysis, the Borough, FSHC and the Court Master have agreed that the Borough is entitled to a Vacant Land Adjustment such that it has a combined Prior Round + Round 3 RDP of 64, and a remaining Prior Round + Round 3 “unmet need” of 359.

7. The Borough will address its combined Prior Round + Round 3 RDP of 64 as follows:

- a. RPM Project: Forty-eight (48) family rental units from the Borough’s 50-unit 100 percent affordable family rental project to be constructed by RPM Development, LLC (“RPM”) on a five-acre parcel located within the Borough. The Borough has entered into a Redevelopment Agreement and a PILOT Agreement with RPM, RPM has received Preliminary Site Plan Approval from the Borough Planning Board, and RPM applied for and received nine percent (9%) tax credits from the HMFA in 2017.
- a. Sixteen (16) rental bonus credits.

8. The Borough will address its remaining Prior Round + Round 3 “unmet need” as follows:

- a. RPM Project: Two (2) remaining family rental affordable units from the RPM one hundred percent (100%) affordable family rental housing project.
- a) Bloomfield Avenue Overlay Zone: This overlay zone will be set at ten (10) units per acre, and will provide a twenty percent (20%) affordable housing set-aside for for-sale units and a fifteen (15%) affordable housing set-aside for rental units.
- b) Fairfield Road Overlay Zone: This overlay zone will be set at ten (10) units per acre, and will provide a twenty percent (20%) affordable housing set-aside for for-sale units and a fifteen percent (15%) affordable housing set-aside for rental units.

- c) Mandatory Set-Aside Ordinance. The Borough will adopt a Borough-wide Mandatory Set-Aside Ordinance ("MSO"), which will require that any site that benefits from a rezoning, variance or redevelopment plan approved by the Borough that results in multi-family residential development of five (5) dwelling units or more to produce affordable housing at a set-aside rate of twenty percent (20%) for for-sale affordable units and at a set-aside rate of fifteen percent (15%) for rental affordable units. The adoption of the MSO does not give any developer the right to any such rezoning, variance, redevelopment designation or other relief, or establish any obligation on the part of the Township to grant such rezoning, variance, redevelopment designation or other relief.

- b. Green Brook Golf Course Overlay Zone: The Borough will adopt an Ordinance to create an overlay zone over the Green Brook Country Club (Block 1600, Lot 1), so that affordable housing can be created on the site if it ceases to remain a golf course in the near future. If this were to occur, the project would consist of the following:
 - i. An assisted living/memory care facility, with a maximum of 130 beds and a minimum of 80 beds to be provided. Ten percent (10%) of the beds shall qualify as affordable under applicable COAH regulations.
 - ii. 160 market-rate age-restricted units (55 years old +) to be designed as either stacked condo flats over parking or townhomes, and deed restricted accordingly.
 - iii. No fewer than 89, and no more than 99, market-rate townhomes. Townhomes shall be defined as being "for sale" units without age restriction and including no more than three bedrooms.
 - iv. In addition to the market-rate units provided for above, Green Brook shall provide fifty (50) total affordable units as part of the proposed project. Twenty-five (25) of the affordable units shall be family rental units in one building and twenty-five (25) units shall be age-restricted senior affordable rental units restricted to seniors (55 and over) located in a second building. Ten percent (10%) of the assisted living beds in the Assisted Living Facility, in a third building, shall qualify as affordable units and each of those beds shall count toward the required twenty-five (25) senior rental affordable units. In the event the number of assisted living beds qualifying for affordable housing

credits drops below thirteen (13), Green Brook shall construct one senior rental affordable unit for each unit below thirteen (13) generated by the Assisted Living Facility, to assure that the Borough receives credit for fifty (50) total affordable units. The affordable units will be located on a separate lot.

9. All other terms and conditions in the FSHC Settlement Agreement (Exhibit P-1) shall be adhered to, and all such terms and conditions are hereby incorporated by reference.

10. Counsel for the Borough shall provide copies of this Order to all counsel of record and to the Court Master within seven (7) days of ^{the date hereof per the Rules of Court.} ~~receipt~~

X Unopposed

Robert H. Gardner, JSC
Honorable Robert H. Gardner, J.S.C.