



# Housing Element + Fair Share Plan

Prepared By:



Topology, LLC  
60 Union Street, 1st Floor  
Newark, NJ 07105

**Land Use Board Hearing:**  
July 6, 2021

# Acknowledgements

**Borough Mayor**

Thomas Mulligan

**Borough Council**

Melissa Burnside

Russell Greuter

Thomas Haynes

James Hurley

Patrick McDonald

Robert Smith

**Borough Administrator**

Patricia Reiche

**Borough Land Use Board**

Kenneth Banbor

Kenneth Blair, Chairman

Joyce Freiermuth

Russell Greuter, Councilman

Janet Leonard

William Hople

Mark Howarth

Barbara Koch

Ron Hamman

Thomas Mulligan, Mayor

Kim Rose

**Special Counsel**

Richard Beilin, Esq.

**Land Use Board Attorney**

John Mills III, Esq.

**Land Use Board Engineer**

Samantha Anello, PE, CME, CFM

**Land Use Board Secretary**

Colleen Reardon

**Prepared By:**

Golda Speyer, PP, AICP

NJ Planner License No. 639400



Greer Patras, PP, AICP

NJ Planner License No. 636300

Assistance from Marc Lincer, Associate Planner

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

# Table of Contents

<b>1. Introduction.....</b>	<b>4</b>
1.1.New Jersey Affordable Housing Policy: A Brief History .....	4
1.2.Housing Plan Requirements.....	9
1.3.Applicable Methodologies .....	10
<b>2. Municipal Summary.....</b>	<b>12</b>
2.1.A Note on the Data .....	12
2.2.Demographic Characteristics.....	13
2.3.Existing Housing Conditions.....	18
2.4.Employment Data .....	23
2.5.Land Use Analysis .....	27
2.6.Master Plan .....	35
2.7.Regional Planning Regulations .....	35
<b>3. Compliance with Fair Share Plan.....</b>	<b>36</b>
3.1.Fair Share Obligation.....	36
3.2.Prior Round Obligation.....	37
3.3.Present Need (Rehabilitation Share).....	37
3.4.Gap and Prospective Need .....	38
3.5.Site Description and Suitability Analysis.....	41
3.6.Recommendations to Meet Unmet Need.....	44
3.7.Administration .....	47

Appendix A – Vacant Land Adjustment

Appendix B – Settlement Agreement

Appendix C – AHTF Spending Plan

Appendix D – Mandatory Ordinances

Appendix E – Regulatory Resolutions

# 1. Introduction

This Housing Element and Fair Share Plan will exhibit the Borough of Rockaway's (herein the "Borough" or "Rockaway" or "Rockaway Borough") commitment to providing opportunities for the development of affordable housing within the municipality. This document seeks to frame Rockaway Borough's efforts based on the current best knowledge of the framework given by the Courts, applicable past rules established by the Council on Affordable Housing (COAH), and past practices.

This Plan follows the requirements of N.J.S.A. 52:27D-310, et seq., N.J.A.C. 5:93, and certain portions of the Third Round Rules (N.J.A.C. 5:97) that have been expressly invalidated by the Appellate and/or Supreme Courts. Following this introduction is a brief history of New Jersey housing policy. In accordance with Municipal Land Use Law, this Plan also includes a Demographic Analysis, Housing Inventory, Employment Analysis, and review of land uses and policies. This Plan will summarize the Borough's obligations, which include a "Prior Round Need" (new construction obligation from 1987-1999), the rehabilitation obligation known as the traditional "Present Need" or "Indigenous Need" and the Round 3 new construction obligation, which, for purposes of this HEFSP, shall include the "Gap Period Present Need," which is a measure of households formed from 1999 to 2015 that need affordable housing that was recognized by the Supreme Court in *In re Declaratory Judgment Actions filed by Various Municipalities*, 227 N.J. 508 (2017) as well as the traditional Round 3 "Prospective Need" (the new construction obligation between 2015-2025). Finally, the document incorporates several appendices, including the Borough's Settlement Agreement, Mandatory Ordinances, and its Spending Plan, which outlines how the Borough intends to expend funds in the Affordable Housing Trust Fund.

## 1.1. New Jersey Affordable Housing Policy: A Brief History

### 1975 – 1985 | Mount Laurel Doctrine & the Fair Housing Act

In 1975 the New Jersey Supreme Court decided *Southern Burlington County NAACP v. the Township of Mount Laurel*, more commonly referred to as "Mount Laurel I," wherein it interpreted the New Jersey Constitution to create an affirmative obligation for developing municipalities to provide a "realistic opportunity for the construction of low- and moderate-income housing in their communities." In 1983, the New Jersey Supreme Court expanded the obligation from only developing municipalities to all municipalities in a decision commonly referred to as "Mount Laurel II". In addition, the Supreme Court required the establishment of each municipality's fair share obligation

and required each municipality, through its zoning, to provide a realistic opportunity for the construction of that established fair share obligation. Subject to several prerequisites, conditions and requirements, Mount Laurel II also created the “builder’s remedy” as a mechanism to enforce the doctrine in instances where a developer successfully demonstrated a municipality’s zoning failed to create the requisite realistic opportunity. Under such circumstances, a plaintiff may be entitled to have its site rezoned for an inclusionary development with an affordable set aside if the site is available, developable, approvable, and suitable for the proposed project and all other requirements for a successful builder’s remedy are met and all defenses defeated.

In 1985, in response to Mount Laurel II and the flood of litigation stemming from it, the Legislature adopted the Fair Housing Act (“FHA”) to discourage litigation and incentivize voluntary compliance N.J.S.A. 52-27D-303. The FHA established, among other things, the Council on Affordable Housing (“COAH”) as an administrative alternative to litigation and judicial intervention. COAH was charged with establishing various housing regions in the state, estimating regional affordable housing obligations, and adopting criteria and guidelines for the municipal determination of housing need as well as guidelines for satisfying those obligations. The FHA also linked municipal planning and zoning powers to the satisfaction of affordable housing obligations. Under the Act, a municipal zoning ordinance is presumptively invalid if a municipality fails to adopt a housing element as part of its master plan or enacts zoning regulations that are inconsistent with their housing plan.

### **1987 – 2004 | Establishment of COAH Rules**

Subsequent to the adoption of the Fair Housing Act, COAH adopted procedural and substantive rules to effectuate the FHA’s legislative intent in both Round 1 (1987-1993) (N.J.A.C 5:91 and 5:92) and Round 2 (1993-1999) (N.J.A.C. 5:93). The Round 2 substantive regulations (Chapter 93) superseded the Round 1 substantive regulations (Chapter 92) and recalculated the Round 1 obligations. Thus, the Round 2 regulations effectively created a “cumulative” obligation between Rounds 1 and 2 for the years 1987-1999, which are commonly now referred to as the “Prior Round”

Under COAH’s regulations, low-income households are defined as those with incomes no greater than 50 percent of the area median income (AMI), adjusted for household

size, and moderate-income households are those with incomes no greater than 80 percent and no less than 50 percent of the median household income. AMI limits are calculated based upon housing regions as established by COAH; Rockaway Borough is located within Region 2, comprised of Essex, Morris, Union and Warren Counties.

### **2004 – 2010 / Third Round Litigation & Revisions**

In December 2004, COAH promulgated its Third Round “Growth Share” methodology (N.J.A.C. 5:95), which adjusted prior round obligations and devised a new system for projecting future municipal housing obligations. Growth Share obligations were based upon municipal growth and the then-Third Round was defined as the period of 1999-2014. The initial Growth Share methodology required municipalities to provide one affordable housing unit for every eight market rate units and one affordable unit for every 25 jobs created.

In January 2007, the Appellate Division invalidated the Growth Share Methodology (In re Adoption of N.J.A.C. 5:94 and 5:95, 390 NJ Super 1) and required COAH to revise its rules, which it did in May 2008 in the Round 3 substantive regulations of Chapter 97 (N.J.A.C. 5-97). Chapter 97 increased municipal housing obligations to one unit for every 5 market-rate units (20%) and one unit for every 16 jobs. The May 2008 amendments also provided:

1. Bonus credits for supportive and special needs housing, new credit for affordable housing in redevelopment areas, and optional plan phasing based on economic feasibility.
2. Density bonuses for developers of residential projects where development provides for either on-site affordable housing or payment-in-lieu contributions.
3. Payment-in-lieu standards (cost of constructing an affordable unit) averaging \$161,000 per affordable unit.
4. Increased development fees for residential and nonresidential development projects.

The third-round rules were further amended in September 2008 to include:

1. Various changes to comport with NJDEP rules and policies including Water Quality Management, Stream Encroachment, and Highland Regional Plan programs.

2. One-third bonus for units within redevelopment areas and those constructed in proximity to mass transit nodes.
3. Established presumptive densities and affordable housing set-asides for inclusionary developments based on the State Development and Redevelopment Plan.

In July 2008, the FHA was amended by A-500. This round of amendments, among other things, eliminated Regional Contribution Agreements (“RCA”) and reduced non-residential development fees to 2.5%. Executive Order #114, signed in September 2008, amended the COAH rules to ensure consistency with the Highlands Regional Master Plan.

### **2010 – Present / COAH’s Noncompliance and Resumption of Court Responsibility**

The last decade has seen continued inaction and increased uncertainty in the realm of affordable housing. COAH has faced a political and administrative deadlock and has therefore not responded to the various judicial orders and failed to discharge its statutory duties.

Just after taking office, Governor Chris Christie signed Executive Order No. 12, establishing the five-member Housing Opportunity Task Force and charging them with a full review of the Fair Housing Act, COAH, and COAH’s regulatory structure. The Task Force framed its recommendations by characterizing the track record of housing production under COAH as a “poor return” on investment. In addition, the Task Force cited an evolution of New Jersey’s socioeconomic landscape, transportation infrastructure development, and changes in settlement patterns that occurred since development of the Mount Laurel doctrine that were not considered in the formulation and promulgation of COAH rules and methodologies. The task force recommended a “new model”, which included adjusted definitions of present and prospective need, a benchmark of 10 percent growth predicted by the State Planning Commission to guide obligations, and transferring of procedural responsibility from COAH to the Home Mortgage Finance Agency (HMFA).

In October 2010, the Appellate Division invalidated a substantial portion of COAH’s rules (N.J.A.C. 5:96 and N.J.A.C. 5:97) in response to 22 consolidated appeals. Most

notably, the Court invalidated the Third Round Growth Share methodology and ordered COAH to revise its rules in accordance with the decision. In addition, the Court prohibited certification of housing plans that rely upon municipally sponsored affordable housing projects without specified funding and required COAH to create an incentive structure for inclusionary developments. Several provisions within COAH's rules that provided "bonuses" were also invalidated, including rental bonuses for prior round obligations for developments that were not constructed within a reasonable timeframe and "compliance bonuses." However, the court upheld the "Smart Growth" and "Redevelopment" bonuses. In addition, the Appellate Division also upheld the methodologies used to determine municipalities' "rehabilitation share" and "prior round obligation" components of their overall present need. The New Jersey Supreme Court agreed in March 2011 to hear the appeal of this decision that invalidated much of COAH's existing rules.

Governor Christie sought to work with the legislature to reform affordable housing law, but a compromise was not reached. Both houses of the legislature passed S1/A3447 in January 2011, but Governor Christie conditionally vetoed the legislation, disagreeing with the affordable housing obligations required by the legislation. The respective sponsors of S1/A3447 subsequently withdrew both bills.

On June 29, 2011, Governor Christie issued Reorganization Plan No. 001-2011, which transferred the administration of the State's affordable housing program from COAH to the New Jersey Department of Community Affairs. The Reorganization Plan was to take effect on August 29, 2011. This executive order effectively sought to abolish COAH.

Upon challenge by the Fair Share Housing Center, the Appellate Court invalidated Governor Christie's Reorganization Plan in March 2012. The Supreme Court, in a 5-2 decision, upheld this decision in July 2013, confirming the ruling that the Governor could not reorganize an independent agency "in but not of" the executive branch. In September 2013, the Supreme Court confirmed the invalidation of the previously adopted Third Round regulations (N.J.A.C. 5:96-97), upholding that the methodology used for projecting housing needs in these rules was unconstitutional. In that ruling, the court established a February 2014 deadline for development and adoption of new COAH rules, which was eventually extended to November 2014. COAH proposed new

rules (N.J.A.C. 5:98-99) in June 2014 and heard public comments on them, but its Board failed to adopt them in October 2014 in a 3-3 deadlocked vote. The Board did not meet again after this vote.

In March 2015, in the case entitled *In re: Adoption of N.J.A.C. 5:96 & 5:97*, 221 N.J. 1 (2015), more commonly referred to as “Mount Laurel IV” the State Supreme Court determined that COAH was “moribund” and unable to carry out its duties as intended by the Fair Housing Act. The Court further held “that the courts may resume their role as the forum of first instance for evaluating municipal compliance with Mount Laurel obligations.”

Thus, the Court designed a transitional process whereby municipalities could seek judicial approval of their HEFSPs (Mount Laurel IV at 35-36). Those transitional procedures gave municipalities the choice whether to seek compliance voluntarily via a DJ Action or to not file a DJ Action and risk being sued. As part of these procedures, the Supreme Court authorized “a court to provide a town whose plan is under review immunity from subsequently filed challenges during the court’s review proceedings, even if supplementation of the plan is required during the proceedings” (Ibid at 24). Proactive municipalities were entitled “like treatment” to towns that petitioned COAH for review of their plans in the wake of the FHA and received broad protections from site-specific relief (Ibid at 28).

## 1.2. Housing Plan Requirements

### *Municipal Land Use Law & Fair Housing Act*

The Municipal Land Use Law (MLUL), through incorporation of the New Jersey Fair Housing Act (FHA), requires municipalities to include a housing element in their master plans as a prerequisite to the zoning power. The principal purpose of the housing element is to enumerate and provide the data, policies, and methods by which municipalities will meet present and prospective housing needs, with particular attention to low- and moderate-income households. Under the FHA, as amended, the required contents of the housing element are:

An inventory of the municipality’s housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to

low- and moderate-income households and substandard housing capable of being rehabilitated;

- A projection of the municipality’s housing stock, including the probable future construction of low- and moderate-income housing, for the upcoming 10 years, taking into account, but not necessarily limited to: construction permits issued, approvals of applications for development and probable residential development of lands;
- An analysis of the municipality’s demographic characteristics, including but not necessarily limited to: household size, income level and age;
- An analysis of the existing and probable future employment characteristics of the municipality;
- A determination of the municipality’s present and prospective fair share for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing; and
- A consideration of the lands that are most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for low- and moderate-income housing, including a consideration of lands belonging to developers who have expressed a commitment to provide low- and moderate-income housing.

### 1.3. Applicable Methodologies

It is impossible to specify the constitutional fair share housing obligation for the period 1987 to 2025 for any municipality. However, there is guidance on determining housing obligations for each municipality based on affordable housing need, as follows:

#### **Prior Round Obligation**

The prior round obligation is the amount of the municipality’s “new construction” obligation between the years 1987 and 1999, as calculated by COAH in June 1994 when its Round Two regulations were adopted – these numbers remain unchanged. The prior round need obligation for Rockaway Borough is 43.

### *Present Need*

The present need, or rehabilitation obligation, is an estimate of the number of substandard units occupied by low- and moderate-income households existing within the municipality as determined by Census data. The present need obligation for Rockaway Borough is 30.

### *Prospective Need*

Various experts have calculated Rockaway Borough's prospective need obligation and reached disparate results. Generally, however, prospective need is calculated by estimating the growth in low- and moderate-income households in each of New Jersey's six regions. Rockaway Borough has a prospective need of 176 units in accordance with the settlement agreement reached with the Fair Share Housing Center. This represents a 35% reduced obligation as determined by Kinsey & Hand in their May 2016 assessment of fair share obligations.



## 2. Municipal Summary

The Borough of Rockaway is roughly two square miles in area (2.12 sq mi) and is located in the heart of Morris County, roughly five miles from Morristown and 27 miles from New York City. Centered around the Rockaway River, the Borough is a quaint suburban community that maintains access to both regional urban centers and the State's natural assets. Home to many commercial and industrial employment centers around US Route 46, the Borough also has easy regional access from Interstate 80 and train service from nearby Dover and Denville, all while maintaining a historic downtown and beautiful suburban neighborhoods. Open space, recreation and community facilities are located throughout the Borough, which is bounded by Rockaway Township to the north, west, and southwest and Denville to the east and southeast.

The population of Rockaway decreased by 53 (0.84%) between 2010 and 2019 to an estimated 6,384 residents. The Borough's median age was 43.3 years for the five-year period from 2015-2019, older than both Morris County (42.8 years) and the State (39.9 years).

Detached single family homes make up nearly two-thirds (64.7%) of the Borough's housing stock and very little (3.7%) of the Borough's housing stock is comprised of multifamily apartment structures with 20 or more units. More than four-fifths (83.5%) of the Borough's housing stock was built before 1980, and nearly one-half (47.7%) was built prior to 1960. According to the guidelines established by COAH and adopted by the Courts, Rockaway Borough is located in Housing Region 2, a region that consists of Essex, Morris, Union and Warren counties.

### 2.1. A Note on the Data

The following statistics and demographic data are derived from the following sources.

- American Community Survey: The most up to date information is the American Community Survey (ACS) estimates, which are generated between the decennial censuses. ACS figures are based on data collected over a 5-year time period. The estimates represent the average characteristics of population and housing between January 2015 and December 2019 and DO NOT represent a single point in time. Comparisons will be made with the 2008-2012 ACS to show change over time.

- Decennial Census: Every ten years, the Census conducts detailed data collection to create an image that is as accurate as possible of the conditions throughout the country in that year. Data from the decennial census is used for comparison when equivalent ACS information is unavailable, as well as for longitudinal analysis.
- State Agency Sources: for select data types, State sources are used instead of the Census Bureau when equivalent Census data does not exist or the State data provides a more complete picture.

It is important to note that these data sets are all from before the COVID-19 pandemic, as the Census Bureau has yet to publish the complete 2020 Decennial Census. Beyond 2020 and 2021, we expect new, unique trends to manifest well into the future as people and the economy respond to the aftermath of the pandemic.

## 2.2. Demographic Characteristics

### Population

The 2015-2019 Census population estimate for Rockaway Borough was 6,384, which represents a decrease of 54 from the 2010 Census (-0.84%). While the Borough’s population has remained relatively stable since 2000, this modest decline continues an overall trend of population decline since 1980, when the Borough’s population peaked after decades of significant, consistent growth. Despite this trend, the NJTPA predicts the Borough’s population to grow to 6,791 people in 2045.

Table 1: Historic Population Growth | 1940-2019

Year	Population	Change	Percent Change
1940	3,514	N/A	N/A
1950	3,812	298	8.48%
1960	5,413	1,601	42.00%
1970	6,383	970	17.92%
1980	6,852	469	7.35%
1990	6,243	-609	-8.89%
2000	6,473	230	3.68%
2010	6,438	-35	-0.54%
2019	6,384	-54	-0.84%

Source: US Census Bureau and ACS

Table 2: Historic Population Growth

Year	Population	Change	Percent Change
2015	6,488	N/A	N/A
2045	6,791	303	4.67%

Source: NJTPA Municipal Population Forecast, 2017

### Population Composition by Age

The median age in Rockaway for 2015-2019 is 43.3, compared to 42.8 for Morris County and 39.9 for New Jersey. The older median age is explained by a smaller segment of the population under the age of 10 and more residents over the age of 65.

Table 3: Population by Age in Rockaway | 2015-2019

Age Range	Rockaway	Morris County
Under 10	8.2%	10.7%
10 - 17	13.2%	10.7%
18 - 34	16.5%	19.3%
35 - 44	15.7%	12.3%
45 - 54	15.0%	15.8%
55 - 64	11.8%	14.5%
65 - 74	11.6%	9.3%
75 - 84	5.8%	5.0%
85 and Over	2.2%	2.5%

Source: American Community Survey 2015-2019

### Households

According to the US Census Bureau’s classification system, people either live in a household, housing unit, or in “group quarters.” Two types of “households” exist: family and non-family. A “household” consists of one or more persons living and eating together separately from other persons who may be in the same building. A “family” is a household with two or more related persons living together in the same housing unit. While the majority of Rockaway households live in single-family structures (72.1%%), a significant share of the population lives in multifamily structures (28.9%).

The average household size in Rockaway is 2.64, which is similar to that of the County (2.66) and the State (2.69). The average household size in Rockaway is smaller than the average family size due to a significant number of households with one person living alone. Households consisting of one person living alone increased significantly in

Rockaway since 2012, increasing from 19.9% to 26.3%, while the share of single-person households at the County level has remained relatively stable.

**Table 4: Population by Housing Type | 2008 - 2019**

	Rockaway			Morris County		
	2008-2012	2015-2019	% Change	2008-2012	2015-2019	% Change
Total Households	2,445	2,413	-1.3%	179,940	181,884	1.1%
Total Families	1,745	1,665	-4.6%	129,878	130,138	0.2%
Average Household Size	2.63	2.64	0.4%	2.7	2.66	-1.5%
Average Family Size	3.12	3.23	3.5%	3.22	3.19	-0.9%
Households with 1 person	487	635	30.4%	42,466	43,288	1.9%

Source: American Community Survey 2008 - 2012, 2015 - 2019

### Immigration

Foreign born residents make up 24.4% percent of Rockaway’s population, which is a higher than County (19.3%) and State (22.5%) levels. Half of the Borough’s foreign-born residents are not U.S. citizens, comprising 12% of the overall Borough population, a larger share than that of Morris County (7.5%) and the State (9.8%).

**Table 5: Rockaway Residents Place of Birth | 2015 - 2019**

	Rockaway		Morris County		New Jersey	
	Count	Percent	Count	Percent	Count	Percent
Total	6,384	100.0%	493,379	100.0%	8,878,503	100.0%
Born in United States	4,826	75.6%	398,068	80.7%	6,886,476	77.6%
Foreign Born	1,558	24.4%	95,311	19.3%	1,992,013	22.5%
Naturalized Citizen	793	12.4%	58,496	11.9%	1,125,326	12.7%
Not a Citizen	765	12.0%	36,815	7.5%	866,701	9.8%

Source: American Community Survey 2015 - 2019

### Income

The median household income for Rockaway grew dramatically from 2012 to 2019, growing 26.2% and far outpacing the County (17.9%) and the State (15.2%); this growth is so large because the tracked period begins in the depths of the Great Recession and ends right before the most recent recession from COVID-19. The Borough’s per capita and household median income are significantly below that in Morris County but similar to the State average. However, the Borough experienced significantly less per capita income growth despite its significantly higher growth in household median income. This may be due to different data types (median vs. average), as well as the Borough’s significant growth in average family size.

Table 6: Household Median Income | 2008 - 2019

	2008-2012*	2015-2019	Change	% Change
Rockaway	\$76,555	\$96,602	\$20,047	26.2%
Morris County	\$97,979	\$115,527	\$17,548	17.9%
New Jersey	\$71,637	\$82,545	\$10,908	15.2%

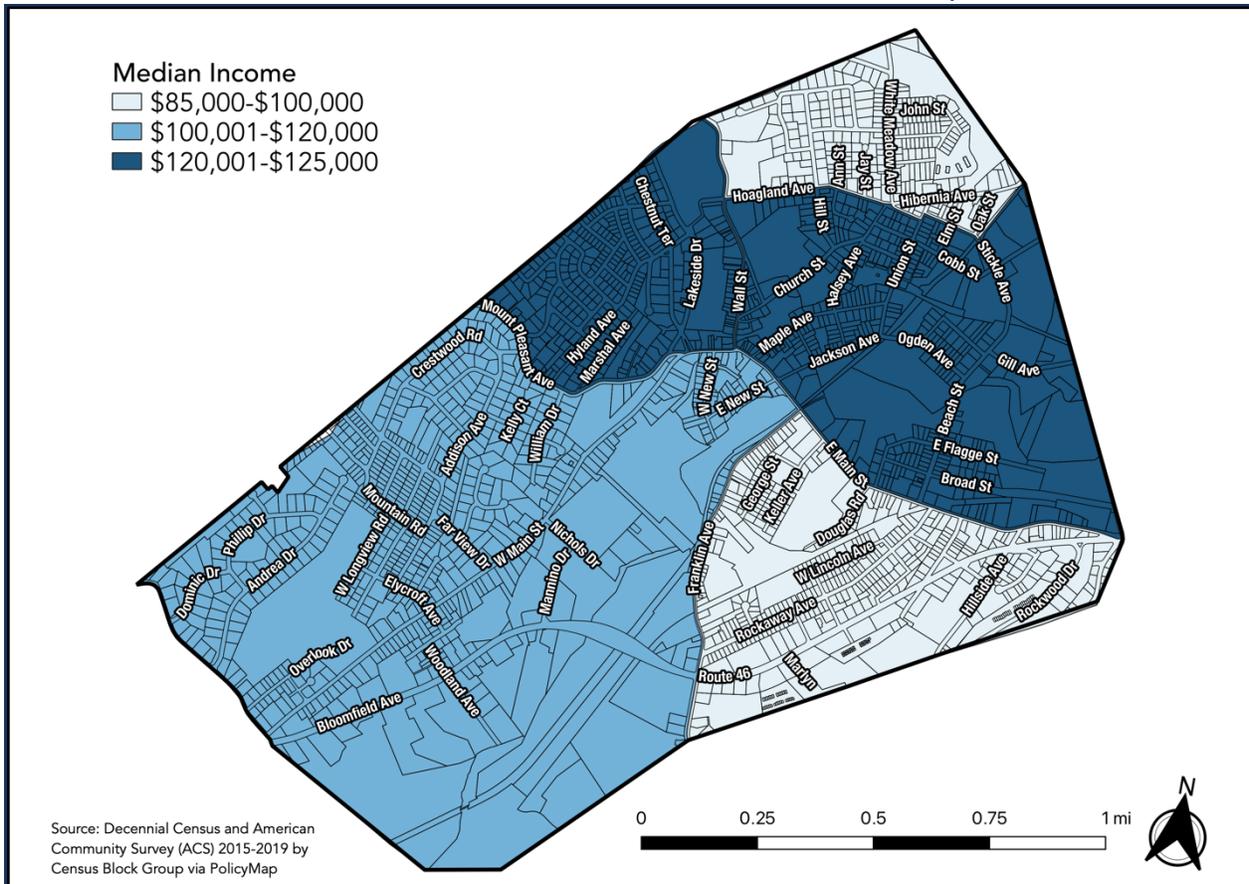
\* Inflation adjustment from 2012 dollars to 2019 dollars  
 Source: American Community Survey 2008 - 2012, 2015 - 2019

Table 7: Per Capita Income | 2008 - 2019

	2008-2012*	2015-2019	Change	% Change
Rockaway	\$38,951	\$43,708	\$4,757	12.21%
Morris County	\$48,252	\$58,109	\$9,857	20.43%
New Jersey	\$35,928	\$42,745	\$6,817	18.97%

\* Inflation adjustment from 2012 dollars to 2019 dollars  
 Source: American Community Survey 2008 - 2012, 2015 - 2019

Map 1: Housing Income



### Poverty Status

In Rockaway, 209 residents (9.9%) live below the poverty line, a dramatic decrease from 21.2% in 2012. In this regard, the Borough had a drastically different trajectory than Morris County, which experienced an increase from 13% to 15.2% over the same period.

**Table 8: Poverty Status | 2008 - 2019**

<b>Rockaway</b>	<b>2008-2012</b>	<b>Percent</b>	<b>2015-2019</b>	<b>Percent</b>	<b>Change</b>
Total Persons	6,451		6,384		
Total Below Poverty	372	21.2%	209	9.9%	-43.82
<b>Morris County</b>	<b>2008-2012</b>	<b>Percent</b>	<b>2015-2019</b>	<b>Percent</b>	<b>Change</b>
Total Persons	493,472		493,379		
Total Below Poverty	20,447	13.0%	23,212	15.2%	13.52%
Source: American Community Survey 2008 - 2012, 2015 - 2019					

### Household Costs

The tables below show the housing expenditures for those who own and rent in Rockaway. The general affordability standard is that no more than 30 percent of gross income should be allocated for housing costs. In Rockaway, more than 30 percent of homeowners with a mortgage and 43 percent of renters spend more than 30 percent of their household income on housing costs. These figures indicate that roughly 27.2% of Rockaway's households (379 owner-occupied households and 277 renter households) are burdened by unaffordable housing costs; when homeowners without a mortgage are not considered, this figure rises to 39.4%.

**Table 9: Monthly Owner Costs as a % of Household Income in Rockaway | 2015-2019**

	<b>Total</b>	<b>Percent</b>
Total owner-occupied housing units with a mortgage	1,214	-
Less than 30 percent	875	72.1%
30 percent or more	339	27.9%
50 percent or more	40	3.3%
Source: American Community Survey 2015 - 2019		

Table 10: Gross Rent as a % of Household Income in Rockaway | 2015-2019

	Total	Percent
Total renter-occupied units	643	100%
Less than 10 percent	45	7.0%
10 to 29 percent	304	47.3%
30 to 49 percent	211	32.8%
50 percent or more	66	10.3%
Not Computed	17	2.6%

Source: American Community Survey 2015 - 2019

### 2.3. Existing Housing Conditions

#### Housing Unit Data

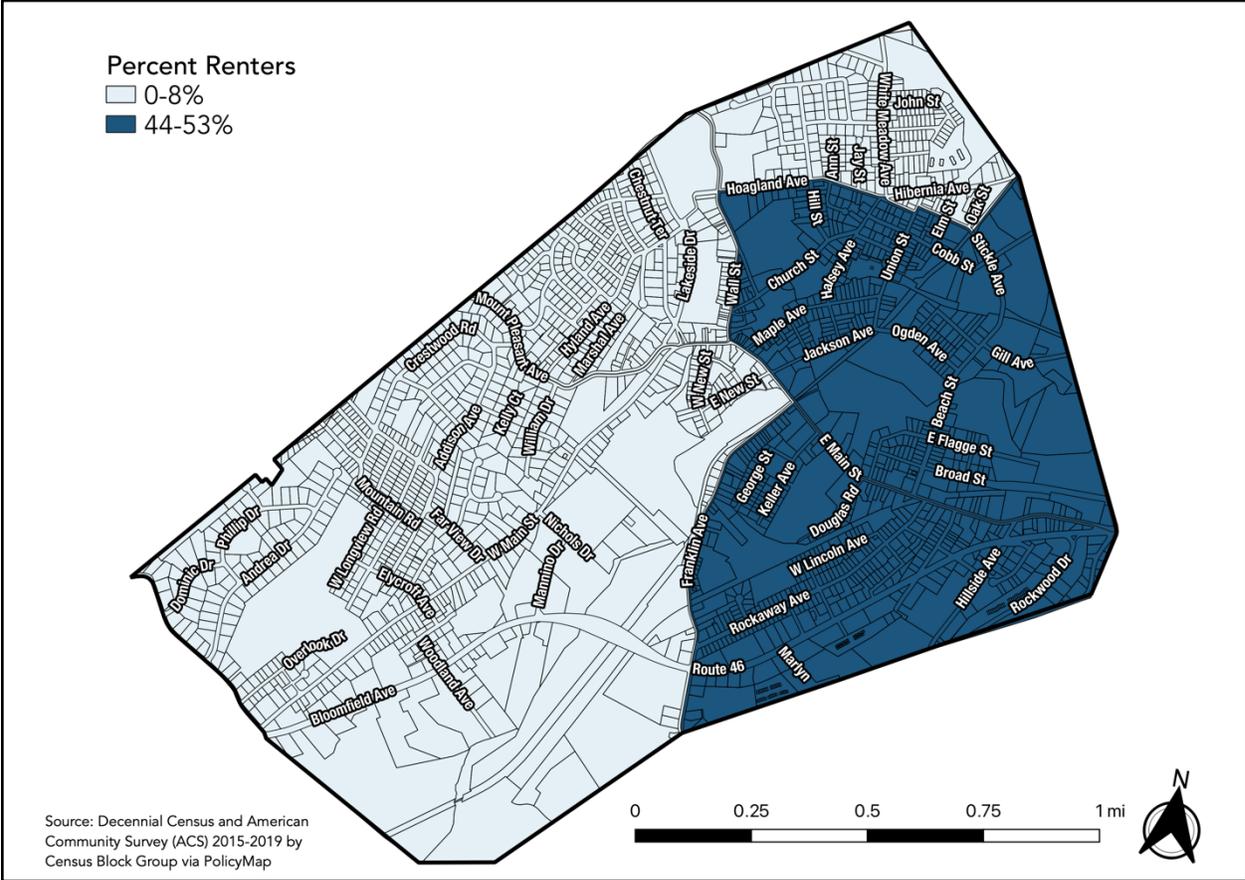
According to the 2019 ACS, there are an estimated 2,542 housing units in Rockaway which represented a 2.4% decrease from 2012. The Borough is predominately comprised of owner-occupied households, which comprise 73.4% of the Borough’s households. 26.7% of households are renters, and 5.1% of the Borough’s housing units are vacant. Since 2012, the Borough has seen a significant shift towards owner-occupied households, coming from a 23.1% decrease in renters and an 18.9% decrease in the Borough’s vacancy rate.

Table 11: Housing Tenure and Occupancy in Rockaway | 2008-2019

Housing Units	2008-2012	Percent	2015-2019	Percent	Percent Change
Total	2,604		2,542		-2.4%
Tenure					
Owner Occupied	1,616	66.1%	1,770	73.4%	9.5%
Renter Occupied	839	33.9%	643	26.7%	-23.1%
Vacant Units	159	6.1%	129	5.1%	-18.9%

Source: American Community Survey 2008 - 2012 and 2015 - 2019

Map 2: Percent of Renters



Nearly half of Rockaway’s housing structures were built prior to 1960, and nearly seven in eight were built before 1980. Surprisingly, no new housing was built between 2010 and 2019. While the age of the Borough’s housing stock contributes to its historic identity and unique character, it also necessitates significant maintenance to upgrade the housing to today’s standards and keep units in habitable condition. The lack of recent housing will be mitigated by the anticipated developments incorporated into this Plan.

Table 12: Year Structure Built in Rockaway

	Units	Percent
Total	3,315	
Built 2010 or later	0	0%
Built 1980 to 2009	397	16.5%
Built 1960 to 1979	866	35.9%
Built 1940 to 1959	643	26.6%
Built 1939 or earlier	507	21.0%

Source: American Community Survey 2015 - 2019

Since 2012, the share of Borough’s single-family housing stock has increased slightly, from 70.9% to 71.1%. While there was significant growth of 5-19 unit apartments, this growth was countered by decreases in 2-4 unit and 20-or-more unit apartments.

**Table 13: Housing Type & Size | 2008-2019**

Housing Units	2008-2012	Percent	2015-2019	Percent	Percent Change
Total:	2,445		2,413		
1, detached	1,535	62.8%	1,561	64.7%	1.7%
1, attached	198	8.1%	179	7.4%	-9.6%
2 apartments	190	7.8%	95	3.9%	-50.0%
3 or 4 apartments	160	6.5%	97	4.0%	-39.4%
5 to 9 apartments	67	2.7%	152	6.3%	126.89%
10 to 19 apartments	183	7.5%	239	9.9%	30.6%
20 or more apartments	112	4.6%	90	3.7%	-19.6%

*Source: American Community Survey 2008 - 2012 and 2015 - 2019*

**Table 14: Number of Bedrooms Per Unit, 2015-2019**

Rooms	Total	Percent
Total	2,413	-
No Bedroom	93	3.9%
1 Bedroom	315	13.1%
2 Bedrooms	556	23.0%
3 Bedrooms	713	29.6%
4 Bedrooms	671	27.8%
5 or more Bedrooms	65	2.7%

*Source: American Community Survey 2015-2019*

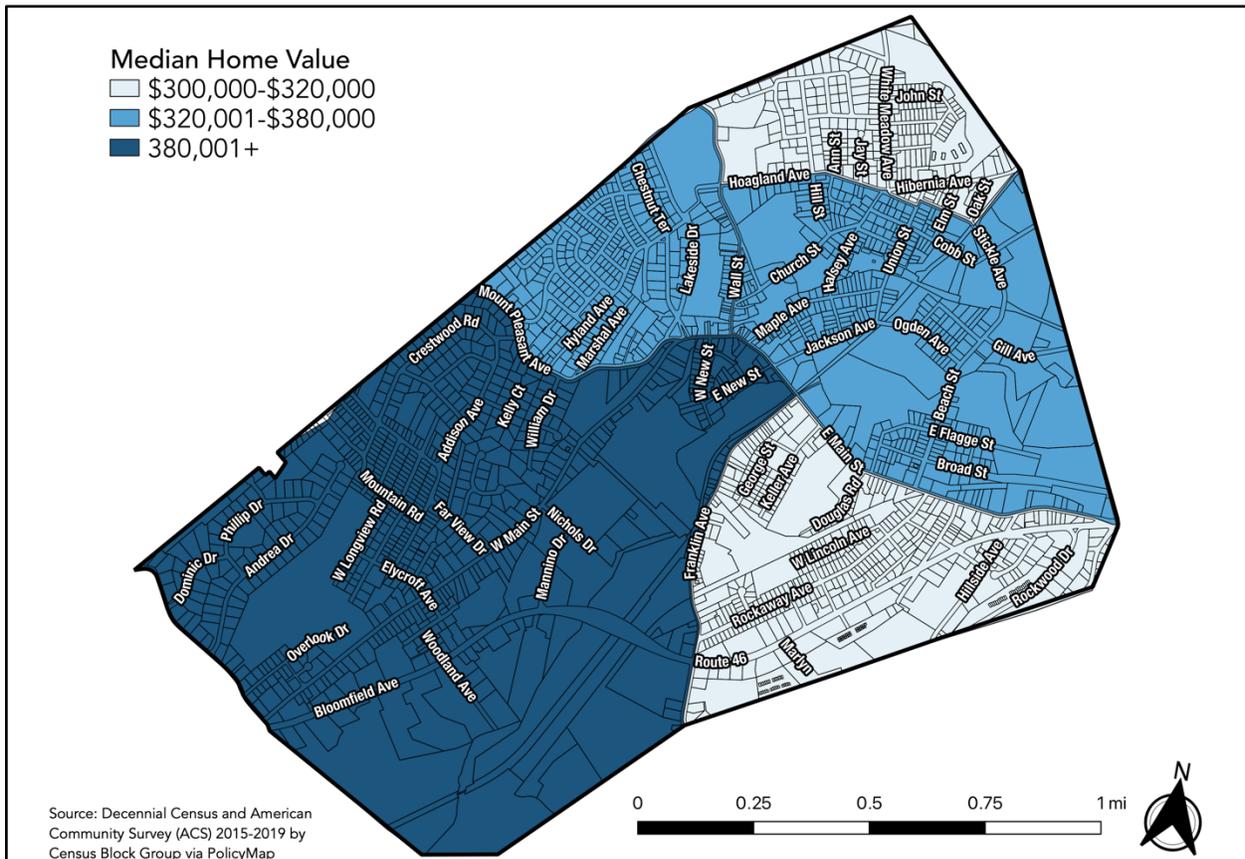
### **Housing Values**

Since 2012, home values in the Borough have decreased by \$14,000 (-4.1%) to \$344,800 in 2019. This change is led by a decrease in homes worth more than \$500,000 and an increase in homes worth between \$150,000 and \$299,999. However, the decline does not seem to be inherently bad, as lower-priced homes have broadly increased in value. Also, the Borough experienced a significant decrease in households encumbered by mortgages and home equity loans, indicating better financial standing since the burst of the housing bubble in 2008.

Table 15: Value for Owner-Occupied Housing Units in Rockaway | 2008-2019

Value	2008-2012	Percent	2015-2019	Percent	Percent Change
Total	1,616	100.0%	1,770	100.0%	9.53%
Less than \$20,000	26	1.6%	0	0.0%	-100%
\$20,000 to \$49,999	0	0.0%	26	1.5%	100%
\$50,000 to \$99,999	0	0.0%	0	0.0%	-
\$100,000 to \$149,999	0	0.0%	41	2.3%	100%
\$150,000 to \$299,999	405	25.1%	481	27.2%	18.77%
\$300,000 to \$499,999	1,027	63.6%	1,089	61.5%	6.04%
\$500,000 +	158	9.8%	133	7.6%	-15.82%
Median value	\$358,800	N/A	\$344,800	N/A	-4.1%
Mortgage Status	2008-2012	Percent	2015-2019	Percent	Percent Change
Total	1,616	100.0%	1,770	100.0%	9.53%
Housing units with a mortgage, contract to purchase, or similar debt:	1,290	79.8%	1,214	68.6%	-5.89%
With either a second mortgage or home equity loan, but not both:	486	30.1%	137	7.7%	-71.81%
Second mortgage only	58	3.6%	0	0.0%	-100%
Home equity loan only	428	26.5%	137	7.7%	-67.99%
Both second mortgage and home equity loan	0	0.0%	0	0.0%	--
No second mortgage or home equity loan	804	49.8%	1,077	60.9%	34.63%
Housing units without a mortgage	326	20.2%	414	26%	26.99%
Source: American Community Survey 2008 - 2012 and 2015 - 2019					

Map 3: Median Home Value



### Housing Conditions

The table below details the condition of housing within Rockaway based on heating fuel, plumbing facilities, kitchen facilities, and overcrowding. These factors help determine the number of inadequate housing units within the Borough. According to the 2015-2019 ACS estimate, no housing units in Rockaway lacked complete plumbing or kitchen facilities, which is unchanged from 2012. The Borough has seen significant increases in homes heated by gas, electricity, and solar energy, spurred by a significant decrease in oil-based heating.

Housing units with more than one occupant per room are considered overcrowded. Overcrowded households in the Borough fell 0.9%, but 1% of the Borough lived with more than 1.5 occupants per room, whereas no such households existed in 2012.

Table 16: House Heating Fuel Conditions in Rockaway

	2008-2012	Percent	2015-2019	Percent
Total	2,445	100.0%	2,413	100.0%
Utility Gas	1,550	63.4%	1,642	68.0%
Gas (Utility, Bottled, Tank, or Lp Gas)	25	1.0%	39	1.6%
Electricity	110	4.5%	206	8.5%
Fuel Oil, Kerosene, etc	736	30.1%	480	19.9%
Coal, Coke or Wood	0	0.0%	0	0.0%
Solar Energy	0	0.0%	37	1.5%
Other Fuel	14	0.6%	9	0.4%
No Fuel Used	10	0.4%	0	0.0%

Source: American Community Survey 2008 - 2012 and 2015 - 2019

Table 17: Occupants per Room + Inadequate Units in Occupied Housing Units

Occupants Per Room	2008-2012	Percent	2015-2019	Percent
0.50 or less	1,796	73.5%	1,670	69.2%
0.51 to 1.00	562	23.0%	679	28.1%
1.01 to 1.50	87	3.6%	41	1.7%
1.51 or more	0	0.0%	23	1.0%
Inadequate Units	2008-2012	Percent	2015-2019	Percent
Total	3,020		3,315	
Lacking complete plumbing facilities	0	0.0%	0	0.0%
Lacking complete kitchen facilities	0	0.0%	0	0.0%

Source: American Community Survey 2008 - 2012 and 2015 - 2019

## 2.4. Employment Data

### Employment Trends

The following tables detail changes in employment from 2010 to 2019 for Rockaway, Morris County, and New Jersey. Unemployment rates rose significantly from 2010 across the board due to the Great Recession, and much of the last decade was a recovery from those high unemployment rates. Rockaway fared better than the State, having a lower peak unemployment rate and recovering much faster. Compared to Morris County, the Borough had a significantly higher peak unemployment but recovered faster. However,

Rockaway’s unemployment rate had begun to grow after 2017, increasing by 3.1% over two years to 5%, a trend not seen at the County or State level.

**Table 19: Employment and Labor Force in Rockaway | 2010-2019**

Year	Resident Labor Force	Resident Employment	Unemployment	Unemployment Rate (%)
2010	3,912	3664	248	6.3%
2011	3910	3,551	359	9.2%
2012	4,071	3,735	336	8.3%
2013	4,316	3,955	361	8.4%
2014	3,619	3,394	225	6.2%
2015	3,849	3,686	163	4.2%
2016	3,536	3,461	75	2.1%
2017	3,421	3,355	66	1.9%
2018	3,372	3,283	89	2.6%
2019	3,630	3,448	182	5.0%

Source: American Community Survey 5-Year Estimates

**Table 20: Employment and Labor Force in Morris County | 2010-2019**

Year	Resident Labor Force	Resident Employment	Unemployment	Unemployment Rate (%)
2010	265,150	245,550	19,650	7.4
2011	265,900	247,250	18,650	7.0
2012	267,700	248,900	18,800	7.0
2013	263,650	247,500	16,100	6.1
2014	263,900	250,900	12,950	4.9
2015	263,950	250,400	13,550	5.1
2016	261,950	252,600	9,350	3.6
2017	257,300	247,650	9,650	3.8
2018	255,750	246,250	9,500	3.7
2019	254,100	245,050	9,050	3.6

Source: New Jersey Department of Labor

Table 21: Employment and Labor Force in New Jersey | 2010-2019

Year	Resident Labor Force	Resident Employment	Unemployment	Unemployment Rate (%)
2010	4,441,800	4,251,800	190,000	4.3
2011	4,504,400	4,264,000	240,500	5.3
2012	4,550,600	4,138,600	412,100	9.1
2013	4,555,300	4,121,500	433,900	9.5
2014	4,565,300	4,138,500	426,800	9.3
2015	4,585,300	4,158,600	426,800	9.3
2016	4,528,500	4,157,600	370,800	8.2
2017	4,513,600	4,209,700	303,900	6.7
2018	4,543,800	4,288,800	255,000	5.6
2019	4,599,000	4,371,600	227,400	4.9

Source: New Jersey Department of Labor

### Class of Worker and Occupation

According to 2015-2019 ACS, the majority of employed residents in Rockaway were private wage and salary workers (72%), followed by government workers (12.9%) and private non-profit employees (8.7%). While private sector employment grew slightly since 2012, private non-profit employment grew significantly, while all other worker classes decreased significantly. These changes were led by significant growth in management, professional, and service jobs and significant declines in other occupation categories.

Table 22: Class of Worker in Rockaway | 2008-2019

Sector	2008-2012	Percent	2015-2019	Percent	% Change
Total	3,735		3,448		-7.7%
Private Sector	2,683	71.8%	2,483	72.0%	0.3%
Public Sector	524	14.0%	445	12.9%	-7.9%
Self-Employed	252	6.8%	219	6.4%	-5.9%
Private Non-Profit	261	7.0%	301	8.7%	24.3%
Unpaid Family Workers	15	0.4%	0	0%	-100%

Source: American Community Survey 2008 - 2012, 2015 - 2019

**Table 23: Worker Occupations in Rockaway | 2008-2019**

Occupations	2008-2012	Percent	2015-2019	Percent	% Change
Civilian employed population 16 and older	3,735	100.0%	3,448	100.0%	-7.7%
Management, Professional, Related	1,237	33.1%	1,472	42.7%	19.0%
Service	525	14.1%	571	16.6%	8.8%
Sales, Office	1,175	31.4%	829	24.0%	-29.5%
Farming, Fishing, and Forestry Occupations	18	0.5%	0	0.0%	-100%
Construction, Extraction, Maintenance, Repair	343	9.2%	224	6.5%	-34.7%
Production, Transportation, Material Moving	437	11.7%	352	10.2%	-19.5%

Source: American Community Survey 2008 - 2012, 2015 - 2019

**Commuting to Work**

According to the ACS 2015-2019 estimates, the mean travel time to work for Rockaway residents is 29.9 minutes, a 6% increase from 2008-2012. This increase was caused by a hollowing out of the middle, as the Borough experienced increases in commutes less than 20 minutes (including working from home) and over 60 minutes, while commutes between 20-60 minutes decreased. An overwhelming proportion of workers commuted by automobile (91.2%). However, the Borough experienced a significant increase in carpooling, increasing by 53% to 11.8% of commuters. Only 1.4% of commuters use public transportation, a 75% decrease from 2012. Meanwhile, walking and working from home increased significantly. This demonstrates that Rockaway is very firmly an automobile-dependent suburb which is characteristic of much of suburban America today.

**Table 24: Travel + Means to Work in Rockaway | 2008-2019**

Travel Time	2008-2012	Percent	2015-2019	Percent	% Change
Total	3,536	100.0%	3,419	100.0%	-3.3%
Did not work at home	3,422	96.8%	3,271	95.7%	-4.4%
Less than 10 minutes	482	13.6%	440	12.9%	-8.7%
10 to 19 minutes	811	22.9%	871	25.5%	7.4%
20 to 29 minutes	778	22.0%	629	18.4%	-19.2%
30 to 39 minutes	576	16.3%	584	17.1%	1.4%
40 to 59 minutes	408	11.8%	327	9.6%	-19.9%
60 to 89 minutes	219	6.2%	230	6.7%	5.0%
90 or more minutes	148	4.2%	190	5.6%	28.4%
Worked At Home	114	3.2%	148	4.3%	29.8%
Mean travel time to work	28.2		29.9		6.0%

Means of Commute	2008-2012	Percent	2015-2019	Percent	% Change
Workers 16 years and over	3,536	100.0%	3,419	100.0%	-3.3%
Car, Truck, or van	3,234	91.5%	3,118	91.2%	-3.6%
Drove Alone	2,970	84.0%	2,714	79.4%	-8.6%
Carpooled	264	7.5%	404	11.8%	53.0%
Public Transportation	185	5.2%	46	1.4%	-75.1%
Motorcycle	0	0.0%	0	0.0%	0.0%
Bicycle	0	0.0%	0	0.0%	0.0%
Walked	3	0.1%	107	3.1%	3,567%
Other Means	0	0.0%	0	0.0%	0.0%
Worked at home	114	3.2%	148	4.3%	29.8%

Source: American Community Survey 2008 - 2012, 2015 - 2019

## 2.5. Land Use Analysis

Zoning helps determine where growth is expected and where new housing units are likely to be developed in the future. This analysis covers how existing zoning regulations and capital infrastructure provide adequate capacity to accommodate residential and nonresidential growth projections. The section includes the following:

- An analysis of the available existing and planned infrastructure.
- The anticipated demand for types of uses permitted by zoning based on present and anticipated future demographic characteristics of the Borough and anticipated land use patterns.
- The Borough’s economic development policies and constraints on development with existing or planned measures to address constraints.

### Infrastructure

The Borough expects new developments to bear the cost that such development puts upon the Borough’s existing infrastructure, including its sewer and water systems, road infrastructure, school facilities, and emergency services. This includes the addition of capacity necessitated by the new development, as well as associated maintenance costs. New development should not be a burden on the Borough’s infrastructure.

## **Sewer**

All properties in Rockaway have access to sanitary sewer provided by the Rockaway Valley Regional Sewerage Authority (RVRSA), which also services nine other municipalities in Morris County. Since 2008, the Morris County Planning Board (MCPB) has been responsible for wastewater management planning within the RVRSA service area; the Highlands Council also is responsible for planning for municipalities conforming to the Highlands Regional Plan, but the Borough does not conform with this Plan. The MCPB adopted the Morris County Wastewater Management Plan (WMP) in 2015 to govern the County, which includes the Borough in the future RVRSA service area. Compliance with the WMP is required for new residential development.

## **Water**

The Borough's Department of Public Works provides water to the Borough through four wells that supply over 40 million gallons of water each year. Any new water connections must apply to the Borough for water allocation and be approved by the Mayor and Council. Pursuant to Ordinance 247-46, a portion of spare Firm Capacity – as determined by the NJDEP – is set aside for municipal use. The set aside includes an initial 75,000 gallons per day (gpd) and an additional 25% of any new water allocation provided by the NJDEP. In 2017, the Borough had approximately 170,000 gpd Firm Capacity for non-municipal use.

## **Municipal Services**

New development will need to determine the net cost to the Borough's police, fire, and EMS services due to increased utilization by the development. Furthermore, new residential developments must provide an estimated number of school-age children likely to live in the new development.



### Industrial

Industrial uses comprise less than 1% of parcels and 2.1% of land area in Rockaway, which are generally located near the Rockaway River and south of US-46.

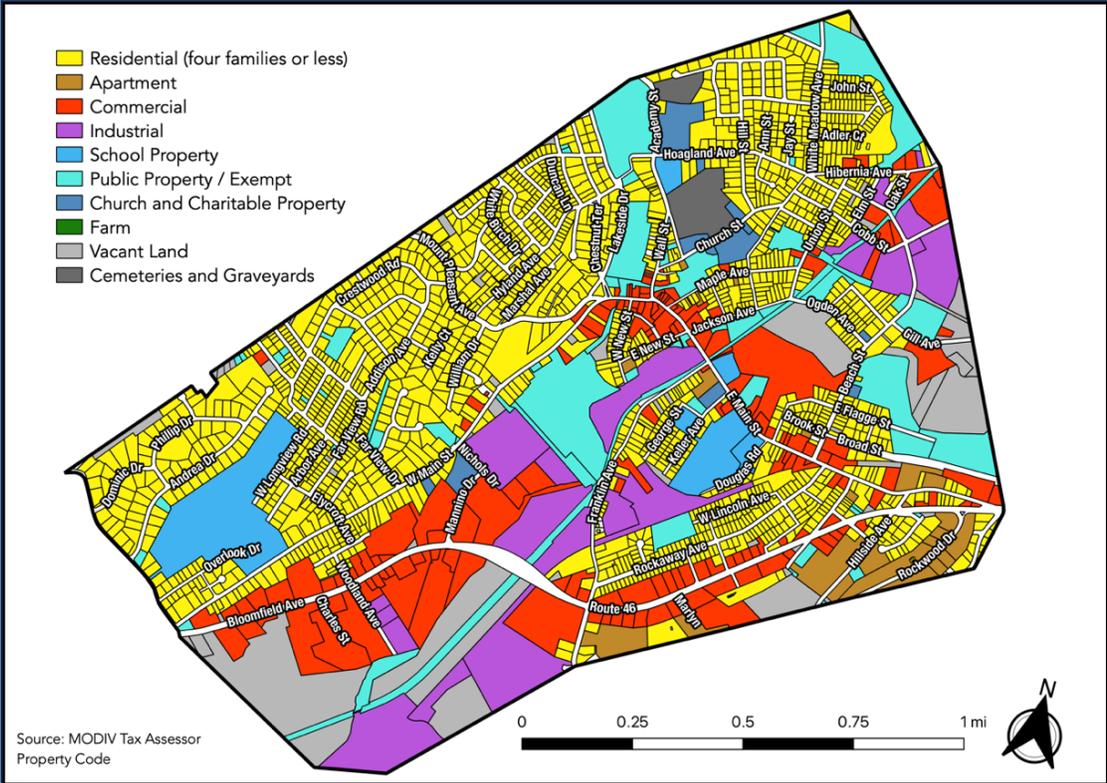
### Agricultural

The Borough has one agricultural parcel, which constitutes 4.5% of the Borough’s land area at nearly 71 acres.

### Other

Public and quasi-public uses, including the Borough’s public infrastructure, churches and charitable properties, comprise 4% of the Borough’s parcels and 24.5% of its land area. Such properties include Borough Hall, the Borough’s emergency services, and open space like Donatoni Park, Memorial Park, and Friendship Field. In addition, 5.4% of the Borough’s parcels and 14.3% of it’s land area is vacant or unclassified. This significant amount of vacant land is explained by the Borough’s extensive floodplains and steep slopes, as well as the rail rights-of-way that follow the Rockaway River.

Map 5: Existing Land Use in Rockaway Borough



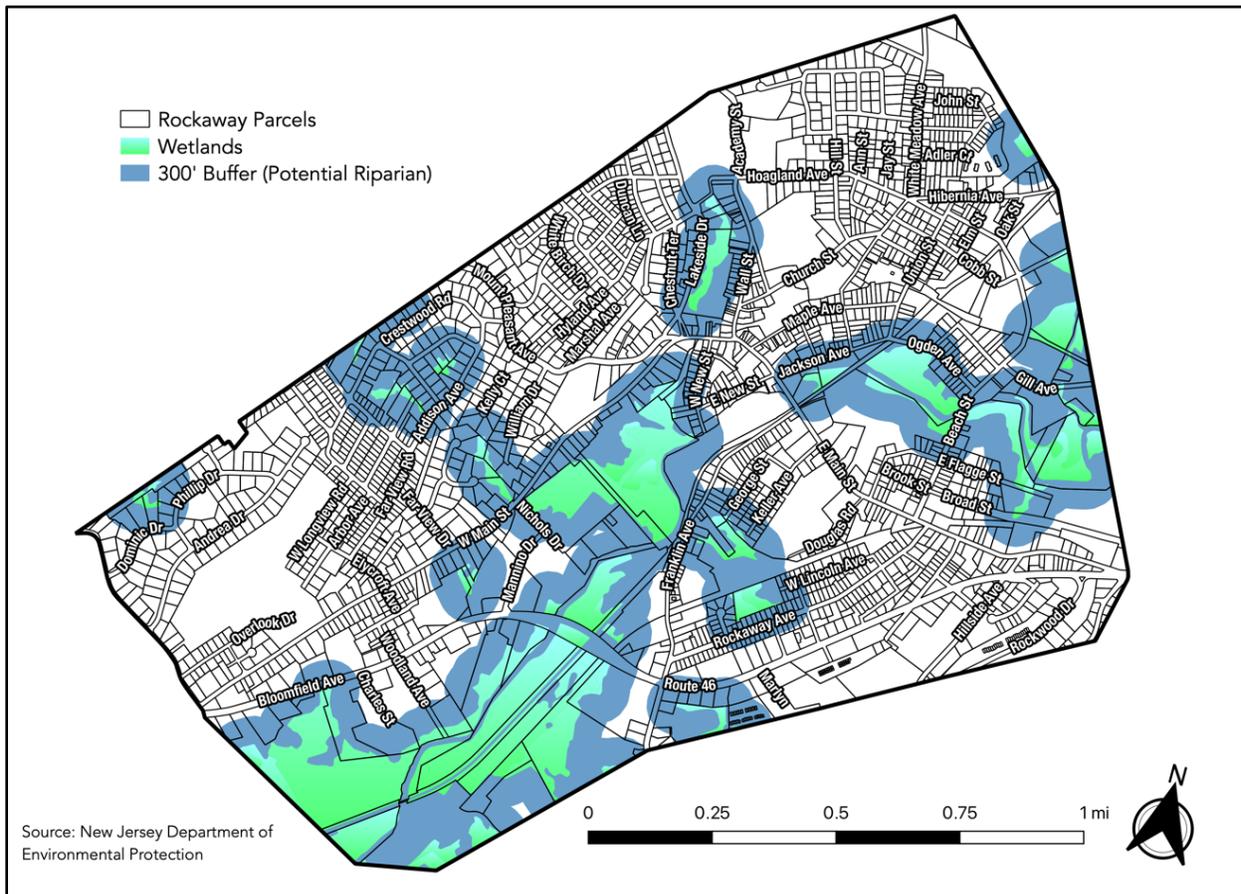
## Environmental Constraints

The following section summarizes the environmental constraints within the Borough. The constraints are detailed on the Wetlands, Floodplains, Steep Slopes, and Critical Habitat maps.

### **Wetlands**

The Borough contains four significant bodies of water: the Rockaway River, Foxs Brook, Foxs Pond, and Beaver Brook. As such, much of the Borough lies within wetlands and/or riparian buffers, and all but one vacant parcel in the Borough (Block 33, Lot 3) contain riparian buffers and/or wetlands.

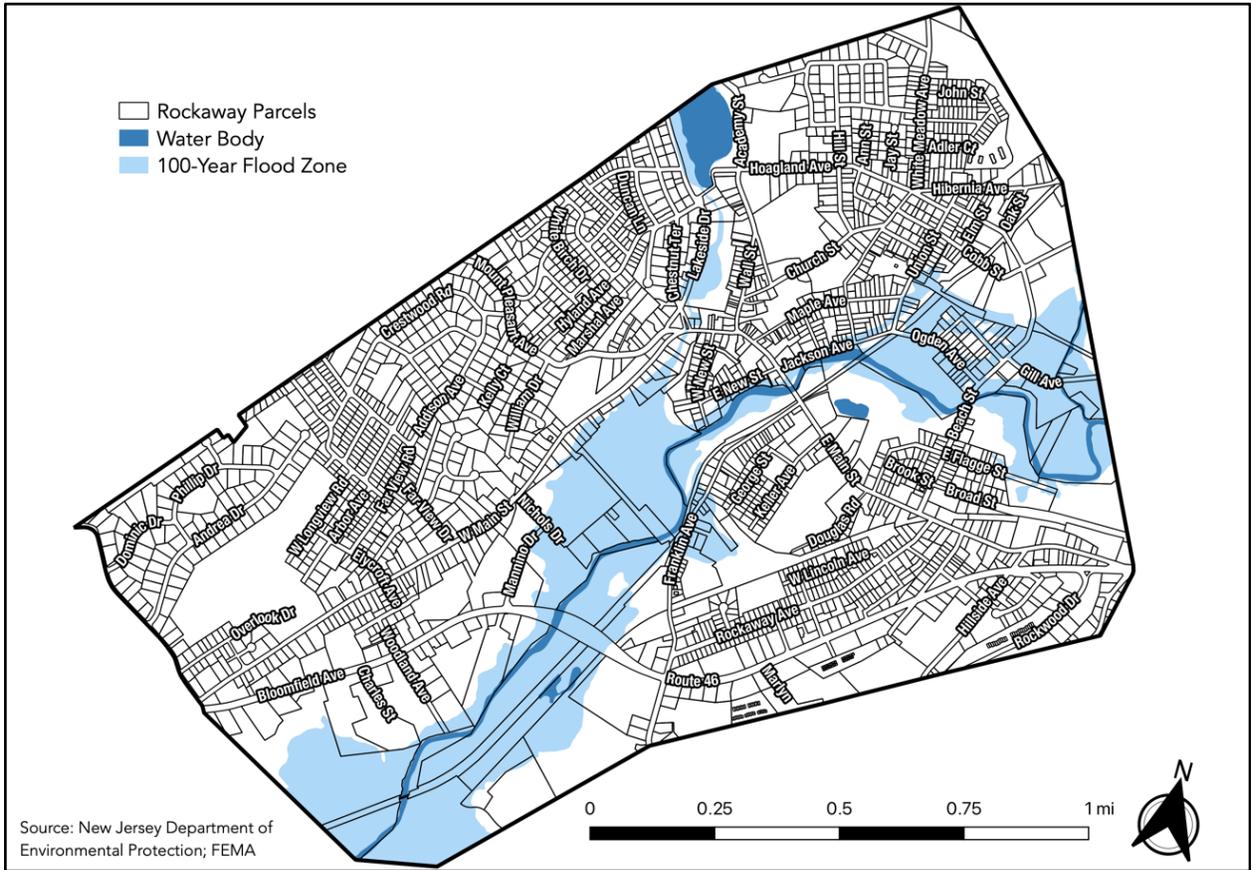
*Map 6: Wetlands in Rockaway Borough*



# Floodplains

Floodplains are areas adjacent to streams, rivers, ponds and lakes. In order to avoid destruction of property and habitat, development within the floodplains is restricted. Given the presence of the Rockaway River, Foxs Brook, Foxs Pond, and Beaver Brook within Rockaway, a significant portion of the Borough lies within floodplains.

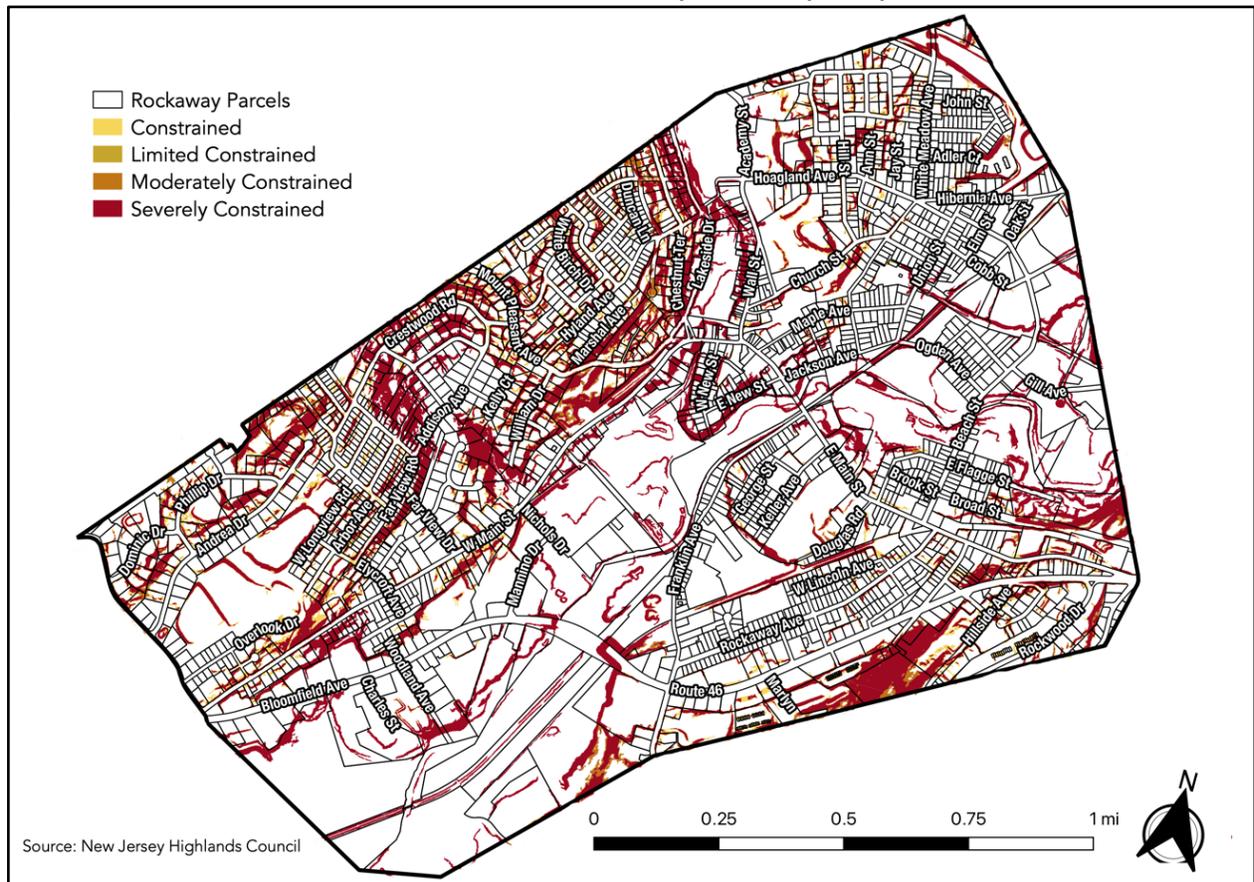
Map 7: Flood Hazard Areas in Rockaway Borough



## Steep Slopes

Located well within the New Jersey Highlands, much of Rockaway is constrained by steep slopes. While steep slopes may be found throughout the Borough, they are particularly concentrated around and to the west of West Main Street and southwest of Hillside Avenue.

Map 8: Steep Slopes in Rockaway Borough



### Map Notes:

- *Severely Constrained Slopes: All lands with slopes of 20% or greater and lands within Riparian Areas with slopes of 10% and greater.*
- *Moderately Constrained Slopes: All non-Riparian Area lands having a slope of 15% to less than 20% which are forested.*
- *Constrained Slopes: All non-Riparian Area lands having a slope of 15% to less than 20% which are non-forested with one or more of the following characteristics:*

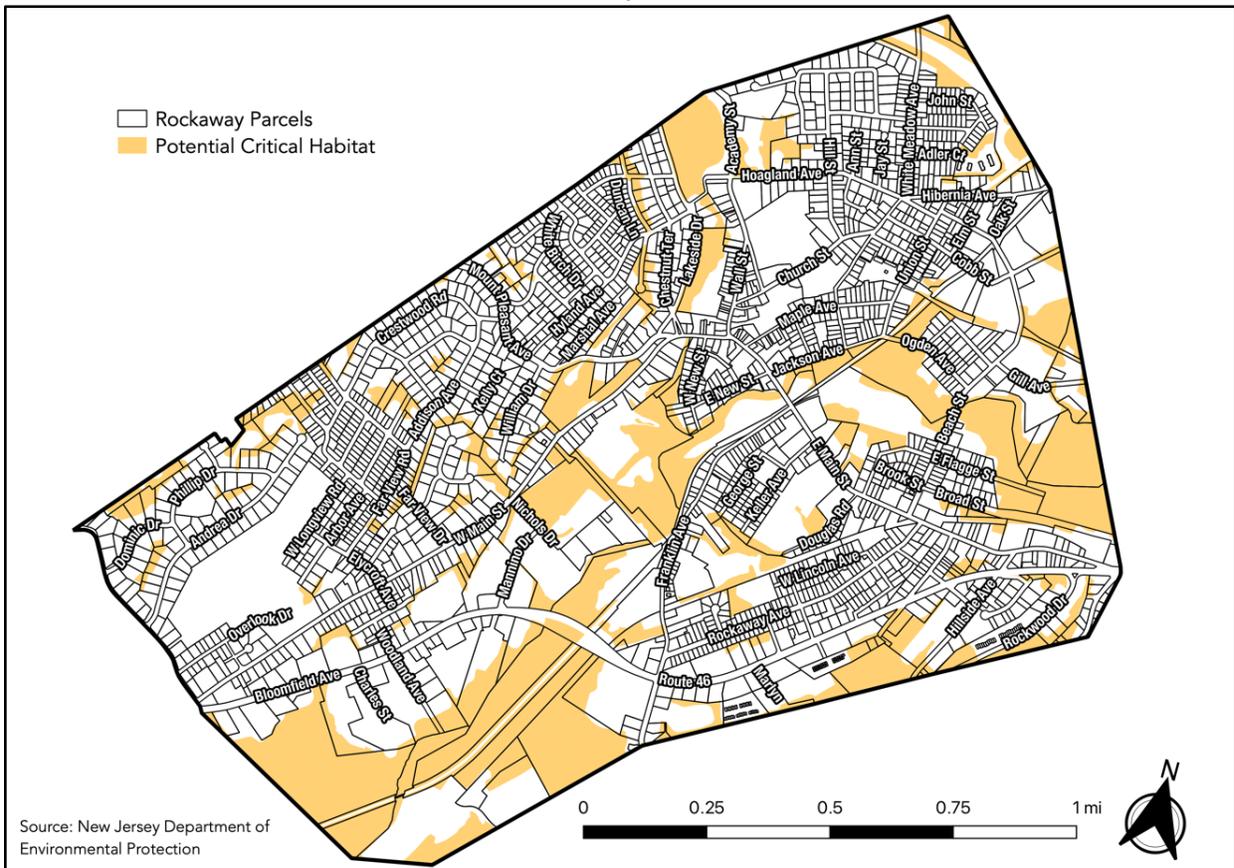
a) highly susceptible to erosion; b) shallow depth to bedrock; or c) a Soil Capability Class indicative of wet or stony soils.

- *Limited Constrained Slopes: All non-Riparian Area lands having a slope of 15% to less than 20%, which are non-forested, are not highly susceptible to erosion, and do not have a shallow depth to bedrock or a Soil Capability Class indicative of wet or stony soils.*

## Critical Habitats

No Federally listed, State endangered, or threatened lands are located in the Borough. A preponderance of critical habitats in Rockaway are listed as suitable habitat/rank 1, and, while they are found throughout the Borough, they are generally concentrated around the Borough's bodies of water.

Map 9: Critical Habitats in Rockaway Borough



## 2.6. Master Plan

The Borough's Master Plan is up-to-date, with the most recent comprehensive plan having been adopted in December 2018. Including Land Use, Economic Development, Community Facilities, and Recycling Elements, the Master Plan seeks to promote the Borough's growth while protecting its open space and existing, historic residential character. Growth would be stimulated through the recommended redevelopment/rehabilitation of the Borough Center. The Borough already contains two affordable housing overlays from previous affordable housing compliance efforts, which are situated along West Main Street, East Main Street, and the southeastern municipal border. The Master Plan also recommended goals for a future housing element, which seek to preserve and enhance existing neighborhoods will diversifying the Borough's housing stock to provide affordable housing and the Borough's COAH obligations. Ultimately, the Master Plan reflects the community's desire to revitalize the Borough Center, while mitigating any adverse impacts from high-density development on established single-family neighborhoods.

## 2.7. Regional Planning Regulations

### *State Development and Redevelopment Plan*

According to the State Development and Redevelopment Plan, the Borough is within the Suburban Planning Area (PA2). The intent of the PA2 Suburban Area is to create and maintain a high quality of life in the region through cooperative regional programs and processes that empower municipalities to act jointly. The goal for this area is to provide for much of the State's future growth in ways that redesign sprawl, protect existing communities and natural resources, and revitalize towns.

## 3. Compliance with Fair Share Plan

The foregoing analysis was prepared for submission to the Superior Court on behalf of the Borough of Rockaway in connection with the New Jersey Supreme Court's March 10, 2015 decision in *In re Adoption of N.J.A.C. 5:96 & 5:97* by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV"). This action was in response to a failure on the part of the Council on Affordable Housing (COAH) to adopt new rules consistent with the New Jersey Fair Housing Act to establish a methodology to determine statewide municipal housing obligations.

The Court's ruling created a judicial review process through which municipalities could secure approval of their Third Round plans by trial judges. The Court appointed judges to review declaratory judgment actions filed on the part of municipalities seeking a declaration that their Fair Share Plans, as may be supplemented, satisfy their constitutional obligation to plan and provide for their fair share of the region's affordable housing units.

### 3.1. Fair Share Obligation

The housing need consists of the following components: The Prior Round Obligation, Indigenous Need or "Rehabilitation Obligation," the "Gap Present Need", and "Prospective Need" (the municipal share of the regional housing need for 2015-2025). Collectively, the Gap and the Prospective Need are referred to as the Round 3 obligation.

The figures that are presented in the fair share obligations below have been derived from the May 2016 Kinsey obligation with a 35% reduction. As defined by both COAH and the Court, municipal housing need is divided into three components:

- **Prior Round Obligation: 43**
- **Present Need (Rehabilitation Share): 30**
- **Gap and Prospective Need: 176**

However, Rockaway Borough does not have enough suitable land to address the obligation. Therefore, the Borough seeks a vacant land adjustment ("VLA") under the COAH Second Round Rules (N.J.A.C. 5:93-4.2). Thus, the Borough requests an

adjustment of its Third Round new construction obligation to reflect the available and developable land area within its municipal boundaries. It is the conclusion of this analysis that the Realistic Development Potential (“RDP”), given the capacity for inclusionary development in the Borough of Rockaway is twenty-two (22) and its unmet need is therefore one-hundred-ninety-five (195).

**3.2. Prior Round Obligation**

COAH allocated to Rockaway Borough a Prior Round Obligation of 43 credits for the period of 1987-1999, which was first determined in 1993 as part of Round Two. This obligation, which was unaddressed, shall be combined with the Borough’s Third Round obligation (See Section 3.4 of this Fair Share Plan).

**3.3. Present Need (Rehabilitation Share)**

COAH defines “indigenous need” as “deficient housing units occupied by low- and moderate-income households within a municipality and is a component of “present need” under N.J.A.C. 5:93-1.3. In Rockaway Borough, the rehabilitation obligation through the end of Round 3 (i.e. July 2, 2025) has been determined to be thirty (30). The Borough’s efforts to meet its Rehabilitation Share includes participation in the Morris County rehabilitation program and the allocation of funding for qualified rehabilitation projects in the Borough’s Spending Plan.

**Participation in the County’s Home Improvement Program:**

Morris County provides deferred payment loans to low- and moderate- income homeowners occupying a one- to three-family home in the Morris County Consortium, which includes Rockaway Borough. A 10-year zero interest loan in the amount of assistance required for the rehabilitation work will be made to the homeowner by the County Division of Housing and Community Development. The Home Improvement Program will market the available funds to qualified residents and vet residents to ensure they qualify and manage the repairs. The program will primarily serve owner-occupied units and address homes with lack of heat, lack of hot water, roof leaks, dangerous electrical problems, broken pipes, problems with sanitary facilities, and other housing conditions that threaten the health, safety, or well-being of the household members per COAH rules (N.J.A.C. 5:93). All rehabilitated units shall remain affordable to low- and

moderate-income households for a period of at least 10 years (the control period). For owner-occupied units, the control period is enforced with a recorded lien; and for renter-occupied units, the control period is enforced with a recorded deed restriction.

### 3.4. Gap and Prospective Need

#### Consideration of Land Most Appropriate for Affordable Housing

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

In addition to considering vacant land for the creation of affordable housing, the Borough has amended its zoning to create affordable and inclusionary housing zoning districts that will create low- and moderate-income housing. These sites will meet the “realistic development potential” or “RDP” and contribute toward the Borough’s unmet need (See Section 3.6 of this Fair Share Plan). With the understanding that affordable housing sites require densities that must be serviced by public water and sewer, the Borough prioritized lands which have such services. Additionally, adoption of the mandatory set-aside ordinance will ensure unforeseen opportunities for affordable housing are captured.

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

### Vacant Land Adjustment and Crediting Plan

Pursuant to N.J.A.C. 5:93-4.1(b), a municipality may secure a downward adjustment of its “new construction” obligation by demonstrating that it lacks sufficient vacant, suitable land for the development of affordable housing. Pursuant to N.J.A.C. 5:93-4.2., municipalities calculate their realistic development potential by tallying their vacant, suitable acreage, multiplying that by at least 6 units per acre, and then dividing that figure by five (which assumes a 20-percent set-aside).

The Borough performed a vacant land analysis in accordance with N.J.A.C 5:93-4.2 and -5.2, attached hereto as **Appendix A**, to determine the realistic development potential across all developable vacant properties within the Borough. Based on that analysis, Rockaway’s realistic development potential is **22 units** as the Borough is either fully built out and/or contains environmentally constraint land, and the entirety of the Borough’s prospective need obligation constitutes unmet need.

The Borough of Rockaway currently has **22 credits** to apply to its realistic development potential and additional surplus senior credits to apply towards unmet need:

- **PSCH Group Home** (135 Hoagland Avenue)
- **Allegro Group Home** (80 Andrea Drive)
- **ESW Realty, LLC** (76 Franklin Avenue)
- **Rockaway Commons, LLC** (204-212 Route 46)
- **Mill Lane Realty, LLC** (60 East Main Street)
- **RPM – Senior Project** (West Main Street – Across from Donatoni Park)

**Table 25: 2015 - 2025 Housing Obligation and Credits**

OBLIGATION		CREDIT	
Prior Round (Unfulfilled)	43	Total Affordable Units (Capped with Senior):	16
Round 3 Obligation	176	Rental Bonus (Capped):	6
Realistic Development Potential	22	Total Affordable Credits:	22
Vacant Land	0*	Unmet Need:	195
RDP Generated from Land Use Approvals	22*		
*See <b>Appendix A</b> for VLA and RDP calculation			

Table 26: Current Round Credits

Project Name	Tenure	Affordable Units	Capped (Non-Family)	Non-Capped (Family)	Rental Bonus
PSCH Group Home	Non-Family / Supportive Needs	4	3*	0	0
Allegro Group Home		5		0	0
ESW Realty, LLC	Inclusionary / Rental	1	0	1	6
Rockaway Commons, LLC		4	0	4	
Mill Lane Realty, LLC		3	0	3	
RPM – Senior Project	Senior	70	5**	0	0
<b>TOTAL</b>			<b>8</b>	<b>8</b>	<b>6***</b>

\*Group homes are collectively capped at 3 to accommodate for requirement that at least half of the affordable units must be family units.  
 \*\*Senior/Non-Family units capped at 25% of RDP for crediting, rounded down.  
 \*\*\*Rental bonuses capped at 25% of RDP for crediting, rounded up.

Table 27: Income Parameters of Third Round Physical Units

Project Name	Physical Units	Very Low Income*	Low Income	Moderate Income
PSCH Group Home	3	**	3	0
Allegro Group Home				
ESW Realty, LLC	1	0	0	1
Rockaway Commons, LLC	4	1	2	2
Mill Lane Realty, LLC	3	0	1	2
RPM – Senior Project	5	1	5	0
<b>THRESEHOLD</b>	-	<b>At least 2 units (13%)***</b>	<b>At least 8 units (50%)</b>	<b>NTE 8 units (50%)</b>
<b>TOTAL</b>	<b>16</b>	<b>2 (15%)</b>	<b>9 (69%)</b>	<b>5 (31%)</b>

\*At least half of VLI requirement shall be family units  
 \*\* Pre-2008 construction units are exempt from VLI requirement  
 \*\*\*Excludes Group Homes and thus denominator is 13 (Pre-2008 and exempted from VLI threshold)

Table 28: Family vs. Non-Family Parameters of Third Round Physical Units

Project Name	Physical Units	Non-Family	Family
PSCH Group Home	3	**	3
Allegro Group Home		**	
ESW Realty, LLC	1	0	0
Rockaway Commons, LLC	4	1	2
Mill Lane Realty, LLC	3	0	1
RPM – Senior Project	5	1	5
<b>THRESEHOLD</b>	-	<b>NTE 8 units (50%)</b>	<b>At least 8 units (50%)</b>
<b>TOTAL</b>	<b>16</b>	<b>8 units (50%)</b>	<b>8 units (50%)</b>

### 3.5. Site Description and Suitability Analysis

Municipalities shall designate sites that are available, suitable, developable and approvable, as defined in N.J.A.C. 5:93-1. As such, the criteria for crediting units must meet the following:

- **“Available site”** – a site with clear title, free of encumbrances which preclude development for low- and moderate-income housing.
- **“Suitable site”** – 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.
- **“Developable site”** – 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 management plan) or is included in an amendment to the area wide water quality management plan submitted to and under review by DEP.
- **“Approvable site”** – a site that may be developed for low- and moderate-income housing in a manner consistent with the rules or regulations of all agencies

with jurisdiction over the site. A site may be approvable although not currently zoned for low- and moderate-income housing.

### **PSCH Group Home**

On April 29, 2002, PSCH-NJ, Inc. purchased 135 Hoagland Avenue to establish a non-profit group home for the developmentally disabled, as licensed by the New Jersey Department of Human Services (DHS), in the Borough. The facility accommodates four (4) residents that are low-income. These units have received Certificates of Completion through the Borough's Project / Unit Monitoring in the CTM System. On June 28, 2012, the property was sold to Delta Community Supports, Inc., which provides support services for adults with developmental disabilities. Since the property is: (1) owned with clear title (available); (2) is located adjacent to other residential houses (suitable); (3) is an existing building connected to the Borough's water / sewer infrastructure (developable); and (4) under the Municipal Land Use Law (MLUL) group homes are permitted uses in its corresponding residential district (approvable), the project meets the requirements of N.J.A.C. 5:93.

### **Allegro Group Home**

ALLEGRO School was Established in 1989 as a non-profit 501(C)(3) corporation to provide quality special education for children on the autism spectrum. In addition to the School, Allegro currently maintains six group homes in Morris County for adults with autism and the ALLEGRO ETC, an adult day program in Morris Plains. Allegro purchased 80 Andrea Drive in Rockaway Borough on March 13, 1997 and entered into a mortgage for same with the New Jersey Department of Human Services on July 16, 1997 (*recorded via book 7085, page 9*). Their Rockaway facility has five (5) bedrooms. They rent to low-income individuals under Medicare coverage. Since the property is: (1) owned with clear title (available); (2) is located adjacent to other residential houses (suitable); (3) is an existing building connected to the Borough's water / sewer infrastructure (developable); and (4) under the Municipal Land Use Law (MLUL) group homes are permitted uses in its corresponding residential district (approvable), the project meets the requirements of N.J.A.C. 5:93.

### **ESW Realty LLC**

The project received its land use approval in June 2017 and was subsequently deed-restricted for 30 years for one affordable unit (*recorded via book 23384, page 344*). Since the property is: (1) owned by a Developer with clear title (available); (2) is located along a street with adjacent residential uses, walking distance to the Lincoln School, and accessible to downtown government and commercial resources (suitable); (3) is a

building under construction and will be connected to the Borough’s water / sewer infrastructure (developable); and (4) has been approved for a 6-unit project by the Joint Land Use Board (approvable), the project meets the requirements of N.J.A.C. 5:93.

**Rockaway Commons, LLC**

The project received its land use approval in April 2018 and, as a condition of approval, must deed-restrict four affordable units for 30 years. On June 1, 2021, the Land Use Board granted the application a one-year extension of its approval through May 2022, and the developer intends to commence project construction in the summer of 2021. Since the property is: (1) owned by a Developer with clear title (available); (2) is located along a commercial corridor with access to a grocery store, commercial uses, and adjacent residential uses (suitable); (3) may be connected to the Borough’s water / sewer infrastructure (developable); and (4) has been approved for a 21-unit project by the Joint Land Use Board (approvable), the project meets the requirements of N.J.A.C. 5:93.

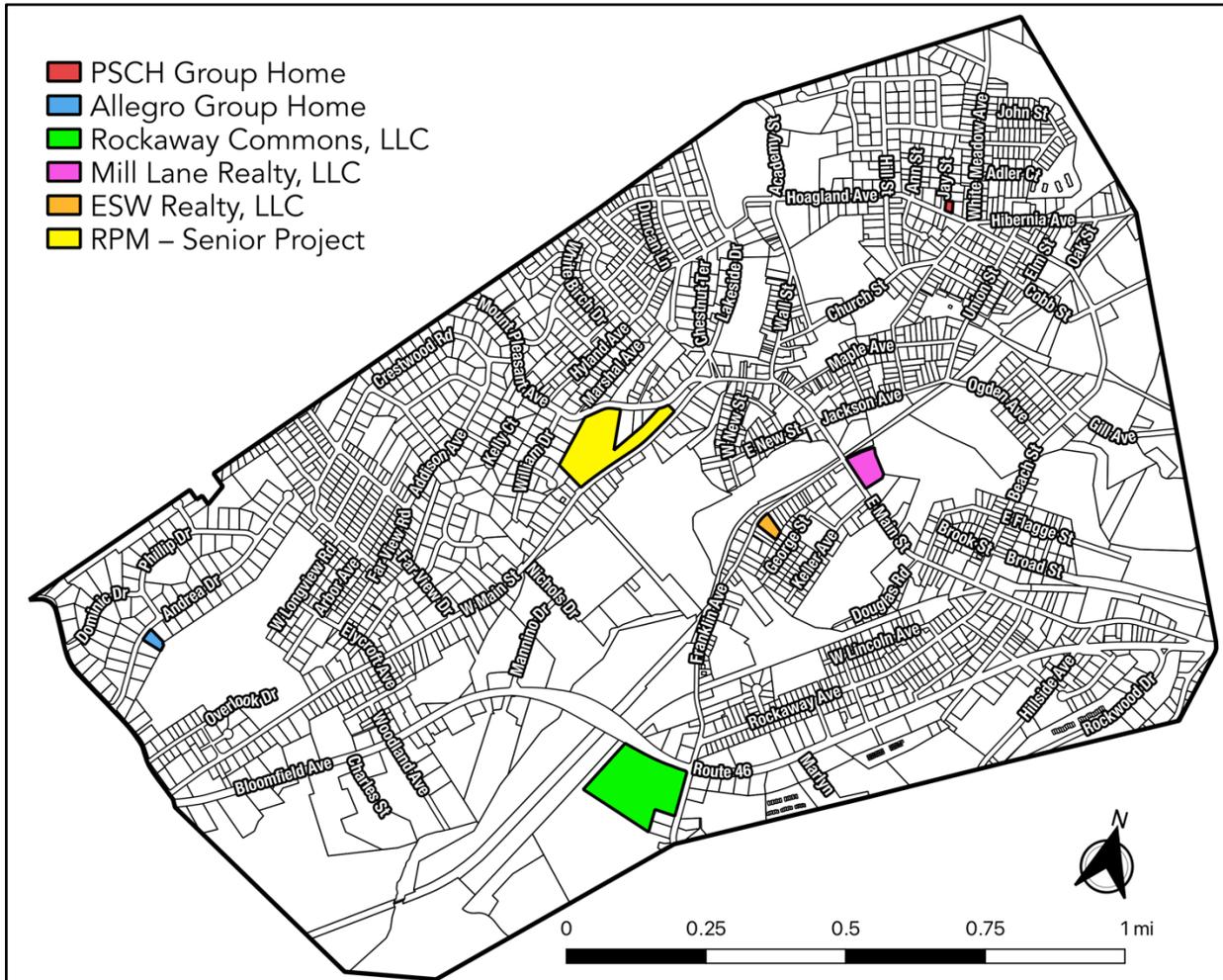
**Mill Lane Realty, LLC**

The project received its land use approval in February 2019 and was subsequently deed-restricted for 30 years for three affordable units (*recorded via book 23632, page 1132*). Since the property is: (1) owned by a Developer with clear title (available); (2) is located in front of a public transportation bus stop (NJTransit Route 880), walking distance to downtown, and accessible to government and commercial resources (suitable); (3) is an existing building connected to the Borough’s water / sewer infrastructure (developable); and (4) has been approved for a 19-unit project by the Joint Land Use Board (approvable), the project meets the requirements of N.J.A.C. 5:93.

**RPM – Senior Project**

As part of the Borough’s Builder’s Remedy Litigation, this property has been settled between the Borough and the Developer to construct a 70-unit 100% affordable senior residential project on an approximately 7-acre parcel. This Site has been re-zoned accordingly via O-09-21. On June 23, 2021, the project received its land use approval, where it will be a condition of the resolution to deed-restrict the units for affordable housing prior to occupancy. Since the property is: (1) owned by a Developer with clear title and is participating in the Borough’s affordable housing litigation (available); (2) is located near the downtown with adjacent compatible residential, commercial and public park land uses (suitable); (3) is connected or can be connected to the Borough’s water / sewer infrastructure (developable); and (4) has been re-zoned to allow for an as-of-right 70-unit 100% affordable senior residential project before the Land Use Board (approvable), the project meets the requirements of N.J.A.C. 5:93.

Map 10: Crediting Sites to Meet RDP



### 3.6. Recommendations to Meet Unmet Need

The Borough will address its “unmet need” of 195 units through the following mechanisms:

1. **Surplus of Senior Units at Block 73, Lots 59.01 and 65:** The Borough shall partially address its unmet need with additional credits from the proposed RPM 100% affordable housing development. The Borough may apply up to 49 of the remaining credits proposed for this development toward its unmet need. The remaining credits may be applied towards the Borough’s future affordable housing obligations in accordance with then applicable rules and regulations.

2. **Rental Bonuses to Satisfy RDP:** The Borough shall partially address its unmet need with 2 additional credits from the bonus credits from the family rentals in the above crediting table (8 rental credits provided, in which were capped at 6). The Borough may apply up to 2 of the remaining bonus credits proposed toward its unmet need.
3. **Affordable Housing Overlay Ordinances (O-16-18 adopted September 13, 2018):** The Borough agrees to adopt inclusionary overlay zoning on the following properties:
  - Gallo Brothers (Block 40, Lots 34 and 35.01) – the Borough agrees to rezone this 2.65-acre property to permit 15 du/ac and require a 20% set-aside.
  - Holstein (Block 27, Lot 7) – the Borough agrees to rezone this 5.5-acre property, of which approximately 1.3 acres are developable to permit 15 du/ac and require a 20% set-aside.
  - Roned Realty (Block 17, Lot 8) – the Borough agrees to rezone this 3.66-acre property to permit 15 du/ac and require a 20% set-aside.
  - Alcoa (Block 84, Lot12) – the Borough agrees to rezone this property with 2.6 unconstrained acres to permit up to 15 du/ac and require a 20% set-aside.
  - Van Duyne/ Hillside (Block 31, Lots 4, 13, 16; Block 33, Lots 2, 3) – the Borough agrees to rezone this 9.4-acre property to permit up to 15 du/ac and require a 20% set-aside.
4. **Borough Central Commercial Zone Area Inclusionary Housing:** The Borough has identified properties located in the Borough Central Commercial Zone including as an area for inclusionary housing. The Borough shall either:
  - Authorize the Land Use Board to study these properties as a non-condemnation area in need of redevelopment or area in need of rehabilitation pursuant to the Local Housing and Redevelopment Law.The parties agree that since this area has not yet been studied for Redevelopment that an appropriate amount of time is necessary to allow the Borough to complete the study and, if necessary, adopt a

Redevelopment Plan. The parties agree that the Borough shall have one year from the date of final judgment to complete its preliminary investigation/review of this area for Redevelopment and eighteen months to adopt a Redevelopment Plan. If by the first anniversary of the date of final judgment the Redevelopment process has not completed its preliminary investigation or if at any point the Redevelopment process is abandoned the parties agree that the Borough will adopt an Overlay Zone Ordinance to encompass the approximately 18-acre area. These parcels are currently developed with a variety of land uses. The overlay zone will allow for inclusionary residential development at a density of between 15 to 18 units per acre, with the final maximum permitted density to be determined at the time of ordinance preparation. Affordable housing will be required at a minimum set-aside rate of 20% whether the affordable housing units are for-sale or rental; or

- The Borough may forego the redevelopment process and in lieu of same, may adopt an Overlay Zone and/or amend existing zoning to encompass the approximately 18-acre area, for inclusionary residential development at a density between 15 to 18 units per acre, with the final maximum permitted density to be determined at the time of ordinance preparation. Affordable housing will be required at a minimum set-aside rate of 20% whether the affordable housing units are for-sale or rental.

5. **Mandatory Set-Aside Ordinance (O-19-18 adopted on September 13, 2018):** The ordinance requires all new multifamily residential developments of five (5) units or more. The set aside for developments shall be twenty percent (20%) regardless of tenure. The provisions of the ordinance shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five or more, or to specific parcels or zones identified in other paragraphs of this agreement, which shall be subject to the requirements specified therein.

### 3.7. Administration

#### *Development Fee Ordinance + Affordable Housing Trust Fund*

The Borough has adopted a development fee ordinance that is consistent with the “Roberts Bill”, P.L. 2008 c.46. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with COAH’s regulations and the Statewide Non-Residential Development Fee Act.

Within the Borough of Rockaway, all residential developers that are not providing affordable housing or are specifically exempted by the Ordinance, shall pay a developer fee of:

- One and a half percent (1.5%) of the equalized assessed value for all new residential development, provided no increased density is permitted; or
- Six percent (6%) percent of the equalized assessed value for each additional unit that may be realized when there is an increase in residential density pursuant to a “d” variance granted under N.J.S.A. 40:55D.

All non-residential developers that are not specifically exempted by the Ordinance, shall pay a developer fee of:

- Two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.

Additionally, the following funds shall be deposited into the AHTF:

- Any payments in lieu of on-site construction of a fraction of an affordable unit, where permitted by Ordinance or by Agreement with the Borough of Rockaway;
- Funds contributed by developers to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
- Rental income from municipally operated units;
- Repayments from affordable housing program loans;
- Recapture funds;
- Proceeds from the sale of affordable units; and

- Any other funds collected in connection with Rockaway’s affordable housing program.

Such fees shall be deposited into an interest-bearing local municipal Affordable Housing Trust Fund (AHTF) to be maintained by the Borough of Rockaway for the purpose of depositing development fees collected. Developer fees collected shall be used for the sole purpose of providing very low, low- and moderate-income housing in accordance with a Court-approved Spending Plan.

### **Spending Plan**

The Spending Plan (**See Appendix C**), which discusses anticipated revenues, collection of revenues, and the use of revenues, was prepared in accordance with COAH’s applicable substantive rules. All collected revenues will be placed in the Borough’s Affordable Housing Trust fund and will be dispensed for the use of eligible affordable housing activities including, but not limited to:

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

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

At least 30% of collected development fees, excluding expenditures made since July 17, 2008, when affordability assistance became a statutory requirement in the Fair Housing Act, shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in a municipal Fair Share Plan. At least one-third

(1/3) of the affordability assistance must be expended on very-low-income units. Additionally, no more than 20% of the revenues collected from development fees each year, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to prepare or implement a rehabilitation program, a new construction program, a housing element and fair share plan, and/or an affirmative marketing program.

### **Affordable Housing + Affirmative Marketing**

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

The Borough will establish the position of the Municipal Housing Liaison and appoint a staff member to the position. The Borough will permit developers who demonstrate the appropriate experience and expertise to administer their own units, as both are experienced affordable housing administrators.

The affirmative marketing plan is designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age, or number of children to the affordable units located in the Borough. Additionally, the affirmative marketing plan is intended to target those potentially eligible persons who are the least likely to apply for affordable units and who reside in the Borough's housing region, Region 2, comprised of Essex, Morris, Union and Warren Counties. The affirmative marketing plan includes regulations for qualification of income eligibility, price and rent restrictions, bedroom distribution, affordability control periods, and unit marketing in accordance to N.J.A.C. 5:80-26.1 et seq. All newly created affordable units will comply with the 30-year affordability control required by UHAC, N.J.A.C. 5:80-26.5 and 5:80-26.11. This plan must be adhered to by all private, non-profit, and municipal developers

of affordable housing units and must cover the period of deed restriction or affordability controls on each affordable unit.

**Monitoring**

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

- On the first anniversary of the entry of final judgment, and every anniversary thereafter through the end of this Agreement, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC. In addition to the foregoing, the Borough may also post such activity on the CTM system and/or file a copy of its report with the COAH or its successor agency at the State level.
  
- For the midpoint realistic opportunity review date, the parties agree that the midpoint for purposes of this agreement will be July 7, 2020 pursuant to N.J. S. A. 52: 27D- 313 (*Note: Date is from the Settlement Agreement*). The Borough will post the review on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled RDP mechanisms continue to present a realistic opportunity and whether the mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether the mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues.

For the review of very low-income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of the entry of final judgment, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low-income requirements, including the family very low-income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very low-income housing obligation under the terms of this settlement.



# **Appendix A: Vacant Land Adjustment**

# Rockaway Borough

## Vacant Land Analysis

June 2020

Prepared by:



Topology, LLC  
60 Union Street, 1st Floor  
Newark, NJ 07105

# Table of Contents

*Introduction*..... 2

*Methodology*..... 2

    Assumptions Underlying Realistic Development Potential..... 2

    Data Sources..... 3

    Methodology of Vacant Land Parcels Assemblage ..... 3

*Vacant Parcels with Environmental Constraints*..... 5

*Parcels Likely to be Redeveloped* ..... 8

*Conclusion*..... 9

## Introduction

The foregoing analysis was prepared for submission to the Superior Court on behalf of the Borough of Rockaway (“the Borough”) in connection with the New Jersey Supreme Court’s March 10, 2015 decision in re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”). This action was in response to a failure on the part of Council on Affordable Housing (COAH) to adopt new rules consistent with the New Jersey Fair Housing Act to establish a methodology to determine statewide municipal housing obligations.

N.J.A.C. 5:93-4.2 provides a mechanism for a municipality to adjust its affordable housing obligations based on a lack of vacant, available, suitable, developable, and approvable land. To demonstrate a lack of capacity to address the Borough’s municipal housing obligation, all vacant parcels in the municipality were analyzed to determine the development potential of each property, and the sum of potential units is compared to the prospective need obligation in the foregoing analysis. If there is insufficient vacant land within the municipality to meet the obligation for new affordable units, the total prospective need obligation is adjusted accordingly.

## Methodology

An analysis of existing land uses and zoning in the Borough was conducted to determine the Realistic Development Potential (RDP), and an estimate of potential inclusionary affordable units was derived from the RDP assuming a 20% affordable set-aside. Using data from the State of New Jersey Tax Assessment Records and New Jersey environmental GIS records of all properties within the Borough were examined to determine if they were vacant and developable. Properties reserved for public use, open space, listed on the NJ ROSI, and those that were occupied by water bodies, steep slopes, wetlands, critical habitats, and within a riparian buffer were removed as candidates for development. The remaining properties were then tested to determine their ability to accommodate a minimum of five (5) units. Public and non-profit owned properties of sufficient size to accommodate potential inclusionary development were also included as vacant and potentially developable in the analysis. All properties with sufficient buildable area to accommodate five or more units were included in the determination of the RDP.

### *Assumptions Underlying Realistic Development Potential*

#### **Inclusionary Development**

N.J.A.C. 5:93-4.2(f) specifies that the RDP is based on an inclusionary zoning framework and available land is not assumed to be developed as 100% affordable housing. The minimum presumptive set aside for affordable housing is 20%, or one in five units. As such, suitable development sites for inclusionary development must have the capacity to provide a minimum of five units.

#### **Assumed Densities and Minimum Project Size**

According to the Second Round Rules, it is important to “consider the character of the area surrounding each site” when crafting assumptions underlying the intensity of residential development. As such, the maximum density for each assemblage was determined as follows:

- The permitted density of each parcel pursuant to the Borough’s Zoning Ordinance;
- Minimum presumptive density of six units per acre as required by the Second Round Rules where permitted density is below six units per acre;
- Surrounding land uses;
- The need for affordable housing; and
- Density count of approved projects by the Planning or Zoning Board.

### **Data Sources**

- **Mod IV Tax Assessment Data** used obtained from the Assessment Records Search.
- The **Critical Habitat Dataset** was developed using New Jersey Department of Environmental Protection (NJDEP).
- The **Steep Slope Dataset** was developed using New Jersey Geographic Information Network (NJGIN).
- The **Flood Hazard Area Dataset** was digitized from FEMA Flood GIS data of 100-year flood zones.
- The **Wetlands Dataset** was developed using the Land Use/Land Cover 2012 as developed by the New Jersey Department of Environmental Protection (NJDEP), Office of Information Resources Management (OIRM), Bureau of Geographic Information Systems (BGIS).
- The **Waterbodies Dataset** was obtained from the National Hydrography Dataset (NJDEP) Waterbody 2002 dataset as developed by the New Jersey Department of Environmental Protection (NJDEP), Office of Information Resource Management (OIRM), and Bureau of Geographic Information Systems (BGIS)

### **Methodology of Vacant Land Parcels Assemblage**

#### **Step 1: Selection of Sites**

##### **Step 1.1: Classification of Vacant Land**

Using the **Mod IV Tax Assessment Data**, properties except those with tax class 1 (Vacant) and vacant properties with tax class 15C (Public) were removed from the analysis. The remaining properties can be found in Table 1: Inventory of All Vacant Sites.

##### **Step 1.2: Generation of Assemblages**

No properties remaining on the Inventory of Vacant Sites were determined to be in need of assemblage.

### **Step 1.3: Exclusion of Low Yield Properties**

The Second Round Rules established by the Council of Affordable Housing in N.J.A.C. 5:93 required development potential to consider principles of sound land use planning in regards to density, and that the minimum presumptive density be 6 du/ac.

In conformance with this requirement, the analysis used existing zoning densities to determine the number of units per acre that could be constructed. In cases where permitted density under the zoning ordinance did not meet the minimum presumptive density, the development potential was calculated at 6 units per acre.

The acreage of the assemblages created in Step 1.2 was multiplied by the permitted number of units per acre to determine the property yield. All vacant assemblages whose yield was less than five units were excluded from the Inventory of Vacant Sites.

## **Step 2: Site Analysis (Exclusion of Environmentally Sensitive Areas from Development Calculations)**

### **Step 2.1: Overlay Environmentally Sensitive Areas**

The remaining vacant sites were mapped using GIS. The properties were overlaid with the **Critical Habitat, Steep Slopes, Flood Hazard, Wetlands, and Waterbodies Datasets**.

### **Step 2.2: Calculate Development Potential.**

Areas of vacant land impacted by these environmental constraints were removed from the calculation of developable area. No areas without these environmental constraints were left to determine a potential for development.

## **Step 3: Additional Exclusions**

### **Step 3.1: Exclusion of Historic and Architecturally Important Sites**

No properties remaining on the Inventory of Vacant Sites were determined to be historically or architecturally important.

### **Step 3.2: Exclusion of Active Recreational Lands**

All active recreational lands were excluded based on their property tax classification under in the MOD IV tax assessment data.

### **Step 3.3: Exclusion of Parklands and Open Space**

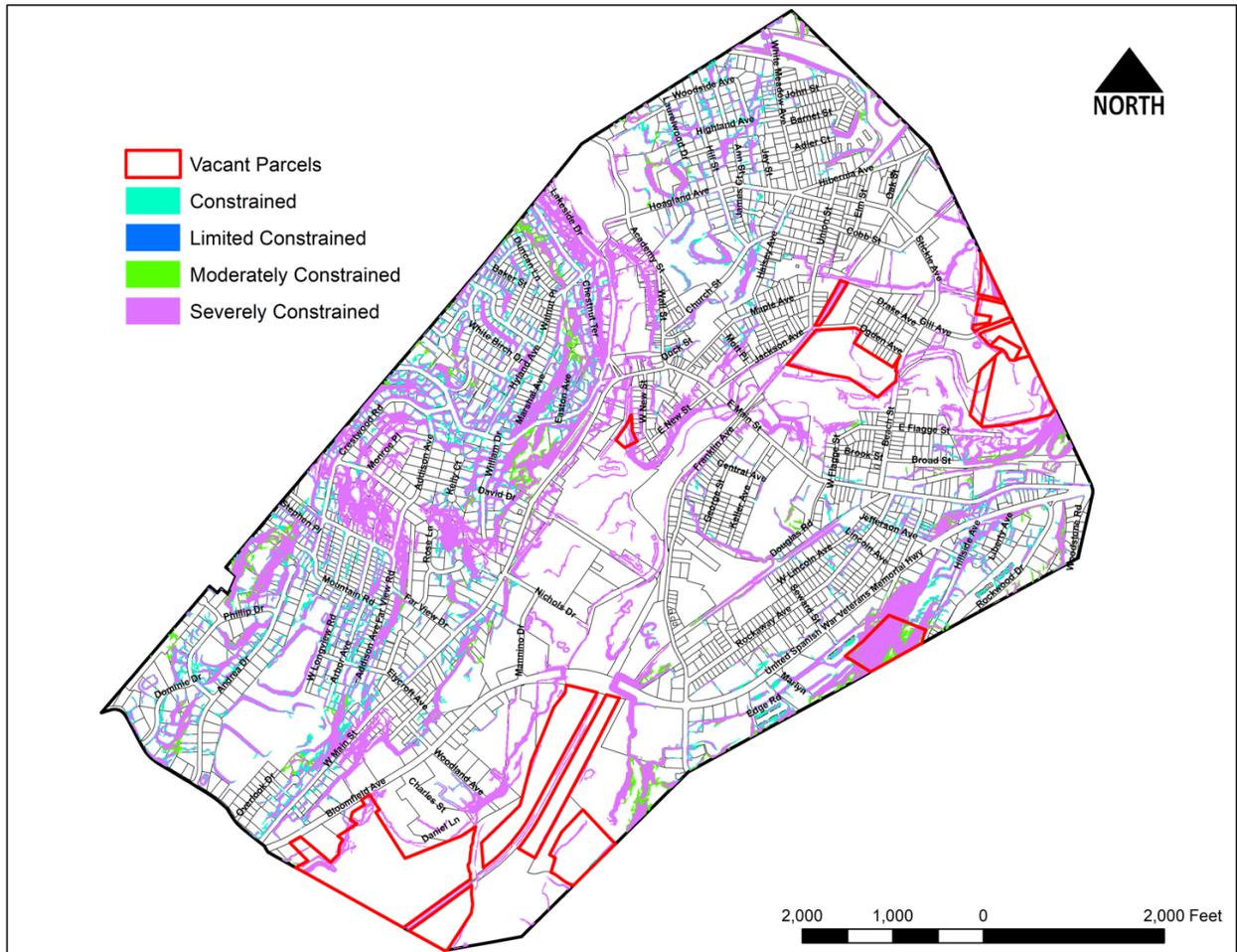
All parklands and open space areas were excluded based on their property tax classification under in the MOD IV tax assessment data.

# Vacant Parcels with Environmental Constraints

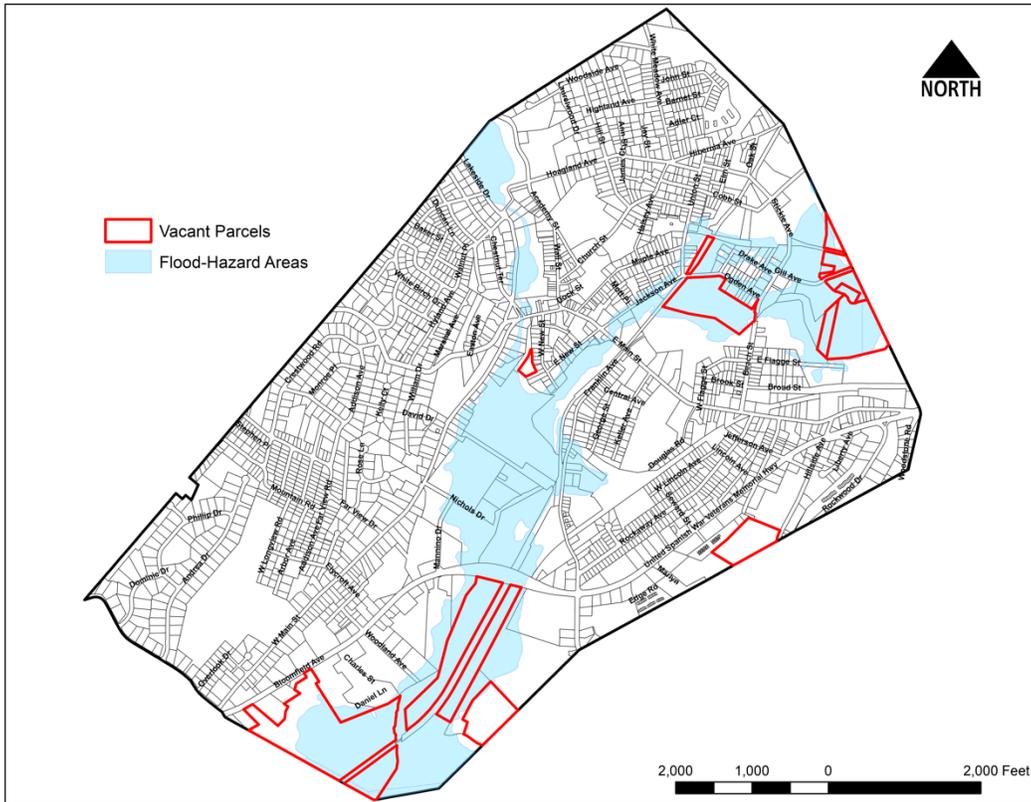
The maps below illustrate the application of the above methodology to all parcels in the Borough to identify potentially developable vacant sites based on size and yield.

Analysis of aggregated sites (*with enough acreage to produce 5 or more units at 6 du/ac*) on the Inventory of Vacant Sites revealed that all vacant land within the Borough is environmentally constrained. The table below summarizes the results of the site analysis across all eligible vacant sites in the Borough, which were each assessed separately for development potential.

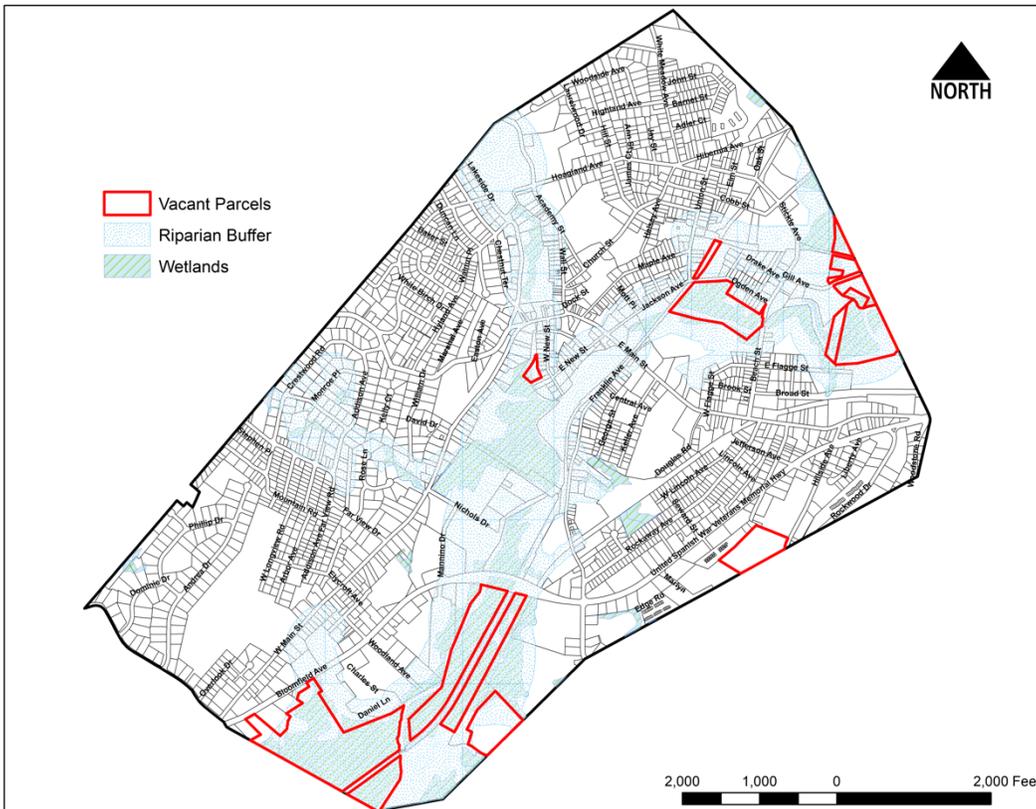
### Environmental Constraint Map 1: Steep Slopes



## Environmental Constraint Map 2: Flood Hazard Areas



## Environmental Constraint Map 3: Wetlands and Riparian Buffers



### Environmental Constraint Map 4: Critical Habitat



Thus, these sites do not present a feasible opportunity for development regardless of conditions on the site or the configuration of the parcel. All sites that produced less than five units at a presumed density of six units per acre under COAH’s Second Round Rules were removed from the list completely:

**Table 1: “Vacant” Coded in MODIV Tax Assessor Records + Associated Constraints**

Block	Lot	Property Location	Acres	6un/ac	Zoning	RDP Eligible
<b>Color Codes:</b>						
Disqualified since "False" Rockaway property (small encroachment in Borough - actually in Denville)						
Disqualified since "False" Rockaway property (small encroachment in Borough - actually in Rockaway Twp)						
Disqualified since "False" vacant as property has improvements on it						
Disqualified since located in flood-hazard, wetland, and/or riparian zone						
Disqualified since located with Severely Constrained Slopes and/or Critical Habitat						
Disqualified since in RDP for land use approval						
84	12	400 ROUTE 46	30.095	180.57	HC-1	NO
84	35	RR ROW	12.857	77.142	I	NO
10101	32	ROCKAWAY RD - REAR	12.574	75.444	I	NO

Block	Lot	Property Location	Acres	6un/ac	Zoning	RDP Eligible
17	31	OGDEN AVE	10.794	64.764	R-2	NO
41301	15	OFF MENDES ST	10.576	63.456	I-2	NO
62002	4	4-10 VANDERHOOF AVE	10.485	62.91	I-2	NO
21	3	BEACH ST	10.253	61.518	GLI	NO
10802	40	126 MT PLEASANT AVE	9.387	56.322	R-20	NO
10101	31	ROCKAWAY RD	9.266	55.596	I	NO
84	5.03	FRANKLIN AVE REAR	7.543	45.258	I	NO
84	35.02	RR ROW	7.481	44.886	I	NO
61601	11	VANDERHOOF AVE	6.626	39.756	I-2	NO
33	3	ROUTE 46	6.52	39.12	R-5	NO
84	10	ROUTE 46	5.178	31.068	I	NO
40203	1	360 FRANKLIN AVE	4.824	28.944	R-1	NO
21	3.01	BEACH ST	2.027	12.162	GLI	NO
21	1	20 GILL AVE	1.952	11.712	GLI	NO
62002	2	26 DOCK RD	1.863	11.178	I-2	NO
15	6	25 GILL AVE	1.75	10.5	I	NO
15	4	GILL AVE	1.332	7.992	I	NO
62002	3	VANDERHOOF AVE	1.136	6.816	I-2	NO
84	12.01	404 ROUTE 46	0.996	5.976	HC	NO
14	17	RAILROAD PROP	0.921	5.526	R-2	NO
21	2	BEACH ST	0.894	5.364	GLI	NO
40	11	W NEW ST REAR	0.853	5.118	R-4	NO

## Parcels Likely to be Redeveloped

The Borough altogether contains four (4) properties of land likely to developed and/or redeveloped in the period from 1999-2025. A total of 109 residential units are approved, under construction or were constructed, or are part of the Borough's settlement agreement, of which 22 potential affordable units at a 20% set-aside are included in the RDP. The table below presents fundamental information on each development site and constructed project:

**Table 2: RDP Generated Sites**

Block	Lot	Property Location	Applicant	Units Approved	Assumed Set-Aside of 20%
38	138	76 Franklin Ave	LUB-41	6	1.2
84	1	Rockaway Commons	LUB-48	20	4.0
17	23	60 E Main	LUB-49	19	3.8
73	65	W Main Street	TBD (Settlement)	64	12.8
<b>TOTAL</b>				<b>109</b>	<b>22</b>

## **Conclusion**

The preceding analysis demonstrates (1) that the Borough lacks sufficient vacant, suitable land to fully address its prospective need obligation of 176 (per Kinsey Report, as adjusted through the Borough's settlement agreement) and prior round obligation of 41; and (2) that the Borough's "realistic development potential" is 22 units, based on developable land, redevelopment after 1999, and land likely to redevelop within the Borough by 2025. Once the RDP has been met, the 195 affordable units unaddressed by current and anticipated development will constitute "unmet need."

# Appendix B: Settlement Agreement

---

June 30, 2021

Richard H. Beilin, Esq.  
Wacks, Debona, Beilin, and Weber LLC  
110 South Jefferson Road, Suite 304  
Whippany, New Jersey 07981

**Re: In the Matter of the Borough of Rockaway, County of Morris, Docket  
No. MRS-L-1671-15**

Dear Mr. Beilin:

This letter memorializes the terms of a second amended agreement reached between the Borough of Rockaway (the "Borough" or "Rockaway"), the declaratory judgment plaintiff, and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (Mount Laurel IV) and, through this and earlier settlement agreements, a defendant in this proceeding. This Agreement, if and when approved by the court at a fairness hearing, will supersede the previous agreements dated June 22, 2017 and September 4, 2020. All terms from both the original settlement agreement and the amended settlement agreement not specifically amended by this Agreement will remain in full force and effect as previously approved by the Court.

The Borough and FSHC have entered into this amended agreement because the parties agree that it will result more quickly in additional affordable housing units being constructed in the Borough of Rockaway.

The Borough and FSHC hereby agree to the following amended terms:

1. The parties previously entered into a settlement agreement on or about June 22, 2017, which was approved by Hon. L. Maryann Nergaard, J.S.C. on July 28, 2017, and which is superseded and replaced by that agreement. Pursuant to that settlement agreement, the Borough adopted the following ordinances, which are currently in place:
  - (a) Ordinance No. 15-18, concerning development fees for affordable housing;
  - (b) Ordinance No. 16-18, establishing Affordable Housing Overlay Zones;
  - (c) Ordinance No. 17-18, concerning Accessory Housing Units;
  - (d) Ordinance 18-18, concerning the position of Affordable Housing Liaison, and
  - (e) Ordinance No. 19-18, creating Chapter 88 of the Borough Code, to address the requirements of the Fair Housing Act and Uniform Housing Affordability Controls, and comply with the Borough's affordable housing obligations.
2. The parties previously entered into an amended settlement agreement on September 4, 2020 that called for, among other things, the addition of the RPM Site to the Borough's fair share plan as a 100% affordable, municipally-sponsored development. On September 21, 2020 the Borough's joint Land-Use Board denied site plan approval to the RPM which denial was memorialized in a resolution dated October 6, 2020. RPM filed a Complaint in

Lieu of Prerogative Writs on October 26, 2020 against the Borough and the LUB challenging the denial of the site plan application. The Borough, the LUB, and RPM ultimately negotiated a settlement agreement on May 10, 2021. That settlement agreement is incorporated into this amended settlement agreement. The following specific provisions are hereby amended:

- a. The RPM site, also called the Donatoni site, at Block 73, Lots 59.01 and 65 was previously included in the settlement agreement and anticipated to produce 64 affordable housing units which would have partially addressed the Borough's combined Prior Round and Third Round Realistic Development Potential (RDP), and the remainder being applied to the Borough's Third Round Unmet Need. This RPM Agreement anticipates that 69 affordable housing units will be constructed on the RPM/Donatoni site.
  - b. The Borough's RDP compliance will remain the same with 5 units at the RPM site being utilized to address the Borough's RDP.
  - c. The Borough's Unmet Need will be partially satisfied with 49 units at the RPM site.
  - d. The remaining 15 units at the RPM site may be applied towards the Borough's future affordable housing obligations in accordance with then applicable rules and regulations.
3. The Borough will provide a realistic opportunity for the development of affordable housing that will be developed or created through means other than inclusionary zoning on the RPM (Donatoni) site located at Block 73 Lots 59.01 and 65. The Borough has entered into an agreement with RPM for the production of 69 age-restricted affordable housing units.
- a. In accordance with N.J.A.C. 5:93-5.5, the Borough recognizes that it must provide evidence that the municipality has adequate and stable funding for any non-inclusionary affordable housing developments. The municipality is required to provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved. The Borough meets this obligation as follows: the Borough agrees to fully support RPM's application for an allocation of 9% Low-Income Housing Tax Credits and to facilitate RPM applying for tax credits in the next application cycle in 2021. Pursuant to the RPM Agreement the following steps have been taken:
    - i. The Borough adopted a resolution of need on May 13, 2021.
    - ii. The Borough adopted an ordinance for an amended financial agreement on June 24, 2021.
    - iii. The Borough adopted the zoning ordinance for the RPM site on April 8, 2021.
  - b. In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The schedule shall provide for construction to begin within two years of court approval of this settlement. The municipality shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The Borough shall demonstrate in its Housing Element and Fair Share Plan how it addresses these requirements.
4. The Borough has identified properties located in the Borough Central Commercial Zone including (Attachment "B") as an area for inclusionary housing. The Borough shall either:



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

6. All other terms of the June 22, 2017 and September 4, 2020 settlement agreements between FSHC and the Borough of Rockaway shall remain in full force and effect.

**TO FSHC:** Adam M. Gordon, Esquire  
Fair Share Housing Center  
510 Park Boulevard  
Cherry Hill, NJ 08002  
Phone: (856) 665-5444  
Telecopier: (856) 663-8182  
E-mail: adamgordon@fairsharehousing.org

**TO THE BOROUGH:** Richard H. Beilin, Esq.  
Wacks, Debona, Beilin, and Weber LLC  
110 South Jefferson Road, Suite 304  
Whippany, New Jersey 07981  
Phone: (973)644-0770  
Telecopier: (973)644-2224  
E-Mail: rbeilin@wackslaw.net

**WITH A COPY TO THE MUNICIPAL CLERK:** Clerk, Borough of Rockaway  
Rockaway Borough, Municipal Building  
1 East Main Street  
Rockaway, New Jersey 07866  
Phone: (973)627-2000  
Telecopier: (973)627-8294  
E-Mail: boroughclerk@rockawayborough.org

Please sign below if these terms are acceptable.

Sincerely,

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

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

\_\_\_\_\_

Dated: \_\_\_\_\_



Peter J. O'Connor, Esq.  
Adam M. Gordon, Esq.  
Laura Smith-Denker, Esq.  
David T. Rammler, Esq.  
Joshua D. Bavers, Esq.  
Bassam F. Gergj, Esq.

September 4, 2020

**Richard H. Beilin, Esq.**  
**Wacks, Debona, Beilin, and Weber LLC**  
**110 South Jefferson Road, Suite 304**  
**Whippany, New Jersey 07981**

**Re: In the Matter of the Borough of Rockaway, County of Morris, Docket  
No. MRS-L-1671-15**

Dear Mr. Beilin:

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

### **Background**

Rockaway Borough filed the above-captioned matter on July 7, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., in accordance with In re N.J.A.C. 5:96 and 5:97, supra. Through the declaratory judgment process, the Borough and FSHC have agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

The parties previously entered into a settlement agreement on or about June 22, 2017, which was approved by Hon. L. Maryann Nergaard, J.S.C. on July 28, 2017, and which is superseded and replaced by that agreement. Pursuant to that settlement agreement, the Borough adopted the following ordinances, which are currently in place:

- (a) Ordinance No. 15-18, concerning development fees for affordable housing;
- (b) Ordinance No. 16-18, establishing Affordable Housing Overlay Zones;
- (c) Ordinance No. 17-18, concerning Accessory Housing Units;
- (d) Ordinance 18-18, concerning the position of Affordable Housing Liaison, and
- (e) Ordinance No. 19-18, creating Chapter 88 of the Borough Code, to address the requirements of the Fair Housing Act and Uniform Housing Affordability Controls, and comply with the Borough's affordable housing obligations.

**Settlement terms**

The Borough and FSHC hereby agree to the following terms:

1. FSHC agrees that the Borough, through the adoption of a Housing Element and Fair Share Plan conforming with the terms of this Agreement (hereafter “the Plan”) and through the implementation of the Plan and this Agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when Third Round fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round Obligation instead of doing so through plenary adjudication of the Third Round Obligation.
3. FSHC and Rockaway hereby agree that Rockaway's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report <sup>1</sup> )	30
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	43
Third Round (1999-2025) Obligation (per Kinsey Report, as adjusted through this Agreement)	176

4. For purposes of this Agreement, the Third Round Obligation shall be deemed to include the Gap Period present need for new construction to address the affordable housing needs of households formed from 1999-2015, a need that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017), and the Prospective Need, which is a measure of the affordable housing need anticipated to be generated between July 1, 2015 and June 30, 2025.
5. The Borough's efforts to meet its Rehabilitation Share includes participation in the Morris County rehabilitation program and the allocation of funding for qualified rehabilitation projects in the Borough's Spending Plan. This is sufficient to satisfy the Borough's present need obligation of 30 units.
6. As noted above, the Borough has a Prior Round (new construction) Obligation of 43 units and the Third Round (new construction) obligation of 176 units which create a combined obligation of 219 units. The Borough will address its combined Prior Round and Third Round obligation, in part, with a vacant land adjustment. The Borough, has a realistic development potential (RDP) of 22 units, as calculated in Exhibit A. That RDP will be satisfied as follows:

Credits to Satisfy RDP of 22 units				
Name of Development	AH BR/Units	# of Bonus	Total Credits	Comments
PSCH Group Home	4*			Completed; Supportive Housing

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

Allegro Group Home	5*			Completed; Supportive Housing
RPM (Donatoni site)	5 (of 64)**			Proposed; 100% AH – age-restricted
76 Franklin	1	1		Approved; family rental
Rockaway Commons	4	4		Approved; family rental
60 East Main St.	3	3		Approved; family rental
	16*	6***	22	
<i>* Group homes capped at 3 to accommodate for requirement of half units to be family  ** Capped 25% of RDP, Rounded Down  *** Capped 25% of RDP, Rounded Up</i>				

7. The RDP compliance plan of 22, subtracted from the agreed upon combined Prior Round and Third Round Obligation of 219 units, results in an Unmet Need of 195 units, which shall be addressed through the following mechanisms, as more fully described herein in this Agreement:
- a. RPM site (Block 73, Lots 59.01 and 65) – the Borough shall partially address its unmet need with additional credits from the proposed RPM 100% AH development. The Borough may apply up to 49 of the remaining 59 credits proposed for this development toward its unmet need. The remaining 10 credits may be applied towards the Borough’s future affordable housing obligations in accordance with then applicable rules and regulations.
  - b. Rental Bonuses to Satisfy RDP – the Borough shall partially address its unmet need with 2 additional credits from the bonus credits from the family rentals in the above crediting table (8 rental credits provided, in which were capped at 6). The Borough may apply up to 2 of the remaining bonus credits proposed toward its unmet need.
  - c. The Borough agrees to adopt inclusionary overlay zoning on the following properties:
    - i. Gallo Brothers (Block 40, Lots 34 and 35.01) – the Borough agrees to rezone this 2.65-acre property to permit 15 du/a and require a 20% set-aside.
    - ii. Holstein (Block 27, Lot 7) – the Borough agrees to rezone this 5.5-acre property of which approximately 1.3 acres are developable to permit 15 du/a and require a 20% set-aside.
    - iii. Roned Realty (Block 17, Lot 8) – the Borough agrees to rezone this 3.66-acre property to permit 15 du/a and require a 20% set-aside.
    - iv. Alcoa (Block 84, Lot12) – the Borough agrees to rezone this property with 2.6 unconstrained acres to permit up to 15 du/a and require a 20% set-aside.
    - v. Van Duyne/ Hillside (Block 31, Lots 4, 13, 16; Block 33, Lots 2, 3) – the Borough agrees to rezone this 9.4-acre property to permit up to 15 du/a and require a 20% set-aside.
  - d. The Borough has identified properties located in the Borough Central Commercial Zone including (Attachment “B”) as an area for inclusionary housing. The Borough shall either:



provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved. The Borough meets this obligation as follows: the Borough agrees to fully support RPM's application for an allocation of 9% Low-Income Housing Tax Credits and to facilitate RPM applying for tax credits in the next application cycle in 2020.

- b. In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The schedule shall provide for construction to begin within two years of court approval of this settlement. The municipality shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The Borough shall demonstrate in its Housing Element and Fair Share Plan how it addresses these requirements.
9. The Borough agrees to require 13% of all units referenced in this Agreement, excepting those units that were constructed or granted preliminary or final site plan approval prior to July 1, 2008, to be very low income units, with half of the very low income units being available to families. The municipality will comply with those requirements as follows:

**Affordability Compliance of Physical Units Only (i.e. excludes bonus credits)**

Project Name	Units	VLI*	LI	MI
76 Franklin Ave	1	0	0	1
Rockaway Commons	4	1	2	2
60 E Main	3	0	1	2
RPM Senior Units	5	1	5	0
PSCH-NJ ; Allegro School**	3	**	3	0
<b>TOTAL</b>	<b>16</b>	<b>2</b>	<b>9</b>	<b>5</b>
<b>THRESHOLD</b>		<b>At least 13%***</b>	<b>At least 50%</b>	<b>NTE 50%</b>
		<b>15%</b>	<b>69%</b>	<b>31%</b>

\*At least 1/2 of VLI requirement shall be family units

\*\*Pre-2008 construction units are exempt from VLI requirement

\*\*\*Excludes Group Homes and thus denominator is 13 (Pre-2008 and exempted from VLI threshold)

10. The Borough shall meet its Third Round Obligation in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 6 above:
- a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
  - b. At least 50 percent of the units addressing the Third Round Obligation shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
  - c. At least twenty-five percent of the Third Round Obligation shall be met through rental units, including at least half in rental units available to families.

**Unit Type Compliance of Physical Units Only (i.e. excludes bonus credits)**

Project Name	Units	Non-Family	Family
76 Franklin Ave	1	0	1
Rockaway Commons	4	0	2
60 E Main	3	0	3
RPM Senior Units	5	5	0
PSCH-NJ ; Allegro School	3	3	0
<b>TOTAL</b>	<b>16</b>	<b>8</b>	<b>8</b>
<b>THRESHOLD</b>		<b>NTE 50%</b>	<b>At least 50%</b>
		<b>50.00%</b>	<b>50.00%</b>

- d. At least half of the units addressing the Third Round Prospective Need in total must be available to families.
  - e. The Borough agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.
11. The Borough shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Morris County Chapter of the NAACP, Newark NAACP, East Orange NAACP, Housing Partnership for Morris County, Community Access Unlimited, Inc., Northwest New Jersey Community Action Program, Inc. (NORWESCAP), Homeless Solutions of Morristown, and the Supportive Housing Association,, and shall, as part of its regional affirmative marketing strategies during its implementation of the affirmative marketing plan, provide direct notice to those organizations of all available affordable housing units in writing, along with copies of application forms. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.
12. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, *et seq.*, or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in rental projects shall be required to be at 30 percent of median income, and in conformance with all other applicable law. The Borough, as part of its HEFSP, shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. limits for all units that are part of the Plan required by this Agreement and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Borough annually within 30 days of the publication of determinations of median income by HUD as follows:
- a. Regional income limits shall be established for the Housing Region in which the Borough is located (in this case, Housing Region 1) based on the median income by household size, which shall be established by a regional weighted average of

the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated number of households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total number of households from the most recent decennial Census in the Borough's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

- b. The income limits attached hereto as Exhibit C are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2020, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
  - c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
  - d. The parties agree to request the Court prior to or at the fairness hearing in this matter to enter an order implementing this paragraph of this Agreement, the terms of which shall also be reflected in the Borough's Affordable Housing Ordinance.
13. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.
  14. As an essential term of this Agreement, to the extent that same have not already been adopted, within one hundred twenty (120) days of the Court's approval of this Agreement, the Borough shall introduce an ordinance or ordinances providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning contemplated herein and shall adopt a Housing Element and Fair Share Plan and Spending Plan in conformance with the terms of this Agreement.
  15. The parties agree that if a decision of a court of competent jurisdiction in Morris County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Borough for the period 1999-2025 that would be lower by more than

twenty (20%) percent than the total prospective Third Round Obligation established in this Agreement, and if that calculation is memorialized in an unappealable final judgment, the Borough may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Borough shall be obligated to adopt a Housing Element and Fair Share Plan that conforms to the terms of this Agreement and to implement all compliance mechanisms included in this Agreement, including by adopting or leaving in place any site specific zoning adopted or relied upon in connection with the Plan adopted pursuant to this Agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms set forth herein to address unmet need; and otherwise fulfilling fully the fair share obligations as established in this Agreement. The reduction of the Borough's Third Round Obligation below that established in this Agreement does not provide a basis for seeking leave to amend this Agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its Third Round Obligation, the Borough may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.

16. The Borough shall prepare a Spending Plan within the period referenced above, subject to review by FSHC and the approval of the Court, and reserves the right to seek approval from the Court that the expenditures of funds contemplated under the Spending Plan constitute a "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment in this matter that includes approval of the Spending Plan in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). On the first anniversary of the Court's approval of the Spending Plan, and on every anniversary of that date thereafter through July 1, 2025, the Borough agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
17. On the first anniversary of the execution of this Agreement, and every anniversary thereafter through the end of this Agreement, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website, with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.
18. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the period of protection provided in this Agreement. The Borough agrees to comply with those provisions as follows:
  - a. For the midpoint realistic opportunity review, due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of the Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any

mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.

- b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this Agreement, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.
19. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this Agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.
  20. This Agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Borough shall present its planner as a witness at this hearing. FSHC agrees to support this Agreement at the fairness hearing. In the event the Court approves this proposed settlement, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025. If this Agreement is rejected by the Court at a fairness hearing it shall be null and void.
  21. The Borough agrees to pay FSHC's attorneys fees and costs in the amount of \$10,000.00 within ten (10) days of the Court's approval of this Agreement pursuant to a duly-noticed fairness hearing.
  22. If an appeal is filed of the Court's approval or rejection of this Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of this Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful, at which point the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.
  23. This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Morris County. A prevailing movant or plaintiff in such a motion or separate action shall be entitled to reasonable attorney's fees.

24. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.
25. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
26. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
27. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.
28. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.
29. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.
30. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.
31. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.
32. No member, official or employee of the Borough shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
33. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.
34. All Notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight carrier or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) Notices shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be effected 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, Esquire  
Fair Share Housing Center  
510 Park Boulevard  
Cherry Hill, NJ 08002  
Phone: (856) 665-5444  
Telecopier: (856) 663-8182  
E-mail: adamgordon@fairsharehousing.org

**TO THE BOROUGH:** Richard H. Beilin, Esq.  
Wacks, Debona, Beilin, and Weber LLC  
110 South Jefferson Road, Suite 304  
Whippany, New Jersey 07981

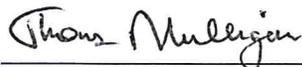
**WITH A COPY TO THE MUNICIPAL CLERK:** Clerk, Borough of Rockaway  
Rockaway Borough, Municipal Building  
1 East Main Street  
Rockaway, New Jersey 07866

Please sign below if these terms are acceptable.

Sincerely,

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

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

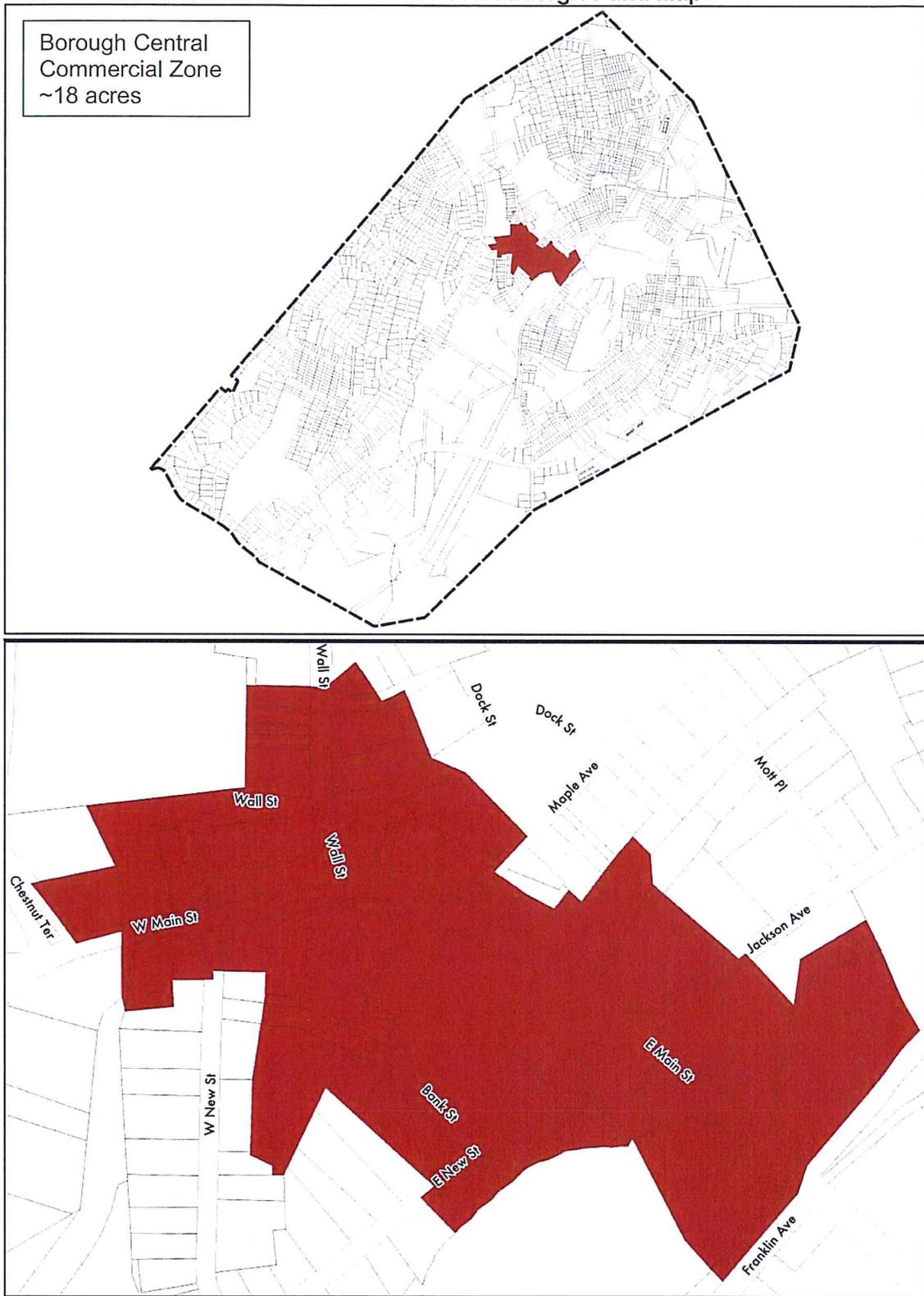


THOMAS MULLIGAN, Mayor

Dated: 9/4/20

## Exhibit A: Vacant Land Analysis

### Exhibit B: Unmet Need Strategies and Map



## EXHIBIT C: 2020 INCOME LIMITS

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

### 2020 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE

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

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

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

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

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

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

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

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

# Appendix C: AHTF Spending Plan

# Spending Plan



**Borough of Rockaway**  
Morris County  
1 E. Main St.  
Rockaway, NJ 07866

Prepared By:



Topology, LLC  
60 Union Street, 1st Floor  
Newark, NJ 07105

**Council Meeting:**  
July 8, 2021

**Introduction**

The Borough of Rockaway has prepared a Housing Element and Fair Share plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:93-1 et seq.), as requested by the New Jersey Supreme Court. A development fee ordinance creating a dedicated revenue source for affordable housing was adopted by the municipality in August 2005. This ordinance established Rockaway’s Affordable Housing Trust Fund (AHTF).

All development fees, payments in-lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited into this separate, interest-bearing Affordable Housing Trust Fund for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:93, or applicable regulations, as described in the sections that follow.

In accordance with the settlement agreement with the Fair Share Housing Center (FSHC), executed on June 24, 2020, the expenditures of funds contemplated under the FSHC agreement constitute a “commitment” for expenditure 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 applicable law. 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 entities 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 New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Service.

**1. Revenues for Certification Period**

The Borough has considered the following AHTF revenue sources between the period of 2021-2025:

- (A) Development fees: Since the developer fee ordinance was established in 2005, the Borough has collected revenues through its AHTF. Such revenues over this long time period allow the Borough to deduce the expected annual revenue of the AHTF.

The Borough analyzed seven years (2014 to 2020) of residential and nonresidential development fees deposited into the AHTF and averaged these annual incomes to determine the expected annual fee. Through this analysis of qualifying projects during the 2014 to 2020 period, we determined an annual average revenue fee of **\$16,378.04** to determine potential developer fees for the years of 2021 to 2025.

The analysis excludes one deposit of \$97,842 in 2018 from Rockaway Recycling (KTB Realty Limited Liability Co.), where the assessed property value increased by \$4.1 million. This

deposit is an outlier over the analyzed period, and no comparable income is expected from an individual project in the near future.

2014	\$7,705.00
2015	\$12,353.00
2016	\$2,515.00
2017	\$2,341.00
2018	\$33,140.00
2019	\$38,071.48
2020	\$2,142.75
<b>Average</b>	<b>\$16,378.04</b>

(B) Payment in lieu (PIL): There is no known payment in lieu of construction expected to be collected from developers in the near future.

(C) Funds from other sources such as the sale of units with extinguished controls, repayment of affordable housing program loans, rental income, or proceeds from the sale of affordable units are **not** anticipated.

Table A in the following section indicates the anticipated revenue to be generated from development fees. Based on anticipated revenue as described above, the Borough of Rockaway projects approximately **\$73,701** to be collected between January 1, 2021 and June 30, 2025 to be used for affordable housing purposes under the assumptions presented after the table. This figure is in addition to the AHTF's existing funds amounting to approximately **\$142,616**.

The Borough of Rockaway is currently conducting its first preliminary investigations to determine whether parcels in the downtown qualify as an area in need of redevelopment and whether nonresidential parcels in the Borough qualify as in need of rehabilitation. Subsequent rehabilitation/redevelopment plans are expected to spur development throughout the Borough, and, therefore, it is expected that the Borough may collect more revenue than previous years. However, since these efforts are still ongoing and will be the Borough's first rehabilitation/redevelopment plans, a baseline cannot be established at this time. The Borough reserves the right to amend its spending plan accordingly if more development fees than projected are collected.

## 2. Administrative Mechanism to Collect and Distribute Funds

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Borough:

(A) Collection of development fee revenues: Collection of development fee revenues shall be consistent with Rockaway's development fee ordinance for both residential and non-residential developments in accordance with COAH's Regulations and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 3238 (C. 40:55D-8.1 through 8.7).

(B) Distribution of development fee revenues: The governing body shall approve all expenditures from the account, including administrative expenses and direct expenditures. The Affordable Housing Administrator and/or the Municipal Housing Liaison shall directly manage projects described in this Spending Plan, the Housing Element and Fair Share Plan, and expenditures from the fund.

(C) Collection and distribution of barrier free funds shall be consistent with Rockaway’s Affordable Housing Ordinance in accordance with N.J.A.C. 5:97-8.5.

<b>Table A: Projected Revenue</b>						
	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025 (6 Months)</b>	<b>Total</b>
<b>Existing Funds</b>	\$142,616.20	\$158,994.24	\$175,372.28	\$191,750.32	\$208,128.35	\$142,616.20
<b>Development Fees</b>	\$16,378.04	\$16,378.04	\$16,378.04	\$16,378.04	\$8,189.02	\$73,701.17
<b>Payment in lieu*</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>	\$158,994.24	\$175,372.28	\$191,750.32	\$208,128.35	\$216,317.37	\$216,317.37

*\*The Borough reserves the right to amend the Spending Plan should any PILs for a project be collected.*

### 3. Description of Anticipated Use of Affordable Housing Funds

The Borough of Rockaway may use the funds in the trust fund for any of the below listed items, pursuant to N.J.A.C. 5:93-8.16(a) and (c):

- New construction of affordable housing units and related development costs, and in the case of inclusionary developments, eligible costs shall be pro-rated based on the proportion of affordable housing units included in the development. New construction programs shall constitute projects such as Group Homes, Market to Affordable housing, or other similar opportunities. In this regard, the Borough intends to set aside money for opportunities that may occur in the event that a housing unit becomes available for acquisition that may be appropriate for a conversion into affordable housing via a deed restriction and resale (Market-to-Affordable) or via deeding the unit over to a qualified group home provided;
- Extensions or improvements of roads and infrastructure directly serving affordable housing development sites; in the case of inclusionary developments, costs shall be pro-rated based on the proportion of affordable housing units included in the development;
- Acquisition and/or improvement of land to be used for affordable housing;
- Purchase of existing market rate or affordable housing for the purpose of maintaining or implementing affordability controls, such as in the event of foreclosure;
- Accessory apartment or market-to-affordable programs;

- Green building strategies designed to save money for low and moderate income households, either for new construction that is not funded by other sources, or as part of necessary maintenance or repair of existing affordable units;
- Maintenance and repair of affordable housing units;
- Repayment of municipal bonds issued to finance low and moderate income housing activities;
- Affordability assistance to very low, low and moderate income buyers and renters of affordable housing units to lower the cost of homeownership;
- Disbursement to RPM Development Group, LLC ("RPM") of \$100,000 (plus the \$500,000 contribution discussed in Section C) pursuant to the Whispering Woods Settlement Agreement reached between the Borough and RPM as part of RPM's development of 70 affordable senior units in the Borough; and
- Any other activity as specified herein.

Below are the specific estimates for funds to be dedicated to affordable housing activities and administration.

- (A) **Affordability Assistance:** At least 30% of collected development fees, excluding expenditures from the AHTF, shall be dedicated to affordability assistance to low- and moderate-income households. In excess of the minimum requirement of \$64,895 (30%), the Borough of Rockaway will dedicate a minimum of \$73,054 from the AHTF to render units more affordable through 2025, if projected development fees are realized. At least \$24,351 from the Affordable Housing Trust Fund will be used to render units more affordable to households earning 30 percent or less of the median income by region (i.e. VLI).

Funds may go toward down payment assistance as part of a monetary contribution to owner occupied affordable units. This down payment assistance is designed to help low- and moderate-income households achieve the goal of homeownership. This program will provide a zero-interest loan to income-qualified homebuyers of deed restricted affordable properties within the Borough of Rockaway to use as a principal down payment. Funds are made available through the Affordable Housing Trust Fund of the Borough of Rockaway. The goal of the program is to provide financial assistance to income-qualified homebuyers moving to the Borough of Rockaway.

Applicants for this loan program must be income-qualified and must be under contract to purchase a deed restricted home in the Borough of Rockaway. This means that the applicant must have made an application to buy a home, been income-qualified and selected to purchase an affordable home within the Borough of Rockaway, and signed a contract with the seller.

Properties must be single family homes within the Borough of Rockaway. The price of the home will be limited by the deed restriction to be affordable to either a low or moderate-income household.

(B) **Administrative Expenses (N.J.A.C. 5:93-8.16):** The Borough of Rockaway will expend no more than 20 percent of the revenues collected from development fees and payments in lieu of construction. A projected \$43,263 will be available from the affordable housing trust fund to be used for administrative purposes. Projected administrative expenditures are as follows:

- Administration and setup expenses for all affordable housing programs including new construction;
- Administration and setup expenses for affordability assistance programs;
- Staffing and consulting fees associated with future planning, outreach, and activities, as permitted under N.J.A.C. 5:93-8.16;
- Other expenses associated with the implementation of the Housing Element, and the monitoring of current and future housing programs in the Borough.

Administrative funds may also be used for: income qualification of households; monitoring turnover of sale and rental units; and compliance with monitoring requirements.

(C) **Bonding:** In addition to the distributions and expenditures described herein, the Borough of Rockaway has agreed to make an additional financial contribution of Five Hundred Thousand Dollars and No Cents (\$500,000.00) toward RPM's development of 70 affordable senior units in the Borough (for a total \$600,000 contribution towards RPM's development). If necessary, the Borough has agreed to use its bonding powers to raise the funds for this additional financial contribution. These funds will be contributed to RPM for its affordable senior housing project within 60 days after the NJHMFA awards / reserves Low-Income Housing Tax Credits ("LIHTCs") for the said project.

#### 4. Expenditure Schedule

The Borough intends to use affordable housing trust fund revenues for the rehabilitation of affordable housing units as needed, and to assist the active community development groups in the Borough and the region with new opportunities for affordable housing. Where applicable, the funding schedule below parallels the implementation schedule set forth in the Housing Element and Fair Share Plan.

Table B: Spending Plan Summary of Revenues and Expenditures		
<b>Revenues</b>		
Current Cash on Hand as of 1/2021		\$142,616
Projected Fee Revenue	+	\$73,701
Projected Bonding per Section 3.C	+	\$500,000
<b>Projected Revenues</b>	=	<b>\$716,317</b>
<b>Expenditures</b>		
RPM (New Construction)	-	(\$600,000)
Total Administration (Max 20%)	-	(\$43,263)
Minimum Affordability Assistance (At least 30%)	-	(\$73,054)
1. For Very Low-Income Households (1/3)		(\$24,351)
2. Other Affordability Assistance (2/3)		(\$48,703)
<b>Total Projected Expenditures</b>	=	<b>\$716,317</b>
<b>Remaining Balance</b>	=	<b>\$0</b>

	Table C: Spending Plan Annual Expenditures					
	2021	2022	2023	2024	2025	Total
RPM (New Construction)	(\$600,000.00)	\$0.00	\$0.00	\$0.00	\$0.00	(\$600,000.00)*
Total Administration	(\$8,652.69)	(\$8,652.69)	(\$8,652.69)	(\$8,652.69)	(\$8,652.69)	(\$43,263.47)
Minimum Affordability Assistance	(\$14,610.78)	(\$14,610.78)	(\$14,610.78)	(\$14,610.78)	(\$14,610.78)	(\$73,053.90)
<b>Total</b>	<b>(\$123,263.47)</b>	<b>(\$23,263.47)</b>	<b>(\$23,263.47)</b>	<b>(\$23,263.47)</b>	<b>(\$23,263.47)</b>	<b>(\$716,317.37)</b>

\*Includes \$500,000 in bond funds for RPM Project per Section 3.C above

## 5. Excess or Shortfall of Funds

The governing body of the Borough of Rockaway reserves the right to revise projections and anticipated funding commitments based upon actual revenues to the Affordable Housing Trust Fund. In the event that a shortfall of anticipated revenues occurs, the Borough will revise its spending plan accordingly.

In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be used toward the affordability assistance program, specifically, the down payment assistance program.

## **6. Barrier Free Escrow**

Collection and distribution of barrier free funds shall be consistent with Rockaway's Affordable Housing Ordinance in accordance with N.J.A.C. 5:93. A process describing the collection and distribution procedures for a barrier free escrow is detailed within the Borough's Affordable Housing Ordinance.

## **7. Summary**

The Borough of Rockaway intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:93 and in a manner that is consistent with the housing programs described in its Housing Element and Fair Share Plan. The Borough had a balance of \$142,616 as of May 20, 2021 and anticipates a total of \$73,701 in additional revenues by July 31, 2025. The Borough will dedicate \$73,054 toward affordability assistance to render units more affordable; and approximately \$43,263 to administrative costs.

**RESOLUTION 130-21: RESOLUTION OF THE GOVERNING BODY OF THE BOROUGH OF ROCKAWAY  
APPROVING THE BOROUGH'S AFFORDABLE HOUSING SPENDING PLAN**

**WHEREAS**, on September 4, 2020, the Borough of Rockaway signed a settlement agreement with Fair Share Housing Center ("FSHC"), which settlement agreement was amended on June 30, 2021, and which established the Borough's fair share obligation and preliminarily approved the Borough's compliance mechanisms in accordance with the March 10, 2015 decision of the Supreme Court, which transferred responsibility to review and approve housing elements and fair share plans from the Council on Affordable Housing ("COAH") to designated Mount Laurel trial judges within the Superior Court; and

**WHEREAS**, the Borough has prepared a Spending Plan, pursuant to N.J.A.C. 5: 93-5.1 et seq. and consistent with P.L.2008, c.46 Council on Affordable Housing ("COAH") which projects anticipated revenues to the Borough's Affordable Housing Trust Fund and describes anticipated expenditures of funds through the end of the Third Round;

**WHEREAS**, the Borough requires approval of its Spending Plan in order to utilize any of the funds within the Affordable Housing Trust Fund;

**WHEREAS**, the Borough desires to submit its Spending Plan to the Court in connection with the Compliance Action for review and approval.

**NOW THEREFORE BE IT RESOLVED**, by the Governing Body of the Borough of Rockaway, County of Morris, and the State of New Jersey hereby adopts the Spending Plan that is attached hereto as Exhibit A and requests that the Court review and approve the Borough's Spending Plan, so that it can expend funds in its Affordable Housing Trust Fund.

**BE IT FURTHER RESOLVED**, that the Borough of Rockaway reserves the right to amend the Spending Plan, should that become necessary.

DATE: July 8, 2021

BOROUGH OF ROCKAWAY

ATTEST: Kimberly Cuspilich, Borough Clerk

BY: Thomas Mulligan, Mayor

**CERTIFICATION**

I, KIMBERLY CUSPILICH, Acting Borough Clerk of the Borough of Rockaway, in the County of Morris, do hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the Mayor and Council at a meeting held on July 8, 2021.

  
Kimberly Cuspilich, RMC  
Borough Clerk

# Appendix D: Mandatory Ordinances

ORDINANCE NO. 15-18

ORDINANCE OF THE BOROUGH OF ROCKAWAY  
MAYOR AND COUNCIL  
AMENDING CHAPTER 169, LAND USE ADMINISTRATION AND PROCEDURES,  
OF THE CODE OF THE BOROUGH OF ROCKAWAY

WHEREAS, in Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A.52:27D-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's adoption of rules; and

WHEREAS, it is in the best interest of the Borough of Rockaway to establish standards for the collection, maintenance and expenditure of development fees pursuant to COAH's rules; and

WHEREAS, it is the intent of the Governing Body that fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing and that this subsection shall be interpreted within the framework of the COAH's rules on development fees.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Rockaway, County of Morris, State of New Jersey, that Chapter 169, Land Use Administration and Procedures, of the Code of the Borough of Rockaway be amended as follows:

Section I

1. Section 169-64, Development Fees for Affordable Housing, is hereby repealed in entirety and modified to read as follows:

**"§ 169-64.1. Findings and Purpose.**

- A. In Holmdel Builder's Ass'n v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- B. Pursuant to P.L.2008, c.46 Section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH was authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or a Court of competent jurisdiction and have an approved spending plan may retain fees collected from non-residential development.
- C. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance with P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate- income housing. This ordinance shall be interpreted within the framework of COAH's prior round rules on development fees, codified at N.J.A.C. 5:93-8. and P.L.2008, c.46, Section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7).

**§ 169-64.2. Basic Requirements.**

- A. This ordinance shall not be effective until approved by the Court.
- B. The Borough of Rockaway shall not spend development fees until the Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:93-5.1(c).

**§ 169-64.3. Definitions.**

The following terms, as used in this ordinance, shall have the following meanings:

AFFORDABLE HOUSING DEVELOPMENT - a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

COAH or the COUNCIL - the New Jersey Council on Affordable Housing established under the Fair Housing Act.

DEVELOPMENT FEE - money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:93-8.

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

**EQUALIZED ASSESSED VALUE** - the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5 and 6 of P.L.1973, c.123 (C. 54:1-35a through C. 54:1-35c).

**GREEN BUILDING STRATEGIES** - those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

#### **§ 169-64.4. Residential Development Fees.**

##### **A. Imposed Fees.**

- (1) Within all zoning district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one percent (1%) of the equalized assessed value for residential development provided no increased density is permitted.
- (2) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of six percent (6%) of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one and one-half percent (1.5%) of the equalized assessed value on the first two units; and the specified higher percentage up to six percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

- (3) Eligible exactions, ineligible exactions, and exemptions for residential development.
  - (a) Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
  - (b) Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
  - (c) Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, unless the owner resided in the previous dwelling for a period of one year or more prior to obtaining a demolition permit, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved or replaced structure as compared to the previous structure.
  - (d) Homes replaced as a result of a natural disaster (such as a fire or flood) shall be exempt from the payment of a development fee.

#### **§ 169-64.5. Non-Residential Development Fees.**

##### **A. Imposed Fees.**

- (1) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted below, shall pay a fee equal to two and one-half percent (2.5%) of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
- (2) Non-residential developers, except for developers of the types of development specifically exempted below, shall also pay a fee equal to two and one-half percent (2.5%) of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
- (3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. made an improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

B. Eligible exactions, ineligible exactions, and exemptions for non-residential development.

- (1) The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half percent (2.5%) development fee, unless otherwise exempted below.
- (2) The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the existing footprint, reconstruction, renovations and repairs.
- (3) Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
- (4) A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
- (5) If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Borough of Rockaway as a lien against the real property of the owner.

**§ 169-64.6. Collection Procedures.**

- A. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.

- D. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- E. The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- F. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. Should the Borough of Rockaway fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
- H. Except as provided in Section 169-64.5.A.(3) above, fifty percent (50%) of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- I. Appeal of development fees.
  - (1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Borough of Rockaway. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
  - (2) A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Borough of Rockaway. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

**§ 169-64.7. Affordable Housing Trust Fund.**

- A. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Borough of Rockaway Chief Financial Officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- B. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  - (1) payments in lieu of on-site construction of affordable units;
  - (2) developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
  - (3) rental income from municipally operated units;
  - (4) repayments from affordable housing program loans;
  - (5) recapture funds;
  - (6) proceeds from the sale of affordable units; and
  - (7) any other funds collected in connection with the Borough of Rockaway's affordable housing program.

- C. Within seven days from the opening of the trust fund account, the Borough of Rockaway shall provide the State of New Jersey, Department of Community Affairs, Division of Local Government Services with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and NJDCA-LGS to permit NJDCA-LGS to direct the disbursement of the funds as provided for in N.J.A.C. 5:93-8.15, 8.18 and 8.19. This requirement shall be deemed to have been satisfied by a previously executed three-party escrow agreement with COAH, provided the bank remains the same as in the original agreement.
- D. All interest accrued in the housing trust fund shall only be used on eligible housing activities approved by the Court.

**§ 169-64.8. Use of Funds.**

- A. The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the housing trust fund may be used for any activity approved by the Court to address the Borough of Rockaway's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:93-8.16 and specified in the approved spending plan.
- B. Funds shall not be expended to reimburse the Borough of Rockaway for past housing activities.
- C. At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
  - (1) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
  - (2) Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
  - (3) Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- D. The Borough of Rockaway may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance.
- E. No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the reporting and monitoring requirements that have been approved by the Court. Legal or other fees related to litigation opposing affordable housing sites or objecting to or appealing Court's approval of Rockaway's Housing Element and Fair Share Plan are not eligible uses of the affordable housing trust fund.

**§ 169-64.9. Monitoring.**

On an annual basis commencing with the first anniversary of the entry of the Order granting a Final Judgment of Compliance and Repose to Rockaway, the Borough of Rockaway shall report all activity in connection with its Affordable Housing Trust Fund to the New Jersey Department of Community Affairs (either the Division of Local Government Services or the Council on Affordable Housing (COAH), whichever entity is designated by the State of New Jersey), with a copy provided to Fair Share Housing Center and to the Intervenor/Defendants IMO the Application of the Borough of Rockaway for a Final Judgment of Compliance and Repose of its Obligations Under the Fair Housing Act and Approval of its Amended Spending Plan, Docket No.: PAS-L-2348-15, and with a posting of same on the municipal website, using forms previously developed for this purpose by COAH. The reporting shall include all sources and amounts collected/earned and the amounts and purposes for which funds have been expended.

**§ 169-64.10. Ongoing Collection of Fees.**

- A. The ability for the Borough of Rockaway to impose, collect and expend development fees shall expire with its Judgment of Compliance and Repose unless the Borough of Rockaway has filed an adopted Housing Element and Fair Share Plan with the Court or with COAH or its successor agency designated by the State of New Jersey, has petitioned for a Judgment of Compliance and Repose or substantive certification, and has received the Court's or COAH's approval of its development fee ordinance. If the Borough of Rockaway fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance and Repose, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C. 52:27D-320). The Borough of Rockaway shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgment of Compliance and Repose, nor shall the Borough of Rockaway retroactively impose a development fee on such a development. The Borough of Rockaway shall not expend development fees after the expiration of its Judgment of Compliance and Repose.
- B. It is the intent of the Borough Council to incorporate the additions, amendments and/or supplements contained in this Ordinance into the Code."

Section II

1. This Ordinance may be renumbered for codification purposes.
2. All Ordinances of the Borough of Rockaway which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.
3. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.
4. This Ordinance shall take effect as provided by law.

DATE: September 13, 2018

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

**CERTIFICATION**

I, SHEILA SEIFERT, Borough Clerk of the Borough of Rockaway, in the County of Morris, do hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the Mayor and Council at a meeting held on September 13, 2018.

*Sheila Seifert*  
Sheila Seifert  
Borough Clerk

ORDINANCE NO. 19-18

ORDINANCE OF THE BOROUGH OF ROCKAWAY  
MAYOR AND COUNCIL  
ADDING CHAPTER 88, AFFORDABLE HOUSING,  
TO THE CODE OF THE BOROUGH OF ROCKAWAY

WHEREAS, it is in the best interest of the Borough of Rockaway to address the requirements of the Fair Housing Act and the Uniform Housing Affordability Controls (UHAC) regarding compliance with the Borough's Affordable Housing obligations.

NOW, THEREFORE BE IT ORDAINED by the Mayor and Council of the Borough of Rockaway, County of Morris, State of New Jersey, that the following new Chapter 88, Affordable Housing, be added to the Code of the Borough of Rockaway as follows:

Section I - Chapter 88, Affordable Housing

1. Chapter 88, Affordable Housing, is hereby added to read as follows:

**"Article I, Establishment, Purpose**

**§ 88-1. Establishment, purpose.**

- A. The Code of the Borough of Rockaway is hereby amended to include provisions addressing Rockaway's constitutional obligation to provide for its fair share of low- and moderate-income housing, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985. This Chapter is intended to provide assurances that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy those units. This Chapter shall apply except where inconsistent with applicable law.
- B. The Rockaway Borough Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Housing Element and Fair Share Plan have been endorsed by the governing body. This Chapter implements and incorporates the adopted and endorsed Housing Element and Fair Share Plan and addresses the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C.5:80-26.1, et seq. as amended and supplemented, and the New Jersey Fair Housing Act of 1985.

**§ 88-2. Definitions.**

The following terms when used in this Chapter shall have the meanings given in this Section:

ACT - The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

ADAPTABLE - Constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

ADMINISTRATIVE AGENT - The entity designated by the Borough to administer affordable units in accordance with this Chapter, N.J.A.C. 5:93, and UHAC (N.J.A.C. 5:80-26).

AFFIRMATIVE MARKETING - A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

AFFORDABILITY AVERAGE - The average percentage of median income at which new restricted units in an affordable housing development are affordable to low- and moderate-income households.

AFFORDABLE - A sales price or rent level that is within the means of a low- or moderate-income household as defined within N.J.A.C. 5:93-7.4, and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

**AFFORDABLE HOUSING DEVELOPMENT** - A development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable housing development.

**AFFORDABLE HOUSING PROGRAM(S)** - Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

**AFFORDABLE UNIT** - A housing unit proposed or created pursuant to the Act and approved for crediting by the Court and/or funded through an affordable housing trust fund.

**AGENCY** - The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

**AGE-RESTRICTED UNIT** - A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development wherein the unit is situated are 62 years of age or older; or 2) at least 80 percent of the units are occupied by one person who is 55 years of age or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

**ALTERNATIVE LIVING ARRANGEMENT** - A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

**ASSISTED LIVING RESIDENCE** - A facility that is licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

**CERTIFIED HOUSEHOLD** - A household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

**COAH** - The Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.).

**DCA** - The State of New Jersey Department of Community Affairs.

**DEFICIENT HOUSING UNIT** - A housing unit with health and safety code violations that requires the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

**DEVELOPER** - Any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land included in a proposed development including the holder of an option to contract to purchase, or other person having an enforceable proprietary interest in such land.

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

**INCLUSIONARY DEVELOPMENT** - A development containing both affordable units and market rate units. This term includes, but is not limited to: new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

LOW-INCOME HOUSEHOLD - A household with a total gross annual household income equal to 50 percent or less of the median household income.

LOW-INCOME UNIT - A restricted unit that is affordable to a low-income household.

MAJOR SYSTEM - The primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and load bearing structural systems.

MARKET-RATE UNITS - Housing not restricted to low- and moderate-income households that may sell or rent at any price.

MEDIAN INCOME - The median income by household size for the applicable housing region, as adopted annually by COAH or a successor entity approved by the Court.

MODERATE-INCOME HOUSEHOLD - A household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income.

MODERATE-INCOME UNIT - A restricted unit that is affordable to a moderate-income household.

MONI - The Agency's Market Oriented Neighborhood Investment Program, as it may be authorized from time to time by the Agency.

MULTI-FAMILY UNIT - A structure containing five or more dwelling units.

NON-EXEMPT SALE - Any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.

RANDOM SELECTION PROCESS - A process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

REGIONAL ASSET LIMIT - The maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

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

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

RESTRICTED UNIT - A dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

UHAC - The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26, et seq.

UHORP - The Urban Home Ownership Recovery Program.

VERY LOW-INCOME HOUSEHOLD - A household with a total gross annual household income equal to 30 percent or less of the median household income for the applicable housing region.

VERY LOW-INCOME UNIT - A restricted unit that is affordable to a very low-income household.

WEATHERIZATION - building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

**§ 88-3. Applicability.**

- A. The provisions of this Chapter shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Rockaway pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.
- B. Where the developer is able to demonstrate that a 20% set-aside would warrant the project economically infeasible, the developer should submit an economic analysis and pro forma to the Borough for review. A real estate analysis expert hired by the Borough through escrow funds provided by the developer will evaluate the proforma and determine if the claim of economic infeasibility is valid. In the event that the Borough's review agrees with the developer, the Borough will permit a 15% set-aside.
- C. The following sections shall apply to all developments that contain low-and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.
- D. All affordable housing developments, including those intended to be funded through federal Low Income Housing Tax Credit programs, shall be deed restricted to comply with COAH and UHAC Rules pertaining to the income and bedroom distributions of the units.

**§ 88-4. Alternative living arrangements.**

- A. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:
  - (1) Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court;
  - (2) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).
- B. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30 year controls on affordability in accordance with UHAC.
- C. The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

**§ 88-5. Inclusionary zoning.**

- A. Rental Units: In inclusionary developments, all affordable units shall be family rental units.
- B. Phasing: In inclusionary developments the following schedule shall be followed:

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Low- and Moderate-Income Units Completed
25	0
25+1	10
50	50
75	75
90	100

**§ 88-6. New construction.**

**A. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:**

- (1) The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit. At least 13 percent of all restricted rental units shall be very low income units (affordable to a household earning 30 percent or less of median income). The very low income units shall be counted as part of the required number of low income units within the development. At least 25 percent of the obligation shall be met through rental units, including at least half in rental units available to families. A maximum of 25 percent may be age restricted.
- (2) In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.
- (3) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
  - (a) The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
  - (b) At least 30 percent of all low- and moderate-income units shall be two bedroom units;
  - (c) At least 20 percent of all low- and moderate-income units shall be three bedroom units; and
  - (d) The remaining two and three bedroom units may be allocated at the discretion of the developer and Borough.
- (4) Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

**B. Accessibility Requirements:**

- (1) The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free SubCode, N.J.A.C. 5:23-7 and the following:
- (2) All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
  - (a) An adaptable toilet and bathing facility on the first floor; and
  - (b) An adaptable kitchen on the first floor; and
  - (c) An interior accessible route of travel on the first floor; and
  - (d) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
  - (e) If not all of the foregoing requirements in (2)(a) through (2)(d) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs (2)(a) through (2)(d) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
  - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a, et seq.) and the Barrier Free SubCode, N.J.A.C. 5:23-7, or evidence that Rockaway has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:

- (i) Where a unit has been constructed with an adaptable entrance, upon the request of a person with disabilities who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
- (ii) To this end, the builder of restricted units shall deposit funds within the Borough of Rockaway's Affordable Housing Trust Fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
- (iii) The funds deposited under paragraph (f)(ii) above shall be used by the Borough of Rockaway for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
- (iv) The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the Borough of Rockaway for the conversion of adaptable to accessible entrances.
- (v) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meets the requirements of the Barrier Free SubCode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's Affordable Housing Trust Fund in care of the Borough Chief Financial Officer, who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
- (vi) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free SubCode, N.J.A.C. 5:23-7.

C. Design:

- (1) In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.
- (2) In inclusionary developments, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.

D. Maximum Rents and Sales Prices:

- (1) In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by COAH or a successor entity.
- (2) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52 percent of median income.
- (3) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13 percent of all low- and moderate-income rental units shall be affordable to very low-income households, earning 30 percent or less of the regional median household income.
- (4) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.

- (5) In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
    - (a) A studio shall be affordable to a one-person household;
    - (b) A one-bedroom unit shall be affordable to a one and one-half person household;
    - (c) A two-bedroom unit shall be affordable to a three-person household;
    - (d) A three-bedroom unit shall be affordable to a four and one-half person household; and
    - (e) A four-bedroom unit shall be affordable to a six-person household.
  - (6) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
    - (a) A studio shall be affordable to a one-person household;
    - (b) A one-bedroom unit shall be affordable to a one and one-half person household; and
    - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
  - (7) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
  - (8) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate size household, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
  - (9) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.
  - (10) The rent of low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.
- E. Minimum Presumptive Densities/Maximum Presumptive Set-asides for Multi-Family Development:
- (1) Affordable Housing Requirements
    - (a) For Sale: Any project not associated with a specific density or affordable housing requirement as outlined in a specific zone or redevelopment plan shall be required to provide a 20% set-aside for affordable housing. Where a developer is able to demonstrate that a 20% set-aside would warrant the project economically infeasible, the developer should submit economic analysis and pro-forma to the Borough for review. A real estate analysis expert hired by the Borough through escrow funds provided by the developer will evaluate the proforma and determine if the claim of economic infeasibility is valid. In the event the Borough's review agrees with the developer, the Borough will permit a 15% set-aside.

- (b) **Rental Developments:** Any project not associated with a specific density or affordable housing requirement as outlined in a specific zone or redevelopment plan shall be required to provide a 15% set-aside for affordable housing. Where a developer is able to demonstrate that a 15% set-aside would warrant the project economically infeasible, the developer should submit economic analysis and pro-forma to the Borough for review. A real estate analysis expert hired by the Borough through escrow funds provided by the developer will evaluate the proforma and determine if the claim of economic infeasibility is valid. In the event the Borough's review agrees with the developer, the Borough will permit a 10% set-aside.
- (c) A project shall not be subdivided into two or more lots so as to fall below the threshold or avoid the set aside requirement by taking multiple actions.

**§ 88-7. Utilities.**

- A. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
- B. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

**§ 88-8. Occupancy standards.**

In referring certified households to specific restricted units, the Administrative Agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:

- A. Provide an occupant for each bedroom;
- B. Provide children of different sexes with separate bedrooms;
- C. Provide separate bedrooms for parents and children; and
- D. Prevent more than two persons from occupying a single bedroom.

**§ 88-9. Control periods for restricted ownership units and enforcement mechanisms.**

- A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Chapter for a period of at least thirty (30) years, until Rockaway takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- B. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- C. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- D. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Chapter, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.

- E. The affordability controls set forth in this Chapter shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- F. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

**§ 88-10. Price restrictions for restricted ownership units, homeowner association fees and resale prices.**

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

- A. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- B. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- C. The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.
- D. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See Section 88-14.

**§ 88-11. Buyer income eligibility.**

- A. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- B. Notwithstanding the foregoing, however, the Administrative Agent may, upon approval by the Borough Council, and subject to the Court's approval, permit moderate-income purchasers to buy low-income units in housing markets if the Administrative Agent determines that there is an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate-income households shall retain the required pricing and pricing restrictions for low-income units.
- C. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- D. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's eligible monthly income.

**§ 88-12. Limitations on indebtedness secured by ownership unit; subordination.**

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.

- B. With the exception of First Purchase Money Mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of the unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C.5:80-26.6(b).

**§ 88-13. Capital improvements to ownership units.**

- A. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
- B. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

**§ 88-14. Control periods for restricted rental units.**

- A. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least 30 years, until Rockaway takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented. For new projects receiving nine percent Low Income Housing Tax Credits, a control period of not less than a 30-year compliance period plus a 15-year extended use period shall be required.
- B. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Morris. The deed shall also identify each affordable unit by apartment number and/or address and whether that unit is designated as a very low, low or moderate income unit. Neither the unit nor its affordability designation shall change throughout the term of the deed restriction. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- C. A restricted rental unit shall remain subject to the affordability controls of this Chapter despite the occurrence of any of the following events:
  - (1) Sublease or assignment of the lease of the unit;
  - (2) Sale or other voluntary transfer of the ownership of the unit; or
  - (3) The entry and enforcement of any judgment of foreclosure on the property containing the unit.

**§ 88-15. Rent restrictions for rental units; leases.**

- A. A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- B. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- C. Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Chapter.
- D. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least 15 percent of the total number of dwelling units are restricted rental units in compliance with this Chapter.

**§ 88-16. Tenant income eligibility.**

- A. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
  - (1) Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.
  - (2) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.
  - (3) Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of median income.
- B. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
  - (1) The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
  - (2) The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  - (3) The household is currently in substandard or overcrowded living conditions;
  - (4) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
  - (5) The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- C. The applicant shall file documentation sufficient to establish the existence of the circumstances in A.(1) through B.(5) above with the Administrative Agent, who shall counsel the household on budgeting.

**Article II, Municipal Housing Liaison and Administrative Agent**

**§ 88-17. Purpose.**

The purpose of this article is to create the administrative mechanisms needed for the execution of the Borough of Rockaway's responsibility to assist in the provision of affordable housing pursuant to the Fair Housing Act of 1985.

**§ 88-18. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

**ADMINISTRATIVE AGENT** - The entity responsible for administering the affordability controls of some or all units in the affordable housing program for the Borough of Rockaway to ensure that the restricted units under administration are affirmatively marketed and sold or rented, as applicable, only to low- and moderate-income households.

**MUNICIPAL HOUSING LIAISON** - The employee charged by the governing body with the responsibility for oversight and administration of the affordable housing program for the Borough of Rockaway.

**§ 88-19. Establishment of Municipal Housing Liaison position; compensation; powers and duties.**

- A. The Borough of Rockaway shall appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for administering the affordable housing program, including affordability controls, the Affirmative Marketing Plan, monitoring and reporting, and, where applicable, supervising any contracted Administrative Agent. Rockaway shall adopt a Resolution appointing a Municipal Housing Liaison.
- B. The Municipal Housing Liaison shall be appointed by the Mayor and Council and may be a full- or part-time municipal employee.
- C. Compensation. Compensation shall be fixed by the Mayor and Council at the time of the appointment of the Municipal Housing Liaison.
- D. The Municipal Housing Liaison shall be approved by the Court and shall be duly qualified through a training program sponsored by Affordable Housing Professionals of New Jersey before assuming the duties of Municipal Housing Liaison.
- E. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Rockaway, including the following responsibilities which may not be contracted out to the Administrative Agent:
  - (1) Serving as the Borough of Rockaway's primary point of contact for all inquiries from the State of New Jersey, affordable housing providers, administrative agents, and interested households;
  - (2) Monitoring the status of all restricted units in the Borough of Rockaway's Fair Share Plan;
  - (3) Compiling, verifying, and submitting annual monitoring reports may be required by the Court;
  - (4) Coordinating meetings with affordable housing providers and administrative agents, as needed;
  - (5) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed;
  - (6) If applicable, serving as the administrative agent for some or all of the restricted units in the Borough of Rockaway as described in Subsection F below.

- F. Subject to approval by the Court, the Borough of Rockaway may designate one or more Administrative Agent(s) to administer newly constructed affordable units in accordance with UHAC. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Court. The Operating Manual(s) shall be available for public inspection in the office of the Borough Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the Administrative Agent(s). If the Borough of Rockaway contracts with another entity to administer all or any part of the affordable housing program, including the affordability controls and affirmative marketing plan, the Municipal Housing Liaison shall supervise the contracting administrative agent.

**§ 88-20. Establishment of Administrative Agent position; powers and duties; compensation.**

- A. The Administrative Agent shall be an independent entity serving under contract to and reporting to the municipality. For new sale and rental developments, all of the fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required. For resales, single family homeowners and condominium homeowners shall be required to pay three percent of the sales price for services provided by the Administrative Agent related to the resale of their homes. That fee shall be collected at closing and paid directly to the Administrative Agent. The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof. Administrative powers and duties assigned to the Administrative Agent include:
- (1) Affirmative marketing:
    - (a) Conducting an outreach process to affirmatively market of affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Rockaway and the provisions of N.J.A.C. 5:80-26.15; and
    - (b) Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
  - (2) Household certification:
    - (a) Soliciting, scheduling, conducting and following up on interviews with interested households;
    - (b) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
    - (c) Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
    - (d) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
    - (e) Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and
    - (f) Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough of Rockaway when referring households for certification to affordable units.

- (3) Affordability controls:
  - (a) Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
  - (b) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
  - (c) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Morris County Register of Deeds or county clerk's office after the termination of the affordability controls for each restricted unit;
  - (d) Communicating with lenders regarding foreclosures; and
  - (e) Ensuring the issuance of continuing certificates of occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.
- (4) Resale and rental:
  - (a) Instituting and maintaining an effective means of communicating information between owners and the administrative agent regarding the availability of restricted units for resale or rental; and
  - (b) Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or rental.
- (5) Processing requests from unit owners:
  - (a) Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Article;
  - (b) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;
  - (c) Notifying the municipality of an owner's intent to sell a restricted unit; and
  - (d) Making determinations on requests by owners of restricted units for hardship waivers.
- (6) Enforcement:
  - (a) Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee owners and notifying all such owners that they must either move back to their unit or sell it;
  - (b) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgment of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the administrative agent;
  - (c) The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the administrative agent where complaints of excess rent or other charges can be made;

- (d) Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
  - (e) Establishing a program for diverting unlawful rent payments to the municipality's affordable housing trust fund; and
  - (f) Creating and publishing a written operating manual for each affordable housing program administered by the administrative agent, to be approved by the Borough Council and the Court, setting forth procedures for administering such affordability controls.
- (7) Additional Responsibilities:
- (a) The administrative agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
  - (b) The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet any monitoring requirements and deadlines imposed by the Court.
  - (c) The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.
- B. Compensation. Compensation shall be fixed by the Mayor and Council at the time of the appointment of the Administrative Agent.

**§ 88-21. Affirmative marketing requirements.**

- A. The Borough of Rockaway shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Court that is compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- B. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs marketing activities toward Housing Region 2 and is required to be followed throughout the period of restriction.
- C. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 2, comprised of Essex, Morris, Union, and Warren Counties.
- D. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and rerentals. The Administrative Agent designated by the Borough of Rockaway shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
- E. In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- F. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.
- G. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.

- H. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the municipality in which the units are located; and the developer's rental office. Pre-applications shall be emailed or mailed to prospective applicants upon request.
- I. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

**§ 88-22. Enforcement of affordable housing regulations.**

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action(s) against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
  - (1) The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is adjudged by the Court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the Court:
    - (a) A fine of not more than \$500.00 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
    - (b) In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Rockaway Affordable Housing Trust Fund of the gross amount of rent illegally collected;
    - (c) In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.
  - (2) The municipality may file a court action in the Superior Court seeking a judgment that would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- or moderate-income unit.
    - (a) The judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.

- (b) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.
- (c) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (e) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- (f) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

**§ 88-23. Appeals.**

Appeals from all decisions of an Administrative Agent appointed pursuant to this Ordinance shall be filed in writing with the Court.

**§ 88-24. Reporting and monitoring requirements.**

- A. On the first anniversary of the entry of the Order granting the Borough a Final Judgment of Compliance and Repose, and every anniversary thereafter, through the end of the Repose period, the Borough shall provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services, or such other entity designated by the State of New Jersey, with copies provided to Fair Share Housing Center and the Intervenor in *IMO Application of the Borough of Rockaway*, Docket No.: MRS-L-1671-15, and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
- B. On the first anniversary of the entry of the Order granting the Borough a Final Judgment of Compliance and Repose, and every anniversary thereafter, through the end of the Repose period, the Borough shall provide annual reporting of the status of all affordable housing activity within the Borough through posting on the Borough website with copies provided to Fair Share Housing Center and the Intervenor in *IMO Application of the Borough of Rockaway* Docket No.: MRS-L-1671-15, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Court-appointed Special Master and Fair Share Housing Center.
- C. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough shall post on its Borough website, with copies provided to Fair Share Housing Center and the Intervenor in *IMO Application of the Borough of Rockaway*, Docket No.: MRS-L-1671-15, 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. Such posting shall invite any interested party to submit comments to the Borough, with copies provided to Fair Share Housing Center and the Intervenor in *IMO Application of the Borough of Rockaway*, Docket No.: MRS-L-1671-15, regarding whether any sites no longer present a realistic opportunity and should be replaced. Any interested party may, by motion, request a hearing before the Court regarding these issues.
- D. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of the entry of the Order granting the Borough a Final Judgment of Compliance and Repose, and every third year thereafter, the Borough shall post on its Borough website, with copies provided to Fair Share Housing Center and the Intervenor in *IMO Application of the Borough of Rockaway*, Docket No.: MRS-L-1671-15, 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 Borough with copies provided to Fair Share Housing Center and the Intervenor in *IMO Application of the Borough of Rockaway*, Docket No.: MRS-L-1671-15, on the issue of whether the municipality has complied with its very low income housing obligation."

Section II

1. This Ordinance may be renumbered for codification purposes.
2. All Ordinances of the Borough of Rockaway which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.
3. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.
4. This Ordinance shall take effect as provided by law.

DATE: September 13, 2018

BOROUGH OF ROCKAWAY

ATTEST: Sheila Seifert, Borough Clerk

BY: Russell Greuter, Mayor

**CERTIFICATION**

I, SHEILA SEIFERT, Borough Clerk of the Borough of Rockaway, in the County of Morris, do hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the Mayor and Council at a meeting held on September 13, 2018.

*Sheila Seifert*  
Sheila Seifert  
Borough Clerk

# Appendix E: Regulatory Resolutions

**LAND USE BOARD OF THE  
BOROUGH OF ROCKAWAY  
MORRIS COUNTY, NEW JERSEY  
ADOPTION OF THE HOUSING ELEMENT AND FAIR SHARE PLAN**

---

**RESOLUTION OF FINDING AND DETERMINATION**

**WHEREAS**, the Land Use Board of the Borough of Rockaway, a body authorized to exercise all powers granted to the Planning Board and Zoning Board of Adjustment pursuant to the Municipal Land Use Law had previously adopted a Housing Element and Fair Share Plan (“HEFSP”) pursuant to N.J.S.A. 40:55D-28 in April of 1996 which was submitted to the Council on Affordable Housing (“COAH”) with substantive certification granted on April 2, 1997; and

**WHEREAS**, the New Jersey Supreme Court issued a decision and order on March 10, 2015, In re Adoption of N.J.A.C. 5:96 and 5:97 ex rel. New Jersey Council on Affordable Housing, 331 NJ 1 which required adoption of anew HEFSP to be prepared in accordance with COAH’s prior round rules, and

**WHEREAS**, the Borough of Rockaway had filed a declaratory judgment action in the Superior Court of New Jersey, law Division seeking a judicial declaration that the Borough had satisfied its “fair share” of the regional need for low and moderate income housing; and

**WHEREAS**, in furtherance of the Declaratory Judgment Action the Borough and fair Share Housing center engaged in negotiations which resulted in a Settlement Agreement; and

**WHEREAS**, in accordance with the court’s decision and the Settlement Agreement, the Land Use Board has prepared a proposed new HEFSP, and

**WHEREAS**, N.J.A.C. 5:91-2.2(a) requires the adoption of the HEFSP by the Land Use Board and endorsement thereof by the Borough Council, and

**WHEREAS**, upon notice duly provided pursuant to N.J.S.A. 40:55D-13, the Land Use Board held a public hearing on the new HEFSP on July 6, 2021; and

**WHEREAS**, the Land Use Board has determined that the HEFSP is consistent with the goals and objectives of the Rockaway Borough Master Plan and that adoption and implementation of the HEFSP are in the public interest and protect public health, safety and promote the general welfare.

**NOW THEREFORE BE IT HEREBY RESOLVED** by the Land Use Board of the Borough of Rockaway hereby adopts the 2021 Housing Element and Fair Share Plan prepared by Topology, LLC.

**CERTIFICATION**

I, Colleen Reardon, hereby certify that the foregoing resolution is a true copy of the resolution regularly and duly adopted by the Land Use Board of the Borough of Rockaway at a duly called meeting of the Board held on July 6, 2021.



Colleen Reardon, Secretary

**RESOLUTION 125-21: RESOLUTION OF THE GOVERNING BODY OF THE BOROUGH OF ROCKAWAY  
ENDORING THE BOROUGH'S ROUND 3 HOUSING ELEMENT AND FAIR SHARE PLAN**

**WHEREAS**, on July 6, 2021, the Land Use Board of the Borough of Rockaway, County of Morris, State of New Jersey, adopted its Housing Element and Fair Share Plan ("Fair Share Plan"); and

**WHEREAS**, the Fair Share Plan address the Borough's Mount Laurel obligations as delineated in the court-approved Settlement Agreement between the Borough of Fair Share Housing Center, executed on or around September 4, 2020 and amended June 30, 2021; and

**WHEREAS**, the Borough of Rockaway remains committed to comply with its constitutional Mount Laurel obligations by voluntarily providing its "Fair Share" of affordable housing.

**NOW THEREFORE BE IT RESOLVED**, that the Council of the Borough of Rockaway, County of Morris, State of New Jersey, hereby endorses the Fair Share Plan as adopted by the Borough of Rockaway Land Use Board on July 6, 2021; and

**BE IT FURTHER RESOLVED**, that the Mayor and Council of the Borough of Rockaway, pursuant to provisions of N.J.S.A. 52:27D-301 et seq. hereby authorize and direct their professionals to immediately file the adopted and endorsed amended Fair Share Plan and all other relevant documents with the Court; and

**BE IT FURTHER RESOLVED**, that the Mayor and Council of the Borough of Rockaway hereby authorize and direct their professionals to take any and all actions reasonable and necessary to secure approval of the Borough's Fair Share Plan, to maintain the Borough's Immunity from any Mount Laurel lawsuits, and to secure a Final Round 3 Judgment of Compliance and Repose; and

**BE IT FURTHER RESOLVED**, that, upon, seeking approval of its Fair Share Plan, all known interested parties shall receive notice of the Borough's actions and requests; and

**BE IT FURTHER RESOLVED**, that notice of the Borough's application for approval of its Fair Share Plan shall be published in a newspaper of regional circulation and the Borough shall otherwise provide all the notice which the Court deems appropriate as it determines whether the Fair Share Plan satisfies the Borough's affordable housing responsibilities under applicable laws and consistent with Settlement Agreement between the Borough and Fair Share Housing Center. Said notice shall give the public sufficient time to review the Borough's Fair Share Plan and offer any comments that the individual or entity may deem appropriate; and

**BE IT FURTHER RESOLVED**, that the Borough of Rockaway reserves the right to amend the Fair Share Plan, should that become necessary.

DATE: July 8, 2021

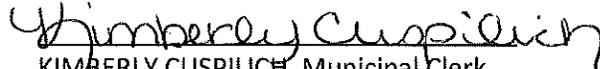
BOROUGH OF ROCKAWAY

ATTEST: Kimberly Cuspilich, Borough Clerk

BY: Thomas Mulligan, Mayor

**CERTIFICATION**

I, Kimberly Cuspilich, Municipal Clerk to the Borough of Rockaway, hereby certify that the foregoing resolution is a true, accurate and complete copy of a resolution duly adopted by the Borough Council of the Borough of Rockaway at a meeting held on July 8, 2021.

  
KIMBERLY CUSPILICH, Municipal Clerk