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January 26, 2016

VIA E-MAIL ONLY

Elizabeth K. McManus, PP, AICP, LEED
Clarke Caton Hintz
100 Barrack Street
Trenton, New Jersey 08608

**Re: In the Matter of the Application of the Borough of East Rutherford
For a Judgment of Compliance and Repose
Docket No.: BER-L-5925-15**

Dear Ms. McManus:

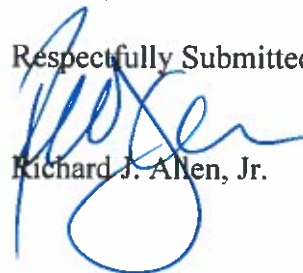
Enclosed you will find the "Amended Summary of Plan" submitted on behalf of the Borough of East Rutherford. In accordance with the Court's Order, copies are being provided to all interveners and interested parties. In addition, a copy will be posted on the Borough's Website.

Note that the amendments revolve around the correction of the prior round obligation form 60 to 70. The 60 was a typographical error arising out of the Tomu opinion. Corresponding changes were made in other entries of the Summary to reflect that change.

Also, please note that the enclosed is subject to ratification by Robert T. Regan, Esq., the Monitor appointed by the court in the Tomu decision.

We look forward to reviewing this matter with you at your convenience.

Respectfully Submitted,



Richard J. Allen, Jr.

RJA:kg
Enclosure

cc: Robert T. Regan, Esq. – via regular mail
George Steveson, PP – via e-mail only
Danielle Lorenc, Borough Clerk – via e-mail only
All Interested Parties – via regular mail

AMENDED SUMMARY OF PLAN FOR FAIR SHARE OBLIGATION		MUNICIPALITY: East Rutherford <i>See Explanatory Notes beginning on third page ...</i>					
		COUNTY: Bergen					
	EST. OBLIG.	COMPLETED UNITS	PROPOSED UNITS	LOW	MOD	VERY LOW	TOTAL UNITS
Rehabilitation Share (per 2010 Census)	132 ⁱ						
<i>Rehabilitation Credits</i>	0						
Rehab Program(s)							
Remaining Rehabilitation Share	132 ⁱⁱ						
1987-1999 Prior Round Obligation (1)							
<i>Vacant Land Adjustment (if applicable)</i>							
<i>Unmet Need</i>							
<i>RDP</i>							
<i>Mechanisms (2)</i>							
Prior Cycle Credits (4/1/80-12/31/86)							
Credits without Controls							
Inclusionary Zoning (Development)			60 ^v				60
100% Affordable							
Accessory Apartments							
Write Down-Buy Down/Market-to-Affordable							
Alternative Living/Supportive & Special Needs							
Assisted Living							
RCA Units (previously approved)							
Compliance Bonus							
Rental Bonuses			15 ^v				
<i>Total Prior Round Credits</i>			75				
Units Addressing 1987-1999 Prior Round			70				70
1999-2015 GAP Period Estimate (1)							
<i>Mechanisms (2)</i>							
<i>Vacant Land Adjustment (if applicable)</i>							
<i>Unmet Need</i>							
<i>RDP</i>							
Inclusionary Zoning							
Redevelopment							
100% Affordable							
Accessory Apartments							
Market-to-Affordable							

Supportive & Special Needs/Alternative Living							
Assisted Living							
Extended Affordability Controls							
Other (describe on a separate sheet)							
Smart Growth Bonuses							
Redevelopment Bonuses							
Rental Bonuses							
Total Third Round Credits							
Units Addressing 1999-2015 GAP period	0						0
2015-2025 Third Round Obligation (1)							
<i>Mechanisms (2)</i>							
Vacant Land Adjustment (if applicable)							
<i>Unmet Need</i>							
<i>RDP</i>							
Inclusionary Zoning (Development)		35 ^{viii}	58 ^{ix}				93
Redevelopment							
100% Affordable							
Accessory Apartments							
Market-to-Affordable							
Supportive & Special Needs/Alternative Living							
Assisted Living							
Extended Affordability Controls							
Other (describe on a separate sheet)							
Smart Growth Bonuses							
Redevelopment Bonuses							
Rental Bonuses		6 ^x					
Total Third Round Credits		41	58				99
Units Addressing 2015-2025 Fair Share	24						
Excess units	85 ^{xi}						

(1) Identify the basis for asserting this number as the municipal obligation

(2) Provide a description for each mechanism

TOTALS	#	% OF TOTAL OBLIGATION
LOW/MOD UNITS	158 ^{xii}	147% ^{xiii}
VERY LOW INCOME	TBD ^{xiv}	TBD
BONUS CREDITS	21	25% ^{xv}
AGE-RESTRICTED	0	0.0%
NOT AGE-RESTRICTED	159	169% ^{xvi}

Explanatory Notes to
Summary of Plan for Total Fair Share Obligation
Borough of East Rutherford
County of Bergen

ⁱ Obtained from the 2014 3rd Round rules proposed by COAH but not adopted. While these proposed rules are not law, they represent the only currently available non-adversarial attempt to establish the “need” as required by the Fair Housing Act. As a result, the Borough has chosen to use these numbers in this current plan. The Borough recognizes the likelihood that these numbers will be revised and, in fact, is part of a consortium of municipalities that had commissioned Dr. Robert Burchell of Rutgers University to design a methodology and perform the necessary need calculations. Unfortunately, Dr. Burchell suffered a stroke and is unable to complete the task. As a result, the consortium commissioned Econsult, Inc. to perform that analysis. The delay resulting from Dr. Burchell’s stroke has delayed the availability of the methodology and need calculations. The Econsult report is not yet available. The Borough will likely propose revisions to this plan upon receipt and analysis of the Econsult report.

ⁱⁱ Obtained from the 2014 3rd Round rules proposed by COAH but not adopted. The Borough disagrees with the statistical analysis resulting in the 132 unit rehabilitation need reported in proposed COAH rules. COAH’s Second Round Rules provide that the calculated number is an “estimate.” See N.J.A.C. 5:93-5.2(a). In the alternative, East Rutherford elects to perform a “Structural Conditions Survey” in accordance with Appendix C to N.J.A.C. 5:93. The Structural Conditions Survey results will be presented to the Court as part of East Rutherford’s Fair Share Plan, thus modifying the estimated rehabilitation need. A Structural Conditions Survey performed in 2008 and submitted to COAH as part of the Borough’s 2008 Housing Element and Fair Share Plan disclosed only 3 units in need.

ⁱⁱⁱ The Borough recognizes that the 2014 3rd Round rules proposed by COAH but not adopted provided for a Round 2 need of 70 units. In *Tomu Development Co., Inc. v. Borough of East Rutherford, et al.*, Docket No.: *BER-L-5895-03*, the court determined that East Rutherford’s then current need (now the Prior Round Obligation) was 70 units. Since this was determined after a full trial on the merits, and affirmed on appeal, see Docket No. A-5621-05T1, the determination in the *Tomu* matter is binding (i.e., “res judicata”) as to the Borough’s Prior Round Need. In light of that, the Borough’s Prior Round Obligation is set at 70.

^{iv} The *Tomu* Court awarded a builders’ remedy to Tomu which provided for 60 affordable units in East Rutherford. Of those 60 units, 45 are applied to Round 2 and the balance of 15 units carried to Round 3.

^v The *Tomu* court required that the affordable housing units included in the builders’ remedy be rental units thereby qualifying for a “bonus” credit. Under the then effective Second Round rules, see *N.J.A.C. 5:93-5.15(d)(2)*, the bonus credit is a maximum of 25% of the obligation. This yields a rental bonus of 15 units.

v Per 2014 3rd Round rules proposed by COAH but not adopted. See Endnote i above. No additional credit for this negative obligation is claimed at this time.

vi Per 2014 3rd Round rules proposed by COAH but not adopted. See Endnote i above.

viii The *Tomu* court appointed Robert T. Regan, Esq. as Mount Laurel Compliance Monitor (the “Monitor”) with power to control land development in East Rutherford. Since the appointment of the Monitor affordable housing has been a consideration in every significant land use application in East Rutherford. As a result, the following land use developments have been approved and completed with an affordable housing set-aside:

132 Union, LLC	3 (plus an additional 3 “in lieu payments)
Group at 3 (Phase 1)	32 (pursuant to COAH order)
Total	35

The following land use developments have been approved with an affordable housing set-aside

M& M Investment (Van Winkle Avenue)	6 (3 on site -3 “in lieu payments)
GFM Builders LLC	5
Capodagli	9
384 Paterson LLC	1
Sterling	30 (awaiting decision, likely in December, 2015)
Total	51

In addition:

the Group at 3 approvals anticipate a Phase II (not yet approved) which currently proposes 44 affordable housing units pursuant to a COAH order and requires Group at 3 to provide additional affordable units, not to exceed 20%, under certain circumstances.

East Rutherford committed the balance of \$140,000 in its affordable housing trust fund to a project proposed by the Housing Authority of Bergen County (“HABC”.) This project would create at least 2 additional units of affordable housing.

^k See Note viii above. The 5 units carried over from Round 2 and the 2 units committed to HABC from the Borough’s trust fund are added to the 51 units described in that table

^x 25% of the 24 unit obligation – see Note vii above.

^{xi} Total Round 3 credits of 99 units less the 24 third round units (see Note vii above) yields 75 units.

^{xii} Total units of 138 (159 credits less 21 bonus credits).

^{xiii} Total obligation of 94 divided by total units proposed (less bonus credits) of 138 yields 147%.

^{xiv} To be determined per COAH rules after any necessary revisions to the Plan upon consideration of the Econsult report. See Note i above.

^{xv} 25% of the 24 unit obligation – see Notes vii and x above.

^{xvi} Total obligation of 94 divided by total units proposed (including credits) of 159 yields 169%.