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HOUSING ELEMENT AND FAIR SHARE PLAN FOR THE THIRD ROUND: 1999-2025

PREPARED FOR

THE BOROUGH OF EAST RUTHERFORD
IN THE COUNTY OF BERGEN
STATE OF NEW JERSEY

April ___, 2016

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PART 1: HOUSING ELEMENT

1.0 INTRODUCTION

Under section 40:55D-28 of the Municipal Land Use Law, the Housing Plan Element is to, through incorporation by reference of the provisions of section 52:27D-310 of the Fair Housing Act, be designed to achieve the goal of access to affordable housing to meet present and prospective housing need, with particular attention to low and moderate income housing, and shall incorporate elements which are set forth below. While the Housing Element is not identified under the Municipal Land Use Law as a required element of the master plan, it is nonetheless a required element of East Rutherford's Master Plan inasmuch as the Borough has an adopted zoning ordinance. Pursuant to N.J.S.A. 40:55D-62.(a), a governing body may not adopt or amend a zoning ordinance, until and unless, the planning board would have adopted a land use plan element and housing plan element of the master plan.

Required essential elements of the Housing Element as set forth under the Fair Housing Act are as follows:

a. 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, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards;

b. A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;

c. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;

d. An analysis of the existing and probable future employment characteristics of the municipality;

e. 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

f. 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 of developers who have expressed a commitment to provide low and moderate income housing.

This Housing Element and Fair Share Plan for the Borough of East Rutherford also has been prepared pursuant to the New Jersey Supreme Court decision-of March 10, 2015, In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221, N.J. 1 (2015)("Mount Laurel IV). In this decision, the Court held that courts may resume their role as the forum of first instance for evaluating municipal compliance with Mount Laurel obligations, inasmuch as the Council on Affordable Housing (*hereinafter* COAH) had ceased functioning, and established a transitional process for towns to seek the equivalent of substantive certification through judicial review.

The transitional process addresses two types of towns (i) towns that had received certification under the subsequently found to be flawed round three rules, and (ii) those that had "participating status" to mean, towns that had submitted to COAH's jurisdiction and were participating in the administrative process leading to substantive certification of their housing plans, which was not awarded owing to the invalidation of the third round rules.

East Rutherford is a "participating town" in that the East Rutherford Planning Board adopted a Housing Element and Fair Share Plan on December 15, 2008, which was endorsed by the Mayor and Council on December 16, 2008 as required for submission of the petition for substantive certification, which petition was filed with the Council on Affordable Housing (*hereinafter* Council) on December 31, 2008. This submission was also endorsed by the Mount Laurel Implementation Monitor, in correspondence to the Council, dated December 22, 2008. The Borough's submission was deemed complete by the Council on June 8, 2009; however, with the eventual set-aside of the growth share portion of the Substantive Rules, East Rutherford was left in an "ongoing holding pattern."

The Borough did file a declaratory relief action, pursuant to the process established by the aforementioned New Jersey Supreme Court decision, which was granted on October 29, 2015, so to have a period of temporary immunity, within which time the Borough would prepare a new housing element and fair share plan.

Through submission of this new housing element and fair share plan, East Rutherford seeks an affirmative declaration of its constitutional compliance with its Mount Laurel obligations, so to enjoy insulating protection from exclusionary zoning litigation.

2.0 MUNICIPAL OVERVIEW

The Borough of East Rutherford is situated in the southwest section of Bergen County and is bounded to the north by the Boroughs of Wallington and Carlstadt, to the south by the Borough of Rutherford, to the west by the City of Passaic, and to the east by the Town of Secaucus. East Rutherford encompasses an area of 4 square miles, of which approximately 3.08 square miles is under the jurisdiction of the New Jersey Sports and Exposition Authority (NJSEA), which serves as the zoning and planning agency for lands within the Meadowlands District.

The 2010 Census revealed that the Borough had a total population of 8,913 persons, which represents a 2.2% increase in the total population as reported by the 2000 Census (8,716 persons). The U.S. Census Bureau 2009-2013 5-Year American Community Survey estimated a total population of 9,091 persons.

With respect to the State Development and Redevelopment Plan (SDRP), the area beyond that under the jurisdiction of the NJSEA is classified as Metropolitan Planning Area (PA1); communities of this classification are characterized by mature settlement patterns, a paucity of vacant land, and the need to rehabilitate housing to keep pace with changing market standards. As PA1 classified communities form a part of a metropolitan mass where community boundaries tend to blur, functional issues affecting one community typically affect the next community, making necessary multi-jurisdictional/regional approaches for resolution of such issues. For areas so classified, the SDRP anticipates that redevelopment will be the principal generator of future growth.

In terms of residential growth, for the period January 2000 through December 2014, East Rutherford issued building permits authorizing the development of 1,254 units, the bulk of which being units resulting from multi-family development.[1] As can be seen from the below table, the bulk of this activity occurred prior to 2008; since 2008, the Borough has issued permits for the development of only 13 one and two-family units and 340 multi-family units.

Table 1. Housing Units Authorized by Building Permits: 2000 - 2014

Year	1&2 Family	Multi-family	Total
2000-2003	—	—	146*
2004	6	109	115
2005	15	0	15
2006	1	0	1
2007	2	622	624
2008	3	24	27
2009	0	0	0
2010	2	0	0
2011	0	0	0
2012	1	316	317
2013	5	0	5
2014	2	0	0

[1] New Jersey Department of Community Affairs (DCA) Construction Reporter, www.state.nj.us/dca/divisions/codes/reporter, accessed June 26, 2015.

- The DCA Construction Reporter did not begin to report housing permits by type until 2004.

3.0. HOUSING STOCK: OCCUPANCY AND PHYSICAL CHARACTERISTICS

3.1 Housing Occupancy

Table 3.1: Housing Occupancy

	2000 East Rutherford		2010 East Rutherford		Bergen County	
	Estimate	Percent	Estimate	Percent	Estimate	Percent
Total Housing Units	3,771	100.0	4,018	100.0	352,388	100.0
Occupied housing units	3,644	96.6	3,792	94.4	335,730	95.3
Vacant housing units	127	3.4	226	5.6	16,658	4.7
Homeowner vacancy rate	1.3	(X)	1.4	(X)	1.2	(X)
Rental vacancy rate	2.0	(X)	6.3	(X)	5.6	(X)

2000 East Rutherford: *Source: U.S. Census Bureau, Census 2000 Summary File 1*
2010 East Rutherford: *Source: U.S. Census Bureau, Census 2010 Summary File 1*
Bergen County: *Source: U.S. Census Bureau, Census 2010 Summary File 1*
(X) means the estimate is not applicable or is not available

From the time of the 2000 Census to the 2010 Census, the Borough experienced a 6.5% increase in total housing units and a 4.0% increase in occupied housing units; the percentage of occupied housing units approximates the County average. At the same time, the Borough experienced a 7.8% increase in vacant housing units, as well as, a slight increase in the homeowner vacancy rate, and also a significant increase in the rental vacancy rate, which rate is slightly higher than found countywide. The increase in vacant housing units and increases in both the homeowner and renter vacancy rates may be attributable to the severe economic decline in the latter part of the 2000s.

3.2 Housing Tenure

Table 3.2: Housing Tenure

	2000 East Rutherford		2010 East Rutherford		2009-2013 Bergen County	
	Estimate	Percent	Estimate	Percent	Estimate	Percent
Occupied housing units	3,644	100.0	3,897	100.0	335,422	100.0
Owner-occupied housing units	1,576	43.4	1,626	41.7	220,018	65.6
Average household size of owner-occupied units	2.68	(X)	2.70	(X)	2.86	(X)
Renter-occupied	2,068	56.6	2,271	58.3	115,404	34.4

	2000 East Rutherford		2010 East Rutherford		2009-2013 Bergen County	
	Estimate	Percent	Estimate	Percent	Estimate	Percent
housing units						
Average household size of renter-occupied units	2.09	(X)	2.04	(X)	2.35	(X)

2000 East Rutherford: *Source: U.S. Census Bureau, Census 2000 Summary File 1*
2010 East Rutherford: *Source: U.S. Census Bureau, Census 2010 Summary File 1*
Bergen County: *Source: U.S. Census Bureau, Census 2010 Summary File 1*
(X) means the estimate is not applicable or is not available

From the time of the 2000 Census to the time of the 2010 Census, the Borough experienced a 6.9% increase in occupied-housing units, a 3.2% increase in owner occupied units, and a 9.8% increase in renter-occupied units.

The data also reveals that there is a lesser percentage of owner-occupied units in East Rutherford than found countywide (41.7% v. 65.6%) and concomitantly a significantly higher percentage of renter-occupied units than the County average (58.3% v. 34.4%).

3.3 Units in Structure

Table 3.3: Units in Structure

	2000 East Rutherford		2009-2013 East Rutherford		Bergen County	
	Estimate	Percent	Estimate	Percent	Estimate	Percent
Total Housing Units	3,771	100.0	4,124	100.0	353,415	100.0
1-unit detached	808	21.4	794	19.3	189,275	53.6
1-unit, attached	181	4.8	358	8.7	17,988	5.1
2 units	1,171	31.1	1,217	29.5	50,316	14.2
3 or 4 units	499	13.2	468	11.3	19,935	5.6
5 to 9 units	208	5.5	131	3.2	11,590	3.3
10 to 19 units	305	8.1	267	6.5	14,036	4.0
20 or more units	599	15.9	869	21.1	48,808	13.8
Mobile home	0	0.0	0	0.0	1,285	0.4
Boat, RV, van, etc.	0	0.0	20	0.5	182	0.1

2000 East Rutherford: *Source: U.S. Census Bureau, Census 2000Summary File 3*
20009-2013 East Rutherford: *Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey*
Bergen County: *Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey*

The most predominate type of residential development continues to be 2-unit construction. The 2009-2013 American Community Survey (ACS) estimates a 45.0% increase in the number of residential units within developments of 20 or more units from the time of the 2000 Census.

3.4 Year Structure Built

Table 3.4: Year Structure Built

	2009-2013 East Rutherford		2009-2013 Bergen County	
	Estimate	Percent	Estimate	Percent
Total Housing Units	4,124	100.0	353,415	100.0
Built 2010 or later	0	0.0	1,032	0.3
Built 2000 to 2009	280	6.8	22,040	6.2
Built 1990 to 1999	228	5.5	18,979	5.4
Built 1980 to 1989	556	13.5	26,037	7.4
Built 1970 to 1979	351	8.5	32,286	9.1
Built 1960 to 1969	490	11.9	56,620	16.0
Built 1950 to 1959	810	19.6	82,160	23.2
Built 1940 to 1949	336	8.1	43,863	12.4
Built 1939 or earlier	1,073	26.0	70,398	19.9

East Rutherford: *Source: U.S. Census Bureau, 2009-2013 5-year American Community Survey*
Bergen County: *Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey*

Housing units within the Borough are newer than those found countywide. The 2009-2013 American Community Survey (ACS) estimates that 34.3% of the Borough's housing units were constructed since 1970, where 28.4% is estimated for the County. Similarly, the ACS estimates that 6.8% of the Borough's housing stock has been constructed since 2000 where 6.5% is the County average.

3.5 Substandard Housing Condition

Table 3.5: Selected Characteristics

	2000 East Rutherford		2009-2013 East Rutherford		Bergen County	
	Estimate	Percent	Estimate	Percent	Estimate	Percent
Occupied Housing Units	3,644	100.0	3,897	100.0	335,422	100.0
Lacking complete plumbing facilities	11	0.3	124	3.2	1,388	0.4
Lacking complete kitchen facilities	6	0.2	138	3.5	2,746	0.8
More than 1.0 occupants per room (overcrowding)	241	6.6	77	0.3	7,584	2.2

2000 East Rutherford: *Source: U.S. Census Bureau, Census 2000 Summary File 3*
2009-2013 East Rutherford: *Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey*

Bergen County: *Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey*

The 2009-2013 American Community Survey (ACS) estimates that there has been a significant decrease in overcrowded units, but at the same time, significant increases in the numbers of units lacking complete plumbing and kitchen facilities. The ACS estimate is so dramatic as to be suspect.

4.0 HOUSING STOCK: VALUE AND AFFORDABILITY

4.1: Value of Owner-Occupied Units

Table 4.1: Value of Owner-Occupied Unit

	2000 East Rutherford		2009-2013 East Rutherford		2009-2013 Bergen County	
	Estimate	Percent	Estimate	Percent	Estimate	Percent
Owner-Occupied Units	778	100.0	1,626	100.0	220,018	100.0
Less than $50,000	0	0.0	0	0.0	3,463	1.6
$50,000 to $99,999	8	1.0	26	1.6	2,019	0.9
$100,000 to $149,999	91	11.7	20	1.2	3,343	1.5
$150,000 to $199,999	321	41.3	0	0.0	4,657	2.1
$200,000 to $299,999	328	42.2	272	16.7	21,262	9.7
$300,000 to $499,999	30	3.9	897	55.2	97,870	44.5
$500,000 to $999,999	0	0.0	370	22.8	72,577	33.0
$1,000,000 or more	0	0.0	41	2.5	14,827	6.7
Median (dollars)	196,200	(X)	397,300	(X)	451,400	(X)

2000 East Rutherford: *Source: U.S. Census Bureau, Census 2000Summary File 3*

2009-2013 East Rutherford: Source*: U.S. Census Bureau, 2009-2013 5-year American Community Survey*

Bergen County: *Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey*

(X) means the estimate is not applicable or is not available

The 2009-2015 5-Year Community Survey (ACS) estimate indicates that the value of owner occupied units has significantly increased since the time of the 2000 Census. Median value at the time of the 2000 Census was $196,000; median value as estimated by the 2009-2013 ACS is $397,000, which is 12% less than the County average. A further indication of the significant increase in value of owner occupied units is evidenced by the significant increase in the percentage of units having a value of $300,000 or more, which

has increased to an estimated 80.5% of the housing stock from the 3.9% reported by the 2000 Census. Per the ACS, the County average of units having a value of $300,000 or more is estimated to be 84.2%.

4.2 Gross Rent

Table 4.2: Gross Rent

	2000 East Rutherford		2009-2013 East Rutherford		2009-2013 Bergen County	
	Estimate	Percent	Estimate	Percent	Estimate	Percent
Occupied Units Paying Rent	2,068	100.0	2,231	100.0	111,221	100.0
Less than $200	36	1.7	48	2.2	1,026	0.9
$200 to $299	117	5.7	91	4.1	1,884	1.7
$300 to $499	87	4.2	46	2.1	3,138	2.8
$500 to $749	523	25.3	51	2.3	3,322	3.0
$750 to $999	944	45.6	180	8.1	11,898	10.7
$1,000 to $1,499	312	15.1	934	41.9	48,224	43.4
$1,500 or more	12	0.6	881	39.5	41,719	37.5
Median (dollars)	817	(X)	1,383	(X)	1,334	(X)

2000 East Rutherford: *Source: U.S. Census Bureau, Census 2000Summary File 3*
2009-2013 East Rutherford: *Source: U.S. Census Bureau, 2009-2013 5-year American Community Survey*
Bergen County: *Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey*
(X) means the estimate is not applicable or is not available

The American Community Survey (ACS) estimate indicates that there has been a 7.9% increase in occupied rental units since the time of the 2000 Census and a significant increase in gross rent during the same time frame as evidenced by the percent increase in rents of $1,000 or more since the time of the 2000 Census (21.1% v. 81.4%), and by the percent decrease in rents in the range of $500 to $999 (70.9% v. 10.4).

4.3 Housing Costs as Percentage of Household Income

One metric of affordability is the percentage of monthly household income dedicated to housing costs. In the case of mortgaged property, monthly housing expenses to include principal and interest should not exceed 28% of monthly household income. For rental units, an affordable monthly rent is one which does not exceed 30% of the monthly household income.

Table 4.3.1: Selected Monthly Owner Costs as a Percentage of Household Income (SMOCAPI)

	2000 East Rutherford		2009-2013 East Rutherford		2009-2013 Bergen County	
	Estimate	Percent	Estimate	Percent	Estimate	Percent

	2000 East Rutherford		2009-2013 East Rutherford		2009-2013 Bergen County	
	Estimate	Percent	Estimate	Percent	Estimate	Percent
Housing units with a mortgage (excluding units where SMOCAPI cannot be computed)			800	100.0	148,456	100.0
Less than 20.0 percent	323	41.5	292	26.2	38,109	25.7
20.0 to 24.9 percent	135	17.4	176	15.8	20,710	14.0
25.0 to 29.9 percent	83	10.7	243	21.8	18,450	12.4
30.0 to 34.9 percent	65	8.4	68	6.1	14,348	9.7
35.0 percent or more	172	22.1	334	30.0	56,809	38.3

2000 East Rutherford: *Source: U.S. Census Bureau, Census 2000*
2009-2013 East Rutherford: *Source: U.S. Census Bureau, 2009-2013 5-year American Community Survey*
Bergen County: *Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey*

At the time of the 2000 Census, 30.5% of the Borough's homeowners had monthly housing costs greater than or equal to 30% of the monthly household income; 22.1% had monthly housing costs of 35% or more. The 2009-2013 5-Year American Community Survey (ACS) estimates that 36.1% of homeowners have monthly housing costs of 30% or more of household income, of which 30.0% are estimated to have monthly housing costs of 35% or more of monthly household income.

Table 4.3.2: Gross Rent as a Percentage of Household Income (GRAPI)

	2000 East Rutherford		2009-2013 East Rutherford		2009-2013 Bergen County	
	Estimate	Percent	Estimate	Percent	Estimate	Percent
Occupied units paying rent (excluding units where GRAPI cannot be computed)			969	100.0	108,228	100.0
Less than 15.0 percent	496	24.0	166	7.8	12,981	12.0
15.0 to 19.9 percent	340	16.4	459	21.5	13.962	12.9
20.0 to 24.9 percent	332	16.1	419	19.6	13,784	12.7
25.0 to 29.9	216	10.4	289	13.5	11,968	11.1

percent						
30.0 to 34.9 percent	84	4.1	293	13.7	9,448	8.7
35.0 percent or more	514	24.9	508	23.8	46,085	42.6

2000 East Rutherford: *Source: U.S. Census Bureau, Census 2000*
2009-2013 East Rutherford: *Source: U.S. Census Bureau, 2009-2013 5-year American Community Survey*
Bergen County: *Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey*
(X) means the estimate is not applicable or is not available

Gross rent as a percentage of household income (GRAPI) has increased since the time of the 2000 Census. As reported by the 2000 Census, 29% of renters were paying rent equal to or greater than 30.0% of their monthly household income; the 2009-2013 ACS estimates the percentage at 37.5%, which is significantly less than the County average of 51.3%.

4.4 Other Indices of Affordability

Housing affordability can also be ascertained from (i) a comparison of median housing costs to median household income, (ii) by the ratio of housing value to income, and (iii) by the percentage of households unable to afford median rent.

4.4.1 Median Housing Costs Relative to Median Household Income

Table 4.4.1: Median Housing Costs for Owners with a Mortgage to Median Income

	2000 East Rutherford	2009-2013 East Rutherford	2009-2013 Bergen County
Median Housing Costs: Owners with Mortgage	19,584	27,372	36,012
Median Household Income	50,163	68,965	83,794
Median Housing Costs with Mortgage as Percent of Median Income	39.0	39.7	42.9

2000 East Rutherford: *Source: U.S. Census Bureau, Census 2000 Summary File 3*
2009-2013 East Rutherford: *Source: U.S. Census Bureau, 2009-2013 5-year American Community Survey*
2009-2013 Bergen County: Source: U.S. Census Bureau, 2009-2013 5-year American Community Survey

The above comparison reveals that median housing costs for units with a mortgage were 39.0% of the median household income as reported by the 2000 Census; the 5-Year American Community Survey estimates a slight increase to 39.6% of median household income. In each case, the take-away is that a household of median income cannot support median housing costs of units with a mortgage, when it is considered that a unit is considered affordable where monthly housing costs for units with a mortgage do not exceed 28% of the household monthly income.

4.4.2 Ratio of Housing Value to Income

Table 4.4.2 Ratio of Housing Value to Income

	2000 East Rutherford	2009-2013 East Rutherford	2009-2013 Bergen County
Median Housing Value	196,200	397,300	451,400
Median Household Income	50,163	68,695	83,794
Ratio of Median Housing Value to Income	3.9:1	5.8:1	5.4:1

2000 East Rutherford Source: U.S. Census Bureau, Census 2000 Summary File 3
2009-2013 East Rutherford Source: 2009-2013 5-Year American Community Survey
2009-2013 Bergen County Source: 2009-2013 5-Year American Community Survey

Units are generally considered to be affordable to prospective homeowners where the ratio of median housing value to median household income is in the range of 2.5:1 to 3.0:1. In 2000, the ratio was 3.9:1. The 2009-2013 American Community Survey estimate indicates a significant increase in the ratio to 5.8:1, which suggests that the purchase of a median value first home is becoming increasing more difficult for households of median income and is likely beyond the means of households of less than median income.

4.4.3 Proportion of Households Unable to Afford Median Rent

The 2009-2013 American Community Survey (ACS) 5-Year Estimate reports that median gross rent in the Borough is $1,383 per month ($16,596 annually). A minimum annual income of $55,320 ($16,596/.30) would be necessary to afford the median gross rent. As such, an estimated 54.6% of all households are unable to live in a dwelling rented at or above median gross rent, given this estimated percentage of households has an annual income of less than $55,320.

4.5 Housing Affordable to Households of Low and Moderate Income: 2009-2013

Table 4.5.1 Housing Affordable to Households of Low and Moderate Income

Income Level	Regional Income Limits 2013	Affordable Monthly Rent	2009-2013 East Rutherford Estimated Number of Affordable Rental Units	Affordable Owner-Unit Purchase Price	2009-2013 East Rutherford Estimated Number of Affordable Owner-Units
Median	75,980	1,820	881*	283,000	44
Moderate	60,784	1,520	968	225,600	69
Low	37,990	950	171	141,002	28
Very Low	22,794	570	14	(X)	(X)

Source: *2009-2013 East Rutherford: Source: 2009-2013 5-Year American Community Survey*
Source: Regional Income Limits: New Jersey Council on Affordable Housing

(X) Not Calculated

* Median rent is $1,900.00 per month; ACS data indicates that 881 units have a monthly rent of $1,500.00 or more.

Table 4.5.1 above provides an approximation of the extent to which the Borough affords opportunity for the provision of housing affordable to households of low and moderate income, absent formal restrictions. The regional income limits are as promulgated by the Council on Affordable Housing for 2013 for 3 person households within Housing Region 1 (Bergen, Hudson, Passaic, and Sussex Counties) as the 2009-2013 5-Year Community Survey (ACS) estimates indicated a 2.32 average household size for the Borough. The ACS also estimates a total of 3,897 occupied housing units, of which 1,626 are owner-occupied and 2,271 are renter-occupied.

As indicated earlier herein, rents not exceeding a 30% of monthly household income are considered affordable; owner-occupied units are considered affordable where monthly owner costs do not exceed 28% of monthly household income.

Relative to affordable rents, the number of affordable rental units by income category is based on an extrapolation of the referenced ACS estimates. As such, a total of 1,153 rental units are affordable to households of low and moderate income, equating to 50.7% of the Borough's occupied rental units.

With respect to owner-occupied affordable units, the numbers of same by income category presume a 4.0% fixed interest rate for a 30 year period, a down payment of $5,000, a 1.967% tax rate, being the Borough's current tax rate, and have been derived from an extrapolation of 2009-2013 ACS owner-occupied unit values. Private mortgage insurance costs are not included. Based on the aforementioned, the Borough has approximately 97 owner-occupied units affordable to households of low and moderate income, equating to 6.0% of the Borough's owner-occupied units. Stated another way with respect to total number of units (4,124 per the 2009-2013 ACS), the number of affordable units within the Borough equates to 30.3% of the total housing stock.

5.0 SELECTED DEMOGRAPHIC CHARACTERISTICS

5.1 Population

Table 5.1: Population

	2000	2010	Number Change	% Change
Total	8,716	8,913	197	2.2
Male	4,241	4,294	53	1.2
Female	4,475	4,619	144	3.2

Source: U.S. Census Bureau, 2010 Census
U.S. Census Bureau, Census 2000 Summary File 1

The Borough population increased by 197 persons from the time of the 2000 Census to the time of the 2010 Census, equating to an increase of 2.2%, which approximates the increase in population countywide for the same time period. The 2000 Census reported a County population of 884,118 persons; the 2010 Census reported a County population of 905,116 persons, an increase of 20,998 persons, equating to an increase of 2.3%.

5.2 Population by Age

Table 5.2: Population by Age

	2000 East Rutherford		2010 East Rutherford		2000 - 2010 Number Change
	Number	Percent	Number	Percent	
Total Population	8,716	100.0	8,913	100.0	197
Under 5 years	475	5.4	492	5.5	17
5 to 9 years	463	5.3	435	4.9	(-) 28
10 to 14 years	471	5.4	432	4.8	(-) 39
15 to 19 years	421	4.8	441	4.9	(-) 20
20 to 24 years	475	5.4	585	6.6	110
25 to 34 years	1,606	18.4	1,691	19.0	85
35 to 44 years	1,579	18.1	1,267	14.3	(-) 312
45 to 54 years	1,196	13.7	1,303	14.6	107
55 to 59 years	434	5.0	560	6.3	126
60 to 64 years	346	4.0	507	5.7	161
65 to 74 years	634	7.3	601	6.7	(-) 33
75 to 84 years	448	5.1	439	4.9	(-) 9
85 years and over	168	1.9	160	1.8	(-) 8
Median age (years)	37.9	(X)	37.8	(X)	(-) 0.1

Source: U.S. Census Bureau, 2010 Census Summary File 1
Source: U.S. Census Bureau, Census 2000 Summary File 1
(X) means the estimate is not applicable

The data indicates that the Borough experienced a 2.2% population increase from the time of the 2000 Census to the 2010 Census. For the same time period, there was a 3.5% increase in the number of children in the Under 5 years cohort and 3.5% decrease in the number of school age children. The data also reflects the movement of the "baby boomer" generation through the age pyramid; approximately one third of the Borough's population is comprised of "baby boomers," which percentage may be slightly high given the age cohorts do not match precisely the "baby boomer" age range of 51 to 69 years.

The data indicates a slight decrease in the numbers of persons age 65 years and older, and indicates that 19.1% of the Borough's population was reported as being age 60 years or more.

The median age of the Borough's population remained relatively constant, with a slight decrease of only 0.1 years for the period from the 2000 to 2010 Census.

5.3 Household Type and Size

Table 5.3.1: Household Type

	2000 East Rutherford		2010 East Rutherford		Number Change 2000 to 2010
	Number	Percent	Number	Percent	
Total Households	3,644	100.0	3,792	100.0	148
Family households[1]	2,156	59.2	2,225	58.7	69
Female householder, no husband present	393	10.8	438	11.6	45
Nonfamily households[2]	1,488	40.8	1,567	41.3	79
Householder living alone 65 years and over	424	11.6	438	11.5	14

Source: U.S. Census Bureau, 2000 Summary File 1/2010 Summary File 1

[1] A household that has at least one member of the household related to the householder by birth, marriage, or adoption is a "Family household".

[2] Nonfamily households" consist of people living alone and households which do not have any members related to the householder.

The data indicates that the Borough witnessed a 4.1% increase in total number of households. On a percentage basis, the number and types of households in the Borough has remained little changed from the time of the 2000 Census to the time of the 2010 Census.

Table 5.3.2: Household Size

	2000 East Rutherford	2010 East Rutherford	Number Change 2000 to 2010
Total households	3,644	3,792	148
1-person household	1,216	1,271	55
2-person household	1,114	1,118	4
3-person household	571	650	79
4-person household	461	464	3
5-person household	195	184	(-) 11
6-person household	52	74	22
7-or-more-person household	35	31	(-) 4
Average household size	2.35	2.35	0

Source: U.S. Census Bureau, 2000 Summary File 1
Source: U.S. Census Bureau, 2010 Summary File 1
(X) means the estimate is not applicable or is not available

Average household size has remained constant at 2.35 persons from the time of the 2000 Census to the time of the 2010 Census. The 2010 Census revealed that 1-person and 2-person households continued to be the most prevalent household size; the Census also revealed a 13.8% increase (571 to 650) in the number of 3-person households.

5.4 Household Income Level

Table 5.4: Household Income

	2000-2013 East Rutherford		2009-2013 Bergen County	
	Estimate	Percent	Estimate	Percent
Total households	3,897	3,897	335,422	335,422
Less than $10,000	298	7.6	15,297	4.6
$10,000 to $14,999	138	3.5	10,357	3.1
$15,000 to $24,999	254	6.5	22,947	6.8
$25,000 to $34,999	166	4.3	22,552	6.7
$35,000 to $49,999	450	11.5	31,024	9.2
$50,000 to $74,999	823	21.1	49,643	14.8
$75,000 to $99,999	451	11.6	42,130	12.6
$100,000 to $149,999	805	20.7	60,441	18.0
$150,000 to $199,999	310	8.0	35,551	10.6
$200,000 or more	202	5.2	45,480	13.6
Median Income (dollars)	68,965	(X)	83,794	(X)
Mean Income (dollars)	84,793	(X)	115,950	(X)

Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey Estimate

The 2009-2013 5-Year American Community Survey (ACS) estimates indicate that the percentage of Borough household incomes in the range of $50,000 - $99,999 is estimated to be 32.7% which exceeds the County average of 27.4%; however, the percentage of Borough households having an income equal to, or greater than $100,000 is estimated to be 33.9% where the County average is 42.2%.

The 2009-2013 ACS estimates that the Borough's median income and mean income are respectively 82.3% and 42.2% of the countywide average.

6.0 EXISTING AND PROBABLE FUTURE EMPLOYMENT

6.1 Employment Status

Table 6.1: Employment Status

	2009-2013 East Rutherford	
	Estimate	Percent
Population 16 years and over	7,598	7,598
In labor force	5,487	72.2

	2009-2013 East Rutherford	
	Estimate	Percent
Civilian labor force	5,487	72.2
Employed	5,137	67.6
Unemployed	350	4.6
Armed Forces	0	0.0
Not in labor force	2,111	27.8

Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey

The 2009-2013 5-Year American Community Survey (ACS) estimates reveal that 72.2% of the population 16 years and over is in the labor force, all of which being within the civilian component of same.

6.2 Employment by Occupation

Table 6.2: Employment by Occupation

Occupation	2009-2013 East Rutherford	
	Estimate	Percent
Civilian employed population 16 years and over	5,137	5,137
Management, business, science, and arts occupations	2,537	49.4
Service occupations	578	11.3
Sales and office occupations	1,043	20.3
Natural resources, construction, and maintenance occupations	408	7.9
Production, transportation, and material moving occupations	571	11.1

Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey Estimate

Management, business, science, and arts occupations are the most prevalent occupations in the Borough as was the case at the time of the 2000 Census. Sales and service occupations are the second most prevalent occupations, which was also the case at the time of the 2000 Census, although the percentage of the Borough's workforce engaged in these occupations has decreased by 10.5%.

6.3 Employment by Industry

Table 6.3: Distribution of Employment by Industry

Industry	2009-2013 East Rutherford		Bergen County	
	Estimate	Percent	Estimate	Percent
Civilian employed population 16 years and over	5,137	(X)	449,422	(X)
Agriculture, forestry, fishing and hunting, and mining	23	0.4	711	0.2
Construction	274	5.3	24,488	5.4

Industry	2009-2013 East Rutherford		Bergen County	
	Estimate	Percent	Estimate	Percent
Manufacturing	667	13.0	41,348	9.2
Wholesale trade	235	4.6	21,278	4.7
Retail trade	470	9.1	49,580	11.0
Transportation and warehousing, and utilities	266	5.2	22,896	5.1
Information	288	5.6	17,437	3.9
Finance and insurance, and real estate and rental and leasing	532	10.4	47,134	10.5
Professional, scientific, and management, and administrative and waste management services	849	16.5	58,764	13.1
Educational services, and health care and social assistance	830	16.2	102,156	22.7
Arts, entertainment, and recreation, and accommodation and food services	318	6.2	28,625	6.4
Other services, except public administration	224	4.4	20,581	4.6
Public administration	161	3.1	14,424	3.2

Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey Estimate

The 5-Year American Community Survey (ACS) estimate indicates that nearly half (45.7%) of the Borough's workforce is employed in the following industries: (i) professional, scientific, and management, and administrative and waste management services, (ii) educational services, health care and social assistance, and (iii) manufacturing. These industries employed 36.9% of the Borough's workforce at the time of the 2000 Census, which reflects the increasing numbers of workers engaged in professional, scientific, and management, and administrative and waste management services.

6.4 In-Borough Establishments and Employees by Industry: 2014

Table 6.4: Average Annual Number of Establishments and Employees by Industry: 2014

Description	2014 Averages	
	Units	Employment
FEDERAL GOVT TOTALS	2	41
STATE GOVT TOTALS	4	1,048
LOCAL GOVT TOTALS	5	383
LOCAL GOVT EDUCATION	3	216
Agriculture	.	.
Utilities	.	.
Construction	35	354

Description	2014 Averages	
	Units	Employment
Manufacturing	41	866
Wholesale Trade	72	729
Retail Trade	50	1,280
Transp/Warehousing	17	212
Information	7	166
Finance/Insurance	8	685
Real Estate	.	.
Professional/Technical	29	331
Management	5	86
Admin/Waste Remediation	20	1,077
Education	.	.
Health/Social	17	142
Arts/Entertainment	17	1,058
Accommodations/Food	45	2,438
Other Services	29	226
Unclassifieds	19	28
PRIVATE SECTOR TOTALS	433	9,993

Source: New Jersey Department of Labor and Work Force Development, Annual Municipal - Sector Data - 2014

Table 6.4 above sets forth the average annual number of establishments and employees, by industry sector as grouped by North American Industry Classification System (NAICS) that exists within the Borough, as reported for 2014, being the most recent year for which data is available. In 2014, the Borough had an annual average of 433 private sector establishments, employing on average 9,993 persons.

6.5 Probable Future Employment Opportunities

Future employment opportunities most likely will emanate from redevelopment activity, pursuant to the Paterson Plank Road Redevelopment Plan, from mixed office, commercial, retail, residential development as anticipated by the now under consideration and from the planned "American Dream" Redevelopment Project to be constructed and opened on property owned by the New Jersey Sports and Exposition Authority in the area east of Route 120 along the Hackensack River if and when it opens for business.

The Paterson Plank Road Redevelopment Area encompasses approximately 250 acres found over the Boroughs of Carlstadt and East Rutherford (Block 105.01, Lots 1-9; Block 105.02, Lots 1-5), which lands are found east of Route 17 between New Jersey Transit's Pascack Valley Line to the west and Michele Place to the east. The Redevelopment Plan establishes three sections; lands within East Rutherford fall within the Plan's Environmental Preservation Area, which principally calls for the preservation of wetlands; and the Commercial Gateway Center Area, which area is intended to be a

gateway for the Patterson Plank Road Corridor and the NJSEA Complex. The plan for this section envisions the continuation of commercial, retail, and light industrial uses.[2]

In addition, of the 13 industry sectors, identified in Table 6.3 above, in which the Borough's residents are employed, 10 of these sectors are identified as growing or stable sectors, with only 3 sectors declining: Agriculture, Information, and Manufacturing, which in aggregate comprise 19.0% of the Borough's employment.[3] It is reasonable to presume that the sectors identified as growth or stable sectors will translate to continued opportunity for employment.

7.0 HOUSING STOCK PROJECTION

7.1 From a site specific standpoint, the Borough has approved the inclusionary developments:

(a) 228 Park Avenue (Block 73, Lot 7): This 45-unit project will net 9 affordable units;

(b) Van Winkle Avenue: This 33-unit project will net 3 affordable units;

(c) 384 Paterson Avenue (Block 44, Lot 41): This 7-unit project will net 1 affordable unit.

(d) 132 Union Ave. (Block 97, Lots 1-4). This 32 unit project will net 5 affordable units.

(e) Paterson, Oak and Central Aves. (Block 26, Lots 1 and 2) this 208 unit project will net 30 affordable units.

7.2 From a site specific standpoint, the NJSEA has approved the following inclusionary developments:

(a) 100 Schindler Court (Block 108.04, Lots 1 and 5). This project contains 32 affordable rental units.

7.3 Housing units will also result in the NJSEA jurisdiction from:

(a) Group at 3 Settlement Agreement (Block 108.04, Lots 1 and 5). This project is to be built in 2 phases. Phase 1 contains 316 units with 32 affordable units and is described in 7.2(a). Phase 2 is planned only and provides for 434 units of which 43 will be affordable.

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[2] Paterson Plank Road Redevelopment Plan Amendment (2012), New Jersey Meadowlands Commission, p. 17.
[3] Industry Employment Projections for New Jersey and Counties: 2012-2022: Industries with Greatest Employment Growth, (prepared by other than the Department of Labor pursuant to award of grant from the United States Department of Labor's Employment and Training Administration).

(b) the builder's remedy awarded in favor of TOMU Development Company, Inc., in 2005, by the Superior Court of Bergen County. This 420-unit inclusionary development, netting 60 affordable rental units, is situated over lands along Outwater Lane (Block 107.03, Lots 2, 5, 7, and 11).

(c) Eastbound Inc. (Block 108.04, Lot 4). This 111 unit project will contain 23 affordable units.

8.0 LANDS APPROPRIATE FOR AFFORDABLE HOUSING DEVELOPMENT

The Borough of East Rutherford endorses the development of affordable housing throughout the community.[4] Nonetheless, the Borough finds that housing of all types is not suitable everywhere within the Borough.

The Borough recognizes that the desire to construct housing (even affordable housing) is "not a license for unchecked growth." ***J.W. Field Co. vs. Franklin Twp., 204 N.J. Super. 445, 453 (App. Div. 1985).*** The Supreme Court has noted that housing should be "...located and designed in accordance with sound zoning and planning concepts, including its environmental impact. ***Southern Burlington County NAACP v. Mount Laurel, 92 N.J. 158, 218 (1983).*** ("Mount Laurel II"). In fact, the Court wrote: "the specific location of such housing will of course continue to depend on sound municipal land use planning (emphasis added), ***Mt. Laurel II, at 211.*** The site must be suitable for housing.

A "suitable site" is "adjacent to compatible land uses...," which is "consistent with the environmental policies...." ***In Re Petition for Substantive Certification filed by the Township of Denville, 247 N.J. Super. 186, 199 (App. Div. 1991).*** There should be residential neighborhoods in the general area of the site at issue.

The Borough notes that almost all of the Borough east of Route 17 is either within fully developed industrial or commercial areas or are within the "Sports Complex", an area inappropriate for housing. Except for the nearby "Monarch" apartment and the Tomu site (both of which are too remote from the Site to be "adjacent" or to support a community of interest), those parts of East Rutherford in the Meadowlands not within the Sports Complex are within commercial and industrial zoning and wetlands preservation areas. The Borough believes that the areas of the Borough east of Route 17 are <u>not suitable</u> for housing.

In contrast, the Borough notes that the area of the Borough near the NJ Transit train station at the intersection of Union Avenue and Park Avenue is especially suitable for transit-oriented residential development ("TOD") and consequently for inclusionary affordable housing.

The area proximate to the transit station is residential in character with zoning classifications that permit one and two family, townhouse, multi-family, and garden apartment development. The station is proximate to the terminus of the commercial development along Park Avenue in East Rutherford for which the NC Neighborhood Commercial zoning anticipates uses for the satisfaction of daily needs of residents, as well as, townhouse and multi-family development. An allowance for TOD residential

[4] See Resolution 82-2015, a copy of which is attached as Appendix, Volume 2 at page 309 ("A2-309").

development typically would enable higher density development yielding more units and more opportunity for the creation of affordable units within an easy walk of the train station. In addition, TOD development would foster potentially greater ridership owing to increased density and increased foot traffic to the advantage of local business owners.

PART 2: ACHIEVEMENT OF FAIR SHARE

1.0 INTRODUCTION

1.1 The Plan.

This Fair Share Plan (the "Plan") describes East Rutherford's 1987-1999 prior round need, proposes determination of present need obligation based upon field observation as enabled under Appendix C of N.J.A.C. 5:93 and later at N.J.A.C. 5:97-6.2, and sets forth the Borough's third round prospective need.

Although East Rutherford is a "Participating Municipality" having filed a Housing Element and Fair Share Plan with COAH along with an application for substantive certification in 2008, this Plan is submitted inasmuch as the 2008 Housing Element and Fair Share was not certified prior to the set-aside of the third round rules, which precluded then the issuing of substantive certifications. Moreover, East Rutherford has determined to utilize the transition period for "Participating Municipalities" as established by the New Jersey Supreme Court, in its order in In re N.J.A.C. 5:96 and 5:97, to demonstrate constitutional compliance and thereby obtain protection from exclusionary zoning actions.

Section 2 of this Plan identifies East Rutherford's "Present Need" and sets forth the mechanisms by which the obligations will be addressed.

Section 3 of this Plan identifies East Rutherford's "Prior Round Need" and sets forth the mechanisms by which the obligations will be addressed.

Section 4 of this Plan identifies East Rutherford's "Prospective Need" and sets forth the mechanisms by which the obligations will be addressed.

Section 5 of this Plan describes the Borough's Affordable Housing Trust Fund and accompanying Spending Plan.

Section 6 of this Plan identifies additional affordable housing activities of the Borough.

Section 7 of this Plan identifies the activities necessity to implement this Plan.

Finally, this Plan is accompanied by an Appendix containing copies of documents submitted in support of this Plan.

1.2 The Methodology

In the absence of a methodology and calculation of East Rutherford's affordable obligation, the Borough had entered into a Shared Services Agreement (SSA) with over 200

other municipalities to retain the services of Dr. Robert Burchell of Rutgers University for the calculation of fair share obligations for New Jersey municipalities. When it became apparent that Dr. Burchell would not be able to complete his work owing to illness, the consortium of municipalities,—that initially retained him,—contracted with Econsult Solutions, Inc. of Philadelphia, Pennsylvania, for the preparation of those fair share obligations. In its report of March 24, 2016 titled: "New Jersey Affordable Housing Need and Obligations" (the "Econsult Report") Econsult developed and advanced a methodology to identify the affordable housing obligations of municipalities in New Jersey.[5] This Plan acknowledges the Present Need, Prior Round and Prospective Need obligations set forth in the Econsult Report; however, it provides Borough specific revisions to both the Present Need and Prior Round obligation proposed by the Econsult Report. This Plan accepts the Third Round Prospective Need obligation as developed by Econsult Solutions.

2.0 PRESENT NEED: DEFINED, DETERMINED, AND ADDRESSED

2.1 As Defined

Pursuant to N.J.A.C. 5:93-2.1, East Rutherford's Present Need was determined by the addition of Indigenous Need (to mean deficient housing units occupied by low and moderate income households within a municipality) and Reallocated Present Need (to mean that portion of a housing region's Present Need that is redistributed throughout the housing region). Under COAH's Second Round rules, surrogates evidencing deficient housing included: year structure built, persons per room, plumbing facilities, kitchen facilities, heating fuel, sewer service, and water supply.[6] The Third Round rules reduced the number of surrogates evidencing deficient housing to three: crowded units pre-1950, to mean units having more than 1.0 persons per room; incomplete plumbing, and incomplete kitchen facilities.[7] This reduction in the number of surrogates was found to be by the Appellate Division to be within the Council's discretion and was upheld in the Supreme Court's decision ***In re N.J.A.C. 5:96 & 97, 215 N.J. 578 (20).***

Pursuant to the above cited Supreme Court decision, Reallocated Need is no longer a component in the determination of Present Need, so that now Present Need equates to Indigenous Need, to mean that this component of the obligation is based on deficient housing as determined by crowded units pre-1950, incomplete plumbing, and incomplete kitchen facilities.

2.2 As Determined

The Econsult Report advances a Present Need obligation of 175 units. The Borough disagrees with that conclusion. Instead, East Rutherford will conduct a Structural Conditions Survey (the "Survey") to assure that the Present Need obligation is reflective of actual conditions. See ***N.J.A.C. 5:93-5.2(a).***

Based on previous experience East Rutherford anticipates that the Survey will result in a far lower Present Need obligation. At the time of the 2008 Housing Element and Fair

[5] A copy of the Econsult Report is attached as A1-1
[6] N.J.A.C. 5:93, Appendix A, Present Need.
[7] N.J.A.C. 5: 97, Appendix B, Tables.

Share Plan, at which time the East Rutherford was assigned a rehabilitation obligation (the previous name of the "Present Need Obligation) of 85 units. East Rutherford conducted a Structural Conditions Survey at that time. In that survey the Borough was only able to identify 3 units manifesting conditions suggestive of likelihood of deficient units. A similar result is anticipated for this Third Round.

2.3 As Addressed

To meet its Present Need obligation East Rutherford shall encourage participation in the Bergen County Home Improvement Loan Program administered by the Bergen County Department of Community Development (the "Bergen County Loan Program"). This program is funded by a community development block grant through the United States Department of Housing and Urban Development (HUD) and provides 3% deferred loans up to $17,500.00 for one family dwellings and $25,000.00 for two-family dwellings to income eligible owner occupants for the repair of major systems. A mortgage lien in the amount of the loan is placed against the property which is typically satisfied at the time of transfer of title or on the occasion of the death of the individual who received the loan.

Information provided by the Bergen County Department of Community Development reveals that East Rutherford's participation in the County program predates 2010, occurring in the first decade of the new millennium. Although at present, no property owner has participated in the Bergen County Loan Program and therefore no credits may be claimed, the program remains a viable method of addressing East Rutherford's Present Need.

Going forward, the Borough will continue to encourage participation in the Bergen County Loan Program and implement rehabilitation measures, as found appropriate, until the entirety of the Borough's obligation as identified in the Survey has been satisfied.

3.0 PRIOR ROUND OBLIGATION: 1987-1999

3.1 Numeric Obligation as Recognized

The Econsult Report indicates that East Rutherford has a prior round obligation of 90 units. Notwithstanding that, however, in **Tomu Development Co., Inc. v. Borough of East Rutherford, et al., Docket No.: BER-L-5895-03 (the "Tomu Decision")**the court determined that East Rutherford's then current need (now the Prior Round Obligation) was 70 units.[8] Since this was determined after a full trial on the merits, and affirmed on appeal, see Docket No. A-5621-05T1,[9] the determination in the **Tomu Decision** is binding (i.e., "res judicata") as to the Borough's Prior Round Need. In light of that, the Borough's Prior Round Obligation in this Plan is set at 70.

3.2 As Addressed

The Borough fully satisfies its prior round obligation through application of family rental units and associated bonuses, resulting from the award of the builder's remedy in the Tomu Decision as described below.

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[8] A copy of the *Tomu* builders' remedy opinion and order is found in the Appendix at A2-313.
[9] A copy of the *Tomu* Appellate Division opinion is found in the Appendix at A2-349

In the court's November 10, 2005 opinion, Tomu Development Company, Inc. was awarded a builder's remedy which allowed for the construction of a mixed-use, inclusionary development over lands situated both in the Boroughs of Carlstadt and East Rutherford. Relative to East Rutherford, the builder's remedy permitted the construction of "no more than 420 residential units consisting of 360 market rate units and 60 affordable rental units..."

Based on the Tomu Decision, and pursuant to pursuant to N.J.A.C. 5:93-5.15(d)1/3, East Rutherford is entitled to, two (2) units of credit for each unit available to the general public, up to the Borough's rental obligation, with units beyond the rental obligation being eligible for the claim of 1 unit of credit.

The Borough is not seeking a vacant land adjustment. Therefore, the rental obligation may be calculated as being .25 (municipal pre-credited need - prior cycle credits - impact of the 20 percent cap - the impact of the 1,000 unit limitation pursuant to N.J.A.C. 5:93-14 - the rehabilitation component) or, in the alternative .25 (calculated need - the impact of the 1,000 unit limitation pursuant to N.J.A.C. 5:93-14 - the rehabilitation component. There are no prior cycle credits, (ii) the Borough is not affected by impacts of either the 1,000 unit limitation or the 20 percent cap, and (iii) the Borough is reserving the right to determine the present need component through the performance of a Structural Conditions Survey.

Therefore, the rental bonus from the Tomu builder's remedy is .25(60) = 15 units.

Based on the Prior Round rental obligation of 15 units, the Borough is able to claim 15 bonus credits plus 1 credit for each of the now allocated 55 family rental units towards the Prior Round obligation of 70.

While the developer has not as yet sought a zoning certificate, the NJSEA equivalent of preliminary site plan approval under the Municipal Land Use Law, the developer has not abandoned the development enabled by the grant of the builder's remedy. In fact, Tomu has emphasized its intent to pursue its builder's remedy rights by intervening in the Borough's declaratory judgment action for the express purpose of defending its builder's remedy. [10]

4.0 PROSPECTIVE NEED

4.1 Numeric Obligation as Recognized

The Econsult Report identifies the prospective need period as being from July 1, 2015 through June 30, 2025, and articulates an obligation of 12 units for the period. Of these 12 units there is a rental obligation of 3 units, i.e., .25 of the 12 units. [11]

[10] See letter dated March 22, 2016 from counsel for Tomu demonstrating its intent to protect its builders' remedy rights and reiterating its intent to proceed with the project. See A2-3702.
[11] See Econsult Report at A1-161.

The Econsult Report provides that there is no independent obligation for the so-called "1999-2015 Gap Period" as there is "no affordable housing obligation or identifiable additive affordable housing need that emerges from the "gap period."[12] Econsult more specifically supported the absence of a "gap" period obligation in its February 8, 2016 report entitled "Econsult Solution, Inc., Analysis of the Gap Period (1999-2015). Instead, the Econsult methodology calculates the Borough's Prospective Need for the entire 1999 through 2025 time frame thus eliminating any so-called "gap."[13]

Nonetheless, in response to court holdings in other areas of the State, Econsult prepared an analysis of the "gap period" to identify any separate affordable housing obligation arising during that period. See "Econsult Solutions, Inc. Gap Period Calculations." [14] . That report confirmed that the Borough has no "gap period" obligation.

4.2 As Addressed

East Rutherford fully satisfies its Prospective Need obligation through:

(i) surplus credits resulting from the Tomu Decision's builder's remedy litigation,

(ii) credits from the construction of affordable units resulting from development approvals, and

(iii) credits from the set aside of affordable units within developments which have been approved, but not yet constructed.

Even beyond these credits, it is reasonable to presume that additional affordable units will result from:

(iv) Redevelopment Area designations now being considered by the Planning Board and the Mayor and Council,

(v) developments for which there has been an agreement as to Mount Laurel obligations between prospective developers and the Monitor, and

(vi) from inclusionary development resulting from New Jersey Sports Exposition Authority (NJSEA) approvals, (vii) instances where development approvals are pending before the land use board having jurisdiction and (viii) the proposed TOD area development..

The Borough intends assure that each significant residential development within its jurisdiction provide its fair share of affordable housing. See Section 6.3 below.

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[12] See A1-16-28
[13] See Econsult Report at A1-189-190
[14] See Econsult Gap Period Calculations Report at A1-295

4.3 Projects Yielding Credits for Addressing of Prospective Need

4.3.1 Prior Round Credits – the Tomu Builder's Remedy

As noted in section 3.2 above, Tomu Development Company, Inc. was awarded a builder's remedy, which allowed for the construction of, among other things, 60 affordable rental units." Based on a rental obligation of 15 units and family rental bonus credits as permitted pursuant to N.J.A.C. 5:93-5.15(d)1, satisfaction of the prior round obligation required application of 55 units plus 15 family rental bonus credits, leaving a surplus of 5 units to be applied against the prospective obligation, as permitted pursuant to N.J.A.C. 5:93-3.1(f). The Borough is also able to claim 3 family rental bonus credits.

4.3.2 Credits from Actual Construction of Affordable Units

(a) 100 Schindler Court: The Monarch (Block 108.04, Lots 1 and 5). This completed and operating development contains 316 family rental units, of which 32 rental units are reserved for occupancy by low and moderate income households. The certificate of occupancy was issued in October 2014.[15] The Monarch development is in the redevelopment area established by the NJSEA. Therefore, the Borough is entitled to bonus credit of 1.33 for each affordable housing unit established. See ***N.J.S.A. 5:97-3.10.*** This redevelopment area bonus was upheld by the Appellate Division in ***In Re: Adoption of 5:96 and 5:97, 416 N.J. supra. 462, 466 (App. Div. 2010).*** The decision of the Appellate Division was recognized by the Supreme Court in ***Mount Laurel IV*** when noting the reviewing court's ability to use its discretion to consider those aspects of the 3rd round rules that previously passed muster. See ***221 N.J. at 48.*** Consistent with that, the Borough is entitled to bonus credit of 10 additional units (32 units times .33).

(b) 132 Union Avenue (Block 97, Lots 1, 2, 3, and 4). A development approval granted in 2006, which allowed for the construction of a 2-building, 30 unit residential development, netted the set-aside of 3 for-sale affordable units. The certificate of occupancy for building "A" was issued on March 21, 2011; the certificate of occupancy for building "B" was issued on December 22, 2009.[16]

4.3.3 Credits from "In Lieu" Contributions.

The Borough received a payment of $140,000 from the developer of 132 Union Avenue, (see Section 4.3.2(b) above) pursuant to the Zoning Board of Adjustment's approval of a 32 unit project. Those sums were paid and have been committed to a 2 unit all affordable project sponsored by the Housing Authority of Bergen County.[17] This entitles the Borough to claim 2 credits.

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[15] See a copy of the Zoning Certificate issued by the NJSEA attached as A2-372.

[16] See a copy of the Resolutions of Approval for the project attached as A2-375

[17] See Resolution No. 2012-78 committing funds to the HABC project attached as A2-378 and the August 15, 2013 letter from the HABC explaining its reliance on that commitgmenmt of funds, A2-383..

4.3.4 Credits from Set Aside of Affordable Units within Approved Developments Not Yet Constructed

(a) 228 Park Avenue (Block 73, Lot 7). The Zoning Board of Adjustment granted approval in 2015 for a multi-family development, consisting of 55 family rental units, of which 9 are to be set aside as affordable, enabling the Borough to claim credit 9 credits.[18]

(b) 384 Paterson Avenue (Block 44, Lot 41). The Zoning Board of Adjustment granted approval in 2016 for a multi-family development consisting of 7 family rental units, of which 1 unit will be restricted as affordable, enabling the Borough to claim 1 credit.[19]

(c) Van Winkle Avenue (Block 92, Lot 16). The Planning Board granted approval for a development of 33 units of which 3 units will; be affordable, together with a payment in lieu of construction of another 3 units.[20] Notwithstanding that, at such time as the development occurs, the Borough, pursuant to the Monitor's order, will insist upon a 6 family for-sale affordable unit set-aside, enabling the Borough to claim 6 credits.

(d) Paterson, Oak and Central Avenues (Block 26, Lots 1 and 2). The Planning Board granted approval in 2016 for a 208 unit family-rental development, of which 30 units will be affordable rental units, enabling the Borough to claim 30 credits.[21]

4.3.5 Prospective Developments within NJSEA Jurisdiction.

(a) Group at Route 3, LLC Settlement Agreement (Block 108.04, lot 1 and 5). In accord with a Settlement Agreement approved by COAH, the developer will be able to construct, in two phases, a 750 unit project; phase 1 consisting of 316 units and described in Section 4.3.2(a) above as "The Monarch." The remainder of the project, labeled as "Phase 2" will, according to the Settlement Agreement[22] as approved by COAH[23] consist of 434 units. A 10 percent affordable unit (43 units) will result from Phase 2. This enables the Borough to claim 43 credits together with the additional bonus for affordable units in a redevelopment area (see Section 4.3.2(a) above) of 14 units, for a total credit of 57 units.

(b) Eastbound, Inc. (Block 108.04, lot 4). This entity has filed an application for a zoning certificate to NJSEA to allow for the construction of a 111 units residential units, consisting of 88 market rate and 23 affordable units. The proposed use is permitted under the NJSEA zoning regulations.[24] A decision on the request for the zoning certificate is pending. This enables the Borough to claim 23 credits together with the additional bonus for affordable units in a redevelopment area (see Section 4.3.2(a) above) of 7 units for a total of 30 units.

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[18] See a copy of the Resolution of Approval for the project attached as A2-389
[19] See a copy of the Resolution of Approval for the project attached as A2-508
[20] See a copy of the Resolution of Approval for the project attached as A2-389
[21] See a copy of the Resolution of Approval for the project attached as A2-402
[22] See a copy of the Settlement Agreement as amended, attached as A2-427
[23] See a copy of the resolution of COAH approving the Settlement Agreement attached as A2-461
[24] See a copy of the Application filed with the NJSEA in support of this project attached as A2-488

4.4 Summary of Prospective Need Satisfaction

The Econsult Report, upon which this Plan relies for the development of the Prospective Need obligation, identifies an obligation of 12 units. The below summary sets forth the means by which the obligation is more than satisfied.

PROJECT/SITE	TOTAL CREDITS	RENTAL CREDITS
Tomu Builder's Remedy Surplus	5	5
100 Schlindler Court	32+10*	32
132 Union Avenue	3	
Park Avenue	9	9
384 Patterson Avenue	1	1
Van Winkle Avenue	6	
Paterson, Oak & Central	30	30
HABC Project	2	2
Total Inclusionary Credits	**88 + 10***	**79**
Bonus Rental Credits		**3**
Total Credits	**93 + 10***	**82**
Anticipated Additional Credits		
Group at Route 3, LLC (Phase II)	**43 + 14***	43
Eastbound, Inc.	**23 + 7***	23
TOTAL ANTICIPATED ADDITIONAL CREDITS	**66 + 21***	**66.**

* Redevelopment 1.33/unit bonus as described in Section 4.3.2(a) above.

5. THE AFFORDABLE HOUSING TRUST FUND.

5.1 Establishment of the Fund.

Since January 1992 COAH's rules have authorized municipalities under its jurisdiction to collect "development fees" based on the assessed value of new construction to generate revenue to fund the costs associated with affordable housing requirements. Revenue collected pursuant to a development fee ordinance can only be used for affordable housing-related purposes and must be expended in accordance with an approved "Spending Plan" that complies with COAH and state regulations. In 2015, the Supreme Court's ***Mount Laurel IV*** opinion re-inserted the Superior Court into the process. Shortly after that opinion was issued, the Appellate Division of the Superior Court issued its opinion in ***In Re Council on Affordable Housing to Adopt Trust Fund Commitment Regulations, 440 N.J.Super. 220 (App. Div. 2015).*** At page 227 of the opinion, and consistent with the Supreme Court's Mount Laurel IV ruling, it authorized the Superior Court to determine questions relating to a municipality's affordable housing trust fund because "the courts are the only available forum for addressing these matters.

In light of that, the Borough seeks the approval by the Superior Court of its Affordable Housing Trust Fund ordinance.

5.2 Funding Sources.

As part of its Housing Element and Fair Share Plan presented to COAH in 2008, East Rutherford proposed to establish affordable housing production or "payment in lieu" requirements for developments that generate a growth share obligation.

COAH approved that proposed ordinance[25], however the ordinance was never finally adopted and the Municipal Land Use Law was amended to prohibit locally imposed development fees on certain non-residential development. See ***N.J.S.A. 40:55D-8.1 et seq.***

Although the basis for a municipality's affordable housing obligations has changed from the growth share concept, the Borough now proposes to adopt a development fee ordinance permitting the Borough to impose such fees on certain new residential development. Fees on non-residential development are governed by state law, see ***N.J.S.A. 40:55D-8.1, et seq.*** The funds generated by the collection of development fees will be applied directly toward administration of the Borough's affordable housing program (to the extent permitted by law and towards implementation of the Borough's Fair Share Plan.[26]

Residential development fees of 1.5 percent of the equalized assessed value will be collected on residential development within all residential zoning districts. In addition, the Borough expects to receive payment of Non-residential Development Fees pursuant to ***N.J.S.A. 40A:55D-8.1, et seq.***

The following developers are to be exempt from paying development fees:

- Developers of low and moderate income units, or those who have made a payment in lieu of constructing affordable units;
- Developers of any not-for-profit uses; federal, state and municipal government uses; churches and other places of worship; and public schools;
- Developers who expand, enlarge, or improve existing single family or two family residences, unless the expansion, enlargement, or improvement lads to the creation of additional dwelling units(s).

5.3 Spending Plan.

COAH regulations governing the preparation of plans to spend affordable housing trust funds are largely geared to communities that are or have already, enacted ordinances imposing development fee. Nevertheless, the Borough recognizes the need to obtain either court approval or COAH approval of a spending plan prior to pending any money from the Trust Fund. At the same time, note that East Rutherford has already collected an "in lieu

[25] See a copy of COAH's letter of approval dated February 11, 2010 attached as A2-491

[26] A draft of the proposed Development Fee Ordinance which also establishes the Borough; Affordable Housing Trust Fund is attached as A2-500.

contribution" (not a development fee) which has been committed to the Housing Authority of Bergen County, see Section 4.3.3 above.

6. Additional Affordable Housing Compliance Activities.

Although this Plan satisfies East Rutherford's current affordable housing obligation, the Borough recognizes the continuing need for affordable housing. Therefore, the Borough has elected to undertake additional actions to encourage production of affordable housing.

Those additional actions are both voluntary and proactive on the part of East Rutherford. They are based upon the premise that once a municipality's affordable housing obligation is satisfied, the municipality is free to use its zoning power to further local goals, provided it acts otherwise consistent with law. This is consistent with the Supreme Court's statement in ***Mount Laurel IV*** that "when a municipality satisfies its fair share obligation the ***Mount Laurel*** doctrine will not restrict other measures, including large lot and open area zoning that would maintain its beauty and commercial character. ***Mount Laurel II, 92 N.J. 158, 220 (1983).***

6.1 East Rutherford will utilize its affordable housing trust fund to enhance its affordable housing activities. See Section 5.3 above.

6.2 East Rutherford shall amend its zoning ordinance to:

(a) encourage "Transit-Oriented Development" ("TOD") in the vicinity of the N.J. Transit rail line;

(b) Require that all residential development of more than 2 units shall contain affordable housing in the amount of 1 affordable unit for every 5 market rate units in the project; provided that if the Developer can demonstrate through competent proofs (including detailed project budgets and projections reflecting projected costs and revenues) that the foregoing affordable housing goal is not economically feasible, then the Planning Board may reduce the affordable housing requirement the amount economically feasible but not less than one affordable unit for every 10 market rate units; and

(c) Repeal Sections 389-54 and 389-56 which created affordable housing overlay zones, The creation of affordable housing would be addressed by the activities described in Section 4 above and the other zoning ordinance changes described in this Section 6.

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6.3 Future Need for Revenue to Address Affordable Housing Requirements

6.3.1 East Rutherford will implement this Fair Share Plan as described herein in accordance with any terms and conditions imposed by the Court. The Borough proposes to satisfy its future affordable housing obligation with inclusionary housing developments constructed by private developers on property either already zoned or proposed for rezoning in accordance with this Plan.

6.3.2 While implementing this plan the Borough will monitor whether there is a need for additional revenue for affordable housing. If at any time in the future, additional revenue is determined to be needed to satisfy an affordable housing requirement or program, the Borough may seek approval of a revised Development Fee Ordinance and Spending Plan in accordance with existing state regulations.

7. Compliance Plan Implementation

7.1 Obtain Superior Court approval of this Plan.

7.2 Enacting ordinances to establish the TOD district, the affordable housing requirements described in Section 6.2(b) and repeal the existing affordable housing overlay zones.

7.3 In addition, the Borough shall enact updated affordable housing rules as needed to be consistent with the Fair Housing Act and the state's Uniform Housing Affordability Control (UHAC) regulations.

8. Appendix of Supporting Documents.

The documents set forth in the Appendix are described in the Appendix and are outlined in the Table of Contents at page iii. All are a part of this Plan and will be submitted to the Superior Court in support of this Plan. They will be maintained on file with the East Rutherford Borough Clerk and will be available for public inspection during normal business hours.

Housing Element Fair Share v6 rja comments tracked-4-18-16