



2025

# Fourth Round Housing Plan Element and Fair Share Plan



May 7, 2025

Borough of Cape May Point, Cape May County, New Jersey

Prepared by:

**Clarke Caton Hintz** | 100 BARRACK STREET | TRENTON, N.J. | 08608





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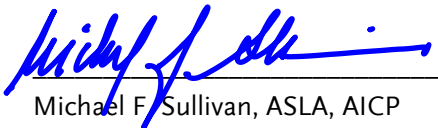
May 7, 2025

Adopted by the Planning Board \_\_\_\_\_

Endorsed by the Board of Commissioners \_\_\_\_\_

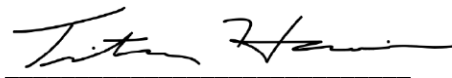
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A signed and sealed original is on file with the Borough Clerk.





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## EXECUTIVE SUMMARY

This Fourth Round Housing Plan Element and Fair Share Plan (“HPE/FSP”) has been prepared for the Borough of Cape May Point (“Borough”), of Cape May County, in accordance with the New Jersey Fair Housing Act (“FHA”) at N.J.S.A. 52:27D-310 as amended by P.L. 2024 c.2, Administrative Directive #14-24, and the rules of the now-abolished New Jersey Council on Affordable Housing (“COAH”) contained at N.J.A.C. 5:93 *et seq.* . This plan is an update to the Borough’s Amended Third Round HPE/FSP adopted by the Planning Board on June 27, 2018, and endorsed by the Board of Commissioners on July 12, 2018. This cumulative Fourth Round HPE/FSP will serve as the foundation for the Borough’s submission to the Superior Court of New Jersey and the Affordable Housing Dispute Resolution Program (“Program”).

A municipality’s affordable housing obligation has four components: Fourth Round Present Need (Rehabilitation Share), Prior Round Prospective Need, Third Round “Gap”/Prospective Need, and Fourth Round Prospective Need.

### *Prior Round/Third Round*

On March 20, 2018, the Superior Court approved the Borough’s 2017 settlement agreement with the Fair Share Housing Center (“FSHC”), which set the Borough’s Prior Round Prospective Need as previously established by COAH and established the Borough’s Third Round “Gap”/Prospective Need as follows:

- Prior Round Obligation: 34 units
- Third Round Gap/Prospective: 36 units

The 2017 Third Round Settlement Agreement reflected a vacant land adjustment (“VLA”), which reduced the cumulative Prior Round/Third Round obligations to a combined Prior Round/Third Round realistic development potential (“RDP”) of 0 and Unmet Need of 70. The Borough has Court-approved Prior Round/Third Round mechanisms to address Unmet Need including an adopted Accessory Apartment Program, an adopted Development Fee Ordinance for affordable housing purposes, and a Borough-Wide Mandatory Set-Aside Ordinance. Pursuant to Term #8 of the 2017 Third Round Settlement Agreement, the Borough will provide one (1) very low-income family affordable rental unit through the Borough’s Accessory Apartment Program, which will carry forward to the Fourth Round.

### *Fourth Round*

On January 28, 2025, the Cape May Point Board of Commissioners adopted Resolution 29-25 accepting the determination of the Borough’s Fourth Round Present Need/Rehabilitation Obligation and Prospective Need by the New Jersey Department of Community Affairs (“DCA”) as follows:



- Fourth Round Present Need: 0 units
- Fourth Round Prospective Need: 5 units

The Borough has prepared an updated VLA as part of this HPE/FSP that has reduced the Borough's Fourth Round Prospective Need of 5 to a Fourth Round RDP of 0 and a Fourth Round Unmet Need of 5. The cumulative Unmet Need, including the Prior Round, Third Round, and Fourth Round Unmet Need, is 75 (70 + 5).

The Borough's cumulative Unmet Need will be addressed by its Court-approved Third Round mechanisms including the adopted Accessory Apartment Program, adopted Borough-wide Mandatory Set-aside Ordinance, and adopted Development Fee Ordinance. These existing mechanisms will be modified as described in this HPE/FSP.

## **NJ AFFORDABLE HOUSING JUDICIAL AND LEGISLATIVE BACKGROUND**

In the 1975 Mount Laurel<sup>1</sup> decision, the New Jersey Supreme Court ruled that developing municipalities have a constitutional obligation to provide diversity and choice in the housing types permitted in the municipality, including housing for low- and moderate-income households. In its 1983 Mount Laurel II decision,<sup>2</sup> the New Jersey Supreme Court extended to all municipalities with any "growth area" as designated in the State Development Guide Plan (now superseded by the State Development and Redevelopment Plan, or SDRP) the obligation to provide their "fair share" of a calculated regional need for affordable units. Mount Laurel II also introduced a "builder's remedy" if a municipality was not providing of its fair share of affordable housing. A builder's remedy may permit a developer that is successful in litigation the right to develop what is typically a higher density multi-family project on land not zoned to permit such use, so long as a "substantial" percentage of the proposed units would be reserved for low- and moderate-income households.

In 1985, in response to Mount Laurel II, the New Jersey Legislature enacted the Fair Housing Act ("FHA").<sup>3</sup> The FHA created the Council on Affordable Housing ("COAH") as an administrative body responsible for oversight of municipalities' affordable housing efforts, rather than having oversight go through the courts. The Legislature charged COAH with promulgating regulations (i) to establish housing regions; (ii) to estimate low- and moderate-income housing needs; (iii) to set criteria and guidelines for municipalities to use in determining and addressing their fair share obligations, and (iv) to create a process for the review and approval of municipal housing plan elements and fair share plans.

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<sup>1</sup> Southern Burlington County NAACP v. Township of Mount Laurel, 67 N.J. 151 (1975)

<sup>2</sup> Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983)

<sup>3</sup> N.J.S.A. 52:27D-301 et seq.



## COAH's First and Second Rounds (1987-1999)

COAH created the criteria and regulations for municipalities to address their affordable housing obligations. COAH originally established a methodology for determining municipal affordable housing obligations for the six-year period between 1987 and 1993,<sup>4</sup> which period became known as the First Round. This methodology established an existing need to address substandard housing that was being occupied by low- and moderate-income households (variously known as “present need” or “rehabilitation share”), and calculated future demand, to be satisfied typically, but not exclusively, with new construction (“prospective need” or “fair share”).

The First Round methodology was superseded in 1994 by COAH's Second Round regulations.<sup>5</sup> The 1994 regulations recalculated a portion of the 1987-1993 affordable housing obligations for each municipality and computed the additional municipal affordable housing need from 1993 to 1999 using 1990 census data. These regulations identified a municipality's cumulative obligations for the First and Second Rounds. Under regulations adopted for the Third Round, a municipality's obligation to provide affordable housing for the First and Second Rounds is referred to cumulatively as the Prior Round obligation.

## COAH's Third Round and Related Judicial and Legislative Activity (1999-2025)

The FHA had originally required housing rounds to be for a six-year period for the First and Second Rounds. In 2001, the time period increased to a 10-year period consistent with the Municipal Land Use Law (“MLUL”). In order to utilize 2000 census data, which hadn't yet been released, COAH delayed the start of the Third Round from 1999 to 2004, with the Third Round time period initially ending in 2014. In December 2004, COAH's first version of the Third Round rules<sup>6</sup> became effective, and the 15-year Third Round *time period* (1999 – 2014) was condensed into an affordable housing *delivery period* from January 1, 2004, through January 1, 2014.

The 2004 Third Round rules marked a significant departure from the methods utilized in COAH's Prior Round. Previously, COAH assigned an affordable housing obligation as an absolute number to each municipality. These Third Round rules implemented a “growth share” approach that linked the production of affordable housing to residential and non-residential development in a municipality.

On January 25, 2007, a New Jersey Appellate Court decision<sup>7</sup> invalidated key elements of the first version of the Third Round rules, including the growth share approach, and the Court ordered COAH to propose and adopt amendments to its rules. COAH issued revised rules effective on June 2, 2008 (as well as a further rule revision effective on October 20, 2008), which largely retained the growth share approach.

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<sup>4</sup> N.J.A.C. 5:92-1 *et seq.*

<sup>5</sup> N.J.A.C. 5:93-1.1 *et seq.*

<sup>6</sup> N.J.A.C. 5:94-1 and 5:95-1

<sup>7</sup> In re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1 (2007)



Just as various parties had challenged COAH's initial Third Round regulations, parties challenged COAH's 2008 revised Third Round rules. On October 8, 2010, the Appellate Division issued its decision on the challenges.<sup>8</sup> The Appellate Division upheld the COAH Prior Round regulations that assigned rehabilitation and Prior Round numbers to each municipality, but invalidated the regulations by which the agency assigned housing obligations in the Third Round, again ruling that COAH could not allocate obligations through a growth share formula. Instead, the Appellate Division directed COAH to use methods similar to those used in the First and Second Rounds.

### *Third Round Judicial Activity*

After various challenges were filed, on September 26, 2013, the New Jersey Supreme Court upheld the Appellate Court decision<sup>9</sup> and ordered COAH to prepare the necessary rules. COAH failed to adopt new rules, and more challenges ensued.

On March 10, 2015, the New Jersey Supreme Court issued a ruling on Fair Share Housing Center's ("FSHC's") Motion in Aid of Litigant's Rights, which became known as Mount Laurel IV.<sup>10</sup> In this decision, the Court transferred responsibility for reviewing and approving housing plan elements and fair share plans from COAH to designated Mount Laurel trial judges, declaring COAH "moribund." Municipalities were now to apply to the Courts, instead of COAH, if they wished to be protected from exclusionary zoning lawsuits. The Mount Laurel trial judges, with the assistance of a Court-appointed Special Adjudicator, were tasked with reviewing municipal plans much in the same manner as COAH had done previously. Those towns whose plans were approved by the Court received a Judgment of Compliance and Repose, the court equivalent of COAH's substantive certification.

While the New Jersey Supreme Court's decision set a process in motion for towns to address their Third Round obligation, the decision did not assign those obligations. Instead, that was to be done by the trial courts, although ultimately most towns entered into settlement agreements to set their fair share obligations. The Court stated that municipalities should rely on COAH's Second Round rules (N.J.A.C. 5:93) and those components of COAH's 2008 regulations that were specifically upheld, as well as the FHA, in their preparation of Third Round housing plan elements and fair share plans.

On January 17, 2017, the New Jersey Supreme Court rendered a decision<sup>11</sup> that found that the period between 1999 and 2015, now known as the "gap period," when no valid affordable housing regulations were in force, generated an affordable housing obligation. This obligation required an expanded definition of the municipal Present Need obligation to include the unaddressed housing needs of low- and moderate-income households that had formed during the gap period. This meant

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<sup>8</sup> In re Adoption of N.J.A.C. 5:96 and 5:97, 416 N.J. Super. 462 (2010)

<sup>9</sup> In re Adoption of N.J.A.C. 5:96 and 5:97 by New Jersey Council On Affordable Housing, 215 N.J. 578 (2013)

<sup>10</sup> In re Adoption of N.J.A.C. 5:96 & 5:97, 221 NJ 1 (2015)

<sup>11</sup> In Re Declaratory Judgment Actions Filed by Various Municipalities, 227 N.J. 508 (2017)



that the municipal affordable housing obligation would now comprise four components: Present Need (rehabilitation), Prior Round (1987-1999, new construction), Gap Need (1999-2015, new construction), and Prospective Need (Third Round, 2015 to 2025, new construction).

### *Third Round Legislative Activity*

The New Jersey Legislature has amended the FHA several times in recent years.

On July 17, 2008, P.L. 2008 c. 46 (referred to as the “Roberts Bill” or “A500”) was enacted, which amended the FHA in a number of ways. Key provisions included the following:

- It established a statewide 2.5% nonresidential development fee instead of requiring nonresidential developers to provide affordable housing;
- It eliminated new regional contribution agreements (“RCAs”) as a compliance technique available to municipalities; previously a municipality could fund the transfer up to 50% of its fair share to so called “receiving” municipalities;
- It added a requirement that 13% of all affordable housing units be restricted to very low-income households, which it defined as households earning 30% or less of median income; and
- It added a requirement that municipalities had to commit to spend development fees within four years of the date of collection. This was later addressed in a Superior Court decision which found the four-year period begins at the time the Court approves the municipal spending plan.<sup>12</sup>

In July 2020, the State amended the FHA again to require, beginning in November 2020, that all affordable units that are subject to affirmative marketing requirements also be listed on the state’s Affordable Housing Resource Center website.<sup>13</sup> All affordable housing affirmative marketing plans are now required to include listing on the State Affordable Housing Resource Center website.

### **The Fourth Round (2025-2035)**

On March 20, 2024, the New Jersey Legislature passed P.L. 2024 c.2, which amended the FHA and other statutes to:

- Formally abolish COAH;

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<sup>12</sup> In the Matter of the Adoption of the Monroe Township Housing Element and Fair Share Plan, and Implementing Ordinances (2015)

<sup>13</sup> <https://www.nj.gov/njhrc/>



- Require the state Department of Community Affairs (“DCA”) to promulgate municipal obligations using an adjusted methodology. These obligations are to be considered advisory, not binding;
- Establish a timeline within which municipalities need to adopt and submit binding resolutions stipulating to their Fourth Round fair share obligations, in order for them to retain their immunity from exclusionary-zoning lawsuits;
- Require the New Jersey Housing and Mortgage Finance Agency (“HMFA”) and DCA to update rules and standards governing affordable housing production, trust funds, and affordable housing administration;
- Establish a Court-based Affordable Housing Dispute Resolution Program (“Program”) that will be responsible for challenges to municipalities’ affordable housing obligation determinations and compliance efforts;
- Establish a longer control period – 40 years, rather than 30 years – for new affordable rental units;
- Change the criteria for affordable housing bonuses, making various additional categories of affordable housing eligible for bonuses;
- Establish a timeline within which municipalities need to take various steps toward adoption of a Housing Plan Element and Fair Share Plan, in order for them to retain their immunity from exclusionary-zoning lawsuits;
- Establish new reporting and monitoring procedures and deadlines for both affordable units and affordable housing trust funds and assign oversight for reporting and monitoring to DCA.

In December 2024, the Administrative Office of the Courts issued Administrative Directive #14-24, establishing procedures for implementation of the Program and for municipalities to file their Fourth Round Declaratory Judgment (“DJ”) filings, etc. As detailed under section covering requirements of an HPE/FSP, the Administrative Directive also set requirements for what must be included in a compliant Fourth Round HPE/FSP.

This plan has been prepared to meet the requirements of the FHA as most recently amended, as well as the 2024 Administrative Directive and all applicable regulations.



## **CAPE MAY POINT'S AFFORDABLE HOUSING HISTORY**

In August of 1988, the Borough of Cape May Point adopted an HPE/FSP in accordance with the First Round of COAH's affordable housing regulations.

On January 5, 1999, the Borough attained substantive certification for its Second Round obligations. The Borough received a VLA, showing an RDP of 0-units in comparison to the 29-unit Second Round obligation set forth by COAH. As a result, the Borough was required to establish a development fee ordinance.

After the first version of COAH's Third Round rules became effective in December 2005, the Borough petitioned and received an extension to Second Round substantive certification on July 29, 2005.

On November 12, 2006, the Borough introduced, and later adopted on December 14, an ordinance conditionally permitting accessory apartments in order to meet their affordable housing need of one growth share unit. The approved ordinance would permit a limited number of principal residence owners to create an accessory apartment of at least 300 square feet, but not greater than 25% of their total floor area.

On December 31, 2008, the Borough petitioned COAH for substantive certification of their Third Round HPE/FSP addressing their 1987-2018 affordable housing obligations. COAH issued a Compliance Report on May 15, 2009, recommending approval of the Borough's petition for approved compliance with their Third Round obligations. On July 8, 2009, the Borough formally received substantive certification from COAH in relation to their petition for Third Round obligations. COAH granted a 29-unit VLA in the Second Round, resulting in an RDP of 0. The Borough was waived of their 29-unit Unmet Need due to lack of realistic opportunity to generate affordable units. The Borough agreed to meet a realistic Growth Share obligation through their accessory apartment program.

Due to the Appellate Division's decision to halt review of municipalities' plans for third round obligation following COAH's regulations, the Borough's efforts to meet its constitutional obligation were stunted until the NJ Supreme Court transferred the review and approval of municipal housing plans to the NJ Superior Courts on March 10, 2015. As such, municipalities were required to file declaratory judgement actions with the Superior Court by July 8, 2015, in order to maintain immunity from builder's remedy litigation.

On June 8, 2015, the Borough filed for declaratory judgement in Superior Court.

After substantial negotiation, a Third Round Settlement Agreement with FSHC was executed on December 8, 2017 (Appendix A). This agreement cites the Borough's fair share obligation, including its VLA. The settlement agreement sets forth how the Borough's Prior Round and Third Round obligations are satisfied. The Borough subsequently noticed the Court, interested parties, and various government entities of the executed Agreement and sought approval of it from Superior



Court. On March 15, 2018, a Fairness Hearing occurred that reviewed the Settlement Agreement between Cape May Point and FSHC. At this time, and as addressed in an Order dated March 20, 2018, the Honorable Nelson C. Johnson, J.S.C., approved the Settlement Agreement and found it to be “fair and reasonable, and adequately protects the interest of low and moderate income persons.” At this time, the Court also found that the Borough’s proposed affordable housing strategy as set forth within the Settlement Agreement was facially constitutionally compliant and provided a fair and reasonable opportunity for the Borough to meet its obligation. In addition, the Order of Fairness and Compliance granted the Borough “the judicial equivalent of substantive certification and accompanying protection as provided under the FHA’ per Mount Laurel IV, through July 31, 2025.”

The Borough’s Amended Third Round HPE/FSP was adopted by the Planning Board on June 27, 2018, and endorsed by the Borough Commission on July 12, 2018. Thereby, the Borough of Cape May Point is immune to builder’s remedy lawsuits through 2025 as it continues to comply with the requirements of the Settlement Agreement and Court-approved mechanisms of the HPE/FSP.

On January 28, 2025, the Borough adopted Resolution 29-25 accepting the DCA’s calculated affordable housing obligations and subsequently filed a Fourth Round Declaratory Judgment Action (“DJ Action”) with the Program/Superior Court that received an Order on March 27, 2025 (Appendix B).

## **AFFORDABILITY REQUIREMENTS**

Affordable housing is defined under the FHA as a dwelling, either for sale or rent that is within the financial means of households of low- or moderate-income as income is measured within each housing region. The Borough of Cape May Point is in Region 6, which includes the Counties of Atlantic, Cape May, Cumberland, and Salem. Moderate income households are those earning between 50% and 80% of the regional median income. Low-income households are those with annual incomes that are between 30% and 50% of the regional median income. In 2008, the State Legislature created an additional sub-category of low income – very-low income, which has been defined as households earning 30% or less of the regional median income.

Through the Uniform Housing Affordability Controls (“UHAC”) found at N.J.A.C. 5:80-26.1 *et seq.*, the maximum rent for a qualified unit must be affordable to households that earn no more than 60% of the median income for the region. The average rent must be affordable for households earning no more than 52% of the median income. The maximum sale prices for affordable units must be affordable for households that earn no more than 70% of the median income. The average sale price must be affordable for a household that earns no more than 55% of the median income.

The regional median income is now defined in the amended FHA and continues to utilize HUD income limits on a regional basis. In the spring of each year HUD releases updated income limits which will be reallocated to the six (6) regions. It is from these income limits that the rents and sale prices for affordable units are derived. See Table 1 for 2024 income limits for Region 6 and Tables





2 and 3 for illustrative sale prices and gross rents from 2024 (the latest figures available). The sample rents and sale prices are illustrative and are gross figures which do not account for the specified utility allowance for rentals.

**Table 1. Sample 2024 Income Limits for Region 6**

Household Income Level	1-Person Household	2-Person Household	3-Person Household	4-Person Household	5-Person Household
Median	\$68,852	\$78,688	\$88,524	\$98,360	\$106,228
Moderate	\$55,081	\$62,950	\$70,819	\$78,688	\$84,983
Low	\$34,426	\$39,344	\$44,262	\$49,180	\$53,114
Very Low	\$20,655	\$23,606	\$26,557	\$29,508	\$31,868

Source: AHPNJ, 2024 Affordable Housing Regional Income Limits by Household Size

**Table 2. Illustrative 2024 Affordable Rents for Region 6**

Household Income Level (% of Median Income)	1 Bedroom Unit Rent	2 Bedroom Unit Rent	3 Bedroom Unit Rent
Moderate (60% of Median)	\$1,107	\$1,328	\$1,534
Low (50% of Median)	\$922	\$1,107	\$1,279
Very Low (30% of Median)	\$553	\$664	\$767

Source: AHPNJ Affordable Housing Regional Income Limits and Rental Calculator

**Table 3. Illustrative 2024 Affordable Sales Prices for Region 6**

Household Income Levels (% of Median Income)	1 Bedroom Unit Price	2 Bedroom Unit Price	3 Bedroom Unit Price
Moderate (70% of Median)	\$118,451	\$151,841	\$183,004
Low (50% of Median)	\$70,753	\$94,602	\$116,862
Very Low (30% of Median)	\$23,054	\$37,363	\$50,719

Source: AHPNJ Affordable Housing Regional Income Limits and Sales Calculator



## HOUSING PLAN ELEMENT AND FAIR SHARE PLAN REQUIREMENTS

In accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1, *et seq.*), a municipal master plan must include a housing plan element as the foundation for the municipal zoning ordinance (see N.J.S.A. 40:55D-28b(3)). Pursuant to the Fair Housing Act (N.J.S.A. 52:27D-301 *et seq.*), a municipality's housing plan element must be designed to provide access to affordable housing to meet present and prospective housing needs, with particular attention to low- and moderate-income housing. Specifically, N.J.S.A. 52:27D-310 requires that the housing plan element contain at least the following (*emphasis added*):

- 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;*
- 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 of low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share of low- and moderate-income housing, as established pursuant to section 3 of P.L. 2024, c.2 (C.52:27D-304.1);*
- f. *A consideration of the lands 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;*
- g. *An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of 23 section 1 of P.L.2021, c.273 (C.52:27D-329.20); and*
- h. *For a municipality located within the jurisdiction of the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), an*



*analysis of compliance of the housing element with the Highlands Regional Master Plan of lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands-conforming municipalities. This analysis shall include consideration of the municipality's most recent Highlands Municipal Build Out Report, consideration of opportunities for redevelopment of existing developed lands into inclusionary or 100 percent affordable housing, or both, and opportunities for 100 percent affordable housing in both the Highlands Planning Area and Highlands Preservation Area that are consistent with the Highlands regional master plan; and*

- i. *An analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.*

This Fourth Round Housing Plan Element And Fair Share Plan has been prepared in compliance with the following additional requirements specified by Administrative Directive #14-24, issued by the Administrative Office of the Courts on December 13, 2024:

1. *One of the requirements for a final HEFSP is the inclusion of detailed site suitability analyses, based on the best available data, for each of the un-built inclusionary or 100 percent affordable housing sites in the plan as well as an identification of each of the sites that were proposed for such development and rejected, along with the reasons for such rejection.*
2. *The concept plan for the development of each of the selected sites should be overlaid on the most up to date environmental constraints map for that site as part of its analysis. When the detailed analyses are completed, the municipality can see what changes will be needed (either to the selected sites or to their zoning) to ensure that all of the units required by the settlement agreement will actually be produced. If it becomes apparent that one (or more) of the sites in the plan does not have the capacity to accommodate all of the development proposed for it, the burden will be on the municipality either to adjust its zoning regulations (height, setbacks, etc.) so that the site will be able to yield the number of units and affordable units anticipated by the settlement agreement or to find other mechanisms or other sites as needed to address the likelihood of a shortfall.*
3. *The final HEFSP must fully document the creditworthiness of all of the existing affordable housing units in its HEFSP and to demonstrate that it has followed all of the applicable requirements for extending expiring controls, including confirmation that all of the units on which the controls have been extended are code-compliant or have been rehabilitated to code-compliance, and that all extended controls cover a full 30-year period beginning with the end of the original control period. Documentation as to the start dates and lengths of affordability controls applicable to these units and applicable Affordable Housing Agreements and/or deed restrictions is also required. Additionally, the income and bedroom distributions and continued creditworthiness of all other existing affordable units in the HEFSP must be provided.*



4. *The HEFSP must include an analysis of how the HEFSP complies with or will comply with all of the terms of the executed settlement agreement. Once the HEFSP has been prepared, it must be reviewed by Fair Share Housing Center and the Program's Special Adjudicator for compliance with the terms of the executed settlement agreement, the Fair Housing Act (FHA) and Uniform Housing Affordability Controls (UHAC) regulations. The HEFSP must be adopted by the Planning Board and the implementation components of the HEFSP must be adopted by the governing body.*

*The HEFSP must also include (in an Appendix) all adopted ordinances and resolutions needed to implement the HEFSP, including:*

1. *All zoning amendments (or redevelopment plans, if applicable).*
2. *An Affordable Housing Ordinance that includes, among other required regulations, its applicability to 100 percent affordable and tax credit projects, the monitoring and any reporting requirements set forth in the settlement agreement, requirements regarding very low income housing and very low income affordability consistent with the FHA and the settlement agreement, provisions for calculating annual increases in income levels and sales prices and rent levels, and a clarification regarding the minimum length of the affordability controls (at least 30 years, until the municipality takes action to release the controls).*
3. *The adoption of the mandatory set aside ordinance, if any, and the repeal of the existing growth share provisions of the code.*
4. *An executed and updated Development Fee Ordinance that reflects the court's jurisdiction.*
5. *An Affirmative Marketing Plan adopted by resolution that contains specific directive to be followed by the Administrative Agent in affirmatively marketing affordable housing units, with an updated COAH form appended to the Affirmative Marketing Plan, and with both documents specifically reflecting the direct notification requirements set forth in the settlement agreement.*
6. *An updated and adopted Spending Plan indicating how the municipality intends to allocate development fees and other funds, and detailing (in mini manuals) how the municipality proposes to expend funds for affordability assistance, especially those funds earmarked for very low income affordability assistance.*
7. *A resolution of intent to fund any shortfall in the costs of the municipality's municipally sponsored affordable housing developments as well as its rehabilitation program, including by bonding if necessary.*
8. *Copies of the resolution(s) and/or contract(s) appointing one or more Administrative Agent(s) and of the adopted ordinance creating the position of, and resolution appointing, the Municipal Affordable Housing Liaison.*



9. *A resolution from the Planning Board adopting the HEFSP, and, if a final Judgment is sought before all of the implementing ordinances and resolutions can be adopted, a resolution of the governing body endorsing the HEFSP.*

*Consistent with N.J.A.C. 5:93-5.5, any municipally sponsored 100 percent affordable housing development will be required to be shovel-ready within two (2) years of the deadlines set forth in the settlement agreement:*

1. *The municipality will be required to submit the identity of the project sponsor, a detailed pro forma of project costs, and documentation of available funding to the municipality and/or project sponsor, including any pending applications for funding, and a commitment to provide a stable alternative source, in the form of a resolution of intent to fund shortfall, including by bonding, if necessary, in the event that a pending application for outside funding has not yet been not approved.*
2. *Additionally, a construction schedule or timetable must be submitted setting forth each step in the development process, including preparation and approval of a site plan, applications for state and federal permits, selection of a contractor, and start of construction, such that construction can begin within two (2) years of the deadline set forth in the settlement agreement.*



## HOUSING CONDITIONS

A summary of the housing stock estimates by occupancy and number of units in Cape May Point is shown in Table 4. The Borough's housing stock consists of an estimated 655 housing units, of which 84 units (12.8%) are owner-occupied, 0 units are renter-occupied, and 571 units (87.2%) are vacant and/or seasonal homes. The existing housing stock is primarily composed of single-family detached housing units (91.0%).

**Table 4. Housing Units by Number of Units in Structure and Tenure, 2023**

Number of Units in Structure	Owner-Occupied		Renter-Occupied		Vacant		Total	
	Units	Percent	Units	Percent	Units	Percent	Units	Percent
1, Detached	84	12.8%	0	0.0%	512	78.2%	596	91.0%
1, Attached	0	0.0%	0	0.0%	24	3.7%	24	3.7%
2	0	0.0%	0	0.0%	13	2.0%	13	2.0%
3 or 4	0	0.0%	0	0.0%	9	1.4%	9	1.4%
5 to 9	0	0.0%	0	0.0%	0	0.0%	0	0.0%
10 to 19	0	0.0%	0	0.0%	0	0.0%	0	0.0%
20 or more	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Mobile Home	0	0.0%	0	0.0%	13	2.0%	13	2.0%
Other	0	0.0%	0	0.0%	0	0.0%	0	0.0%
<b>Total</b>	<b>84</b>	<b>12.8%</b>	<b>0</b>	<b>0.0%</b>	<b>571</b>	<b>87.2%</b>	<b>655</b>	<b>100%</b>

Source: Table B25032 and Table DP04, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates



The estimated age of the housing stock in Cape May Point is shown in Table 5. The median year of construction of all housing units in the Borough is 1981, which is more recent than that of the County (1977) and the State (1969). More than half of the Borough's housing stock was built prior to 1970, and one-fifth was built after 2000.

**Table 5. Housing Units by Year Built and Tenure, 2023**

Year Built	Owner-Occupied		Renter-Occupied		Vacant		Total	
	Units	Percent	Units	Percent	Units	Percent	Units	Percent
2020 or later	0	0.0%	0	0.0%	7	1.1%	7	1.1%
2010 to 2019	10	1.5%	0	0.0%	42	6.4%	52	7.9%
2000 to 2009	3	0.5%	0	0.0%	70	10.7%	73	11.1%
1990 to 1999	5	0.8%	0	0.0%	33	5.0%	38	5.8%
1980 to 1989	27	4.1%	0	0.0%	76	11.6%	103	15.7%
1970 to 1979	3	0.5%	0	0.0%	36	5.5%	39	6.0%
1960 to 1969	6	0.9%	0	0.0%	30	4.6%	36	5.5%
1950 to 1959	14	2.1%	0	0.0%	63	9.6%	77	11.8%
1940 to 1949	7	1.1%	0	0.0%	35	5.3%	42	6.4%
1939 or earlier	9	1.4%	0	0.0%	179	27.3%	188	28.7%
<b>Total</b>	<b>84</b>	<b>12.8%</b>	<b>0</b>	<b>0.0%</b>	<b>571</b>	<b>87.2%</b>	<b>655</b>	<b>100.0%</b>
<b>Median Year Built</b>	<b>1981</b>		<b>(X)</b>		<b>(X)</b>		<b>1981</b>	

Sources: Table B25036, Table B25037, and Table DP04, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates



Table 6 illustrates the estimated number of rooms per housing unit in the Borough. According to American Community Survey estimates, no units have fewer than three rooms. Approximately 33.6% of all housing units contain three to five rooms, 28.9% of housing units contain six rooms, and 37.6% of housing units contain more than six rooms. The median number of rooms per unit in the Borough (6.1 rooms) is higher than the County (5.7 rooms) State (5.7 rooms).

**Table 6. Number of Rooms per Housing Unit, 2023**

Rooms per Unit	Units	Percent
1 Room	0	0.0%
2 Rooms	0	0.0%
3 Rooms	34	5.2%
4 Rooms	74	11.3%
5 Rooms	112	17.1%
6 Rooms	189	28.9%
7 Rooms	138	21.1%
8 Rooms	69	10.5%
9+ Rooms	39	6.0%
<b>Total</b>	<b>655</b>	<b>100%</b>
<b>Median</b>	<b>6.1 rooms</b>	

Source: Table DPo4 U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates

As shown in Table 7, over two-thirds of all units in the Borough contain three or four bedrooms. Approximately 18.0% of units contain two bedrooms, and 13.3% contain one or five bedrooms. According to American Community Survey estimates, there are no studios in the Borough.

**Table 7. Number of Bedrooms per Housing Unit, 2023**

Bedrooms per Unit	Units	Percent
Efficiency (Studio)	0	0.0%
1 Bedroom	28	4.3%
2 Bedrooms	118	18.0%
3 Bedrooms	228	34.8%
4 Bedrooms	222	33.9%
5+ Bedrooms	59	9.0%
<b>Total</b>	<b>655</b>	<b>100%</b>

Source: Table DPo4, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates





Table 8 shows the estimated value of owner-occupied housing units in Cape May Point in 2013 and 2023. Without adjusting for inflation, the median home value in the Borough increased from \$791,700 in 2013 to \$987,200 in 2023 (+24.7%). The percentage of units valued at over \$1,000,000 increased from 17.4% to 47.6% of the housing stock.

Based on AHPNJ's 2024 Illustrative Sales Prices (See Table 3), an estimated 2.4% (2 units) of for-sale housing units within the Borough would be considered affordable to low- and moderate-income households in 2023, compared to no units in 2013.

**Table 8. Value of Owner-Occupied Housing Units, 2013 and 2023**

Housing Unit Value	2013		2023	
	Units	Percent	Units	Percent
Less than \$50,000	0	0.0%	0	0.0%
\$50,000 to \$99,999	0	0.0%	0	0.0%
\$100,000 to \$149,999	0	0.0%	2	2.4%
\$150,000 to \$199,999	0	0.0%	0	0.0%
\$200,000 to \$299,999	6	6.5%	0	0.0%
\$300,000 to \$499,999	3	3.3%	2	2.4%
\$500,000 to \$999,999	67	72.8%	40	47.6%
\$1,000,000 or more	16	17.4%	40	47.6%
<b>Total</b>	<b>92</b>	<b>100%</b>	<b>84</b>	<b>100%</b>
<b>Median Value</b>	<b>\$791,700</b>		<b>\$987,200</b>	

Sources: Table Dp04, U.S. Census Bureau, 2009-2013 American Community Survey Five-Year Estimates; Table Dp04, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates.



Table 9 shows gross rent estimates in Cape May County for 2023. The median rent in the County was \$1,345. Approximately 28.8% of households in renter-occupied units in the County pay less than \$1,000 in rent, 55.0% pay between \$1,000 and \$1,999, and 21.6% pay rents of \$2,000 or more.

**Table 9. Gross Rent by Housing Unit, 2023**

Gross Rent	Cape May Point Borough		Cape May County	
	Units	Percent	Units	Percent
Less than \$500	0	0.0%	446	5.3%
\$500 to \$999	0	0.0%	1,981	23.5%
\$1,000 to \$1,499	0	0.0%	2,475	29.3%
\$1,500 to \$1,999	0	0.0%	2,168	25.7%
\$2,000 to \$2,499	0	0.0%	1,097	13.0%
\$2,500 to \$2,999	0	0.0%	180	2.1%
\$3,000 or More	0	0.0%	99	1.2%
No rent paid	0	0.0%	446	5.3%
<b>Total</b>	<b>0</b>	<b>0.0%</b>	<b>8,446</b>	<b>100%</b>
<b>Median Rent</b>	<b>(X)</b>		<b>\$1,345</b>	

Source: Table DP04, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates

Housing is generally considered to be affordable if the cost of rents, mortgages, and other essential housing costs consume 28% or less of an owner-household's income or 30% or less of a renter-household's income. In Cape May Point, an estimated 21.4% of all households spend more than 30% of their income on housing costs.

**Table 10. Housing Affordability by Tenure, 2023**

Monthly Housing Costs as Percent of Income	Owner-Occupied		Renter-Occupied		All Occupied	
	Units	Percent	Units	Percent	Units	Percent
Less than 20 Percent	58	69.0%	0	0.0%	58	69.0%
20 to 29 Percent	8	9.5%	0	0.0%	8	9.5%
30 Percent or More	18	21.4%	0	0.0%	18	21.4%
<b>Total*</b>	<b>84</b>	<b>100%</b>	<b>0</b>	<b>0.0%</b>	<b>84</b>	<b>100%</b>
*Remainder of occupied units have zero or negative income.						

Source: Table DP04, U.S. Census Bureau 2019-2023, American Community Survey Five-Year Estimates



Indicators of deficient housing units are shown in Table 11. The FHA defines a *deficient housing unit* as “housing that (1) is over fifty years old and overcrowded, (2) lacks complete plumbing, or (3) lacks complete kitchen facilities.” However, the estimates in Table 11 are consistent with DCA’s Fourth Round Present Need/Rehabilitation Share calculation of zero (0) for the Borough. Although an estimated 343 units, or 52.4% of the Borough’s housing stock, will be more than 50 years old by 2029, zero (0) units in the Borough were estimated to have incomplete plumbing, incomplete kitchens, or crowded conditions, as of 2023.

**Table 11: Indicators of Housing Deficiency, 2023**

Indicator	Units	Percent*
50+ Years Old*	343	52.4%
Incomplete Plumbing	0	0.0%
Incomplete Kitchen	0	0.0%
Crowded or Overcrowded and Built pre-1950	0	0.0%
* Includes all units built prior to 1979.		

Source: Table B25050, Table B25051, and Table B25034, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates



## POPULATION CHARACTERISTICS

A comparison of population changes by census year in Cape May Point Borough and Cape May County is shown in Table 12. Similar to most of the country, the most rapid population growth in the Borough occurred in the 1950s and 1960s. However, while the population of Cape May County peaked in 2000, the Borough's population has fluctuated since the 1980 Census. Between 2000 and 2010, Borough's population grew by over 20%. As of 2023, the Borough's population was estimated at 155, or 49.1% less than the population of 305 recorded during the 2020 Decennial Census.

**Table 12. Population Change, 1950 to 2023**

Year	Cape May Point Borough		Cape May County	
	Population	Percent Change	Population	Percent Change
1950	198	+57.1%	37,131	+28.4%
1960	263	+32.8%	48,555	+30.8%
1970	204	- 22.4%	59,554	+22.7%
1980	255	+25.0%	82,266	+38.1%
1990	248	- 2.7%	95,089	+15.6%
2000	241	- 2.8%	102,326	+7.6%
2010	291	+20.7%	97,265	-4.9%
2020	305	+4.8%	95,263	-2.1%
2023*	155	- 49.1%	95,236	0.0%
*Estimate provided by American Community Survey Five-Year Estimates				

Sources: U.S. Census Bureau, Decennial Census 1950-2020; Table S0101, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates



Population estimates for each age cohort in the Borough in 2013 and 2023 are shown in Table 13. The total population has decreased by 8.8%, and the age of the population has increased. The percentage of the population over age 60 has increased from 72.3% in 2013 to 91.6% in 2023, while the percentage of population under age 45 has remained at or near zero. Similarly, the median age in the Borough has increased from 67.8 in 2013 to 70.9 in 2023.

**Table 13. Age of Population, 2013 and 2023**

Age in Years	2013		2023		Percent Change 2013-2023
	Population	Percent	Population	Percent	
Under 5	0	0.0%	0	0.0%	(X)
5 to 9	0	0.0%	0	0.0%	(X)
10 to 14	0	0.0%	0	0.0%	(X)
15 to 19	0	0.0%	0	0.0%	(X)
20 to 24	0	0.0%	0	0.0%	(X)
25 to 34	0	0.0%	5	3.2%	(X)
35 to 44	0	0.0%	0	0.0%	(X)
45 to 54	14	8.2%	3	1.9%	- 78.6%
55 to 59	33	19.4%	5	3.2%	- 84.8%
60 to 64	23	13.5%	24	15.5%	+4.3%
65 to 74	52	30.6%	51	32.9%	- 1.9%
75 to 84	32	18.8%	34	21.9%	+6.3%
85+	16	9.4%	33	21.3%	+106.3%
<b>Total</b>	<b>170</b>	<b>100%</b>	<b>155</b>	<b>100%</b>	<b>- 8.8%</b>
<b>Median Age</b>	<b>67.8 Years</b>		<b>70.9 Years</b>		<b>(X)</b>

Source: Table DP05, U.S. Census Bureau, 2009-2013 American Community Survey Five-Year Estimates;  
Table DP05, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates



HOUSEHOLD CHARACTERISTICS

A household is defined by the U.S. Census Bureau as persons who occupy a single room or group of rooms constituting a housing unit; however, these persons may or may not be related. By comparison, a family is identified as a group of persons including a householder and one or more persons related by blood, marriage or adoption, all living in the same household. As of 2023, there were an estimated 84 households in the Borough.

Table 14 compares household size in the Borough in 2013 and 2023. During this period, the total number of households decreased from 102 in 2013 to 84 in 2023. Likewise, household size decreased from 1.50 persons per household in 2013 to 1.40 in 2023 as the number of households with two or more persons decreased.

Table 14. Household Size of Occupied Units, 2013-2023

Household Size	2013		2023	
	Units	Percent	Units	Percent
1 Person	49	48.0%	49	58.3%
2 Persons	50	49.0%	35	41.7%
3 Persons	2	2.0%	0	0.0%
4+ Persons	1	1.0%	0	0.0%
Total	102	100%	84	100%
Average Household Size	1.50		1.40	

Source: Table S1101 and Table S2501, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates



Household and family composition estimates in Cape May Point are shown in Table 15. The most-represented family household types in 2023 were female householders with no spouse present (64.3%) and married-couple households with no children (29.8%). According to American Community Survey estimates, no households in the Borough have children.

**Table 15. Household Composition, 2023**

Household Type	Households	Percent
<b><i>Family households</i></b>		
Married-couple household	25	29.8%
With Children	0	0.0%
Without Children	25	29.8%
Cohabiting couple household	0	0.0%
With Children	0	0.0%
Without Children	0	0.0%
Male householder, no spouse present	5	6.0%
With Children Under 18	0	0.0%
Without Children Under 18	5	6.0%
Female householder, no spouse present	54	64.3%
With Children Under 18	0	0.0%
Without Children Under 18	54	64.3%
<b><i>Nonfamily households</i></b>		
Householder living alone	5	6.0%
<b>Total Households</b>	<b>84</b>	<b>100%</b>

Source: Table DP02, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates



## INCOME CHARACTERISTICS

A summary of household income characteristics in Cape May Point is shown in Table 16. In 2023, the median household income in Cape May Point was \$88,333, which is consistent with the County (\$88,046) but below the statewide median (\$101,050). More than one-third of households in the Borough earn between \$75,000 and \$99,999, and approximately 22.6% of households earn over \$200,000. The percentage of households earning between \$75,000 and \$99,999 in the Borough (34.5%) is nearly triple the percentage of households in the County (13.4%) and State (11.4%).

Table 16. Household Income, 2023

Household Income	Households	Percent
Less than \$10,000	5	6.0%
\$10,000-\$14,999	0	0.0%
\$15,000-\$24,999	1	1.2%
\$25,000-\$34,999	0	0.0%
\$35,000-\$49,999	5	6.0%
\$50,000-\$74,999	10	11.9%
\$75,000-\$99,999	29	34.5%
\$100,000-\$149,999	13	15.5%
\$150,000-\$199,999	2	2.4%
\$200,000+	19	22.6%
<b>Total</b>	<b>84</b>	<b>100%</b>
<b>Median Household Income</b>	<b>\$88,333</b>	

Source: Table DP03, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates





A comparison of estimated poverty rates in Cape May Point and Cape May County is shown in Table 17. The poverty rate in the Borough is 0.0% among families and 12.3% among individuals. While the Borough's poverty rate among families is well below the County (6.1%) and State (7.0%), the individual poverty rate in Borough is slightly higher than the County (8.7%) and State (9.8%). However, this differential may be a result of a relatively high margin of error corresponding to the Borough's relatively low sample/population size.

**Table 17. Poverty Rates among Individuals and Families, 2023**

Location	Poverty Rate, Family	Poverty Rate, Individuals
Cape May Point Borough	0.0%	12.3%
Cape May County	6.1%	8.7%
New Jersey	7.0%	9.8%

*Source:* Table S1701 and Table S1702, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates



## EMPLOYMENT CHARACTERISTICS

Estimated employment among Cape May Point residents by North American Industry Classification System (NAICS) categories is shown in Table 18. In 2023, an estimated 62 residents were employed. In 2023, “Other Services, Except Public Administration” employed the largest percentage of residents (37.1%) in the labor force. The next largest industry sectors were “Finance and Insurance, and Real Estate and Rental and Leasing” (24.2%), and “Arts, Entertainment, and Recreation, and Accommodation And Food Services” (12.9%).

**Table 18. Employed Residents by Industry Sector, 2023**

NAICS Industry	Employed Residents	Percent
Agriculture, Forestry, Fishing and Hunting, And Mining	0	0.0%
Construction	0	0.0%
Manufacturing	2	3.2%
Wholesale Trade	0	0.0%
Retail Trade	0	0.0%
Transportation and Warehousing, And Utilities	3	4.8%
Information	3	4.8%
Finance and Insurance, and Real Estate and Rental and Leasing	15	24.2%
Professional, Scientific, and Management, and Administrative and Waste Management Services	2	3.2%
Educational Services, and Health Care And Social Assistance	3	4.8%
Arts, Entertainment, and Recreation, and Accommodation And Food Services	8	12.9%
Other Services, Except Public Administration	23	37.1%
Public Administration	3	4.8%
<b>Civilian employed population 16 years and over</b>	<b>62</b>	<b>100%</b>

Source: Table DP03, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates



Employment by occupation category is shown in Table 19. The most common occupation groups are “Management, Business, Science, and Arts” (77.4%) and “Sales and Office” (12.9%).

**Table 19. Employed Residents by Occupation, 2023**

Occupation	Employed Residents	Percent
Management, Business, Science, Arts	48	77.4%
Service	5	8.1%
Sales and Office	8	12.9%
Natural Resources, Construction, Maintenance	0	0.0%
Production, Transportation, Material Moving	1	1.6%
<b>Civilian employed population 16 years and over</b>	<b>62</b>	<b>100%</b>

Source: Table DP03, U.S. Census Bureau, 2019-2023 American Community Survey Five-Year Estimates

Estimated changes in employment among Cape May Point residents between 2013 and 2023 are shown in Table 20. In 2023, the Borough’s labor force was estimated to be 62 workers with a 100% employment rate. Over the previous ten years, the Borough’s labor force fluctuated between 39 and 65 workers with an unemployment rate between 0% and 16.7% (8 unemployed).

**Table 20. Change in Employment, 2013-2023**

Year	Labor Force	Employed Residents	Unemployed Residents	Unemployment Rate
2013	56	54	2	3.6%
2014	54	51	3	5.6%
2015	58	56	2	3.4%
2016	41	37	4	9.8%
2017	39	36	3	7.7%
2018	65	58	7	10.8%
2019	59	51	8	13.6%
2020	48	40	8	16.7%
2021	51	45	6	11.8%
2022	50	46	4	8.0%
2023	62	62	0	0.0%

Source: Table DP03, U.S. Census Bureau, American Community Survey Five-Year Estimates



Table 21 compares employment estimates within Cape May Point and Cape May County regardless of where workers live. In 2022, an estimated 70 workers were employed in the Borough, comprising 0.3% of the 34,128 total jobs in Cape May County.

**Table 21. Estimated Employment, 2023**

Year	Cape May Point Borough	Cape May County
2023	70	34,128

Source: U.S. Census Bureau, OnTheMap Application and LEHD Origin-Destination Employment Statistics (Beginning of Quarter Employment, 2nd Quarter of 2002-2022).

Common commuter destinations among Cape May Point residents are shown in Table 22. In 2022, the most common commuter destinations were Cape May City, NJ (21.2%), Lower Township, NJ (16.1%), and Middle Township, NJ (13.6%), while other municipalities in South Jersey were also common.

**Table 22. Top Ten Commuting Destinations for Delanco Residents, 2022**

Destination	Workers	Percent of Workers
Cape May City, NJ	25	21.2%
Lower Township, NJ	19	16.1%
Middle Township, NJ	16	13.6%
West Cape May, NJ	9	7.6%
Atlantic City, NJ	6	5.1%
Cherry Hill, NJ	3	2.5%
Wildwood, NJ	3	2.5%
Gloucester Township, NJ	2	1.7%
Trenton, NJ	2	1.7%
Vineland, NJ	2	1.7%
All Other Locations	31	26.3%
<b>Total</b>	<b>118</b>	<b>100%</b>

Source: U.S. Census Bureau, OnTheMap Application and LEHD Origin-Destination Employment Statistics (Beginning of Quarter Employment, 2nd Quarter of 2002-2022).



## POPULATION AND EMPLOYMENT PROJECTIONS

The South Jersey Transportation Planning Organization (“SJTPO”) is the Metropolitan Planning Organization for the southern New Jersey region, which contains all municipalities in the Counties of Salem, Atlantic, Cape May, and Cumberland. The SJTPO publishes population and employment forecasts for each county and municipality in the region. Between 2020 and 2060, the SJTPO projects slight population decline and significant employment growth throughout the region. In Cape May Point, the SJTPO projects local employment growth of 200 jobs (+18.2%) with no changes in population. As shown in Table 23, the Borough is not expected to experience the population decline that is projected to occur throughout the County (-10.7%).

**Table 23. Population and Employment Projections, 2020-2060**

Location	Population			Employment		
	Estimate 2020	Projected 2060	Percent Change	Estimate 2020	Projected 2060	Percent Change
Cape May Point	300	300	0.0%	1,100	1,300	+ 18.2%
Cape May County	95,300	85,100	- 10.7%	58,200	72,700	+ 24.9%
SJTPO Region	588,800	557,100	- 5.4%	310,000	378,900	+ 22.2%

Source: South Jersey Transportation Planning Organization, Population and Employment Projections, 2020-2060



## HOUSING UNIT PROJECTIONS

The FHA requires that housing plans include a 10-year projection of new housing units based on the number of building permits, development applications approved, and probable developments, as well as other indicators deemed appropriate (N.J.S.A. 52:27D-310.b). Table 24 shows the balance of Certificates of Occupancy and Demolition Permits issued between 2013 and 2023. According to NJDCA permit data, 29 new units were certified, and 46 units were demolished. There is an annual average net decrease of 1.5 dwelling units per year. If this rate were to remain relatively constant, the Borough could see a net decrease of 18 units by 2035.

**Table 24. Residential C.O.'s and Demolition Permits Issued, 2013-2023**

Year	Certificates of Occupancy	Demolitions	Net New Dwellings
2013	4	5	-1
2014	5	3	2
2015	4	4	0
2016	7	16	-9
2017	2	7	-5
2018	2	1	1
2019	1	3	-2
2020	1	3	-2
2021	0	4	-4
2022	3	0	3
2023	0	0	0
<b>Total</b>	<b>29</b>	<b>46</b>	<b>-17</b>
<b>Annual Average</b>	<b>2.6</b>	<b>4.2</b>	<b>-1.5</b>

Source: NJDCA Construction Reporter, Building Permits, Yearly Summary Data

## CONSIDERATION OF LAND FOR AFFORDABLE HOUSING

Pursuant to the FHA at N.J.S.A. 52:27D-310.f, an HPE/FSP shall contain “a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing.” As part of this HPE/FSP, the Borough has considered land that is appropriate for the construction of low- and moderate-income housing. The Borough received a vacant land adjustment (“VLA”) for the Prior Round and Third Round and has prepared a VLA update as part of this Fourth Round HPE/FSP.



## FAIR SHARE PLAN

### Affordable Housing Obligation for Cape May Point

A municipality's Fourth Round affordable housing obligation has four components: Fourth Round Present Need (Rehabilitation Share), Prior Round Prospective Need, Third Round "Gap"/Prospective Need, and Fourth Round Prospective Need.

In December 2017, the Borough entered into a Third Round settlement agreement with the Fair Share Housing Center ("FSHC") to establish the Borough's Prior Round Prospective Need (previously established by COAH) and Third Round Gap/ Prospective Need (as negotiated with FSHC), which was then adjusted pursuant to an updated 2018 Prior Round/Third Round VLA. On January 28, 2025, the Cape May Point Board of Commissioners adopted Resolution 29-25 accepting the DCA calculation of its Fourth Round Present Need and Prospective Need, which will also be adjusted per an updated 2025 Fourth Round VLA.

The four components of the Borough's Fourth Round fair share obligation are as follows:

- Fourth Round Present Need: 0 units
- Prior Round Prospective Need: 34 units
- Third Round Prospective Need: 36 units
- Fourth Round Prospective Need: 5 units

### *Fourth Round Present Need*

The amended FHA defines *present need* as "the number of substandard existing deficient housing units currently occupied by low- and moderate-income (LMI) households" and *deficient housing unit* as "housing that (1) is over fifty years old and overcrowded, (2) lacks complete plumbing, or (3) lacks complete kitchen facilities." The Borough's Fourth Round Present Need of zero (0) was calculated by DCA according to its October 2024 methodology report. The Borough accepted DCA's determination of its Fourth Round Present Need obligation by resolution as submitted to the Program/Superior Court with its Fourth Round DJ filing. Because the Borough's rehabilitation obligation is zero (0), there is no rehabilitation obligation to satisfy in the Fourth Round.

### *Prior Round Prospective Need*

The Prior Round Prospective Need obligation is the cumulative Prospective Need obligation for the First and Second Rounds (1987 to 1999). The Borough's 34-unit Prior Round Prospective Need was calculated by COAH as set forth in the Appendices to COAH's Substantive Rules at N.J.A.C. 5:93-1.



### *Third Round "Gap" / Prospective Need*

As established by the Borough's 2017 Third Round Settlement Agreement, Cape May Point's Third Round Prospective Need (1999-2025) was set at 36. As part of the Borough's Third Round HPE/FSP, the Borough prepared a court-approved VLA update that resulted in a combined Prior Round/Third Round RDP of 0 and a combined Prior Round/Third Round Unmet Need of 70. The Third Round VLA ultimately concluded that new construction at the time consisted of subdivisions of property smaller than 0.33 acres, conversions of existing dwellings to two (2) to three (3) units, and the replacement of existing dwellings.

### *Fourth Round Prospective Need*

The FHA, as amended by P.L. 2024, c.2, defines *prospective need* as "a projection of housing needs based on development and growth which is reasonably likely to occur in a region or municipality, as the case may be, as a result of actual determination of public and private entities." The Borough's Fourth Round Prospective Need of 5 was calculated by DCA according to the methodology described in the October 2024 report titled *Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background*. The Borough accepted DCA's determination of its Fourth Round Prospective Need as adopted by resolution and filed with the Program/Superior Court as part of its Fourth Round DJ Action (Appendix B).

### *Fourth Round Vacant Land Adjustment Update*

As part of this Fourth Round HPE/FSP, the Borough has prepared a Fourth Round VLA update to determine, pursuant to the 2002 NJ Supreme Court decision in the Cherry Hill Twp./Garden State Racetrack VLA matter, whether there were any 'changed circumstances' from the Borough's Court-approved Third Round VLA from 2017. Based on an analysis of property tax records, approvals, and aerial imagery, the Borough has determined that there have been no changed circumstances that would generate new realistic development potential ("RDP") since the VLA contained in the 2017 Third Round HPE/FSP.

All vacant land continues to be too small to generate a minimum density of 6 dwellings per acre (less than 0.86 acres). The only site that had potential for redevelopment was the historic, 1.3-acre St. Mary-by-the-Sea site, which was sold by the Sisters of St. Joseph in 2022 for \$5.5 million to Cape May Point Science Center Inc., who now operates the site as the Cape May Point Arts and Science Center.

This updated VLA consists of a Fourth Round RDP of 0 and a Fourth Round Unmet Need of 5.

### *Addressing Prior/Third Round Prospective Need*

As the Borough had a Prior Round/Third Round RDP of 0 and a Prior Round/Third Round Present Need of 0, all Court-approved programs that were in the Third Round HPE/FSP were intended to address Prior/Third Round Unmet Need (70 units).





Pursuant to Term #8 of the 2018 FSHC Agreement, the Borough was required to provide one (1) very low-income unit. The required unit was not created through the Borough's ADU program or mandatory inclusionary zoning ordinance. As a result, the required unit obligation will be carried forward and addressed in the Fourth Round.

### Addressing Fourth Round Prospective Need

As stated in this HPE/FSP, the Borough has prepared a Fourth Round VLA that adjusted its Fourth Round Prospective Need of 5 to an RDP of 0 and an Unmet Need of 5. Pursuant to the FHA as amended by P.L. 2024, c.2, the Borough plans to address at least 25% of its Fourth Round Unmet Need,  $[(0.25)(5) = 1.25, \text{rounded up} = 2]$  through its adopted Accessory Apartment Program and Mandatory Set-Aside Ordinance.

### Accessory Apartment Program

An accessory apartment (also known as an accessory dwelling unit) is defined within the Borough's municipal code as:

*A self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.*

As noted in the 2017 Third Round Settlement Agreement and HPE/FSP, the Borough adopted an Accessory Apartment Program (Appendix C) as a part of the Borough's Third Round substantive certification with COAH. While the VLA demonstrated that the Borough lacks vacant and developable land, the Borough has sufficient housing stock and a number of oversized lots within residential zoning districts that can accommodate the construction of accessory apartments to address the Borough's Unmet Need.

Pursuant to the 2017 Third Round Settlement Agreement, the Borough agreed to maintain the Accessory Apartment Program through July 1, 2025. However, while the Borough has indicated that the program continues to be marketed to the public, no applications were received during the Third Round. The Borough will therefore extend the agreement with Triad Associates to implement the program through the Fourth Round (June 30, 2035). As noted in the Borough's Fourth Round Spending Plan and draft ordinance amendment (Appendix C), the Borough will increase the per-unit subsidy amounts to further incentivize the creation of accessory affordable apartments.



### *Mandatory Set-Aside Ordinance*

Per the 2017 Third Round Settlement Agreement, the Borough was required to adopt an ordinance establishing a mandatory set-aside requirement for all new multifamily residential developments containing five (5) or more units. On July 12, 2018, the Board of Commissioners adopted Ordinance 08-2018 (Appendix D) establishing the mandatory affordable housing set-aside requirements contained at §52-21 in the Borough Code.

In compliance with the 2017 Third Round Settlement Agreement, the adopted set-aside ordinance requires all new qualifying developments to set aside 15% of proposed rental units and 20% of proposed for-sale units for affordable housing. This ordinance strictly applies to new developments, and does not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in the net increase of five or more dwelling units.

### **VERY LOW-INCOME UNITS**

Pursuant to the amended FHA (P.L. 2008, c.46), the Borough must ensure that at least 13% of affordable housing units approved and constructed (or to be constructed) after July 17, 2008, are available to very low-income households. As the Borough currently has no affordable units with controls, the one (1) very low-income accessory unit that will be created through the Accessory Apartment Program to satisfy the 2017 Third Round Settlement Agreement will exceed the requirement that 13% of units be available to very low-income households.

Per the more recently amended FHA (P.L. 2024, c.2) at N.J.S.A. 52:27D-329.1, at least half of very low-income units addressing the Fourth Round Prospective Need must be “available for families with children.” To meet this requirement, the one (1) very low-income accessory apartment to be created through the Accessory Apartment Program shall be a family affordable unit containing two (2) or three (3) bedrooms.

### **INCOME AND BEDROOM DISTRIBUTION**

While the Borough currently has no affordable units with affordability controls, the Borough's Affordable Housing Ordinance will ensure that the distribution of new affordable developments in the Borough, including the one (1) very low-income family affordable accessory apartment, will comply with N.J.A.C. 5:93-7.2 through -7.3.



## **AFFORDABLE HOUSING ADMINISTRATION AND AFFIRMATIVE MARKETING**

### *Affordable Housing Ordinance*

Cape May Point currently has a Court-approved Affordable Housing Ordinance at Chapter 52 of the Borough Code (Appendix E). The Affordable Housing Ordinance governs the establishment and occupancy of affordable units in the Borough including, but not limited to, the phasing of affordable units, the mix of very low-/low-/moderate-income units, bedroom distribution, occupancy standards, affordability controls, rents and sales prices, affirmative marketing, and income qualification. The Affordable Housing Ordinance also establishes the standards for the collection, maintenance, and expenditure of development fees.

Once DCA and HMFA finalize their rule proposals (anticipated after June 30, 2025), the Borough will prepare an updated Affordable Housing Ordinance in accordance with COAH's rules, DCA's proposed new regulations at N.J.A.C. 5:99, and UHAC's new 2025 regulations (anticipated to be released shortly). The updated ordinance will address any terms of the court-approved Third Round FSHC agreement, if relevant.

### *Affirmative Marketing Plan*

Cape May Point has prepared a Preliminary Fourth Round Affirmative Marketing Plan (Appendix F). Once DCA and HMFA finalize their rule proposals (anticipated after June 30, 2025), the Borough will adopt the Preliminary Affirmative Marketing Plan with updates in accordance with DCA's proposed new regulations at N.J.A.C. 5:99, UHAC's new 2025 regulations that are anticipated to be released shortly, any remaining relevant COAH rules not superseded by either the proposed 2025 DCA regulations or the upcoming 2025 revised UHAC rules. The updated Affirmative Marketing Plan will address any terms of the court-approved Third Round FSHC agreement, if relevant. The Borough will adopt an Affirmative Marketing Plan for all affordable housing sites.

The Borough has established the position of the Municipal Housing Liaison and has appointed a staff member to the position by resolution (Appendix H). However, the Borough has a contract with Triad Associates to conduct the administration and affirmative marketing of its affordable housing sites. The affirmative marketing plans are 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 least likely to apply for affordable units and who reside in the Borough's housing region, Region 6, consisting of Atlantic, Cape May, Cumberland, and Salem counties.

The Affirmative Marketing Plan lays out the random-selection and income qualification procedure of the administrative agent, which is consistent with COAH's rules and N.J.A.C. 5:80-26.1. All



newly created affordable units will comply with the minimum 30-year (or 40-year for rentals) affordability control required by UHAC, N.J.A.C. 5:80-26.1 *et seq.* This plan must be adhered to by all private, nonprofit or municipal developers of affordable housing units and must cover the period of deed restriction or affordability controls on each affordable unit.

As required by the Court-approved Third Round FSHC agreement, the Affirmative Marketing Plan lists FSHC, the New Jersey State Conference of the NAACP, the Latino Action Network, Cape May County Branch of the NAACP among the list of community and regional organizations. The Borough has also included several local and regional veterans' groups. The Borough shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Borough also agrees to require any other entities, including developers or individual or companies retained to do affirmative marketing, to comply with this paragraph. Finally, in accordance with the July 2020 amendment to the FHA, The Borough will include in its Affirmative Marketing Plan the requirement that all units subject to affirmative marketing requirements be listed on the state Housing Resource Center website.<sup>14</sup>

## **SPENDING PLAN**

The Borough has prepared a Fourth Round Spending Plan (Appendix G), which discusses anticipated revenues, collection of revenues, and the use of revenues, in accordance with N.J.A.C. 5:93-5.1(c). All collected revenues are placed in the Borough's Affordable Housing Trust Fund and will be dispensed for the use of affordable housing activities as indicated in the Fourth Round Spending Plan. Once DCA and HMFA finalize their rule proposals (anticipated after June 30, 2025), the Borough will prepare an updated spending plan in accordance with DCA's proposed new regulations at N.J.A.C. 5:99, UHAC's new 2025 regulations that are anticipated to be released shortly, any remaining relevant COAH rules, not superseded by either the proposed 2025 DCA regulations or the upcoming 2025 revised UHAC rules as well as to address any terms of the court-approved Third Round FSHC agreement.

The Borough may, in the future, seek to amend its Spending Plan and obtain court approval to use its affordable housing trust funds for the following additional permitted affordable housing activities, including new, emergent affordable housing activities, subject to applicable limitations and minimum expenditures:

- New construction;
- Purchase of land for low- and moderate-income housing;
- Improvement of land to be used for low- and moderate-income housing;
- Extensions and/or improvements of roads and infrastructure to low- and moderate-income housing sites;

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<sup>14</sup> <https://njhrc.gov>



- Assistance designed to render units to be more affordable.

At least 30% of development fees and interest collected must be used to provide affordability assistance to low- and moderate-income households in affordable units included in a municipal Fair Share Plan and for the creation of very low-income units. Additionally, no more than 20% of trust fund revenues collected each year 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 rehabilitation program, a new construction program, an HPE/FSP, and/or an affirmative marketing program.

The adoption of the Borough's Fourth Round Spending Plan will constitute a "commitment" for expenditure per the FHA at *N.J.S.A. 52:27D-329.2*, with a four-year time period for expenditure that will start with the entry of the Superior Court's Fourth Round Judgment of Compliance and Repose and/or Compliance Certification.

## **COST GENERATION**

The Borough's Zoning Ordinance has been reviewed to eliminate unnecessary cost generating standards and provides for expediting the review of development applications containing affordable housing. Such expediting may consist of, but is not limited to, scheduling pre-application conferences and special monthly public hearings. All development applications containing affordable housing must be reviewed for consistency with the Land Development Ordinance, NJ Residential Site Improvement Standards ("RSIS") (*N.J.A.C. 5:21-1 et seq.*) and the mandate of the FHA regarding unnecessary cost generating features. The Borough will comply with COAH's requirements for unnecessary cost generating requirements, *N.J.A.C. 5:93-10.1*, procedures for development applications containing affordable housing, *N.J.A.C. 5:93-10.4*, and requirements for special studies and escrow accounts where an application contains affordable housing, *N.J.A.C. 5:93-10.3*. Once DCA and HMFA finalize their rule proposals (not anticipated before June 30, 2025), the Borough will revise its Zoning Ordinance, if needed, in accordance with DCA's proposed new regulations at *N.J.A.C. 5:99*, and UHAC's new 2025 regulations, anticipated to be released shortly, in order to address new requirements to address cost generative issues.

## **MULTIGENERATIONAL FAMILY HOUSING CONTINUITY**

The FHA requires an HPE/FSP to provide an analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of 23 section 1 of P.L.2021, c.273 (*C.52:27D-329.20*). As of April 2025, no recommendations have been issued by the Commission. Notwithstanding, Cape May Point Borough's Accessory Apartment Program supports the development of affordable, multigenerational living for existing developed properties in a manner that is consistent with existing community design and sound land use planning.



## **STATE DEVELOPMENT AND REDEVELOPMENT PLAN**

The entirety of Cape May Point is located in the Environmentally Sensitive Planning Area (PA-5) as established by the SDRP Plan. Per the SDRP, the intent for PA-5 is to:

- protect environmental resources;
- protect both large and small contiguous areas of land;
- promote restoring habitats and bio-diversity;
- accommodate growth only in Centers;
- confining programmed sewers and public water services to Centers;
- revitalize cities, towns, and older traditional settlements; and
- protect, enhance, and diversify the existing character of stable communities.

The Borough's HPE/FSP is consistent with the intent of PA-5. Cape May Point is not a center such that the NJ State Plan does not identify the Borough as a focus for future growth. Cape May Point's program for the creation of accessory apartments represents a thoughtful mechanism to integrate affordable housing within a context of a fully developed community that utilizes existing infrastructure while protecting the cherished natural resources that define the context of the Borough. New affordable units, including the one (1) very low-income family rental unit to be created through the Accessory Apartment Program, are anticipated to have negligible impact on the Borough's environmental and coastal resources as all units are expected to be infill development and/or accessory units on developed lots.

**APPENDIX A – 2017 THIRD ROUND SETTLEMENT AGREEMENT,  
FAIRNESS ORDER**

**BROCK D. RUSSELL, LLC**

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RECEIVED  
2.9.18

**BROCK D. RUSSELL**

- MEMBER OF N.J. & FLA BAR
- CERTIFIED BY THE N.J. SUPREME COURT  
AS A MATRIMONIAL LAW ATTORNEY

**N. DOUGLAS RUSSELL** (1952-2006)

**JEANNETTE A. PACE, PARALEGAL**

**Cape May County Office:**

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Please forward Emails to: [diamondlawgirl@aol.com](mailto:diamondlawgirl@aol.com)

☒ Please respond to the **Millville Office**

February 7, 2018

Donna Gomez  
Administrative Assistant  
Fair Share Housing Center  
510 Park Boulevard  
Cherry Hill, NJ 08002

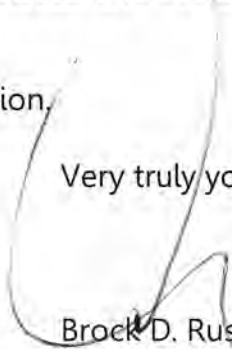
RE: In the Matter of the Borough of Cape May Point  
Docket No.: CPM-L-292-15

Dear Ms. Gomez:

In follow-up to my email, enclosed please find the original agreement signed by Mayor Robert Moffatt.

Thank you for giving this your attention.

Very truly yours,

  
Brock D. Russell

BDR/jap





Peter J. O'Connor, Esq.  
Kevin D. Walsh, Esq.  
Adam M. Gordon, Esq.  
Laura Smith-Denker, Esq.  
David T. Rommler, Esq.  
Joshua D. Bauers, Esq.

December 8, 2017

Brock D. Russell, Esq.  
Brock Russell LLC  
706 North High Street  
P.O. Box 290  
Millville, NJ 08332

**Re: In the Matter of the Borough of Cape May Point, County of Cape May, Docket No. CPM-L-292-15**

Dear Mr. Russell:

This letter memorializes the terms of an agreement reached between the Borough of Cape May Point (the Borough or "Cape May Point"), 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**

Cape May Point filed the above-captioned matter on June 8, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and 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 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.

#### **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 present and prospective need instead of doing so through plenary adjudication of the present and prospective need.
3. FSHC and Cape May Point hereby agree that Cape May Point's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report <sup>1</sup> )	0
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	34
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this Agreement)	36

4. For purposes of this Agreement, the Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999-2015 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).
5. The Borough has no rehabilitation obligation.
6. The Borough, as calculated in Exh. A, has a realistic development potential (RDP) of 0 units for the Prior and Third Round so there is currently no RDP obligation to satisfy.
7. For the purposes of settlement, the Borough agrees to address the unmet need of 70 units from the Prior Round and Third Round through the following mechanisms:
  - a. Accessory Apartment Program: The Borough already adopted as part of its Borough Code, Section 52, an accessory apartment program in response to its Third Round substantive certification from COAH. The Borough will maintain this Program through at least July 1, 2025, and will prior to final judgment in this matter as part of its Housing Element and Fair Share Plan, through collaboration between FSHC, the Special Master, and representatives of the Borough, provide a plan for marketing the program and adding a very low income unit to the program per paragraph 8 of this agreement
  - b. Mandatory Set-Aside: The Borough shall adopt an ordinance requiring a mandatory affordable housing set aside for all new multifamily residential developments of five (5) units or more. The set aside for rental developments shall be fifteen percent (15%) and the set aside for for-sale developments shall be twenty percent (20%). 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. The form of the Ordinance shall be finalized prior to final judgment being issued in this matter through collaboration between FSHC, the Special Master, and representatives of the Borough.
8. 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 by providing funding for one very-low-income accessory apartment unit and if any developments are created through the mandatory set-aside ordinance requiring 13% of the affordable units to be very low income.

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<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, July 2016 and April 2017.

9. The Borough shall meet its Third Round Prospective Need 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 Prospective Need 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 Prospective Need shall be met through rental units, including at least half in rental units available to families.
  - 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.
10. 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, and the Atlantic County NAACP, and shall, as part of its regional affirmative marketing strategies during its implementation of the affirmative marketing plan, provide notice to those organizations of all available affordable housing units. 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.
11. 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 such projects shall be required to be at 30 percent of median income, and 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. Income 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 region that the Borough is located within (i.e. Region 6) 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 households within the county according to the most recent



decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Borough's housing region. This quotient represents the regional weighted average of median income for a household of four. 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 B are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2017, 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.
- 
12. 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.
13. As an essential term of this Agreement, within one hundred and twenty (120) days of Court's approval of this Agreement, the Borough shall introduce and adopt 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 adopt a Housing Element and Fair Share Plan and Spending Plan in conformance with the terms of this Agreement.
14. The parties agree that if a decision of a court of competent jurisdiction in Cape May 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 need 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 to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough's 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 prospective need for the Third Round, the Borough may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.

15. The Borough shall prepare a Spending Plan within the period referenced above, subject to the review of FSHC and 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 "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 approving this settlement 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 execution of this Agreement, which shall be established by the date on which it is executed by a representative of the Borough, and on every anniversary of that date thereafter through the end of the period of protection from litigation referenced in this Agreement, 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.
16. 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.
17. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in this Agreement. The Borough agrees to comply with those provisions as follows:
  - a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to 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.
18. 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.
19. 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.
20. 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.
21. This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Cape May County. A prevailing movant or plaintiff in such a motion or separate action shall be entitled to reasonable attorney's fees.
22. 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.
23. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
24. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

706 North High Street  
P.O. Box 290  
Millville, NJ 08332

Telecopier:  
Email: [brockdrussell@aol.com](mailto:brockdrussell@aol.com)

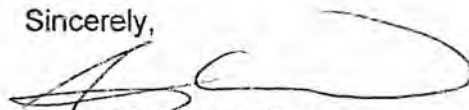
**WITH A COPY TO THE  
MUNICIPAL CLERK:**

Municipal Clerk  
P.O. Box 490  
215 Lighthouse Avenue  
Cape May Point, NJ 08212

Telecopier: (609) 884-1732


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 Cape May Point, with the authorization  
of the governing body:

  
\_\_\_\_\_  
Mayor Robert Matlock  
Dated: 2-6-18



## CAPE MAY POINT | COMPLIANCE PROGRAM SUMMARY

### Clarke Caton Hintz

Architecture

Planning

Landscape Architecture

100 Barrack Street

Trenton NJ 08608

clarkecatonhintz.com

Tel: 609 883 8383

Fax: 609 883 4044

*The following is provided for the purpose of settlement discussions only.*

### Obligation

Cape May Point was assigned a 31-unit Prior Round obligation by COAH's Second Round Rules, which was adjusted to 34 units during COAH's first iteration of the Third Round rules based on new data.

The Fair Share Housing Center ("FSHC") most recent 2016 and 2017 affordable housing obligation calculations assign the Borough a 0-unit rehabilitation obligation and a 34-unit adjusted Prior Round obligation. FSHC's calculation of the Borough's Third Round obligation is capped at 36 units according to N.J.A.C. 5:93-2.16, which caps a municipality's obligation at 20% of the occupied housing stock.

The Borough proposes to address a 0 unit rehabilitation obligation, 34 unit prior round obligation and a 36 unit third round obligation, and to do so with a vacant land adjustment.

### Vacant Land Analysis

Through the vacant land adjustment process, the Council of Affordable Housing's ("COAH") rules allow a municipality to adjust downward its new construction obligation to recognize its limited land available for new development. The downward adjusted number is referred to as the realistic development potential ("RDP"). COAH approved the Borough's vacant land adjustment that included a 0-unit RDP by way of granting the Borough Substantive Certification for its Second Round Housing Element and Fair Share Plan in 1999. The following analysis determines whether the Borough is eligible for a continued vacant land adjustment for the period of 1999 through 2025 and if yes, if or how the RDP must increase to account for newly vacant land or to reflect development that occurred since 1999.

The analysis first assessed if or how the Borough's housing stock grew since 1999 and if any market-rate residential development occurred that could arguably have supported inclusionary development. To make this assessment, we reviewed aerial photography from 1995 through 2016, as well as U.S. Census data and certificates of occupancy issued since 1999. According to the U.S. Census and American Community Survey ("ACS") data for 2000 and 2015, the total number of housing units grew by 79 units (501 to 580), but the number of occupied housing units was unchanged (133 to 132); as such nearly all of the new units are vacation homes. The certificate of occupancy data we received also indicates that from the beginning of 1999 to the end of October of this year, 84 certificates

Philip Caton, FAICP

John Hatch, FAIA

George Hibbs, AIA

Brian Slauch, AICP

Michael Sullivan, AICP

*Emeriti*

John Clarke, FAIA

Carl Hintz, AICP, ASLA



# EXHIBIT B: 2017 INCOME LIMITS

Prepared by Affordable Housing Professionals of New Jersey (AHPNJ) - August 2017

## 2017 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 Rent*** Sales***	Regional Asset Limit****
Region 1 Bergen, Hudson, Passaic and Sussex	Median	\$60,271	\$64,576	\$68,882	\$77,492	\$86,102	\$93,546	\$92,990	\$99,878	\$106,766	\$113,655		
	Moderate	\$48,217	\$51,661	\$55,105	\$61,993	\$68,882	\$71,537	\$74,392	\$79,903	\$85,413	\$90,921	1.7%	\$156,493
	Low	\$30,136	\$32,288	\$34,441	\$38,746	\$43,051	\$44,773	\$46,495	\$49,939	\$53,383	\$56,827	1.99%	
	Very Low	\$18,081	\$19,373	\$20,664	\$23,248	\$25,831	\$26,864	\$27,897	\$29,963	\$32,030	\$34,096		
Region 2 Essex, Morris, Union and Warren	Median	\$65,953	\$70,663	\$75,374	\$84,796	\$94,218	\$97,987	\$101,755	\$109,293	\$116,830	\$124,368		
	Moderate	\$52,762	\$56,531	\$60,299	\$67,837	\$75,374	\$78,389	\$81,404	\$87,434	\$93,464	\$99,494	1.7%	\$180,756
	Low	\$32,976	\$35,332	\$37,687	\$42,398	\$47,109	\$48,993	\$50,878	\$54,646	\$58,415	\$62,184	3.25%	
	Very Low	\$19,786	\$21,199	\$22,612	\$25,439	\$28,265	\$29,396	\$30,527	\$32,788	\$35,049	\$37,310		
Region 3 Hunterdon, Middlesex and Somerset	Median	\$73,780	\$79,050	\$84,320	\$94,860	\$105,400	\$109,616	\$113,832	\$122,264	\$130,696	\$139,128		
	Moderate	\$55,024	\$63,240	\$67,456	\$75,888	\$84,320	\$87,693	\$91,066	\$97,811	\$104,557	\$111,302	1.7%	\$200,698
	Low	\$36,890	\$39,525	\$42,160	\$47,430	\$52,700	\$53,808	\$56,916	\$61,132	\$65,348	\$69,564	0.38%	
	Very Low	\$22,134	\$23,715	\$25,296	\$28,458	\$31,620	\$32,865	\$34,150	\$36,679	\$39,200	\$41,738		
Region 4 Mercer, Monmouth and Ocean	Median	\$66,022	\$70,738	\$75,454	\$84,885	\$94,317	\$98,090	\$101,862	\$109,408	\$116,953	\$124,498		
	Moderate	\$52,817	\$56,590	\$60,363	\$67,908	\$75,454	\$78,472	\$81,490	\$87,526	\$93,562	\$99,599	1.7%	\$177,413
	Low	\$33,011	\$35,369	\$37,727	\$42,443	\$47,158	\$48,045	\$50,931	\$54,704	\$58,476	\$62,249	1.53%	
	Very Low	\$19,807	\$21,221	\$22,636	\$25,466	\$28,295	\$29,427	\$30,559	\$32,822	\$35,086	\$37,349		
Region 5 Burlington, Camden and Gloucester	Median	\$58,240	\$62,400	\$66,560	\$74,880	\$83,200	\$86,528	\$89,856	\$96,512	\$103,168	\$109,824		
	Moderate	\$46,592	\$49,920	\$53,248	\$59,904	\$66,560	\$69,222	\$71,885	\$77,210	\$82,534	\$87,859	1.7%	\$154,194
	Low	\$29,120	\$31,200	\$33,280	\$37,440	\$41,600	\$43,264	\$44,928	\$48,256	\$51,584	\$54,912	2.09%	
	Very Low	\$17,472	\$18,720	\$19,968	\$22,464	\$24,960	\$25,958	\$26,957	\$28,954	\$30,950	\$32,947		
Region 6 Atlantic, Cape May, Cumberland, and Salem	Median	\$51,085	\$54,734	\$58,383	\$65,681	\$72,979	\$75,898	\$78,817	\$84,655	\$90,494	\$96,332		
	Moderate	\$40,868	\$43,787	\$46,706	\$52,545	\$58,383	\$60,718	\$63,054	\$67,724	\$72,395	\$77,066	1.7%	\$136,680
	Low	\$25,543	\$27,367	\$29,192	\$32,840	\$36,489	\$37,949	\$39,409	\$42,328	\$45,247	\$48,166	0.00%	
	Very Low	\$15,326	\$16,420	\$17,515	\$19,704	\$21,894	\$23,769	\$25,645	\$25,397	\$27,143	\$28,900		

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 per N.J.A.C. 5:97-9.3. The increase for 2015 was 2.3%, the increase for 2016 was 1.1% and the increase for 2017 is 1.7% (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 or 2016 may increase rent by up to the applicable combined percentage from their last rental increase for that unit. 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 per N.J.A.C. 5:97-9.3(b). 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).

Note: Since the Regional Income Limits for Region 6 in 2016 were higher than the 2017 calculations, the 2016 income limits will remain in force for 2017. See N.J.A.C. 5:97-9.2(c).

COURT INITIATED

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IN THE MATTER OF THE  
APPLICATION OF THE BOROUGH OF  
CAPE MAY POINT FOR COURT  
APPROVAL OF ITS HOUSING  
ELEMENT AND FAIR SHARE PLAN

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CAPE MAY COUNTY  
DOCKET NO. CPM-L-292-15

**ORDER OF FAIRNESS AND  
COMPLIANCE**

---

THIS MATTER having been opened to the Court by Brock D. Russell, Esquire, on behalf of the Petitioner, Borough of Cape May Point (hereinafter "the Borough"); and in the presence of Adam Gordon, Esquire, legal counsel to the Fair Share Housing Council (hereinafter "FSHC"); and the Court being in receipt of the findings and recommendations of the Honorable Steven P. Perskie, J.S.C.(Ret'd.), the Court-appointed Special Master ("the Master") in this litigation;

And the within litigation raising issues with regard to the compliance of the Borough with the requirements of the New Jersey Fair Housing Act, *N.J.S.A. 52:27D-301, et seq.*, ("NJFHA"), and, more particularly, with the mandates of the New Jersey Supreme Court's decision of January 18, 2017, supplementing its ruling in the matter of *In Re: Adoption of N.J.A.C. 5:96, 221 N.J. 1* (2015) (hereinafter "Mount Laurel IV"), which decision and prior rulings issued by the Supreme Court articulate what is known as "The Mount Laurel Doctrine";

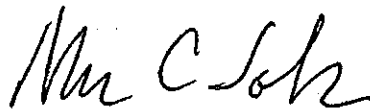
AND the Borough and FSHC having negotiated a settlement agreement wherein the Borough has agreed, and committed to adopting the requisite Ordinances and municipal planning documents, and taking such other actions as are necessary to insure that the Borough has removed all legal or regulatory impediments to the construction of the Borough's fair share of affordable housing within the Borough;

and the Court is in receipt of the Public Notice, and Certification of publication of said Notice by the Borough providing for a Public Hearing on March 15, 2018; and for good cause shown;

IT IS ON THIS 20th day MARCH 2018, ORDERED, as follows:

1. The Court finds that the Settlement Agreement between the Borough and FSHC is fair and reasonable, and adequately protects the interests of low and moderate income persons within the Borough's housing region based upon the criteria set forth in *East/West Venture v. Borough of Fort Lee*, 286 N.J. Super. 311 (App. Div. 1996) for approving a settlement of Mount Laurel Litigation.
2. The Court finds that the Borough's proposed affordable housing strategy as set forth within the Settlement Agreement is facially constitutionally compliant and provides a fair and reasonable opportunity for the Borough to meet its obligation under Mount Laurel IV, subject to the Borough's compliance with the conditions set forth hereinafter.
3. On or before July 31, 2018, the following actions shall be completed in fulfillment of the Borough's responsibilities hereunder.
  - a. The adoption of a Housing Element and Fair Share Plan ("Fair Share Plan") by the Borough Planning Board, consistent with the standards set forth at N.J.S.A. 40:55D-1, et seq. and with Mount Laurel IV.
  - b. The ratification of the Fair Share Plan by the Borough Committee via adoption of the requisite ordinance(s) consistent with Article Eight of the Municipal Land Use Law and such other applicable standards of N.J.S.A. 40:55D-1 et seq. and with Mount Laurel IV.
  - c. Adoption of the requisite amendments to the Borough's Affordable Housing and Zoning Ordinance to implement the terms of the Settlement Agreement between FSHC and the Borough.

- d. Implementation of all the terms contained in the Settlement Agreement, up to those terms required to be completed by July 31, 2018, from FSHC and the Borough dated December 7, 2017, endorsed by Adam M. Gordon, Esquire, on behalf of the FSHC.
  - e. Adoption of the requisite "Spending Plan" as contemplated by N.J.S.A. 52:27D-329.2 and 329.3.
  - f. Submission to the Court, the Master and FSHC of a Certification by the Borough Clerk confirming that the aforesaid measures have been duly completed.
  - g. As per the terms of paragraph 18 a., in the event the FSHC concludes that the Borough's planning and zoning "mechanisms" are not effective in enabling a realistic opportunity for the construction of affordable housing, then the FSHC is encouraged to petition this Court for a plenary hearing to address any such concerns.
4. Upon completion of the actions referenced in paragraph 3, the Borough shall be granted the "judicial equivalent of substantive certification and accompanying protection as provided under the FHA," pursuant to Mount Laurel IV, through July 31, 2025.
5. The Borough's temporary immunity from Mount Laurel Litigation is hereby extended through July 31, 2018 pending the completion of the actions referenced in paragraph 3.
6. IT IS FURTHER ORDER that a copy of this Order shall be serviced upon all parties within seven (7) days of its receipt.



NELSON C. JOHNSON, J.S.C.

**APPENDIX B – FOURTH ROUND DECLARATORY JUDGMENT FILING,  
ORDER, RESOLUTION**



**Case Details | Case Number: CPM-L-000046-25**

Case Caption: IN THE MATTER OF CAPE MAY POINT BORO			
Court: Civil Part	Venue: CAPE MAY	Case Initiation: 01/29/2025	
Case Track: 4	Case Status: Active	Jury Demand: NONE	
Case Type: AFFORDABLE HOUSING	Judge: CAPE MAY, AFF HSG	Team: 805	
Law Firm Case ID:			

**Transaction Information**

Transaction ID: LCV2025212836	Received by eCourts On: 01/29/2025	Total Payment Amount: \$250.00
Documents Received:		
COMPLAINT		
MUNICIPAL RESOLUTION		
Case Information Statement		

John P. Amenhauser, Esquire  
Attorney Identification No. 121372014  
THE DEWEESE LAW FIRM, P.C.  
3200 Pacific Avenue  
Wildwood, New Jersey 08260  
(609) 522-5599; Fax (609) 522-3003  
*Attorneys for Declaratory Plaintiff, Borough of Cape May Point*

**IN THE MATTER OF THE  
APPLICATION OF THE BOROUGH OF  
CAPE MAY POINT, COUNTY OF CAPE  
MAY, STATE OF NEW JERSEY**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CAPE MAY COUNTY

DOCKET NO.: CPM-L-

Civil Action  
AFFORDABLE HOUSING  
PER DIRECTIVE #14-24

**COMPLAINT FOR DECLARATORY  
RELIEF PURSUANT TO DIRECTIVE  
#14-24**

Declaratory Plaintiff, the Borough of Cape May Point, County of Cape May, State of New Jersey (hereinafter “Cape May Point” or the “Borough”), a municipal corporation of the State of New Jersey, with a principal office at 215 Lighthouse Avenue, Cape May Point, New Jersey 08212, by way of this Declaratory Judgment Action (“DJ Action”) as authorized under Directive #14-24 of the Administrative Office of the Courts alleges and says:

**Background**

1. Cape May Point is a body corporate and politic organized under the laws of the State of New Jersey.



2. The Mayor and Borough Commissioners are the governing body of Cape May Point and are responsible, inter alia, to ensure that Cape May Point takes the actions necessary to achieve and maintain compliance with its obligations under the laws collectively known as the “Mount Laurel Doctrine”
3. The Planning Board of the Borough of Cape May Point (hereinafter the “Planning Board”) is a municipal agency created and organized under the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., (hereinafter the “MLUL”), and, among other duties and obligations, is responsible for adopting the Housing Element and Fair Share Plan (“HEFSP”) of Cape May Point’s Master Plan.
4. Through this DJ Action, Cape May Point seeks the following relief in relation to its Fourth Round (2025-2035) affordable housing obligation: (a) to secure the jurisdiction of the Affordable Housing Alternative Dispute Resolution Program (the “Program”) pursuant to P.L. 2024, c.2 (hereinafter, the “Act”) and the Court, pursuant to Directive #14-24; (b) to have the Program and the Court approve the Borough’s Present and Perspective affordable housing obligations as set forth in the binding resolution adopted by the Borough, attached hereto as Exhibit A; (c) to have the Program and the Court approve a HEFSP to be adopted by the Planning Board and endorsed by the governing body of the Borough and issue a conditional or unconditional “Compliance Certification” pursuant to the Act or other similar declaration; (d) to the extent it is not automatically granted pursuant to the Act, through the filing of this DJ Action and binding resolution, to have the Program and the Court confirm the Borough’s immunity from all exclusionary zoning litigation, including builder’s remedy lawsuits, during the pendency of the process outlined in the Act and for the duration of the Fourth Round, i.e., through

June 30, 2035; and (e) to have the Program and the Court take such other actions and grant such other relief as may be appropriate to ensure that the Borough receives and obtains all protections as afforded to it in complying with the requirements of the Act, including, without limitation, all immunities and presumptions of validity necessary to satisfy its affordable housing obligations voluntarily without having to endure the expense and burdens of unnecessary third-party litigation.

### **COUNT 1**

#### **ESTABLISHMENT OF JURISDICTION UNDER P.L.2024, C.2**

5. The Borough of Cape May Point repeats and realleges each and every allegation as set forth in the previous paragraphs of this DJ Action as if more fully set forth at length herein.
6. The Act represents a major revision of the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq.
7. Among other things , the Act abolishes the Council on Affordable Housing (hereinafter, “COAH”), and replaced it with seven retired, on recall, judges that have been designated as the Program. Among other things, the Act authorizes the Director of the Administrative Office of the Courts, (hereinafter, respectively, “Director” and “AOC”) to create a framework to process applications for a compliance certification.
8. On or about December 13, 2024, the Director issued Directive #14-24, which, among other things, required municipalities seeking compliance certification to file an action in the form of a declaratory judgment complaint and Civil Case Information Statement in the County in which the municipality is located within forty-eight (48) hours after the

municipality's adoption of a binding resolution as authorized under the Act and attach a copy of said binding resolution to the DJ Action.

9. The Borough adopted a binding resolution establishing its present and prospective affordable housing obligations within the statutory window of time set forth in the Act and in accordance with the methodology and formula set forth in the Act, a certified copy of which resolution is attached to this DJ Action as Exhibit A.
10. Based on the foregoing, the Borough has established the jurisdiction of the Program and the Court in regard to this DJ Action for a compliance certification as set forth herein.

**WHEREFORE**, the Borough of Cape May Point seeks a declaratory judgment for the following relief:

- a. Declaring that the Borough of Cape May Point has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as Exhibit A to this DJ Action or to adjust such determination consistent with the Act;
- b. Declaring the present and prospective affordable housing obligations of the Borough of Cape May Point under the Act;
- c. Declaring the approval of the Borough of Cape May Point's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Borough's governing body, including, as applicable, any applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;
- d. Declaring that the Borough of Cape May Point continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;

- e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive #14-24 to the Borough of Cape May Point for the time period beginning July 1, 2025, and ending on June 30, 2035; and
- f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

## **COUNT II**

### **DETERMINATION OF THE PRESENT AND PROSPECTIVE NEED OF THE BOROUGH OF CAPE MAY POINT**

- 11. The Borough of Cape May Point repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if more fully set forth at length herein.
- 12. The Act adopted the methodology to calculate every municipality's present and prospective need affordable housing obligation for the Fourth Round (2025-2035) and beyond.
- 13. The Act directed the Department of Community Affairs ("DCA") to apply the methodology and to render a non-binding calculation of each municipality's present and prospective affordable housing obligations to be contained in a report to be issued not later than October 20, 2024.
- 14. The DCA issued its report on October 18, 2024.
- 15. Pursuant to the October 18, 2024, report, the DCA calculated Cape May Point's present and prospective affordable housing obligations as follows:
  - a. Present Need: 0 Units
  - b. Prospective Need: 5 Units

16. Pursuant to the Act, a municipality desiring to participate in the Program is obligated to adopt a “binding resolution” determining its present and prospective affordable housing obligations to which it will commit based upon the methodology set forth in the Act.
17. Cape May Point adopted a binding resolution, a copy of which is attached hereto and made a part hereof as Exhibit A as to DJ Action.
18. The binding resolution maintains that the Present (“Rehabilitation”) Need obligation of Cape May Point is 0 and its Prospective Need obligation is 5.
19. Cape May Point seeks the approval of and confirmation by the Program and the Court of the Present and Prospective affordable housing obligations as set forth in the binding resolution attached hereto and made a part hereof as Exhibit A or the adjustment of those obligations consistent with the Act and the applicable COAH regulations.

**WHEREFORE**, the Borough of Cape May Point seeks a declaratory judgment for the following relief:

- a) Declaring that the Borough of Cape May Point has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as Exhibit A to this DJ Action or to adjust such determination consistent with the Act;
- b) Declaring the present and prospective affordable housing obligations of the Borough of Cape May Point under the Act;
- c) Declaring the approval of the Borough of Cape May Point’s HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Borough’s governing body, including, as applicable, any adjustments permitted in accordance with the Act and/or applicable COAH regulations;

- d) Declaring that the Borough of Cape May Point continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e) Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive #14-24 to the Borough of Cape May Point for the period beginning July 1, 2025, and ending on June 30, 2035; and
- f) Declaring such other relief that the Program and the Court deems just and proper within the parameters of the Act and applicable COAH regulations.

### **COUNT III**

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

- 20. The Borough of Cape May Point repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if more fully set forth at length herein.
- 21. Pursuant to the Act, a Housing Element and Fair Share Plan (hereinafter, "HEFSP") must be prepared, adopted by the Borough's Planning Board, and endorsed by the Borough's governing body by June 30, 2025.
- 22. Cape May Point hereby commits for its professionals to prepare the appropriate HEFSP to address its affordable housing obligations, as determined by the Program and the Court which HEFSP shall apply as appropriate, and any applicable adjustments, as appropriate, that is permitted in accordance with the Act and/or applicable COAH regulations.

**WHEREFORE**, the Borough of Cape May Point seeks a declaratory judgment for the following relief:

- a) Declaring that the Borough of Cape May Point has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as

set forth in the binding resolution attached as Exhibit A to this DJ Action or to adjust such determination consistent with the Act;

- b) Declaring the present and prospective affordable housing obligations of the Borough of Cape May Point;
- c) Declaring that the Borough of Cape May Point's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Borough's governing body, including, as applicable, any adjustment permitted in accordance with the Act and/or applicable COAH regulations;
- d) Declaring that the Borough of Cape May Point continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e) Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive #14-24 to the Borough of Cape May Point for the period beginning July 1, 2025, and ending June 30, 2035; and
- f) Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

#### **COUNT IV**

#### **CONFIRMATION OF IMMUNITY**

- 23. The Borough of Cape May Point repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if more fully set forth at length herein.
- 24. Pursuant to the Act, a municipality that complies with the deadlines in the Act for both determining present and prospective affordable housing obligations and for adopting an appropriate HEFSP shall have immunity from exclusionary zoning litigation.

25. The Borough of Cape May Point has met the deadline for adoption and filing of its binding resolution (and the filing of this DJ Action in accordance with Directive #14-24) not later than January 31, 2025, by adopting the binding resolution attached to this DJ Action as Exhibit A, and has committed to the adoption of its HEFSP by the June 30, 2025, deadline.

**WHEREFORE**, the Borough of Cape May Point seeks a declaratory judgment for the following relief:

- a) Declaring that the Borough of Cape May Point has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as Exhibit A to this DJ Action or to adjust such determination consistent with the Act;
- b) Declaring the present and prospective affordable housing obligations of the Borough of Cape May Point;
- c) Declaring that the Borough of Cape May Point's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Borough's governing body, including, as applicable, any adjustment permitted in accordance with the Act and/or applicable COAH regulations;
- d) Declaring that the Borough of Cape May Point continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e) Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive #14-24 to the Borough of Cape May Point for the period beginning July 1, 2025, and ending June 30, 2035; and



- f) Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

THE DEWEESE LAW FIRM, P.C.  
*Attorneys for Plaintiff*

Dated: January 29, 2025

BY:   
JOHN P. AMENHAUSER, ESQUIRE  
*For the Firm*

**CERTIFICATION PURSUANT TO RULE 4:5-1**

The undersigned, John P. Amenhauser, Esquire, certifies on behalf of the above-named Plaintiff, as follows:

1. I am an attorney admitted to practice in the State of New Jersey and am a partner with The DeWeese Law Firm, P.C., counsel for the above-named Plaintiff.
2. The matter in controversy in this matter is not the subject of any other action pending in any Court or of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated.
3. At this time, there are no other parties who should be joined in this action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

THE DEWEESE LAW FIRM, P.C.  
*Attorneys for Plaintiff*

Dated: January 29, 2025

BY:   
JOHN P. AMENHAUSER, ESQUIRE  
*For the Firm*

**CERTIFICATION PURSUANT TO R. 1:38-7(b)**

John P. Amenhauser, Esq., of full age, hereby certifies as follows:

- 1) I am a partner with The DeWeese Law Firm, P.C., attorneys for the Declaratory Plaintiff, the Borough of Cape May Point.
- 2) I certify that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment for false swearing.

THE DEWEESE LAW FIRM, P.C.  
*Attorneys for Plaintiff*

Dated: January 29, 2025

BY:   
JOHN P. AMENHAUSER, ESQUIRE  
*For the Firm*

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:5-1(c), John P. Amenhauser, Esquire, of The DeWeese Law Firm, P.C., is hereby designated as trial counsel for Plaintiff in this matter.

THE DEWEESE LAW FIRM, P.C.  
*Attorneys for Plaintiff*

Dated: January 29, 2025

BY:   
JOHN P. AMENHAUSER, ESQUIRE  
*For the Firm*

# **Exhibit A**

**BOROUGH OF CAPE MAY POINT  
COUNTY OF CAPE MAY  
STATE OF NEW JERSEY**

**RESOLUTION COMMITTING THE BOROUGH OF CAPE MAY POINT TO  
COMPLY WITH DCA'S FOURTH ROUND AFFORDABLE HOUSING PRESENT  
NEED AND PROSPECTIVE NEED NUMBERS**

**RESOLUTION 29-25**

**WHEREAS**, on March 20, 2024, Governor Murphy signed into law an Amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 *et seq.*) (hereinafter "Amended FHA"); and

**WHEREAS**, the Amended FHA requires the Department of Community Affairs ("DCA") to produce non-binding estimates of fair share obligations on or before October 20, 2024; and

**WHEREAS**, the DCA issued a report on October 18, 2024 ("DCA Report") wherein it reported its estimate of the obligation for all municipalities based upon its interpretation of the standards in the Amended FHA; and

**WHEREAS**, the DCA Report calculates the Borough of Cape May Point's ("Borough") Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 0 and a Prospective Need or New Construction Obligation of 5; and

**WHEREAS**, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support lower calculations of Round 4 affordable housing obligations; and

**WHEREAS**, the Amended FHA further provides that "[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by COAH unless those regulations are contradicted by statute, including P.L. 2024, c.2, or binding court decisions" (N.J.S.A. 52:27D-311(m)); and

**WHEREAS**, COAH regulations authorize vacant land adjustments as well as durational adjustments; and

**WHEREAS**, based on the foregoing, the Borough accepts the DCA calculations of the Borough's fair share obligations and commits to its fair share of 0 units present need and 5 units prospective need subject to any vacant land and/or durational adjustments it may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA; and

**WHEREAS**, the Borough reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

**WHEREAS**, the Borough also reserves the right to adjust its position in the event of any rulings in the *Montvale* case (MER-L-1778-24) or any other such action that alters the deadlines and/or requirements of the Amended FHA; and

**WHEREAS**, in the event that a third party challenges the calculations provided for in this Resolution, the Borough reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 Present or Prospective Need Obligations should be lower than described herein; and

**WHEREAS**, considering the above, the Commissioners of the Borough of Cape May Point finds that it is in the best interest of the Borough to declare its commitment to the obligations reported by the DCA on October 18, 2024 subject to the reservations set forth herein; and

**WHEREAS**, in addition to the above, the Acting Administrative Director issued Directive #14-24, dated December 13, 2024, and made the directive available later in the week that followed; and

**WHEREAS**, pursuant to Directive #14-24, a municipality seeking a certification of compliance with the FHA shall file an action in the form of a declaratory judgment complaint . . . in the county in which the municipality is located . . . within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner"; and

**WHEREAS**, seeks a certification of compliance with the FHA and, therefore, directs its legal counsel to file a declaratory relief action within 48 hours of the adoption of this resolution in Cape May County.

**NOW, THEREFORE, BE IT RESOLVED** on this 28 day of January, 2025, by the Commissioners of the Borough of Cape May Point as follows:

1. All the above Whereas Clauses are incorporated into the operative clauses of this resolution.

2. The Borough of Cape May Point hereby commits to the DCA Round 4 Present Need Obligation of 0 units and the Round 4 Prospective Need Obligation of 5 units described in this resolution, subject to all reservations of rights set forth above.

3. The Borough of Cape May Point hereby directs its legal counsel to file a declaratory judgment complaint in Cape May County within 48 hours after adoption this resolution, attaching this resolution.

4. The Borough of Cape May Point authorizes its legal counsel to attach this resolution as an exhibit to the declaratory judgment action that is filed and to submit and/or file this resolution with the Program or any other such entity as may be determined to be appropriate.

5. This resolution shall take effect immediately, according to law.

	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Geiger			X			
vanHeeswyk	X		X			
Yunghans		X	X			

### **CERTIFICATION**

I, Elaine Wallace, Clerk of the Borough of Cape May Point, County of Cape May, State of New Jersey, do hereby certify that the foregoing is a true copy of a resolution adopted by the Commissioners of the Borough of Cape May Point at a meeting held on January 28, 2025.

  
\_\_\_\_\_  
Elaine Wallace, Borough Clerk

**PREPARED BY THE COURT:**

**IN THE MATTER OF THE  
DECLARATORY JUDGMENT  
ACTION OF THE BOROUGH  
OF CAPE MAY POINT, CAPE  
MAY COUNTY PURSUANT TO  
P.L. 2024, CHAPTER 2**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – CIVIL PART  
CAPE MAY COUNTY  
DOCKET NO. CPM-L-46-25

Civil Action

**ORDER FIXING MUNICIPAL  
OBLIGATIONS FOR “PRESENT NEED”  
AND “PROSPECTIVE NEED” FOR THE  
FOURTH ROUND HOUSING CYCLE**

**THIS MATTER**, having come before the Court on its own motion, *sua sponte*, on the Complaint for Declaratory Judgment filed on January 29, 2025 (“DJ Complaint”) by the Petitioner, **BOROUGH OF CAPE MAY POINT** (“Petitioner” or “Municipality”), pursuant to N.J.S.A. 52:27D-304.2, -304.3, and -304.1(f)(1)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, *et seq.* (collectively, the “FHA”), and in accordance with Section II.A of Administrative Directive #14-24 (“Directive #14-24”) of the Affordable Housing Dispute Resolution Program (the “Program”), seeking a certification of compliance with the FHA;

**AND IT APPEARING**, that on October 18, 2024, pursuant to the FHA (as amended), the New Jersey Department of Community Affairs (“DCA”) issued its report entitled *Affordable Housing Obligations for 2025-2035 (Fourth Round)*,<sup>1</sup> therein setting forth the present need and prospective need obligations of all New Jersey municipalities for the Fourth Round housing cycle (the “DCA’s Fourth Round Report”);

<sup>1</sup> See [https://nj.gov/dca/dlps/pdf/FourthRoundCalculation\\_Methodology.pdf](https://nj.gov/dca/dlps/pdf/FourthRoundCalculation_Methodology.pdf)

**AND IT APPEARING** that, pursuant to the DCA's Fourth Round Report, the **present need** obligation of the Petitioner has been calculated and reported as **0** affordable units, and its **prospective need** obligation of the Petitioner has been calculated and reported as **5** affordable units, and which calculations have been deemed presumptively valid for purposes of the FHA;

**AND THE COURT**, having determined that no interested party has filed a challenge to the Petitioner's DJ Complaint by way of an Answer thereto as provided for and in accordance with Section II.B of Directive #14-24 of the Program;

**AND THE COURT**, having found and determined, therefore, that the present need and prospective need affordable housing obligations of the Petitioner for the Fourth Round housing cycle as calculated and reported in the DCA's Fourth Round Report have been committed to by the Petitioner and are uncontested, and for good cause having otherwise been shown:

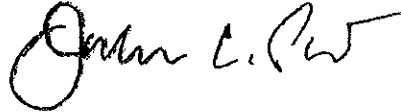
**IT IS, THEREFORE**, on this 27<sup>th</sup> day of **MARCH 2025 ORDERED AND ADJUDGED** as follows:

1. That the present need obligation of the Municipality, be, and hereby is fixed as **0** affordable units for the Fourth Round housing cycle.
2. That the prospective need obligation of the Municipality, be, and hereby is fixed as **5** affordable units for the Fourth Round Housing cycle; and
3. That the Petitioner is hereby authorized to proceed with preparation and adoption of its proposed Housing Element and Fair Share Plan for the Fourth Round, incorporating therein the present need and prospective need allocations aforesaid (and which plan shall include the elements set forth in the "Addendum" attached to Directive #14-24), by or before June 30, 2025, as provided for and in accordance with Section III.A of Directive #14-24, and without further delay.



**IT IS FURTHER ORDERED**, that a copy of this Order shall be deemed served on the Petitioner and Petitioner's counsel.

SO ORDERED:

A handwritten signature in black ink, appearing to read "John C. Porto", written over a horizontal line.

**Hon. John C. Porto, P.J.Cv.**

(X) Uncontested.



**APPENDIX C – ADOPTED ACCESSORY APARTMENT PROGRAM  
ORDINANCE, DRAFT AMENDMENT**



## Chapter 52. Affordable Housing

### Article I. General Program Purposes, Procedures

#### § 52-3. AFFORDABLE HOUSING PROGRAMS.

[Ord. No. 09-2018]

The Borough of Cape May Point has determined that it will use the following mechanisms to satisfy its affordable housing obligations:

a. Accessory Apartment Program.

1. All accessory apartments shall meet the following conditions:

- (a) Accessory apartments are permitted by the Zoning Ordinance for various zoning districts, provided the units are affordable to low- and moderate-income households. Accessory apartments may be developed as low-income or moderate-income units (accessory apartments may be limited to only low- or only moderate-income units as determined in the Fair Share Plan).
- (b) Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all building codes.
- (c) At the time of initial occupancy of the unit and for at least 10 years thereafter, the accessory apartment shall be rented only to a household which is either a low- or moderate-income household.
- (d) Rents of accessory apartments shall be affordable to very low, low- or moderate-income households as per COAH and UHAC regulations.
- (e) There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale of the unit and the accessory apartment.
- (f) The appropriate utility authority must certify that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartment. Where the proposed location is served by an individual well and/or septic system, the additional capacity necessitated by the new unit must meet the appropriate NJDEP standards.
- (g) The Borough of Cape May Point accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.
- (h) No accessory apartment created as a result of this Article or these regulations shall exceed the gross floor area of the existing principal dwelling on the lot.
- (i) Municipal building permit fees shall be waived in all cases involving affordable accessory apartment development under this section. An annual license and inspection fee, if required, shall be paid by unit owners.

2. The maximum number of creditable accessory apartments shall be equal to no more than 10 or an amount equal to 10% of the Borough of Cape May Point's fair share obligation,

whichever is greater (additional units may be approved by COAH if the municipality has demonstrated successful completion of its accessory apartment program).

3. The Borough of Cape May Point shall designate an administrative entity to administer the accessory apartment program that shall have the following responsibilities:
  - (a) The Administrative Agent shall administer the accessory apartment program, including advertising, income qualifying prospective renters, setting rents and annual rent increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports and affirmatively marketing the affordable accessory apartment program in accordance with the UHAC.
  - (b) The administrative entity shall only deny an application for an accessory apartment if the project is not in conformance with COAH's requirements and/or the provisions of this section/Article. All denials shall be in writing with the reasons clearly stated.
  - (c) In accordance with COAH requirements, the Borough of Cape May Point shall provide at least \$30,000 per unit to subsidize the creation of one very low income unit, \$25,000 per unit to subsidize the creation of each low-income accessory apartment or \$20,000 per unit to subsidize the creation of each moderate-income accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.
4. Property owners wishing to apply to create an accessory apartment shall submit to the administrative entity:
  - (a) A sketch of floor plan(s) showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another structure;
  - (b) Rough elevations showing the modifications of any exterior building facade to which changes are proposed; and
  - (c) A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition, if any, along with the minimum building setback lines; the required parking spaces for both dwelling units; and any man-made conditions which might affect construction.

**DRAFT AMENDMENT**  
**ACCESSORY APARTMENT ORDINANCE**  
**Borough of Cape May Point**

52-3 AFFORDABLE HOUSING PROGRAMS.

The Borough of Cape May Point has determined that it will use the following mechanisms to satisfy its affordable housing obligations:

a. Accessory Apartment Program.

1. All accessory apartments shall meet the following conditions:

(a) Accessory apartments are permitted by the Zoning Ordinance for various zoning districts, provided the units are affordable to low- and moderate-income households. Accessory apartments may be developed as low-income or moderate-income units (accessory apartments may be limited to only low- or only moderate-income units as determined in the Fair Share Plan).

(b) Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all building codes.

(c) At the time of initial occupancy of the unit and for at least ten (10) years thereafter, the accessory apartment shall be rented only to a household which is either a very low-, low- or moderate-income household.

(d) Rents of accessory apartments shall be affordable to very low-, low- or moderate-income households as per ~~COAH~~ FHA and UHAC regulations, and N.J.A.C. 5:93.

(e) There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale of the unit and the accessory apartment.

(f) The appropriate utility authority must certify that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartment. Where the proposed location is served by an individual well and/or septic system, the additional capacity necessitated by the new unit must meet the appropriate NJDEP standards.

(g) The Borough of Cape May Point accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.

(h) No accessory apartment created as a result of this Article or these regulations shall exceed the gross floor area of the existing principal dwelling on the lot.

(i) Municipal building permit fees shall be waived in all cases involving affordable accessory apartment development under this section. An annual license and inspection fee, if required, shall be paid by unit owners.

2. The maximum number of creditable accessory apartments shall be equal to no more than ten (10) or an amount equal to ten percent (10%) of the Borough of Cape May Point's fair share obligation, whichever is greater (additional units may be approved by ~~COAH~~ the Program if the municipality has demonstrated successful completion of its accessory apartment program.).

3. The Borough of Cape May Point shall designate an administrative entity to administer the accessory apartment program that shall have the following responsibilities:

(a) The Administrative Agent shall administer the accessory apartment program, including advertising, income qualifying prospective renters, setting rents and annual rent increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports and affirmatively marketing the affordable accessory apartment program in accordance with the UHAC.

(b) The administrative entity shall only deny an application for an accessory apartment if the project is not in conformance with ~~COAH's~~ FHA, N.J.A.C. 5:93, and UHAC requirements and/or the provisions of this section/Article. All denials shall be in writing with the reasons clearly stated.

(c) In accordance with ~~COAH requirements N.J.A.C. 5:93~~, the Borough of Cape May Point shall provide at least ~~thirty thousand (\$30,000)~~ ninety thousand (\$90,000) dollars per unit to subsidize the creation of ~~one (1)~~ two (2) very low-income units, ~~twenty five thousand (\$25,000.00)~~ forty thousand (\$40,000) dollars per unit to subsidize the creation of each low-income accessory apartment or twenty thousand (\$20,000.00) dollars per unit to subsidize the creation of each moderate-income accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.

4. Property owners wishing to apply to create an accessory apartment shall submit to the administrative entity:

(a) A sketch of floor plan(s) showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another structure;

(b) Rough elevations showing the modifications of any exterior building facade to which changes are proposed; and

(c) A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition, if any, along with the minimum building setback lines; the required parking spaces for both dwelling units; and any manmade conditions which might affect construction.

(Ord. No. 566-09 § 3)



## **APPENDIX D – ADOPTED MANDATORY SET-ASIDE ORDINANCE**



## Chapter 52. Affordable Housing

### Article III. Administration

#### § 52-21. MANDATORY AFFORDABLE HOUSING SET-ASIDE ORDINANCE.

[Ord. No. 08-2018]

- a. All multi-family residential development, including the residential portion of a mixed-use project, which consists of five or more new residential units, whether permitted by a zoning amendment, a use variance granted by the Zoning Board, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, shall require that an appropriate percentage of the residential units be set aside for low and moderate income households.
- b. This requirement 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.
- c. For inclusionary projects in which the low and moderate units are to be offered for sale, the set-aside percentage should be 20 percent; for projects in which the low and moderate income units are to be offered for rent, the set-aside percentage should be 15 percent.
- d. The developer shall provide that half of the low- and moderate-income units constructed be affordable by low-income households and that the remaining half be affordable by moderate-income households. At least 13 percent of all restricted 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.
- e. Subdivision and site plan approval shall be denied by the board unless the developer complies with the requirements to provide low- and moderate-income housing pursuant to the provisions of this section. A property shall not be permitted to be subdivided so as to avoid meeting this requirement. The board may impose any reasonable conditions to ensure such compliance.
- f. Nothing in this paragraph precludes the Borough from imposing an affordable housing set aside in a development not required to have a set-aside pursuant to this paragraph consistent with N.J.S.A. 52:27D-311(h) and other applicable law.
- g. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.
- h. This requirement does not apply to any sites or specific zones otherwise identified in the Fair Share Plan, for which density and set-aside standards shall be governed by the specific standards set forth therein.



## **APPENDIX E – ADOPTED AFFORDABLE HOUSING ORDINANCE**



## Chapter 52. Affordable Housing

[Chapter 52 was amended in entirety by Ord. Nos. 07-2018, 08-2018 and 09-2018. Prior history includes Ord. No. 566-09]

### Article I. General Program Purposes, Procedures

#### § 52-1. AFFORDABLE HOUSING OBLIGATION.

[Ord. No. 07-2018]

- a. This chapter of the Borough Code sets forth regulations regarding the low and moderate income housing units in the Borough consistent with the provisions known as the "Substantive Rules of the New Jersey Council on Affordable Housing", N.J.A.C. 5:93 et seq., the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et seq. except where modified by the terms of a Settlement Agreement between the Borough and Fair Share Housing Center ("FSHC") such that the statutory requirement to provide very-low income units equal to 13% of affordable units approved and constructed after July 1, 2008, to be affordable to households at 30% of the regional median income, overrides the UHAC requirement that 10% of all low- and moderate-income units must be affordable at 35% of the regional median income, and the Borough's constitutional obligation to provide a fair share of affordable housing for low and moderate income households. In addition, this section applies requirements for very low income housing as established in P.L. 2008, c.46 (the "Roberts Bill", codified at N.J.S.A. 52:27D-329.1).
- b. This chapter is intended to assure that very-low, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very-low, low- and moderate-income households shall occupy these units. This chapter shall apply to all inclusionary developments and 100% affordable developments (including those funded with low-income housing tax credit financing) except where inconsistent with applicable law.
- c. The Cape May Point 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 Plan has also been endorsed by the Borough Commission of the Borough of Cape May Point. The Fair Share Plan describes the ways the Borough shall address its fair share for low- and moderate-income housing as determined by the Superior Court and documented in the Housing Element.
- d. This chapter implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:93, as may be amended and supplemented.
- e. The Borough shall file monitoring and status reports with the Superior Court and place the reports on its municipal website. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring evaluation report prepared by the Special Master in accordance with N.J.A.C. 5:91 shall be available to the public at the Cape May Point Borough Municipal Building, 215 Lighthouse Avenue, Cape May Point, New Jersey, 08212.
- f. On or about December 8 of each year through the end of the period of Third Round Judgment of Repose, the Borough will 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 all parties to the Borough's Court-approved Settlement Agreements, using forms

previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and Fair Share Housing Center ("FSHC").

- g. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in the Borough's agreement with FSHC. The Borough agrees to comply with those provisions as follows:
1. By July 1, 2020, the Borough must prepare a midpoint realistic opportunity review, as required pursuant to N.J.S.A. 52:27D-313, which the Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. 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 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. In the event the Court determines that a site or mechanism no longer presents a realistic opportunity and should be replaced or supplemented, then the municipality shall have the opportunity to supplement or revise its plan to correct any deficiency.
  2. Within 30 days of December 8, 2020 and every third year thereafter, the Borough shall prepare a review of compliance with the very low income housing requirements required by N.J.S.A. 52:27D-329.1 and its Settlement Agreement with Fair Share Housing Center. 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 and in the Borough's Settlement Agreement with FSHC. 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.

## § 52-2. DEFINITIONS.

[Ord. No. 07-2018]

As used herein the following terms shall have the following meanings:

### **ACCESSORY APARTMENT**

Means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

### **ACT**

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

### **ADAPTABLE**

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

### **ADMINISTRATIVE AGENT**

Means the entity responsible for the administration of affordable units in accordance with this chapter, N.J.A.C. 5:91, N.J.A.C. 5:93 and N.J.A.C. 5:80-26.1 et seq.

### **AFFIRMATIVE MARKETING**

Means 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**

Means the average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.



**AFFORDABLE**

Means, a sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:93-7.4; 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 DEVELOPMENT**

Means a housing development all or a portion of which consists of restricted units.

**AFFORDABLE HOUSING DEVELOPMENT**

Means 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% affordable development.

**AFFORDABLE HOUSING PROGRAM(S)**

Means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

**AFFORDABLE UNIT**

Means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:93, and/or funded through an affordable housing trust fund.

**AGENCY**

Means 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**

Means 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 where the unit is situated are 62 years or older; or 2) at least 80% of the units are occupied by one person that is 55 years 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**

Means a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangement includes, but is not limited to: transitional facilities for the homeless, Class A, B, C, D, and E boarding homes as regulated by the 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**

Means a facility 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**

Means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

**COAH**

Means the Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act

(N.J.S.A. 52:27D-301 et seq.).

**DCA**

Means the State of New Jersey Department of Community Affairs.

**DEFICIENT HOUSING UNIT**

Means a housing unit with health and safety code violations that require 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**

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

**DEVELOPMENT**

Means 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.

**FAIR SHARE PLAN**

Means the plan that describes the mechanisms, strategies and the funding sources, if any, by which the Borough proposes to address its affordable housing obligation as established in the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:93-5.

**HOUSING ELEMENT**

Means the portion of the Borough's Master Plan, required by the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-28b(3) and the Act, that includes the information required by N.J.A.C. 5:93-5.1 and establishes the Borough's fair share obligation.

**INCLUSIONARY DEVELOPMENT**

Means a development containing both affordable units and market rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

**LOW-INCOME HOUSEHOLD**

Means a household with a total gross annual household income equal to 50% or less of the median household income.

**LOW-INCOME UNIT**

Means a restricted unit that is affordable to a low-income household.

**MAJOR SYSTEM**

Means 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 or load bearing structural systems.

**MARKET-RATE UNITS**

Means housing not restricted to low- and moderate-income households that may sell or rent at any price.

**MEDIAN INCOME**

Means the median income by household size for the applicable county, as adopted annually by COAH or approved by the NJ Superior Court.

**MODERATE-INCOME HOUSEHOLD**

Means a household with a total gross annual household income in excess of 50% but less than 80% of the median household income.

**MODERATE-INCOME UNIT**

Means a restricted unit that is affordable to a moderate-income household.

**NON-EXEMPT SALE**

Means 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**

Means 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**

Means the maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by adopted/approved Regional Income Limits.

**REHABILITATION**

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

**RENT**

Means 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**

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

**SPECIAL MASTER**

Means an expert appointed by a judge to make sure that judicial orders are followed. A master's function is essentially investigative, compiling evidence or documents to inform some future action by the court.

**UHAC**

Means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

**VERY LOW-INCOME HOUSEHOLD**

Means a household with a total gross annual household income equal to 30% or less of the median household income.

**VERY LOW-INCOME UNIT**

Means a restricted unit that is affordable to a very low-income household.

## WEATHERIZATION

Means 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 rehabilitation.

## § 52-3. AFFORDABLE HOUSING PROGRAMS.

[Ord. No. 09-2018]

The Borough of Cape May Point has determined that it will use the following mechanisms to satisfy its affordable housing obligations:

a. Accessory Apartment Program.

1. All accessory apartments shall meet the following conditions:

- (a) Accessory apartments are permitted by the Zoning Ordinance for various zoning districts, provided the units are affordable to low- and moderate-income households. Accessory apartments may be developed as low-income or moderate-income units (accessory apartments may be limited to only low- or only moderate-income units as determined in the Fair Share Plan).
- (b) Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all building codes.
- (c) At the time of initial occupancy of the unit and for at least 10 years thereafter, the accessory apartment shall be rented only to a household which is either a low- or moderate-income household.
- (d) Rents of accessory apartments shall be affordable to very low, low- or moderate-income households as per COAH and UHAC regulations.
- (e) There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale of the unit and the accessory apartment.
- (f) The appropriate utility authority must certify that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartment. Where the proposed location is served by an individual well and/or septic system, the additional capacity necessitated by the new unit must meet the appropriate NJDEP standards.
- (g) The Borough of Cape May Point accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.
- (h) No accessory apartment created as a result of this Article or these regulations shall exceed the gross floor area of the existing principal dwelling on the lot.
- (i) Municipal building permit fees shall be waived in all cases involving affordable accessory apartment development under this section. An annual license and inspection fee, if required, shall be paid by unit owners.

2. The maximum number of creditable accessory apartments shall be equal to no more than 10 or an amount equal to 10% of the Borough of Cape May Point's fair share obligation, whichever is greater (additional units may be approved by COAH if the municipality has demonstrated successful completion of its accessory apartment program).

3. The Borough of Cape May Point shall designate an administrative entity to administer the accessory apartment program that shall have the following responsibilities:

- (a) The Administrative Agent shall administer the accessory apartment program, including advertising, income qualifying prospective renters, setting rents and annual rent increases,

maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports and affirmatively marketing the affordable accessory apartment program in accordance with the UHAC.

- (b) The administrative entity shall only deny an application for an accessory apartment if the project is not in conformance with COAH's requirements and/or the provisions of this section/Article. All denials shall be in writing with the reasons clearly stated.
  - (c) In accordance with COAH requirements, the Borough of Cape May Point shall provide at least \$30,000 per unit to subsidize the creation of one very low income unit, \$25,000 per unit to subsidize the creation of each low-income accessory apartment or \$20,000 per unit to subsidize the creation of each moderate-income accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.
4. Property owners wishing to apply to create an accessory apartment shall submit to the administrative entity:
- (a) A sketch of floor plan(s) showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another structure;
  - (b) Rough elevations showing the modifications of any exterior building facade to which changes are proposed; and
  - (c) A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition, if any, along with the minimum building setback lines; the required parking spaces for both dwelling units; and any man-made conditions which might affect construction.

## § 52-4. NEW CONSTRUCTION.

[Ord. No. 07-2018]

The following requirements shall apply to all new or planned developments that contain low- and moderate-income housing units.

- a. Phasing. Final site plan or subdivision approval shall be contingent upon the affordable housing development meeting the following phasing schedule for low and moderate income units whether developed in a single phase development, or in a multi-phase development:

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

- b. Design. In inclusionary developments, to the extent possible, low- and moderate- income units shall be integrated with the market units.
- c. Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.
- d. 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.
2. In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units.
3. Within rental developments, of the total number of affordable rental units, at least 13% shall be affordable to very low income households.
4. 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% of the total low- and moderate-income units;
  - (b) At least 30% of all low- and moderate-income units shall be two bedroom units;
  - (c) At least 20% of all low- and moderate-income units shall be three bedroom units; and
  - (d) The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
5. 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. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

e. Accessibility Requirements:

1. The first floor of all new restricted townhouse dwelling units and all restricted multistory dwelling units attached to at least one other dwelling unit shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.
2. All restricted townhouse dwelling units and all restricted multistory dwelling units attached to at least one other dwelling unit shall have the following features:
  - (a) An adaptable toilet and bathing facility on the first floor;
  - (b) An adaptable kitchen on the first floor;
  - (c) An interior accessible route of travel on the first floor;
  - (d) An interior accessible route of travel shall not be required between stories within an individual unit;
  - (e) 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
  - (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 the Borough has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
    - (1) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
    - (2) To this end, the builder of restricted units shall deposit funds with the Borough of Cape May Point sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.

- (3) The funds deposited under paragraph (2) herein, shall be used by the Borough for the sole purpose of making the adaptable entrance of any 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.
- (4) The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Borough of Cape May Point.
- (5) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet 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 of Cape May Point in care of the Municipal Treasurer who shall ensure that the funds are deposited and appropriately earmarked for accessibility purposes.
- (6) 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.

f. 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 and by the Superior Court, utilizing the regional income limits established.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52% 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.
  - (a) At least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be met:
  - (a) A studio or efficiency unit 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 rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be met:

- (a) A studio or efficiency unit 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% 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% 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% of the eligible monthly income of the appropriate household size 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.

Income limits for all units 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 Region 6 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 households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in Region 6. 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 calculated each year shall be the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the relevant fiscal year, 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. 5:8026.16(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.

10. The rent levels of very-low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. 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.
  11. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.
- g. Condominium and Homeowners Association Fees. For any affordable housing unit that is part of a condominium association and/or homeowner's association, the Master Deed shall reflect that the association fee assessed for each affordable housing unit shall be established at 100% of the market rate fee.

## Article II. Affordable Unit Controls and Requirements

### § 52-5. PURPOSE.

[Ord. No. 07-2018]

- a. The requirements of this section apply to all developments that contain affordable housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.
- b. Affirmative Marketing.
  1. The Borough shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
  2. 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 also 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 all marketing activities toward COAH Housing Region 6 and covers the period of deed restriction.
  3. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 6, comprised of Atlantic, Cape May, Cumberland, and Salem Counties.
  4. The Administrative Agent designated by the Borough shall assure the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the municipality.
  5. 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.
  6. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
  7. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Borough of Cape May Point.

## § 52-6. OCCUPANCY STANDARDS.

[Ord. No. 07-2018]

- a. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
  1. Provide an occupant for each bedroom;
  2. Provide separate bedrooms for parents and children;
  3. Provide children of different sexes with separate bedrooms; and
  4. Prevent more than two persons from occupying a single bedroom.
- b. Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

## § 52-7. SELECTION OF OCCUPANTS OF AFFORDABLE HOUSING UNITS.

[Ord. No. 07-2018]

- a. The administrative agent shall use a random selection process to select occupants of low- and moderate- income housing.
- b. A waiting list of all eligible candidates will be maintained in accordance with the provisions of N.J.A.C. 5:80-26 et seq.

## § 52-8. CONTROL PERIODS FOR RESTRICTED OWNERSHIP UNITS AND ENFORCEMENT MECHANISMS.

[Ord. No. 07-2018]

- a. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability.
- b. Rehabilitated owner-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- c. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- d. 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.
- e. 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 that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

## § 52-9. PRICE RESTRICTIONS FOR RESTRICTED OWNERSHIP UNITS, HOMEOWNER ASSOCIATION FEES AND RESALE PRICES.

[Ord. No. 07-2018]

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:8026.1, 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 method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate income unit owners and the market unit owners.
- 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 capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

## § 52-10. BUYER INCOME ELIGIBILITY.

[Ord. No. 07-2018]

- 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% of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.
- b. 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% of the household's certified monthly income.

## § 52-11. LIMITATIONS ON INDEBTEDNESS SECURED BY OWNERSHIP UNIT; SUBORDINATION.

[Ord. No. 07-2018]

- a. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- b. With the exception of original purchase money mortgages, during a control period 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% of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.6(b).

## § 52-12. CONTROL PERIODS FOR RESTRICTED RENTAL UNITS.

[Ord. No. 07-2018]

- a. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, and each restricted rental unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability.
  1. Restricted rental units created as part of developments receiving 9% Low Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period.
- b. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- c. 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 Cape May. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- d. 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.

## § 52-13. PRICE RESTRICTIONS FOR RENTAL UNITS; LEASES.

[Ord. No. 07-2018]

- a. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, 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 5% 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.

## § 52-14. TENANT INCOME ELIGIBILITY.

[Ord. No. 07-2018]

- 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% of median income.
  2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
  3. Moderate-income rental units shall be reserved for households with a gross household income less than 80% 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, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% 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% (40% 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% (40% 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 proposed 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 b,1 through b,5 above with the Administrative Agent, who shall counsel the household on budgeting.

## § 52-15. CONVERSIONS.

[Ord. No. 07-2018]

Each housing unit created through the conversion of a non-residential structure shall be considered a new housing unit and shall be subject to the affordability controls for a new housing unit.

## § 52-16. ALTERNATIVE LIVING ARRANGEMENTS.

[Ord. No. 07-2018]

- 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, unless an alternative commitment is approved by the Court.
- 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.

## Article III. Administration

## § 52-17. MUNICIPAL HOUSING LIAISON.

[Ord. No. 07-2018]

- a. The position of Municipal Housing Liaison for the Borough of Cape May Point is hereby established. The Municipal Housing Liaison shall be appointed by duly adopted resolution of the Borough Commission and be subject to the approval by the Superior Court.
- b. The Municipal Housing Liaison must be either a full-time or part-time employee of the Borough of Cape May Point.
- c. The Municipal Housing Liaison must meet the requirements for qualifications, including initial and periodic training found in N.J.A.C. 5:93.
- d. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Cape May Point, including the following responsibilities which may not be contracted out to the Administrative Agent:
  1. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
  2. The implementation of the Affirmative Marketing Plan and affordability controls;
  3. When applicable, supervising any contracting Administrative Agent;
  4. Monitoring the status of all restricted units in the Borough of Cape May Point's Fair Share Plan;
  5. Compiling, verifying and submitting annual reports as required by the Superior Court;
  6. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
  7. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by the Superior Court.

## § 52-18. ADMINISTRATIVE AGENT.

[Ord. No. 07-2018]

- a. The Borough shall designate by resolution of the Borough Commission, subject to the approval of the Superior Court, one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:93 and UHAC.
- b. An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Superior Court. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- c. The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:
  1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Superior Court;
  2. Affirmative Marketing;
  3. Household Certification;
  4. Affordability Controls;
  5. Records retention;
  6. Resale and re-rental;

7. Processing requests from unit owners; and
8. Enforcement, although the ultimate responsibility for retaining controls on the units rests with the municipality.
9. The Administrative Agent shall, as delegated by the Borough Commission, have the authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

## § 52-19. ENFORCEMENT AFFORDABLE HOUSING REGULATIONS.

[Ord. No. 07-2018]

- 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, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the 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 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 found 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 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
    - (b) In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment to the Borough of Cape May Point of the gross amount of rent illegally collected and appropriately earmarked for affordable housing purposes;
    - (c) In the case of an Owner who has rented his or her 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, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any 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- and moderate-income unit.
- c. Such 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 the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- d. 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 and to the 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.

- e. 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.
- f. 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.
- g. 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.
- h. 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.

## § 52-20. APPEALS.

[Ord. No. 07-2018]

Appeals from all decisions of an Administrative Agent designated pursuant to this chapter shall be filed in writing with the Borough.

## § 52-21. MANDATORY AFFORDABLE HOUSING SET-ASIDE ORDINANCE.

[Ord. No. 08-2018]

- a. All multi-family residential development, including the residential portion of a mixed-use project, which consists of five or more new residential units, whether permitted by a zoning amendment, a use variance granted by the Zoning Board, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, shall require that an



appropriate percentage of the residential units be set aside for low and moderate income households.

- b. This requirement 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.
- c. For inclusionary projects in which the low and moderate units are to be offered for sale, the set-aside percentage should be 20 percent; for projects in which the low and moderate income units are to be offered for rent, the set-aside percentage should be 15 percent.
- d. The developer shall provide that half of the low- and moderate-income units constructed be affordable by low-income households and that the remaining half be affordable by moderate-income households. At least 13 percent of all restricted 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.
- e. Subdivision and site plan approval shall be denied by the board unless the developer complies with the requirements to provide low- and moderate-income housing pursuant to the provisions of this section. A property shall not be permitted to be subdivided so as to avoid meeting this requirement. The board may impose any reasonable conditions to ensure such compliance.
- f. Nothing in this paragraph precludes the Borough from imposing an affordable housing set aside in a development not required to have a set-aside pursuant to this paragraph consistent with N.J.S.A. 52:27D-311(h) and other applicable law.
- g. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.
- h. This requirement does not apply to any sites or specific zones otherwise identified in the Fair Share Plan, for which density and set-aside standards shall be governed by the specific standards set forth therein.

## Article IV. Affordable Housing Development Fees

[Article IV was previously codified as Article II, 52-21—52-31 and renumbered as Article IV, 52-22—52-32 by Ord. No. 07-2018]

### § 52-22. PURPOSE.

[Ord. No. 567-09 § 1]

- a. 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 rules adopted by the New Jersey Council on Affordable Housing's (COAH).
- 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 is 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 court of competent jurisdiction and have an approved spending plan may retain fees collected from nonresidential development.
- c. This Article 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 Article shall be used for the sole purpose of providing low- and

moderate-income housing. This Article shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

## § 52-23. BASIC REQUIREMENTS.

[Ord. No. 567-09 § 2]

- a. The Borough of Cape May Point shall not impose development fees on any applicant pursuant to this Article until COAH or a Court has approved the Development Fee Ordinance pursuant to N.J.A.C. 5:96-5.1, except that residential fees may be collected pursuant to the previously approved fee ordinance until such time as this ordinance takes effect, and nonresidential fees shall be collected in accordance with the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq.
- b. The Borough of Cape May Point shall not spend development fees until COAH or a Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.

## § 52-24. DEFINITIONS.

[Ord. No. 567-09 § 3]

- a. The following terms, as used in this Article, shall have the following meanings:
  1. AFFORDABLE HOUSING DEVELOPMENT – Shall mean 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% affordable development.
  2. COAH OR THE COUNCIL – Shall mean the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in the State.
  3. DEVELOPMENT FEE – Shall mean money paid by a developer for the improvement of property as permitted under N.J.A.C. 5:97-8.3.
  4. DEVELOPER – Shall mean 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.
  5. EQUALIZED ASSESSED VALUE – Shall mean 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).
  6. GREEN BUILDING STRATEGIES – Shall mean those strategies that minimize the impact of development on the environment, and enhance 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.

## § 52-25. RESIDENTIAL DEVELOPMENT FEES.

[Ord. No. 567-09 § 4]

- a. Imposed Fees.
  1. Within all zoning districts in the Borough of Cape May Point, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one

and one-half percent (1.5%) 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 shall be required to pay a development fee of 6% of the equalized assessed value (EAV) for each additional unit above that permitted by right which 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 1/2%) of the equalized assessed value on the first two units; and the specified higher percentage up to 6% 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.

b. Eligible Exactions, Ineligible Exactions and Exemptions for Residential Development.

1. 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.
2. 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.
3. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, 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 structure.
4. Nonprofit organizations which have received tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code, providing current evidence of that status is submitted to the Municipal Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee.
5. Federal, State, County and local governments shall be exempted from paying a development fee.
6. The owner of a residential unit who rebuilds when the owner's existing dwelling unit was destroyed due to fire, flood or other natural disaster shall be exempt from paying a development fee.

## § 52-26. NONRESIDENTIAL DEVELOPMENT FEES.

[Ord. No. 567-09 § 5]

a. Imposed Fees.

1. Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, 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 nonresidential construction on an unimproved lot or lots.

2. Nonresidential developers, except for developers of the types of development specifically exempted, 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 nonresidential purposes.
  3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-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. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.
- b. Eligible Exactions, Ineligible Exactions and Exemptions for Nonresidential Development.
1. The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the two and one-half percent (2.5%) development fee, unless otherwise exempted below.
  2. The two and one-half percent (2.5%) fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
  3. Nonresidential developments shall be exempt from 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 nonresidential 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 nonresidential 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 nonresidential 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 nonresidential development fees under these circumstances may be enforceable by the Borough of Cape May Point as a lien against the real property of the owner.

## § 52-27. COLLECTION PROCEDURE.

[Ord. No. 567-09 § 6; Ord. No. 15-2014; Ord. No. 2015-05; Ord. No. 02-2016]

- 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 Borough's Construction Official as well as the Zoning Official responsible for issuance of a Zoning Permit.
- b. For nonresidential 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 nonresidential development shall complete Form N-RDF as per the instructions provided. The Zoning Official shall verify the information submitted by the nonresidential 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 Zoning Official responsible for the issuance of a zoning permit shall notify the local Tax Assessor of the issuance of the first zoning 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 shall notify 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 and the Zoning Official of the amount of the fee.
- g. Should the Municipal Assessor 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.40:551)-8.6).
- h. An estimated 50% of the development fee shall be collected at the time of issuance of the zoning 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 Cape May Point. 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, N.J.S.A. 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 nonresidential 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 Cape May Point. 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, N.J.S.A. 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.

## § 52-28. AFFORDABLE HOUSING TRUST FUND.

[Ord. No. 567-09 § 7]

- a. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Borough's Chief Financial Officer for the purpose of depositing development fees collected from residential and nonresidential 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 10% of the affordable 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 Cape May Point's affordable housing program.
- c. The Borough of Cape May Point shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the Borough's banking institution, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
  - d. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH or the Court.

## § 52-29. USE OF FUNDS.

[Ord. No. 567-09 § 8]

- a. The expenditure of all funds shall conform to a spending plan approved by COAH or the Court. Funds deposited in the housing trust fund may be used for any activity approved by COAH or the Court to address the Borough of Cape May Point'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. 5:97-8.7 through 8.9 and specified in the approved spending plan.
- b. Funds shall not be expended to reimburse the Borough of Cape May Point for past housing activities.
- c. At least 30% 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. 1/3 of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% 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% 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% 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 Cape May Point 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, in accordance with N.J.A.C. 5:96-18.

- e. No more than 20% 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% 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 COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

## § 52-30. MONITORING.

[Ord. No. 567-09 § 9]

The Borough of Cape May Point shall complete and return to COAH all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, and funds from the sale of units with extinguished controls barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Borough of Cape May Points housing program, as well as to the expenditure of revenues and implementation of the plan approved by the court. All monitoring reports shall be completed on forms designed by COAH.

## § 52-31. ONGOING COLLECTION OF FEES.

[Ord. No. 567-09 § 10]

The ability of the Borough of Cape May Point to impose, collect and expend development fees shall expire with its substantive certification or judgment of compliance unless the Borough of Cape May Point has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned COAH for substantive certification, or brought a declaratory relief action in Court pursuant to N.J.S.A. 52:27D-313 and has received approval of its development fee ordinance by COAH or a Court. If the Borough of Cape May Point fails to renew its ability to impose and collect development fees prior to the expiration of its substantive certification or judgment of compliance, 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 Cape May Point shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or its judgment of compliance, nor shall the Borough of Cape May Point retroactively impose a development fee on such a development. The Borough of Cape May Point shall not expend development fees after the expiration of its substantive certification or its judgment of compliance.

## § 52-32. RESOLUTION OF CONFLICTING PROVISIONS.

[Ord. No. 567-10 § 11]

Notwithstanding the provisions of any other ordinance to the contrary, the provision of this Article shall apply to the development within the Mount Laurel zoning districts containing inclusionary affordable housing units.





**APPENDIX F – PRELIMINARY FOURTH ROUND  
AFFIRMATIVE MARKETING PLAN**



Coming Soon!



## **APPENDIX G – FOURTH ROUND SPENDING PLAN**





## **BOROUGH OF CAPE MAY POINT FOURTH ROUND SPENDING PLAN**

### **INTRODUCTION**

The Borough of Cape May Point has prepared a Fourth Round Housing Plan Element and Fair Share Plan (“HPE/FSP”) 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) as amended by P.L. 2024, c.2, and the remaining valid regulations of the former Council on Affordable Housing (“COAH”) found at N.J.A.C. 5:93-1 and N.J.A.C. 5:97-8.

The Borough of Cape May received Second Round substantive certification and approval of a Prior Round spending plan on January 5, 1999. On July 8, 2009, the Borough formally received substantive certification from COAH in relation to their petition for Third Round obligations. The Borough did not receive approval for an updated Spending Plan at the time. On June 27, 2018, the Third Round HEFSP and spending plan were amended pursuant to a 2017 Settlement Agreement between the Borough of Cape May Point and Fair Share Housing Center (“FSHC”) and a March 20, 2018, Order of Fairness and Compliance which granted the Borough “the judicial equivalent of substantive certification and accompanying protection as provided under the FHA’ per Mount Laurel IV, through July 31, 2025.”

The Borough has a development fee ordinance that was most recently amended on July 12, 2018, following the court-approved 2018 Third Round HPE/FSP. The ordinance established the Borough’s affordable housing trust fund as a dedicated revenue source of affordable housing funding. This Spending Plan sets forth how the Borough will spend its affordable housing trust funds in support of the affordable housing compliance plan detailed in the Fourth Round HEFSP.

As of December 31, 2024, the Borough collected a total of \$1,073,439.98 in revenue, including \$1,005,204.00 in development fees, \$56,114.92 in interest, \$0.00 in payments in lieu of construction of affordable housing units, and \$12,121.06 in other income, while the Borough has spent a total of \$123,627.73, including \$51,390.90 in housing activity related to a former rehabilitation program, \$0.00 in affordability assistance, and \$72,236.83 in administrative expenditures, leaving a balance in the trust fund of \$949,812.25.



All development fees, payments in lieu of constructing affordable units, other income, and interest generated are deposited in a separate, interest-bearing affordable housing trust account at Crest Savings Bank.

The Borough acknowledges that the expenditure of funds contemplated in this spending plan constitute a “commitment” for expenditure pursuant to N.J.S.A. 52:27D-329.2.d., with the four-year time period beginning to run with the date of collection of the funds as may be extended by virtue of the date of the Superior Court’s approval of this Fourth Round Spending Plan.

These funds will be spent in accordance with N.J.A.C. 5:93-8.16, as described in this Spending Plan. The Borough will rely on N.J.A.C. 5:93 or 5:97, as N.J.S.A. 52:27D-329.2.a(4) provides that “[m]unicipalities may continue to rely on regulations on development fees and spending plans previously adopted by the council until new rules and regulations are adopted by the department.”

## **REVENUES FOR CERTIFICATION PERIOD**

To calculate a projection of revenue anticipated during the Fourth Round (2025-2035), the Borough of Cape May Point has considered the following:

- (a) Development fees: \$794,035
  - 1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
  - 2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
  - 3. Future development that is likely to occur based on historical rates of development.

- (b) Payment in lieu (PIL): \$0

Actual and committed payments in lieu (PIL) of construction from developers. The Borough has not previously received any PILs, and no revenues from PILs are expected during the Fourth Round as the FHA was amended by P.L. 2024, c.2 to eliminate N.J.S.A. 52:27D-329.3 which had enabled PILs.





(c) Other funding sources: \$0

The Borough had previously collected \$12,121.06 from other sources, but does not anticipate future funds from this category at this time. Funds from other sources include, but are not limited to, the sale of units with extinguished controls, repayment of affordable housing program loans, rental income, and proceeds from the sale of affordable units. All monies in the Affordable Housing Trust Fund are anticipated to come from development fees and interest.

(d) Projected interest: \$15,722

Based on the current average interest rate and projected development fee revenue, the Borough anticipates collecting \$15,722 in interest through 2035.

As shown in Table SP-1, the Borough of Cape May Point projects a total revenue of \$809,757 during the Fourth Round (2025-2035) from residential and non-residential development fees and accrued interest. Projected residential development fees are based on an annual average of past residential development fee receipts for residential construction and improvements between 2013 and 2024 and cross-referenced with the 10-year housing stock projection contained in the HEFSP. Projected non-residential development fees are based on limited non-residential fee receipt history and minimal anticipated future commercial development in the Borough. Projected interest assumes the average interest rate of 1.98% as of December 2024.



Table SP-1. Projected Fourth Round Affordable Housing Trust Fund Revenues

Year Source of Funds		2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2025-2035 Total
Projected Residential Development	\$949,812.25 STARTING BALANCE (12/31/2024)	\$72.2k	\$72.2k	\$72.2k	\$72.2k	\$72.2k	\$72.2k	\$72.2k	\$72.2k	\$72.2k	\$72.2k	\$72.2k	\$0.79 M
Projected Non- Residential Development		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Interest		\$1.4k	\$1.4k	\$1.4k	\$1.4k	\$1.4k	\$1.4k	\$1.4k	\$1.4k	\$1.4k	\$1.4k	\$1.4k	\$15.7k
<b>Total</b>		<b>\$73.6k</b>	<b>\$73.6k</b>	<b>\$73.6k</b>	<b>\$73.6k</b>	<b>\$73.6k</b>	<b>\$73.6k</b>	<b>\$73.6k</b>	<b>\$73.6k</b>	<b>\$73.6k</b>	<b>\$73.6k</b>	<b>\$73.6k</b>	<b>\$0.81 M</b>



## **ADMINISTRATIVE MECHANISM TO COLLECT / DISTRIBUTE FUNDS**

The following procedural steps for the collection and distribution of development fee revenues shall be followed by the Borough of Cape May Point:

(a) Collection of development fee revenues:

All collection of development fee revenues will be consistent with local regulations which follow COAH administrative models for residential development in accordance with the FHA as amended by P.L. 2024, c.2, and non-residential developments in accordance with N.J.S.A. 40:55D-8.1 through 8.7.

(b) Distribution of development fee revenues:

The Planning Board adopts and forwards a resolution to the governing body recommending the expenditure of development fee revenues as set forth in this Spending Plan. Alternatively, the governing body may hear and decide upon a request for development fee revenues for the purpose of creating affordable housing. The governing body reviews the request for consistency with the Spending Plan and adopts the recommendation by resolution.

The release of funds requires the adoption of the governing body resolution. Once a request is approved by resolution, the Chief Financial Officer releases the requested revenue from the trust fund for the specific use approved in the governing body's resolution.

## **ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS**

(a) Accessory Apartment Program

The Borough will commit funds from the Affordable Housing Trust Fund to extend the Affordable Accessory Apartment Program for the creation of accessory apartments. The Borough shall provide at least \$90,000 per unit to subsidize the creation of up to two (2) very low-income accessory units, \$40,000 per unit to subsidize the creation of each low-income accessory unit, and \$20,000 per unit to subsidize the creation of each moderate-income accessory unit. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates. At this time, the Borough anticipates creating up to 20 accessory units, which would require a total subsidy of up to \$800,000.

(b) Affordability Assistance (N.J.A.C. 5:93-8.16(c))

The Borough is required to spend a minimum of 30 percent of development fee revenue to render existing affordable units more affordable, and at least one-third of that amount must be dedicated to very low-income households or to create very



low-income units (i.e. households earning less than 30 percent of the regional median income).

As shown in Table SP-2, the Borough projects that it must dedicate at least \$561,322.74 from the affordable housing trust fund to render units more affordable. Since the Borough's combined RDP for all rounds is 0, the Borough currently has no units or tenants that can take advantage of Affordability Assistance funds. To address the affordability assistance requirement, the Borough will allocate \$180,000 toward the creation of two (2) very low-income units through the Accessory Apartment Program (as discussed below) and \$381,322.74 in affordability assistance to be disbursed as soon as new affordable units are created and/or occupied. The Borough will contract with Triad Associates to administer the affordability assistance program, which may include, but may not be limited to, the following mechanisms:

- Down-payment assistance;
- Rental assistance;
- Security deposit assistance;
- Low interest loans;
- Assistance with homeowners' association or condominium fees and special assessments; and/or
- Conversion of low-income units to very-low-income units or the creation of new very-low income units, etc.

As shown in Table SP-3, the Borough projects that it must dedicate at least \$178,054.80 in very low-income affordability assistance. As noted above, the Borough will provide \$180,000 for the creation of two (2) very low-income accessory apartments in addition to affordability assistance to be disbursed as soon as new affordable units are created and/or occupied.



**Table SP-2. Projected Minimum Affordability Assistance Requirement**

Actual development fees collected through 12/31/2024		\$1,005,204.00
Actual interest earned through 12/31/2024	+	\$56,114.92
Projected development fees (1/1/2025 - 6/30/2035)	+	\$794,035.00
Projected interest (1/1/2025 - 6/30/2035)	+	\$15,721.89
<b>Total</b>	<b>=</b>	<b>\$1,871,075.81</b>
30 percent requirement	x 0.30 =	\$561,322.74
Less affordability assistance expenditures through 12/31/2024	-	\$0.00
<b>Projected Minimum Affordability Assistance Requirement</b>	<b>=</b>	<b>\$561,322.74</b>

**Table SP-3. Projected Minimum Very Low-Income Affordability Assistance Requirement**

Actual development fees collected (7/17/2008 - 12/31/2024)		\$918,802.00
Actual interest earned (7/17/2008 - 12/31/2024)	+	\$51,989.09
Projected development fees (1/1/2025 - 6/30/2035)	+	\$794,035.00
Projected interest (1/1/2025 - 6/30/2035)	+	\$15,721.89
<b>Total</b>	<b>=</b>	<b>\$1,780,547.98</b>
30 percent requirement	x 0.30 =	\$534,164.39
1/3 requirement	÷ 3 =	\$178,054.80
Less <u>very low-income</u> affordability assistance expenditures through 12/31/2024	-	\$0.00
<b>Projected Minimum <u>Very Low-Income</u> Affordability Assistance Requirement</b>	<b>x 0.33 =</b>	<b>\$178,054.80</b>



(c) Administrative Expenses (N.J.A.C. 5:93-8.16(e))

The Borough may use affordable housing trust fund revenue for related administrative costs up to a 20 percent limitation pending funding availability after programmatic and affordability assistance expenditures. The actual administrative expense maximum is calculated based on actual revenues.

As shown in Table SP-4, the Borough projects that \$301,978.33 may be available from the affordable housing trust fund to be used for administrative purposes. Projected administrative expenditures, subject to the 20 percent cap, are as follows:

- Borough Attorney, Engineer, and Planner fees related to plan preparation and implementation;
- Administration fees related to rehabilitation, extension of expiring controls, and municipally-sponsored construction programs;
- Affirmative Marketing;
- Income qualification of households; and
- Administration of Borough's Affordable Housing Units.

**Table SP-4. Projected Allowed Administrative Expenses**

Actual development fees collected through 12/31/2024	\$1,005,204.00
Actual interest earned through 12/31/2024	+ \$56,114.92
Actual payments-in-lieu through 12/31/2024	+ \$0
Projected development fees (1/1/2025 – 6/30/2035)	+ \$794,035
Projected interest (1/1/2025 – 6/30/2035)	+ \$15,722
<b>Total</b>	<b>= \$1,871,075.81</b>
20 percent maximum permitted administrative expenses	x 0.20 = \$374,215.16
Less administrative expenditures through 12/31/2024	– \$72,236.83
<b><i>Projected allowed administrative expenditures</i></b>	<b>= \$301,978.33</b>

**EXPENDITURE SCHEDULE**

The Borough of Cape May Point intends to use affordable housing trust funds revenues for its Affordable Accessory Apartment Program, affordability assistance including the creation of very low-income units, and administrative expenses. Where applicable, the Projected Expenditure Schedule in Table SP-5 will reflect the implementation schedule to be set forth in the Fourth Round HEFSP.



Table SP-5. Projected Expenditure Schedule, 2025-2035

Program	Units	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
Housing Activity (Accessory Apartment Program)	20	\$72.7k	\$72.7k	\$72.7k	\$72.7k	\$72.7k	\$72.7k	\$72.7k	\$72.7k	\$72.7k	\$72.7k	\$72.7k	\$800k
Affordability Assistance		\$59.8k	\$59.8k	\$59.8k	\$59.8k	\$59.8k	\$59.8k	\$59.8k	\$59.8k	\$59.8k	\$59.8k	\$59.8k	\$658k
Administration		\$27.5k	\$27.5k	\$27.5k	\$27.5k	\$27.5k	\$27.5k	\$27.5k	\$27.5k	\$27.5k	\$27.5k	\$27.5k	\$302k
TOTAL		\$160k	\$160k	\$160k	\$160k	\$160k	\$160k	\$160k	\$160k	\$160k	\$160k	\$160k	\$1.76 M



## **EXCESS OR SHORTFALL OF FUNDS**

While no shortfall of funds is anticipated, the Borough commits to adopting a resolution of intent to fund all programs detailed in this Spending Plan, including via all outside funding sources and municipal funding including but not limited to municipal bonding. Any excess in funds collected over what has been projected will be dedicated to additional accessory units and bond payments to the extent required.

## **MONITORING**

In accordance with the requirements of N.J.S.A. 52:27D-301 *et seq.* as amended by P.L. 2024 c.2, by February 15 of each year of the Fourth Round, the Municipality will provide data entry in DCA's new AHMS monitoring system including a detailed accounting of all residential and non-residential fees collected, interest earned, and other income collected and deposited into the Municipality's affordable housing trust fund during the prior calendar year. The Municipality will also provide a detailed accounting of all expenditures of affordable housing trust funds during the prior calendar year, including purposes and amounts, and documentation of the balance remaining in the affordable housing trust fund as of December 31 of that year.

## **SUMMARY**

The Borough of Cape May Point intends to spend affordable housing trust fund revenues pursuant to the regulations governing such funds and consistent with the Fourth Round HPE/FSP. As of December 31, 2024, the Borough had a balance of \$949,812.25 and projects an additional \$809,757 in revenues during the Fourth Round for a total of \$1,759,569.14 by June 30, 2035. The Borough estimates that up to \$800,000 will be spent to subsidize the creation of affordable units through the Borough's Affordable Accessory Apartment Program (including two (2) very low-income units) and an additional \$381,322.74 will be spent on affordability assistance once affordable units are created and/or occupied. The Borough may also expend up to \$301,978.33 of the trust fund on administrative costs during the Fourth Round. Table SP-6 provides a summary of the Borough's Fourth Round Spending Plan.





**Table SP-6. Spending Plan Summary**

<b>Revenues</b>		
Balance as of 12/31/2024		\$949,812.25
Projected Revenues through 6/30/2035		
1. Development fees	+	\$794,035
2. Interest	+	\$15,722
3. Other funds	+	\$0
<b>Total Projected Revenue</b>	<b>=</b>	<b>\$1,759,569.14</b>
<b>Expenditures</b>		
Accessory Unit Program	-	\$800,000.00
Affordability Assistance	-	\$657,590.81
Administration	-	\$301,978.33
<b>Total Projected Expenditures</b>	<b>=</b>	<b>\$1,759,569.14</b>



## **APPENDIX H – AFFORDABLE HOUSING ADMINISTRATION DOCUMENTS**



**BOROUGH OF CAPE MAY POINT  
COUNTY OF CAPE MAY  
STATE OF NEW JERSEY**

**RESOLUTION 58-25**

**APPOINTING MUNICIPAL HOUSING LIAISON**

**WHEREAS**, Cape May Point has established an affordable housing program to provide for ownership and rental units for very low-, low-, and moderate-income households to satisfy its constitutional obligation under Southern Burlington County NAACP vs. Mount Laurel, 67 N.J. 151 (1975); and

**WHEREAS**, Chapter 52, section 17 of the Code of the Borough of Cape May Point provides for the appointment of a Municipal Housing Liaison to administer Cape May Point's affordable housing program in accordance with all applicable state and local regulations including Housing Affordability Control, N.J.A.C. 5:80-26.1 et seq.

**NOW THEREFORE BE IT RESOLVED**, by the Governing Body of the Borough of Cape May Point, County of Cape May, State of New Jersey that Jim Craft is hereby appointed as the Municipal Housing Liaison, effective May 1, 2025, for the administration of the affordable housing program, pursuant to and in accordance with Section 52-17 of the Code of the Borough of Cape May Point and N.J.A.C. 5:80-26.1 et seq.

	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Geiger						
vanHeeswyk						
Yunghans						

I hereby certify that the foregoing is a true copy of a Resolution duly passed and adopted by a majority of full membership of the Board of Commissioners of the Borough of Cape May Point, County of Cape May, New Jersey, at a meeting held on April 22, 2025.

\_\_\_\_\_  
Municipal Clerk



**RESOLUTION NO:**

**RESOLUTION OF THE COUNCIL OF THE BOROUGH OF CAPE MAY POINT, CAPE  
MAY COUNTY, NEW JERSEY, OF INTENT TO FUND SPENDING PLAN SHORTFALL  
FOR AFFORDABLE HOUSING PROGRAMS IN THE BOROUGH'S HOUSING  
ELEMENT & FAIR SHARE PLAN**

**WHEREAS**, pursuant to the NJ Fair Housing Act and N.J.A.C. 5:93, certain portions of the Borough's Fourth Round Housing Plan Element and Fair Share Plan as adopted by the Cape May Point Borough Planning Board on May 20, 2020, may require a financial commitment by the Borough; and

**WHEREAS**, the municipality must resolve to address any shortfall in the funding of its affordable housing programs as set forth in the Spending Plan and the Fair Share Plan, including its willingness to incur bonded indebtedness, if necessary, to provide the funds required for the timely implementation of the Fair Share Plan;

**NOW THEREFORE BE IT RESOLVED**, by the Governing Body of the Borough of Cape May Point, in the County of Cape May, New Jersey, as follows:

- I. To the degree that the funds required for the implementation of the Borough's Fair Share Plan, as will be more particularly set forth in the Borough's approved Spending Plan, are not available at the time they are needed from all available affordable housing funding sources, the Borough will provide the funding needed to cover any shortfall through appropriations in the Borough's annual budget, bonding, or any other legal means, with the understanding that any future affordable housing funding which becomes available may be used to reimburse the Borough for the costs incurred.

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Mayor, Borough of Cape May Point

I, \_\_\_\_\_, Borough Clerk of the Borough of Cape May Point, do hereby certify that the above is a true copy of a resolution adopted by the Borough Council at a meeting held on \_\_\_\_\_.

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Borough Clerk, Borough of Cape May Point

