

**Borough of North Caldwell**  
**County of Essex**  
**July 1, 2020**

**Midpoint Review Report**

**Purpose**

The Borough of North Caldwell is required to comply with the statutory midpoint review requirements of the Fair Housing Act (“FHA”) and specifically N.J.S.A. 52:27D-313, which provides in relevant part: “[t]he Council shall establish procedures for a realistic opportunity review at the midpoint of the certification period and shall provide for notice to the public.” Pursuant to the Settlement Agreement between Fair Share Housing Center (“FSHC”) and the Borough (hereinafter the “FSHC Settlement Agreement”), that review requires the Borough to post on its website on July 1, 2020, with a copy to FSHC, and an opportunity for comment, a status report regarding its compliance mechanisms and whether or not unbuilt sites/unfulfilled mechanisms continue to present a realistic opportunity. The Settlement also contemplates review of unmet need/deferred mechanisms, though the realistic opportunity for the construction of those mechanisms during the compliance period is not applicable.

**Relevant Background**

On July 2, 2015, the Borough filed a declaratory judgment action, seeking a determination of its Round Three affordable housing obligations and approval of its proposed Housing Element and Fair Share Plan to satisfy such obligations and, thereby, obtain a Judgment of Compliance and Repose from the Court, pursuant to the March 2015 New Jersey Supreme Court decision, In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”). The Court appointed a Special Master, Francis J. Banisch III, P.P., A.I.C.P., as is customary in Mount Laurel matters. The Special Master assisted the Borough in reaching a settlement agreement with FSHC, a non-profit organization dedicated to protecting the rights of low and moderate income households in New Jersey. The FSHC Settlement Agreement was entered into on December 11, 2018, and the settlement was approved by the Court via an Order entered on February 15, 2019, after a properly noticed Fairness Hearing was held. The Borough obtained a conditional Judgment of Compliance and Repose (“JOR”) approving the Borough’s Housing Element and Fair Share Plan on September 26, 2019, after a properly noticed Compliance Hearing was held, which secured immunity for the Borough from all Mount Laurel lawsuits, including but not limited to, Builders Remedy lawsuits, until July 2, 2025. The Borough has satisfied three of the four conditions of its JOR, and as to the final condition, the Borough just introduced a revised version of the Green Brook Golf Course Overlay Zone Ordinance on June 23, 2020, which will be up for adoption in July of 2020.

The Court approved FSHC Settlement Agreement, established the Borough’s Third Round Fair Share obligations as follows:

- Rehabilitation Obligation: 20
- Prior Round Obligation (1987-1999): 63

- Third Round Gap and Prospective Need Obligation (1999-2025): 360

### **Rehabilitation Program(s) Update**

The Borough has a 20-unit Rehabilitation Obligation. The Borough will work with Essex County, and is also in the process of putting together a local rehabilitation program to address its rehabilitation obligation.

### **Realistic Opportunity Review**

The realistic opportunity standard applies to all mechanisms for non-adjustment municipalities, and Realistic Development Potential (or “RDP”) mechanisms for Vacant Land Adjustment municipalities.

The Borough is a Vacant Land Adjustment municipality, and has a Court approved combined Prior Round (1999-2025) and Third Round (1999-2025) RDP of 64.

The status of the Borough’s satisfaction of its RDP of 64 is as follows:

- **RPM Project**: Forty-eight (48) family rental units from the Borough’s under construction 50-unit 100 percent affordable family rental project on a five-acre parcel located within the Borough. The Borough has entered into a Redevelopment Agreement and a PILOT Agreement with RPM Development, LLC (“RPM”) to build and run the project, RPM has received Site Plan Approval from the Borough Planning Board, and RPM applied for and received nine percent (9%) tax credits from the HMFA. Four (4) of the Five (5) buildings in the project are constructed with lease up and occupancy ongoing. The final building should be constructed by Labor Day.
- Sixteen (16) rental bonus credits.

### **Unmet Need**

As contemplated in the FSHC Settlement Agreement, the Borough is in the process of addressing its remaining unmet need as follows:

- **RPM Project**: Two (2) family rental affordable units from the RPM one hundred percent (100%) affordable family rental housing project.
- **Bloomfield Avenue Overlay Zone**: The Borough adopted an overlay zone Ordinance for Bloomfield Avenue, which was set at ten (10) units per acre, and which requires a twenty percent (20%) affordable housing set-aside for for-sale units and a fifteen percent (15%) affordable housing set-aside for rental units. There is currently one proposed project in the zone that is under review by the Borough Planning Board, which will also be reviewed in accordance with the required affordable housing set-aside requirements.

- Fairfield Road Overlay Zone: The Borough adopted an overlay zone for Fairfield Road, which was set at ten (10) units per acre, and which requires a twenty percent (20%) affordable housing set-aside for for-sale units and a fifteen percent (15%) affordable housing set-aside for rental units. There are no applications for any proposed projects currently pending before the Planning Board in this zone.
- Mandatory Set-Aside Ordinance: The Borough adopted a Borough-wide Mandatory Set-Aside Ordinance (“MSO”), which requires that any site that benefits from a rezoning, variance or redevelopment plan approved by the Borough that results in multi-family residential development of five (5) dwelling units or more to produce affordable housing at a set-aside rate of twenty percent (20%) for for-sale affordable units and at a set-aside rate of fifteen percent (15%) for rental affordable units. The MSO does not give any developer the right to any such rezoning, variance, redevelopment designation or other relief, or establish any obligation on the part of North Caldwell to grant such rezoning, variance, redevelopment designation or other relief. There are no applications for any proposed projects currently pending before the Planning Board under the MSO.
- Green Brook Golf Course Overlay Zone: The Borough is in the process of adopting an Ordinance to create an overlay zone over the Green Brook Country Club (Block 1600, Lot 1), so that affordable housing can be created on the site if it ceases to remain a golf course in the near future. If this were to occur, the project will deliver 50 total affordable units, which will be made of (1) 25 age-restricted affordable units from a combination of affordable Assisted Living Facility beds and affordable age-restricted rental units, and (2) 25 affordable family rental units.

### *Very Low Income Analysis*

The RPM 100 percent affordable project will deliver seven (7) affordable very low income units. Additional very low income units will be captured via the various compliance techniques that are described in the unmet need section above.

### *Conclusion*

The Borough’s plan implementation continues to create a realistic opportunity where that standard is applicable, and the Borough maintains sufficient mechanisms for addressing unmet need.