

BOROUGH OF SWEDESBORO  
COUNTY OF GLOUCESTER

**Midpoint Review Report**

**Purpose**

The Borough of Swedesboro 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 2, 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.

**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, Philip B. Caton, P.P., F.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 November 7, 2016, and the settlement was approved by the Court via an Order entered on December 14, 2016, 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 April 14, 2017, 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.

As part of the process described above, the Borough adopted all required resolutions and zoning ordinances.

**Rehabilitation Program(s) Update**

The Borough has a Rehabilitation Obligation of 15. The Borough’s JOR approved eight (8) credits from existing units rehabilitated under the Gloucester County HOME Investment Partnership Program, which reduced the Borough’s remaining Rehabilitation Obligation to seven (7). The Borough will continue to participate in the county program to address its remaining Rehabilitation Obligation. Due to the *de minimus* nature of the Borough’s remaining

Rehabilitation Obligation, the requirement that the Borough create a rehabilitation program for rental units was waived by the Court in the JOR.

**Realistic Opportunity Review**

The realistic opportunity standard applies to all mechanisms for non-adjustment municipalities such as Swedesboro Borough. The Borough continues to create a realistic opportunity towards the satisfaction of its Prior Round (1987-1999) and Third Round Obligation (1999-2025) as follows:

| <b><u>Mechanism</u></b>   | <b><u>Affordable Units</u></b>                                      | <b><u>Ordinance Adopted (Yes/No)</u></b> | <b><u>Status</u></b>      | <b><u>Notes/Additional Information</u></b>   |
|---|---|--|---------------------------|--|
| 100 Percent Affordable Kings Way Apartments. (Block 52, Lot 2.03).<br><br>Plan A or Plan B. | 36 age-restricted and/or special needs affordable units .           | Yes.                                     | Constructed and occupied. |  |
| DelMonte Site (Block 23, Lot 1)<br><br>Plan A: 100% Affordable Eastern Pacific Project.     | 62-unit 100% affordable family rental project                       |  | Proposed.                 | A redeveloper’s agreement and a PILOT Agreement were entered into between the Borough and the developer.   |
| DelMonte Site (Block 23, Lot 1)<br><br>Plan B: Inclusionary Project.                        | 124 total units of which 19 will be affordable family rental units. |  | Proposed.                 | As described, this project will be appropriately zoned in the event that the developer of the proposed 100% affordable project, described above, t is unable to obtain funding   |
| Valley View Site (Block 52, Lots 1 and 13)<br><br>Plan B: Inclusionary Project.             | 140 total units of which 18 will be affordable family rental units. |  | Proposed.                 | This site was the subject of a builder’s remedy law suit, and is subject to a Settlement Agreement between the owner of the site and the Borough. That Settlement Agreement has been recorded with the County, and its affordable housing requirements run with the land, binding any future owners of the property. The Borough has consistently adhered to the |

|   |   |  |           | provisions of the Settlement Agreement. |
|---|---|--|-----------|---|
| Block 3, Lot 1<br><br>Plan B:<br>Inclusionary<br>Project.             | 12 total units<br>of which 2<br>will be<br>affordable<br>family rental<br>units.  |  | Proposed. |   |
| Block 5, Lot 1<br><br>Plan B:<br>Inclusionary<br>Project.             | 24 total units<br>of which 4<br>will be<br>affordable<br>family rental<br>units.  |  | Proposed. |   |
| Block 52, Lot 2<br><br>Plan B:<br>Inclusionary<br>Project.            | 63 total units<br>of which 10<br>will be<br>affordable<br>family rental<br>units. |  | Proposed. |   |
| Block 14, Lots 4<br>& 4.02<br><br>Plan B:<br>Inclusionary<br>Project. | 24 total units<br>of which 4<br>will be<br>affordable<br>family rental<br>units.  |  | Proposed. |   |

The Borough and FSHC agreed to allow the Borough to fulfill its Prior Round and Third Round obligations with two (2) alternative plans, referenced in the Settlement Agreement as “Plan A” and “Plan B.” Currently existing affordable units are located in the Kings Way Apartments. Plan A proposed satisfying the remainder of the Borough’s obligations through the development of a 100% affordable project, located on the Del Monte site. In furtherance of such project, the Borough entered into a Redevelopment Agreement and a PILOT Agreement with Eastern Pacific Development, LLC. Said project is dependent on the developer obtaining necessary HMFA funding. In the event that the developer of said project was not able to obtain the necessary funding, then the Borough and FSHC agreed that the Borough would satisfy its obligations through the re-zoning of several sites, which comprise “Plan B.” Although Eastern Pacific has yet to obtain the necessary funding, the developer remains interested in constructing the project, and the Borough is supportive of its endeavors. In addition, the Borough is a party to a Settlement Agreement arising out of a builder’s remedy law suit filed by the then-owners of the Valley View site which, if developed, will generate affordable housing units.

As the Borough’s plan is actually comprised of two alternative plans, the Borough is currently operating under Plan A. Plan B is, therefore, a deferred mechanism. Because the developer of the proposed 100% affordable project remains highly interested in constructing the project, and has requested additional time to obtain the necessary funding for the project, the

Borough has agreed to implement a request from FSHC that will allow Eastern Pacific to continue to apply for HMFA tax credits. As part of this agreement, the Borough will move forward with a portion of the zoning required by Plan B.

**Very Low Income Analysis**

The Borough will ensure that 13% of all of the affordable units created under Plan A or Plan B, with the exception of units constructed as of July 1, 2008 and units subject to preliminary or final site plan approval, will be affordable to very low income households. Half of the very low income units will be made available to families.

**Conclusion**

The Borough plan implementation continues to create a realistic opportunity.