

AFFORDABLE HOUSING MIDPOINT REVIEW

**Borough of Highlands
Monmouth County, New Jersey**

July 1, 2021

Prepared By:



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Community Planning Consultants

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AFFORDABLE HOUSING MIDPOINT REVIEW
BOROUGH OF HIGHLANDS, MONMOUTH COUNTY

Purpose

The Borough of Highlands' Settlement Agreement with Fair Share Housing Center (FSHC) requires that the Borough 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, that review requires the Borough to post on its website, with a copy to FSHC, a status report regarding its compliance mechanisms and whether or not unbuilt sites/unfulfilled mechanisms continue to present a realistic opportunity. Such posting shall invite any interested party to submit comments to the Borough, with a copy to FSHC, regarding the implementation of the Plan.

Relevant Background

Although the Borough of Highlands' first Housing Element and Fair Share Plan (HEFSP) was adopted as part of its Master Plan in 2004, the Borough was not under the jurisdiction of COAH and therefore did not file for substantive certification in previous rounds or file a declaratory judgment action in response to Mount Laurel IV in 2015 along with other NJ municipalities. Since that time, however, the Borough has taken initiative to meet its affordable housing obligation. The Borough adopted an amended HEFSP on July 14, 2016 and filed a declaratory judgment action on December 27, 2016 (Docket No. MON-L-0012-17). The 2016 declaratory judgment action sought 1) approval of the HEFSP, 2) issuance of a Judgment of Compliance and Repose (JOR), and 3) approval of the Borough's development fee ordinance and Spending Plan.

The Borough entered into a Settlement Agreement with FSHC on June 19, 2019 (signed by the Borough on June 25, 2019) and a subsequent Fairness and Preliminary Compliance Hearing was held August 9, 2019 wherein the Settlement Agreement was approved by the Court and deemed fair and reasonable. The resulting Order of Fairness and Preliminary Compliance was issued by the Honorable Linda Grasso Jones, J.S.C. on September 23, 2019. Court Master Michael P. Bolan, AICP, PP prepared a Report dated August 5, 2019 establishing 13 conditions for the Borough, all of which have been met. The Borough's Final Compliance Hearing was initially held on December 23, 2019 and then completed on April 6, 2021. The Court entered a Third Round Final Judgment of Compliance and Repose on May 22, 2020 (the "Final Judgment"). Pursuant to the Final Judgment, the Borough is immune from Mt. Laurel or exclusionary zoning lawsuits through July 1, 2025. Pursuant to the Court-approved Settlement Agreement, the Borough has the following affordable housing obligation:

Rehabilitation Share: 65

Prior Round Obligation: 20

Third Round Total Obligation: 72

Third Round RDP: 10

Third Round Unmet Need: 62

In accordance with the Fair Housing Act (FHA) and Municipal Land Use Law (MLUL), the Borough's Land Use Board adopted an amended HEFSP on October 3, 2019, to effectuate the terms of the Court-approved Settlement Agreement. Additionally, the Borough Council has adopted all requisite documents, including:

- Ordinance #19-17 creating Chapter 26, Affordable Housing in accordance with N.J.A.C. 5:80-26.1 et seq., adopted by Borough Council on October 16, 2019;
 - Chapter 26 includes the Affordable Housing Mandatory Set-Aside ordinance (Section 26-2) and Development Fee ordinance (Section 26-3).
- Resolution #19-260 approving and adopting the Affordable Housing Trust Fund Spending Plan on October 16, 2019;
- Resolution #19-261 endorsing the Amended Housing Element and Fair Share Plan on October 16, 2019;
- Resolution #19-263 adopting the Affirmative Marketing Plan on October 16, 2019;
- Resolution #19-264 appointing the Borough's Business Administrator as the Municipal Housing Liaison on October 16, 2019; and,
- Resolution #19-278 appointing Community Grants, Planning & Housing (CGP&H) as Administrative Agents for Affordability Controls on November 13, 2019.

Rehabilitation Program Update

The Borough of Highlands has a Rehabilitation/Present Need obligation of 65 units. As detailed in the Spending Plan, the Borough retains the option to utilize \$90,855 from the Affordable Housing Trust Fund to implement its own municipal-wide renter/owner rehabilitation program or contract with a separate entity to undertake rehabilitation efforts in the Borough. The Borough may also address its Present Need through participation in the Monmouth County Rehabilitation Program. The Court has determined that this partnership with the County is sufficient to meet the Borough's Present Need Obligation.

County Rehabilitation Update

In Monmouth County, Community Development Block Grant (CDBG) and HOME Investment Partnership Program (HOME) funding is coordinated and administered by the Community Development Department. The CDBG Program provides block grant funds for communities to carry

out affordable housing and community development activities directed toward revitalizing neighborhoods, economic development, and providing improved community facilities and services. The HOME Program is a housing rehabilitation program for renter- or owner-occupied units. Funds from the HOME program are typically issued to nonprofit organizations, individuals, corporations, and other public entities that are in partnership with communities. From 2009 to 2017, approximately \$25,000 in CDBG funding was expended on five (5) rehabilitation projects in the Borough. There have been no subsequent rehabilitation projects since 2017. See Appendix A for information on the rehabilitation projects.

Realistic Opportunity Review

The realistic opportunity standard applies to all mechanisms for non-adjustment municipalities and RDP/non-deferred mechanisms for Vacant Land/Durational Adjustment municipalities. In accordance with N.J.A.C. 5:93-4.2, the Borough prepared a vacant land analysis (VLA) to determine the amount of actual developable land, and by extension, assign a realistic development potential (RDP). Due to a lack of developable land, the Borough’s VLA established an initial RDP of 0 units. As a result of a 49-unit development approved and constructed on Lots 27 and 30 in Block 101 with no affordable set-aside, the Borough’s RDP was subsequently increased to 10 units as part of the FSHC Settlement Agreement. The Borough intends to address its 10-unit RDP the following mechanisms:

Borough of Highlands, Monmouth County Realistic Opportunity Review				
<u>Mechanism</u>	<u>Description</u>	<u>Ordinances Adopted</u>	<u>Status</u>	<u>Notes/Additional Information</u>
Ptak Towers Lots 16, 19.01 & 24 in Block 61	2 age- restricted rental units	N/A	RAD Agreement signed 7/27/2018	95 age-restricted units in all. 5 credits went towards Prior Round; 2 credits are applied to Third Round RDP.
Monmouth Highlands Apartments Lots 5.01-5.16 in Block 20	6 family rental units	N/A	Control Period began via Deed dated 4/27/20 (see Appendix B)	16 units in all, 15 of which are currently occupied. 10 credits were applied to the Prior Round and the remaining 6 credits, as well as 2 rental bonus credits, are applied to the Third Round RDP.
	2 rental bonus credits			1 vacant unit is currently being actively marketed.
TOTAL TOWARDS RDP:				10 units

There are no complicated or unusual circumstances associated with the above mechanisms.

Unmet Need or Deferred Mechanisms

The Borough intends to address its 62-unit Unmet Need through the following mechanisms:

Borough of Highlands, Monmouth County Unmet Need or Deferred Mechanisms				
<u>Mechanism</u>	<u>Description</u>	<u>Ordinances Adopted</u>	<u>Status</u>	<u>Notes/Additional Information</u>
Ptak Towers Lots 16, 19.01 & 24 in Block 61	15 age- restricted rental units	N/A	Rental Assistance Demonstration (RAD) Agreement signed 7/27/2018	95 age-restricted units in all. 5 credits went towards Prior Round; 15 credits are applied to Third Round Unmet Need
Shadow Lawn Redevelopment Area	TBD	Redevelopment Plan adopted 12/19/18	No applications have triggered the set-aside requirement yet.	The Plan provides for 13 acres to be developed at a maximum density of 30 du/gross acre, for a total of 390 units with a 15% set-aside. Resolution #21-61 conditionally designated Alpine Residential, LLC as the Redeveloper for this site on 2/17/21.
Borough-Wide Mandatory Set-Aside Ordinance	TBD	Ordinance #19- 17 adopted 10/16/19	No applications have triggered the set-aside requirement as of yet.	All new multi-family residential development of 5+ units require a 15% set-aside for rental, 20% for for-sale
TOTAL TOWARDS UNMET NEED:				62 units

Very Low-Income Analysis

The Borough will ensure that 13% of all of the affordable units created under the Implementation Plan, with the exception of units constructed as of July 1, 2008 and units subject to preliminary or final site plan approval as of July 1, 2008, will be affordable to very low-income households. Half of the very low-income units will be made available to families. The Borough intends to comply with the very low-income requirement through the following actions:

- Pursuant to the April 27, 2020 Deed attached as Appendix B and conversations with Affordable Housing Alliance, 12 of the 16 units at Monmouth Highlands Apartments (37 Navesink Avenue) are occupied by very low-income households, far exceeding the required minimums established in the Court-approved Settlement Agreement.

- Requiring 13% of the affordable units to be developed as part of the Shadow Lawn Redevelopment Area (Lot 1.1 in Block 105.107) to be made available to very low-income households.
- Ensuring that 13% of any affordable units are developed through the Borough-wide affordable housing mandatory set-aside ordinance.

Borough of Highlands, Monmouth County Very Low-Income Breakdown Analysis		
<u>Development</u>	<u># OF TOTAL AH UNITS POST 2008</u>	<u>Very Low-Income units from development</u>
Ptak Towers	0	0
Monmouth Highlands Apartments	0	12
Shadowlawn Redevelopment Area	TBD	TBD - Administrative Agent will ensure that 13% of the affordable units produced will be made available to very low-income households
Mandatory Set-Aside Ordinance		
APPROVED/PROPOSED TOTALS	0	>2

Conclusion

Highlands Borough’s plan implementation continues to create a realistic opportunity for the development of affordable housing units, and the Borough maintains sufficient mechanisms for addressing its Rehabilitation/Present Need Obligation, its RDP, and its Unmet Need.

Appendix A

County Rehabilitation Activities in Highlands Borough

**Midpoint Review of the Borough of Highlands, Monmouth County
County Rehabilitation Update**

#	Address	Program	Status	Final Cost	Completion Date	Repair Completed (if available)
1	201 Shore Drive	HIP	Completed	\$14,525.00	4/19/1989	
2	14 4th. St.	HIP	Completed	\$11,930.00	7/3/1990	roof, sanitary plumbing, heating, windows and/or doors
3	24 Waterwitch Avenue	HIP	Completed	\$2,795.00	8/3/1987	
4	48 Second Street	HIP	Completed	\$12,400.00	4/19/1989	
5	94 Valley Drive/ Box 286	HIP	Completed	\$12,500.00	10/24/1987	
6	34 East North Street	HIP	Completed	\$12,740.00	1/16/1997	electricity,heating,plumbing,windows and/or doors,siding,paint,roof
7	20 Ocean Avenue	HIP	Completed	\$11,320.00	4/19/1989	
8	19 5th Street	HIP	Completed	\$7,384.00	4/27/1989	
9	254 Bayside Dr	HIP	Completed	\$13,725.00	9/8/1992	electricity,roof,windows and/or doors,insulation-weatherization
10	50 Second Street	HIP	Completed	\$11,800.00	4/29/1988	
11	388 Shore Drive	HIP	Completed	\$7,275.00	5/2/1989	
12	63 Seadriftwood Avenue	HIP	Completed	\$11,308.00	9/14/1987	
13	21 Barberie Ave.	HIP	Completed	\$9,070.00	2/15/1991	electricity, roof, paint, windows and/or doors
14	58 2nd Street	HIP	Completed	\$15,605.00	3/6/1996	
15	9 Locust Street	HIP	Completed	\$28,150.00	5/31/2011	roof,electricity,load bearing systems,windows and/or doors,siding,lead paint removal
16	141 Bay Ave.	HIP	Completed	\$14,955.00	11/20/1990	electricity, heating, plumbing, siding, windows and/or doors
17	344 Shore Dr.	HIP	Completed	\$11,887.00	5/1/1990	electricity, roof, windows and/or doors, plumbing, heating
18	36 Ocean Ave	HIP	Completed	\$14,520.00	2/27/2007	roof,heating,electricity,windows and/or doors
19	43 Second St.	HIP	Completed	\$12,410.00	5/1/1990	roof, heating, electricity, Gutters, paint, windows and/or doors, insulation-weatherization
20	P.O. Box 192	HIP	Completed	\$11,590.00	4/23/1990	roof, electricity, windows and/or doors
21	286 Bay Avenue	HIP	Completed	\$11,711.00	9/28/1987	
22	215 Bay Avenue	HIP	Completed	\$10,005.00	12/11/1987	
23	63 Snug Harbor	HIP	Completed	\$8,721.00	4/27/1989	
24	42 Ocean Avenue	RR	Completed	\$17,905.00	9/19/2001	

**Midpoint Review of the Borough of Highlands, Monmouth County
County Rehabilitation Update**

#	Address	Program	Status	Final Cost	Completion Date	Repair Completed (if available)
25	88 Seadrift Avenue	HIP	Completed	\$5,819.00	5/26/1989	
26	27 Miller Street	HIP	Completed	\$36,430.00	3/1/2010	roof,heating,electricity,sanitary plumbing,windows and/or doors,paint,floors,lead paint removal, front stairs
27	38 Miller Street	HIP	Completed	\$11,200.00	3/12/1990	
28	25 Portland Rd	HIP	Completed	\$5,930.00	11/22/2000	plumbing,electricity,windows and/or doors,
29	46 Second Street	HIP	Completed	\$8,590.00	7/18/1988	
30	15 Second Street	HIP	Completed	\$10,680.00	11/4/1987	
31	64 Barberie Avenue	Emergency Repair Program & Office on Aging	Completed	\$5,800.00	2017	Roofing
32	14 Barberie Avenue	Emergency Repair Program	Completed	\$6,000.00	2009	Roofing
33	3 Private Road	Emergency Repair Program & Office on Aging	Completed	\$6,015.00	2017	Vertical Platform
34	72 Miller Street	Emergency Repair Program	Completed	\$2,300.00	2017	Lifts
35	8 Beach Blvd	Emergency Repair Program & Office on Aging	Completed	\$4,800.00	2017	Roofing

Appendix B

Monmouth Highlands Apartments Deed Restriction, dated April
21, 2020



Monmouth County Document Summary Sheet

MONMOUTH COUNTY CLERK PO BOX 1251 MARKET YARD FREEHOLD NJ 07728	Transaction Identification Number	4337707	4047046
	Recorded Document to be Returned by Submitter to: VESTED RECORDINGS 165 PASSAIC AVE. STE 101 FAIRFIELD, NJ 07004		

Official Use Only

CHRISTINE GIORDANO HANLON
 COUNTY CLERK
 MONMOUTH COUNTY, NJ

 INSTRUMENT NUMBER
 2020046025
 RECORDED ON
 May 01, 2020
 12:20:29 PM
 BOOK:OR-9411 PAGE:3710
 Total Pages: 7

 COUNTY RECORDING FEES \$80.00
 TOTAL PAID \$80.00

Submission Date (mm/dd/yyyy)		04/29/2020
No. of Pages (excluding Summary Sheet)		5
Recording Fee (excluding transfer tax)		\$80.00
Realty Transfer Tax		\$0.00
Total Amount		\$80.00
Document Type	AGREEMENT	
Electronic Recordation Level	L2 - Level 2 (With Images)	
Municipal Codes		1901
HIGHLANDS		
		1052320

Additional Information (Official Use Only)

* DO NOT REMOVE THIS PAGE.
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Monmouth County Document Summary Sheet

AGREEMENT	Type		AGREEMENT			
	Consideration					
	Submitted By		VESTED RECORDINGS (CSC/INGEO SYSTEMS INC)			
	Document Date		04/21/2020			
	Reference Info					
	Book ID	Book	Beginning Page	Instrument No.	Recorded/File Date	
	MB	5290	834			
	GRANTOR		Name		Address	
			MONMOUTH HEIGHTS APARTMENTS AFFORDABLE HOUSING ALLIANCE INC			
	GRANTEE		Name		Address	
			BOROUGH OF HIGHLANDS			
	Parcel Info					
	Property Type	Tax Dist.	Block	Lot	Qualifier	Municipality

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Deed Restriction

THIS DEED RESTRICTION, entered into as of this the 21 day of APRIL, 2020, by and between the Borough of Highlands, a New Jersey municipal corporation, with offices at 42 Shore Drive, Highlands, New Jersey 07732 (the "**Municipality**"), and Affordable Housing Alliance, Inc. a New Jersey non-profit corporation having offices at 3535 Route 66, Parkway 100, Building 4, Neptune Township, New Jersey 07753 (the "**Owner**") as owner of a 16 unit family rental apartment project known as Monmouth Heights Apartments located at 37 Navesink Avenue, Borough of Highlands, New Jersey and identified as Block 20, Lots 5.01 through 5.16, inclusive, on the Borough of Highlands tax map (the "**Project**");

WITNESSETH

Article 1. Consideration

In consideration of the payment of \$100,000.00 and other benefits to be paid and/or provided by the Municipality to the Owner and in accordance with the terms and conditions of the Agreement between the Municipality and the Owner dated April 6, 2020,, which is incorporated by reference as if fully set forth at length herein, the Owner hereby agrees to abide by the covenants, terms and conditions set forth in this Deed Restriction with respect to the ten (10) residential units within the Project, which units are more specifically described in Article 2 hereof (individually a "**Restricted Unit**" and collectively, the "**Restricted Units**").

Article 2. Description of Property

The Restricted Units consists of ten (10) units in the Project out of sixteen (16) total units in the Project. The selection of the ten (10) units subject to this Deed Restriction shall be identified from time to time, by and maintained in the business records of the Owner and may be changed from time to time by the Owner during the Control Period, as hereinafter defined, and shall be in addition to the six (6) units already required to be affordable to lower-income households pursuant to the Land Use Restriction Agreement on this Project recorded on February 28, 1994 at Book 5290, Page 0834 of the Monmouth County Land Records.

Article 3. Affordable Housing Covenants

The following covenants (the "**Covenants**") shall run with the land for the period of time (the "**Control Period**"), determined separately with respect to each Restricted Unit that identified by Owner

as included in the Project, commencing on the date on which the first certified household occupies each Restricted Unit after the unit is affirmatively marketed subsequent to this Deed Restriction, and shall expire as determined under the Uniform Controls, as defined below. The period of time elapsed for a Restricted Unit that is later replaced by a replacement Restricted Unit shall be added to, i.e., tacked onto, the new Restricted Unit so that Control Period for each Restricted Unit and its replacement shall be determined to commence based on the original Restricted Unit identified by the Owner.

In accordance with N.J.A.C. 5:80-26.11, each Restricted Unit shall remain subject to the requirements of this subchapter, i.e., the "Control Period," until the Municipality in which the unit is located elects to release the unit from such requirements. Prior to such a municipal election, a restricted rental unit must remain subject to the requirements of this subchapter for a period of at least 30 years

- A. Sale and use of a Restricted Unit is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq.*, the "Uniform Controls").
- B. The Restricted Units shall be used solely for the purpose of providing rental dwelling units, including (i) 2 very low- (at 30 percent of median income) , (ii) 3 low- and (iii) 5 moderate-income households, and no commitment for any such Restricted Unit shall be given or implied, without exception, to any person who has not been certified for that unit in writing by the Owner. So long as a Restricted Unit remains within its Control Period, sale of such Restricted Unit must be expressly subject to these Deed Restrictions, and deeds of conveyance must have these Deed Restrictions appended thereto.
- C. No improvements may be made to the Property that would affect the bedroom configuration of any of aggregate breakdown of very low-, low- and moderate income Restricted Units..
- D. The Owner shall notify the Municipality of any foreclosure actions filed with respect to the Restricted Units within five (5) business days of service upon Owner.
- E. The Owner shall notify the Municipality within three (3) business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Owner.

Article 4. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Municipality and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability

Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of low and moderate-income housing.

- A. In the event of a threatened breach of any of the Covenants by the Owner, or any successor in interest of the Property, the Municipality shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.
- B. Upon the occurrence of a breach of any Covenants by the Owner or any successor in interest or other owner of the Restricted Units, the Municipality shall have all remedies provided at law or equity including but not limited to foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

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IN WITNESS WHEREOF, the Owner and the Municipality have executed this Deed Restriction as of the date first above written.

Affordable Housing Alliance, Inc., Owner

BY: *Donna M. Blaze*
Donna Blaze
Chief Executive Officer

4/27/2020

Approved by the Borough Of Highlands

BY: *Carolyn Bouillon*
Carolyn Bouillon
Mayor

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ACKNOWLEDGEMENTS

STATE OF NEW JERSEY)

) SS:

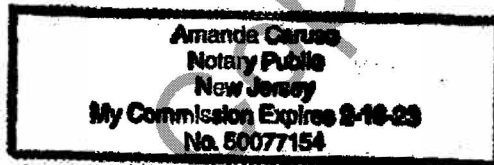
COUNTY OF MONMOUTH)

DONJA BLAZE

In this the 17 day of April, 2020 before me came Donja Blaze, to me known and known to me to be Chief Executive Officer of Affordable Housing Alliance, Inc., the Owner of the Property, who states that (s)he has signed said Agreement for the purposes stated therein.

Amanda Caruso

NOTARY PUBLIC



STATE OF NEW JERSEY)

) SS:

COUNTY OF MONMOUTH)

LAROLYN BOUILLON MAYOR

In this the 21st day of April, 2020 before me came Larolyn Bouillon known and known to me to be Mayor of the Borough of Highlands, the Municipality identified as such in the foregoing Agreement, who states that (s)he is duly authorized to execute said Agreement on behalf of said Municipality, and that (s)he has so executed the foregoing Agreement for the purposes stated therein.

[Signature]
NOTARY PUBLIC

PATRICK S MASON JR.
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2356914
My Commission Expires 3/7/2022

Notary Public