

LAW OFFICES
OF
JOHN E. BRUDER

Two West Union Avenue
P.O. Box 750
Bound Brook, New Jersey 08805
732.356.1243
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MEMBER OF NJ, NV & PA BARS

July 7, 2015

HAND DELIVERED

Civil Records Office
Superior Court of New Jersey
Middlesex County Courthouse, 2nd Floor Tower
56 Paterson Street
P.O. Box 2633
New Brunswick, New Jersey 08903-0964

Re: **In the Matter of the Application of the Borough of Dunellen, County of Middlesex, Docket No. (Pending)**

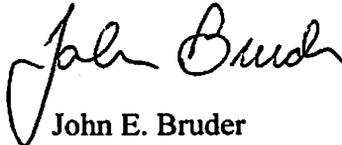
Dear Sir or Madam:

Enclosed herewith please find an original and one (1) copy of the Borough of Dunellen's Complaint for Declaratory Relief, pursuant to the Mount Laurel Doctrine, together with a Case Information Statement, Proof of Service and additional supporting documents with respect to the above-referenced matter.

Enclosed please also find an original and one (1) copy of the Borough's Notice of Motion for Temporary Immunity, together with supporting Certification(s), proposed form of Order, and Proof of Service.

Kindly file the Pleading and Motion and return a filed copy to the undersigned in the self-addressed, stamped envelope provided. I am also enclosing this firm's check in the sum of \$300.00 representing the applicable filing fees. Thank you for your cooperation.

Very truly yours,



John E. Bruder

JEB:lcj

Enclosures

cc: Honorable Douglas K. Wolfson, J.S.C. (via Hand Delivery)
William Robins, Clerk/Administrator (via electronic mail)
John M. Lore, Esq. (via electronic mail)
Jennifer Beahm, AICP/PP (via electronic mail)
Service List

LAW OFFICES
OF
JOHN E. BRUDER

Two West Union Avenue
P.O. Box 750
Bound Brook, New Jersey 08805
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Fax 732.356.0765

MEMBER OF NJ, NV & PA BARS

July 7, 2015

HAND DELIVERED

Honorable Douglas K. Wolfson, J.S.C.
Superior Court of New Jersey
Middlesex County Courthouse
56 Paterson Street
P.O. Box 964
New Brunswick, New Jersey 08903-0964

**Re: Borough of Dunellen – Declaratory Action and Motion for Temporary
Immunity from Mount Laurel Lawsuits**

Dear Judge Wolfson:

On behalf of the Borough of Dunellen, enclosed please find a courtesy copy of the Declaratory Complaint and Motion For Temporary Immunity filed in conjunction with the rulings and guidance articulated by the Supreme Court on March 10, 2015 in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015)("In re COAH).

This declaratory pleading and the associated motion are filed in furtherance of the Borough's effort to satisfy its Mount Laurel affordable housing obligations voluntarily, thereby eliminating the need for any exclusionary zoning lawsuits. Consistent with In re COAH, the Borough notified those on the Service List for this case. In addition, the Borough is publishing notice of its actions in a newspaper of regional circulation, and is providing actual notice to an exhaustive list of known and potentially-interested parties.

Finally, please note that the Borough's Notice of Motion and Form of Public Notice establishes September 4, 2015 as the return date of the Motion for Temporary Immunity, thereby providing interested parties more than thirty (30) days to file a responsive pleading and/or to oppose the motion. However, given the number of similar filings expected in the wake of In re COAH, the Borough anticipates it, along with other interested parties, will need some flexibility in scheduling the return dates and related submissions. Accordingly, the Borough respectfully requests the Court to consider scheduling a Joint Case Management Conference or alternatively, a series of individual Case Management Conferences to discuss common issues, set appropriate deadlines, consider potential efficiencies, and establish any special processes or instructions to be utilized in adjudicating the various Mount Laurel matters.

Honorable Douglas K. Wolfson, J.S.C.

July 7, 2015

Page 2

Thank you in advance for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "John Bruder". The signature is written in a cursive style with a large initial "J".

John E. Bruder

JEB:lcj

Enclosures

cc: William Robins, Clerk/Administrator (*via electronic mail*)
John M. Lore, Esq. (*via electronic mail*)
Jennifer Beahm, AICP/PP (*via electronic mail*)
Service List

Appendix XII-B1

	<h2 style="margin:0;">CIVIL CASE INFORMATION STATEMENT (CIS)</h2> <p style="margin:0;">Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed</p>		FOR USE BY CLERK'S OFFICE ONLY PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO.: _____ AMOUNT: _____ OVERPAYMENT: _____ BATCH NUMBER: _____
	ATTORNEY / PRO SE NAME John E. Bruder, Esq.	TELEPHONE NUMBER (732) 356-1243	COUNTY OF VENUE Middlesex <input checked="" type="checkbox"/>
	FIRM NAME (if applicable) Law Offices of John E. Bruder		DOCKET NUMBER (when available)
	OFFICE ADDRESS 2 West Union Avenue P.O. Box 750 Bound Brook, NJ 08805		DOCUMENT TYPE Declaratory Complaint JURY DEMAND <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
NAME OF PARTY (e.g., John Doe, Plaintiff) Borough of Dunellen		CAPTION In the Matter of the Application of the Borough of Dunellen	
CASE TYPE NUMBER (See reverse side for listing) 303	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.	
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, LIST DOCKET NUMBERS	
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input type="checkbox"/> UNKNOWN	
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.			
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION			
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS	
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION. This is a Mount Laurel (affordable housing) matter, through which the Borough of Dunellen is seeking to comply with its constitutional affordable housing "fair share" obligations voluntarily, thereby rendering all exclusionary zoning lawsuits to be unnecessary. This declaratory complaint therefore seeks two forms of relief. First, it asks the trial court to enter an Order granting the Borough "temporary" immunity from all Mount Laurel lawsuits. Second, it asks the Court to review and approve the Borough's Housing Element and Fair Share Plan through the entry of a Judgment of Compliance and Repose.			
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION	
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, FOR WHAT LANGUAGE?	
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 <i>Rule 1:38-7(b)</i> .			
ATTORNEY SIGNATURE: <i>John Bruder</i>			



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

- | | |
|--|---|
| <ul style="list-style-type: none"> 271 ACCUTANE/ISOTRETINOIN 274 RISPERDAL/SEROQUEL/ZYPREXA 278 ZOMETA/AREXIA 279 GADOLINIUM 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL 282 FOSAMAX 285 STRYKER TRIDENT HIP IMPLANTS 286 LEVAQUIN 287 YAZ/YASMIN/OCELLA 288 PRUDENTIAL TORT LITIGATION | <ul style="list-style-type: none"> 289 REGLAN 290 POMPTON LAKES ENVIRONMENTAL LITIGATION 291 PELVIC MESH/GYNECARE 292 PELVIC MESH/BARD 293 DEPUY ASR HIP IMPLANT LITIGATION 295 ALLODERM REGENERATIVE TISSUE MATRIX 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS 297 MIRENA CONTRACEPTIVE DEVICE 601 ASBESTOS 623 PROPECIA |
|--|---|

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category Putative Class Action Title 59

ADDENDUM TO CASE INFORMATION STATEMENT FOR THE MOUNT LAUREL DECLARATORY COMPLAINT FILED BY THE BOROUGH OF DUNELLEN

The Borough of Dunellen is filing this Declaratory Complaint pursuant to the recent Supreme Court opinion entitled In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015). Due to the regional nature of Mount Laurel affordable housing matters, each time any trial judge decides the Round 3 obligation of any municipality, that determination could impact on the formula used to calculate the Round 3 obligation of every other municipality in the region. Because of this phenomenon, it is entirely possible that before any trial judge determines any municipality's Round 3 obligation, it will want to hear from all litigants in all Mount Laurel lawsuits in that judge's vicinage. Otherwise, that judge will find himself or herself hearing from the same set of experts on multiple occasions. Therefore, while we are not aware of any "related cases pending" as listed on the CIS form, it is entirely possible if not likely, that as this matter proceeds other related cases will occur.

groups in the Borough's COAH Region, as provided by the Housing and Community Development Network of New Jersey.

6. Third, we utilized the New Jersey Council on Affordable Housing's most recent Service List for the Borough.

7. Fourth, the undersigned communicated with the Borough and reviewed relevant documents to determine whether any additional persons or entities expressing an interest in developing affordable housing in the Borough, or any property owners included in the Borough's current Housing Element and Fair Share Plan, or other interested parties not captured by the above-referenced action should be added to the Borough's Master Service List.

9. Finally, we reviewed the Master Service List to eliminate duplication.

10. I hereby certify that the foregoing statements 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.

Dated: 7/7/15



John E. Bruder

EXHIBIT A

Borough of Dunellen Declaratory Judgment Action Interested Parties Service List

Supreme Court List

Edward J. Buzak, Esq.
The Buzak Law Group
Montville Office Park
150 River Road, Suite N-4
Montville, New Jersey 07045

Jonathan Drill, Esq.
Stickel, Koenig, Sullivan & Drill
571 Pompton Avenue
Cedar Grove, New Jersey 07009

Jeffrey Kantowitz, Esq.
Law Office of Abe Rappaport
195 Route 46 West, Suite 6
Totowa, New Jersey 07512

Ronald C. Morgan, Esq.
Parker McCay
9000 Midlantic Drive, Suite 300
Mount Laurel, New Jersey 08054

Edward Barocas, Jeanne Locicero,
Alexander Shalom
ACLU of NJ Foundation
89 Market Street, PO Box 32159
Newark, New Jersey 07102

Georgette Castner, Esq.
Montgomery, McCracken
457 Haddonfield Road
Suite 6000
Cherry Hill, New Jersey 08002

Connie Pascale, Melville Miller, Jr.
Legal Services of New Jersey
100 Metroplex Drive, Suite 402
PO Box 1357
Edison, New Jersey 08818

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Office of the Attorney General
25 West Market Street
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Stephen M. Eisdorfer, Esq.
Hill Wallack
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Princeton, New Jersey 08543

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Lawrenceville, New Jersey 08648

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Sills Cummis & Gross
650 College Road East
Princeton, New Jersey 08053

Kevin Walsh, Esq.
Peter J. O'Connor, Esq.
Adam Gordon, Esq.
510 Park Boulevard
Chery Hill, New Jersey 08002

Tracy A. Siebold, Esq.
Nehmad, Perillo & Davis
430 Ocean Heights Avenue
Egg Harbor Township, New Jersey 08234

Ronald K. Chen
Constitutional Litigation Clinic
Center for Law & Justice
123 Washington Street
Newark, New Jersey 07102

Borough of Dunellen Declaratory Judgment Action Interested Parties Service List

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Office of the Attorney General
25 West Market Street
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Norman Kingsbury and Norman
30 Jackson Road, Suite A-2
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Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102

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McKernan, McKernan & Godino
113 North Sixth Street
Camden, New Jersey 08012

Robert Lougy
Assistant Attorney General
Office of the Attorney General
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Trenton, New Jersey 08625

Borough of Dunellen Declaratory Judgment Action Interested Parties Service List

COAH Service List

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Cleary, Giacobbe, Alfieri, Jacobs, LLC.
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PO Box 533
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8 Frost Avenue
East Brunswick, New Jersey 08816

Guliet D. Hirsch, Esq.
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Flemington, New Jersey 08822

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Avalon Bay Communities, Inc.
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Peter Falvo, Jr., Esq.
Ansell Grimm & Aaron, PC
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Ocean, New Jersey 07712

Borough of Dunellen Declaratory Judgment Action Interested Parties Service List

Region 3 Housing Advocates

Elliot D. Harris, Esq.
Legal Services of New Jersey
100 Metroplex Drive
PO Box 1357
Edison, New Jersey 08818

Eileen O'Donnell
Executive Director
Coming Home of Middlesex County, Inc.
75 Bayard Street, 5th Floor
New Brunswick, New Jersey 08901

Cynthia Light, Director of Housing
Triple C Housing, Inc.
1 Distribution Way
Monmouth Junction, New Jersey 08852

Richard Sheridan, Executive Director
ARC of Middlesex County
219 Black Horse Lane
Suite 1
North Brunswick, New Jersey 08902

Sean Thompson, Acting Director
NJ Council on Affordable Housing
NJ Department of Community Affairs
101 South Broad Street
PO Box 800
Trenton, New Jersey 08625

Faith Fellowship Community Development
Corp.
2707 Main Street
Sayreville, New Jersey 08872

New Jersey Citizen Action
75 Raritan Avenue, Suite 200
Highland Park, New Jersey 08904

Puerto Rican Action Board
90 Jersey Avenue
New Brunswick, New Jersey 08901

Housing Authority of the City of
Perth Amboy
881 Amboy Avenue
Perth Amboy, New Jersey 08861

United Way of Northern New Jersey
PO Box 1948
Morristown, New Jersey 07962

Somerset County Coalition on Affordable
Housing
600 First Avenue, Suite 3
Raritan, NJ 08869

Supportive Housing Association
29 Alden Street, Suite 1B
Cranford, New Jersey 07834

Housing Coalition of Central Jersey
100 Bayard Street
3rd Floor
New Brunswick, NJ 08901

NJACP
140 Scotch Road
Ewing, New Jersey 08638

Fair Share Housing Center
510 Park Boulevard
Cherry Hill, New Jersey 08002

Housing and Community Development
Network of New Jersey
145 West Hanover Street
Trenton, New Jersey 08618

Sarah's Hope and Foundation
12 Morton Avenue
Monroe Township, New Jersey 08831

Borough of Dunellen Declaratory Judgment Action Interested Parties Service List

**Raritan Valley Habitat for Humanity
100 West Main Street
Somerville, New Jersey 08876**

**Homesharing, Inc.
120 Finderne Avenue
Bridgewater, New Jersey 08807**

**Ayesha S. Patrick, Executive Director
Community Options, Inc.
16 Farber Road
Princeton, New Jersey 08540**

Borough of Dunellen Declaratory Judgment Action Interested Parties Service List

Borough of Dunellen Service List

The Honorable Robert J. Seader, Mayor
Borough of Dunellen
355 North Avenue
Dunellen, New Jersey 08812

William Robins, Administrator
Borough of Dunellen
355 North Avenue
Dunellen, New Jersey 08812

Louis Ploskonka, Engineer
CME Associates
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Parlin, New Jersey 08859

W.L.M Associates, LLC.
C/O Laurence Straus
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John E. Bruder, Esq.
Law Offices of John E. Bruder
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Bound Brook, New Jersey 08805

Jennifer Beahm, Planning Director
CME Associates
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Howell, New Jersey 07731

Jacqui Adam
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Jon Vogel
Development Director
Avalon Bay Communities, Inc.
517 Route One South
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Iselin, New Jersey 08830

Parking Authority
Borough of Dunellen
345 Front Street
Dunellen, New Jersey 08812

Karl Hartkopf
Director of Planning
State of New Jersey
Office for Planning Advocacy
Smart Growth/State Planning
PO Box 204
225 West State Street, 3rd Floor
Trenton, New Jersey 08625

Middlesex County Planning Board
40 Livingston Avenue
New Brunswick, New Jersey 08901

Provident Savings Bank
830 Bergen Avenue
Jersey City, New Jersey 07306

Sun North Properties
301 North Avenue
Dunellen, New Jersey 08812

Borough of Dunellen – Library
106 New Market Road
Dunellen, New Jersey 08812

Dunellen Associates
22 North McCauley Road
Travelers Rest, South Carolina 29690

Borough of Dunellen Declaratory Judgment Action Interested Parties Service List

**New Jersey Builders Association
200 American Metro Blvd.
Suite 123
Hamilton, New Jersey 08619**

**Elizabeth Semple
New Jersey Department
of Environmental Protection
PO Box 402
Trenton, New Jersey 08625**

**State of New Jersey
Department of the Public Advocate
240 West State Street
PO Box 851
Trenton, New Jersey 08625**

LAW OFFICES OF JOHN E. BRUDER
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P.O. Box 750
Bound Brook, N.J. 08805
Tel. (732) 356-1243
Fax (732) 356-0765
Attorney: John E. Bruder, ID # 025961989
Attorney for Plaintiff/Petitioner

IN THE MATTER OF THE
APPLICATION OF THE
BOROUGH OF DUNELLEN, a municipal
corporation of the State of New Jersey,

Plaintiff/Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX COUNTY
DOCKET NO. MID-

CIVIL ACTION
(Mount Laurel)

AFFIDAVIT OF PUBLIC NOTICE

JOHN E. BRUDER, ESQ., of full age, does hereby certify as follows:

1. I am the municipal attorney for the Borough of Dunellen in this matter.
2. On July 7, 2015, this office arranged with the Clerk for the Borough of Dunellen for publication of a Legal Notice notifying the public that the Borough filed a Declaratory Complaint as sanctioned in the Mount Laurel doctrine and further setting forth the details of the time and place that the Court will consider the Borough's pending Motion to Reaffirm Temporary Immunity, which was filed simultaneously with the Declaratory Action referred to above. See Exhibit A.
3. The Legal Notice will be published in the *Courier News*, the Borough's legal newspaper, simultaneous with the filing of this Motion. A copy of the Affidavit of Publication received from the *Courier News* will be forwarded to the Court after it is received by this office.
4. On July 7, 2015, this office forwarded a copy of the Borough's Declaratory Action, its Motion to Reaffirm Temporary Immunity, and all other related documents filed in this

matter, to the Dunellen Borough Clerk, via electronic mail and Regular Mail, and instructed the Borough to have the pleadings and other relevant documents available for inspection by the public.

5. In addition, I sent via regular and certified mail the form letter annexed hereto as Exhibit B to all members of the Service/Notice List attached hereto as Exhibit C.

6. The Service List is a comprehensive collection of (a) the members of the mandatory service list required by the Supreme Court in In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015); (b) the known affordable housing advocacy groups in the region; (c) the members of the updated service list recently provided by COAH; (d) any additional persons or entities expressing an interest in creating affordable housing in Borough; and (e) any owners of property identified in the municipality's Housing Element and Fair Share Plan as potential and/or existing sources of affordable housing credits.

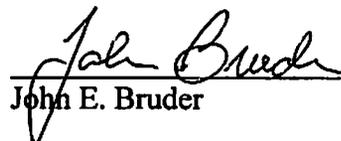
7. In light of these actions, in addition to the public notice published in the newspaper(s) referenced above, we provided each member of the Service List with (a) actual notice of the Borough's Declaratory Action and its Motion to Reaffirm Temporary Immunity, and (b) an opportunity to be heard thereon.

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

LAW OFFICES OF JOHN E. BRUDER
Attorney for Plaintiff/Petitioner,
Borough of Dunellen

Dated:

July 7, 2015



John E. Bruder

EXHIBIT A

Legal Notice
Borough of Dunellen

Notice of Declaratory Action and Motion before the Superior Court of New Jersey to Reaffirm
Temporary Immunity from Mount Laurel Lawsuits

NOTICE is hereby given that, on July 7, 2015, the Borough of Dunellen filed a Declaratory Complaint in Middlesex County Superior Court, Law Division, in response to the Supreme Court's recent decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (hereinafter "In re COAH"). Through its Declaratory Complaint, the Borough is asking the Court to:

1. Enter an Order providing the Borough five (5) months to file a Housing Element and Fair Share Plan with the Court, commencing on the date the Court determines the criteria and guidelines with which the Borough must comply;
2. Enter an Order reaffirming the right of the Borough and its Planning Board to temporary immunity from Mount Laurel lawsuits commencing from June 8, 2015 and remaining in effect until the Court issues a final judgment of Compliance and Repose to the Borough for its Housing Element and Fair Share Plan formulated, adopted and approved by the Court; or if the Court declines to commence the start date as the date the Court makes this determination, for five (5) months from the date the Court determines the criteria and guidelines with which the Borough must comply;
3. Enter an Order extending immunity provided that the Borough files a Round 3 Housing Element and Fair Share Plan (hereinafter "Fair Share Plan") prior to the expiration of the initial five-month period;
4. Enter an Order approving the jurisdiction of the Court to consider and approve any Spending Plan and Amendments thereof, if applicable, and approve the Borough's Fair Share Plan as may be supplemented and amended during the aforementioned five-month period and thereafter;
5. To enter subsequent orders periodically extending immunity until such time as the Court enters a Judgment of Compliance and Repose formally approving the Borough's Fair Share Plan;
6. To enter an Order approving the jurisdiction of the Court to consider and approve any Spending Plan and Amendments thereto, if applicable;
7. To determine that the Borough has committed to expend trust fund monies within four years of receipt in accordance with N.J.S.A. 52:27D-329.2 and 329.3; and
8. To grant such other relief as the Court deems just and equitable.

A "Mount Laurel lawsuit" is brought pursuant to Supreme Court opinions commonly referred to as "Mount Laurel I" and "Mount Laurel II" claiming that a municipality has used its zoning powers to exclude low and moderate income households in violation of the requirements of these landmark decisions, the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et. seq. and other applicable laws. A "temporary immunity" order protects a municipality and its planning board from Mount Laurel lawsuits. A Judgment of Compliance and Repose is an order formally approving a municipality's Housing Element and Fair Share Plan which provides the municipality ten years of protection from Mount Laurel suits. Any response to the Borough's Declaratory Action must be filed in accordance with the Rules of Court. Any interested party seeking to participate in this action should consider legal counsel and should be guided by these Rules.

NOTICE is further given that, on July 7, 2015, the Borough also filed a Motion to Reaffirm Temporary Immunity and shall move before the Honorable Douglas Wolfson, J.S.C. on September 4, 2015 at 9:00 a.m., or such other date and/or time to be determined by the Court, for an Order (1) reaffirming the Temporary Immunity From Mount Laurel Lawsuits previously granted to the Borough and its Planning Board; and (2) providing the Borough five (5) months to file a Fair Share Plan with the Court, commencing from the date the Court determines the criteria and guidelines with which the Borough must comply; or, if the Court declines to commence the start date as the date the Court makes this determination, for five months from the date the Court deems appropriate.

Please be advised that, due to the anticipated number of similar actions to be filed in the wake of In re COAH, it is possible, if not likely, that the date and/or time of the hearing on the Borough's Motion will change. Scheduling information can be obtained from the Middlesex County Court Clerk or through any of the attorneys referenced below.

Any public comments opposing the Borough's Motion to Reaffirm Temporary Immunity must be submitted in writing no later than 5:00 p.m. on Tuesday, August 4, 2015. Such written comments shall set forth any reason(s) why the Court should not enter an Order granting the borough and its Planning Board immunity from Mount Laurel lawsuits. Be advised that the Court could decline to consider any written public comments not filed by the deadline, and will use its discretion on the probative weight to be given any filing. Public comments shall be served upon:

Honorable Douglas Wolfson, J.S.C.
Middlesex County Superior Court
56 Paterson Street
New Brunswick, NJ 08903

William M. Robins, Administrator
Borough of Dunellen

355 North Avenue
Dunellen, NJ 08812

John E. Bruder, Esq.
2 West Union Avenue
PO Box 750
Bound Brook, NJ 08805

John Lore, Esq.
DeMarco and Lore
PO Box 279
418 North Washington Avenue
Dunellen, NJ 08812

A copy of the Borough's Declaratory Action and Motion to Reaffirm Temporary Immunity with supporting documentation are available for public inspection at the office of the Borough Clerk, Borough of Dunellen, 355 North Avenue, Dunellen, NJ 08812 during regular business hours.

EXHIBIT B

LAW OFFICES
OF
JOHN E. BRUDER

Two West Union Avenue
P.O. Box 750
Bound Brook, New Jersey 08805
732.356.1243
Fax 732.356.0765

MEMBER OF NJ, NV & PA BARS

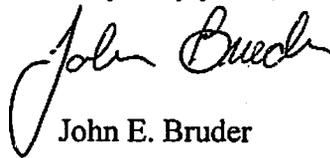
July 7, 2015

Re: **Mount Laurel Declaratory Action and Notice of Motion to Reaffirm
Temporary Immunity from Exclusionary Zoning Lawsuits**

Dear Sir or Madam:

Attached please find a form of public notice that the Borough of Dunellen is publishing in the *Courier News*. The notice is self-explanatory. Copies of the relevant papers are on file and available for inspection at Borough Hall and with the New Jersey Superior Court, Law Division. In addition, if you or your organization are considering taking action in response to the attached notice, we would be happy, as a courtesy, to deliver these documents to you by way of email. To facilitate this process, please furnish us with an active email address with sufficient capabilities to accept large documentary attachments.

Very truly yours,



John E. Bruder

JEB:lcj
Enclosure

EXHIBIT C

Borough of Dunellen Declaratory Judgment Action Interested Parties Service List

Supreme Court List

Edward J. Buzak, Esq.
The Buzak Law Group
Montville Office Park
150 River Road, Suite N-4
Montville, New Jersey 07045

Jonathan Drill, Esq.
Stickel, Koenig, Sullivan & Drill
571 Pompton Avenue
Cedar Grove, New Jersey 07009

Jeffrey Kantowitz, Esq.
Law Office of Abe Rappaport
195 Route 46 West, Suite 6
Totowa, New Jersey 07512

Ronald C. Morgan, Esq.
Parker McCay
9000 Midlantic Drive, Suite 300
Mount Laurel, New Jersey 08054

Edward Barocas, Jeanne Locicero,
Alexander Shalom
ACLU of NJ Foundation
89 Market Street, PO Box 32159
Newark, New Jersey 07102

Georgette Castner, Esq.
Montgomery, McCracken
457 Haddonfield Road
Suite 6000
Cherry Hill, New Jersey 08002

Connie Pascale, Melville Miller, Jr.
Legal Services of New Jersey
100 Metroplex Drive, Suite 402
PO Box 1357
Edison, New Jersey 08818

Geraldine Callahan, DAG
Office of the Attorney General
25 West Market Street
PO Box 112
Trenton, New Jersey 08625

Thomas F. Carroll, III, Esq.
Stephen M. Eisdorfer, Esq.
Hill Wallack
202 Carnegie Center CN 5226
Princeton, New Jersey 08543

Henry L. Kent-Smith, Esq.
Fox Rothschild
Princeton Pike Corporate Center 997
Lenox Drive, Bldg. 3, Suite 204
Lawrenceville, New Jersey 08648

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Sills Cummis & Gross
650 College Road East
Princeton, New Jersey 08053

Kevin Walsh, Esq.
Peter J. O'Connor, Esq.
Adam Gordon, Esq.
510 Park Boulevard
Chery Hill, New Jersey 08002

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430 Ocean Heights Avenue
Egg Harbor Township, New Jersey 08234

Ronald K. Chen
Constitutional Litigation Clinic
Center for Law & Justice
123 Washington Street
Newark, New Jersey 07102

Borough of Dunellen Declaratory Judgment Action Interested Parties Service List

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25 West Market Street
PO Box 112
Trenton, New Jersey 08625**

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25 Chestnut Street, Site 3
Haddonfield, New Jersey 08033**

**Russo & Cassidy
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Toms River, New Jersey 08753**

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Norman Kingsbury and Norman
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Medford, New Jersey 08055**

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Gibbsboro, New Jersey 08026**

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Eileen M. Conner, Esq.
Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102**

**Martin F. McKernan, Jr., Esq.
McKernan, McKernan & Godino
113 North Sixth Street
Camden, New Jersey 08012**

**Robert Lougy
Assistant Attorney General
Office of the Attorney General
25 West Market Street
Trenton, New Jersey 08625**

Borough of Dunellen Declaratory Judgment Action Interested Parties Service List

COAH Service List

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Cleary, Giacobbe, Alfieri, Jacobs, LLC.
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PO Box 533
Matawan, New Jersey 07747

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8 Frost Avenue
East Brunswick, New Jersey 08816

Guliet D. Hirsch, Esq.
Archer & Greiner, PC
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1 State Route 12, Suite 201
Flemington, New Jersey 08822

Susan Grogan
NJ Pinelands Commission
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Lisbon, New Jersey 08064

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Marlton, New Jersey 08053

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Mehr LaFrance & Williams
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Iselin, New Jersey 08830

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Birdsall Services Group
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Barnegat, New Jersey 08005

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Forked River, New Jersey 08731

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McCarter & English, LLP
Four Gateway Center
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Newark, New Jersey 07102

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Ansell Grimm & Aaron, PC
1500 Lawrence Avenue, CN 7807
Ocean, New Jersey 07712

Richard J. Hoff, Esq.
Bisgaier Hoff, LLC
25 Chestnut Street, Suite 3
Haddonfield, New Jersey 08033

Peter Falvo, Jr., Esq.
Ansell Grimm & Aaron, PC
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Ocean, New Jersey 07712

Borough of Dunellen Declaratory Judgment Action Interested Parties Service List

Region 3 Housing Advocates

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Legal Services of New Jersey
100 Metroplex Drive
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Edison, New Jersey 08818

Eileen O'Donnell
Executive Director
Coming Home of Middlesex County, Inc.
75 Bayard Street, 5th Floor
New Brunswick, New Jersey 08901

Cynthia Light, Director of Housing
Triple C Housing, Inc.
1 Distribution Way
Monmouth Junction, New Jersey 08852

Richard Sheridan, Executive Director
ARC of Middlesex County
219 Black Horse Lane
Suite 1
North Brunswick, New Jersey 08902

Sean Thompson, Acting Director
NJ Council on Affordable Housing
NJ Department of Community Affairs
101 South Broad Street
PO Box 800
Trenton, New Jersey 08625

Faith Fellowship Community Development
Corp.
2707 Main Street
Sayreville, New Jersey 08872

New Jersey Citizen Action
75 Raritan Avenue, Suite 200
Highland Park, New Jersey 08904

Puerto Rican Action Board
90 Jersey Avenue
New Brunswick, New Jersey 08901

Housing Authority of the City of
Perth Amboy
881 Amboy Avenue
Perth Amboy, New Jersey 08861

United Way of Northern New Jersey
PO Box 1948
Morristown, New Jersey 07962

Somerset County Coalition on Affordable
Housing
600 First Avenue, Suite 3
Raritan, NJ 08869

Supportive Housing Association
29 Alden Street, Suite 1B
Cranford, New Jersey 07834

Housing Coalition of Central Jersey
100 Bayard Street
3rd Floor
New Brunswick, NJ 08901

NJACP
140 Scotch Road
Ewing, New Jersey 08638

Fair Share Housing Center
510 Park Boulevard
Cherry Hill, New Jersey 08002

Housing and Community Development
Network of New Jersey
145 West Hanover Street
Trenton, New Jersey 08618

Sarah's Hope and Foundation
12 Morton Avenue
Monroe Township, New Jersey 08831

Borough of Dunellen Declaratory Judgment Action Interested Parties Service List

**Raritan Valley Habitat for Humanity
100 West Main Street
Somerville, New Jersey 08876**

**Homesharing, Inc.
120 Finderne Avenue
Bridgewater, New Jersey 08807**

**Ayesha S. Patrick, Executive Director
Community Options, Inc.
16 Farber Road
Princeton, New Jersey 08540**

Borough of Dunellen Declaratory Judgment Action Interested Parties Service List

Borough of Dunellen Service List

The Honorable Robert J. Seader, Mayor
Borough of Dunellen
355 North Avenue
Dunellen, New Jersey 08812

William Robins, Administrator
Borough of Dunellen
355 North Avenue
Dunellen, New Jersey 08812

Louis Ploskonka, Engineer
CME Associates
3141 Bordentown Road
Parlin, New Jersey 08859

W.L.M Associates, LLC.
C/O Laurence Straus
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Hoboken, New Jersey 07030

John E. Bruder, Esq.
Law Offices of John E. Bruder
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Bound Brook, New Jersey 08805

Jennifer Beahm, Planning Director
CME Associates
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Howell, New Jersey 07731

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Allies, Inc.
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Bldg. A, Suite 101
Hamilton, New Jersey 08690

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Development Director
Avalon Bay Communities, Inc.
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Iselin, New Jersey 08830

Parking Authority
Borough of Dunellen
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Dunellen, New Jersey 08812

Karl Hartkopf
Director of Planning
State of New Jersey
Office for Planning Advocacy
Smart Growth/State Planning
PO Box 204
225 West State Street, 3rd Floor
Trenton, New Jersey 08625

Middlesex County Planning Board
40 Livingston Avenue
New Brunswick, New Jersey 08901

Provident Savings Bank
830 Bergen Avenue
Jersey City, New Jersey 07306

Sun North Properties
301 North Avenue
Dunellen, New Jersey 08812

Borough of Dunellen – Library
106 New Market Road
Dunellen, New Jersey 08812

Dunellen Associates
22 North McCauley Road
Travelers Rest, South Carolina 29690

Borough of Dunellen Declaratory Judgment Action Interested Parties Service List

**New Jersey Builders Association
200 American Metro Blvd.
Suite 123
Hamilton, New Jersey 08619**

**Elizabeth Semple
New Jersey Department
of Environmental Protection
PO Box 402
Trenton, New Jersey 08625**

**State of New Jersey
Department of the Public Advocate
240 West State Street
PO Box 851
Trenton, New Jersey 08625**

methodology established by this Court; or in the alternative for five (5) months from the date the Court determines the criteria and guidelines with which the Borough must comply.

If the Court denies the relief in Paragraph 3 and 4 above, the Borough seeks an Order granting the following relief in lieu thereof:

5. Declaring that the protections from Mount Laurel suits contemplated in the Order shall remain in effect for five (5) months from the date the Borough filed its Declaratory Judgment Complaint.

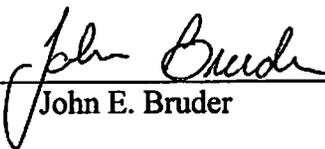
6. Providing that, if the Borough files a Housing Element and Fair Share Plan within the five-month deadline established above, the immunity from Mount Laurel lawsuits shall remain in force pending further Order of the Court.

7. Such other relief as the Court deems equitable and just.

PLEASE TAKE FURTHER NOTICE that the Borough shall rely upon the Declaratory Judgment Complaint filed herewith, as well as supporting Certification of Jennifer Beahm, P.P., A.I.C.P., Certification of John E. Bruder, Esq., and the proposed form of Order in support of this Motion filed simultaneously herewith.

LAW OFFICES OF JOHN E. BRUDER
Attorney for Plaintiff/Petitioner,
Borough of Dunellen

Dated: 7/7/15

By: 
John E. Bruder

LAW OFFICES OF JOHN E. BRUDER
Two West Union Avenue
P.O. Box 750
Bound Brook, N.J. 08805
Tel. (732) 356-1243
Fax (732) 356-0765
Attorney: John E. Bruder, ID # 025961989
Attorney for Plaintiff/Petitioner

IN THE MATTER OF THE	:	SUPERIOR COURT OF NEW JERSEY
APPLICATION OF THE BOROUGH	:	LAW DIVISION:MIDDLESEX COUNTY
OF DUNELLEN, a municipal	:	DOCKET NO.: MID-
corporation of the State of New Jersey,	:	
	:	<u>CIVIL ACTION</u>
	:	(Mount Laurel)
	:	
Plaintiff/Petitioner	:	PROOF OF SERVICE
	:	
	:	

John E. Bruder, Esq., of full age, does hereby certify as follows:

1. On July 7, 2015, an original and one (1) copy of a Complaint for Declaratory Relief with supporting papers along with a Notice of Motion for an Order for Temporary Immunity from Mount Laurel lawsuits with supporting Brief, Certification of Jennifer Beahm, P.P., A.I.C.P., Certification of John E. Bruder, Esq., proposed form of Order and other supporting documents were hand delivered to the Civil Clerk, Superior Court of New Jersey, Middlesex County Courthouse, 56 Paterson Street, New Brunswick, New Jersey 08903.

2. I further certify that on July 7, 2015, a copy of the above-referenced documents were hand delivered to:

Honorable Douglas K. Wolfson, J.S.C.
Superior Court of New Jersey
Middlesex County Courthouse
56 Paterson Street
New Brunswick, New Jersey 08903

3. I further certify that a copy of the above-referenced documents were forwarded via electronic mail to the members of the Service List associated with In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) and any other persons who provided an email address and requested for the firm to forward the documents referenced above electronically.

4. I further certify that consistent with the Borough's corresponding Affidavit of Public Service, the remaining members of the Borough's Master Service List were notified of the Borough's Notice of Motion for Temporary Immunity from Mount Laurel Lawsuits and given the opportunity to request copies of all relevant documents, which will be provided upon request.

5. 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.

Dated: 7/7/15



John E. Bruder

("In re COAH"); and COAH's failure having prevented trial judges from approving affordable housing plans filed with them because the Supreme Court had directed them to follow COAH's "decisions, criteria and guidelines" "wherever possible" (Mount Laurel III, 103 N.J. at 63); and the Supreme Court having further determined that municipalities are not responsible for COAH's failure to adopt new regulations in a timely fashion and that therefore municipalities should not suffer prejudice because of COAH's failure; and the Supreme Court having determined that the task of implementing the Mount Laurel doctrine should revert from COAH to the courts because of COAH's failure to adopt new regulations by the deadline the Court imposed; and, accordingly, the Supreme Court having determined that our trial courts in lieu of COAH must now "establish . . . [the] presumptive constitutional housing obligations for each municipality" and "identify the permissible means which a Borough's proposed affordable housing plan, housing element, and implementing ordinances can satisfy that obligation" (In re COAH) 221 N.J. at 33); and the Supreme Court having further determined that municipalities under COAH's jurisdiction should enjoy the same protections from exclusionary zoning litigation in a Court proceeding that the New Jersey Fair Housing Act ("FHA") conferred on them in a COAH proceeding; and there being no reason to confer lesser protections on municipalities that sought to comply voluntarily since the Supreme Court ruled that it did not believe that "the Legislature wanted lower income housing opportunities to develop in two different directions at the same time" (Mount Laurel III, 103 N.J. at 63); and the Supreme Court having further emphasized the importance and value of voluntary municipal compliance (In re COAH, 221 N.J. at 34); and the immunity doctrine having arisen as a result of specially designated trial judges implementing the charge of the Supreme Court in Mount Laurel II to foster voluntary compliance; and Dunellen Borough having committed itself to comply voluntarily by filing a duly adopted affordable housing plan with the Council on Affordable Housing for its approval and through other means; and the Borough wishing to complete the process of complying voluntarily now that the Court will establish the

standards with which the Borough must comply and thereby break the logjam created by COAH's inaction; and it appearing that temporary immunity should be reaffirmed (1) to bar the filing and serving of any unnecessary Mount Laurel lawsuits; (2) to promote voluntary compliance; and (3) to facilitate the resolution of all issues concerning the Borough's Mount Laurel responsibilities to be resolved expeditiously and with as little additional burden to the public as possible; and the Court having considered the pleadings and related papers filed in this matter and the arguments of counsel; and good cause appearing.

IT IS on this _____ day of _____, 2015, ORDERED as follows:

1. The Court hereby enters this Protective Order reaffirming that the Borough of Dunellen, the governing body of the Borough of Dunellen, and the Planning Board of the Borough of Dunellen are entitled to temporary immunity from the filing and serving of any Mount Laurel lawsuits.

2. The protection from Mount Laurel lawsuits created by this Order shall commence on June 8, 2015, the effective date of In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015).

3. The Borough shall have five months to submit a Housing Element and Fair Share Plan to the Court from the date the Court determines the criteria and guidelines with which the Borough must comply.

4. The protections from Mount Laurel suits contemplated in this Order shall remain in effect from the date of the filing of the related Declaratory Judgment action (filed simultaneously with the motion which is the subject of this Order) until this Court issues a Final Judgment of Compliance and Repose to the Borough of Dunellen for its HEFSP formulated, adopted and approved in accordance with the applicable formula and methodology established by this Court; OR in the alternative

5. For a period of five (5) months from the date the Court determines the criteria and

guidelines with which the Borough must comply.

6. If the Borough files a Housing Element and Fair Share Plan within the five month deadline established above, the immunity from Mount Laurel lawsuits contemplated in the Order shall remain in force pending further Order of the Court.

7. Counsel for the Borough shall provide all parties on the Service/Notice List with a copy of this Order within seven (7) days of receipt.

HONORABLE DOUGLAS K. WOLFSON, J.S.C.

LAW OFFICE OF JOHN E. BRUDER
Two West Union Avenue
P.O. Box 750
Bound Brook, N.J. 08805
Tel. (732) 356-1243
Fax (732) 356-0765
Attorney: John E. Bruder, Esq.
Attorney for Plaintiff/Petitioner,
Borough of Dunellen

IN THE MATTER OF THE
APPLICATION OF THE
BOROUGH OF DUNELLEN, a municipal
corporation of the State of New Jersey,

Plaintiff/Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX COUNTY
DOCKET NO. MID-

CIVIL ACTION
(Mount Laurel)

**COMPLAINT FOR DECLARATORY
JUDGMENT**

Plaintiff/Petitioner, the Borough of Dunellen, a municipal corporation and body politic organized under the laws of the State of New Jersey, with offices located at 355 North Avenue, Dunellen, New Jersey 08812, by way of Complaint for Declaratory Judgment says:

Jurisdiction

1. Jurisdiction is established pursuant to the New Jersey Declaratory Act, N.J.S.A. 2A:16-50, et seq.
2. Jurisdiction is further established as a result of the 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) (the “2015 Case”).

Background and Prior Round Obligations

3. In 1975 the Supreme Court of New Jersey in South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975), ruled that the developing municipalities in the State of New Jersey exercising their zoning power, in general, had a

constitutional obligation to provide a realistic opportunity for the construction of their fair share of the region's low and moderate income housing needs.

4. In 1983, the Supreme Court refined that constitutional obligation in South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983), to apply to those municipalities having any portion of their boundaries within the growth area as shown on the State Development Guide Plan.

5. In 1985, the New Jersey Legislature adopted, and the Governor signed, the Fair Housing Act ("FHA") N.J.S.A. 52:2D-301 et seq. which transformed the judicial doctrine which became known as the "Mount Laurel doctrine" into a statutory one and provided an alternative administrative process in which municipalities could elect to participate in order to establish a Housing Element and Fair Share Plan ("HEFSP") that would satisfy its constitutional obligation by creating an administrative agency known as the Council on Affordable Housing ("COAH") to develop regulations to define the obligation and implement it.

6. COAH proceeded to adopt regulations for first round obligations applicable from 1987 to 1993 and thereafter, second round obligations that created a cumulative obligation from 1987 to 1999.

7. Based on the re-calculations by COAH, the Borough's Unmet Prior Round Obligation ("UPO") for the period of 1987 through 1999 (i.e. for the first and second rounds) is four (4) units based on the COAH rules in existence at that time.

Third Round Obligation

8. COAH first proposed third round substantive and procedural rules in October, 2003. 35 N.J.R. 4636(a); 35 N.J.R. 4700(a).

9. Those rules remained un-adopted and COAH re-proposed both the substantive and procedural third round rules (N.J.A.C. 5:94 and 5:95) in August of 2004 and adopted the same effective on December 20, 2004. (the "2004 Regulations")

10. In furtherance of the Third Round Rules, the Borough adopted a Housing Element and Fair Share Plan on January 9, 2006 which incorporated the then-Third Round Rules adopted by COAH. Attached hereto as **Exhibit A** is the Borough of Dunellen's Housing Element and Fair Share Plan ("HEFSP" or "Plan"), dated December, 2005, prepared on behalf of the Borough by Beacon Planning and Consulting Services, Inc. Initially based on this plan, the Borough's projected growth share obligation for the Third Round's initial rules was proposed to be up to thirty (30) units projected from 1999 to 2014. The Plan proposed to address both the prior round obligation of four units and the projected growth share obligation in the Dunellen Downtown Redevelopment Area, Phase I. Additionally, the Plan identified that the Borough's rehabilitation obligation would be met as the Borough has been (and continues to the present to be) a participant in Middlesex County's Housing Preservation Program, which provides for the rehabilitation of substandard dwelling units by providing deferred payment loans up to \$25,000.00 to low and moderate income homeowners in the urban Middlesex County municipalities, of which Dunellen is classified as one such municipality by that program.

11. On February 8, 2006, the Borough of Dunellen petitioned COAH for substantive certification regarding the third round plan. On February 10, 2006, COAH acknowledged receipt of the Borough's petition for substantive certification of its Housing Element and Fair Share Plan. See, **Exhibit B**. COAH further acknowledged that the Borough's application was complete. *Id.* Thereafter, by letter dated April 7, 2006, COAH advised that no objections were received and that the Borough's HEFSP was under review by COAH. See, **Exhibit C**. However, before COAH acted to provide substantive certification to the Borough, the 2004 COAH regulations were challenged.

12. As a result of that challenge, on January 25, 2007, the Appellate Division invalidated various aspects of those regulations and remanded considerable portions of the rules to COAH with direction to adopt revised rules. In the Matter of the Adoption of N.J.A.C. 5:94

and 5:95 by the New Jersey Council on Affordable Housing, 390 N.J. Super. 1 (App. Div.), certif. denied, 192 N.J. 72 (2007) (the “2007 Case”).

13. On January 22, 2008, COAH proposed and published revised third round regulations in the New Jersey Register. 40 N.J.R. 237.

14. On May 6, 2008, COAH adopted the revised third round regulations and advised that the new regulations would be published in the June 2, 2008 New Jersey Register, thereby becoming effective.

15. On May 6, 2008, COAH simultaneously proposed amendments to the revised third round rules it had just adopted. Those amendments were published in the June 16, 2008 New Jersey Register, 40 N.J.R. 3373 (Procedural - N.J.A.C. 5:96); 40 N.J.R. 3374 (Substantive - N.J.A.C. 5:97). The amendments were adopted on September 22, 2008 and made effective on October 20, 2008.

16. Subsequently, the COAH regulations changed. In considering same, the Borough observed that its Third Round obligations would still be zero (see paragraph 18, *infra*). Accordingly, the Borough re-endorsed its 2005 Housing Element and Fair Share Plan (HEFSP) on February 16, 2009. See, **Exhibit D**; See also **Exhibit A**. Immediately thereafter, the Borough again petitioned COAH for third round substantive certification on February 20, 2009, which petition COAH acknowledged by letter dated June 1, 2009. See **Exhibit E**. By letter dated August 12, 2009, COAH then advised that the Borough had properly completed and filed its petition, with no objections to the Borough’s petition having been raised. See, **Exhibit F**. COAH also advised that it would be working on providing substantive certification to the Borough. Id.

17. Through no fault of its own, however, the Borough did not thereafter receive substantive certification from COAH in response to the Borough’s 2009 re-petition for third round substantive certification. COAH simply did not act on either the Borough’s petition for

certification in 2006, or its re-petition for certification in 2009. However, in both instances the Borough had properly filed its petition for substantive certification, and thereby came under COAH jurisdiction.

18. Based on the revised COAH regulations, the Borough's growth share obligation according to the new third round rules was thirteen (13) units. Adding in the Unmet Prior Round ("UPO") obligation of four (4) units, the Borough's total obligation was seventeen (17) units. However, utilizing the Vacant Land Map and applying the Vacant Land Adjustment, the Borough's Growth Share Affordable Housing Obligation for the third round would be Zero (0) units. See, Certification of Jennifer Beahm, Borough of Dunellen Planner, attached hereto as **Exhibit G**. See also, Vacant Land Map for the Borough of Dunellen, attached hereto as **Exhibit H**.

19. Due to litigation challenging the validity of the Growth Share Rules adopted by COAH, the Borough has been limited in its ability to implement the HEFSP without knowing what rules were to be applied. However, the Borough of Dunellen did introduce and pass an ordinance in furtherance of the HEFSP. For instance, the Borough adopted Ordinance No. 09-09 on August 3, 2009 regarding affordable housing development fees. See, **Exhibit I**.

The Transfer of Jurisdiction to the Courts

20. N.J.A.C. 5:96 and 5:97 as adopted in 2008 were challenged in an appeal entitled In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 416 N.J. Super. 462 (App. Div. 2010) (the "2010 Case"). In its October 8, 2010 decision, the Appellate Division determined, among other things, that the growth share methodology was invalid and that COAH should adopt regulations utilizing methodologies similar to the ones utilized in the first and second rounds, i.e. 1987-1999.

21. On September 26, 2013, the Supreme Court of New Jersey affirmed the Appellate Division's invalidation of the third iteration of the third round regulations, sustained the

determination that the growth share methodology was invalid, and directed COAH to adopt new regulations based upon the methodology utilized in the first and second rounds. In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 215 N.J. 578 (2013) (the “2013 Case”).

22. COAH proceeded to propose such regulations in accordance with the schedule and amended schedule established by the New Jersey Supreme Court in the 2013 Case.

23. On October 20, 2014, COAH deadlocked with a 3-3 vote and failed to adopt the revised third round regulations.

24. Due to COAH’s failure to adopt the revised regulations and subsequent inaction, Fair Share Housing Center (“FSHC”), a party in the 2010 Case and the 2013 Case filed a motion with the New Jersey Supreme Court to enforce litigant’s rights.

25. On March 10, 2015 the New Jersey Supreme Court issued its decision on FSHC’s motion to enforce litigant’s rights. The Supreme Court in the 2015 Case found that the COAH administrative process had become non-functioning and, as a result, returned primary jurisdiction over affordable housing matters to the trial courts. 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. (2015) (the “2015 Case”).

26. In doing so, the Supreme Court established a transitional process for municipalities, like the Borough of Dunellen, that participated in the administrative process before COAH to file a declaratory judgment action with the trial courts seeking to declare their HEFSP as being constitutionally compliant and seeking similar protections to those that the participating municipalities would have received if they had continued to proceed before COAH.

27. In explaining the transitional process contemplated, the Supreme Court equated these “Participating ”Municipalities” to those municipalities in 1985 that had sought to transfer jurisdiction from the Court to the newly created COAH and switch the forum from a judicial one to an administrative one under N.J.S.A. 52:27D-316.

28. While the Supreme Court in the 2015 Case declined to adopt a specific methodology or formula to calculate the third round affordable housing obligations of the municipalities and instead left that determination to the 15 Mount Laurel Judges (one in each vicinage), it did provide some guidance by reiterating its endorsement of the previous methodologies employed in the First and Second Round Rules as the template to establish third round affordable housing obligations, and as mentioned above, by treating Participating Municipalities filing Declaratory Judgment actions in the same way that the 1985 FHA, when originally enacted on July 2, 1985, treated municipalities transitioning from the judicial to the administrative process.

29. Based on the facts as set forth herein, the Borough has been deemed to be a “Participating Municipality.”

30. In light of the decisions in the 2013 Case and the 2015 Case, the Borough of Dunellen and its Planner are currently in the process of preparing a revised HEFSP that will verify full compliance of the Borough of Dunellen with its constitutional affordable housing obligations.

Recent Fair Share Housing Calculations for the Borough of Dunellen from Both the COAH expert and from the Fair Share Housing Center’s expert

31. In both the first and second rounds, the State retained Rutgers University to assist in developing COAH’s approach to both regulations and calculations for appropriate fair share housing obligations.

32. For both such rounds, COAH retained expert Robert Burchell, Ph.D., of the Rutgers University Center for Urban Policy Research at the Edward J. Bloustein School of Planning and Public Policy to prepare the analysis upon which COAH would base its regulations for fair share housing.

33. Doctor Burchell utilized his expertise to assist COAH in determining the housing

regions of the state, calculating present and prospective regional need for affordable housing, and allocating the regional need to the various municipalities within each region of the state.

34. While there were some challenges to the numbers created by Dr. Burchell on behalf of COAH, no court invalidated any of those numbers.

35. COAH retained Dr. Burchell again in 2014 to calculate COAH'S third iteration of the Third Round rules and regulations.

36. Accordingly, Dr. Burchell and the team of experts with whom he worked developed and filed the technical appendices included in COAH's 2014 rules proposal, published in the New Jersey Register on June 2, 2014. See, 46 N.J.R. 949-1051.

37. Dr. Burchell and his team of COAH experts calculated the Borough's total affordable housing obligation to be 41 units, consisting of a 12 unit rehabilitation number, a 17 unit UPO (unmet prior obligation) number, and a 12 unit prospective Round 3 obligation. See, **Exhibit G**, Certification of Borough Planner, Jennifer Beahm.

38. Conversely, the Fair Share Housing Center ("FSHC") filed a Motion to Enforce Litigant's Rights also in 2014. As part of that filing, the FSHC relied upon an alternative fair share calculation for each municipality, including Dunellen, which calculation was made by FSHC's retained expert, Dr. Kinsey, Ph.D.

39. According to Dr. Kinsey's 2014 calculations, Dunellen has a total affordable housing unit obligation of 74 units, consisting of a 12 unit rehabilitation number, a 0 unit UPO number, and a 62 unit prospective Round 3 obligation. Id.

40. However, Dr. Kinsey thereafter substantially changed virtually all of his municipality obligation numbers on behalf of the FSHC, including for Dunellen. Thus, in his 2015 calculations, Dr. Kinsey almost doubled his earlier calculation of Dunellen's total obligation, to 130 units, consisting of a 12 unit rehabilitation number, a 0 unit UPO number, and a 118 unit prospective Round 3 obligation. Id.

41. Not only did Dr. Kinsey's latest calculations almost double his calculations for Dunellen from less than a year prior, but in fact his calculations were now more than three times higher than those of COAH's expert, Dr. Burchell.

42. If this Court were to utilize any of the pending expert calculations, nonetheless based on the Vacant Land Adjustment calculated by the Borough's Planning Expert Jennifer Beahm, that vacant land analysis shows that the Borough's realistic development potential for Round 3 is Zero (0) units. Even if the Court were to adopt the seemingly unrealistic most recent FSHC calculations by Dr. Kinsey, that would leave the Borough with an "unmet need" obligation of 17 total units. Id.

43. Only recently has Dr. Burchell become available to serve as an expert on behalf of various municipalities, potentially including the Borough of Dunellen, in calculating or re-calculating affordable housing needs.

44. In light of the FSHC's and the New Jersey Builders' Association's criticism of Dr. Burchell's calculation methods, it is anticipated that Dr. Burchell will now endeavor to analyze the criticism, as well as to incorporate any other guidelines or regulations which the Court shall adopt to determine fair share housing needs.

45. It is not now known how the Court will respond to conflicting testimony of the experts; however, engaging in the adversarial process on this complicated issue will likely assist the judiciary in accurately determining the obligations of the various municipalities, including the Borough of Dunellen.

COUNT ONE

(DECLARATORY RELIEF, CONSTITUTIONAL COMPLIANCE)

46. The Borough of Dunellen repeats and realleges each and every allegation set forth

in Paragraphs 1-45 of this Complaint as if set forth herein at length.

47. Pursuant to the Declaratory Judgments Act, N.J.S.A. 2A:16-50 et seq., and the 2015 Case, the Borough of Dunellen has a right to a declaratory judgment verifying and confirming the Borough's full and voluntary compliance with its constitutional affordable housing obligations.

WHEREFORE, Plaintiff/Petitioner, the Borough of Dunellen respectfully seeks that the Court grant the following relief:

- a. An Order exercising jurisdiction over the compliance by the Borough of Dunellen with its constitutional affordable housing obligations; and
- b. An Order declaring that the Borough of Dunellen has fully discharged its constitutional affordable housing obligations and is granted protection and repose against exclusionary zoning litigation.
- c. A Judgment of Compliance and Repose for a period of ten (10) years from its date of entry.
- d. An Order granting such additional relief as the Court deems equitable and just.

COUNT TWO

FIVE MONTH PREPARATION PERIOD FOR HEFSP

48. The Borough of Dunellen repeats and realleges each and every allegation as set forth in Paragraphs 1-47 as if set forth herein at length.

49. In the 2015 Case, the Supreme Court equated participating municipalities who file Declaratory Judgment actions such as the instant one to those municipalities who were involved in litigated matters in 1985 when the Fair Housing Act was adopted and successfully transferred their litigated cases to COAH and were entitled under N.J.S.A. 52:27D-316 to a five month period from the date of transfer or the date of the promulgation of criteria and guidelines by

COAH, or by the establishment by the Supreme Court or other court of competent jurisdiction of the State of New Jersey the fair share obligation, whichever occurs later, to prepare its HEFSP.

50. The Supreme Court in the 2013 Case and in the 2015 Case declined to establish a specific methodology or formula to calculate third round affordable housing obligations of the municipalities and instead left that determination to the 15 Mount Laurel Judges (one in each vicinage), directing that the methodology or formula established should be similar to that employed in the first and second round rules.

51. As a result of the Supreme Court's actions in the 2013 Case and the 2015 Case, there are insufficient criteria and guidelines established by the Court at this time for the Borough of Dunellen to prepare a compliant HEFSP which this Court could evaluate to determine its constitutional compliance.

52. In the 2015 Case, the Supreme Court afforded wide discretion to the 15 Mount Laurel Judges in addressing these Declaratory Judgment actions and enabled the trial judges specifically to grant municipalities a five month period within which to prepare a compliant HEFSP in accordance with the approved methodology and formula established by said trial judges.

53. By equating these Participating Municipalities to those municipalities who in 1985 transferred their litigated cases from the Court to COAH, and then had a five (5) month period from the date of transfer or the date that guidelines and regulations were adopted by COAH, whichever was later, the Borough of Dunellen is entitled to the opportunity to prepare and adopt a HEFSP within five (5) months from the date that the Court establishes the methodology and formula (also referred to as the criteria and guidelines) which will quantify the affordable housing obligation of the Borough of Dunellen and allow for the preparation and adoption of a constitutionally compliant HEFSP.

WHEREFORE, Plaintiff/Petitioner, the Borough of Dunellen respectfully seeks that the

Court grant the following relief:

- a. An Order granting the Borough of Dunellen the opportunity to prepare and adopt a HEFSP commencing immediately and extending for a five month period after the date that a methodology or formula is established by this Court, or otherwise as alleged in this Court, to prepare a constitutionally compliant HEFSP that incorporates the formula and methodology approved by this trial court or otherwise.
- b. An Order granting such additional relief as the Court deems equitable and just.

COUNT THREE

REQUEST FOR IMMUNITY

54. The Borough of Dunellen repeats and realleges each and every allegation as set forth in Paragraphs 1-53 as if set forth herein at length

55. In the 2015 Case, the Supreme Court afforded any Participating Municipality which files a Declaratory Judgment action seeking to verify and confirm its constitutional compliance with its affordable housing obligations, the right to seek temporary immunity from third party lawsuits while pursuing this Declaratory Judgment action and the development of a compliant HEFSP.

56. Moreover, pursuant to N.J.S.A. 52:27D-309 and 316, any municipality which had filed its affordable housing plan with the COAH agency before being sued on the basis of its alleged failure to provide affordable housing, not only secured COAH's jurisdiction but it also automatically secured immunity from exclusionary zoning lawsuits until 5 months after COAH adopts its criteria and guidelines.

57. The judicial equivalent to the statutory protections created by N.J.S.A. 52:27D-309 and 316 is more commonly referred to as the "immunity doctrine." See, K. Hovnanian Shore Acquisitions v. Twp. of Berkeley, 2003 WL 23206281 (App. Div., July 1, 2003).

58. Similar to the statutory immunity created pursuant to N.J.S.A. 52:27D-309 and 316, the Court in the recent In re COAH ruling, 221 N.J. at 6, created immunity for those municipalities which file a declaratory judgment action and request for immunity by July 8, 2015 (i.e. four months from the Court's publication of its holding in In re COAH.)

59. The Borough of Dunellen did in fact submit a petition for substantive certification of its Housing Element and Fair Share Plan in 2006 but COAH did not act on the petition. The Borough re-petitioned COAH again in 2009 for the third round substantive certification of its HEFSP, COAH deemed the submission complete, but COAH again did not timely act on that petition. Notwithstanding COAH's failure to act on the Borough's application, the Borough has in fact been a "Participating Municipality" and is thereby entitled to immunity.

60. The Borough of Dunellen has made good faith efforts to comply with all of COAH's Regulations during the third round, and the Borough has remained under COAH's jurisdiction throughout the time that the rules have been in a state of flux.

61. Moreover, by virtue of the instant Declaratory Judgment Complaint and Request for Immunity, the Borough is again voluntarily participating and is in compliance with the Court's most recent ruling. The Borough of Dunellen has demonstrated its unconditional commitment to voluntarily comply with the FHA, thereby rendering any exclusionary zoning lawsuit unnecessary.

62. Finally, it is again noted that the Borough's Third Round Unmet Need obligation is zero (0) units. See, **Exhibit G**, Certification of the Borough's Planner, Jennifer Beahm.

63. Because of all of the foregoing and by virtue of the filing of the within action, the Borough is eligible to seek and obtain immunity from third party lawsuits while pursuing their Declaratory Judgment action pursuant to the 2015 Case.

WHEREFORE, Plaintiff/Petitioner, the Borough of Dunellen respectfully seeks that the Court grant the following relief:

a. An Order granting temporary immunity from third party lawsuits against the Borough of Dunellen or its Planning Board from the date of the filing of the instant Declaratory Judgment action until this Court issues a Final Judgment of Compliance and Repose to the Borough of Dunellen for its HEFSP formulated, adopted and approved in accordance with the applicable formula and methodology established by this Court;

b. In the alternative, an Order granting temporary immunity for a period commencing immediately and extending for a period of five (5) months from the date the Court determines the criteria and guidelines with which the Borough must comply, and an Order extending immunity thereafter so long as the Borough files a HEFSP prior to the expiration of the aforementioned five (5) month period;

c. An Order granting such additional relief as the Court deems equitable and just.

COUNT FOUR

JURISDICTION OVER UNAPPROVED SPENDING PLAN

64. The Borough of Dunellen repeats and realleges each and every allegation as set forth in Paragraphs 1-63 as if set forth herein at length.

65. On April 9, 2015 the Appellate Division issued a decision divesting COAH of jurisdiction to administratively effectuate a forfeiture of Affordable Housing Trust Funds not spent or committed in accordance with the requirements of the FHA and enjoining COAH from taking any such administrative action. In re Failure of Council on Affordable Housing to Adopt Trust Fund Commitment Regulations, 2015 WL 1582908 (App. Div. 2015) (the “Trust Fund Case”).

66. In the Trust Fund Case, the Appellate Division further transferred jurisdiction over such actions and matters to the 15 Mount Laurel Judges designated to hear the Declaratory Judgment Actions regarding compliance with affordable housing obligations as set forth in the

2015 Case.

67. On information and belief, COAH has taken the position that it no longer has jurisdiction to approve Spending Plans that are pending before it.

68. The Borough of Dunellen does not have an approved Spending Plan, and without COAH's approval and authorization it would prevent the Borough from expending Affordable Housing Trust Funds to advance the purposes of affordable housing in the municipality.

69. In light of COAH's inaction on its Spending Plan, the Borough of Dunellen seeks to have this Court, in conjunction with processing the instant Declaratory Judgment action, assume jurisdiction over any Spending Plan once approved, or any amendment thereto, in order to give the Borough of Dunellen the ability to properly utilize and expend Affordable Housing Trust Funds if applicable collected in the future for the purposes of advancing and satisfying its affordable housing obligation.

WHEREFORE, Plaintiff/Petitioner, the Borough of Dunellen respectfully seeks that the Court grant the following relief:

- a. An Order approving the jurisdiction of this Court to consider and approve any Spending Plan and amendments thereto, if applicable; and
- b. An Order granting such additional relief as the Court deems equitable and just.

COUNT FIVE

AMENDMENTS TO APPROVED SPENDING PLANS

70. The Plaintiff/Petitioner, Borough of Dunellen repeats and realleges each and every allegation set forth in Paragraphs 1-69 of the Complaint as if set forth herein at length.

71. Currently, the Borough of Dunellen does not have a COAH-approved Spending Plan, and it has a trust fund with no balance in trust. Additionally, the Borough has no developable land.

72. Nonetheless, as a result of the 2015 Trust Fund Case, and on information and belief, COAH has been divested of, and/or has relinquished jurisdiction over approval of any amendments to any Spending Plan of the Borough of Dunellen.

73. It is anticipated that as part of the mechanism to satisfy the affordable housing obligations of the Borough of Dunellen as determined by this Court, there is a limited possibility that an approved Spending Plan may be required.

74. The Borough of Dunellen desires that this Court assume jurisdiction to approve any such Spending Plan of the Borough of Dunellen in order to effectuate and implement its HEFSP approved by this Court and any future amendments pending any reversion of jurisdiction to COAH, so as to allow the Borough of Dunellen the ability to utilize and expend its Affordable Housing Trust Funds to advance its affordable housing plans and satisfy its affordable housing obligation.

WHEREFORE, Plaintiff/Petitioner, the Borough of Dunellen respectfully seeks that the Court grant the following relief:

- a. An Order that this Court assume and assert jurisdiction for the approval of any approved Spending Plan in the same manner as COAH would have considered and approved such a Plan or amendments thereto.
- b. An Order granting such additional relief as the Court deems equitable and just.

LAW OFFICE OF JOHN E. BRUDER
Attorney for Plaintiff/Petitioner,
Borough of Dunellen

Dated:



John E. Bruder

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, notice is hereby given that John E. Bruder, Attorney for the Plaintiff/Petitioner, the Borough of Dunellen is designated as trial counsel in the above captioned matter.

CERTIFICATION PURSUANT TO R. 4:5-1

Pursuant to R.4:5-1, I hereby certify that the matter in controversy is not the subject matter of any other action pending in any Court or of a pending arbitration or administrative proceeding, and that no other action or arbitration or administrative proceeding is contemplated, except that Plaintiff has previously submitted a Petition for Substantive Certification to the New Jersey Council on Affordable Housing which, as a result of the 2015 Case, has been divested of jurisdiction that has been assumed by this Court as a result of the filing of the within Declaratory Judgment action.

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.

LAW OFFICE OF JOHN E. BRUDER
Attorney for Plaintiff/Petitioner,
Borough of Dunellen

Dated:



John E. Bruder

EXHIBIT A



BEACON PLANNING AND CONSULTING SERVICES, L.L.C.

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41 STATE HIGHWAY 34 SOUTH
COLTS NECK, NJ 07722

TEL. (732) 845-8103
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**HOUSING ELEMENT
AND
FAIR SHARE PLAN**

**BOROUGH OF DUNELLEN
MIDDLESEX COUNTY
NEW JERSEY**

Beacon File: A05133

December 2005

Land Use Board

- Roger Dornbierer, Chairperson
 - Robert J. Seader, Mayor
 - Joseph Petracca, Council Representative
 - Scott Luthman, Zoning Official
 - Chris Mueller, Secretary
 - Kenneth Bayer
 - Greg Bullwinkle
 - Robert F. Krause
 - Randee Staats
 - Barbara Seif, Alternate
-
- Donna Murray, Recording Secretary

Governing Body

- Robert J. Seader, Mayor
- Frank T. Bieniek, Council President
- James Ashworth
- Kevin Bachorik
- Kenneth Baudendistel
- Kelly Kolakowski
- Joseph Patracca

**BOROUGH OF DUNELLEN
MIDDLESEX COUNTY
HOUSING ELEMENT**

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**BOROUGH OF DUNELLEN
MIDDLESEX COUNTY
HOUSING ELEMENT**

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Introduction

A municipality's housing element must be designed to achieve the goal of providing affordable housing to meet the total 1987-2014 affordable housing need, which is comprised of the estimated growth share and the remaining balance of Prior Round Obligation from the Borough of Dunellen's. The regulations of the Council on Affordable Housing (COAH), N.J.A.C. 5:94 et seq. delineate a municipality's strategy for addressing its present and prospective housing needs, and, as such, each municipality's Housing Element must contain the following:

1. 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;
2. A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for the six years subsequent to the adoption of the housing element, taking into account, but not necessarily limited to, construction permits issued, approvals for development and probable residential development lands;
3. An analysis of the municipality's demographic characteristics, including, but not limited to, household size, income level and age;
4. An analysis of existing and probable future employment characteristics of the municipality;
5. A determination of the municipality's present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing;
6. A consideration of the lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion of, or rehabilitation for, low and moderate income housing, including a consideration of land of developers who have expressed a commitment to provide low and moderate income housing;
7. A map of all sites designated by the municipality for the production of low and moderate income housing and listing of each site that includes its owner, acreage, lot and block;

8. The location and capacities of existing and proposed water and sewer lines and facilities relevant to the designated sites;
9. Copies of necessary applications for sewer service and water quality management plans submitted pursuant to Sections 201 and 208 of the Federal Clean Water Act, 33 U.S.C. 1215, et seq.;
10. A copy of the most recently adopted municipal master plan, and where required, the immediately preceding, adopted master plan;
11. For each designated site, a copy of the New Jersey Freshwater Wetlands map where available. When such maps are not available, municipalities shall provide appropriate copies of the National Wetlands Inventory maps provided by the U.S. Fish and Wildlife Service;
12. A copy of appropriate United States Geological Survey Topographic Quadrangles for designated sites; and
13. Any other documentation pertaining to the review of the municipal housing element as may be required by the Council.

I. Inventory of the Borough of Dunellen's Housing Stock

A. Age

Approximately 28.9 percent of Dunellen's housing stock was built between 1950 and 1969. The Borough of Dunellen has a total housing stock of 2,520 units. The median year that a structure was built in the Borough of Dunellen was 1945, according to the 2000 census.

**Table 1
Age of Housing Units
Dunellen, New Jersey**

Dates of Construction	Structures	Percent of Total
1939 or earlier	1,030	40.9
1940 to 1949	424	16.8
1950 to 1959	479	19.0
1960 to 1969	250	9.9
1970 to 1979	204	8.1
1980 to 1989	69	2.7
1990 to 1994	17	0.7
1995 to 1998	39	1.6
1999 to March 2000	8	0.3
Total Units:	2,520	100.0

Source: U.S. Bureau of the Census

Units built before 1939 that contain 1.01 or more persons per room are highly correlated with substandard housing indicators. This is an index utilized by COAH in determining the rehabilitation share. In Dunellen, 1,030 units, or 40.9 percent of the existing housing stock, were built before 1939.

B. Condition

Rehabilitation share is the total deficient housing indicated by selected housing unit characteristics unique to each community. It is assumed that units so indicated will be prime candidates for rehabilitation. The following characteristics are used as indicators of a need for rehabilitation:

- *Persons per Room.* Housing units built in 1939 or before with 1.01 or more persons per room. These are old units that are overcrowded.
- *Plumbing Facilities.* Inadequate plumbing sufficient for rehabilitation is indicated by incomplete plumbing facilities, i.e., lack of hot and cold piped water, flush toilet or bathtub/shower.
- *Kitchen Facilities.* Inadequate kitchen facilities signaling rehabilitation are indicated by the non-presence of kitchen facilities within the unit, or the non-presence of one of three components: a sink with piped water, a stove or a refrigerator.

These characteristics of deficient housing are nationally recognized indicators of housing inadequacy. Each one of these indicators, when properly identified and not double-counted or multiplied, is sufficient to signal a need for unit rehabilitation. This is true not solely because the characteristic specified is itself debilitating, but rather indicates that a unit is either old or missing one of the basic components of normal housing. The data indicating these characteristics are available at the municipal level from the U.S. Census. The data are reported in a manner that allows for the number of units that need rehabilitation to be quantified, but not over counted.

Table 1 presented the age of the Borough of Dunellen's housing stock. Tables 2 through 4 address the other surrogates of deficient housing.

Total	2,451	1,692	759
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Source: U.S. Bureau of the Census

**Table 3
Plumbing Facilities, 2000
Dunellen, New Jersey**

	Total Units
Complete plumbing facilities	2,520
Lacking complete plumbing facilities	0

Source: U.S. Bureau of the Census

**Table 4
Kitchen Facilities, 2000
Dunellen, New Jersey**

	Total Units
Complete kitchen facilities	2,488
Lacking complete kitchen facilities	32

Source: U.S. Bureau of the Census

C. Purchase and Rental Value

Approximately 58 percent of the owner-occupied housing units in the Borough of Dunellen had values between \$125,000 and \$175,000. The median value was \$155,800.

**Table 5
Housing Values, 2000
Dunellen, New Jersey**

Specified Owner Occupied Units	Units	Percent
Less than \$15,000	0	0
\$15,000 to \$19,999	0	0
\$20,000 to \$24,999	0	0
\$25,000 to \$29,999	0	0
\$30,000 to \$34,999	0	0
\$35,000 to \$39,999	0	0
\$40,000 to \$49,999	0	0
\$50,000 to \$59,999	0	0
\$60,000 to \$69,999	0	0
\$70,000 to \$79,999	22	1.5
\$80,000 to \$89,999	0	0
\$90,000 to \$99,999	35	2.4
\$100,000 to \$124,999	171	11.8
\$125,000 to \$149,999	393	27.1
\$150,000 to \$174,999	450	31.0
\$175,000 to \$199,999	256	17.7
\$200,000 to \$249,999	115	7.9
\$250,000 to \$299,999	8	0.6
\$300,000 to \$399,999	0	0
\$400,000 or more	0	0
Total	1,450	100.0

Source: U.S. Bureau of the Census

Of the 733 rental units with cash rent in Dunellen, 366 were rented for between \$650 and \$999 per month. The median contract rent was \$1,100 per month. An additional 26 units had no cash rents.

Table 6
Contract Rent Values, 2000
Dunellen, New Jersey

Renter Occupied Units	Number	Percent
Less than \$299	0	0.0
\$300 to \$349	13	1.8
\$350 to \$399	0	0.0
\$400 to \$449	49	6.7
\$450 to \$499	43	5.9
\$500 to \$549	62	8.5
\$550 to \$599	59	8.0
\$600 to \$649	31	4.2
\$650 to \$699	70	9.5
\$700 to \$749	110	15.0
\$750 to \$999	186	25.4
\$1,000 or more	110	15.0
Total	733	100.0

Source: U.S. Bureau of the Census

D. Occupancy Characteristics and Types

Sixty-nine percent of the housing in the Borough of Dunellen is owner occupied. Approximately 31 percent of Dunellen's housing stock is rental.

Table 7
Tenure and Vacancy, 2000
Dunellen, New Jersey

Occupied Housing Units	Housing Units
Owner Occupied	1,694
Renter Occupied	757
Total	2,451
Vacant Housing Units	
For rent	35
For sale only	11
Rented or sold, not occupied	8
Seasonal, recreational or occasional use	3
Other vacant	12
Total	69

Source: U.S. Bureau of the Census

E. Units Affordable to Low and Moderate Income Households

Units are affordable to low and moderate-income households if the maximum sales price or rent is set within the COAH specified formula. A moderate income household is a household whose gross family income is more than fifty percent of median income, but less than 80 percent of the median income for households of the same size within the housing region. A low-income household is a household whose gross family income is equal to or less than 50 percent of the median gross household income for a household of the same size within the housing region. Dunellen is in Region 3, which encompasses Hunterdon, Middlesex and Somerset counties.

Using current regional income limits adopted by COAH, a four-person Middlesex County median household income is estimated at \$92,000. A moderate-income four-person household would earn a maximum of \$73,600 (80 percent of regional median) and a low-income four-person household would earn up to \$46,000 (50 percent of regional median).

Income levels for one, two, three and four person households as of 2005 are given below:

Table 8
2005 Regional Incomes by Household Size
Hunterdon, Middlesex and Somerset Counties

Income Level	One-person HH	Two-person HH	Three-person HH	Four-person HH
Median	\$64,400	\$73,600	\$82,800	\$92,000
Moderate	\$51,520	\$58,800	\$66,240	\$73,600
Low	\$32,200	\$36,800	\$41,400	\$46,000

Source: Council on Affordable Housing

Based on the qualifying formula in N.J. A.C. 5:80-26, the monthly CO'st of shelter which includes mortgage (principal and interest), taxes, insurance and homeowners or condominium association fees, may not exceed twenty-eight percent of gross monthly household income based on a five percent down payment. In addition, moderate-income sales units must be available for at least three different prices and low-income sales units available for at least two different prices. The maximum sales prices must now be affordable

to households earning no more than seventy percent of median income. The sales prices must average fifty-five percent of median income.

Under COAH regulations, rents including utilities may not exceed thirty percent of gross monthly income. The average rent must now be affordable to households earning fifty-two percent of median income. The maximum rents must be affordable to households earning no more than sixty percent of median income. In averaging fifty-two percent, one rent may be established for a low-income unit and one rent for a moderate-income unit for each bedroom distribution. In addition, in inclusionary rental developments, ten percent of the rental units must be affordable to households earning no more than thirty-five percent of median income. The utility allowance must be consistent with the utility allowance approved by HUD and utilized in New Jersey.

Dunellen currently does not have any low and moderate income housing units that are deed restricted and occupied by income eligible households.

II. PROJECTION OF HOUSING STOCK

A. Building Permits

According to the New Jersey Department of Labor, Residential Building Permits Issued, (Jan. 1990 - Sept. 2005), 110 new residential building permits were issued in the Borough of Dunellen during this period.

B. Approvals of Development Applications

Projecting Municipal Growth Share Obligation addresses this section.

C. Probable Residential Development

Projecting Municipal Growth Share Obligation addresses this section.

D. Future Construction of Low and Moderate Income Housing

Dunellen will address the future construction of low and moderate income housing in the Fair Share Plan.

III. Demographic Characteristics

A. Population

Dunellen's population increased by 4.3 percent between 1990 and 2000. Table 9 illustrates the figures.

**Table 9
Population
Dunellen, New Jersey**

Year	Population
1990	6,528
2000	6,823

Source: U.S. Bureau of the Census

The majority of the Borough's residents (51 percent) were between the ages of 24 and 54 years.

**Table 10
Populations by Sex, 2000
Dunellen, New Jersey**

Sex	Number	Percentage
Male	3,428	50.2
Female	3,395	49.8
Total	6,823	100.0

Source: U.S. Bureau of the Census

Table 11
Population by Sex and Age, 2000
Dunellen, New Jersey

<u>Age</u>	<u>Male</u>	<u>Female</u>
Under 5 years	251	252
5 to 17 years	625	571
18 to 20 years	103	104
21 to 24 years	132	130
25 to 44 years	1257	1200
45 to 54 years	470	438
55 to 59 years	141	165
60 to 64 years	104	107
65 to 74 years	176	193
75 to 84 years	135	178
85 years and over	34	57
Total	3,428	3,395

Source: 2000 Census of Population and Housing

B. Household Size and Type

A household profile of the Borough of Dunellen shows that there were 2,451 households with a total household population of 6,736 in 2000. The average number of persons per household was 2.75.

Table 12
Household Profile 2000
Dunellen, New Jersey

	<u>Total Number</u>
Households	2,451
Population in households	6,736
<u>Average persons per household</u>	<u>2.75</u>

Source: U.S. Bureau of the Census

Table 13
Household Type and Relationship
Dunellen, New Jersey

Population in family households:	5,789
Householder:	1,711
Male	1,217
Female	494
Spouse	1,334
Child:	2,126
Natural-born or adopted	2,039
Step	87
Grandchild	119
Other relatives	175
Non-relatives	144
Population in non-family households:	947
Living alone	575
Not living alone	165
Non-relatives	207
In group quarters:	87
Institutionalized population	0
Non-institutionalized population	87

Source: U.S. Bureau of the 2000

Table 14
Type of Housing Units by Structure
Dunellen, New Jersey

Units in Structure	Total Units
1, detached	1,579
1, attached	143
2	450
3 or 4	208
5 to 9	68
10 to 19	57
20 to 49	0
50 or more	15
Mobile home	0
Total	2,520

Source: U.S. Bureau of the 2000

C. Income Level

Just over 53 percent of the households in Dunellen earn between \$50,000 and \$124,999 according to the 2000 Census, with 1.8 percent earning \$200,000 or more.

Table 15
Household Income, 2000
Dunellen, New Jersey

Household Income	Number	Percent
Less than \$10,000	56	2.3
\$10,000 to \$14,999	89	3.6
\$15,000 to \$19,999	138	5.7
\$20,000 to \$24,999	107	4.4
\$25,000 to \$29,999	53	2.2
\$30,000 to \$34,999	108	4.4
\$35,000 to \$39,999	197	8.1
\$40,000 to \$44,999	140	5.7
\$45,000 to \$49,999	76	3.1
\$50,000 to \$59,999	274	11.2
\$60,000 to \$74,999	322	13.2
\$75,000 to \$99,999	457	18.7
\$100,000 to \$124,999	243	10.0
\$125,000 to \$149,999	77	3.2
\$150,000 to \$199,999	60	2.5
\$200,000 or more	44	1.8
Total	2,441	100.1

Source: 2000 Census of Population and Housing

Total does not add up to 100 percent due to rounding

D. Marital Status

In 2000, there were more men than women over the age of 15 years in the Borough of Dunellen. There were 222 more males that never married. There were significantly more widows than widowers and more divorced females than males.

Table 16
Sex by Marital Status for Persons 15 years and over, 2000
Dunellen, New Jersey

Marital Status	Total	Male	Female
Never Married	1,428	825	603
Now Married	3,206	1,599	1,607
Widowed	328	83	245
Divorced	479	226	253
Total	5,441	2,733	2,708

Source: U.S. Bureau of the Census

IV. EXISTING & PROBABLE FUTURE EMPLOYMENT CHARACTERISTICS

Of the 3,484 Dunellen's residents employed in the civilian labor force, 56.8 percent are in various service industries, including information services; fire, insurance and real estate services; professional scientific and management services; education, health and social services; arts, entertainment and recreation services; other services; and, public administration.

Table 17
Industry for Employed Persons 16 Years and over, 2000
Dunellen, New Jersey

Industry	Male	Female	Total
Agriculture, forestry, fishing and hunting, and mining:	0	0	0
Construction	165	32	197
Manufacturing	288	194	482
Wholesale trade	107	17	124
Retail trade	260	235	495
Transportation and warehousing, and utilities:	174	32	206
Information	173	76	249
Finance, insurance, real estate and rental and leasing:	85	139	224
Professional, scientific, management, administrative, and waste management services:	220	179	399
Educational, health and social services:	161	447	608
Arts, entertainment, recreation, accommodation and food services:	114	91	205
Other services (except public administration)	102	72	174
Public administration	74	47	121
Total	1,923	1,561	3,484

Source: U.S. Bureau of the Census

Table 18
Occupation for Employed Persons 16 Years and over, 2000
Dunellen, New Jersey

Occupation	Male	Female	Total
Management, professional and related	651	582	1,233
Management	301	203	504
Professional	350	379	729
Service	216	228	444
Healthcare support	0	26	26
Protective	70	21	91
Food preparation and serving	80	79	159
Building and grounds cleaning and maintenance	43	15	58
Personal care	23	87	110
Sales and office	261	648	909
Sales and related	148	136	284
Office and administrative support	113	512	625
Farming, fishing and forestry	11	0	11
Construction, extraction and maintenance	344	19	363
Construction and extraction	163	0	163
Installation, maintenance and repair	181	19	200
Production, transportation and material moving	440	84	524
Production	283	59	342
Transportation and material moving	157	25	182
Total	1,923	1,561	3,484

Source: U.S. Bureau of the Census

Future employment activity within Dunellen is addressed in the Projecting Growth Share section.

According to the New Jersey State Data Center, Dunellen had a covered employment number of 158 in 2003.

V. DETERMINATION OF TOTAL OBLIGATION FROM PRIOR ROUNDS

A. Rehabilitation Share

Dunellen's third round rehabilitation share is 9 units. The Borough has been a participant in Middlesex County's Housing Preservation Program, which provides for the rehabilitation of substandard dwelling units. It is anticipated that the Borough's rehabilitation share will be fulfilled by its continued participation in this program. Affordability controls are provided through liens placed on rehabilitated homes. Repayment is due to Middlesex County upon sale or transfer of these properties to a non-eligible household, regardless of the length of time after the rehabilitation was completed.

B. Recalculated Total Obligation from Prior Rounds

Dunellen's prior round obligation (1987-1999), as recalculated by COAH, is 4 units. The formulas for the prior round recalculated obligation are essentially the same as that of the second round. The only difference is that the "recalculated need plus the rehabilitation share" replaces "pre-credited need" on the formulas. The second round rules established in N.J.A.C. 5:93 et seq., apply to this component of the third round plan.

VI. PROJECTION OF MUNICIPAL GROWTH SHARE OBLIGATION

A. Residential Growth Share Obligation

Step 1: The projections in Table R-1 were provided by the Metropolitan Planning Organization (MPO) and will be utilized until the Plan Projections for 2015 in the final State Development and Redevelopment Plan are released. The MPO growth projections show population projections in five-year intervals from 2000 through 2025. These projections show total population, not just the population projected to reside in market rate units. To determine how many affordable units will be provided to address residential growth, the increase in population was determined by subtracting the population in the year 2005 from the population in the year 2015. This provided a 10-year population increase that closely parallels the 2004 to 2014 period on which the growth share is based. This result was then divided by the average household size for the Borough of Dunellen as determined by the 2000 Census. This resulted in a total number of 204 new households, which is also the number of new housing units that are projected as shown in Table R-1 below. This is the figure that will be compared to the total net residential growth as projected by Dunellen in Steps 5 and 6.

Table R-1
MPO Residential Growth Projection
Dunellen, New Jersey

2015 MPO Population	2005 MPO Population	=	Population Change	+	2000 Household Size	=	Household Growth
7,500	6,940	=	560	+	2.75	=	204

Step 2: Next, there is a review of the historical data for the last 10 years that were collected on certificates of occupancy and demolitions issued. Table R-2 provides the ten-year historical certificate of occupancy (CO) and demolition permit data that were collected. This assists in projecting likely future growth and also provides for actual growth since January 1, 2004. CO's issued minus

demolitions that have taken place since January 1, 2004 comprise the first component of the growth share calculation.

Actual figures are used for growth in 2004 and projections are used for growth from 2005 – 2014.

Any CO's issued in 2004 for affordable housing units that are part of a second round COAH certified plan are noted here and also noted as to whether they are part of an inclusionary development. Of the CO's issued in 2004, none were for affordable housing.

Table R-2
10-year Historical Trend of Certificates of Occupancy and Demolition Permits
Dunellen, New Jersey

	'95	'96	'97	'98	'99	'00	'01	'02	'03	'04
CO's Issued	NA	1	4	5	6	2	1	4	8	18
Demolitions	NA	0	0	0	1	1	5	20	1	1
Net	NA	1	4	5	5	2	(4)	(16)	7	19

Step 3: This section includes projections from the housing element of future residential construction based on a site-specific analysis of development applications, both approved and anticipated. Developments that are expected to be constructed before 2014 were utilized to project residential growth. Yield calculations gave consideration to wetlands, steep slopes, access to utilities, etc. Also included in this projections were all anticipated development, including affordable housing developments from the second round certified affordable housing plan that have not yet been constructed as well as future housing projects that will be approved and will have CO's issued by 2014. Table R-3 lists those developments and provides an estimate of the number of units that could be constructed and the year CO's would be issued.

Table R-3 represents the range of new residential development that has been proposed by various developers for the Dunellen Downtown Redevelopment Area, Phase 1. The Borough is currently reviewing these redeveloper proposals and will choose one for implementation. Thus, Table R-3 shows the anticipated upper and lower ranges of such new residential development. New development will primarily stem from the redevelopment of a section of the Borough's downtown. This category also reflects single-family building permits that contribute to growth share, but would not be captured in the other components of the growth projection. Looking at CO and demolition permit historical trends, it is noted that Dunellen had minimal development activity over the past ten years.

Table R-3
Anticipated Developments and Number of Residential Units
by Year that CO's are Anticipated to be Issued
Dunellen, New Jersey

	'05	'06	'07	'08	'09	'10	'11	'12	'13	Total
Approved Development Applications										
None										
Anticipated Development Applications										
<i>Baker Residential</i>			94	95	94					283
<i>Dunellen Redevelopment, LLC</i>			129	129	128					386
<i>Kaplan Companies</i>			136	136	136					408
<i>Matzel and Mumford</i>			147	147	147					441
<i>Millenium Homes</i>			145	145	145					435
<i>Toll Brothers</i>			131	131	130					392
Other Projected Development										
<i>Isolated Lots</i>	4	4	4	4	4	4	4	4	4	36
Total										319 - 477

Step 4: Anticipated demolitions are subtracted from the total CO's projected, as shown in Table R-4. The upper end of the proposed residential development from Table R-2 is used in order to simplify all subsequent calculations. It is

understood that the ultimate number of affordable housing units to be provided will be largely determined by the actual number of housing units within the Dunellen Downtown Redevelopment Area, Phase 1.

Table R-4
Projected Miscellaneous CO's and Demolition Permits
Dunellen, New Jersey

	'05	'06	'07	'08	'09	'10	'11	'12	'13	Total
Total CO's Issued (from Table R-3)	4	4	151	151	151	4	4	4	4	477
Demolitions	1	1	1	1	1	1	1	1	1	9
Net	3	3	150	150	150	3	3	3	3	468

Step 5: The actual net residential growth from 2004 (Table R-2) is added to the projected net residential growth from 2005 to 2014 (Table R-4) to arrive at the total 10-year total residential growth as show in Table R-5:

Table R-5
Total Net Residential Growth (Sum of Actual and Projected Growth)
Dunellen, New Jersey

	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	Total
Total CO's Issued (from Table R-3)	18	4	4	151	151	151	4	4	4	4	495
Demolitions	1	1	1	1	1	1	1	1	1	1	10
Net	17	3	3	150	150	150	3	3	3	3	485

Step 6: The net residential growth from Step 5 in compared to the MPO housing unit growth as projected in Step 1. Because the net residential growth of 485 units is greater than the MPO household growth projection of 204, the projection has a presumption of validity in the petition for substantive certification.

Step 7: From the total net residential growth, affordable housing units are subtracted that were included in the second round certified plan that have been received or are projected to receive CO's after January 1, 2004. In addition to affordable units, market-rate residential units in an inclusionary development that were part of a second round certified plan were also subtracted.

These developments represent a component of total growth as shown in Tables R-2 (actual) and R-3 (projected).

Dunellen does have any affordable housing units that have been received or are projected to be received through either a second round certified plan of an inclusionary development that was part of a second round certified plan.

Step 8: The total number of second round units to be excluded from the growth share projection as calculated in Step 6. Table R-6 shows the net residential growth projection after excluding all allowable second round affordable and market-rate units.

Dunellen does not have any units to be excluded from its growth share projection.

Step 9: The net projected residential growth of 485 units is divided by nine, with a resulting growth share obligation of 54 affordable units. The reason the number is divided by nine is that affordable units that will meet a third round obligation are assumed to be included in these projections, rather than generating additional growth over and above these projections.

**Table R-6
Affordable Housing Unit Growth Projections
Dunellen, New Jersey**

	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	Total
Table R-5 Total	17	3	3	150	150	150	3	3	3	3	476
Divided by Nine	1.9	0.3	0.3	16.7	16.7	16.7	0.3	0.3	0.3	0.3	53.8

Therefore, the total affordable housing obligation that will be generated by new residential development is projected to be 54 new construction units over the 10-year certification period.

B. Non-residential Growth Share Obligation

Step 1: The projections in Table NR-1 were provided by the MPO and will be utilized until the Plan Projections for 2015 in the final State Development and Redevelopment Plan are released. The MPO growth projections show employment projections in five-year intervals from 2000 through 2025. To determine how many affordable units will be provided to address non-residential growth, the increase in employment is determined by subtracting the number of jobs in the year 2005 from the number of jobs in the year 2015. This provides a 10-year employment increase that closely parallels the 2004 to 2014 period on which growth share is based. This figure is then compared for consistency to the employment growth projected for the Borough in Step 6. See the example shown in Table NR-1 below:

**Table NR-1
MPO Non-Residential Growth Projection
Dunellen, New Jersey**

2015 MPO Employment	-	2005 MPO Employment	=	Employment Change
1,910	-	1,750	=	160

Step 2: The historical data for the last 10 years that were collected on CO's and demolitions issued were reviewed. Table NR-2 provides the 10-year historical CO and demolition permit data that were collected. This assisted in projecting likely future growth and also provided actual growth since January 1, 2004. CO's issued minus demolitions that have taken place since January 1, 2004, comprise the first component of the growth share calculation.

Actual figures are used from growth in 2004 and projections are used for growth from 2005 to 2014.

The Borough's Construction Official has indicated that there has not been any new non-residential development in Dunellen over the past ten years.

STEP 3: The actual growth that has occurred was then converted into the square footage to jobs using Appendix E. These conversions were made for each of the relevant use groups.

The Borough's Construction Official has indicated that there has not been any new non-residential development in Dunellen over the past ten years.

STEP 4: Projections from the housing element of future non-residential construction based on a site-specific analysis of development applications, both approved and anticipated are included. Developments that are expected to be constructed before 2014 are used to project non-residential growth. Yield calculations gave consideration to wetlands, steep slopes, access to utilities, etc. All anticipated development, including future development likely to be approved and have CO's issued by 2014, are included in this projection. Tables NR-2 through NR-4 list such development and provide an estimate of the square footage anticipated and the year CO's would be issued:

These projections were made for each of the relevant use groups.

Any adjustment to the non-residential growth projections by demolitions that resulted in job loss calculations was based upon the most recent use group of the building prior to its demolition.

Once tabulated, the appropriate use group factor listed in Appendix E to the projected net gross square footage of new non-residential development is applied to determine the projected job growth. Appendix E was the standard used to determine jobs per square feet.

Table NR-2
"B" Use Group: Developments and Anticipated Developments by the Year that CO's are Anticipated to be Issued (sq. ft)
Dunellen, New Jersey

	'05	'06	'07	'08	'09	'10	'11	'12	'13	Total	Jobs
Approved Development Applications											
Pending Development Applications											
Anticipated Development Applications											
Baker Residential				43,870						43,870	132
Dunellen Redevelopment, LLC				132,000						132,000	396
Kaplan Companies				60,500						60,500	182
Matzel and Mumford				37,300						37,300	112
Millenium Homes				57,300						57,300	172
Toll Brothers				45,000						45,000	135
Other Projected Development											
Total New Development				37,300 – 132,000						37,300 – 132,000	112 – 396
Total Demolitions			22,000							22,000	3

Table NR-3
"M" Use Group: Developments and Anticipated Developments by the Year that CO's are Anticipated to be Issued (sq. ft)
Dunellen, New Jersey

	'05	'06	'07	'08	'09	'10	'11	'12	'13	Total	Jobs
Approved Development Applications											
Pending Development Applications											
Anticipated Development Applications											
Baker Residential				9,500						9,500	0
Dunellen Redevelopment, LLC				22,000							1
Kaplan Companies				30,800							1
Matzel and Mumford				20,000							1
Millenium Homes				49,000							2
Toll Brothers				15,000							1
Other Projected Development											
Total New Development				9,500 – 49,000						9,500 – 49,000	1 – 2
Total Demolitions			1,600							1,600	0

**Table NR-4
 "F" Use Group: Developments and Anticipated Developments by the Year that CO's are Anticipated to be Issued (sq. ft)
 Dunellen, New Jersey**

	'05	'06	'07	'08	'09	'10	'11	'12	'13	Total	Jobs
Approved Development Applications											
Pending Development Applications											
Anticipated Development Applications											
Other Projected Development											
Total New Development											
Total Demolitions										490,000	980

STEP 5: Tables NR-2 through 4 were merged once the number of jobs created (new construction) or lost (demolitions) by use group was determined. Jobs lost (as evidenced by demolitions) were subtracted from jobs created (new construction) to arrive at net projected employment growth.

**Table NR-5
Net Projected Employment Growth
Dunellen, New Jersey**

	'05	'06	'07	'08	'09	'10	'11	'12	'13	Total
Table NR-2: Total New Development				396						396
Table NR-3 Total New Development				2						2
Table NR-4 Total New Development										
Subtotal New Development				397						397
Table NR-2 Total Demolitions			(3)							(3)
Table NR-3 Total Demolitions										
Table NR-4 Total Demolitions			(980)							(980)
Subtotal Demolitions			(983)							(983)
Total Projected Net Employment Growth			(983)	397						(586)

STEP 6: The actual net non-residential growth from 2004 was added to the projected net non-residential growth from 2005 to 2014 to arrive at the total 10-year net non-residential (employment) growth as shown in Table NR-6.

**Table NR-6
Total Net Non-Residential (Employment) Growth (Sum of Actual and Projected Growth)
Dunellen, New Jersey**

	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	Total
Total New Development					397						397
Total Demolitions				(983)							(983)
Total Net Employment Growth				(983)	397						(586)

STEP 7: The net non-residential growth from Step 5 is compared to the MPO employment growth as projected in Step 1. The projected net non-residential growth is less than the MPO employment growth projection. This is because the MPO projection does not take into account the demolition of 490,000 square feet of manufacturing space, as well as an additional 23,600 square feet of office and retail space as part of the Dunellen Downtown Redevelopment Area, Phase 1.

STEP 8: The net non-residential decline in job growth of 586 jobs is divided by 25, with a resulting non-residential growth share obligation of -23 affordable units.

Table NR-10
Affordable Housing Unit Obligation Generated by Non-Residential Development
Dunellen, New Jersey

	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	Total
Table NR-9 Total				(983)	397						(586)
Divided by 25				(39.3)	15.9						(23.4)

Therefore, the Borough of Dunellen is not anticipated to have a non-residential affordable housing obligation over the 10-year certification period.

FINAL STEP: The net residential component of growth share projection from Step 9 of the Residential Growth Projection Example is added to the non-residential growth share projection from Step 8 above and determines Dunellen's third round growth share obligation. The projection shows that the Borough of Dunellen growth share affordable housing obligation may be as high as 30 units. This may vary depending on which redeveloper proposal the Borough chooses for the Dunellen Downtown Redevelopment Area, Phase 1.

Table T-1
Total Projected Affordable Housing Obligation Generated by
Residential and Non-Residential Development 2004-1014
Dunellen, New Jersey

	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	Total
Table R-8 (R)	1.9	0.3	0.3	16.7	16.7	16.7	0.3	0.3	0.3	0.3	53.8
Table NR-10 (NR)				(39.3)	15.9						(23.4)
Total	1.9	0.3	0.3	(22.6)	32.6	16.7	0.3	0.3	0.3	0.3	30.4

The projections are not equally divided between the years. Accordingly, consideration is given to providing for the affordable units to be constructed in proportion to the market-rate residential and non-residential construction as it occurs.

VI. ANALYSIS OF EXISTING AND FUTURE ZONING TO ACCOMMODATE GROWTH PROJECTIONS

A. Availability of Existing and Planned Infrastructure.

Potable water is supplied through the New Jersey American Water Company. There is sufficient potable water. The Borough is also serviced by the Plainfield Area Regional Sewerage Authority. There is sufficient capacity. The Borough does not expect future growth to exceed the capacity of these essential infrastructure services.

B. Anticipated Demand for Types of Uses Permitted by Zoning Based on Present and Anticipated Future Demographic Characteristics.

Future development in the borough is largely restricted by the limited amount of vacant, developable land. Dunellen has proposed to redevelop a section of its downtown area. The redevelopment plan would replace existing industrial and commercial uses with residential and commercial uses, including affordable housing.

C. Anticipated Land Use Patterns.

There are few undeveloped properties in the Borough, including oversized lots with subdivision potential. The Borough has eight primary land use categories, including residential, commercial, industrial, public, quasi-public, streets, vacant lands, and areas in need of redevelopment. Dunellen has designated part of its downtown area for redevelopment, and is implementing the adopted redevelopment plan for this area. The redevelopment plan calls for the provision of affordable housing in sufficient numbers to satisfy the Borough's affordable housing obligation.

D. Economic Development Policies.

Dunellen is concerned about the maintenance of its economic vitality. The Borough has experienced the loss of manufacturing jobs and ratables, which in turn has resulted in a lack of investment in its business district. The rail line continues to be a focus of Dunellen with commuters from the Borough and surrounding communities using the train station to access jobs in employment centers in Newark, Jersey City, and New York. The rail line represents a key opportunity for the Borough's future, but rather than as a center of manufacturing, Dunellen hopes to be a center to residential and commercial development that takes advantage of its location near the train station.

E. Constraints on Development.

State and federal regulations:

There are no state or federal regulations that would act to constrain the development of affordable housing in Dunellen.

Land ownership patterns:

Approximately 69.1 percent of the Borough's housing stock is owner-occupied and 30.9 percent is renter-occupied. Approximately 5.4 percent of the Borough's land area is classified as recreation or conservation areas, with parks and recreation site totaling 2.2 acres.

Incompatible land uses:

The Dunellen Downtown Redevelopment Area contains industrial uses that are not compatible with adjacent single-family residences. The area is

proposed to be redeveloped for residential uses, including attached single-family and multifamily residences.

Sites needing remediation:

Brownfields remediation is anticipated for the Art Color property, which comprises much of the Dunellen Downtown Redevelopment Area.

Environmental constraints:

There are no substantial areas of environmentally sensitive lands that would inhibit the provision of affordable housing in Dunellen. A review of FEMA floodplain mapping shows that while portions of Dunellen are subject to flooding associated with the Bound and Bonygut Brooks, the 100-year floodplains associated with these water bodies does not extend into the Dunellen Downtown Redevelopment Area, within which the Borough intends to satisfy its affordable housing obligation. Mapping from the NJDEP indicates there are no freshwater wetlands within the redevelopment area. Dunellen has a relatively flat topography, thus there are no substantial areas of steep slopes.

Existing or planned measures to address any constraints:

The Federal Emergency Management Agency is planning to construct a levy that would shield Dunellen from much of the flooding that occurs along the Bound Brook. However, this is not anticipated to substantially affect the anticipated development within the Dunellen Downtown Redevelopment Area.

FAIR SHARE PLAN

Borough of Dunellen/Middlesex County

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I. PREFACE

A municipality's affordable housing obligation is cumulative, and includes affordable housing need for the period 1987 to 2014. The affordable housing obligation consists of three components:

- Rehabilitation share (2000)
- Prior Round Obligation (1987-1999)
- Growth Share (1999-2014)

Under growth share, municipalities determine their 1999 to 2014 new construction or "growth share" obligation, by applying the following ratios:

- For every eight market-rate residential units constructed from January 1, 2004 to January 1, 2014, a one-unit affordable housing obligation is generated.
- For every 25 jobs resulting from new or expanded non-residential construction within the municipality from January 1, 2004 to January 1, 2014, based on the conversion factor found in Appendix E of the third round rules, a one-unit affordable housing obligation is generated.

These two components are then added together to arrive at the total growth share obligation.

A municipality's Rehabilitation Share is a measure of old, crowded, deficient housing that is occupied by low- and moderate-income households. These rehabilitation numbers are based on 2000 census data. Rehabilitation Share numbers from each prior round are replaced with the latest round number because the numbers are updated with each decennial census.

A municipality may receive credit for rehabilitation of low- and moderate-income deficient housing units completed after April 1, 2000 provided the units were rehabilitated up to the applicable code standard, the average capital CO'st spent on rehabilitating a unit was at least

\$8,000 and the units have the appropriate controls on affordability to ensure the unit remains affordable during the required period of time.

Rehabilitation credits cannot exceed the Rehabilitation Share and, generally speaking, can only be credited against the rehabilitation component, not the new construction component.

The prior round obligation is the municipal new construction obligation from 1987 to 1999. Obligations from the first and second rounds have been recalculated to include the most recent data from the 2000 census. All municipalities participating in the COAH process must use these updated figures. COAH continues to offer credits, reductions, and adjustments that may be applied against the Prior Round Obligation (1987-1999) for affordable housing activity undertaken from 1980 to 1999.

II. REHABILITATION SHARE

The purpose of the rehabilitation program is to renovate deficient housing units. Deficient housing units are defined as units 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. Upon rehabilitation, the housing deficiencies must be corrected and the unit must comply with the applicable code standard.

A municipality must demonstrate that it has the capability to administer a rehabilitation program by either designating an experienced employee to administer the program or entering into an agreement with a governmental agency or private consultant to administer all or some of the program. A municipality must provide the consultant or municipal employee's credentials to administer the program as well as a procedures manual. If the county is administering the rehabilitation program, the municipality must submit a statement from the county agreeing to adhere to applicable COAH rules and acknowledging sufficient funding.

Rental units cannot be excluded from the municipal rehabilitation program. There must be at least 10-year affordability controls placed on both owner-occupied units and rental units. For owner-occupied units, these controls may be in the form of a lien filed with the appropriate property's deed. For rental units, the controls must be in the form of a deed restriction and may also include a lien. Units rehabilitated after April 1, 2000 are eligible for credits against the third round Rehabilitation Share.

The municipal investment for the rehabilitation of a unit must average at least \$10,000 per unit, of which no more than \$2,000 can be used for administrative costs. Documentation must also be submitted demonstrating adequate funding source(s) and a resolution of intent to bond in the event there is a shortfall of funds. Financing of rehabilitation programs must be structured to encourage rehabilitation and continued occupancy.

A municipality is also required to prepare and submit a rehabilitation manual to COAH that summarized the administration of the rehabilitation program including an affirmative marketing plan. The affirmative marketing program must clearly describe the outreach efforts to be used in implementing the program. COAH expects that a combination of media approaches – cable television, radio and print – plus appropriate mailing to residents, local civic, social and religious groups will be included in the marketing program.

III. PRIOR ROUND OBLIGATION

COAH has determined that the Borough of Dunellen's Prior Round Obligation is 13 units. With a Rehabilitation Share of 9 units, the Borough of Dunellen has a pre-credited need of 4 units.

A. Rental Obligation and Rental Bonuses

The rental component is calculated as follows:

0.25 (pre-credited need - prior cycle credits - rehabilitation component)

0.25 (4 - 0 - 0)

0.25 (4) = 1

Therefore, the Borough of Dunellen has a prior round rental obligation of one unit.

Pursuant to N.J.A.C. 5:93-5.15, the maximum number of units for which a municipality may receive rental bonuses is also calculated in the formula above. One bonus is granted for family rental units and a 0.33 bonus is granted for age-restricted units.

B. Maximum Age-restricted Units

Pursuant to N.J.A.C. 5:93-5.14, a municipality may receive credit for age-restricted units according to the following formula:

.25 (pre-credited need - prior cycle credits - rehabilitation credits)

.25 (4 - 0 - 0)

.25 (4) = 1

Based on this formula, the Borough of Dunellen is eligible to age-restrict one unit for COAH credit.

C. Regional Contribution Agreement (RCA) Maximum

A municipality may transfer one-half of its obligation to another willing municipality within the COAH housing regions. The formula for calculating the maximum RCA is as follows:

$$.50 (\text{pre-credited need-prior cycle credits-credits pursuant to N.J.A.C. 5:93-3.4})$$

$$.50 (4 - 0 - 0)$$

$$.50 (4) = 2$$

Based on this formula, the Borough of Dunellen may enter into an RCA not to exceed two units.

D. Implementation

Dunellen proposes to address its prior round obligation within a redevelopment area known as the Dunellen Downtown Redevelopment Area, Phase 1.

Planning Area

Dunellen is in Planning Area (PA1) of the State Development and Redevelopment Plan that was adopted on March 1, 2001. The purpose of this planning area is described as providing for much of the State's future redevelopment; revitalization of cities and towns; promoting growth in compact form; stabilizing older suburbs; redesigning area of sprawl; and protecting the character of existing stable communities.

Water and Sewer Service

Potable water is supplied through American Water Company. At present, the water source is located off-site and distributed throughout the Borough.

Sewage treatment service in Dunellen is provided by the Plainfield Area Regional Sewage Authority. The Borough sends raw (untreated) sewage directly to the treatment plant, which has sufficient capacity to accommodate the additional sewage generated by the redevelopment of the Dunellen Downtown Redevelopment Area, Phase 1.

IV. GROWTH SHARE OBLIGATION

The Fair Share Plan includes the projects, strategies, and funding sources, if applicable, to address an affordable housing obligation and any municipal ordinance in draft form that a municipality is required to adopt as a requirement of certification. The Fair Share Plan is based upon the municipal fair share obligation developed in the housing element. The planning board adopts the Fair Share Plan and it is endorsed by the governing board prior to substantive certification but in any event must be adopted no later than 45 days after COAH grants substantive certification.

The Fair Share Plan consists of a detailed proposal on how a municipality intends to provide for its affordable housing obligation. Once certified, the plan will be monitored by COAH to verify that the construction or provision of affordable housing is in proportion to the actual residential growth and employment growth at the end of third, fifth and eighth year after filing date for substantive certification. Zoned sites addressing a prior obligation will also be reviewed at these intervals.

COAH rules have a number of different provisions regulating the development of affordable housing. The options available to meet the 1999-2014 fair share obligation include:

- Municipal Zoning
 - Zoning for inclusionary developments
 - Adoption of a growth share ordinance
 - Redevelopment districts/sites
- Municipally sponsored new construction and 100 percent affordable developments
- Regional contribution agreements (RCA's)
- Alternative living arrangements
 - Permanent supportive housing (where the tenant has a lease and support services are provided)
 - Group homes
 - Congregate housing

- Transitional facilities
- Residential health care facilities
- Accessory apartments
- Buy-down program of for-sale market-rate units
- Municipally sponsored rental program
- ECHO (elder cottage housing opportunities) housing
- Assisted living residences
- Affordable housing partnership program
- Expanded crediting opportunities
- Extension of Affordable units with expiring controls
- Age-restricted housing
- Rental housing with bonus credits
- Very low-income housing with bonus credit

The Fair Share Plan must include the following information:

- Descriptions of operational and financial feasibility of any specific project intended to provide affordable housing. This includes any of the new construction options described above intended to address the Growth Share obligation with the exception of inclusionary zoning. A municipality must submit a financial plan for each project, a municipal resolution appropriating funds from general revenue or a resolution of intent to bond in the event there is a shortfall of funding from the identified source.
- Draft Fair Share Ordinance necessary for the implementation of the programs and projects identified as providing affordable housing. The governing body is required to formally adopt the final version of this ordinance within 45 days after receiving substantive certification. Provisions of such an ordinance may include a Growth Share or other zoning requirement, an accessory apartment conditional use, phasing requirements, affordability controls or payment in lieu stipulations. A municipality must also provide an affirmative marketing plan. Which is referenced in the fair share ordinance.

A. Obligation

Dunellen will address its prior round obligation of four units and its projected growth share obligation in the Dunellen Downtown Redevelopment Area, Phase 1. The Borough is currently reviewing proposals to redevelop this area. Because the Borough has not yet chosen a redeveloper proposal, it is not possible to precisely determine its growth share obligation. However, the intent of the redevelopment plan is that the future redeveloper will provide the number of affordable units within the redevelopment project that will satisfy the Borough's prior round and growth share obligation. It is projected that the Borough's growth share obligation may be as high as 30 affordable housing units.

V. DRAFT FAIR SHARE ORDINANCE

The following draft ordinance was prepared as part of the Fair Share Plan by which Dunellen intends to satisfy its obligation to create a realistic opportunity to meet its fair share of low and moderate income housing needs of its region and which details the affirmative measures the municipality proposes to achieve its fair share of low and moderate income housing. This ordinance addresses development regulations needed to implement the housing element and addresses COAH requirements for a Fair Share Plan.

- A. This section of the Borough of Dunellen Code sets forth regulations regarding low and moderate income housing units in the Borough of Dunellen that are consistent with the provisions of N.J.A.C. 5:80 et seq. effective October 1, 2001 and N.J.A.C. 5:94 et seq. as effective on December 20, 2004. These rules are pursuant to the Fair Housing Act of 1985 and the Borough of Dunellen's constitutional obligation to provide for its fair share of low and moderate-income housing.
 1. The Borough of Dunellen's fair share obligation will be divided equally between low and moderate-income households.

2. Except for inclusionary developments constructed pursuant to low income tax credit regulations:
 - a. at least half of all units within each inclusionary development will be affordable to low-income households; and
 - b. at least half of all rental units will be affordable to low income households; and
 - c. at least one-third of all units in each bedroom distribution will be affordable to low-income households.
3. Inclusionary developments that are not age-restricted will be constructed in conjunction with realistic market demands so that:
 - a. the combined number of efficiency and one bedroom units is no greater than 20 percent of the total low and moderate-income units; and
 - b. at least 30 percent of all low and moderate-income units are two bedroom units; and
 - c. at least 20 percent of all low and moderate-income units are three bedroom units; and
 - d. low and moderate-income units that are age-restricted may utilize a modified bedroom distribution. At a minimum, the number of bedrooms will equal the number of age-restricted low and moderate-income units within the inclusionary development.
4. In conjunction with realistic market information, the following criteria, as per N.J.A.C. 5:80-26.4 (a), will be used in determining maximum rents and sale prices:
 - a. studio units will be affordable to a one person household; and
 - b. one bedroom units will be affordable to 1.5 person households; and
 - c. two bedroom units will be affordable to three person households; and
 - d. three bedroom units will be affordable to 4.5 person households; and
 - e. median income means the median income by household size for an applicable county, as adopted annually by COAH; and

- f. the maximum sales prices of low and moderate income units within each inclusionary development will be affordable to households earning no more than 70 percent of median income. In averaging an affordability range of 55 percent for sales units, the municipal ordinance will require moderate income sales units to be available for at least three different prices and low-income sales units to be available for at least two different prices; and
- g. for both owner-occupied and rental units, the low and moderate income units will utilize the same heating source as market units within an inclusionary development; and
- h. low income units will be reserved for households with a gross household income less or equal to 50 percent of the median income approved by COAH; moderate income units will be reserved for households with a gross household income less than 80 percent of the median income approved by COAH; and
- i. the regulations outlined in N.J.A.C. 5:80-26 will be applicable for purchased and rental units.

5. For rental units, developers and/or municipal sponsors may:

- a. establish one rent for low income unit and one for moderate income unit for each bedroom distribution as per N.J.A.C 5:80; and
- b. gross rents, including an allowance for tenant-paid utilities, will be established so as not to exceed 30 percent of the gross monthly income of the appropriate household size as per N.J.A.C. 5:80-26. The tenant-paid utility allowance will be consistent with the utility allowance approved by HUD for use in New Jersey; and
- c. the maximum rents of low and moderate-income units within each inclusionary development as per N.J.A.C. 5:80-26 will be affordable to households earning no more than 60 percent of median income. In averaging an affordability range of 52 percent for rental units, developers and/or municipal sponsors of rental units may establish one rent for low income unit and one rent for a moderate income unit for each bedroom distribution.

6. For sale units:

- a. the initial purchase price of a low and moderate-income owner-occupied for-sale housing unit will be established so that the monthly carrying CO'sts of the unit, including principal and interest (based on a mortgage equal to 95 percent of the purchase price and a market rate of interest) the taxes, homeowner and private mortgage insurance, and condominium or homeowner fee do not exceed 28 percent of the eligible gross monthly income of an appropriate household size as determined under N.J.A.C. 5:80-26 including the range of affordability as per N.J.A.C. 5:80-26; and
- b. master deeds of inclusionary developments will regulate condominium or homeowner association fees or special assessments of low and moderate income purchasers at the same percentage of those paid by market purchasers as per N.J.A.C. 5:80-25; and
- c. The Borough of Dunellen will follow the general provision concerning uniform deed restriction liens and enforcement through certificates of occupancy or reoccupancy on sale units as per N.J.A.C. 5:80-26; and
- d. Upon the expiration of the control period for a restricted ownership unit established in N.J.A.C. 5:80-26, the owner of the unit shall be entitled to sell it to any purchaser at the fair market value as per N.J.A.C. 5:80-26; and
- e. Eligible capital improvements prior to the expiration of controls on sale units will be consistent with N.J.A.C. 5:80-26; and
- f. The regulations detailed in N.J.A.C. 5:80-26 will be applicable to low and moderate-income units that are for sale units.

7. In zoning for inclusionary developments the following is required:

- a. low and moderate income units will be built in accordance with N.J.A.C. 5:94

Minimum Percent of Low/Moderate Income Units Completed	Percent of market Housing Units Completed
0	25
10	25 + 1 unit
50	50
75	75
100	90
	100

b. a design of inclusionary developments that integrates low and moderate income units with a market units is encourages as per N.J.A.C. 5:94.

8. To provide assurances that low and moderate income units are created with controls on affordability over time and that low and moderate income households occupy these units, the Borough of Dunellen will designate an experienced administrative agency with the responsibility of ensuring the affordability of sales and rental units over time. The experienced administrative agency will be responsible for those activities detailed in N.J.A.C. 5:80-26; and

a. In addition, the administrative entity will be responsible for utilizing the verification and certification procedure outline in N.J.A.C. 5:80-26 in placing households in low and moderate income units; and

c. newly constructed low and moderate income sales units will remain affordable to low and moderate income households for at least 30 years; and

d. the experienced administrative entity will require all conveyances of newly constructed units to contain the deed restriction and mortgage lien in the Technical Appendixes found in N.J.A.C. 5:80; and

e. housing units created through the conversion of a nonresidential structure will be considered a new housing unit and will be subject to 30-year controls on affordability. The experienced administrative agency will require COAH's appropriate deed restriction and mortgage lien.

9. Regarding rehabilitated units:

a. rehabilitation owner-occupied single family housing units that are improved to code standard will be subject to affordability controls for at least 10 years.

b. rehabilitated renter-occupied housing units that are improved to code standard will be subject to affordability controls for at least 10 years.

10. Regarding rental units:

a. newly constructed low and moderate income rental units will remain affordable to low and moderate-income households for at least 30 years. The experienced

administrative agency will require the deed restriction and lien and deed of easement in the Technical Appendixes found in N.J.A.C. 5:80; and

- b. affordability controls in accessory apartments will be for a period of at least 30 years; and
- c. alternative living arrangements will be controlled in a manner suitable to COAH, that provides assurances that such a facility will house low and moderate income households for at least 30 years;

11. Section 14(b) of the Fair Housing Act N.J.S.A 52:27D-301 et seq. incorporates the need to eliminate unnecessary CO'st generating features from the Borough of Dunellen's land use ordinances. Accordingly, the Borough of Dunellen will eliminate development standards that are not essential to protect the public welfare and to expedite or fast track municipal approvals/denial on certain affordable housing developments. The Borough of Dunellen will adhere to the components of N.J.A.C. 5:94.

VII. DRAFT AFFIRMATIVE MARKETING PLAN

The Borough of Dunellen/Middlesex County has a prior round obligation of 4 units and is projecting a growth share obligation of up to 85 units. The growth share obligation is dependent on which redeveloper proposal is chosen for the Dunellen Downtown Redevelopment Area, Phase 1. This ordinance will apply to all new developments that contain proposed low and moderate-income units.

The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of sex, age or number of children, to housing units which are being marketed by a developer/sponsor, municipality and/or designated administrative agency of affordable housing. The plan will address the requirements of N.J.A.C. 5:80-26 et seq. In addition, the plan prohibits discrimination in the sale, rental, financing or other services related to housing on the basis of race, color, sex, religion, handicap, age, familial status/size or national origin. The Borough of Dunellen is in the housing region consisting of Hunterdon, Middlesex and Somerset counties. The affirmative marketing program is a continuing program and will meet the following requirements:

- All newspaper articles, announcements and requests for applications for low and moderate-income units will appear in the Courier News and Star Ledger newspapers.
- The primary marketing will take the form of at least one press release sent to the above publications and a paid display advertisement in each of the above newspapers. Additional advertising and publicity will be on an "as needed" basis.
- The advertisement will include the:
 - Street address
 - Direction to housing units;
 - Number of bedrooms per unit;
 - Range of selling prices/rents;
 - Size of units;

- Household income limits and
- Location of applications including business hours and where/how applications may be obtained.

- All newspaper articles, announcements and requests for applications for low and moderate-income housing will appear in the following neighborhood-oriented weekly newspapers, religious publications and organizational newsletters within the region:
The Chronicle.

The following is the location of applications, brochure(s), sign(s), and/or poster(s) used as part of the affirmative marketing program including specific employment centers within the region:

Municipal building
Municipal library
Senior center

The following is a list of community contact person(s) and/or organization(s) in Hunterdon, Middlesex and Somerset counties that will aid in the affirmative marketing program with particular emphasis on contacts that will reach out to groups that are least likely to apply for housing with the region:

Middlesex County Housing Preservation Program

Applications will be mailed to prospective applicants upon request.

Additionally, applications will be sent to the chief administrative employees of each of the following agencies in the counties of Hunterdon, Middlesex and Somerset:

Office on Aging
Housing Agency or Authority
Library
Area Community Action Agencies

The following is a description of the random selection method that will be used to select occupants of low and moderate-income housing:

Selection will be made on a random basis. Upon request, orally or in writing, applications will be mailed to interested applicants and returned via first class mail, in pre-addressed envelopes, to the managing agent's office until a lottery is held at a location determined by the administrative entity. Applications will be randomly selected by a neutral third party, date timed, stamped, and logged, in order of pull, in a book with the applicant's name, address, and income.

The Borough of Dunellen is ultimately responsible for administering the affirmative marketing program. The Borough of Dunellen will delegate this responsibility initially to the developer and then to an experienced administrative agency. The administrative agency will income qualify low and moderate-income households; place income eligible households in low and moderate income units upon initial occupancy; provide for the initial occupancy of low and moderate income units with income qualified households; continue to qualify households for reoccupancy of units as they become vacant during the period of affordability controls; assist with advertising and outreach to low and moderate income households if in contract; and enforce the terms of the deed restriction and mortgage loan as pre N.J.A.C. 5:80-26, Technical Appendixes. The Borough of Dunellen Administrator within the Borough of Dunellen is the designated housing officer to act as liaison to the administrative agency. The administrative agency will provide counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualification, responsibilities of homeownership, rental lease requirements and landlord/tenant law.

The Borough of Dunellen is ultimately responsible for administering the affirmative marketing program. The Borough of Dunellen will delegate this responsibility initially to the developer and then to an experienced administrative agency. The experienced administrative will income qualify low and moderate income households; place income eligible households in low and moderate income units upon initial occupancy; provide for the initial occupancy of low and moderate income units with income qualified households; continue to qualify

households for reoccupancy of units as they become vacant during the period of affordability controls; assist with advertising and outreach to low and moderate income households if in contract; and enforce the terms of the deed restriction and mortgage loan as per N.J.A.C. 5:80-26 et seq. The Borough Administrator for the Borough of Dunellen is the designated housing officer to act as liaison to the administrative agency. The administrative agency will provide names of counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualification, responsibilities of homeownership, rental lease requirements and landlord/tenant law.

Households who live or work in the COAH-established housing region of Hunterdon, Middlesex and Somerset Counties may be given preference for sales and rental units constructed within that housing region. Application living outside the housing region will have an equal opportunity for units after regional applicants have been initially serviced.

Developers of low and moderate-income housing units will assist in the marketing of the affordable units in their respective developments.

The marketing program will commence at least 120 days before the issuance of either temporary or permanent certificates of occupancy. The marketing program will continue until all low and moderate-income housing units are initially occupied and for as long as affordable units are deed restricted and occupancy or reoccupancy of units continues to be necessary.

The administrative agency will comply with monitoring and reporting requirements as per N.J.A.C. 5:94.

EXHIBIT B



State of New Jersey
Council on Affordable Housing
 101 SOUTH BROAD STREET
 PO Box 813
 TRENTON NJ 08625-0813
 (609) 292-3000
 (609) 633-6856 (FAX)

*Mailed
 2/29/06*

JON S. CORZINE
Governor

SUSAN BASS LEVIN
Commissioner

LUCY VOORHOEVE
Executive Director

February 10, 2006

The Honorable Robert J. Seader
 Dunellen Borough
 355 North Avenue
 Dunellen, NJ 08812

Dear Mayor Seader:

The Council on Affordable Housing (COAH) acknowledges receipt on February 8, 2006 of the Dunellen Borough, Middlesex County, petition for substantive certification of the Borough's housing element and fair share plan. All required documents in accordance with N.J.A.C. 5:95-3.2(a) have been received. Please note that your service list may have been updated to reflect COAH records and the attached service list should be used for all future correspondence. Within seven days of this letter, you must publish notice of your petition in a newspaper of general circulation within the municipality and county. A sample public notice is enclosed with this letter.

Publication of your public notice will commence the 45-day objection period. Please send the affidavit of publication to the address above and to the enclosed service list. Objections must be in writing and sent both to COAH's office and to the municipal clerk by the end of the objection period, which will be no later than April 3, 2006.

If you have any questions or need further information, please call James Cordingley, COAH supervising planner, at (609) 292-1547.

Sincerely,

Lucy Voorhoeve
 Executive Director

- c: Service List
 James Cordingley, COAH supervising planner
 Kathy McGlinchy, COAH monitor



EXHIBIT C



State of New Jersey
COUNCIL ON AFFORDABLE HOUSING

101 SOUTH BROAD STREET
PO BOX 813

TRENTON, NJ 08625-0813

(609) 292-3000

FAX: (609) 633-6056

coahmail@dca.state.nj.us

SUSAN BASS LEVIN
Commissioner

LUCY VOORHOEVE
Executive Director

JON S. CORZINE
Governor

April 7, 2006

The Honorable Robert J. Seader
Dunellen Borough
355 North Avenue
Dunellen, NJ 08812

Dear Mayor Seader:

Your municipality filed a petition for substantive certification with the Council on Affordable Housing (COAH) on February 8, 2006. At the end of the 45-day objection period, no objections were received.

As a result, your housing element and fair share plan are under review by Pam Weintraub, COAH planner. If you have any questions or need further information, please call Ms. Weintraub at (609) 633-2133. Finally, please provide the affidavit of publication from the publication of your public notice in the *Courier News* on February 15, 2006 as soon as possible. Thank you.

Sincerely,

Lucy Voorhoeve
Executive Director

c: Service List
Pam Weintraub, COAH planner
James Cordingley, COAH supervising planner
Kathy McGlinchy, COAH monitor



EXHIBIT D

02-16-2009: #7

BE IT RESOLVED BY THE GOVERNING BODY OF THE BOROUGH OF DUNELLEN, NEW JERSEY, THAT:

WHEREAS, the Planning Board of the Borough of Dunellen, State of New Jersey, adopted the Housing Element of the Master Plan on February 16, 2009; and

WHEREAS, a true copy of the resolution of the Planning Board adopting the Housing Element is attached pursuant to N.J.A.C. 5:96-2.2(a)2; and

WHEREAS, the Planning Board adopted the Fair Share Plan on February 16, 2009; and

WHEREAS, a true copy of the resolution of the Planning Board adopting the Fair Share Plan is attached pursuant to N.J.A.C. 5:96-2.2(a)2.

NOW THEREFORE BE IT RESOLVED that the Governing Body of the Borough of Dunellen, County of Middlesex, State of New Jersey, hereby endorses the Housing Element and Fair Share Plan as adopted by the Borough of Dunellen Planning Board; and

BE IT FURTHER RESOLVED that the Governing Body of the Borough of Dunellen, pursuant to the provisions of N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:96-3.2(a), submits this petition for substantive certification of the Housing Element and Fair Share Plan to the Council on Affordable Housing for review and certification; and

BE IT FURTHER RESOLVED that a list of names and addresses for all owners of sites in the Housing Element and Fair Share Plan has been included with the petition; and

BE IT FURTHER RESOLVED that notice of this petition for substantive certification shall be published in a newspaper of countywide circulation pursuant to N.J.A.C. 5:96-3.5 within seven days of issuance of the notification letter from the Council on Affordable Housing's Executive Director indicating that the submission is complete and that a copy of this resolution, the adopted Housing Element and Fair Share Plan and all supporting documentation shall be made available for public inspection at the Borough of Dunellen Municipal Clerk's office located at 355 North Avenue, during the hours of 9:00 a.m. and 4:30 p.m. on Monday through Friday for a period of 45 days following the date of publication of the legal notice pursuant to N.J.A.C. 5:96-3.5.


.....
Clerk of the Borough of Dunellen

Approved 2/16/09


.....
Mayor of the Borough of Dunellen

I certify the foregoing to be a true and correct abstract of a resolution regularly passed at a meeting of the Common Council of the Borough of Dunellen, held

..... 2/16/09

and in that respect a true and correct copy of its minutes.


.....
Clerk of the Borough of Dunellen

EXHIBIT E



State of New Jersey
COUNCIL ON AFFORDABLE HOUSING
101 SOUTH BROAD STREET
PO BOX 813
TRENTON NJ 08625-0813
(609) 292-3000
FAX: (609) 633-6056
coahmail@dca.state.nj.us

JON S. CORZINE
Governor

JOSEPH V. DORIA, JR.
Commissioner
LUCY I. VANDENBERG
Executive Director

June 1, 2009

The Honorable Robert J. Seader
Dunellen Borough
355 North Avenue
Dunellen, NJ 08812

Dear Mayor Seader:

The Council on Affordable Housing (COAH) acknowledges receipt on February 20, 2009 of the Dunellen Borough, Middlesex County, petition for substantive certification of the Borough's Housing Element and Fair Share Plan. All required documents in accordance with N.J.A.C. 5:96-3.2(a) have been received. We appreciate your participation in the COAH process and your commitment to provide affordable housing. COAH staff looks forward to working with you to implement your third round growth share plan.

Please note that your service list may have been updated to reflect COAH records and the attached service list should be used for all future correspondence. Within seven days of this letter, you must publish notice of your petition in a newspaper of general circulation within the municipality and county (Home News Tribune, Asbury Park Press, Star Ledger). A list of acceptable publications is available on COAH's website at <http://www.nj.gov/dca/affiliates/coah/resources/planresources/publications.pdf> A sample public notice is enclosed with this letter.

Publication of your public notice will commence the 45-day comment period. Please send the affidavit of publication to the address above and to the enclosed service list. Comments must be in writing and sent both to COAH's office and to the municipal clerk by the end of the comment period, which COAH estimates will be July 16, 2009. COAH staff will continue to work with Dunellen Borough on a substantive review of your third round growth share plan to culminate in final approval.



If you have any questions or need further information, please contact Pamela Weintraub, COAH planner, at (609) 633-2133. We look forward to working with you to implement your fair share plan.

Sincerely,

A handwritten signature in black ink that reads "Lucy L Vandenberg". The signature is written in a cursive style with a large, prominent "L" at the beginning.

Lucy Vandenberg, PP, AICP
Executive Director

cc: Attached Service List
Sean Thompson, COAH manager of planning
Kathy McGlinchy, COAH monitor
Pamela Weintraub, COAH planner
Dennis Funaro, COAH supervisor

EXHIBIT F



**State of New Jersey
Council on Affordable Housing**

101 SOUTH BROAD STREET
PO Box 813
TRENTON NJ 08625-0813

(609) 292-3000
(609) 633-6056 (FAX)

JON S. CORZINE
Governor

CHARLES A. RICHMAN
Acting Commissioner
LUCY VANDENBERG
Executive Director

August 12, 2009

The Honorable Robert J. Seader
Dunellen Borough
355 North Avenue
Dunellen, NJ 08812

Dear Mayor Seader:

Your municipality filed a petition for substantive certification with the Council on Affordable Housing (COAH) on February 20, 2009. At the end of the 45-day objection period, no objections were received.

If you have questions regarding the status of your plan, please call Pamela Weintraub, COAH planner, at (609) 633-2133. All future correspondence about this petition must be copied to the Borough's service list. Thank you and we look forward to working with you toward certification of your Housing Element and Fair Share Plan. Finally, please provide the affidavit of publication from the publication of your public notice in the *Home News Tribune* on June 5, 2009 as soon as possible. Thank you.

Sincerely,

Lucy Vandenberg, PP, AICP
Executive Director

Enclosures

cc: Attached Service List
Sean Thompson, COAH manager of planning
Kathy McGlinchy, COAH monitor
Pamela Weintraub, COAH planner
Dennis Funaro, COAH supervisor



EXHIBIT G

LAW OFFICE OF JOHN E. BRUDER
Two West Union Avenue
P.O. Box 750
Bound Brook, New Jersey 08805
(732) 356-1243
(732) 356-0765 Facsimile
Attorney: John E. Bruder, ID # 025961989
Attorney for Petitioner, Borough of Dunellen

**IN THE MATTER OF THE APPLICATION
OF THE BOROUGH OF DUNELLEN,
COUNTY OF MIDDLESEX**

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY**

DOCKET NO:

CIVIL ACTION – MOUNT LAUREL

**CERTIFICATION OF JENNIFER BEAHM,
P.P., A.I.C.P., IN SUPPORT OF THE
BOROUGH'S MOTION FOR TEMPORARY
IMMUNITY FROM MOUNT LAUREL
SUITS**

JENNIFER BEAHM, P.P., A.I.C.P., of full age, does hereby certify as follows:

1. I am a licensed professional planner in the State of New Jersey and I am also certified by the American Institute of Certified Planners. I am currently employed at CME Associates, a planning firm which serves as the municipal planning consultant to the Borough of Dunellen (hereinafter "Borough").

2. I am well versed on the regulations and policies of the New Jersey Council On Affordable Housing, as well as Mount Laurel case law.

3. I am submitting this certification in support of the Borough's request for the Court to enter an Order for temporary immunity from Mount Laurel lawsuits for the Borough's Planning Board.

Affordable Housing Obligations Under The Proposed 2014 COAH Regulations

4. In order to comply with the Supreme Court order to draft new Round 3 regulations and to calculate new Round 3 fair share numbers in accordance with the methodologies utilized in Rounds 1 and 2, COAH retained Robert W. Burchell, PhD, a professor with the Rutgers University Center for Urban Policy Research at the Edward J. Bloustein School of Planning and Public Policy.

5. In addition to Dr. Burchell, COAH's experts also included William Dolfin, M.A., and Jinwoo Kwon, M.R.P.

6. This team of experts developed and filed the technical appendices included in COAH's 2014 rule proposals, published in the *New Jersey Register* on June 2, 2014. See 46 N.J.R. 949-1051.

7. COAH's expert determined the Borough's total affordable housing obligation to be 41 units, consisting of (i) a 12-unit rehab number, (ii) a 17-unit Unmet Prior Round obligation ("UPO"), and (iii) a 12-unit prospective Round 3 obligation.

8. The initial UPO number was calculated as follows: (i) For the period 1987 through 1999, COAH's expert assigned the Borough a number of 4, (ii) For the period 1999 through 2014, COAH's expert assigned the Borough a number of 13, (iii) COAH's expert then added the two numbers together to get 17.

The Approach FSHC Advocated To The Supreme Court

9. In its Motion in Aid of Litigant's Rights filed on October 31, 2014, FSHC included an alternative fair share calculation for each municipality through the analysis of its expert, Dr. Kinsey, PhD.

10. According to Dr. Kinsey, Dunellen had a 74-unit obligation consisting of a 12-unit rehabilitation obligation, a zero-unit Prior Round obligation, and a 62-unit Round 3 obligation.

11. In apparent recognition that its 2014 calculations were somewhat flawed, FSHC presented revised calculations in April of 2015.

12. Specifically, Dr. Kinsey now asserts that Dunellen has a 130-unit obligation consisting of a 12-unit rehabilitation obligation, a zero-unit Prior Round obligation and a 118-unit Round 3 obligation.

13. Thus, Dr. Kinsey now asserts that Dunellen's obligation is **almost three times higher** than the obligations calculated by Dr. Burchell.

14. Thus, whereas Dunellen would only have to satisfy an affordable housing obligation of 42 in the 2014 through 2024 period under COAH's proposed 2014 regulations for the reasons set forth above, the Borough would have to satisfy an affordable housing obligation of 130 pursuant to the standard FSHC has advocated.

The Borough's Past Procedural Affordable Housing History

15. Dunellen has demonstrated a commitment to comply voluntarily with its Mount Laurel obligations, and the following facts demonstrate this commitment.

16. In January of 2006, Dunellen's Planning Board adopted and Dunellen's governing body endorsed a Round 3 Housing Element and Fair Share plan ("2006 plan"), and petitioned COAH for approval of the 2006 plan on February 8, 2006. See attached Exhibit A.

17. In February of 2009, the Borough re-petitioned COAH for substantive certification of the 2006 plan.

Satisfaction of the Borough's Rehabilitation Obligation

18. The Borough has a 12-unit rehabilitation obligation under both COAH's proposed 2014 regulations and under FSHC's numbers. The Borough has participated in the Middlesex County Housing Preservation Program, which provides deferred-payment loans of up to \$25,000 to qualifying low and moderate income homeowners. The Borough will continue to participate in this program to satisfy its rehabilitation obligation.

Satisfaction of the Borough's Prior Round Obligation

19. The Borough has a 17-unit Prior Round obligation. The 2006 plan states that the Borough will address its Prior Round obligation in Phase I of the Dunellen Downtown Redevelopment Area. See 2006 plan.

Satisfaction of the Borough's Round 3 Obligation

20. Depending on the Court's acceptance of one methodology over another, the Borough has a 12-unit or 118-unit Third Round Obligation.

21. As with its Prior Round obligation, the Borough will satisfy its Third Round obligation in Phase I of the Dunellen Downtown Redevelopment Plan. See 2006 Plan.

***Recent Actions Taken By The Borough To Further
Demonstrate Its Commitment To Voluntary Compliance***

22. Due to the lack of vacant land in the Borough, I have prepared a vacant land analysis to see how many affordable units could realistically be created for Round 3. See Exhibit B.

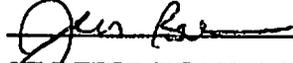
23. The vacant land analysis shows that the Borough's realistic development potential for Round 3 is 0. Ibid.

24. If FSHC's seemingly unrealistic Round 3 number of 130 somehow withstands scrutiny, that would leave the Borough with an "unmet need" of 17. Ibid.

25. In light of these facts, and by the Borough filing a Declaratory Judgment Complaint prior to July 8, 2015, it is clear that Dunellen is indeed the "catalyst for change" and is committed to voluntary Mount Laurel compliance, which in turn renders any exclusionary zoning lawsuits unnecessary.

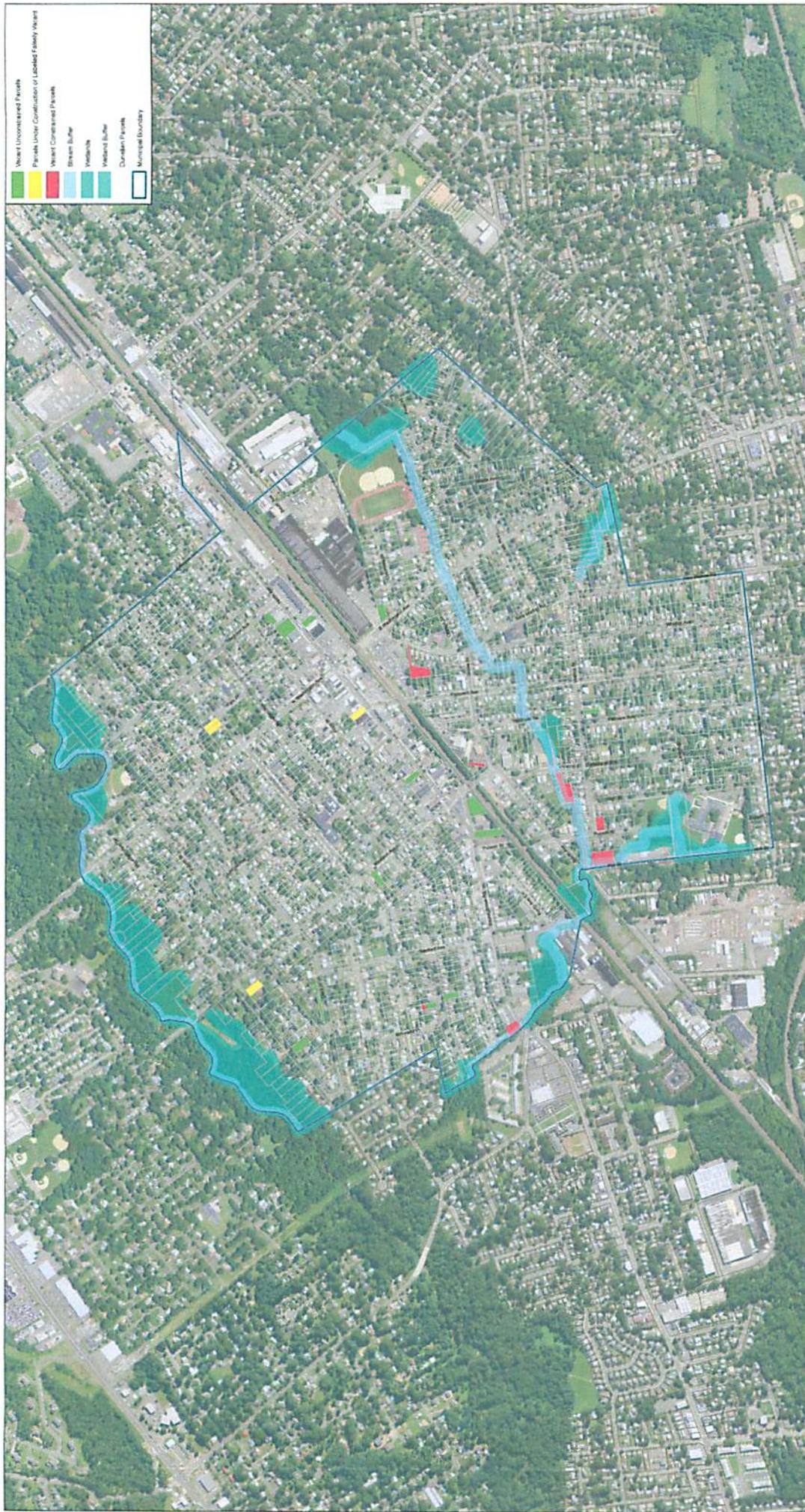
26. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: June 26, 2015



JENNIFER BEAHM, P.P., A.I.C.P.

EXHIBIT H



**Vacant Land Map, 2015
Borough of Dunellen
Middlesex County, New Jersey**



CWE ASSOCIATES
1460 US Highway 9 South
Howell, New Jersey 07731

Map data provided by Esri, DeLorme, GeoEye, IGN, Aerotech, Earthstar, IGN, etc., © 2015

EXHIBIT I

**BOROUGH OF DUNELLEN
ORDINANCE 09-09**

Development Fee Ordinance

This ordinance was Introduced at the Dunellen Borough Council Meeting of July 6, 2009. It is now being presented for Second Reading and Public Hearing on August 3, 2009. Copies of this ordinance have been posted on the Bulletin Board at the Municipal Clerk's Office, and have been available free of charge to members of the public at the Clerk's Office, 355 North Avenue, Dunellen, NJ.

BE IT ORDAINED by the Mayor and Council of the Borough of Dunellen, in the County of Middlesex and the State of New Jersey, as follows:

1. Purpose

- 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 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- 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 a COAH-approved spending plan may retain fees collected from non-residential development.
- c) This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees; codified at N.J.A.C. 5:97-8.

2. Basic requirements

- a) This ordinance shall not be effective until approved by COAH pursuant to N.J.A.C. 5:96-5.1.
- b) The Borough of Dunellen shall not spend development fees until COAH 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.

3. Definitions

- a) The following terms, as used in this ordinance, shall have the following meanings:
 - i. "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 percent affordable development.

- ii. "COAH" or the "Council" means 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 consideration in the State.
- iii. "Development fee" means money paid by a developer for the improvement of property as permitted in *N.J.A.C. 5:97-8.3*.
- iv. "Developer" means 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.
- v. "Equalized assessed value" means 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).
- vi. "Green building strategies" means those strategies that minimize the impact of development on the environment, and enhance the 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.

4. Residential Development fees

a) Imposed fees

- i. Within the RA and RB district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half percent of the equalized assessed value for residential development provided no increased density is permitted and that the proposed density complies with applicable standards of the Dunellen land use ordinances.
- ii. 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 may be required to pay a development fee of six percent of the equalized assessed value for each additional unit in excess of applicable ordinance standards that may be realized. However, if the zoning on a site has changed during the two-year period immediately 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 percent of the equalized assessed value on the first two units; and the specified higher percentage up to six percent 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

- i. 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.

- ii. 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.
- iii. 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.
- iv. Developers of one and two family homes shall be exempt from paying a development fee under the following circumstances: Residential structures demolished and replaced as a result of a natural disaster, including fire, Green buildings, and property converted from commercial to residential use, creating additional housing.

5. Non-residential Development fees

a) Imposed fees

- i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
- ii. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
- iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a 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 non-residential development fee shall be zero.

b) Eligible exactions; ineligible exactions and exemptions for non-residential development

- i. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.
- ii. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- iii. Non-residential developments shall be exempt from the 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.

- iii. A developer of a non-residential 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 non-residential 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.
- iv. If a property which was exempted from the collection of a non-residential 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 non-residential development fees under these circumstances may be enforceable by the Borough of Dunellen as a lien against the real property of the owner.

6. Collection procedures

- 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 construction official responsible for the issuance of a building permit.
- b) For non-residential 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 non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential 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 construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building 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 notifies 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 of the amount of the fee.
- g) Should the Borough of Dunellen 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.40:55D-8.6).

- h) Fifty percent of the development fee shall be collected at the time of issuance of the building 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 Dunellen. 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, R.S.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 non-residential 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 Dunellen. 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, R.S.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.

7. Affordable Housing trust fund

- a) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Municipal Clerk/Municipal Housing Liaison for the purpose of depositing development fees collected from residential and non-residential 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 ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development handicapped 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 Dunellen's affordable housing program.
- c) Within seven days from the opening of the trust fund account, The Borough of Dunellen shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, 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.

8. Use of funds

- a) The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the Borough of Dunellen'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 Dunellen for past housing activities.
- c) At least 30 percent 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. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
 - i. 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.
 - ii. Affordability assistance to households earning 30 percent 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 percent or less of median income. The use of development fees in this manner shall entitle the Borough of Dunellen to bonus credits pursuant to N.J.A.C. 5:97-3.7.
 - iii. 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 Dunellen 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 percent 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 percent 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.

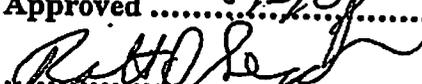
9. **Monitoring**

- a) The Borough of Dunellen shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, 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 Dunellen's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

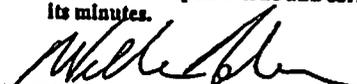
10. **Ongoing collection of fees**

- a) The ability for the Borough of Dunellen to impose, collect and expend development fees shall expire with its substantive certification unless the Borough of Dunellen has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If the Borough of Dunellen fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, 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 Dunellen 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 judgment of compliance, nor shall the Borough of Dunellen retroactively impose a development fee on such a development. The Borough of Dunellen shall not expend development fees after the expiration of its substantive certification or judgment of compliance.


.....
Clerk of the Borough of Dunellen

Approved 8/13/09

.....
Mayor of the Borough of Dunellen

I certify the foregoing to be a true and correct abstract of a resolution regularly passed at a meeting of the Common Council of the Borough of Dunellen, held

..... 8/13/09
and in that respect a true and correct copy of its minutes.

.....
Clerk of the Borough of Dunellen