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Attorney for Plaintiff/Petitioner,  
Township of West Milford

**IN THE MATTER OF THE  
APPLICATION OF THE TOWNSHIP  
OF WEST MILFORD, a municipal  
corporation of the State of New Jersey,**

Plaintiff/Petitioner

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: PASSAIC COUNTY  
DOCKET NO.: PAS-L-2361-15

CIVIL ACTION  
(Mount Laurel)

**CERTIFICATION OF CHARLES T.  
MCGROARTY, PP, AICP**

I, CHARLES T. MCGROARTY, PP, AICP, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am the Township Planner for the Township of West Milford ("Township" or "West Milford") and have been in this position since June 2008. As the Township Planner, I advise and assist Township agencies concerning land use planning for the Township of West Milford and analyze and formulate plans for the development of the Township. As such, I am fully aware of the facts and circumstances involved in this matter.

2. I am a Professional Planner with License Number 33LJ00414500 in the State of New Jersey and have been so licensed since 1987. I am also a member in good standing in the American Institute of Certified Planners, also since 1987. I have attained a Masters Degree in City and Regional Planning from Rutgers, The State University and a Bachelor of Arts from Ramapo College of New Jersey. Throughout my career, I have providing planning services to approximately twenty-five (25) municipalities throughout the State of New Jersey, including three (3) municipalities in Passaic County.

3. This Certification is being made in support of the Township's Complaint for Declaratory Judgment and Motion for Temporary Immunity. It is my understanding that the Township's filing is based upon the recent 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"), wherein the evaluation of municipal compliance with Mount Laurel obligations was transferred from the Council on Affordable Housing ("COAH") back to the Courts.

4. The Township of West Milford a municipal corporation and body politic organized under the laws of the State of New Jersey, with offices located at 1480 Union Valley Road, West Milford, NJ 07480.

5. West Milford has been diligent in its participation with regard to its affordable housing obligations. The Township of West Milford Planning Board adopted a Housing Element and Fair Share Plan, dated January 22, 1997, for its Second Round obligation which was subsequently revised and submitted to COAH on March 19, 1997 with a petition for substantive certification. COAH granted substantive certification on October 6, 1999. At the time of approval, West Milford's pre-credited need was 187 units, which was fully addressed in the HE/FSP through various mechanisms including new construction, rehabilitation, rental bonus credits, and inclusionary zoning.

6. In accordance with the 2008 revised Third Round Rules, the Township's Planning Board adopted a Third Round Housing Element and Fair Share Plan on May 27, 2010. See attached Exhibit A, a true and accurate copy of the Township's Third Round Housing Element and Fair Share Plan. The Township Council adopted a Resolution to seek substantive certification on June 2, 2010 and the Township submitted its petition for substantive certification to COAH on June 8, 2010.

7. The Township of West Milford's petition for substantive certification has not yet been granted as the Court invalidated the 2008 COAH rules by decision in 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) (affirmed 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)). COAH was ordered to adopt new rules, which it has not done at this time.

8. Notwithstanding COAH's inability to grant substantive certification of the Township's 2010 Housing Element and Fair Share Plan, and the current lack of regulatory guidance for municipalities, the Township has continued to proceed with developing affordable housing opportunities where available within the Township. Specifically, Planning Board Resolution 2013-16, approval for an additional 20 beds to the existing independent and assisted living facility known as Chelsea at Bald Eagle required that a total of 14 beds be reserved for low income residents. Additionally, the Township provided funding assistance from its Affordable Housing Trust Fund to Morris Habitat for Humanity to improve an existing single family dwelling for the express purpose of creating a moderate income, deed restricted unit.

9. While there are no current regulations in place at this time to guide the Township, under the most recent COAH rules that were not adopted by COAH at its public meeting on October 20, 2014, the Township had the following obligation:

Prior Rounds  
1987-1999: 79  
1999-2014: 132

The above are off-set by 112 affordable housing completions resulting in an

"unanswered prior round obligation" of 99 units which is reduced to 0 as a result of the "buildable limit" analysis.

Prospective Need  
2014-2024: 19

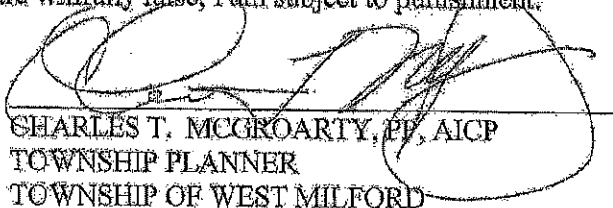
Rehabilitation Obligation  
107

10. The Township of West Milford is unique from a planning perspective in that it falls entirely within the restrictive Preservation Area of the Highlands Region. This includes Newark Watershed property which, by Deed of Conservation Easement, dated May 31, 2006, is undevelopable. See attached Exhibit B, a true and accurate copy of the Deed of Conservation Easement.

11. The Township of West Milford has a Spending Plan, dated June 2, 2010, which was approved by the Township Council by Resolution and to the best of my knowledge, submitted for COAH's approval. See attached Exhibit C, a true and accurate copy of West Milford Township's Spending Plan; Exhibit D, Resolution 2012-213. Similar to the Township's Housing Element and Fair Share Plan, the Spending Plan has not been approved and is pending before COAH.

12. I will assist the Township of West Milford on the preparation of a revised Third Round Housing Element and Fair Share Plan, which the Township intends to file with the Court by November 8, 2015, or on a date certain as otherwise instructed by the Court.

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.

  
CHARLES T. MCGROARTY, PP, AICP  
TOWNSHIP PLANNER  
TOWNSHIP OF WEST MILFORD

DATED:

Fred Semrau, Esq. - 0017871993  
Tracy W. Schnurr, Esq. - 0033962009  
Dorsey & Semrau, LLC  
714 Main Street  
P.O. Box 228  
Boonton, New Jersey 07005  
Attorney for Plaintiff/Petitioner,  
Township of West Milford

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DOCKET NO.: PAS-L-2361-15

CIVIL ACTION  
(Mount Laurel)

**CERTIFICATION PURSUANT  
TO R. 1:4-4(C)**

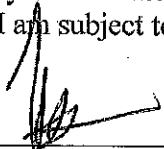
I, FRED SEMRAU, ESQ., of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am an attorney-at-law of the State of New Jersey and the Partner of the law firm of Dorsey & Semrau, LLC, attorneys for Plaintiff/Petitioner, the Township of West Milford, in this matter and I am familiar with this file.

2. Pursuant to R. 1:4-4(c), the Certification of Charles T. McGroarty, PP, AICP, is being filed with an electronic copy of the original signature of Mr. McGroarty. I certify that I have acknowledged the genuineness of his signature.

3. The documents with the original signature will be filed with the Court upon request of the Court.

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.

  
\_\_\_\_\_  
FRED SEMRAU, ESQ.  
DORSEY & SEMRAU, LLC  
ATTORNEY FOR  
PLAINTIFF/PETITIONER,  
TOWNSHIP OF WEST MILFORD

DATED: July 8, 2015

# **Exhibit A**

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Township of West Milford  
Passaic County

Housing Plan Element  
Fair Share Plan

May 27, 2010

Prepared by: West Milford Planning Board

In Consultation with Banisch Associates, Inc.

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Charles T. McGroarty, PP, AICP  
New Jersey Professional Planning License No. 4145

The original copy has been signed and sealed in accordance with N.J.A.C. 13:41-1.3

## West Milford Planning Board

Andrew Gargano, Chairman

Geoffrey Syme, Vice Chairman

Mayor Bettina Bieri

Councilman Philip Weisbecker

Richard McFadden

Douglas Ott

Steven Castronova

Linda Connolly

Christopher Garcia

Michael Siesta – Alternate 1

Thomas Harraka– Alternate 2

Thomas J. Germinario, Esq

Paul Ferriero, PE, PP, CME, LEED AP

Chuck McGroarty, PP, AICP

Tonya E. Cubby, Planning Board Secretary

Township of West Milford, Passaic County  
Housing Element and Fair Share Plan  
May 27, 2010

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May 27, 2010

**EXECUTIVE SUMMARY**

The Township of West Milford will fully satisfy its adjusted prior round affordable housing obligation of 98 units with its existing inventory of low and moderate income units. West Milford will likewise meet its third round obligation (January 1, 2004 – December 31, 2018) of 47 new units through the use of municipally-owned properties and with the application of monies in the Township's Housing Trust Fund. Finally, the Township will continue the rehabilitation program for existing low and moderate income housing, having completed one-third of the total third round obligation of 66 units. It is therefore the intention of the West Milford Planning Board to adopt this Housing Element and Fair Share Plan as part of the West Milford Master Plan and to submit same, with authorization by the West Milford Township Council to the Council On Affordable Housing with a petition seeking substantive certification.

This Housing Element and Fair Share Plan (HE/FSP) for the Township of West Milford in Passaic County fulfills the requirements of the *Municipal Land Use Law*, specifically those pertaining to the preparation of a Housing Plan Element for a municipal Master Plan as set forth in N.J.S.A. 40:55D-28 (3), the *New Jersey Fair Housing Act* (N.J.S.A. 52:27D-301 et seq.), and the procedures established by the Council On Affordable Housing (COAH) as contained in the Third Round Procedural Rules (N.J.A.C. 5:96-1.1 et seq.) and the Third Round Substantive Rules (N.J.A.C. 5:97-1.1 et seq.). Further, as the Township of West Milford is located within the Highlands Region this Housing Element and Fair Share Plan adheres to the specifications found in the Housing Element and Fair Share Plan Instructions issued by the Highlands Council on August 2009 pursuant to the goal, policies and objectives concerning housing and community facilities in the *Highlands Regional Master Plan* (RMP).

West Milford last secured Substantive Certification from COAH on October 6, 1999 for its second round HE/FSP dated January 22, 1997, adopted by the West Milford Planning Board on that same date. Much has changed since then. COAH's rules have undergone significant revisions resulting in different methodologies and affordable housing projections. West Milford has altered some of its land use policies since 1997, most notably a decision for shift away from a "Town Center" and higher density residential development. And, of course, the adoption of the *Highlands Water Protection and Planning Act* in August 2004 dramatically altered future development particularly for West Milford with the Preservation Area designation.

Three sites designed to include both market and affordable housing included in the 1997 HE/FSP and certified by COAH in anticipation of their eventual development did not go forward. The three "prior round" sites – Valley Ridge, Random Woods and Stanford Village – are discussed in greater detail in the Fair Share herein.

**A Note Regarding Terms and Acronyms**

This Housing Element and Fair Share Plan rely upon certain terms particular to the subject matter and employs acronyms in the interest of brevity throughout the text. A listing of key terms and acronyms found herein are as follows:

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COAH -- Council On Affordable Housing

Family Unit -- means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is available to the general public and not restricted to any specific segment of the population.

Growth Share -- means the affordable housing obligation generated in each municipality both residential and non-residential development from 2004 through 2018 and represented by a ratio of one affordable housing unit among five housing units constructed plus one affordable housing unit for every 16 newly created jobs as measured by new or expanded non-residential construction within the municipality in accordance with chapter Appendix D pursuant to the methodology detailed in N.J.A.C. 5:97-2.

HE/FSP -- Housing Element (and) Fair Share Plan

Housing Element -- means the portion of a municipality's master plan, required by the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-28b(3) and the Act\*, that includes all information required by N.J.A.C. 5:97-2 and establishes the municipality's fair share obligation.

[\*Fair Housing Act]

Fair Share Plan -- means the plan that describes the mechanisms and the funding sources, if applicable, by which a municipality proposes to address its affordable housing obligation as established in the Housing Element, includes the draft ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:97-3. (N.J.A.C. 5:97-1.4)

Low Income -- means 50 percent or less of the median gross household income for households of the same size within the housing region in which the household is located, based upon the U.S. Department of Housing and Urban Development's (HUD) Section 8 Income Limits (uncapped) averaged across counties for the housing region.

Moderate Income -- means more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the household is located, based upon the U.S. Department of Housing and Urban Development's (HUD's) Section 8 Income Limits (uncapped) averaged across counties for the housing region.

MLUL -- Municipal Land Use Law

N.J.A.C. -- New Jersey Administrative Code

N.J.S.A. -- New Jersey Statutes Annotated

Prior Round -- cumulative 1987-1999 fair share obligation

RMP -- Highlands Regional Master Plan

Substantive Certification -- a determination by the Council approving a municipality's Housing Element and Fair Share Plan in accordance with the provisions of the Act, this chapter and N.J.A.C. 5:96. A grant of substantive certification may run for a period of 10 years beginning on the date that a municipality files its Housing Element and Fair Share Plan

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with the council in accordance with N.J.S.A. 52:27D-313, but shall not extend beyond December 31, 2019.

Third Round – is the municipal affordable housing obligation for the period of January 1, 2004 through December 31, 2018.

Very low income housing – means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 30% or less of the median gross household income for households of the same size within the housing region in which the housing is located.

## HOUSING ELEMENT

### Inventory of Municipal Housing Conditions

The primary source of information for the inventory of the Township's housing stock is the 2000 U.S. Census, with the data reflecting conditions in 2000. According to the 2000 Census, the Township had 9,909 housing units, of which 9,190 (93%) were occupied. Table 1 identifies the units in a structure by tenure; as used throughout this Plan Element, "tenure" refers to whether a unit is owner-occupied or renter-occupied. While the Township largely consisted of one-family, detached dwellings (88% of the total, compared to 43% in the County), there were 1,208 units in attached or multi-family structures. The Township had a lower percentage of renter-occupied units, 11%, compared to 43% in Passaic County and 32% in the State.

Table 1  
Units in Structure by Tenure

Units in Structure	Vacant Units	Occupied Units		
		Total	Owner	Renter
1, detached	608	8,093	7,514	579
1, attached	20	432	395	37
2	14	207	46	161
3 or 4	17	83	11	7
5+	48	368	257	111
Other	0	0	0	0
Mobile home or trailer	2	7	7	0
<b>Total</b>	<b>719</b>	<b>9,190</b>	<b>8,230</b>	<b>1,017</b>

Source: 2000 U.S. Census, Summary Tape File 3 (STF-3) for Township, QT-H10 and DP-4.

Table 2 indicates the year housing units were built by tenure, while Table 3 compares the Township to Passaic County and the State. The Township has seen a steady increase of housing units since 1950. Housing built since 1950 total 62% of the owner-occupied units 54% renter occupied.

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**Table 2**  
**Year Structure Built by Tenure**

Year Built	Vacant Units	Occupied Units		
		Total	Owner	Renter
1990-2000	74	1,072	1,030	42
1980-1989	16	1,168	1,053	115
1970-1979	83	1,069	1,023	46
1960-1969	104	1,963	1,803	160
1950-1959	148	1,918	1,719	199
1940-1949	163	916	747	169
Pre-1940	131	1,084	855	229

*Source: 2000 U.S. Census, STF-3 for Township, QT-H7.*

Table 3 compares the year of construction for all dwelling units in the Township to Passaic County and the State. The Township had a much larger percentage of units built between 1960 and 1969 than the County or State, and a smaller percentage of units built between before 1940.

**Table 3**  
**Comparison of Year of Construction for Township, County, and State**

Year Built	West Milford Township	Passaic County	New Jersey
1990 - 2000	11.6	5.3	10.5
1980 - 1989	11.9	6.2	12.4
1970 - 1979	11.6	8.6	14.0
1960 - 1969	20.9	16.9	15.9
1940 - 1959	31.7	36.9	27.1
Pre-1940	12.3	26.1	20.1
Median Year	1963	1954	1962

*Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-4.*

The 2000 Census documented household size in occupied housing units by tenure, and the number of bedrooms per unit by tenure; these data are reported in Tables 4 and 5, respectively. Table 4 indicates that renter-occupied units generally housed smaller households, with 60% of renter-occupied units having 2 persons or fewer compared to 47% of owner-occupied units. Table 5 indicates that renter-occupied units generally had fewer bedrooms, with 61% having two bedrooms or fewer, compared to 27% of owner-occupied units.

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**Table 4**  
**Household Size in Occupied Housing Units by Tenure**

Household Size	Total Units	Owner-occupied Units	Renter-occupied Units
1 person	1,536	1,233	303
2 persons	2,930	2,658	272
3 persons	1,826	1,661	165
4 persons	1,742	1,618	124
5 persons	824	769	55
6 persons	241	218	23
7+ persons	91	75	16
<b>Total</b>	<b>9,190</b>	<b>8,232</b>	<b>958</b>

*Source: 2000 U.S. Census, SF-3 for Township, H-17.*

**Table 5**  
**Number of Bedrooms per Unit by Tenure**

Number of Bedrooms	Total Units	%	Vacant Units	Occupied Units		
				Total	Owner	Renter
No bedroom	42	.4	7	35	0	35
1 bedroom	718	7.2	170	548	360	188
2 bedrooms	2,467	24.9	238	2,229	1,871	358
3 bedrooms	4,209	42.5	231	3,978	3,717	261
4 bedrooms	2,137	21.6	73	2,064	1,984	80
5+ bedrooms	336	3.4	0	336	298	38

*Source: 2000 U.S. Census, SF-3 for Township, QT-H8 and QT-H5.*

Table 6 compares the Township's average household size for all occupied units, owner-occupied units, and renter-occupied units to those of the County and State. The Township's average household size is higher than the State but lower than the County.

**Table 6**  
**Average Household Size for Occupied Units for Township, County, and State**

Jurisdiction	All Occupied Units	Owner-occupied units	Renter-occupied units
West Milford Township	2.84	2.88	2.48
Passaic County	2.92	2.99	2.84
New Jersey	2.68	2.81	2.43

*Source: 2000 U.S. Census, SF-1 for Township, County, and State, DP-1.*

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The distribution of bedrooms per unit, shown in Table 7, indicates that the Township contained fewer small units (0-1 bedroom) than the County or State in 2000, and more large units (four or more bedroom) than either the County or State.

**Table 7**  
**Percentage of All Units by Number of Bedrooms**

Jurisdiction	None or one	Two or Three	Four or More
West Milford Township	7.6	67.4	25
Passaic County	19.5	63.1	17.4
New Jersey	18.3	59.2	22.6

*Source: 2000 U.S. Census, SF-3 for Township, County, and State, QT-H4.*

In addition to data concerning occupancy characteristics, the 2000 Census includes a number of indicators, or surrogates, which relate to the condition of the housing stock. These indicators are used by the Council on Affordable Housing (COAH) in calculating a municipality's deteriorated units and indigenous need. In the first Two Rounds of COAH's fair share allocations (1987-1999), COAH used seven indicators to calculate indigenous need: age of dwelling; plumbing facilities; kitchen facilities; persons per room; heating fuel; sewer; and, water. In the Round Three rules, COAH has reduced this to three indicators, which in addition to age of unit with more than 1 person per room (Pre-1940 units in Table 2), are the following, as described in COAH's rules.

*Plumbing Facilities*

Inadequate plumbing is indicated by either a lack of exclusive use of plumbing or incomplete plumbing facilities.

*Kitchen Facilities*

Inadequate kitchen facilities are indicated by shared use of a kitchen or the non-presence of a sink with piped water, a stove, or a refrigerator.

Table 8 compares the Township, County, and State for the above indicators of housing quality. The Township had fewer units with inadequate plumbing and kitchen facilities than the County and State.

**Table 8**  
**Housing Quality for Township, County, and State**

Condition	West Milford Township	Passaic County	New Jersey
Inadequate plumbing <sup>1</sup>	.3	1	0.7
Inadequate kitchen <sup>1</sup>	.3	1.1	0.8
Overcrowding	1.7	4.3	5

*Notes: <sup>1</sup>The universe for these factors is all housing units.*

*Source: 2000 U.S. Census, SF-3 for Township, County, and State QT-H4.*

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The last factors used to describe the municipal housing stock are the housing values and gross rents for residential units. With regard to values, the 2000 Census offers a summary of housing values, seen in Table 9, which indicate that 48% of all residential properties in the Township were valued between \$100,000 and \$199,999. The median housing value for the Township was \$171,200.

**Table 9**  
**Value of Owner Occupied Residential Units**

Value	Number of Units	%
\$0 – 50,000	.4	.4
\$50,000 – 99,999	319	4.2
\$100,000 – 149,999	2,218	29.2
\$150,000 – 199,999	2,568	33.9
\$200,000 – 299,999	1,962	25.9
\$300,000 – 499,999	393	5.2
\$500,000 – 999,999	80	1.1
\$1,000,000 +	9	.1

*Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-4.*

The data in Table 10 indicate that in 2000 virtually all housing units rented for more than \$500/month (81%) with the largest percentage, 31.4%, found between \$1,000 and \$1,499 per month, and 4.3% of the units renting for over \$1,500/ month.

**Table 10**  
**Gross Rents for Specified Renter-Occupied Housing Units**

Monthly Rent	Number of Units	%
Under \$200	16	1.7
\$200 – 299	0	0
\$300 – 499	65	6.8
\$500 – 749	279	29.3
\$750 – 999	159	16.7
\$1,000 – 1,499	299	31.4
\$1,500 or more	41	4.3
No Cash Rent	92	9.7

*Note: Median gross rent for West Milford Township is \$835.*

*Source: 2000 U.S. Census, SF-3 for Township, QT-H12.*

The data in Table 11 indicate that in 2000 there were 429 renter households making less than \$35,000 annually. At least 331 of these households were paying more than 30% of their income for rent; a figure of 30% is considered the limit of affordability for rental housing costs.

Township of West Milford, Passaic County  
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**Table 11**  
**Household Income in 1999 by Gross Rent**  
**as a Percentage of Household Income in 1999**

Income	Number of Households	Percentage of Household Income					Not computed
		0 - 19%	20 - 24%	25 - 29%	30 - 34%	35% +	
< \$10,000	63	0	0	0	7	48	8
\$10,000 - 19,999	159	0	9	0	0	133	17
\$20,000 - 34,999	207	7	19	15	9	134	23
\$35,000 +	522	283	47	83	31	26	52

*Note: The universe for this Table is specified renter-occupied housing units.*

*Source: 2000 U.S. Census, SF-3 for Township, QT-H13.*

**ANALYSIS OF MUNICIPAL DEMOGRAPHIC CONDITIONS**

As with the inventory of the municipal housing stock, the primary source of information for the analysis of the demographic characteristics of the Township's residents is the 2000 U.S. Census. The Census data provide a wealth of information concerning the characteristics of the Township's population in 2000.

The 2000 Census indicates that the Township had 26,410 residents, or 908 more residents than in 1990, an increase of 4%. The Township's 4% increase in the 1990's compares to a 12% increase in Passaic County and an 8% increase in New Jersey.

The age distribution of the Township's residents is shown in Table 12. The age classes remain relatively evenly split between males and females with a predominance of males in the age range of 0-19 and a female predominance in the 19+ age groups.

**Table 12**  
**Population by Age and Sex (%)**

Age	Total Persons	Male	Female
0-4	7.1	7.1	7
5-19	22.2	23.2	21.1
20-34	16.7	16.2	17.3
35-54	36.6	37.2	36
55-69	11.7	11.8	11.6
70 +	5.7	4.5	7

*Source: 2000 U.S. Census, SF-1 for Township, QT-P1.*



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Table 13 compares the Township to the County and State for the same age categories. The principal differences among the Township, County, and State occurs the age categories 35-54 where the Township had more residents and 70+ age group where the Township had a lower percentage of population.

**Table 13**  
**Comparison of Age Distribution for Township, County, and State (% of persons)**

Age	West Milford Township	Passaic County	New Jersey
0-4	7.1	7.4	6.7
5-19	22.2	21.3	20.4
20-34	16.7	21.7	19.9
35-54	36.6	29.1	30.9
55-69	11.7	11.6	12.4
70+	5.7	8.9	9.7
Median	37	34.8	36.7

*Source: 2000 U.S. Census, SF-1 for Township, County, and State. QT-P1.*

Table 14 provides the Census data on household size for the Township, while Table 15 compares household sizes in the Township to those in Passaic County and the State. The Township had a lower percentage of households with 1 person but a higher percentage of households with 2 to 3 persons than the County or State.

**Table 14**  
**Persons in Household (%)**

Household Size	Number of Households
1 person	16.7
2 persons	31.9
3 persons	19.9
4 persons	19
5 persons	9
6 persons	2.6
7 or more persons	1

*Source: 2000 U.S. Census, SF-1 for Township, QT-P10.*

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**Table 15**  
**Comparison of Persons in Household for Township, County, and State**  
(% of households)

Household Size	West Milford Township	Passaic County	New Jersey
1 person	16.7	22.2	24.5
2 persons	31.9	27.3	30.3
3 persons	19.9	17.7	17.3
4 persons	19	16.6	16.0
5 persons	9	8.8	7.5
6 persons	2.6	3.8	2.7
7 or more persons	1	3.5	1.7
Persons per household	2.84	2.92	2.68

Source: 2000 U.S. Census, SF-1 for Township, County, and State, QT-P10.

Table 16 presents a detailed breakdown of the Township's households by type and relationship. There were 7,186 family households in the Township and 2,004 non-family households; a family household includes a householder living with one or more persons related to him or her by birth, marriage, or adoption, while a non-family household includes a householder living alone or with non-relatives only. In terms of the proportion of family and non-family households, the Township had more family households than the County or State (78% for the Township, 73% for the County, and 70.3% for the State).

**Table 16**  
**Household Type and Relationship**

	Total
<b>In family Households:</b>	<b>7,186</b>
Married	6,189
Child	3,830
<b>In Non-Family Households:</b>	<b>2,004</b>
Male householder:	1,042
Living alone	779
Female householder:	962
Living alone	757
<b>In group quarters:</b>	<b>301</b>
Institutionalized:	109
Non-institutionalized	192

Source: 2000 U.S. Census, SF-3 for Township, QT-P11 and QT-P12.

Table 17 provides 1999 income data for the Township, County, and State. The Township's incomes were higher than the County and State. The definitions used for households and

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families in Table 17 are similar to those identified in the description of Table 16, so that the households figure in Table 17 includes families.

**Table 17**  
**1999 Income for Township, County, and State**

Jurisdiction	Per Capita Income (\$)	Median Income (\$)	
		Households	Families
West Milford Township	28,612	74,124	80,264
Passaic County	21,370	49,210	56,054
New Jersey	27,006	55,146	65,370

*Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-3.*

Table 18 addresses the lower end of the income spectrum by providing data on poverty levels for persons and families. The determination of poverty status and the associated income levels are based on the cost of an economy food plan and ranged from an annual income of \$8,501 for a one-person household to \$28,967 for an eight-person family for the year 1999.

According to the data in Table 18, the Township had proportionately fewer persons and families qualifying for poverty status than the County and State. The percentages in Table 18 translate to 1,085 persons and 192 families in poverty status. Thus, the non-family households had a larger share of the population in poverty status.

**Table 18**  
**Poverty Status for Persons and Families for**  
**Township, County, and State (% with 1999 income below poverty)**

Jurisdiction	Persons (%)	Families (%)
West Milford Township	2.6	4.1
Passaic County	12.3	9.4
New Jersey	8.5	6.3

*Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-3.*

The U.S. Census includes a vast array of additional demographic data that provide insights into an area's population. For example, Table 19 provides a comparison of the percent of persons who lived in the same house since 1995; this is a surrogate measure of the mobility/stability of a population. The data indicate that the percentage of Township residents residing in the same house as in 1995 was more than that of the State and County.

**Table 19**  
**Comparison of 1995 Place of Residence for Township, County, and State**

Jurisdiction	Percent living in same house in 1995
West Milford Township	68.2
Passaic County	59.4
New Jersey	59.8

*Source: 2000 U.S. Census, SF-3 for Township, County, and State, QT-H7.*

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Table 20 compares the educational attainment for Township, County, and State residents. The data indicates that more Township residents achieved a high school diploma or higher or a bachelor's degree or higher than the County.

**Table 20**  
**Educational Attainment for Township, County, and State Residents**  
**(Persons 25 years and over)**

Jurisdiction	Percent (%) high school graduates or higher	Percent (%) with bachelor's degree or higher
West Milford Township	89.3	27.2
Passaic County	73.3	21.2
New Jersey	82.1	29.8

*Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-2.*

The 2000 Census also provides data on the means of transportation which people use to reach their place of work. Table 21 compares the Census data for the Township, County, and State relative to driving alone, carpooling, using public transit, and using other means of transportation. The Township had a relatively high percentage of those who drive alone, and a relatively low percentage of workers who carpool or use public transit. Of the 5.7% of workers who resided in the Township and used other means of transportation to reach work, 563 workers worked at home and 190 workers walked to work.

**Table 21**  
**Means of Transportation to Work for Township, County and State Residents**  
**(Workers 16 years old and over)**

Jurisdiction	Percent who drive alone	Percent in carpools	Percent using public transit	Percent using other means
West Milford Township	82.4	9.7	2.2	5.7
Passaic County	71.2	13.5	8.1	7.2
New Jersey	73	10.6	9.6	0.9

*Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-3.*

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**ANALYSIS OF EXISTING AND FUTURE EMPLOYMENT  
CHARACTERISTICS**

Table 22 shows that in 2003 employment by industry reported through the Department of Labor within the Township.

**Table 22  
Employment by Industry**

INDUSTRY	ANNUAL AVG. UNITS	EMPLOYMENT				AVERAGE	WAGES	
		MARCH	JUNE	SEPT.	DEC.		WEEKLY	ANNUAL
Agriculture, forestry, fishing and hunting	4	8	10	10	10	10	\$286	\$14,893
Construction	168	519	572	532	522	533	\$776	\$40,357
Manufacturing	26	239	242	232	256	239	\$834	\$43,356
Wholesale trade	47	166	174	166	169	168	\$1,073	\$55,798
Retail trade	71	671	698	655	687	679	\$522	\$27,168
Transportation and warehousing	18	26	27	30	28	27	\$517	\$26,872
Information	9	24	22	26	24	24	\$1,259	\$65,450
Finance and insurance	26	267	277	291	263	274	\$785	\$40,821
Real estate and rental and leasing	19	45	66	61	53	58	\$391	\$20,319
Professional and technical services	71	235	236	236	250	245	\$691	\$35,944
Administrative and waste services	59	141	172	159	166	165	\$548	\$28,490
Educational services	4	8	8	6	10	8	\$473	\$24,617
Health care and social assistance	48	530	534	537	548	538	\$433	\$22,490
Arts, entertainment, and recreation	12	30	117	108	40	72	\$395	\$20,527
Accommodation and food services	45	362	420	377	390	386	\$229	\$11,906
Other services, except public administration	61	232	236	212	205	226	\$462	\$24,040
Unclassified entities	28	18	29	31	38	28	\$437	\$22,700
PRIVATE SECTOR								
MUNICIPALITY TOTAL	716	3,522	3,848	3,678	3,669	3,685	\$588	\$30,555
FEDERAL GOVT MUNICIPALITY TOTAL	5	40	41	41	40	41	\$836	\$43,456
LOCAL GOVT MUNICIPALITY TOTAL	7	1,056	1,060	997	1,075	962	\$973	\$50,576

Detailed statistics regarding employment trends are only provided on a regional basis. Passaic County is within the (Bergen Hudson Passaic) New York-Wayne-White Plains, NY-NJ region. Table 23 demonstrates the trend by industry type. The table portrays the national economic downturn has also impacted the regions.

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**Table 23**  
**Current Employment within the (Bergen Hudson Passaic)**  
**New York-Wayne-White Plains, NY-NJ region.**

Industry	Apr-09	Mar-09	Apr-08	Change - Month-	Change - Year-
Total Nonfarm	880.7	879.5	906.2	1.2	-25.5
Total Private	751.6	750.8	782	0.8	-30.4
Goods Producing	89.9	90.4	101.8	-0.5	-11.9
Service-Providing	790.8	789.1	804.4	1.7	-13.6
Private Service Providing	661.7	660.4	680.2	1.3	-18.5
Natural Resources and Mining and Construction	26.5	26.1	32.1	0.4	-5.6
Manufacturing	63.4	64.3	69.7	-0.9	-6.3
Durable Goods	28.7	28.9	30.2	-0.2	-1.5
Non-Durable Goods	34.7	35.4	39.5	-0.7	-4.8
Trade, Transportation, and Utilities	204.2	207.6	209.3	-3.4	-5.1
Wholesale Trade	67.6	69.2	69.5	-1.6	-1.9
Retail Trade	96.2	97.5	98	-1.3	-1.8
Transportation Warehousing and Utilities	40.4	40.9	41.8	-0.5	-1.4
Information	21.7	21.7	23.5	0.0	-1.8
Finance	71.6	70.3	74.9	1.3	-3.3
Professional and Business Services	130.2	129.2	137.1	1	-6.9
Educational and Health Services	136.7	135.6	134.5	1.1	2.2
Leisure and Hospitality	58.3	57.5	62	0.8	-3.7
Other Services	39	38.5	38.9	0.5	0.1
Government	129.1	128.7	124.2	0.4	4.9
Federal Government	10	9.9	10.4	0.1	-0.4
State Government	16.5	16.5	16.5	0.0	0.0
Local Government	102.6	102.3	97.3	0.3	5.3

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**FAIR SHARE PLAN**

**Prior Round Obligation**

COAH's recalculated prior round obligation for West Milford is 98 units including a mandatory rental obligation which equates to 25 units (see calculations, below). Rental bonus credits for the prior round cannot exceed the actual number of required rental units hence the maximum rental bonus credits eligible for the prior round are capped at 25. West Milford will apply 73 credits for units and bedrooms and a rental bonus credit of 25 to provide the required obligation of 98 as detailed in Table 24, below.

**A. Rental Unit Obligation**

The rental obligation for the prior round is calculated in accordance with N.J.A.C. 5:97-3.10(b)1 as follows:

- Rental requirement = 25 percent (prior round obligation[98] – prior cycle credits[0] – impact of 20 percent cap[0] – impact of the 1,000 unit limitation[0])
- $0.25(98 - 0 - 0 - 0) = 24.5$  rounded up to 25 units

**25 rental units required**

**B. Age-Restricted Units – Maximum**

The maximum number of age restricted units eligible for credit in the prior round is calculated in accordance with N.J.A.C. 5:97-3.10(c)1 as follows:

Age-restricted maximum = 25 percent (prior round obligation[98] + rehabilitation share[66] – prior cycle credits[0] – rehabilitation credits[20] – impact of 20 percent cap[0] – impact of the 1,000 unit limitation[0] – transferred or proposed RCA units addressing the prior round obligation[0])

- $0.25(98 + 66 - 0 - 20 - 0 - 0 - 0)$
- $0.25(144) = 36$

**36 age-restricted units eligible for credit**

**C. Rental Bonuses**

The Township is eligible for one bonus credit per unit of non-age restricted rental housing and a bonus credit of 0.33 per unit of age-restricted rental housing in accordance with N.J.A.C. 5:97-3.5. The maximum amount of rental bonus credits is capped at the number of the Township's prior round rental obligation which is 25.

**Maximum number of rental bonus credits: 25**

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**Table 24**  
**Units / Bedrooms / Credits Addressing**  
**Prior Round Obligation of 98**

Name	Block	Lot	# Units / Bedrooms	Type
Lincoln Hill	6401	6, 02	13	Age-restricted
Bald Eagle Manor	5621	1, 2, 3	11	Age-restricted
Bald Eagle Manor	5301	21, 33	12	Congregate care
12 Meadow Trail*	7521	8	1	Family
2 Kushaqua Trail**	3008	1	1	Family
Advo Serve	2202	5.01	***20	Group home
Wehrlen House	9404	14	***5	Group home
Center For Humanistic Change	9101	45	3	Group home
Puerto Rican Federation Services	1611	20	3	Group home
ALFA Development 22 Vine Street	5604	1	3	Group home
ALFA Development 240 Germantown Road	13812	13	1	Group home
<b>Sub-total</b>			<b>73</b>	
Rental bonus credits***			25	
<b>Total</b>			<b>98</b>	

\* Sold by Township to Salt & Light Co. Ord. 2002-17

\*\* Sold by Township to Salt & Light Co. Ord. 2001-8

\*\*\* **Rental Bonus:** The prior round rental bonus cannot exceed the actual rental obligation which is 25 units/bedrooms. Thus the maximum number of rental bonus credits is capped at 25.

**Age-restricted units:** The maximum number of age-restricted units eligible for credit in the prior round is capped in accordance with the formula set forth in N.J.A.C. 5:27-3.10, which calculates to 38 units.

**Changes from the Second Round Housing Element / Fair Share Plan**

West Milford received substantive certification from COAH on October 6, 1999 (Resolution Granting Substantive Certification No. 138-99) for its second round obligation as addressed in the Housing Element and Fair Share Plan (HE/FSP) dated January 22, 1997. At that time the Township's affordable housing obligation was 187 units, comprised of 98 new construction component and 89 in the rehabilitation component.

To address this obligation the Township had established a "Town Center" in its Master Plan in accordance with the criteria established by the NJ State Development and Redevelopment Plan (SDRP) and was in the process of seeking Plan Endorsement of this concept from the State Planning Commission. The HE/FSP stated, in part:



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The Township is entirely located within Planning Area 5, as designed by the State Planning Commission. The Township is currently processing an application through the office of State Planning for center designation. All of the inclusionary zoning sites and the WMSHC senior housing project are situated within the proposed Town Center.

The Township is proposed to provide for low/moderate income housing through inclusionary zoning within Town Center. This zoning will include several properties previously zoned for inclusionary development. The densities on two of these previously included sites are to be reduced based upon an intensive land use analysis and reflected in the proposed zoning. However, these two sites are currently protected by the Permit Extension Act at higher densities.<sup>1</sup>

A total of 224 affordable housing units were anticipated from seven development projects as set forth in the *Inclusionary Zoning* matrix presented on page 15 of the HE/FSP. These were as follows:

	Development	Number of Affordable Units
1	Stanford Village	31
2	Valley Ridge	11
3	Bald Eagle Manor	23
4	Williamsburg	29
5	Random Woods	15
6	Town Center	15
7	Corp. Sponsored Senior Housing	100
<b>TOTAL</b>		<b>224</b>

A footnote was appended to the Williamsburg development stating: *"The Housing Plan includes the agreed upon voluntary developers contribution in lieu of the 29 inclusionary units."* As such, the total number of units would have been reduced by 29 for a total of 195 affordable units. Elsewhere in the HE/FSP this point was further addressed wherein it stated: *"The property was the subject of a previous approval and the applicant entered into a voluntary developers contribution agreement to provide \$450,000 contribution in lieu of affordable housing."* *"The low and moderate income inclusionary component is 29 units should the previously agreed to contribution not be honored."*<sup>2</sup>

In its Resolution granting substantive certification, COAH referred to *".. four inclusionary sites that will yield 82 affordable units..."* In the COAH Compliance Report<sup>3</sup> (CCR) dated September 20, 1999 the four sites in question were:

<sup>1</sup> Housing Element and Fair Share Plan, January 22, 1997, pages 13; 14

<sup>2</sup> Housing Element and Fair Share Plan, January 22, 1997, pages 17.

<sup>3</sup> COAH Compliance Report – West Milford Township / Passaic County, September 20, 1999, page 4

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- 
- Stanford Village (31 affordable units)
  - Valley Ridge (11 affordable units)
  - Random Woods (15 affordable units)
  - Bald Eagle Manor (25 affordable units plus 4 rental bonus credits)

The four projects would thus generate 82 affordable units and 4 rental bonus credits for a total of 86 credits. The CCR appears to have assumed the 25 rental units would all be generated by Bald Eagle Manor whereas the HE/FSP, on page 11, indicated that Bald Eagle Manor would have 12 rental units and the Township sponsored senior housing project would generate another 13. Adding to the confusion, the HE/FSP noted that Bald Eagle Manor had 11 affordable units already in place.

The other sites identified in the HE/FSP i.e. 'Williamsburg', 'Town Center' and 'Corp. Sponsored Senior Housing' were not deemed eligible by COAH for credit in the second round for the reasons set forth in the following excerpt from the CCR:

West Milford originally selected seven sites that were to yield affordable units or development fees. The Town Center site and the Williamsburg site were the focus of mediation. Based on an unsigned mediation agreement, the Town Center site may be developed as a commercial site and will not be subject to the development of affordable units or the payment of a development fee. The Williamsburg site, which was originally paying a fee in lieu of construction of affordable units, was removed from the plan by the township. However, West Milford may zone the Williamsburg site to satisfy a future obligation in the form of affordable units or a fee in lieu of construction of affordable units. No agreement was achieved in mediation on this site. Additionally, an age-restricted site to be developed on township land by the West Milford Senior Housing Corporation will be used to address a future obligation and will not be included as part of the second round certification.<sup>4</sup> (Emphasis added.)

The CCR cited the fact that the inclusionary sites would be located within the proposed Town Center, as follows:

As noted, the four sites which will yield low and moderate income housing in West Milford's fair share plan are in PA5. The township has applied for center designation and West Milford's application is under review. All of the sites will be within the center boundaries.<sup>5</sup>

Some two years after securing substantive certification, West Milford reconsidered the Town Center concept and in Resolution No. 2001-36, adopted by the Township Council on February 15, 2001, the Township declared its intention to advise the Office of State Planning that it no longer desired the designation of a Town Center in accordance with the SDRP. In

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<sup>4</sup> Ibid. Page 3

<sup>5</sup> Ibid. Page 3.

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June 2001 the Township advised COAH that it would not pursue the Town Center designation.

In August 2004 the Highlands Water Protection and Planning Act took effect and West Milford became one of five of the 88 municipalities in the Highlands Region to fall entirely within the restrictive *Preservation Area*. Of the four inclusionary sites in the certified second round HE/FSP, only Bald Eagle Manor proceeded to construction. Stanford Village, Valley Ridge and Random Woods have not been developed.

On December 8, 2005 the West Milford Planning Board adopted a third round HE/FSP which was subsequently amended on November 29, 2007 which did not proceed through the substantive certification process. It did, however address the prior round sites as follows:

The Township's Round Two Substantive Certification consisted of four inclusionary sites, and one mediated site zoned commercial for which the owner agreed to provide an "in lieu" contribution. One inclusionary site and the mediated commercial site never proceeded with a development application. Furthermore, the two sites exhibit extreme environmental constraints that prohibit the development previously anticipated. Two other inclusionary sites, Valley Ridge Gardens and Random Woods, are not expected to develop. Valley Ridge has been denied its final approval from the Township Planning Board and has had its Highlands exemption revoked by DEP. Random Woods has not pursued its final subdivision approval with the Township Planning Board and has not received the necessary highlands approvals.

The Township seeks to have these four sites removed from its Third Round Fair Share Plan, in accordance with the provisions outlined in the Third Round Rules, 5:94-4.5(a)<sup>6</sup>.

The current COAH rules regarding prior round sites are set forth in 5:97-6.5, "Status of sites addressing the 1987 through 1999 obligation", presented below. As indicated in subsection (c), the question regarding sites that have yet to be built is one of "realistic opportunity". COAH defines "realistic opportunity" as follows:

Realistic opportunity means a reasonable likelihood that the affordable housing in a municipality's Housing Element and Fair Share Plan will actually be constructed or provided during the 10-year period of certification based upon a careful analysis of the elements in the municipality's plan, including the financial feasibility of each proposed mechanism and the suitability of specific sites as set forth in N.J.A.C. 5:97-3.13.<sup>7</sup>

<sup>6</sup> Housing Element and Fair Share Plan, adopted December 8, 2005, amended November 29, 2007, page 11.

<sup>7</sup> Chapter 5:97, New Jersey Council On Affordable Housing, Third Round Substantive Rules, N.J.A.C. 5:97-1.4, Definitions, with amendments through April 6, 2009.

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**5:97-6.5 Status of sites addressing the 1987 through 1999 obligation**

(a) A municipality that zoned one or more sites for inclusionary development to address the 1987 through 1999 housing obligation and included the site(s) in a previously certified fair share plan or judgment of compliance shall retain such zoning in the third round fair share plan if:

1. The Council determines that the site continues to present a realistic opportunity pursuant to (c) below; and

2. The site meets one of the following conditions:

i. The site was subject to an agreement pursuant to the Council's mediation process or part of a negotiated settlement in court; or ii. The developer of the site has filed a development application with the municipality prior to the expiration of the second round substantive certification period or the municipal petition for substantive certification for the 1999 through 2018 period, whichever is later.

(b) Notwithstanding the provisions of (a) above, pursuant to N.J.S.A. 52:27-311(g), a municipality that has received substantive certification for the 1987 through 1999 period and which has effected the construction of its entire affordable housing obligation of that period may amend its fair share plan or zoning ordinances with respect to sites being used to address its 1987 through 1999 affordable housing obligation. Prior to amending the fair share plan or zoning ordinances, the municipality shall obtain a determination from the Council as to whether the municipality has effected construction of its entire affordable housing obligation. To make such a determination, the Council shall require the municipality to submit the filed deeds with the appropriate deed restrictions, certificates of occupancy for units constructed and evidence of the transfer of RCA funds, if applicable.

**(c) A zoned but unbuilt site that was included in a housing element and fair share plan that received prior round substantive certification or a judgment of compliance shall be evaluated by the Council at the time the municipality petitions for the third round to determine if the site continues to present a realistic opportunity for the construction of affordable housing.** The municipality shall submit all decisions on applications for development on any unbuilt sites included in the prior round certified fair share plan. In evaluating an unbuilt site, the Council shall consider whether the site meets all of the following criteria:

1. The site is a suitable site pursuant to N.J.A.C. 5:97-3.13; and

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2. Market conditions create a realistic opportunity for the affordable housing to be constructed.

(d) Sites that no longer present a realistic opportunity shall not be eligible to address a portion of the fair share obligation. If the Council determines that the site continues to present a realistic opportunity, but can realistically accommodate a lower number of units than proposed in the fair share plan, the municipality may continue to utilize the site, but at the lower number of units.

(e) Sites that address the prior round obligation and are found to present a realistic opportunity pursuant to the provisions above shall be reviewed during plan evaluation pursuant to N.J.A.C. 5:96-10. If a site has not developed, a municipality may be required to amend its plan to address the shortfall.

COAH's method of determining "site suitability" is set forth in Section 3.13, presented in full, below. The provisions of interest with respect to Stanford, Valley Ridge, and Random Woods are highlighted in bold text:

5:97-3.13 Site suitability criteria and consistency with the State Development and Redevelopment Plan

(a) Sites designated to produce affordable housing shall be available, approvable, developable and suitable, according to the following criteria:

1. The site has a clear title and is free of encumbrances which preclude development of affordable housing;
2. The site is adjacent to compatible land uses and has access to appropriate streets;
3. **Adequate sewer and water capacity, as defined under N.J.A.C. 5:97-1.4, shall be available to the site or the site is subject to a durational adjustment pursuant to N.J.A.C. 5:97-5.4; and**
4. The site can be developed consistent with the Residential Site Improvement Standards, N.J.A.C. 5:21, where applicable. Deviations from those standards are to be done in accordance with N.J.A.C. 5:21-3.

(b) Sites designated to produce affordable housing shall be consistent with the State Development and Redevelopment Plan and shall be in compliance with the rules and regulations of all agencies with jurisdiction over the site, including, but not limited to:

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1. Sites that are located in Planning Areas 1 or 2 or located within a designated center or located in an existing sewer service area are the preferred location for municipalities to address their fair share obligation.
2. **Municipalities or developers proposing sites located in Planning Areas 3, 4, 4B, 5 or 5B that are not within a designated center or an existing sewer service area shall demonstrate to the Council that the site is consistent with sound planning principles and the goals, policies and objectives of the State Development and Redevelopment Plan. The Council may seek a recommendation from the Executive Director of the Office of Smart Growth on the consistency of the site with sound planning principles and the goals, policies and objectives of the State Development and Redevelopment Plan.**
3. **Sites within the areas of the State regulated by the Pinelands Commission, Highlands Water Protection and Planning Council, Land Use Regulation Division of DEP and the New Jersey Meadowlands Commission, shall adhere to the land use policies delineated in The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50; The Highlands Water Protection and Planning Act rules, N.J.A.C. 7:38; the Coastal Permit Program Rules, N.J.A.C. 7:7; the Coastal Zone Management Rules, N.J.A.C. 7:7B; and the Zoning Regulations of the New Jersey Meadowlands Commission, N.J.A.C. 19:3, where applicable.**
4. The portions of sites designated for construction shall adhere to wetland constraints as delineated on the New Jersey DEP Freshwater Wetlands Maps; or as delineated on-site by the U.S. Army Corps of Engineers or DEP, whichever agency has jurisdiction as regulated pursuant to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) or Section 404 of the Federal Clean Water Act (33 U.S.C. §§ 1251 through 1375); Category One waterway constraints pursuant to N.J.A.C. 7:9B, 7:8, 7:13 and 7:15; flood hazard constraints as defined in N.J.A.C. 7:13; and steep slope constraints in excess of 15 percent if the municipality has an ordinance in place that uniformly regulates steep slope development throughout the municipality.
5. Historic and architecturally important sites and districts listed on the State or National Register of Historic Places shall be reviewed by the New Jersey State Historic Preservation Office for a recommendation pertaining to the appropriateness and size of buffer areas that will protect the integrity of the site. The review and written recommendation by the New Jersey Historic Preservation Office shall be included in the Housing Element and Fair Share Plan that is the subject of any petition before the Council. Within historic

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districts, a municipality may regulate low- and moderate-income housing to the same extent it regulates all other development.

- (c) The Council may seek a recommendation from the appropriate regulating agency on the suitability of a proposed site. In taking such action, the Council may require the municipality to submit all necessary documentation to the agency so that a review and decision regarding the suitability of any site may be completed.

Stanford Village, Valley Ridge and Random Woods are all situate within the Protection overlay zone in the Highlands Preservation Area. The RMP describes this zone as follows:

The Protection Zone consists of high natural resource value lands that are important to maintaining water quality, water quantity and sensitive ecological resources and processes. Land acquisition is a high priority in the Protection Zone and development activities will be extremely limited; any development will be subject to stringent limitations on consumptive and depletive water use, degradation of water quality, and impacts to environmentally sensitive lands.

Stanford Village and Random Woods do not meet (a) 3 as they were not included in an existing sewer service area. Valley Ridge was included in the Olde Milford sewer service area but will no longer be part of that system in accordance with the Highlands Water Protection and Planning Act and the goals and policies of the Highlands Regional Master Plan. There are no designated Centers within West Milford per (b) 2 and now that the entire municipality falls within the Preservation Area, there will be no opportunity to establish a Center pursuant to the Highlands Water Protection and Planning Act (N.J.S.A. 13:30-7.d) which reads as follows:

The preservation area shall not include any land located within the boundaries of any regional center or town center designated by the State Planning Commission pursuant to the "State Planning Act" P.L. 1985, c. 398 (C.52:18A-196 et al.) as of the date of enactment of this act, except to the extent necessary as set forth in the boundary description of the preservation area in subsection b. of this section to reflect appropriate and nearest practicable, on-the-ground, and easily identified reference points.

With regard to (b) 3, it would be inconsistent with the goals and policies of the Highlands Regional Master Plan to expand sewer and potable water systems to the sites in question, as noted below:

Goal 2I: Limitation of the expansion of water and wastewater infrastructure in the Preservation Area.

Policy 2I1: To prohibit the expansion or creation of public water supply systems, public wastewater collection and treatment systems and community on-site treatment facilities in the Preservation Area unless approved through

Township of West Milford, Passaic County  
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May 27, 2010

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a Highlands Applicability Determination (HAD) or a HPAA with waiver pursuant to N.J.A.C. 7:38 and Policy 7G1.

Objective 2I1a: Designated sewer service areas in the Preservation Area shall be restricted to the Existing Areas Served as of August 10, 2004, except to serve development that is approved through a HAD or a HPAA with waiver pursuant to N.J.A.C. 7:38 and Policy 7G1.

Further, as indicated in (b) 3, the Highlands Water Protection and Planning Act Rules set forth in N.J.A.C. 7:38-1.1 et seq. make it very clear that NJDEP will be guided by the Highlands Regional Master Plan with regard to review and approval of decisions regarding new sanitary sewer and potable water systems as evidenced in N.J.A.C. 7:38 1.1, subsections (g) and (k) which read as follows:

(g) For all decisions in or affecting the planning area or the preservation area, the Department shall give great consideration and weight to the RMP, to be incorporated by reference in (l) below, when adopted by the Highlands Council, and shall apply this in accordance with (h), (i), (j) and (k) below.

(k) For both the planning area and preservation areas, the Department shall review the Highlands Council regional master plan and consider amending the appropriate areawide Water Quality Management Plans to maintain consistency with the regional master plan. The Department shall approve a Water Quality Management Plan amendment only after receiving from the Highlands Council a determination of consistency with the Regional Master Plan to be incorporated by reference in (l) below, when adopted by the Highlands Council. Pending completion of the Regional Master Plan, the Department shall not approve a Water Quality Management Plan amendment for a project proposed in the planning area or preservation area without first obtaining a recommendation from the Highlands Council.

STANFORD VILLAGE [Block 7702, Lot 4]

Preliminary site plan approval was granted in 1986 for a total of 461 residential townhouse units including 42 affordable units, however; the 1997 HE/FSP anticipated a zoning change with a shift towards single family detached dwellings. As a result the total project was expected to yield 208 residential dwellings including 31 affordable units. Stanford Village, a component of the proposed Town Center which was later withdrawn, did not progress past the preliminary approval and by the time of the January 1997 HE/FSP was no longer referenced and was no longer part of the Township's affordable housing plan.

VALLEY RIDGE [Block 8002, Lot 4]

As mentioned in the November 2007 HE/FSP, the development known as Valley Ridge was denied Final site plan approval by the Township's Planning Board at the public hearing on September 28, 2006, however; that denial was reversed at the Law Division level in a decision rendered on December 1, 2006. The Township was unsuccessful in its appeal of



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same resulting the Appellate Division Court's finding on July 24, 2008 affirming the trial court's decision. Notwithstanding the Court's decision, this development did in fact have its Highlands exemption revoked by the NJDEP on August 28, 2007. This site has since been removed from the Olde Milford sewer service area in the Interim Wastewater Management Plan in accordance with the regulations and policies of the Highlands Water Protection and Planning Act and the Highlands Regional Master Plan.

RANDOM WOODS [Block 8001, Lot 1]

This development was granted a Default Approval on November 5, 1990, effective as of May 31, 1990, as a result of legal action taken by the applicant against the Planning Board in Superior Court for failure to act on the application within the required time period set forth in the Municipal Land Use Law. As indicated in the Township's second round HE/FSP, this development was scheduled to have 150 total units of which 15 were to be affordable. It is described in the aforementioned CCR as follows:

This site was granted approval for 104 single family lots in 1987. However, the owner did not seek an extension of the approval after the expirations of the Permit Extension Act, so that approval has expired. West Milford has rezoned this site to permit clustering of 150 units with a setaside of 15 affordable units. This site will have to provide its owner sanitary sewer and potable water until the Town Center treatment plant is operational.<sup>8</sup>

The absence of a Highlands exemption and other factors including the Township's decision to not move ahead with the Town Center brought about a decision by the property owner to sell the 100 acre tract to the municipality. As of this date the Township of West Milford is under contract to purchase this property with assistance through the Passaic County Open Space Trust Fund and the NJ Green Acres program.

### Third Round New Construction Obligation

#### Overview

The Township of West Milford has a third round affordable housing obligation of 47 units and a rehabilitation obligation of 66 units. To date, 14 affordable units (including bedrooms in a group home) are in place and 20 residential dwellings have undergone major rehabilitation work to qualify for credit. As such the Township must address a balance of 33 units of new construction and 46 units in the rehabilitation program.

#### Impact of Highlands

The Township of West Milford is situate entirely within the Highlands Preservation Area. In recognition of the limits imposed on new development with the adoption of the *Highlands Water Protection and Planning Act* in August 2004, the need for COAH to adjust population

<sup>8</sup> COAH Compliance Report -- West Milford Township / Passaic County, September 20, 1999, page 4

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and employment growth projections in the Highlands Region became quite evident and, following Executive Order 114 issued by Governor Corzine on September 5, 2008, COAH and the Highlands Council adopted a Memorandum of Understanding on October 30, 2008. That document established the basis for COAH and the Highlands Council to develop "...adjusted growth projections within the Highlands Region, consistent with the RMP, to be utilized by municipalities that conform to the RMP."

The RMP refers to the Highlands Regional Master Plan. West Milford, by virtue of having its entire jurisdiction within the Preservation Area, is required to conform to the RMP and did complete the requirements for Basic Plan Conformance with the RMP in 2009. Among the tasks undertaken as part of Basic Plan Conformance was a future "build-out" analysis to ascertain the adjusted growth projections called for in Executive Order 114 and the aforementioned Memorandum of Understanding. The results of that analysis are contained in a report entitled *West Milford Township Municipal Build-Out Report*, dated July 2009. As noted in the Final Build-Results section of the Report, the total residential growth projected for West Milford is 19 units which now serve as the basis for determining the Township's third round affordable housing obligation. A total of four affordable units will be required based on this adjusted growth projection. These four units must be added to the "actual" growth obligation generated by residential and nonresidential development that has secured certificates of occupancy since January 1, 2004. Based on the this development there is an actual growth share obligation of 43 units which, combined with the projected growth share obligation of four units equals the total third round new construction obligation of 47 units.

The combination of Highlands-adjusted growth projections and the "actual growth" to date generate the third round new construction obligation of 47 units. By way of comparison, COAH's pre-Highlands third round growth projections for West Milford called for 98 affordable units.

Fair Share Strategy

As mentioned above there are 14 existing affordable units and bedrooms that can be counted towards the 47 unit obligation. These are comprised of 12 age-restricted units at Lincoln Hill and 2 bedrooms in a group home, now known as a "supportive and special need" facility (Table 25).

**Table 25**  
**Existing Affordable Units & Bedrooms**  
**To Be Applied to Third Round Obligation**

Block	Lot	Address	Ownership	# Units/ Bedrooms	Type
6401	6.02	15 Lincoln Ave.	Lincoln Hill Village Urban Renewal	12	Age restricted
13812	13	240 Germantown Road	ALFA Development	2	Supportive/special needs
<b>Total</b>				<b>14</b>	

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This Fair Share Plan will satisfy the remaining 33 units with the implementation of three "mechanisms" set forth in Subchapter 6 of the third round Substantive Rules, as follows:

- a) Municipally sponsored and 100 percent affordable developments (5:97-6.7);
- b) Supportive and special needs housing (5:97-6.10); and
- c) Accessory apartment program (5:97-6.8).

West Milford will utilize its inventory of Township-owned properties in partnership with qualified non-profit organizations to implement (a) and (b). A total of 16 underdeveloped sites consisting of properties owned by the Township have been selected as suitable for infill development. A primary criterion in selecting such sites, apart from avoiding obvious environmental constraints such as steep slopes, wetland and streams, is to be reasonably certain that development can proceed without being classified as a "Major Highlands Development". This allows the sites in question to qualify for the Highlands exemption (2) pursuant to Chapter 13:20-28, thus reducing certain obstacles and expense in actually getting the properties developed for the intended purposes. Highlands Exemption (2) reads as follows:

[T]he construction of a single family dwelling on a lot in existence on the date of enactment of this act, provided that the construction does not result in the ultimate disturbance of one acre or more of land or a cumulative increase in impervious surface by one-quarter acre or more

A number of the sites in question do exhibit environmental constraints, however, it is anticipated that sufficient unencumbered area is present to allow residential construction within the one acre disturbance/one-quarter acre maximum impervious coverage per the above-cited exemption. In order to meet the 33 unit new construction obligation, it is anticipated that some of the properties in question will be developed for single family units, others with duplex units and supportive and special needs residences. Two of the 33 new construction units will be addressed with accessory apartments, as described below. The remaining 31 unit obligation will be addressed through a combination of the aforementioned configurations. At this time the Fair Share Plan proposes the following:

- 8 single family dwellings (8 credits)
- 8 duplex units (16 credits)
- 2 supportive and special needs residences with a combined total of 7 bedrooms (7 credits)

A list of the sites in question is provided in Appendix A. Aerials of each site are provided in Appendix B.

Mechanism (c), the creation of accessory apartments in conformance with 5:97-6.8 will provide two affordable units and two credits. COAH's Substantive Rules requires the municipality to assume a minimum subsidy of \$20,000 per unit for each moderate-income accessory apartment and \$25,000 per unit for each low-income accessory apartment. West

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Milford has a current balance of \$50,695.44 in its Housing Trust Fund as of April 23, 2010. This is sufficient to cover the anticipated subsidies for two accessory apartment units.

**Components of Third Round Obligation**

The third round growth share obligation must include at least fifty percent of the total as family units, 25 percent of the total as rental units, and of those rental units at least fifty percent must be available for family occupancy. The affordable housing obligation must provide for an equal distribution of low and moderate-income households and ensure that at least 13 percent of the total is available to households qualifying as "very low income". In addition, no more than 25 percent of the total growth share may be age-restricted housing and all bonus credits are capped at 25 percent of the total growth share.

**Rental Bonus**

Rental bonus credits are awarded differently in the third round. In the prior round a municipality earned up to one bonus credit for each rental unit that addressed the minimum rental unit obligation. In the current period rental bonus credits are available for those units/bedrooms that exceed the minimum rental unit obligation. In other words, for West Milford the prior round rental unit obligation was 25 units which, when satisfied, enabled the Township to claim up to one credit per unit for a total of 25 rental bonus credits.

In contrast, the third round rules require that a municipality first provide its minimum rental unit obligation before bonus credits are available. In addition, the third round rules impose a maximum cap on all bonus credits equal to 25 percent of the municipality's growth share obligation. For West Milford, the rental unit obligation is 12 units and the maximum number of bonus credits available for this period is also 12. (The calculations showing how these figures are derived are presented below.)

This Fair Share Plan does not rely upon bonus credits to achieve the third round obligation at this time as there are only six rental units in place, leaving a deficit of six rental units to satisfy the 12 unit requirement. Because fifty percent of that 12 unit obligation must be available to families, we cannot apply other units in the age-restricted Lincoln Hill facility or the bedrooms in the ALFA Development supportive and special needs facility. When the 12 unit rental obligation is satisfied, the Township may seek to claim bonus credits for these units and bedrooms through an amended HE/FSP.

Third Round Growth Share Obligation: 47 units to be distributed as follows:

- Family housing obligation:  $47 \times .5 = 23.5$  units (round up to 24 units)
- Rental obligation:  $47 \times .25 = 11.75$  units (round up to 12 units)
- Family rental obligation:  $12 \times .5 = 6$  units
- Very low income obligation:  $47 \times .13 = 6.1$  units (round to 6 units)

**Permitted**

- Maximum bonus credits:  $47 \times .25 = 11.75$  credits (round up to 12 credits)

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➤ Maximum age restricted:  $47 \times .25 = 11.756.75$  units (round up to 12 units)

**I. Family Unit Obligation**

- Required: 24 units
- Existing: None

Remaining Balance: 14 units

**II. Rental Unit Obligation**

- Required: 12 units/bedrooms
- Existing: 6 units (Lincoln Hill)

Remaining Balance: 6 units (must be family units)

**III. Family Rental Unit Obligation**

- Required: 6 units
- Existing: None

Remaining Balance: 6 units

**IV. Very Low Income Unit Obligation**

- Required: 6 units/bedrooms
- Existing: 2 (ALFA Dev.)

Remaining Balance: 4 units/bedrooms

**V. Maximum Age Restricted**

- Permitted: 12 units
- Existing: 12 units: Lincoln Hill Senior Housing

**VII. Third Round Maximum Bonus Credits**

- Permitted: 12 credits
- Not included at this time

**Rehabilitation Obligation**

West Milford has a rehabilitation obligation of 66 units for the third round. To date 20 units have been funded through the Passaic County Department of Community Development program. The Township will disseminate information about the County program through the Township's website, mailings with property tax bills, and notices and/or news articles in local circulation newspapers. Table 26 outlines the proposed schedule to address the remaining rehabilitation obligation of 46 units.

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**Table 26**  
**Proposed Schedule for West Milford**  
**Housing Rehabilitation Program**

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total
#	3	3	4	4	6	6	6	7	7	46
Units										

**Summary of West Milford Fair Share Plan - Total Third Round Obligation**

West Milford has a new construction obligation of 47 units for the third round. To date there are a total of 14 affordable units and bedrooms in place comprised of 12 units in the age-restricted facility known as Lincoln Hill and two bedrooms in the supportive and special needs facility owned and operated by ALFA Development as presented in Table 25. (Actually there are three bedrooms in that facility, however; one of the three is applied to the prior round obligation as indicated in Table 24.) This Fair Share Plan will utilize municipally-owned properties in cooperation with experienced and qualified non-profit entities to facilitate construction of the remaining affordable housing obligation.

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Appendix A

List of properties owned by the Township of West Milford identified as potential affordable housing sites:

1. Block 5301, Lot 34  
(25.6 acres) (R-4 zone)  
Utilize northerly portion of property with frontage on Morsetown Road for residential unit(s).
2. Block 6002, Lot 18  
(115 acres) (SED zone)  
Utilize westerly portion of property with frontage on Moore Road for residential unit(s).
3. Block 8002, Lot 1  
(63.2 acres) (SHD/R-2 zone)  
Utilize westerly portion of property with frontage on Camelot Drive for residential unit(s).
4. Block 8505, lots 1-11; 13-18.  
(2 acres) (SHD/R-2 zone)  
Propose merging parcels to create one residential lot with frontage on Dockerty Hollow Road for residential unit(s).
5. Block 8509, Lot 1  
(1.7 acres) (R-2 zone)  
Utilize easterly portion of property with frontage on Dockerty Hollow Road for residential unit(s).
6. Block 8509, Lot 37  
(0.5 acre) (SHD/R-2)  
Utilize property with frontage on Rock Ledge Road for residential unit(s).
7. Block 8510, Lot 9  
(6.9 acres) (SHD/R-2 zone)  
Utilize northerly portion of property with frontage on Rock Ledge Road for residential unit(s).
8. Block 8701, Lot 8  
(1.8 acres) (R-2 zone)  
Utilize southerly portion of property with frontage on Carriage Lane for residential unit(s).
9. Block 11302, Lot 2  
(0.16 acres) (LR zone)  
Utilize property with frontage on Upper Mountain Glen Lake Drive for residential unit(s).

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10. Block 11501, Lot 6  
(22.7 acres) (R-4 zone)

Utilize easterly portion of property with frontage on Hilltop Road for residential unit(s).

11. Block 12309, Lot 2  
(1.4 acres) (R-4 zone)

Utilize northerly portion of property with frontage on Setting Sun Terrace for residential unit(s).

12. Block 11601, lots 7.03 & 8  
(1 acre – combined) (LR zone)

Combine lots 7.03 and 8 with frontage on Otterhole Road for residential unit(s).

13. Block 10508, Lot 12  
(2.5 acres) (LR zone)

Utilize northerly portion of property with frontage on Schofield Road for residential unit(s).

14. Block 10508, Lot 11  
(3.15 acres) (R-4 zone)

Utilize easterly portion of property with frontage on Baldwin Drive (to be extended) for residential unit(s).

15. Block 10507, Lot 1.01  
(3.8 acres) (R-4 zone)

Utilize westerly portion of property with frontage on Shore Drive for residential unit(s).

16. Block 11101, Lot 1  
(169 acres) (R-3 & R-4 zones)

Utilize northeasterly portion of property with frontage on Snake Den Road for residential unit(s); and/or Utilize northwesterly portion of property with frontage on West Brook Road for residential unit(s).



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Housing Element and Fair Share Plan  
May 27, 2010

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Appendix B

Potential COAH Site - Block 8701 Lot 8  
West Milford Township  
Passaic County, New Jersey

Parcels in Question selection  
Parcel

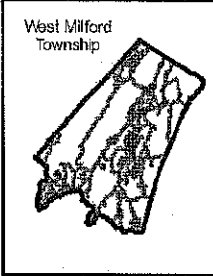


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May 2010

Data Source:  
NJDEP, Passaic County,  
West Milford Township

**BANISCH**  
ASSOCIATES INC.  
Planning and Design



Potential COAH Site - Block 11101 Lot 1  
West Milford Township

May 2010

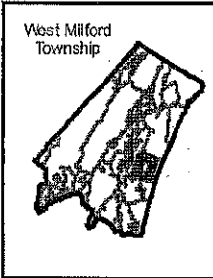
Passaic County, New Jersey

Parcel in Question  
Parcel



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West Milford Township  
**BANISCH**  
ASSOCIATES INC.  
Planning and Design

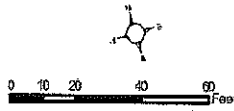


Potential COAH Site - Block 11302 Lot 2  
West Milford Township

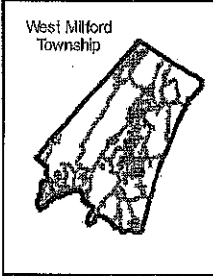
May 2010

Passaic County, New Jersey

 Parcel in Question  
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
Delta Sources  
NJDEP, Passaic County,  
West Milford Township  
**BANISCH**  
ASSOCIATES INC.  
Planning and Design



Potential COAH Site - Block 11501 Lot 6  
West Milford Township  
Passaic County, New Jersey

May 2010

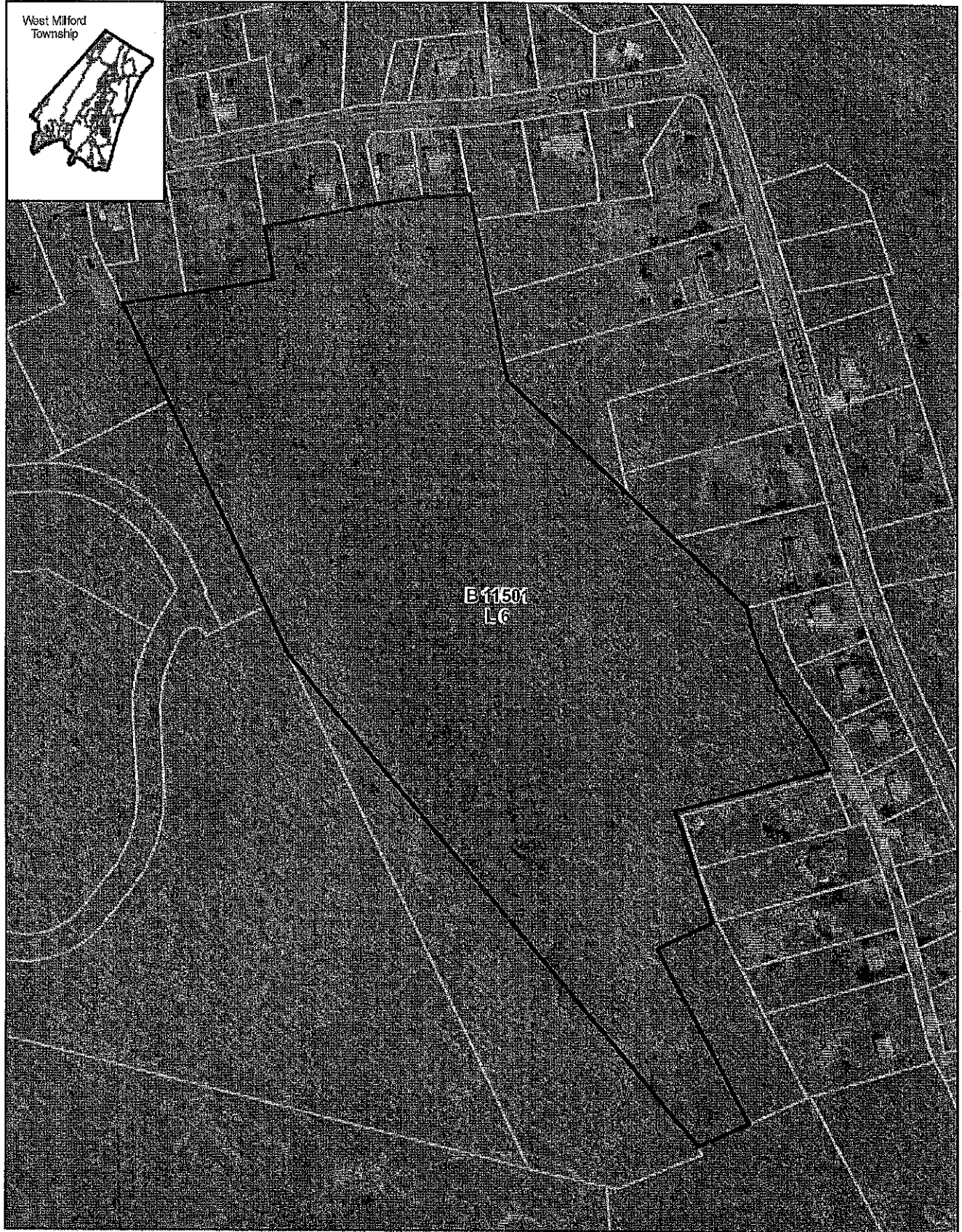
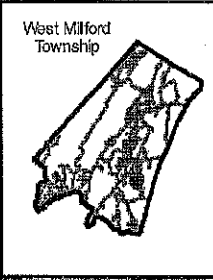
Data Sources:  
NJDEP, Passaic County,  
West Milford Township

 Parcel in Question selection  
 Parcel



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**BANISCH**  
ASSOCIATES INC.  
Planning and Design



Potential COAH Site - Block 11601 Lots 7.03 and 8  
West Milford Township

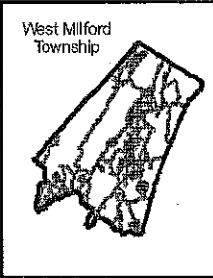
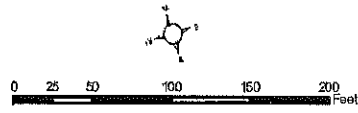
Passaic County, New Jersey

May 2010

Data Source:  
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West Milford Township



**BANISCH**  
ASSOCIATES, INC.  
Planning and Design

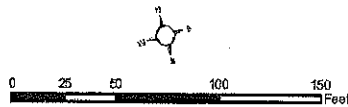
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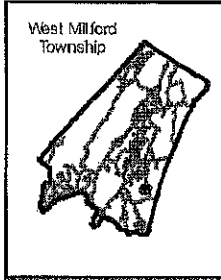
Potential COAH Site - Block 12309 Lot 2  
West Milford Township  
Passaic County, New Jersey

May 2010

 Parcel in Question  
 Parcel



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NDEP, Passaic County,  
West Milford Township  
**BANISCH**  
ASSOCIATES INC.  
Planning and Design



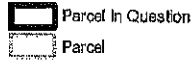
Potential COAH Site - Block 5301 Lot34  
West Milford Township

May 2010

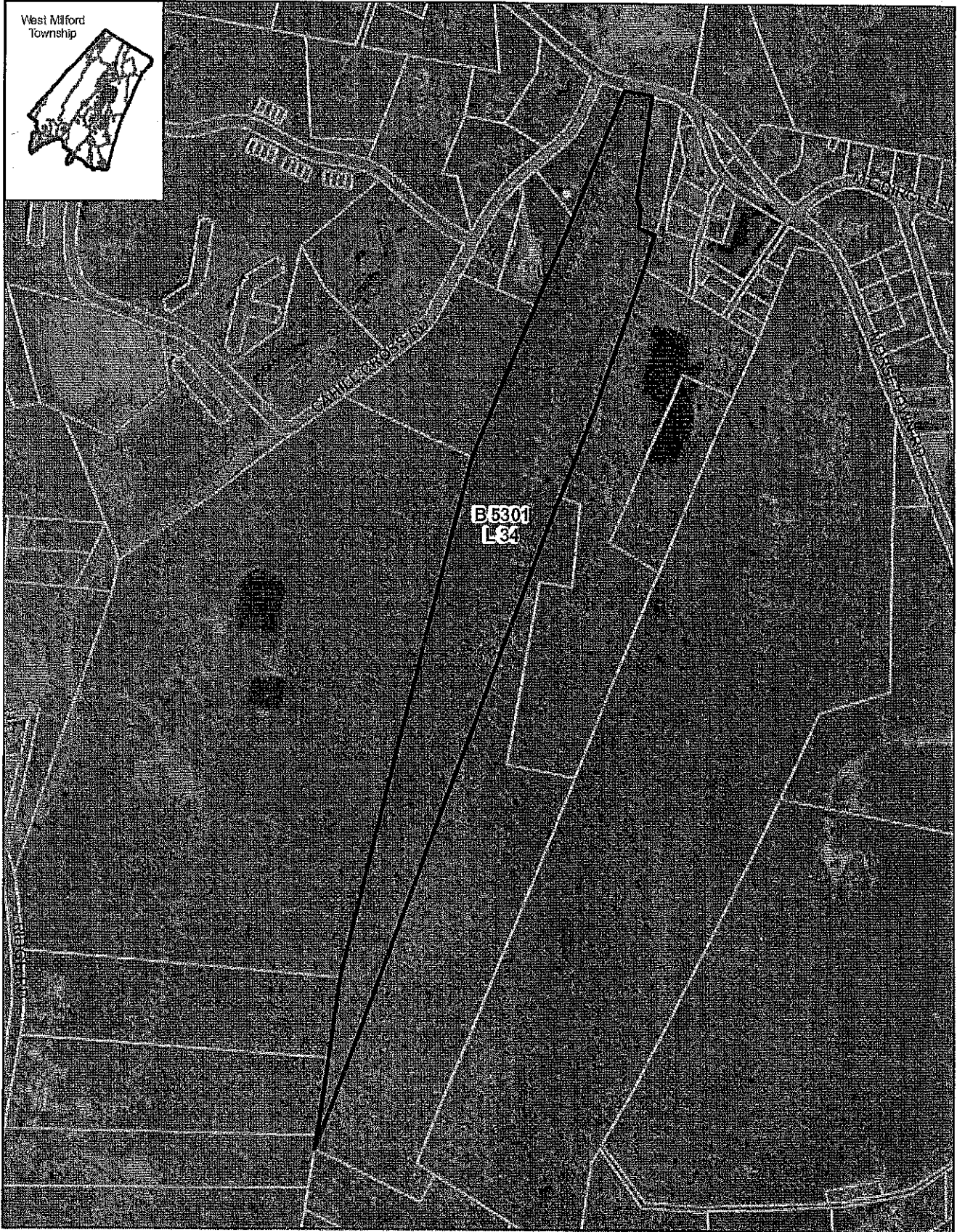
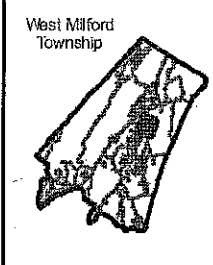
Date Submitted:  
1/15/09, Passaic County,  
West Milford Township

**E. ANISCH**  
ASSOCIATES INC.  
Planning and Design

Passaic County, New Jersey



 Parcel In Question  
Parcel

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Potential COAH Site - Block 6002 Lot18  
West Milford Township  
Passaic County, New Jersey

 Parcel In Question  
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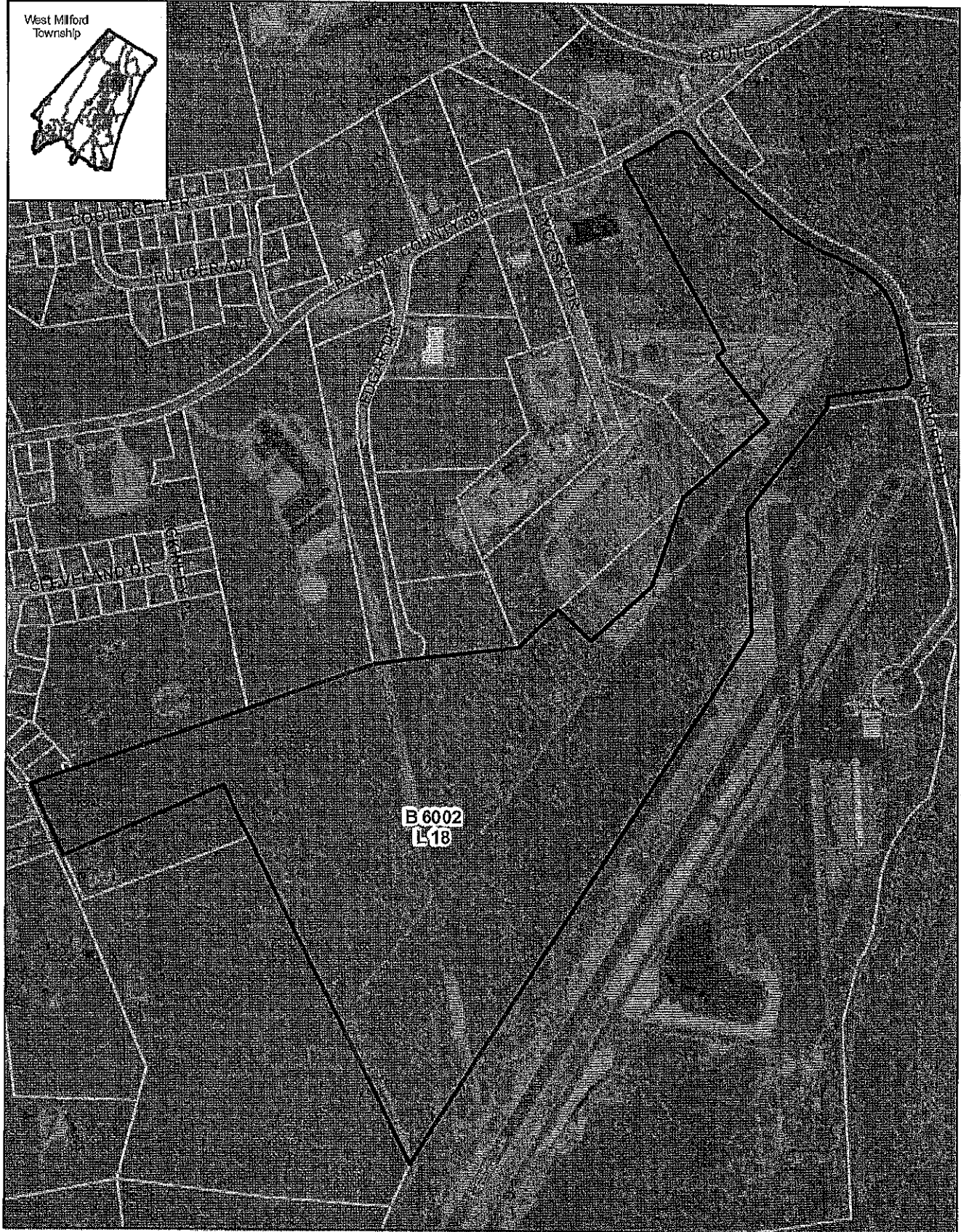
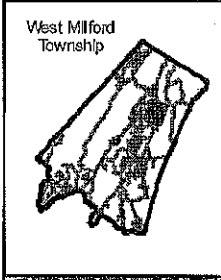


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May 2010

Data Source:  
NJDEP, Passaic County,  
West Milford Township

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Planning and Design





Potential COAH Site - Block 8002 Lot 1  
West Milford Township

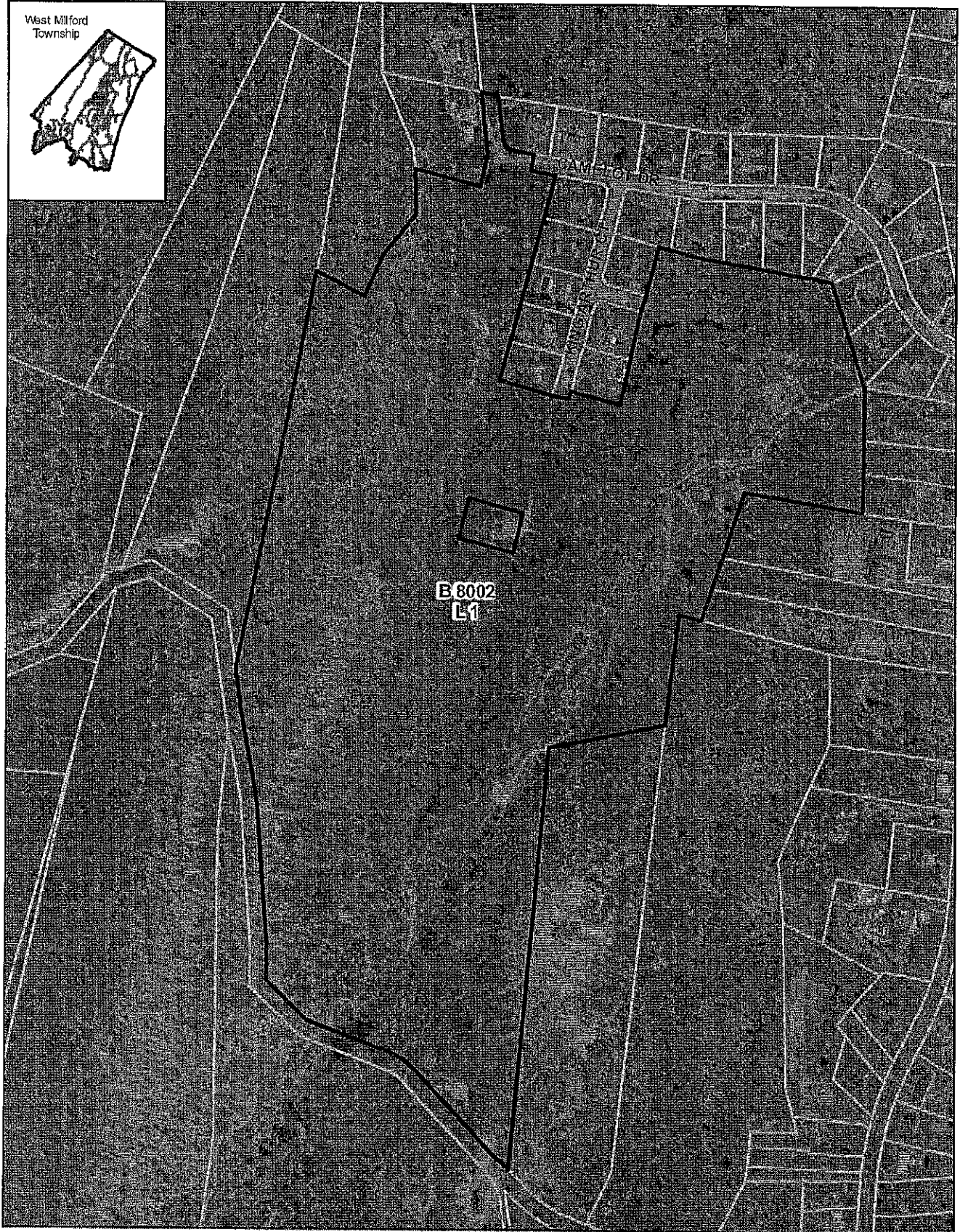
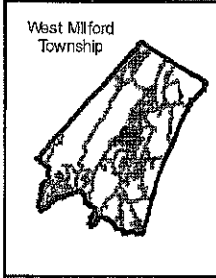
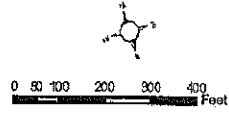
Passaic County, New Jersey

May 2010

Data Source:  
NJDEP, Passaic County,  
West Milford Township

**BANISCH**  
ASSOCIATES INC.  
Planning and Design

 Parcel in Question  
 Parcel



Potential COAH Site - Block 8505 Lots 1-11 and 13-18  
West Milford Township

May 2010

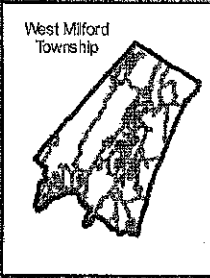
Passaic County, New Jersey

Parcels In Question  
Parcel



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Bob Sorensen  
NJCEP, Passaic County  
West Milford Township  
**BANISCH**  
ASSOCIATES INC.  
Planning and Design

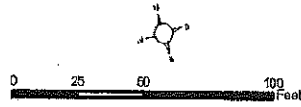


Potential COAH Site - Block 8509 Lot 37  
West Milford Township

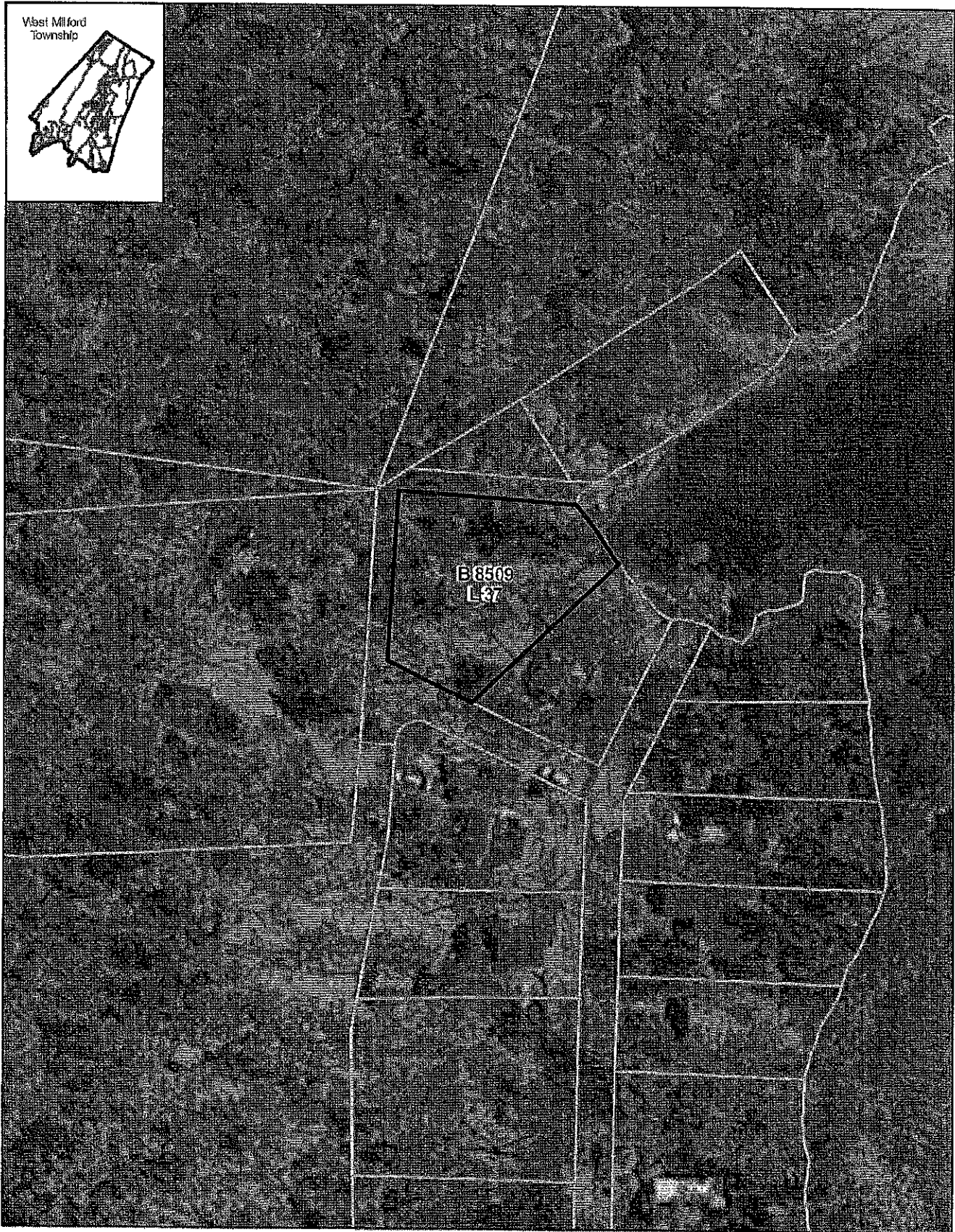
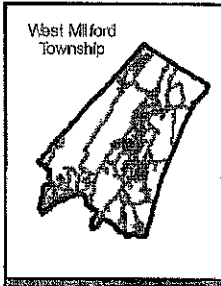
May 2010

Passaic County, New Jersey

 Parcels in Question selection  
 Parcel



Date Submitted:  
NHD GPS, Passaic County,  
West Milford Township  
**BANISCH**  
ASSOCIATES INC.  
*Planning and Design*



Potential COAH Site - Block 8509 Lot 1  
West Milford Township

Passaic County, New Jersey

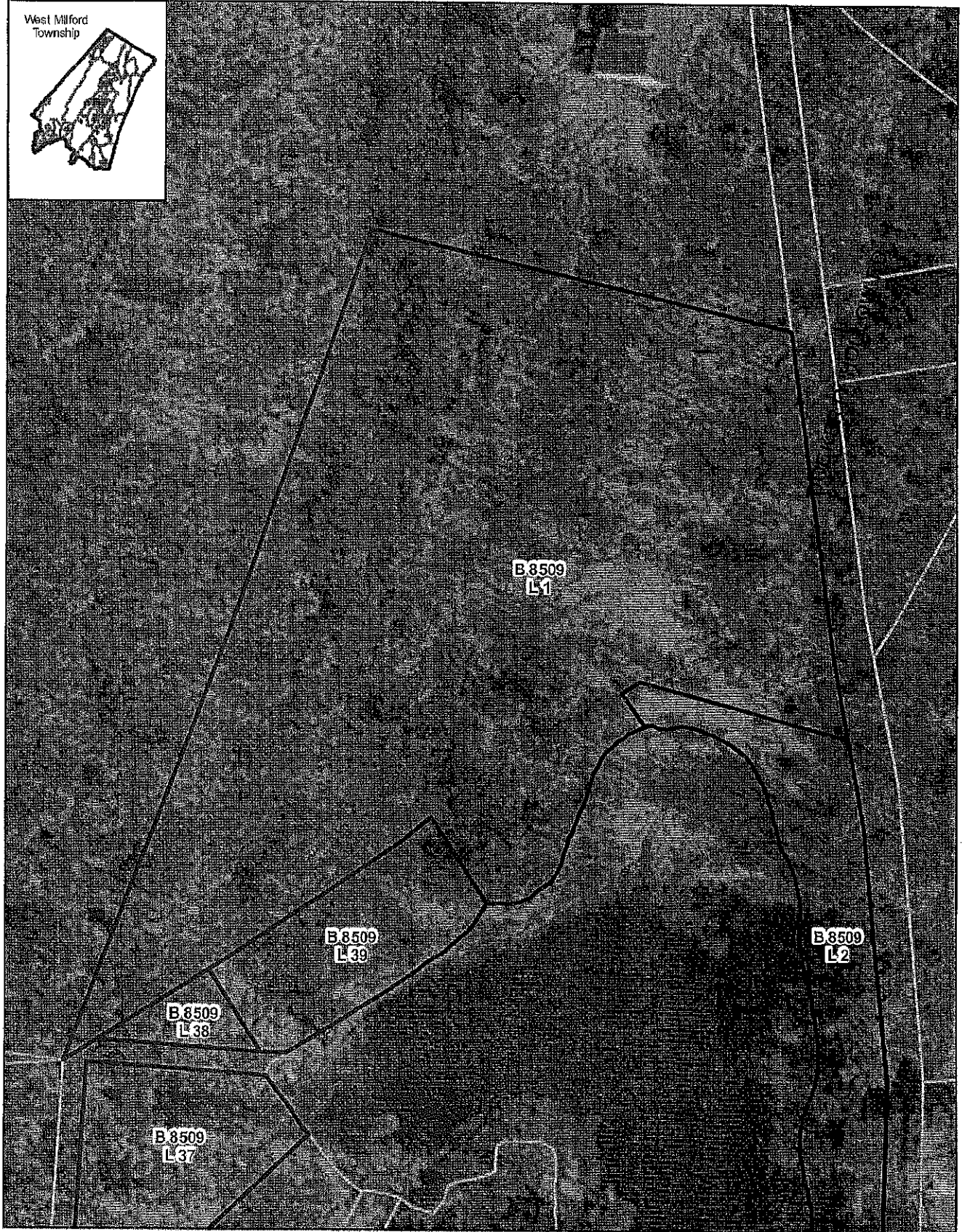
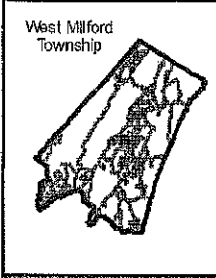
May 2010

Date Stamped:  
NJ DEP, Passaic County,  
West Milford Township

**BANISCH**  
ASSOCIATES INC.  
Planning and Design



Parcel In Question  
Parcel

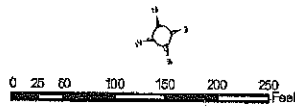
0 25 50 100 Feet



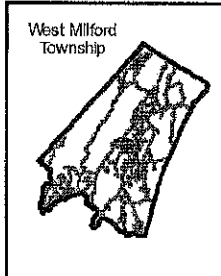
Potential COAH Site - Block 8510 Lot 9  
West Milford Township  
Passaic County, New Jersey

May 2010

 Parcel in Question  
 Parcel





Data Source:  
NJDEP, Passaic County,  
West Milford Township  
**BANISCH**  
ASSOCIATES INC.  
Planning and Design



Potential COAH Site - Block 10508 Lots 11 and 12 and Block 10507 Lot 1.01  
West Milford Township

May 2010

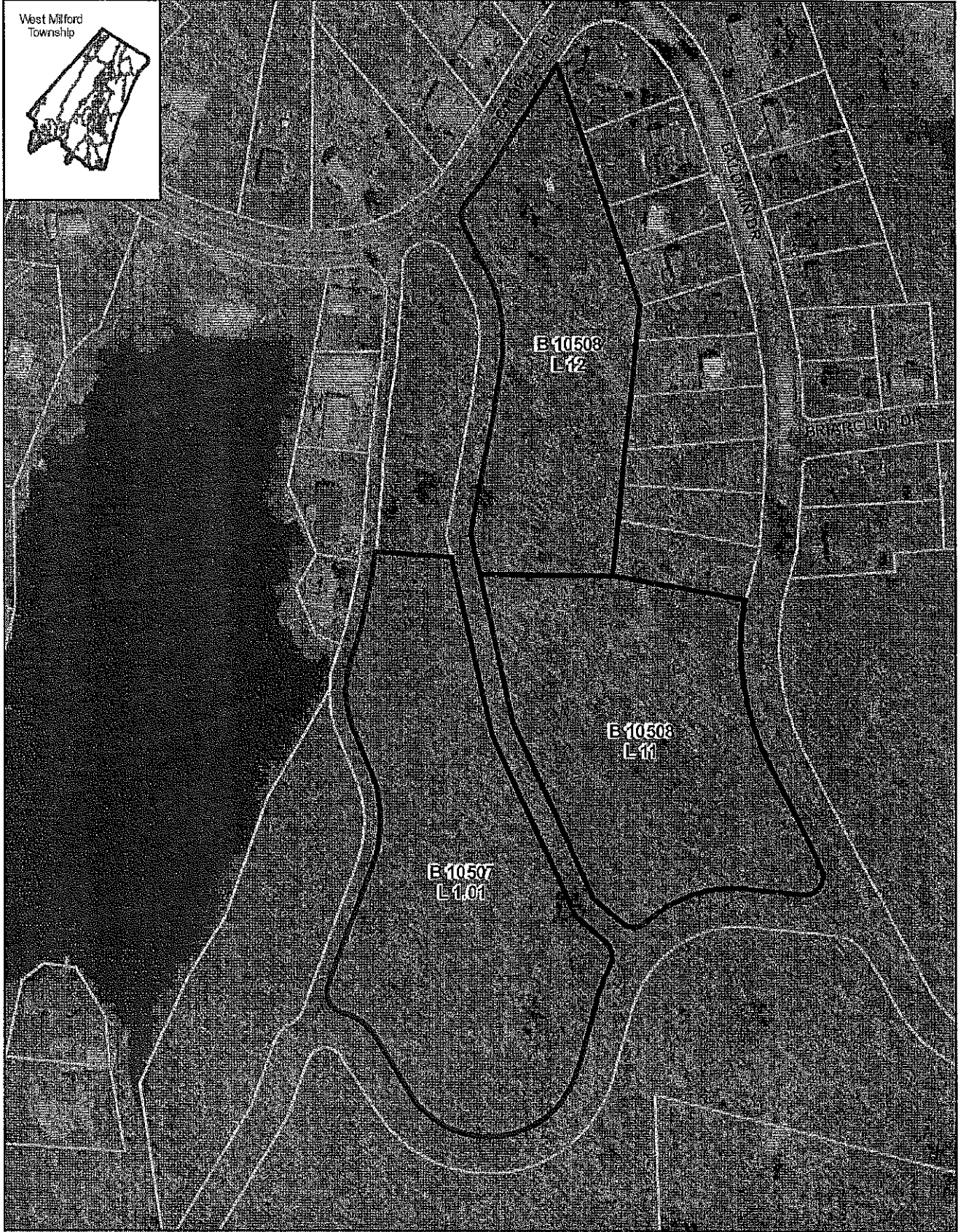
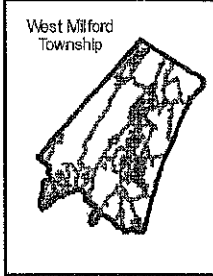
Passaic County, New Jersey

 Parcels in Question  
 Parcel

0 25 50 100 150 200 Feet



Date Colored:  
NDEP, Passaic County,  
West Milford Township  
**BANISCH**  
ASSOCIATES INC.  
*Planning/Design*



# Exhibit B



**DEED OF CONSERVATION EASEMENT**

This Deed of Conservation Easement ("Easement"), made this 31<sup>st</sup> day of May, 2006

Between the City of Newark, a Municipal Corporation ("Grantor"), having its principal place of business at 920 Broad Street, Newark, New Jersey and the State of New Jersey, Department of Environmental Protection having its principal place of business at 401 East State Street, Trenton, New Jersey 08625, ("Grantee"),

**Witnesseth:**

Whereas, Grantor is the sole owner in fee simple of Property, which contains approximately 9640 acres and is comprised of approximately 109 lots; and

Whereas the Property described herein is more specifically shown on the Block/Lot Listing and reference map attached hereto and made a part hereof as Schedule "A";

Whereas, the Property identified herein at Schedule "A" is part of lands generally known as the City of Newark's Pequannock Watershed, which in total comprises approximately 35,000 acres owned by the Grantor in Morris, Passaic and Sussex Counties; and

Whereas, this Deed of Conservation Easement represents the seventh and final phase of similar easement acquisitions from the Grantor; the prior six acquisitions totalled over 23,600 acres; and

Whereas, it is the intent of this Deed of Conservation Easement to additionally confirm that all lands of Grantor within the City of Newark's Pequannock Watershed, except those lands specifically identified in Schedule "A" as "Excluded Lands", are now enumerated by this Deed of Conservation Easement, or prior similar easements, whether or not they appear on Schedule "A" Block & Lot Listing; excepting that only the lands specifically listed by Block and Lot on Schedule "A" and estimated to comprise 9640.08 acres will be subject to the Forest Legacy restrictions stated herein; and

Whereas, the term "Property" as hereinafter used shall apply to all lands of Grantor within the City of Newark's Pequannock Watershed, except those lands specifically identified in Schedule "A" herein as "Excluded Lands"; and

Whereas, the Property is primarily open land which contains a critical mass of forested habitat connecting to adjacent protected land and State land; and

Whereas, the Property consists of lands designated as protection for the Pequannock Watershed, and public drinking water, and contains associated reservoirs, ponds, streams, and forests all contributing to the water quality of the New Jersey Highlands Region affecting millions of New Jersey citizens; and

Whereas the Property is comprised of habitat which supports endangered, threatened, and declining species including Timber rattlesnake, Barred owl, Great Blue heron, Spotted salamander, and many neotropical migratory songbirds, all sensitive to forest fragmentation and development; and

Whereas the Property contains old growth hemlock forests, remnant boreal bogs, and, in certain sections, has been classified as a Natural Heritage Priority Site; and

Whereas, access to this Property offers visitors a near-wilderness experience unmatched in the State's Highland Region, and the protection of the Property ensures the integrity of the adjacent protected lands; and

Whereas, the specific conservation values of the Property are further documented in the Baseline Documentation attached hereto as Schedule "B", and also made part of, and referenced in the Present Condition Report which consists of reports, maps, photographs, and other documentation that the parties agree provide accurate representation of the Property at the time

of this grant and which is intended to serve as information for monitoring the grantor's compliance with the terms of this grant; and

Whereas, Grantor intends, as owner of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

Whereas, this conservation easement is entered into in accordance with the New Jersey Conservation and Historic Preservation Restriction Act (N.J.S.A. 13:3B-1 et seq.) and shall be binding upon the Grantor its successors and assigns and upon the Grantee, its successors and assigns; and

NOW THEREFORE, in consideration of the sum of Ten Million Dollars (\$10,000,000) the receipt of which is hereby acknowledged, the Grantor does hereby convey to the Grantee a conservation easement in perpetuity, pursuant to the laws of New Jersey, for the exclusive purpose of assuring that the open space character, wildlife habitat, scenic qualities, and Conservation Values of the Property will be conserved and maintained forever, and that uses of the Property that are inconsistent with these Conservation Values will be prevented or corrected.

- I. **Purpose.** It is the purpose of this Easement to assure that the Property will be retained forever and predominantly in its natural forested condition and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property.

Nothing contained herein shall be construed to interfere with the right of the grantor, its successors or assigns to utilize the easement area subject to the terms and conditions of this grant. Grantor and grantee further agree that this Easement grants no other right or privilege.

In addition, the purpose of this Easement is to effect the Forest Legacy Program in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. 2103c) as amended, on the herein described land identified specifically by Block and Lot in Schedule "A", which purposes include protecting environmentally important forest areas that are threatened by conversion to non-forest uses and for promoting forest land protection and other conservation opportunities. The purposes also include the protection of important scenic, cultural, fish, wildlife and recreational resources, riparian areas and other ecological values.

II. **Prohibited Acts.** Except for those rights expressly reserved, any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- A. **Subdivision and Development.** Any new development or subdivision of the Property is expressly prohibited, except for specific rights retained in this Easement.

**Structures.** Construction of billboards and cellular phone towers, golf courses, airstrips, and helicopter pads are expressly prohibited on the Property. Construction of any new structures, including but not limited to both residential and agricultural structures, is expressly prohibited, except as provided below:

*Exception:*

Water Supply Related Features It is understood and agreed that not more than 10% of the Easement Area described by Block and Lot on Schedule A and estimated to comprise 9640.08 acres is encumbered by roads or water supply facilities. Existing structures and roads deemed critical to the City of Newark's water supply operations may be repaired and replaced at their current location without further permission from the Grantee. Any proposals to enlarge or increase such operations shall be subject to prior approval by the Grantee, which may not be unreasonably withheld. It is

understood and agreed that 90% of the Easement Area shall be maintained in a forested condition.

- B. **Mining.** No topsoil, sand, gravel, loam, rock, or other minerals shall be deposited on, excavated, dredged, or removed from the Property.
- C. **Roads.** No new roads may be constructed or other portions of the Property covered with concrete, asphalt, or any other paving material. Existing roads and paved surfaces may be maintained in their current condition.
- D. **Trash.** No dumping or placing of trash or waste material shall be permitted on the Property.
- E. **Natural resource protection.** No activity shall be permitted on the Property that would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation.
- F. **Timber harvesting.** Clear cutting of timber stands is expressly prohibited. However, select trees may be cut to: control insects and disease; to prevent personal injury and property damage; for firewood to be used for on-site domestic purposes; and for the preservation of plant and animal species and natural communities described in this Easement. Such selective cutting shall be done under the supervision of a New Jersey State Forester, and with prior approval by the Grantee. Any commercial timber harvesting on the Property shall be conducted on a sustainable yield basis and in accordance with an approved Forest Stewardship Plan.

Grantor shall furnish Grantee with a Forest Stewardship Plan prepared and updated at least every ten years by a professional forester certified by the New Jersey Forest Service. The Plan shall be designed to be consistent with the requirements of this Conservation Easement. Timber harvesting shall be supervised by a professional forester and conducted under written contracts, which shall specify relevant requirements for compliance with this Conservation Easement. The Forest Stewardship Plan and certification shall be provided to the Grantee prior to conducting any timber harvesting activities. The Plan shall be reviewed by the Grantee for consistency with the purposes and terms of this Conservation Easement.

#### III. Rights of Grantor.

The ownership rights of the Grantor extend to Grantor's personal representatives, heirs, successors, and assigns and include, but are not limited to, the right to sell or otherwise transfer the Property.

- IV. **Right of First Refusal.** Grantor agrees to give the Grantee a Right of First Refusal to purchase the Property, which right shall be of perpetual duration. The conditions of this Right shall be such that whenever the Grantor receives a written offer from a person or persons to purchase all or any part of the Property, and Grantor accepts the offer subject to this Right of First Refusal, the Grantor shall notify the Grantee via certified mail of the offer. Grantee may elect to purchase the Property at the offered price and upon such other terms and conditions not less favorable to the Grantor than those contained in the conditionally accepted offer. Grantee shall have ninety (90) days to elect to purchase the Property and will notify the Grantor by certified mail of such an election.

The Right of First Refusal shall apply to all sales and conveyances of the Property, including any sale or conveyance for consideration of any interest in the Property including any conveyance by, or conveyance of any interest in a corporation, partnership or other holding entity.

Notwithstanding the provisions of this section IV or anything contained herein to the contrary, nothing in this Deed of Conservation Easement shall in any way be

construed to prevent or restrict a sale, lease, transfer, conveyance, or other encumbrance by the City of the property described in Schedule "A" hereto, or on behalf of a not-for-profit corporation created and/or existing for, among other things, the purpose of constructing, acquiring, owning, operating, and maintaining the City's water supply, transmission and distribution assets.

V. **Rights of Grantee.** To accomplish the conservation purposes of this Easement the following rights are conveyed to the Grantee:

A. **Enforcement.** Grantee has the right to preserve and protect the conservation values of the Property. The burden of the Easement created hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this easement shall not be appurtenant to any particular parcel of land, but shall in gross and transferable or assignable only to a government entity, consistent with Section 1073(C)(1) of the US Internal Revenue Code of 1986, as amended, and the Forest Legacy Program (16 USC Section 2103c), which entity has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation purposes of this Easement. Any such assignee or transferee shall have the like power of assignment or transfer.

B. **Public Access Area**

1. Grantor and Grantee agree that this easement will benefit the public by virtue of preserving the Property in its natural state and allowing pedestrian access along existing and currently utilized interior trails operated by the Grantor.
2. The City of Newark, or its agent will continue to allow public access and will allow for public hunting and fishing access and may charge reasonable fees and impose reasonable rules for access, by means of a public permit system.
3. Grantee shall have the right to establish additional public trail systems for the connection to pathways, which exist on adjacent public and protected lands. This System shall be designed by the Grantee in such fashion as to reasonably, safely, and efficiently establish said connections, and shall be subject to Grantor's approval, which shall not be unreasonably withheld.

C. **Inspection.** Grantee and its agents shall be permitted access to and have the right to enter upon the Property with reasonable notice to the Grantor, for the purposes of inspection in order to enforce and assure compliance with the terms and conditions of this Easement. Except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior notice to the Grantor.

VI. **Responsibilities of Grantor and Grantee not affected.** Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligations of the Grantor as owner of the Property. This shall apply to:

A. **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property.

B. **Upkeep and Maintenance.** The Grantor, as owner of the Property, shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property except for those trails, buffer strips or public access areas identified in paragraph V(b)3. Nothing in this Easement shall require the Grantor to take any action to restore the condition of the Property after any Act of God or other event over which they had no control.

C. **Liability and Indemnification.** Grantor shall hold harmless, indemnify and defend Grantee and its members, directors, officers, employees, agents, and

contractors, and their successors and assigns from and against all liabilities, penalties, costs, losses, damages, expenses or claims, including, without limitation, reasonable attorneys fees arising from or in any way connected with injury to or the death of any person or physical damage to any property resulting from any act, omission condition or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the indemnified parties.

Grantee shall be responsible for losses or damages resulting from the negligent use, maintenance or occupancy of the Connecting Trail System to the extent legally liable for such actions by the New Jersey Tort Claims Act, NJSA 59:1-1 et seq. The liability, if any, of the Grantee shall be subject to the availability of state of New Jersey funds.

Grantor's agreement to hold harmless and indemnify Grantee shall not affect the statutory protections available to the Grantor under the Landowner's Liability Act, NJSA 2A:42A-2, et seq.

- VII. Remedies.** The Grantee shall have the right to prevent and correct violations of the terms of this Easement. Enforcement of the terms of this Easement shall be at the discretion of the Grantee and any failure on behalf of the Grantee to exercise its rights hereunder shall not be deemed or construed to be a waiver of the Grantee of those rights. This shall be true regardless of the number of violations of the terms of this Easement by the Grantor that occur or the length of time it remains unenforced.

If the Grantee finds what it believes is a violation of the terms of this Easement, it may without limitation as to other available legal recourse, at its discretion take any of the following action:

**A. Notice of Violation, Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation in accordance with a plan approved by the Grantee.

**B. Injunctive Relief.** If Grantor fails to cure the violation within 45 days after receipt of notice from the Grantee, or under circumstances where the violation cannot reasonably be cured with a 45 day period, fail to begin curing such violation, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin ex parte the violation by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to such injury. The Grantor acknowledges that any actual or threatened failure to comply or cure will cause irreparable harm to the Grantee and that money damages will not provide an adequate remedy.

**C. Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of Conservation Values. Without limiting Grantors' liability, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

**D. Costs of Enforcement.** In any case where a court finds that a violation has occurred, all reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantor's violation of the Easement shall be borne by the Grantor.

**VIII. Development Rights.** Grantor hereby grants to Grantee all development rights or credits that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield on the Property or any other property.

**IX. Grantor's Warranties.**

**A. Title.** Grantor warrants good and sufficient title to the Property, free from all encumbrances and hereby promises to defend the same against all claims that may be made against it. Grantor warrants the Property to be free from all mortgages, liens, encumbrances, restrictions, easements, covenants and conditions, except those that the Purchaser determines do not interfere with its proposed use of the Property. The Property may only be subject to a mortgage if the holder of such mortgage agrees to subordinate it to the Easement in a manner satisfactory to the Grantee.

**B. Hazardous Substances.** Grantor warrants no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property. Grantor hereby promises to defend and indemnify Grantee against all litigation, claims, demands, penalties and damages, arising from or connected with any release of hazardous waste or violation of federal, state, or local environmental laws.

**X. Amendment of Easement.** This Easement may be amended only with the written consent of Grantee and Grantor. Any such amendment shall be consistent with the purposes of this Easement and with the laws of the State of New Jersey and any regulations promulgated pursuant to those laws.

**XI. Interpretation.** This Easement shall be interpreted under the laws of the State of New Jersey, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Conservation Purposes.

**XII. Perpetual Duration.** This Easement shall be servitude running with the land in perpetuity. Every provision of this Deed that applies to the Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

**XIII. Reversion of Funds.** The Grantee acknowledges that the Conservation Easement upon this Property set forth in Schedule "A" was acquired with Federal funds under the Forest Legacy Program (P.L. 101-624; 104 Stat. 3359) and the interests acquired cannot be sold or exchanged, or otherwise disposed, unless the United States is reimbursed the market value of the interest in land at the time of disposal. Provided, however, the Secretary of Agriculture may exercise discretion to consent to such sale, exchange, or disposition upon the State's tender of equal valued consideration acceptable to the Secretary.

**XIV. Notices.** Any notices required by this Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee at the following addresses, unless a party has been notified of a change of address:

To Grantor:  
City Clerk, City of Newark, a Municipal Corporation ("Grantor"), having its principal place of business at 920 Broad Street, Newark, New Jersey

To Grantee:  
New Jersey Dept. of Environmental Protection  
401 East State Street  
Trenton, NJ 08625

XV Throughout this Deed, the singular shall include the plural, and the masculine shall include the feminine unless the text indicates otherwise.

IN WITNESS WHEREOF, the Grantor and Grantee have hereunder set their hand and seal on the day and year first written above.

*[Signature]*  
Witness as to Signature of Grantor

*[Signature]*  
Grantor, City of Newark

By: LINDA W. BRASHEAR  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires 12-01-2008

By: \_\_\_\_\_

STATE OF NEW JERSEY )  
  ss.  
COUNTY OF ESSEX)

I certify that on Nov 31 2006 personally appeared before me Sharpe James Mayers who I am satisfied is the person named in and who executed this Instrument and they acknowledged that they signed, sealed and delivered the same as their act and deed, for the uses and purposes therein expressed, and that the full and actual consideration paid or to be paid for this easement as such consideration is defined in P.L. 1969, c49 is Ten Million Dollars \$10,000,000.

*[Signature]*



Attachments:  
Schedule A - Block/Lot Listing  
Schedule B - Baseline Documentation/Conservation Values

Prepared by:  
*[Signature]*  
Randall L. Pease  
Deputy Attorney General  
State of New Jersey

NOTES: COUNTY, NJ: 1808 BRANHALL COUNTY CLERK  
ENS-GR BOOK 20678 PG 0013 RECORDED 11/28/2006 11:25:26  
FILE NUMBER 200611231  
RECORDING FEES 150.00+ N-NOT 0.00ST 0.00+  
RCPT # : 87169; RECD BY: SALLI

This is NOT a certified copy

**SCHEDULE A TO DEED OF CONSERVATION EASEMENT  
BLOCK & LOT LISTING**

MUNICIPALITY	BLOCK	LOT	ACRES
West Milford Twp	10102	9	0.24
West Milford Twp	10204	6	0.75
West Milford Twp	13501	6	35.34
West Milford Twp	13803	1	2.74
West Milford Twp	13804	1	6.39
West Milford Twp	13604	3	1.11
West Milford Twp	13604	4	2.6
West Milford Twp	14101	1	8.29
West Milford Twp	14102	1	23.76
West Milford Twp	14103	1	18.17
West Milford Twp	14104	3	23.61
West Milford Twp	14105	1	1.31
West Milford Twp	14105	1,2	0.05
West Milford Twp	14106	1	2.99
West Milford Twp	14106	1,2	0.05
West Milford Twp	14106	1,3	0.05
West Milford Twp	14107	1	2.46
West Milford Twp	14110	1	61.59
West Milford Twp	14111	1	18.03
West Milford Twp	14401	1	229.19
West Milford Twp	14403	1	320.89
West Milford Twp	14601	2	256.37
West Milford Twp	14601	11	2.08
West Milford Twp	14603	1	27.84
West Milford Twp	14605	1	0.61
West Milford Twp	14607	4	10.41
West Milford Twp	14608	1	14.78
West Milford Twp	14608	4	2.59
West Milford Twp	14609	1	7.01
West Milford Twp	14701	51	0.19
West Milford Twp	14703	1	8.47
West Milford Twp	14703	6	1.88
West Milford Twp	14802	2	44.82
West Milford Twp	14901	37	6.52
West Milford Twp	15001	2	3.52
West Milford Twp	15101	1	101.44
West Milford Twp	15101	4	0.7
West Milford Twp	15101	9	228.74
West Milford Twp	15101	9,1	0.02
West Milford Twp	15101	18	55.04
West Milford Twp	15201	16	1.87
West Milford Twp	15401	59	5.21
West Milford Twp	15502	3	2.8
West Milford Twp	15506	1	0.05
West Milford Twp	15507	1	2
West Milford Twp	15508	1	12.4
West Milford Twp	15508	4	1.03
West Milford Twp	15508	8	0.72
West Milford Twp	15509	1	0.63
West Milford Twp	15601	2	454.03
West Milford Twp	15601	2,1	0.03
West Milford Twp	15802	1	101.64
West Milford Twp	15701	36	0.86
West Milford Twp	15701	36,01	?
West Milford Twp	15803	3	0.24
West Milford Twp	15803	17	0.45
West Milford Twp	15803	23	11.48
West Milford Twp	15804	1	2.2
West Milford Twp	15804	4,01	0.79
West Milford Twp	15804	13	1
West Milford Twp	15804	20	3.77
West Milford Twp	15804	22	0.36
West Milford Twp	15806	1	0.84
West Milford Twp	15901	17	17.55

*certified copy*



West Milford Twp	15903	5	5.47
West Milford Twp	16005	10	1.91
West Milford Twp	18005	11	1.67
West Milford Twp	16102	15	3.8
West Milford Twp	16102	21	36.84
West Milford Twp	16201	1	2.76
West Milford Twp	16201	35	1
West Milford Twp	16501	3	173.54
West Milford Twp	16501	5	2.98
West Milford Twp	16501	9	1.1
West Milford Twp	16501	12	1.63
West Milford Twp	16501	13	4.24
West Milford Twp	16502	1	48.04
West Milford Twp	16503	1	6.08
West Milford Twp	16504	2	227.98
West Milford Twp	16505	1	272.32
West Milford Twp	16506	1	111.19
West Milford Twp	16507	1	135.17
West Milford Twp	16508	1	0.44
West Milford Twp	16508	2	0.29
West Milford Twp	16901	1	4.34
West Milford Twp	16901	5	369.74
West Milford Twp	16902	1	5.81
West Milford Twp	16902	3	0.16
West Milford Twp	16903	1	0.16
West Milford Twp	16904	1	6.51
West Milford Twp	16905	1	3.99
West Milford Twp	16906	1	0.09
West Milford Twp	16906	3	2.18
West Milford Twp	16906	4	1802.33
West Milford Twp	16907	2	3.64
West Milford Twp	16908	1	1900.67
West Milford Twp	17001	1	82.3
West Milford Twp	17001	12	30.81
West Milford Twp	17002	4	8.92
West Milford Twp	17002	5	?
West Milford Twp	17002	6	?
Kinnelon Borough	1.01	1	15.4
Kinnelon Borough	1.02	1	12.02
Kinnelon Borough	1.03	1	10.98
Kinnelon Borough	2	4	10.36
Kinnelon Borough	14	200	2.2
Kinnelon Borough	26	119	10.82
Kinnelon Borough	26	118	67.07
Kinnelon Borough	26	117	7.96
Vernon Twp	210	7	2076
			9640.08

It is the intent of this Deed of Conservation Easement to also confirm that all lands of Grantor within the City of Newark's Pequannock Watershed, except those lands specifically identified in Schedule "A" as "Excluded Lands", are now encumbered by this Deed of Conservation Easement, or prior similar easements, whether or not they appear on Schedule "A", Block & Lot Listing.

EXCLUDED LANDS			
West Milford	12001	26	Encumbered except 5 acres
West Milford	14402	1	Encumbered except 10 acres
West Milford	14403	1	Encumbered except 1 acre
Hardyston	36	26	15.13
Hardyston	41	7	23.4
Hardyston	41	8	8.4
Jefferson	570	3,301	9.59
Jefferson	576	1	8.54
Jefferson	566	1	Encumbered except 5 acres
Rockaway Twp.	60001	21	Encumbered except 5 acres
Rockaway Twp.	40901	10	Encumbered except 2 acres
Vernon	203	1	Encumbered except 10 acres
Vernon	240	2	Encumbered except 2 acres

SCHEDULE B  
BASELINE DATA REPORT

Documented 7/8/05

By LS

PROJECT # OSE 6042-01

OFFER #: 5042

MUNICIPALITY West Milford Twp, Kinnelon Borough, Ve

COUNTY Passaic

EASEMENT TYPE  
Open Space

ORIGINAL  
LAND OWNER: City of Newark

ADDRESS: Zinnerford Smith, Executive Director  
Newark Watershed Conservation  
Newark, New Jersey 07102

PHONE: (973) 622-4621

FAX: (973) 622-8009

EMAIL: wbrsht1@aol.com

PROPERTY DESCRIPTION

The City of Newark's Pequannock Watershed is a critical water supply and aquifer recharge area, and comprises the largest mass of contiguous New Jersey Highlands. This is the seventh and final phase of an on going State DEP initiative which includes past easement acquisitions, totaling over 23, 600 acres of the City of Newark owned lands. The Pequannock River travels through the entire protected area. Extensive critical habitat for Federal and State threatened and endangered species is present. These species include bobcat, bald eagle, barred owl, Cooper's hawk, red-shouldered hawk, and wood turtles. The acquisition of easements will ensure protection from development and allow for recreational public uses. Land is primarily wilderness with significant forest, species diversity, streams, ponds and reservoirs. Public access including hunting and fishing will be permitted. The property is managed by the Newark Watershed Conservation and Development Corporation, a non-profit, on behalf of the City of Newark.

TOTAL ACREAGE  
9640

EASEMENT ACREAGE  
9640

BLOCKLOT 109 lots total. See easement document for full listing.

PUBLIC ACCESS: ACREAGE and DESCRIPTION

Access would be off Canister Rd., Reservoir Rd. and Echo Lake Rd. or from the north via Waywayantla State Park (adjacent). Hunting, fishing and hiking are allowed by permit. Permits are issued at the Echo Lake Facility ( off Echo Lake Rd).

LOCATION West Milford Township (Passaic County), Kinnelon Borough (Morris County) and Vernon Township (Sussex County)

Monday, May 03, 2006 Page 1 of 2

NUMBER OF BUILDINGS: Various

**Principal Residence** None

**Secondary Residence** None

**Non Residential** All located in West Milford: B:16502, Lot 1 (p/o) future parking lot for Lakeland State Bank; B:16201, L:35 leased (future) Church parking lot; B: 14703, L:1- leased to DCT for Park & Ride; B:14701, L:61- leased commercial parking lot; B:15307, L:1- leased commercial parking lot

**Ancillary** All located in West Milford and are water treatment related facilities: B:14609, L:1- abandoned water supply treatment facility; B:14401, L:1- security & maintenance buildings; B:14102, L:1- filtration plant; B: 13501, L: 6 - former incinerator; B: 14101, L:1- chlorination plant; B: 14105, L:1- small frame building; B:14106, L:1- small frame building.

**Subdivision**  
None

**Critical Environmental Features**

See Natural Heritage database, landscape maps & Breeding Bird Atlas.

**Current Activities and/or Benefits of Adjoining Lands**

This completes the critical connection between State holdings at Wawayanda State Park, Hamburg Mountain and Jersey City Waterworks/Split Rock Reservoir. The preservation of this area ensures the safe operation of Newark's water supply and opens the region to variety of approved recreational uses.

**Additional Deed Restrictions or Encumbrances**

Some harvesting may occur as permitted under an approved Forest Stewardship plan. Partial funding may come from the Federal Forest Legacy Program.

**Explicit Directions to the Easement Property**

Route 287 to Route 23 north, follow for 7 miles, make right onto Echo Lake Road. The Echo Lake Visitor Center is 1.1 miles ahead on the left.

MUST SUBMIT IN DUPLICATE  
RTF-1 (Rev. 8/1/06)

STATE OF NEW JERSEY  
AFFIDAVIT OF CONSIDERATION FOR USE BY SELLER

(Chapter 49, P.L. 1968, as amended through Chapter 33, P.L. 2006) (N.J.S.A. 46:15-5 et seq.)

BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM.

STATE OF NEW JERSEY

FOR RECORDER'S USE ONLY	
Consideration	\$ _____
RTF paid by seller	\$ _____
Date	By _____

COUNTY: Mercer } SS. County Municipal Code  
1415, 1616, 1922

MUNICIPALITY OF PROPERTY LOCATION Kinneton Boro., W. Milford Twp., Vernon Twp.

\*Use symbol "C" to indicate that fee is exclusively for county use.

(1) PARTY OR LEGAL REPRESENTATIVE (See Instructions #3 and #4 on reverse side)

Deponent, Randall L. Pease being duly sworn according to law upon his/her oath, deposes and says that he/she is the Legal Representative in a deed dated May 31, 2006 transferring

real property identified as Block number (See attached list) Lot number (See attached list) located at Kinneton Borough, Morris County, West Milford Twp., Passaic County, Vernon Twp., Sussex County and annexed hereto (Street Address, Town)

(2) CONSIDERATION \$ 10,000,000.00 (See Instructions #1 and #5 on reverse side)

(3) Property transferred is Class 4A 4B 4C. (circle one) If Class 4A, calculation in Section 3A is required.

(3A) REQUIRED CALCULATION OF EQUALIZED ASSESSED VALUATION FOR ALL CLASS 4A COMMERCIAL PROPERTY TRANSACTIONS: (See Instructions #5A and 7 on reverse side)

Total Assessed Valuation + Director's Ratio = Equalized Valuation

\$ \_\_\_\_\_ + \_\_\_\_\_ % = \$ \_\_\_\_\_

If Director's Ratio is less than 100%, the equalized valuation will be an amount greater than the assessed value. If Director's Ratio is equal to or in excess of 100%, the assessed value will be equal to the equalized value.

(4) FULL EXEMPTION FROM FEE (See instruction #8 on reverse side)

Deponent states that this deed transaction is fully exempt from the Realty Transfer Fee imposed by C. 49, P.L. 1968, as amended through C. 66, P.L. 2004, for the following reason(s). Mere reference to exemption symbol is insufficient. Explain in detail, 8(b) By or to the United States of America; this State, or any instrumentality, agency or subdivision.

(5) PARTIAL EXEMPTION FROM FEE (See instruction #9 on reverse side)

NOTE: All boxes below apply to grantor(s) only. ALL BOXES IN APPROPRIATE CATEGORY MUST BE CHECKED. Failure to do so will void claim for partial exemption. Deponent claims that this deed transaction is exempt from State portions of the Basic Fee, Supplemental Fee, and General Purpose Fee; as applicable, imposed by C. 176, P.L. 1976, C. 113, P.L. 2004 and C. 66, P.L. 2004 for the following reason(s):

- A. SENIOR CITIZEN Grantor(s)  62 years of age or over. \* (See instruction #9 on reverse side for A or B)
- B. BLIND PERSON Grantor(s)  legally blind or
- DISABLED PERSON Grantor(s)  permanently and totally disabled  Receiving disability payments  Not gainfully employed\*

Senior citizens, blind or disabled persons must also meet all of the following criteria.

- Owned and occupied by grantor(s) at time of sale.
- Resident of the State of New Jersey.
- One or two-family residential premises.
- Owners as joint tenants must all qualify.

\*IN THE CASE OF HUSBAND AND WIFE, ONLY ONE GRANTOR NEEDS TO QUALIFY IF OWNED AS TENANTS BY THE ENTIRETY.

C. LOW AND MODERATE INCOME HOUSING (See instruction #9 on reverse side)

- Affordable according to H.U.D. standards.
- Reserved for occupancy.
- Meets income requirements of region.
- Subject to resale controls.

(6) NEW CONSTRUCTION (See Instructions #2, #10 and # 12 on reverse side)

- Entirely new improvement.
- Not previously occupied.
- Not previously used for any purpose.
- "NEW CONSTRUCTION" printed clearly at the top of the first page of the deed.

(7) Deponent makes this Affidavit to induce county clerk or register of deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of Chapter 49, P.L. 1968, as amended through Chapter 33, P.L. 2006.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006

Ruth M. Wells  
Notary Public of New Jersey  
Commission Expires 10/20/2007

Cheer R  
Signature of Deponent  
401 E. State Street, Trenton, NJ  
Deponent Address

City of Newark  
Grantor Name:  
926 Broad St., Newark, NJ  
Grantor Address at Time of Sale

FOR OFFICIAL USE ONLY	
Instrument Number	County
Deed Number	Book Page
Deed Dated	Date Recorded

County Recording Officers shall forward one copy of each Affidavit of Consideration for Use by Seller when Section 3A is completed.

STATE OF NEW JERSEY- DIVISION OF TAXATION  
PO BOX 281

TRENTON, NJ 08695-0251

ATTENTION: REALTY TRANSFER FEE UNIT

The Director of the Division of Taxation in the Department of the Treasury has prescribed this form as required by law, and may not be altered or amended without prior approval of the Director. For information on the Realty Transfer Fee or to print a copy of this Affidavit, visit the Division of Taxation website at [www.state.nj.us/treasury/taxation/jptfoctax.htm](http://www.state.nj.us/treasury/taxation/jptfoctax.htm).

MUST SUBMIT IN DUPLICATE  
RTF-1EE (Rev. 8/11/06)

STATE OF NEW JERSEY  
**AFFIDAVIT OF CONSIDERATION FOR USE BY BUYER**

(Chapter 49, P.L. 1968, as amended through Chapter 33, P.L. 2006) (N.J.S.A. 46:15-6 et seq.)

**BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM**

STATE OF NEW JERSEY

COUNTY	<u>Mercer</u>	} SS. County Municipal Code <u>1415, 1616, 1922</u>	FOR RECORDER'S USE ONLY	
MUNICIPALITY OF PROPERTY LOCATION	<u>Kinnelon Bor., W. Milford Twp.</u>		Consideration RTF paid by buyer	\$ _____
			Date	By _____

(1) **PARTY OR LEGAL REPRESENTATIVE** (See Instructions #3 and #4 on reverse side)

Deponent, Randall L. Pease (Name) being duly sworn according to law upon his/her oath, deposes and says that he/she is the Legal Representative in a deed dated May 31, 2006 transferring (Grantee, Legal Representative, Corporate Officer, Officer of Title Company, Lending Institution, etc.) real property identified as Block number (see attached list) Lot number (see attached list) located at Kinnelon Borough, Morris County, West Milford Twp., Passaic County, Vernon Twp., Sussex County and annexed thereto. (Street Address, Town)

(2) **CONSIDERATION** \$ 10,000,000.00 (See Instructions #1, #5, and #11 on reverse side)

Entire consideration is in excess of \$1,000,000.

PROPERTY CLASSIFICATION CHECKED BELOW SHOULD BE TAKEN FROM THE OFFICIAL TAX LIST (A PUBLIC RECORD) OF THE MUNICIPALITY WHERE THE REAL PROPERTY IS LOCATED IN THE YEAR THAT THE TRANSFER IS MADE.

(A) When Grantee is required to remit the 1% fee, complete below:

- |   |   |
|---|---|
| <input type="checkbox"/> Class 2 - Residential  | <input type="checkbox"/> Class 4A - Commercial Properties (If checked, calculation in (C) required below) |
| <input type="checkbox"/> Class 3A - Farm property (Regular) and any other real property transferred to same grantee in conjunction with transfer of Class 3A property | <input type="checkbox"/> Class 4C - Residential Cooperative Unit (4 Families or less)                     |

(B) When Grantee is not required to remit the 1% fee, complete below:

- |   |    |    |    |
|---|----|----|----|
| <input type="checkbox"/> Property class. Circle applicable class(es):   | 4B | 4C | 15 |
| <input type="checkbox"/> Exempt Organization pursuant to federal Internal Revenue Code of 1986  |    |    |    |
| <input type="checkbox"/> Incidental to corporate merger or acquisition and equalized assessed valuation less than 20% of total value of all assets exchanged in merger or acquisition (If checked, calculation in (C) below required and MUST ATTACH COMPLETED RTF-4) |    |    |    |

(C) **REQUIRED CALCULATION OF EQUALIZED ASSESSED VALUATION FOR ALL CLASS 4A COMMERCIAL PROPERTY TRANSACTIONS:** (See Instructions #6 and #7 on reverse side)

Total Assessed Valuation + Director's Ratio = Equalized Valuation

\$ \_\_\_\_\_ + \_\_\_\_\_ % = \$ \_\_\_\_\_

If Director's Ratio is less than 100%, the equalized valuation will be an amount greater than the assessed value. If Director's Ratio is equal to or in excess of 100%, the assessed value will be equal to the equalized value.

(3) **TOTAL EXEMPTION FROM FEE** (See Instruction #9 on reverse side)

Deponent states that this deed transaction is fully exempt from the Realty Transfer Fee imposed by C. 49, P.L. 1968, as amended through C. 66, P.L. 2004, for the following reason(s): Mere reference to exemption symbol is insufficient. Explain in detail.  
(8)(b) By or to the United States of America, this State, or any instrumentality, agency or subdivision.

(4) Deponent makes Affidavit of Consideration for Use by Buyer to induce county clerk or register of deeds to record the deed and accept the fee submitted herewith pursuant to the provisions of Chapter 49, P.L. 1968, as amended through Chapter 33, P.L. 2006.

Subscribed and sworn to before me this 13 day of October, 2006

Signature of Deponent

State of New Jersey/DEP  
Grantee Name

401 E. State St., Trenton, NJ 08625  
Deponent Address

410 E. State St., Trenton, NJ  
Grantee Address at Time of Sale

**RUTH M. WELLS**  
Notary Public of New Jersey  
Commission Expires 10/20/2007

Name/Company of Settlement Officer

FOR OFFICIAL USE ONLY	
Instrument Number _____	County _____
Deed Number _____	Book _____ Page _____
Deed Dated _____	Date Recorded _____

County Recording Officers shall forward one copy of each Affidavit of Consideration for Use by Buyer recorded with deeds to:

STATE OF NEW JERSEY - DIVISION OF TAXATION

PC BOX 251

TRENTON, NJ 08646-0251

ATTENTION: REALTY TRANSFER FEE UNIT

The Director of the Division of Taxation in the Department of the Treasury has prescribed this form as required by law, and it may not be altered or amended without prior approval of the Director. For further information on the Realty Transfer Fee or to print a copy of this Affidavit, visit the Division of Taxation website at [www.state.nj.us/treasury/taxation/lpt/localtax.htm](http://www.state.nj.us/treasury/taxation/lpt/localtax.htm)

# Exhibit C

Township of West Milford  
Passaic County

Spending Plan

June 2, 2010

---

Charles T. McGroarty, PP, AICP  
New Jersey Professional Planning License No. 4145  
Banisch Associates, Inc.

The original copy has been signed and sealed in accordance with N.J.A.C. 13:41-4.3

**Towaship of West Milford**

County of Passaic

Spending Plan

June 2, 2010

---

**INTRODUCTION**

West Milford Township has prepared a Housing Element and Fair Share plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:97-1 et seq. and N.J.A.C. 5:96-1 et seq.).

West Milford Township received substantive certification on October 6, 1999 for its second round petition and adopted an affordable housing trust fund ordinance on May 7, 2008. As of April 23, 2010 the current balance was \$50,695.44. (This figure is rounded to \$50,696 in this Spending Plan.)

**1. REVENUES FOR CERTIFICATION PERIOD**

To calculate a projection of revenue anticipated during the period of third round substantive certification, West Milford Township considered the following:

(a) Development fees:

1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
3. Future development that is likely to occur based on the Highlands build-out analysis.

(b) Projected interest:

Interest on the projected revenue in the municipal affordable housing trust fund at the current average interest rate.



**Township of West Milford**  
 County of Passaic  
 Spending Plan  
 June 2, 2010

**Table I**

SOURCE OF FUNDS	PROJECTED REVENUES-HOUSING TRUST FUND - 2010 THROUGH 2018											
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total	
(a) Development fees:												
1. Approved Development												
2. Development Pending Approval												
3. Projected Development			\$12,000	\$12,000	\$12,000	\$18,000	\$18,000	\$18,000	\$18,000	\$12,000	\$120,000	
(b) Interest			\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$4,800	
<b>Total</b>			\$12,600	\$12,600	\$12,600	\$18,600	\$18,600	\$18,600	\$18,600	\$12,600	\$124,800	

**2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS**

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by West Milford Township:

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with West Milford Township's development fee ordinance for both residential and non-residential developments in accordance with COAH's rules, P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7) and P.L. 2009, c. 90 (C. 40:55D-8.1 through 8.7).

(b) Distribution of development fee revenues:

West Milford Township's Planning Administrator/Municipal Housing Liaison will review all requests/proposals for funding from the Township's Housing Trust Fund to determine consistency with the approved Housing Element / Fair Share Plan and approved Spending Plan and will prepare a report to the Township Council with appropriate recommendations. All distributions from the Housing Trust Fund shall be authorized by a Resolution adopted by the Township Council.

**3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS**

(a) **Rehabilitation and new construction programs and projects (N.J.A.C. 5:97-8.7)**

**Rehabilitation program:** West Milford Township will satisfy its rehabilitation obligation through the Passaic County Community Development Program and therefore will not need to dedicate funds for this purpose.

**Township of West Milford**

County of Passaic

Spending Plan

June 2, 2010

New construction and other affordable housing project(s): \$87,748 is projected to be dedicated to the Township's accessory apartment program and the municipally sponsored / 100% affordable housing program as follows:

- Accessory apartment program (2 units): \$40,000
- Municipally sponsored / 100% affordable housing program: \$47,748

(b) **Affordability Assistance (N.J.A.C. 5:97-8.8)**

Projected minimum affordability assistance requirement:

**Table II**

Actual development fees through 4/23/2010		\$50,696
Development fees projected 2009-2018	+	\$120,000
Interest projected 2009-2018	+	\$4,800
<b>Total</b>	=	<b>\$175,496</b>
30 percent requirement \$175,496	x 0.30	
	=	\$52,648
<b>PROJECTED MINIMUM Affordability Assistance Requirement 1/1/2009 through 12/31/2018</b>	=	<b>\$52,648</b>
<b>PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement 1/1/2009 through 12/31/2018</b>	+ 3 =	<b>\$17,549</b>

(c) **Administrative Expenses (N.J.A.C. 5:97-8.9)**

**Table III**

Actual development fees, payments in lieu, and interest through April 23, 2010	\$50,696
Projected development fees and interest anticipated through December 31, 2018	\$124,800.00
<b>Sub-Total</b>	<b>\$175,496</b>
\$175,496 x 20 percent	\$35,099
Actual expenditures from inception of Housing Trust Fund through December 31, 2008 for administrative purposes	-----
<b>Remaining balance available for administrative purposes</b>	<b>\$35,099</b>

West Milford Township projects that \$35,099 will be available from the affordable housing trust fund to be used for administrative purposes, which, subject to the 20 percent cap, are as follows:

- Professional fees for planning consultant, Township Attorney and the Planning Administrator / Municipal Housing Liaison related to the preparation of the Housing Element / Fair Share Plan, Spending Plan and related ordinances to attain substantive certification.

**Township of West Milford**  
 County of Passaic  
 Spending Plan  
 June 2, 2010

- Professional fees for Administrative Agent(s) for Market-to-Affordable and Municipally Sponsored / 100% Affordable Housing programs.
- Partial salary compensation for Land Use Administrator / Municipal Housing Liaison for tasks related to monitoring, training, public assistance.

**4. EXPENDITURE SCHEDULE**

West Milford Township intends to use affordable housing trust fund revenues to support the Accessory Apartment Program and the Municipally Sponsored / 100% Affordable Housing Program. The Township proposes to allocate its Housing Trust Funds to the following projects within the required time period subsequent to COAH's approval of this Spending Plan.

The projected revenues of \$124,800 from anticipated developer fees and interest (Table I) combined with the present balance of \$50,696 in the Township's Housing Trust Fund will provide a total of \$175,496 over the course of the Third Round, assuming the development projections are realized. Table IV presents an estimated schedule for expenditure of the projected revenues. Table V shows both estimated revenues and expenditures based upon a projected annual Housing Trust Fund balance.

**Table IV**

Program	Number of Units	2011	2012	2013	2014	2015	2016	2017	2018	Total
Accessory Apartment	2		\$20,000			\$20,000				\$40,000
Municipally sponsored / 100% affordable	31	\$6,000	\$8,000	\$8,000	\$8,000	\$8,500	\$9,248			\$47,748
<b>Total Programs</b>		<b>\$6,000</b>	<b>\$28,000</b>	<b>\$8,000</b>	<b>\$8,000</b>	<b>\$28,500</b>	<b>\$9,248</b>			<b>\$87,748</b>
Affordability assistance			\$7,500	\$7,500	\$7,500	\$3,000	\$4,500	\$11,325	\$11,324	\$52,649
Administration			\$4,500	\$4,500	\$4,500	\$2,500	\$2,500	\$8,299	\$8,300	\$35,099
<b>TOTAL</b>	<b>33</b>	<b>\$6,000</b>	<b>\$40,000</b>	<b>\$20,000</b>	<b>\$20,000</b>	<b>\$34,000</b>	<b>\$16,248</b>	<b>\$19,624</b>	<b>\$19,624</b>	<b>\$175,496</b>

Township of West Milford  
County of Passaic  
Spending Plan  
June 2, 2010

**Table V**

	2011	2012	2013	2014	2015	2016	2017	2018
Current & Projected Balance	\$50,396	\$57,296	\$29,896	\$22,496	\$21,096	\$5,696	\$8,048	\$7,024
Projected revenues (Table I)	\$12,600	\$12,600	\$12,600	\$18,600	\$18,600	\$18,600	\$18,600	\$12,600
<b>Subtotal</b>	<b>\$63,296</b>	<b>\$69,896</b>	<b>\$42,496</b>	<b>\$41,096</b>	<b>\$39,696</b>	<b>\$24,296</b>	<b>\$26,648</b>	<b>\$19,624</b>
Projected expenditures (Table IV)	(\$6,000)	(\$40,000)	(\$20,000)	(\$20,000)	(\$34,000)	(\$16,248)	(\$19,624)	(\$19,624)
Year-End Balance	\$57,296	\$29,896	\$22,496	\$21,096	\$5,696	\$8,048	\$7,024	- 0 -

\* West Milford Housing Trust Fund balance as of April 23, 2010

**5. EXCESS OR SHORTFALL OF FUNDS**

Pursuant to the Housing Element and Fair Share Plan, the governing body of West Milford Township will make available vacant municipal properties to qualified developers of low and moderate income housing to implement the new construction obligation. There are sufficient funds in the Township's Housing Trust Fund to provide subsidies for two accessory apartments pursuant to COAH requirements. It is the position of the Township of West Milford that the dedication of municipally owned land to facilitate the construction of affordable housing satisfies the requirement of N.J.A.C. 5:97-8.10 (a) 9. To the extent that additional developer fees are realized the Township will provide subsidies to facilitate development of low and moderate income housing on those municipal properties selected for that purpose but in the event said revenues are less than projected the Township of West Milford will rely upon the dedication of municipally owned properties as its contribution in accordance with the standards set forth in the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) and in particular N.J.S.A. 52:27d-311: *Provision of fair share by municipality*:

- 11.a (5) *Donation or use of municipally owned land or land condemned by the municipality for purposes of providing low and moderate income housing;*
- 11.a (9) *Nothing in P.L. 1985, c.222 (C.52:27D-301 et al.) shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing.*

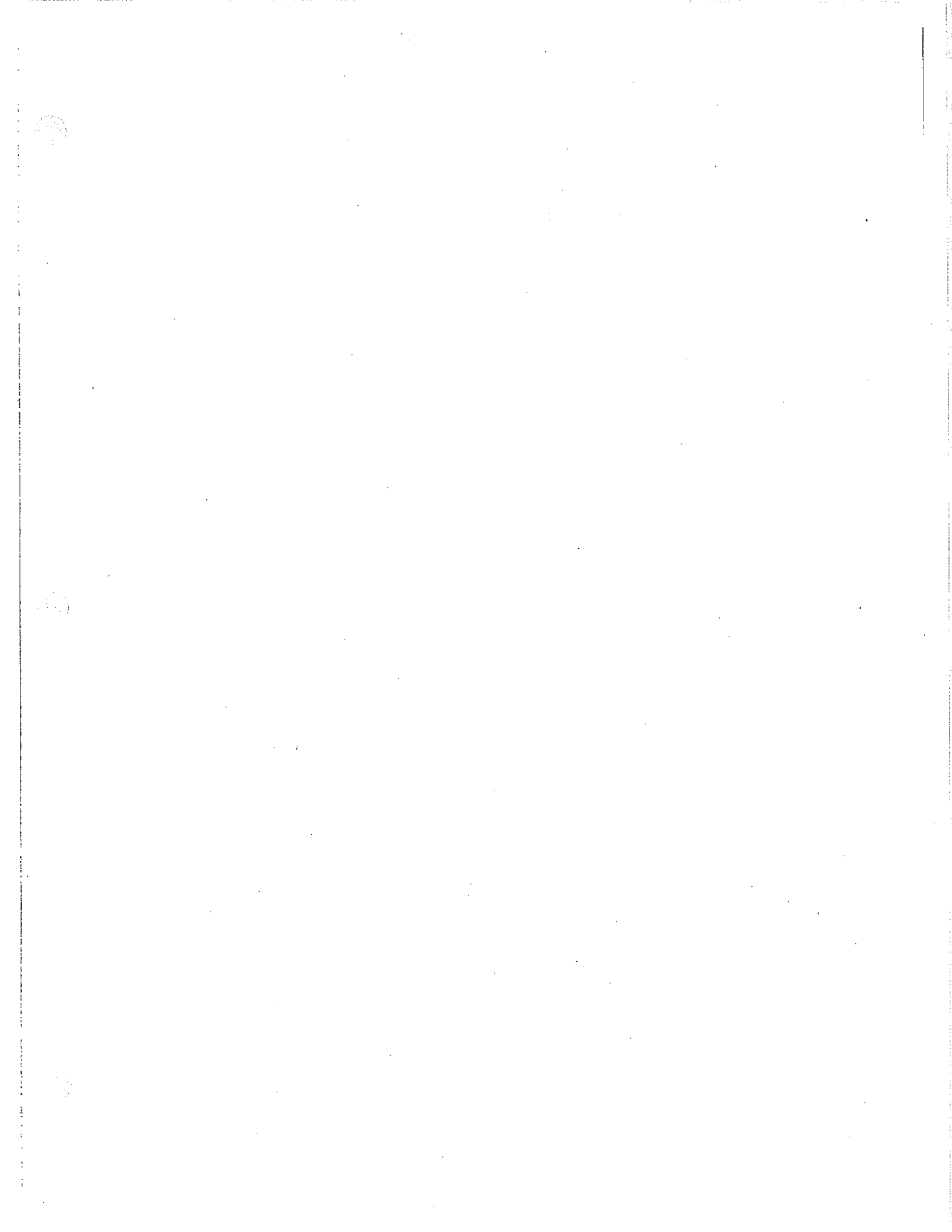
**SUMMARY**

West Milford Township intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:97-8.7 through 8.9 and consistent with the housing programs outlined in the Housing Element and Fair Share Plan adopted by the West Milford Planning Board on May 27, 2010.

Township of West Milford  
 County of Passaic  
 Spending Plan  
 June 2, 2010

Table VI

<b>SPENDING PLAN SUMMARY</b>		
Balance as of April 23, 2010		\$50,696
<b>PROJECTED REVENUE 2009-2018</b>		
Development fees	+	\$120,000
Payments in lieu of construction	+	
Other funds	+	
Interest	+	\$4,800
<b>TOTAL REVENUE</b>		<b>= \$175,496</b>
<b>EXPENDITURES</b>		
Funds used for Rehabilitation	-	
Funds used for affordable housing programs	-	
Accessory Apartments	-	\$40,000
Municipally Sponsored / 100% Affordable	-	\$47,748
Affordability Assistance	-	\$52,649
Administration	-	\$35,099
<b>TOTAL PROJECTED EXPENDITURES</b>		<b>= \$175,496</b>



# Township of West Milford

Passaic County, New Jersey

## ~ Resolution No. 2012 – 213 ~

### RESOLUTION OF THE TOWNSHIP OF WEST MILFORD, PASSAIC COUNTY, STATE OF NEW JERSEY REQUESTING REVIEW AND APPROVAL OF A REVISED MUNICIPAL AFFORDABLE HOUSING TRUST FUND SPENDING PLAN

**WHEREAS**, the Township of West Milford received substantive certification on October 6, 1999 for its Second Round petition and adopted an affordable housing trust fund ordinance on May 7, 2008; and

**WHEREAS**, the Township Council of the Township of West Milford, Passaic County petitioned the Council on Affordable Housing (COAH) for substantive certification on June 8, 2010 for its Third Round Housing Element and Fair Share Plan (HE/FSP) dated May 27, 2010 prepared in accordance with N.J.A.C. 5:96 and 5:97; and

**WHEREAS**, the Township of West Milford did also submit a Spending Plan dated June 2, 2010 to COAH prepared in accordance with N.J.A.C. 5:96 and 5:97; and

**WHEREAS**, pursuant to the Executive Reorganization Act of 1969, P.L. 1969, c. 203 (C. 52:14C-1 et seq.), the Governor abolished COAH and transferred all functions, powers, and duties to the Commissioner of the Department of Community Affairs, effective August 29, 2011; and

**WHEREAS**, as a result of the Reorganization Plan, No. 001-2011, the review formerly to be conducted by COAH is now conducted by the Department of Community Affairs' ("DCA" or "the Department"), Local Planning Services unit; and

**WHEREAS**, the development fee ordinance establishes an affordable housing trust fund that includes development fees, payments from developers in lieu of constructing affordable units on-site, barrier free escrow funds, rental income, repayments from affordable housing program loans, recapture funds, and proceeds from the sale of affordable units; and

**WHEREAS**, N.J.A.C. 5:97-8.1(d) requires a municipality with an affordable housing trust fund to receive approval of a spending plan from the Department prior to spending any of the funds in its housing trust fund; and

**WHEREAS**, N.J.A.C. 5:97-8.10 requires a spending plan to include the following:

1. A projection of revenues anticipated from imposing fees on development, based on pending, approved and anticipated developments and historic development activity;
2. A projection of revenues anticipated from other sources, including payments in lieu of constructing affordable units on sites zoned for affordable housing, funds from the sale of units with extinguished controls, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, and interest earned;
3. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;
4. A description of the anticipated use of all affordable housing trust funds pursuant to N.J.A.C. 5:97-8.7, 8.8, and 8.9;

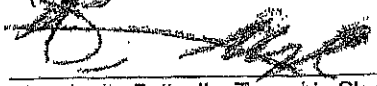
5. A schedule for the expenditure of all affordable housing trust funds, provided that the trust fund balance as of July 17, 2008 is committed for expenditure within four years of that date and that all development fees and any payments in lieu of construction are committed for expenditure within four years from the date of collection;
6. If applicable, a schedule for the creation or rehabilitation of housing units;
7. A pro-forma statement of the anticipated costs and revenues associated with the development if the municipality envisions supporting or sponsoring public sector or non-profit construction of housing; and
8. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan; and
9. A description of the anticipated use of excess affordable housing trust funds, in the event more funds than anticipated are collected, or projected funds exceed the amount necessary for satisfying the municipal affordable housing obligation.

**WHEREAS**, the Township of West Milford has prepared an amended Spending Plan consistent with N.J.A.C. 5:97-8.10 and P.L. 2008, c.46 in order to specify a municipally-owned property known as Lot 11 in Tax Block 10508, which is one of the municipally-owned properties identified in the Township's Third Round HE/FSP, for the purpose of committing funds from the Township's Affordable Housing Trust Fund to Morris Habitat for Humanity to develop the site in question for a single-family home.

**NOW THEREFORE BE IT RESOLVED** that the Township Council of the Township of West Milford, in the County of Passaic does hereby request that DCA's Local Planning Services review and approve the Township of West Milford's revised Spending Plan dated June 6, 2012.

Adopted: June 27, 2012

Adopted this 27<sup>th</sup> day of June, 2012  
and certified as a true copy of an original.

  
Antoinette Battaglia, Township Clerk



# Affordable Housing Trust Fund Spending Plan

## Township of West Milford

### Passaic County

#### INTRODUCTION

The Township of West Milford, Passaic County has prepared a Housing Element and Fair Share Plan in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the affordable housing regulations of the New Jersey Department of Community Affairs (the Department) (N.J.A.C. 5:97-1 et seq. and N.J.A.C. 5:96-1 et seq.). A development fee ordinance creating a dedicated revenue source for affordable housing was approved by the Department on October 7, 2010 and adopted by this municipality on October 8, 2008. The ordinance establishes the Township of West Milford's affordable housing trust fund for which this spending plan is prepared.

#### 1. REVENUES FOR CERTIFICATION PERIOD

As of December 31, 2011, West Milford has collected \$422,663.15, expended \$366,777.39 resulting in a balance of \$55,885.76. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund in Lakeland Bank for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:97-8.7-8.9, as described in the sections that follow.

To calculate a projection of revenue anticipated during the period of third round substantive certification, West Milford considered the following:

- (a) Development fees:
  1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
  2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and

3. Future development that is likely to occur based on historical rates of development.

PROJECTED REVENUES HOUSING TRUST FUND 2012 THROUGH 2018								
SOURCE OF FUNDS	2012	2013	2014	2015	2016	2017	2018	Total
(a) Development fees:								\$ 108,000.00
Approved Development								\$ -
Development Pending Approval								\$ -
Projected Development	\$ 12,000	\$ 12,000	\$ 18,000	\$ 18,000	\$ 18,000	\$ 18,000	\$ 12,000	\$ 108,000.00
(b) Payments in Lieu of Construction								\$ -
(c) Other Funds (Repayment of Rehabilitation Loan)								\$ -
(d) Interest	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 4,200.00
<b>Total</b>								<b>\$ 112,200.00</b>

(b) Other funding sources:

Funds from other sources, including, but not limited to, the sale of units with extinguished controls, repayment of affordable housing program loans, rental income, and proceeds from the sale of affordable units. All monies in the Affordable Housing Trust fund are anticipated to come from development fees and interest.

(d) Projected interest:

Interest on the projected revenue in the municipal affordable housing trust fund at the current average interest rate.

West Milford projects a total of \$112,200.00 in revenue to be collected between January 1, 2012 and December 31, 2018. This projected amount, when added to West Milford's trust fund balance as of December 31, 2011, results in anticipated total revenues of \$168,085.76 available to fund and administer its affordable housing plan. All interest earned on the account shall be used only for the purposes of affordable housing.

**2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS**

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by West Milford:

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with West Milford's development fee ordinance for both residential and non-residential developments in accordance with COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7) and P.L. 2009, c.90 (C. 40:55D-8.1 through 8.7).

(b) Distribution of development fee revenues:

West Milford Township's Planning Administrator/Municipal Housing Liaison will review all requests/proposals for funding from the Township's Housing Trust Fund to determine consistency with the approved Housing Element and Fair Share Plan and approved Spending Plan and will prepare a report to the Township Council with appropriate recommendations. All distributions from the Housing Trust Fund will be authorized by a resolution adopted by the Township Council.

### 3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

(a) **Rehabilitation and new construction programs and projects (N.J.A.C. 5:97-8.7)**

West Milford Township will satisfy its rehabilitation obligation through the Passaic County Community Development Program and therefore will not need to dedicate funds for this purpose.

**New construction project(s):** The Township proposes to expend \$96,269.80 on an accessory apartment program and a municipally sponsored/100% affordable housing program as follows:

- Accessory apartment program (2 units/\$40,000); and
- Municipally sponsored / 100% affordable housing program (\$56,269.80).

(b) Affordability Assistance (N.J.A.C. 5:97-8.8)

AFFORDABILITY ASSISTANCE CALCULATION		
Actual fees thru 12/31/2011	+	\$ 0.00
Actual interest thru 12/31/2011	+	\$ -
Projected Development Fees, 2012 thru 2018	+	\$ 108,000.00
Projected Trust Fund Interest, 2012 thru 2018	+	\$ 4,200.00
Less housing Activity thru 6/2/2008	=	\$ -
Total	x .30	\$ 112,200.00
30% Requirement	-	\$ 33,660.00
Less Affordability assistance expenditures thru 12/31/2011	=	\$ 107,870.00
Projected Minimum Affordability Assistance, 1/1/2012 thru 12/31/2018		\$ -
Projected Minimum Affordability Assistance for Very Low Income, 2012 thru 2018	x 1/3	\$ -

West Milford has already expended \$107,870 from the affordable housing trust fund to render units more affordable, as follows:

- Down-payment assistance;
- Assistance with homeowners association or condominium fees and special assessments; and/or
- Converting low-income units to very low-income units.

(c) Administrative Expenses (N.J.A.C. 5:97-8.9)

ADMINISTRATIVE EXPENSE CALCULATION		
Actual fees and interest thru 12/31/2011		\$ -
Projected Development Fees and interest 2012 thru 2018	+	\$ 112,200.00
Payments-In-Lieu of contraction and other deposits thru 7/17/08	+	\$ 417,416.18
Less RCA expenditures thru 12/31/18	-	\$ -
Total For Administrative Expenses Calculation, 1/1/2012 to 12/31/2018	=	\$ 529,616.18
20% Maximum for Administrative Expense	x .20	\$ 105,923.24
Less Administrative Expenses thru 12/31/2011	-	\$ 22,607.39
Available for Administrative Expenses, 1/01/12 Thru 12/31/2018	=	\$ 83,315.85

West Milford forecasts that \$83,315.85 will be available from the affordable housing trust fund to be used for administrative purposes. However, the Township's administrative expenses are limited to 20 percent of what is actually collected. A maximum of \$71,815.96 is projected to be available for administrative purposes due to obligations to the 100% affordable municipally sponsored project and accessory apartment program. Projected administrative expenditures, subject to the 20 percent cap, are as follows:

- Professional fees for planning consultant, Township Attorney and Planning Administrator / Municipal Housing Liaison, related to the preparation of the Housing Element and Fair Share Plan, Spending Plan and related ordinances to attain substantive certification.
- Professional fees for an administrative agent related to the implementation of the affordable housing programs, projects and units described in the Fair Share Plan, i.e. accessory apartment program, 100% affordable housing and supportive and special needs projects, which involves advertising, screening of applicants, working with property owners to find additional affordable housing for low and very low income people, and filing all necessary reports to the State of New Jersey; and
- Partial salary compensation for Land Use Administrator / Municipal Housing Liaison for tasks related to monitoring, training, and public assistance.

**4. EXPENDITURE SCHEDULE**

West Milford intends to use affordable housing trust fund revenues for the creation and/or rehabilitation of affordable housing units according to the following schedule:

PROJECTS/PROGRAMS	Number of Units Projected	Projected Expenditure Schedule 2012-2018										Total			
		2012	2013	2014	2015	2016	2017	2018	2018	2018	2018				
Passaic County Rehabilitation Program	46														\$ -
New Construction															\$40,000.00
1. Accessory Apartment Program	2			20000	20000										\$56,269.80
2. Municipally Sponsored/100% Affordable Housing	31	\$56,269.8													\$96,269.80
<b>Total</b>															\$ -
Affordability Assistance															\$ -
Administration		\$4,500.00	\$11,219	\$11,219	\$11,219	\$11,219	\$11,219	\$11,219	\$11,219	\$11,219	\$11,219	\$11,219	\$11,219	\$11,219	\$71,815.96
<b>Total</b>															\$168,085.76

## **5. EXCESS OR SHORTFALL OF FUNDS**

In the event of any expected or unexpected shortfall if the anticipated revenues are not sufficient to implement the plan, the Township has adopted a resolution of intent to bond or to appropriating funds from the general revenue in order to cover the shortfall.

In the event more funds than anticipated are collected, projected funds exceed the amount necessary to implement the Fair Share Plan, or West Milford is reserving funds for affordable housing projects to meet a future affordable housing obligation, these excess funds will be dedicated to provide subsidies to facilitate development of low and moderate income housing on those municipal properties identified in the Fair Share Plan for that purpose.

## **6. BARRIER FREE ESCROW**

Collection and distribution of barrier free funds shall be consistent with West Milford's Affordable Housing Ordinance in accordance with N.J.A.C. 5:97-8.5.

A process describing the collection and distribution procedures for barrier free escrow funds pursuant to N.J.A.C. 5:97-8.5 will be detailed within the Township's Affordable Housing Ordinance.

## **SUMMARY**

West Milford intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:97-8.7 through 8.9 and consistent with the housing programs outlined in the Housing Plan Element dated June 7, 2010.

West Milford has a balance of \$55,885.76 as of December 31, 2011 and anticipates an additional \$112,200 in revenues through 2018 for a total of \$168,085.76. The municipality will dedicate \$40,000 towards an accessory apartment program, \$56,269.80 for a municipally sponsored/100% Affordable Housing project, and \$71,815.96 for administrative costs. Any shortfall of funds will be offset by bonding or funds from general revenues. The municipality will dedicate any excess funds or remaining balance toward subsidizing 100% affordable homes on municipally-owned lots identified in the Fair Share Plan.

Fred Semrau, Esq. - 0017871993  
Tracy W. Schnurr, Esq. - 0033962009  
Dorsey & Semrau, LLC  
714 Main Street  
P.O. Box 228  
Boonton, New Jersey 07005  
Attorney for Plaintiff/Petitioner,  
Township of West Milford

**FILED**  
Superior Court of New Jersey  
JUL 02 2015  
Passaic County

**RECEIVED**  
Superior Court of New Jersey  
JUL 02 2015  
Passaic County

**IN THE MATTER OF THE  
APPLICATION OF THE TOWNSHIP  
OF WEST MILFORD, a municipal  
corporation of the State of New Jersey,**

Plaintiff/Petitioner

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: PASSAIC COUNTY  
DOCKET NO.:

L - 2361-15  
CIVIL ACTION  
(Mount Laurel)

**COMPLAINT FOR  
DECLARATORY JUDGMENT**

Plaintiff/Petitioner, the Township of West Milford ("West Milford"), a municipal corporation and body politic organized under the laws of the State of New Jersey, with offices located at 1480 Union Valley Road, West Milford, NJ 07480, 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"), wherein the Court states that, "under the authority of Rule 1:10-3, we hold that the courts may resume their role as the forum of first instance for evaluating municipal compliance with Mount Laurel obligations."



### Background and Prior Round Obligations

3. Plaintiff/Petitioner, the Township of West Milford, is a municipal corporation of the State of New Jersey with its principle place of business located at 1480 Union Valley Road, West Milford, NJ 07480.

4. 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.

5. 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.

6. 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.

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

8. The Township of West Milford Planning Board adopted a Housing Element and Fair Share Plan, dated January 22, 1997, for its Second Round obligation which was subsequently revised and submitted to COAH on March 19, 1997 with a petition for substantive certification. COAH granted substantive certification on October 6, 1999. At the time of approval, West Milford's pre-credited need was 187 units, which was fully addressed in the HE/FSP through various mechanisms including new construction, rehabilitation, rental bonus credits, and inclusionary zoning.

### Third Round Obligation

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

10. 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").

11. The 2004 Regulations were challenged and 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").

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

13. 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.

14. 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.

15. In August 2004, the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq. took effect. The Township of West Milford falls entirely within the restrictive Preservation Area of the Highlands Region. This includes Newark Watershed property which, by Deed of Conservation Easement, dated May 31, 2006, is undevelopable.

16. In accordance with the 2008 revised Third Round Rules, the Township's Planning Board adopted a Third Round Housing Element and Fair Share Plan on May 27, 2010. The Township Council adopted a Resolution to seek substantive certification on June 2, 2010 and the Township submitted its petition for substantive certification to COAH on June 8, 2010.

#### **The Transfer of Jurisdiction to the Courts**

17. While West Milford's petition was pending with COAH, 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.

18. 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 their

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").

19 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.

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

21. 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.

22. 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").

23. In doing so, the Supreme Court established a transitional process for municipalities, like the Township of West Milford, that participated in the administrative process before COAH to file a declaratory judgment action with the trial courts seeking to declare their HEFSPs 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.

24. 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.

25. 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 abovementioned, 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.

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

27. Notwithstanding COAH's inability to grant substantive certification of the Township's 2010 Housing Element and Fair Share Plan, and the current lack of regulatory guidance for municipalities, the Township has continued to proceed with developing affordable housing opportunities where available within the Township. Specifically, Planning Board Resolution 2013-16, approval for an additional 20 beds to the existing independent and assisted living facility known as Chelsea at Bald Eagle required that a total of 14 beds be reserved for low income residents. Additionally, the Township provided funding assistance from its Affordable Housing Trust Fund to Morris Habitat for Humanity to improve an existing single family

dwelling for the express purpose of creating a moderate income, deed restricted unit.

**COUNT ONE**

**(DECLARATORY RELIEF, CONSTITUTIONAL COMPLIANCE)**

28. The Township of West Milford repeats and realleges each and every allegation set forth in Paragraphs 1-27 of this Complaint as if set forth herein at length.

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

**WHEREFORE**, Plaintiff/Petitioner, the Township of West Milford, respectfully seeks that the Court grant the following relief:

- a. An Order exercising jurisdiction over the compliance by the Township of West Milford with its constitutional affordable housing obligations; and
- b. An Order declaring that the Township of West Milford 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 MONTHS TO PREPARE HEFSP)**

30. The Township of West Milford repeats and realleges each and every allegation as

set forth in Paragraphs 1-29 as if set forth herein at length.

31. 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, whichever occurred later to prepare its HEFSP.

32. 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.

33. 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 Township of West Milford to prepare a compliant HEFSP which this Court could evaluate to determine its constitutional compliance.

34. 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.

35. 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 Township of West Milford 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 which will quantify the affordable housing obligation of the Township of West Milford and allow for the preparation and adoption of a constitutionally compliant HEFSP.

36. The Township of West Milford intends to file its Third Round Housing Element and Fair Share Plan with the Court by November 8, 2015, or by a date certain as set by the Court.

**WHEREFORE**, Plaintiff/Petitioner, the Township of West Milford respectfully seeks that the Court grant the following relief:

a. An Order granting the Township of West Milford a five month period from the date that a methodology or formula is established by this Court, estimated to be November 8, 2015, or as otherwise extended or established by the 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)**

37. The Township of West Milford repeats and realleges each and every allegation as set forth in Paragraphs 1-36 as if set forth herein at length.

38. In the 2015 Case, the Supreme Court afforded Participating Municipalities who filed Declaratory Judgment actions seeking to verify and confirm their constitutional compliance



with their affordable housing obligations, the right to seek temporary immunity from third party lawsuits while pursuing these Declaratory Judgment actions and the development of compliant HEFSP's.

39. The Township of West Milford by virtue of the filing of the within action 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 Township of West Milford respectfully seeks that the Court grant the following relief:

a. An Order granting temporary immunity from third party lawsuits against the Township of West Milford 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 Township of West Milford for its HEFSP formulated, adopted and approved in accordance with the applicable formula and methodology established by this Court.

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

#### **COUNT FOUR**

#### **(JURISDICTION OVER UNAPPROVED SPENDING PLAN)**

40. The Township of West Milford repeats and realleges each and every allegation as set forth in Paragraphs 1-39 as if set forth herein at length.

41. On April 9, 2015, the Appellate Division issued a Decision divesting COAH of jurisdiction to administratively effect a forfeiture of Affordable Housing Trust Funds not spent or committee 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").

42. 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.

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

44. The Township of West Milford has a Spending Plan, dated June 2, 2010, that has not been approved pending before COAH and without COAH's approval and authorization is prevented from expending Affordable Housing Trust Funds to advance the purposes of affordable housing in the municipality.

45. In light of COAH's inaction on its Spending Plan, the Township of West Milford seeks to have this Court, in conjunction with processing the instant Declaratory Judgment action, approve the Spending Plan of the Township of West Milford that has been pending before COAH and further, to assume jurisdiction over any amendment to said Spending Plan once approved in order to give the Township of West Milford the ability to properly utilize and expend Affordable Housing Trust Funds collected for the purposes of advancing and satisfying its affordable housing obligation.

**WHEREFORE**, Plaintiff/Petitioner, the Township of West Milford respectfully seeks that the Court grant the following relief:

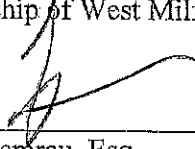
a. An Order approving the Spending Plan of the Township of West Milford heretofore pending before COAH.

b. An Order continuing the jurisdiction of this Court to consider and approve any

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, notice is hereby given that Fred Semrau, Esq., Attorney for the Plaintiff/Petitioner, the Township of West Milford, is designated as trial counsel in the above captioned matter.

DORSEY & SEMRAU, LLC  
Attorney for Plaintiff/Petitioner,  
Township of West Milford

  
\_\_\_\_\_  
Fred Semrau, Esq.

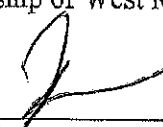
Dated: July 2, 2015

**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, who, as a result of the 2015 Case, has been divested of jurisdiction which 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.

DORSEY & SEMRAU, LLC  
Attorney for Plaintiff/Petitioner,  
Township of West Milford

  
\_\_\_\_\_  
Fred Semrau, Esq.

Dated: July 2, 2015

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> <b>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</b></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:
	1. ATTORNEY / PRO SE NAME Fred Semrau, Esq.	2. TELEPHONE NUMBER (973) 334-1900	3. COUNTY OF VENUE Passaic
	4. FIRM NAME (if applicable) Dorsey & Semrau, LLC		5. DOCKET NUMBER (when available) <b>L-236145</b>
	6. OFFICE ADDRESS 714 Main Street, P.O. Box 228 Boonton, New Jersey 07005		7. DOCUMENT TYPE Declaratory Complaint
			8. JURY DEMAND <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
9. NAME OF PARTY (e.g., John Doe, Plaintiff) Township of West Milford		10. CAPTION In the Matter of the Application of the Township of West Milford	
11. CASE TYPE NUMBER (See reverse side for listing) 303	12. HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	13. 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:53 A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.	
14. RELATED CASES PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	15. IF YES, LIST DOCKET NUMBERS		
16. DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	17. NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input type="checkbox"/> UNKNOWN		
<b>THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.</b>			
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION			
18. 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		
19. DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
20. USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION			
<b>FILED</b> Superior Court of New Jersey JUL 02 2015 Passaic County			
 21. 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		
22. WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, FOR WHAT LANGUAGE?		
23. 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> .			
24. ATTORNEY SIGNATURE: 			

# DORSEY & SEMRAU

JOHN H. DORSEY  
FRED SEMRAU  
TRACY W. SCHNURR  
JEFFREY J. PASEK  
JOSEPH E. BOCK, JR.  
DAWN M. SULLIVAN

ATTORNEYS AT LAW  
714 MAIN STREET  
P.O. Box 228  
BOONTON, NJ 07005  
973-334-1900  
FACSIMILE 973-334-3408  
TSCHNURR@DORSEYSEMRAU.COM

NANETTE S. THOMAS  
OF COUNSEL

July 9, 2015

## Via Hand Delivery

Clerk of Passaic County  
Passaic County Courthouse  
77 Hamilton Street  
Paterson, NJ 07505

Re: In the Matter of the Application of the Township of West Milford  
Docket No. PAS-L-2361-15

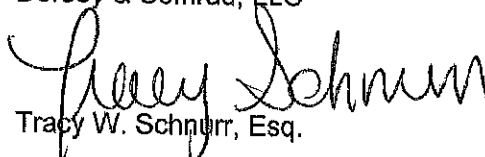
Dear Sir or Madam:

This office represents the Plaintiff/Petitioner, Township of West Milford, in the above-referenced matter. Enclosed for filing please find an original and two (2) copies of the following:

- (1) Notice of Motion for an Order granting a Temporary Period of Immunity;
- (2) Certification of Service;
- (3) Letter Brief in Support of the Notice of Motion to for an Order granting a Temporary Period of Immunity;
- (4) Certification of Charles T. McGroarty, PP, AICP, in Support of the Notice of Motion to for an Order granting a Temporary Period of Immunity; and
- (5) A proposed form of Order.

Please mark a copy with the date of filing and return same to our office in the envelope provided. Also enclosed is a check in the amount of \$50.00 for the filing fee. Should you have any questions or concerns, please do not hesitate to contact us. Thank you.

Very truly yours,  
Dorsey & Semrau, LLC

  
Tracy W. Schnurr, Esq.

## Enclosures

cc: Honorable Thomas F. Brogan, P.J. Cv. (via hand delivery, w/encl.)  
Attached Service List (via email, certified mail or Federal Express, w/encl.)  
Ken Gabbert, Township Administrator (via email, w/encl.)  
Antoinette Battaglia, Township Clerk (via email, w/encl.)

Fred Semrau, Esq. - 0017871993  
Tracy W. Schnurr, Esq. - 0033962009  
Dorsey & Semrau, LLC  
714 Main Street  
P.O. Box 228  
Boonton, New Jersey 07005  
Attorney for Plaintiff/Petitioner,  
Township of West Milford

**IN THE MATTER OF THE  
APPLICATION OF THE TOWNSHIP  
OF WEST MILFORD, a municipal  
corporation of the State of New Jersey,**

Plaintiff/Petitioner

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: PASSAIC COUNTY  
DOCKET NO.: PAS-L-2361-15

CIVIL ACTION  
(Mount Laurel)

**NOTICE OF MOTION FOR AN  
ORDER GRANTING A  
TEMPORARY PERIOD OF  
IMMUNITY**

TO: Honorable Thomas F. Brogan, P.J. Cv.  
Passaic County Courthouse  
77 Hamilton Street  
Paterson, New Jersey 07505

**PLEASE TAKE NOTICE** that on August 7, 2015 at 9:00 A.M. or as soon thereafter as Counsel may be heard, in the Superior Court of New Jersey, Passaic County, New Jersey, the undersigned shall move before the Court for an Order granting a Temporary Period of Immunity for a period of five (5) months in favor of the Township of West Milford from the date that a methodology or formula is established by this Court, or as otherwise extended or established by the Court, preventing the filing of any exclusionary zoning action, including actions for a builder's remedy, pending a determination of West Milford's presumptive compliance with its affordable housing obligation or any similar related relief be granted.

**PLEASE TAKE FURTHER NOTICE** that in support of the Motion for a Temporary

Restraining Order, the Township of West Milford shall rely on the Certification of Chuck McGroarty, PP, AICP, along with the Declaratory Judgment Complaint and Letter Brief, filed simultaneously with this Motion or previously with the Court.

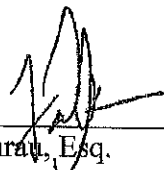
**PLEASE TAKE FURTHER NOTICE** that pursuant to R. 1:6-2(d), oral argument is hereby waived.

**PLEASE TAKE FURTHER NOTICE** that a proposed form of Order is enclosed.

**PLEASE TAKE FURTHER NOTICE** that pursuant to R. 1:6-2(c), no pre-trial conference, arbitration or trial dates have been fixed.

DORSEY & SEMRAU, LLC  
Attorneys for Plaintiff/Petitioner,  
Township of West Milford

By: \_\_\_\_\_

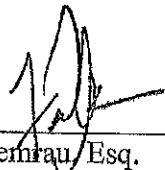
  
Fred Semrau, Esq.

Dated: July 9, 2015

**CERTIFICATION OF SERVICE**

I hereby certify that the original and copies of the within Notice of Motion for an Order Granting a Temporary Period of Immunity, supporting Certification of Chuck McGroarty, PP, AICP, Supporting Letter Brief, and proposed form of Order were forwarded to the Clerk, Passaic County Civil Division, Passaic County Courthouse, 77 Hamilton Street, Paterson, New Jersey 07505 on this date via hand delivery for filing; and a copy of same was served on those parties on the attached Service List via Email, Federal Express or Certified Mail as indicated on the service list; and that a legal notice will be published in the Daily Record of this filing; and a courtesy copy of same was served on the Honorable Thomas F. Brogan, P.J. Cv., Passaic County Courthouse, 77 Hamilton Street, Paterson, New Jersey 07505 via hand delivery.

DORSEY & SEMRAU, LLC  
Attorneys for Plaintiff/Petitioner,  
Township of West Milford

By:   
Fred Semrau Esq.

Dated: July 9, 2015



**West Milford Township Service List**

**VIA EMAIL:**

<p>The Honorable Bettina Bieri Mayor Township of West Milford 1480 Union Valley Rd West Milford, NJ 07480-1303 973-728-2710 (Telephone) <a href="mailto:Bieri@WestMilford.org">Bieri@WestMilford.org</a></p>	<p>Fred Semrau, Esq. Dorsey &amp; Semrau, LLC 714 Main St P.O. Box 228 Boonton, NJ 07005 <a href="mailto:fsemrau@dorseysemrau.com">fsemrau@dorseysemrau.com</a></p>
<p>Antoinette Battaglia, RMC Municipal Clerk Township of West Milford 1480 Union Valley Rd West Milford, NJ 07480-1303 973-728-7000 (Telephone) 973-728-2704 (Fax) <a href="mailto:TwpClerk@WestMilford.org">TwpClerk@WestMilford.org</a></p>	<p>Chuck McGroarty, PP, AICP Planning Consultant Banisch Associates, Inc. 111 Main St Flemington, NJ 08822 908-782-0835 (Telephone) <a href="mailto:chuckmcgroarty@banisch.com">chuckmcgroarty@banisch.com</a></p>
<p>Kenneth A. Gabbert Municipal Administrator/MHL Township of West Milford 1480 Union Valley Rd West Milford, NJ 07480-1303 973-728-2710 (Telephone) 973-728-2884 (Fax) <a href="mailto:TwpAdministrator@WestMilford.org">TwpAdministrator@WestMilford.org</a></p>	<p>Paul W. Ferriero, PE Engineer Ferriero Engineering, Inc. 180 Main St P.O. Box 571 Chester, NJ 07930 908-879-6209 ext. 232 (Telephone) <a href="mailto:paul.ferriero@ferrieroengineering.com">paul.ferriero@ferrieroengineering.com</a></p>
<p>Peter B. Eddy Esq. Williams, Caliri, Miller &amp; Otley, PC 1428 Rte 23 Wayne, NJ 07470 973-694-0800 (Telephone) 973-694-0302 (Fax) <a href="mailto:peddy@wcmolaw.com">peddy@wcmolaw.com</a></p>	<p>Tom Toronto President Bergen County's United Way 6 Forest Ave Ste 210 Paramus, NJ 07652 <a href="mailto:ttoronto@bergenunitedway.com">ttoronto@bergenunitedway.com</a></p>
<p>Wilma E. Frey Senior Policy Manager New Jersey Highlands Council 100 North Rd Rte 513 Chester, NJ 07930-2322 <a href="mailto:info@njconservation.org">info@njconservation.org</a></p>	<p>Karl F. Hartkopf, PP, AICP Director of Planning New Jersey Business Action Center Dept of State, Office for Planning Advocacy P.O. Box 820, 225 W State St, 3<sup>rd</sup> Fl Trenton, NJ 08625-0820 <a href="mailto:Karl.hartkopf@sos.state.nj.us">Karl.hartkopf@sos.state.nj.us</a></p>

### West Milford Township Service List

<p>James Humphries New Jersey Highlands Council 100 North Rd Rte 513 Chester, New Jersey 07930-2322 <a href="mailto:James.humphris@highlands.state.nj.us">James.humphris@highlands.state.nj.us</a></p>	<p>Glenn C. Kienz, Esq. Weiner Lesniak, LLP 629 Parsippany Rd P.O. Box 0438 Parsippany, NJ 07054-0438 973-403-1100 (Telephone) 973-403-0010 (Fax) <a href="mailto:gkienz@weinerlesniak.com">gkienz@weinerlesniak.com</a></p>
<p>Michael La Place Director of Planning Passaic County Planning Board Totowa Business Ctr 930 Riverview Dr, Ste 250 Totowa, NJ 07512 973-569-4040 (Telephone) 973-812-3450 (Fax) <a href="mailto:mlaplace@passaiccountynj.org">mlaplace@passaiccountynj.org</a></p>	<p>Dan McGuire, AICP Director, Development Division Homeless Solutions 6 Dumont Pl 3<sup>rd</sup> Fl Morristown, NJ 07960 <a href="mailto:DanMcGuire@HomelessSolutions.org">DanMcGuire@HomelessSolutions.org</a></p>
<p>Morris Habitat for Humanity 274 South Salem St Suite 100 Randolph, NJ 07869 973-891-1934 (Telephone) 973-891-1938 (Fax) <a href="mailto:info@morrishabitat.org">info@morrishabitat.org</a></p>	<p>Kevin D. Walsh, Esq. Fair Share Housing Center 510 Park Blvd Cherry Hill, NJ 08002 <a href="mailto:kevinwalsh@fairsharehousing.org">kevinwalsh@fairsharehousing.org</a></p>
<p>Paterson Habitat for Humanity P.O. Box 2585 Paterson, NJ 07509 973-595-6868 (Telephone) 973-595-0974 (Fax) <a href="mailto:office@patersonhabitat.org">office@patersonhabitat.org</a></p>	<p>ALFA Development 39 Oak Ridge Rd Newfoundland, NJ 07435 973-697-1010 (Telephone) <a href="mailto:dsantalucia@alphadevelopment.org">dsantalucia@alphadevelopment.org</a></p>
<p>George Vallone Carol Ann Short, Esq. NJ Builders Association 200 American Metro Blvd Suite 123 Hamilton, NJ 08619 609-587-5577 (Telephone) 609-587-0044 (Fax) <a href="mailto:cshort@njba.org">cshort@njba.org</a> <a href="mailto:gvallone@njba.org">gvallone@njba.org</a></p>	<p>Russ Hall Housing Alliance of Morris County P.O. Box 138 Morris Plains, NJ 07950 973-540-1914 (Fax) <a href="mailto:mcha@morriscountyha.org">mcha@morriscountyha.org</a> <a href="mailto:morrishachair@gmail.com">morrishachair@gmail.com</a></p>

West Milford Township Service List

<p>Edward J. Buzak, Esq. The Buzak Law Group Montville Office Park 150 River Road, Suite N-4 Montville, NJ 07045 973-335-0600 (Telephone) 973-335-1145 (Fax) <a href="mailto:ejbuzak@buzaklawgroup.com">ejbuzak@buzaklawgroup.com</a></p>	<p>Jonathan Drill, Esq. Stickel, Koenig, Sullivan &amp; Drill 571 Pompton Avenue Cedar Grove, NJ 07009 <a href="mailto:jdrill@sksdllaw.com">jdrill@sksdllaw.com</a></p>
<p>Jeffrey Kantowitz, Esq. Law Office of Abe Rappaport 195 Route 46 W, Suite 6 Totowa, NJ 07512 973-785-1799 <a href="mailto:info@rappaport-law.com">info@rappaport-law.com</a></p>	<p>Ronald C. Morgan, Esq. Parker McCay 9000 Midlantic Drive, Ste 300 Mount Laurel, NJ 08054 856-985-4010 <a href="mailto:rmorgan@parkermccay.com">rmorgan@parkermccay.com</a></p>
<p>Edward Barocas, Jeanne Locicero, Alexander Shalom ACLU of NJ Foundation 89 Market St, P.O. Box 32159 Newark, NJ 07102 <a href="mailto:ebarocas@aclu-nj.org">ebarocas@aclu-nj.org</a> <a href="mailto:jlocicero@aclu-nj.org">jlocicero@aclu-nj.org</a> <a href="mailto:ashalom@aclu-nj.org">ashalom@aclu-nj.org</a></p>	<p>Georgette Castner, Esq. Montgomery, McCracken 457 Haddonfield Rd, Suite 600 Cherry Hill, NJ 08002 856-488-7794 <a href="mailto:gcastner@mmwr.com">gcastner@mmwr.com</a></p>
<p>Connie Pascale, Melville Miller, Jr Legal Services of New Jersey 100 Metroplex Dr, Suite 402 P.O. Box 1357 Edison, NJ 08818 <a href="mailto:cpascale@lsnj.org">cpascale@lsnj.org</a> <a href="mailto:mmiller@lsnj.org">mmiller@lsnj.org</a></p>	<p>Geraldine Callahan, DAG Office of the Attorney General 25 W Market St P.O. Box 112 Trenton, NJ 08625 <a href="mailto:geraldine.callahan@dol.lps.state.nj.us">geraldine.callahan@dol.lps.state.nj.us</a></p>
<p>Thomas F. Carroll, III, Esq. Stephen M. Eisdorfer, Esq. Hill Wallack 202 Carnegie Center CN 5226 Princeton, NJ 08543 <a href="mailto:tcarrroll@hillwallack.com">tcarrroll@hillwallack.com</a> <a href="mailto:seisdorfer@hillwallack.com">seisdorfer@hillwallack.com</a></p>	<p>Henry L. Kent-Smith, Esq. Fox Rothschild Princeton Pike Corporate Center 997 Lenox Dr, Bldg 3, Ste 204 Lawrenceville, NJ 08648 <a href="mailto:hkent-smith@foxrothschild.com">hkent-smith@foxrothschild.com</a></p>
<p>Kevin J. Moore, Esq. Sills Cummis &amp; Gross 650 College Road East Princeton, NJ 08053 <a href="mailto:kmoore@kmjlaw.com">kmoore@kmjlaw.com</a></p>	<p>Peter J. O'Connor, Esq. Adam Gordon, Esq. Fair Share Housing Center 510 Park Boulevard Cherry Hill, NJ 08002 856-663-3400 <a href="mailto:adamgordon@fairsharehousing.org">adamgordon@fairsharehousing.org</a></p>

### West Milford Township Service List

<p>Tracy A. Siebold, Esq. Nehmad, Perillo, &amp; Davis 430 Ocean Heights Avenue Egg Harbor Twp, NJ 08234 <a href="mailto:tsiebold@npdlaw.com">tsiebold@npdlaw.com</a></p>	<p>Ronald K. Chen Constitutional Litigation Clinic Center for Law &amp; Justice 123 Washington St Newark, NJ 07102 <a href="mailto:rchen@kinoy.rutgers.edu">rchen@kinoy.rutgers.edu</a></p>
<p>George Cohen, DAG Office of the Attorney General 25 W Market St P.O. Box 112 Trenton, NJ 08625 609-292-3508 (Fax) <a href="mailto:George.Cohen@dol.lps.state.nj.us">George.Cohen@dol.lps.state.nj.us</a></p>	<p>Jeffrey Surenian, Esq. Jeffrey R. Surenian and Associates, LLC Brielle Galleria 707 Union Avenue, Suite 301 Brielle, NJ 08730 732-612-3101 (Fax) <a href="mailto:jrs@surenian.com">jrs@surenian.com</a></p>
<p>David R. Oberlander, Esq. Bisgaier Hoff 25 Chestnut St, Suite 3 Haddonfield, NJ 08033 <a href="mailto:doberlander@bisgaierhoff.com">doberlander@bisgaierhoff.com</a></p>	<p>Center for Humanistic Change of NJ, Inc. 12 US Highway 206 Stanhope, NJ 07874 973-691-3488 (Telephone) 973-691-2797 (Fax) <a href="mailto:chc@chcnj.org">chc@chcnj.org</a></p>
<p>Christopher Norman, Esq. Norman Kingsbury and Norman 30 Jackson Rd, Suite A-2 Medford, NJ 08055 609-654-4107 <a href="mailto:cnorman@rclawnj.com">cnorman@rclawnj.com</a></p>	<p>Donna Platt Law 40 Berlin Avenue Stratford, NJ 08084 856-435-2100 (Telephone) <a href="mailto:donna@donnaplattlaw.com">donna@donnaplattlaw.com</a></p>
<p>Lawrence S. Lustberg, Esq. Eileen M. Connor, Esq. Gibbons, P.C. One Gateway Center Newark, NJ 07102 <a href="mailto:llustberg@gibbonslaw.com">llustberg@gibbonslaw.com</a></p>	<p>Martin F. McKernan, Jr., Esq. McKernan, McKernan &amp; Godino 113 North Sixth St. Camden, NJ 08012 856-964-7759 (Telephone) 856-964-9620 (F) <a href="mailto:mckernangodino@juno.com">mckernangodino@juno.com</a></p>
<p>Robert Lougy, AAG Office of the Attorney General 25 Market St P.O. Box 112 Trenton, NJ 08625 <a href="mailto:Robert.Lougy@dol.lps.state.nj.us">Robert.Lougy@dol.lps.state.nj.us</a></p>	<p>AdvoServ New Jersey 510 Heron Drive Suite 114 Swedesboro, NJ 08085 856-241-3320 (Telephone) 856-241-3321 (Fax) <a href="mailto:sheak@advoserv.com">sheak@advoserv.com</a> (CFO) <a href="mailto:baconb@advoserv.com">baconb@advoserv.com</a> (Operator)</p>

West Milford Township Service List

<p>Millie Blazovic Social Activities Director Bald Eagle Commons 21 Richmond Rd West Milford, NJ 07480 973-728-6896 (Telephone) <a href="mailto:mblazovic@optonline.net">mblazovic@optonline.net</a></p>	<p>Kevin Seidel Executive Director The Chelsea at Bald Eagle 197 Cahill Cross Rd West Milford, NJ 07480 973-728-6000 (Telephone) 973-657-1657 (Fax) <a href="mailto:kseidel@cslal.com">kseidel@cslal.com</a></p>
<p>Marcia Carberry Director Wehrlen House Group Home 18 Bisset Drive West Milford, NJ 07480 973-409-2765 (Telephone) 973-208-0381 (Fax) <a href="mailto:Marcia@dpd.org">Marcia@dpd.org</a></p>	<p>New Life Recovery Center 1810 Macopin Rd West Milford, NJ 07480 973-728-7788 (Telephone) <a href="mailto:info@newliferecoverycenter.net">info@newliferecoverycenter.net</a></p>
<p>Ronald S. Ladell Senior Vice President AvalonBay Communities, Inc. 517 Route One South Suite 5500 Iselin, NJ 08830 732-404-4800 (Telephone) 732-283-9101 (Fax) <a href="mailto:Ronald_Ladell@avalonbay.com">Ronald_Ladell@avalonbay.com</a></p>	<p>Jon Vogel Development Director AvalonBay Communities, Inc. 517 Route 1 S., Ste. 5500 Iselin, New Jersey 08830 732-404-4800 (Telephone) 732-283-9105 (Fax) <a href="mailto:Jon_Vogel@avalonbay.com">Jon_Vogel@avalonbay.com</a></p>

**West Milford Township Service List**

**VIA FEDERAL EXPRESS:**

Lincoln Hill Senior Village Rentals 15 Lincoln Ave # 310 West Milford, NJ 07480 973-728-4840 (Telephone)	Melissa Field Director of Housing Development Allies, Inc. 1262 White Horse-Hamilton Sq Rd Bldg A, Ste 101 Hamilton, NJ 08690 609-689-0136 (Telephone) 609-581-4891 (Fax)
Puerto Rican Federation Services, Inc. 326 US Highway 22 Green Brook, NJ 08812 732-926-0812 (Telephone)	Jack Lefkowitz Village on Ridge 750 West Brook Road West Milford, NJ 07480
Lincoln Hill Village c/o Sr. Margaret Lucille 15 Lincoln Ave West Milford, NJ 07480 973-728-4840 (Telephone)	Lincoln Hill Village Urban Renewal 15 Lincoln Ave West Milford, NJ 07480
Bob Martin DEP Commissioner NJ Dept of Environmental Protection 401 E. State St. 7th Floor, East Wing Trenton, NJ 08625-0402	Robert Voliton 116 Erasmus St Brooklyn, NY 11226
Roger Bernier President/COO The Chelsea at Bald Eagle 316 South Avenue Fanwood, NJ 07023	

**VIA CERTIFIED MAIL:**

Salt and Light Company P.O. Box 249 Mt Holly, NJ 08060 609-261-4571 (Telephone) affordablehomesgroup.com	
--	--

Fred Semrau, Esq. - 0017871993  
Tracy W. Schmurr, Esq. - 0033962009  
Dorsey & Semrau, LLC  
714 Main Street  
P.O. Box 228  
Boonton, New Jersey 07005  
Attorney for Plaintiff/Petitioner,  
Township of West Milford

**IN THE MATTER OF THE  
APPLICATION OF THE TOWNSHIP  
OF WEST MILFORD, a municipal  
corporation of the State of New Jersey,**

Plaintiff/Petitioner

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: PASSAIC COUNTY  
DOCKET NO.: PAS-L-2361-15

CIVIL ACTION  
(Mount Laurel)

**ORDER GRANTING A  
TEMPORARY PERIOD OF  
IMMUNITY**

THIS MATTER having been brought before the Court on Motion of Dorsey & Semrau, LLC, attorneys for the Plaintiff/Petitioner, the Township of West Milford; and the Court having considered the papers submitted; and for good cause shown:

IT IS ON THIS \_\_\_\_ day of \_\_\_\_\_, 2015, ORDERED AS FOLLOWS:

1. A Temporary Period of Immunity is hereby granted for a period of five (5) months from the date that a methodology or formula is established by this Court, or as otherwise extended or established by the Court. Specifically, the temporary period of immunity is hereby granted until \_\_\_\_\_. This Temporary Period of Immunity prevents the filing of any exclusionary zoning actions, including actions for a builder's remedy, pending a determination of West Milford's presumptive compliance with its affordable housing obligation.

2. A copy of this Order be served on all parties listed on the Township of West  
Milford's Service List within \_\_\_\_\_ days of the date hereof.

HON. THOMAS F. BROGAN, P.J. CV.

Opposed

Unopposed



## DORSEY & SEMRAU

JOHN H. DORSEY  
FRED SEMRAU  
TRACY W. SCHNURR  
JEFFREY J. PASEK  
JOSEPH E. BOCK, JR.  
DAWN M. SULLIVAN

ATTORNEYS AT LAW  
714 MAIN STREET  
P.O. BOX 228  
BOONTON, NJ 07005  
973-334-1900  
FACSIMILE 973-334-3408  
FSEMRAU@DORSEYSEMRAU.COM

NANETTE S. THOMAS  
OF COUNSEL

July 8, 2015

Hon. Thomas F. Brogan, P.J.Cv.  
Passaic County Courthouse  
77 Hamilton Street  
Paterson, NJ 07505

Re: In the Matter of the Application of the Township of West Milford  
Docket No. PAS-L-2361-15

Dear Judge Brogan:

This office serves as Municipal Counsel to the Plaintiff/Petitioner, Township of West Milford ("Township" or "West Milford"), and accordingly, represents the Township in the above-referenced matter. Please accept this letter brief to serve in lieu of a more formal pleading and in support of the Township's Declaratory Judgment Complaint and Motion for Temporary Immunities.

### LEGAL BACKGROUND AND STATEMENT OF FACTS

Affordable Housing in New Jersey spans back to the 1975 NJ Supreme Court case of South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975), appeal dismissed and cert. denied, 423 U.S. 808, known and referred to as Mount Laurel I. In Mount Laurel I, the Court ruled that developing municipalities were obligated to provide realistic opportunities for their fair share of affordable housing needs. Mount Laurel I was followed in 1983 by South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983), known and referred to as Mount Laurel II, and applied the obligations under Mount Laurel I to

municipalities designated by the State Development Guide Plan as being located within the growth area. Two years later, the New Jersey Legislature adopted the Fair Housing Act ("FHA"), N.J.S.A. 52:2D-301 et seq., codifying the judiciary's holdings in Mount Laurel I and Mount Laurel II.

~~Under the newly enacted FHA, municipalities were given an avenue to satisfy their~~ affordable housing constitutional obligations through the adoption of a Housing Element and Fair Share Plan ("HEFSP"), and submitting same to the newly created administrative agency, the Council on Affordable Housing ("COAH"). COAH was tasked with adopting regulations to define the affordable housing constitutional obligations for municipalities and to implement these regulations.

#### First and Second Rounds

COAH adopted regulations for the First Round for the years 1987 to 1993 and for the Second Round for the years 1987 to 1999. The Township of West Milford Planning Board adopted a Housing Element and Fair Share Plan, dated January 22, 1997, for its Second Round obligation which was subsequently revised and submitted to COAH on March 19, 1997 with a petition for substantive certification. See Certification of Charles T. McGroarty, PP, AICP, par. 5. COAH granted substantive certification on October 6, 1999. See McGroarty Cert., par. 5. At the time of approval, West Milford's pre-credited need was 187 units, which was fully addressed in the HE/FSP through various mechanisms including new construction, rehabilitation, rental bonus credits, and inclusionary zoning. See McGroarty Cert., par. 5.

#### Third Round

COAH proposed Third Round rules in October 2003. However, these rules were not adopted and COAH repropoed Third Round Rules in August 2004 and adopted same effective

on December 20, 2004. The 2004 regulations were invalidated in part by the Appellate Division, which remanded portions of the rules to COAH. See 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").

~~COAH then adopted new Third Round Rules on September 22, 2008, effective October 20, 2008. In accordance with the updated Third Round Rules, the Township's Planning Board adopted a Third Round Housing Element and Fair Share Plan on May 27, 2010. See McGroarty Cert., par. 6, Ex. A. The Township Council adopted a Resolution to seek substantive certification on June 2, 2010 and the Township submitted its petition for substantive certification to COAH on June 8, 2010. See McGroarty Cert., par. 6.~~

However, while West Milford's petition was pending, COAH's rules were again challenged and found invalid by the Court in 2010. 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"). The NJ Supreme Court affirmed this decision in 2013 and directed COAH to adopt new Third Round rules. 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). COAH has failed to adopt new Third Round rules and therefore, despite West Milford's good faith efforts, it has not received substantive certification.

Most recently, the NJ Supreme Court returned jurisdiction as to affordable housing matters to the trial courts due to COAH's failure to adopt Third Round regulations. While the Township has not received substantive certification and there are no current rules in place to guide the Township as to its obligations, the Township has proceeded to take appropriate actions to develop affordable housing opportunities. This includes Planning Board Resolution 2013-16,

approval for an additional 20 beds to the existing independent and assisted living facility known as Chelsea at Bald Eagle required that a total of 14 beds be reserved for low income residents. See McGroarty Cert., par. 8. Additionally, the Township provided funding assistance from its Affordable Housing Trust Fund to Morris Habitat for Humanity to improve an existing single family dwelling for the express purpose of creating a moderate income, deed-restricted unit. See McGroarty Cert., par. 8.

### Highlands

In August 2004, the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq. took effect. The Township of West Milford falls entirely within the restrictive Preservation Area of the Highlands Region. See McGroarty Cert., par. 10. This includes Newark Watershed property which, by Deed of Conservation Easement, dated May 31, 2006, is undevelopable. See McGroarty Cert., par. 10, Ex. B.

## LEGAL ARGUMENT

### **THE TOWNSHIP OF WEST MILFORD IS ENTITLED TO TEMPORARY IMMUNITY FROM MOUNT LAUREL LITIGATION, INCLUDING BUILDER'S REMEDIES ACTIONS**

While the Mount Laurel litigations were intended to require municipalities to abide by their fair share need of low and moderate income housing, the ensuing legislation, the Fair Housing Act, provided for protections for municipalities. Indeed, “[t]he Legislature enacted the Fair Housing Act of 1985 (FHA or the Act), N.J.S.A. 52:27D-301 to -329, to assist in municipal compliance with [its] constitutional obligation.” In re Adoption of N.J.A.C. 5:96 and 5:97 ex rel. New Jersey Council on Affordable Housing, 221 N.J. 1, 4 (2015) (the “2015 Case”). Specifically, the FHA provided an avenue for municipalities by which they could adopt and

submit to COAH Housing Element and Fair Share Plans, and accordingly, receive substantive certification from COAH as follows:

a. Within four months after the effective date of this act, each municipality which so elects shall, by a duly adopted resolution of participation, notify the council of its intent to submit to the council its fair share housing plan. Within five months after the council's adoption of its criteria and guidelines, the municipality shall prepare and file with the council a housing element, based on the council's criteria and guidelines, and any fair share housing ordinance introduced and given first reading and second reading in a hearing pursuant to R.S. 40:49-2 which implements the housing element.

[N.J.S.A. 52:27D-309.]

The substantive certification designation is designed to protect a municipality from Mount Laurel actions. 221 N.J. at 4 (“providing a period during which the municipality's implementing ordinances enjoy a presumption of validity in any ensuing exclusionary zoning litigation.”).

In fact, in the 2015 Case, the Court declared that, “Generally stated, the FHA encourages and rewards voluntary municipal compliance.” Id. The Court further stated that:

Second, it bears emphasizing that the process established is not intended to punish the towns represented before this Court, or those that are not represented but which are also in a position of unfortunate uncertainty due to COAH's failure to maintain the viability of the administrative remedy. Our goal is to establish an avenue by which towns can demonstrate their constitutional compliance to the courts through submission of a housing plan and use of processes, where appropriate, that are similar to those which would have been available through COAH for the achievement of substantive certification. Those processes include conciliation, mediation, and the use, when necessary, of special masters. The end result of the processes employed by the courts is to achieve adoption of a municipal housing element and implementing ordinances deemed to be presumptively valid if thereafter subjected to challenge by third parties.

[Id. at 23-24.]

Jurisdiction has now been moved from COAH to the Courts, with the Courts acting as a substitute for the substantive certification process.


The Township of West Milford has times participated in good faith in the affordable housing process. In the Second Round, it received substantive certification. In the current Third Round, West Milford adopted and submitted a Housing Element and Fair Share Plan under the 2008 second iteration of the Third Round rules.

As West Milford has abided by the FHA and participated in good faith in COAH's process, submitting a petition for substantive certification at each juncture, it is in the interests of justice to grant West Milford temporary immunity during the pendency of this litigation. Additionally, the Supreme Court appears to lean toward granting such immunity as it stated that during the period in which the municipal declaratory judgment actions are pending, that "the [trial] court may provide initial immunity preventing any exclusionary zoning actions from proceedings." 221 N.J. at 28. Therefore, we would respectfully opine that due to West Milford's good faith efforts to participate, it is entitled to receipt of temporary immunities during the time period in which it will draft and provide for the Court's a new Housing Element and Fair Share Plan to continue its efforts toward receipt of substantive certification.

#### Conclusion

For the aforementioned reasons, it is respectfully submitted that the Court should grant the Township of West Milford's Motion for Temporary Immunities.

Respectfully submitted,  
Dorsey & Semrau, LLC

  
Fred Semrau, Esq.

cc: Attached Service List  
Ken Gabbert, Township Administrator  
Antoinette Battaglia, Township Clerk