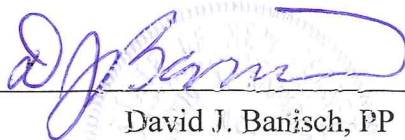

Draft Amended Third Round
Housing Plan Element
and
Fair Share Plan

Borough of Chester
Morris County, New Jersey

March 31, 2016

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The original of this report was signed and sealed in accordance with N.J.A.C. 13:41-1.3



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4/4/16

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Introduction

This is Chester Borough's third Round 3 Housing Plan Element and Fair Share Plan ("HPE&FSP", "Housing Plan" or the "affordable housing plan") amended to address Chester Borough's Third Round affordable housing obligations. This plan responds to the NJ Supreme Court's March 10, 2015 order issued in the case entitled, In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015)(commonly referred to as "Mount Laurel IV"). The Court's March 2015 order resulted from years of litigation regarding COAH's Third Round rules and responded to COAH's failure to adopt new Round 3 regulations by an October 2014 deadline established by the Court. The March 2015 order dissolved the NJ Fair Housing Act's (FHA) exhaustion-of-administrative-remedies requirement for the time being and authorized the trial courts to take over functions previously performed by COAH pursuant to the FHA. More specifically, since COAH could no longer be counted on to establish appropriate rules to guide municipalities, the Supreme Court tasked trial judges in 15 different vicinages to bear that burden. Also, since COAH's lack of regulations precluded it from processing petitions by municipalities seeking approval of their affordable housing plans, the Supreme Court directed trial courts to serve in this capacity. The Supreme Court also designed procedures that mirrored "as closely as possible" the procedures established by FHA. Mount Laurel IV, page 6. This HPE&FSP has been prepared in furtherance of Chester Borough's continuing commitment to comply with its Mount Laurel obligations voluntarily through the transitional procedures established by the Supreme Court in Mount Laurel IV.

The Borough of Chester seeks to secure the Court's approval of this amended Third Round (or "Round 3") Housing Plan, as may be supplemented in accordance with Mount Laurel IV, to address its Mount Laurel obligations and secure a judgment of compliance and repose from the Court. In accordance with applicable laws, the Borough has the power to decide how it will satisfy its responsibilities and this plan reflects the choices of the community. This amended Third Round HPE&FSP has been prepared in accordance with the provisions of the Municipal Land Use Law ("M.L.U.L.") at Section D-28b(3), the FHA, COAH's affordable housing rules found at N.J.A.C. 5:93-1 et seq. and Mount Laurel IV. In accordance with Mount Laurel IV, this HPE&FSP addresses not only Chester Borough's present and prospective need obligations, but also its prior round obligations.

The Legislature designed the FHA to require municipalities to commence implementation of an affordable housing plan only after the plan was approved. Accordingly, N.J.S.A. 52:27D-314 provides, "Once substantive certification is granted, the municipality shall have 45 days in which to adopt its fair share housing ordinance approved by the council." Therefore, the Legislature designed the FHA to mark the securing of plan approval as the turning point from planning to implementation.

Chester Borough's History Of Commitment To Voluntary Compliance

As demonstrated by the following facts, since former Governor Kean signed the FHA into law on July 2, 1985, Chester Borough has consistently demonstrated its commitment to comply voluntarily through the COAH process with its Mount Laurel obligations:

- On February 21, 1989, Chester Borough obtained First Round substantive certification from the New Jersey Council on Affordable Housing ("COAH") with respect to its first round or first cycle affordable housing obligation.
- On October 1, 1997, the Borough obtained Second Round substantive certification from COAH with respect to its second round or second cycle affordable housing obligation.
- On August 25, 2005, Chester Borough adopted its first Round 3 Housing Plan Element and Fair Share Plan and the Borough petitioned COAH for Round 3 substantive certification under the first iteration of COAH's Third Round rules (N.J.A.C. 5:94-1 et seq. and N.J.A.C. 5:95-1 et seq.) in October 2005.
- Before COAH acted on the Borough's 2005 Round 3 petition for substantive certification, the Appellate Division overturned the Chapter 94 (COAH's first iteration of Round 3 rules) in In re Adoption of N.J.A.C. 5:94 and 5:95, decided on January 25, 2007 and ordered COAH to prepare revised Round 3 rules.
- On May 13, 2010 the Borough Planning Board adopted an amended Round Housing Plan Element and Fair Share Plan (the "2010 HPE & FSP") under the second iteration of COAH's Third Round rules (N.J.A.C. 5:96-1 et seq. and N.J.A.C. 5:97-1 et seq.) and, on June 1, 2010, the Chester Borough Mayor and Council again petitioned COAH for Third Round substantive certification based on the 2010 HPE & FSP.
- Chester Borough's 2010 HPE & FSP fully addressed all prior and current affordable housing obligations assigned to the Borough under the second iteration of COAH's Third Round rules in accordance with the provisions established in N.J.A.C. 5:96-1 et seq. and N.J.A.C. 5:97-1 et seq.
- Before COAH acted on the Borough's 2010 HPE & FSP and petition for Round 3 substantive certification, the Appellate Division overturned the second iteration of COAH's Third round Rules in In re Adoption of N.J.A.C. 5:96 and 5:97, which was decided on October 8, 2010.

Third Round Court Developments And Chester's Additional Efforts To Comply Voluntarily

For the two first rounds (collectively referred to as the "Prior Round"), COAH utilized a methodology to calculate municipal affordable housing obligations by determining the present and prospective regional need for each of the six housing regions identified by COAH and then allocating the need to each of the municipalities in the region through various allocation factors after which various other adjustments were made. For the "Third Round," COAH attempted to utilize a new methodology -- which COAH referred to as a "growth share" methodology -- that differed from the prior round methodology.

Instead of determining the present and prospective regional need and allocating it to municipalities in the region, growth share required municipal affordable housing production in proportion to actual residential and employment growth in a municipality. COAH adopted Round 3 regulations in 1994 (Chapter 94) and again in 2008 (Chapter 97) and relied on the growth share approach on both occasions. On January 25, 2007, the Appellate Division partially invalidated the first iteration of Round 3 regulations adopted in 1994 (Chapter 94). Instead of adopting regulations that targeted the deficiencies the Court had identified, COAH adopted a whole new body of procedural and substantive rules in 2008 (Chapter 97), which was the second iteration of Round 3 regulations. The adoption of these 2008 regulations precipitated another round of challenges initially resulting in the Appellate Division's partial invalidation of those rules on October 8, 2010 and ultimately resulting in the Supreme Court's invalidation of all COAH's 2008 regulations on September 26, 2013.

When the Supreme Court invalidated the second iteration of COAH's Round 3 regulations (Chapter 97) in 2013, it reasoned that the FHA had not empowered COAH to employ a growth share approach to fair share calculations. It then ordered COAH to adopt a third iteration of Round 3 regulations that used standards similar to the approach COAH took in Rounds 1 and 2 and not to use a growth share approach. In response to the Court's order, COAH published revised third round rules (proposed Chapter 99) in May 2014, accepted public comment through August of 2014 and voted on the rules on October 20, 2015. However, instead of adopting the new regulations, COAH deadlocked with 3 yes votes and 3 no votes.

Subsequent to their October tie vote, COAH took no action to remedy the situation and adopt the revised Round 3 rules. This culminated in the Mount Laurel IV decision. By this decision, the Supreme Court dissolved the exhaustion of administrative remedies requirements of the FHA for the time being through which municipalities had secured protection from exclusionary zoning suits; and allowed municipalities to seek Court approval of their Round 3 Housing Plan Elements and Fair Share Plans and maintain protections from Mount Laurel lawsuits while doing so. At the time of the Court's decision, Chester Borough was one among 380 municipalities that had filed their affordable housing plans with COAH and either secured COAH's approval or were in the process of attempting to do so. Under the two invalidated iterations of COAH's Third Round rules, fewer than 20% of the municipalities¹ participating in the COAH process had achieved third round substantive certification because COAH suspended their review of municipal petitions for Third Round substantive certification each time the Appellate Division invalidated the rules (Chapters 94 & 97).

On July 2, 2015, Chester Borough, once again, proactively sought compliance by filing its declaratory judgment action with the Court in the 30-day window created by the Supreme Court in Mount Laurel IV. The Borough initiated this action so that it could secure approval of its affordable housing plan, as may be supplemented and so that it could secure protections from Mount Laurel lawsuits while doing so. Since the Supreme Court in Mount Laurel IV had repeatedly noted that municipalities that participated in the

¹ COAH certified the affordable housing plans of only 68 municipalities before it ceased processing petitions for substantive certification.

procedures it had devised could supplement their affordable housing plans, it was clear that municipalities in a court proceeding would have the same flexibility they had in a COAH proceeding to adjust their plans, as may be necessary, to secure approval of an affordable housing plan that embodied the choices of the community. With the Supreme Court's invalidation of all Round 3 rules adopted in 2008, the only regulations in effect are COAH's Chapter 93 substantive rules². Accordingly, we have relied upon Chapter 93 as well as the other parameters the Supreme Court established in Mount Laurel IV to guide courts and municipalities.

The Borough and Highlands Council have engaged in discussions regarding the Borough's participation in the Highlands plan conformance process. The staff of the Highlands Council has provided assurances that it will assist the Borough in addressing a health and safety issue that has plagued the community and become more pronounced since Hurricane Sandy. The problem is that inadequate sewer service capacity prevents roughly 202 connections of existing development in the Borough to the Borough's sewer system including 74 sites zoned commercial that are neither currently served by the existing Borough system nor permitted through the NJPDES program, and 39 parcels zoned residential that have had recently replaced septic systems or are known to be served by seepage pits/cesspools and 89 additional existing residences built prior to 1971, which were assumed to be served by a seepage pit or cesspool due to their age, all of which should be connected to sewer. Through the plan conformance process, the Borough will receive technical and planning assistance from the Highlands Council to cure this serious problem.

Accordingly, the Borough has formally sought plan conformance by the Highlands Council and now all zoning decisions must conform to the policies of the Highlands Council, which the Legislature created to address a health and safety problem facing the state. Specifically, more than four million existing residents currently rely on the Highlands for water supply and millions more in the future will need a source of safe drinking water. The Legislature enacted the Highlands Water and Protection Act (hereinafter "Highlands Legislation" or "Highlands Act") to advance this goal. The Highlands Act sought to advance this goal by creating the Highlands Council and charging it with a vitally important task: the development of a regional master plan ("RMP") based upon a careful inventorying of resources to protect the ecosystems that will in turn protect the water sources. The Highlands Legislation then required or encouraged the 88 municipalities in the Highlands Region to conform their land use policies to the RMP.

Given the importance of securing plan conformance to solving the health and safety issues facing the community, this affordable housing plan is subject to change based upon the Borough's efforts to secure plan conformance. Any affordable housing plan must necessarily take into account the important principles established by the RMP, including individual community growth capacity limits, resource protection goals,

² NJ Administrative Code: October 16, 2016 - In accordance with N.J.S.A. 52:14B-5.1b, Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, expires on October 16, 2016. See: 43 N.J.R. 1203(a).

policies and objectives that the Highlands Council identified in response to the Legislature's directives in the Highlands Act.

Mandatory & Statutory Contents of the Housing Plan Element and Fair Share Plan

- Municipal Land Use Law (N.J.S.A. 40:55D-28b.(3))
- NJ Fair Housing Act (N.J.S.A. 52:27D-310. a. – f.)

At N.J.S.A. 40:55D-28.b(3), the Municipal Land Use Law identifies the following requirements for a Housing Plan Element:

(3) A housing plan element pursuant to section 10 of P.L.1985, c.222 (C.52:27D-310), including, but not limited to, *residential standards and proposals for the construction and improvement of housing*;

The Fair Housing Act at N.J.S.A. 52:27D-310, Essential components of a municipality's housing element, states that: "A municipality's housing element shall be designed to achieve the goal of access to affordable housing to meet present and prospective housing needs, with particular attention to low- and moderate income housing, and shall contain at least:

(b) A municipal housing element shall be designed to achieve the goal of access to affordable housing to meet present and prospective housing needs, with particular attention to low and moderate income housing and shall contain at least:

a. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated; , and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards;

b. A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;

c. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;

d. An analysis of the existing and probable future employment characteristics of the municipality;

e. A determination of the municipality's present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing; and

f. A consideration of the lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing.

These mandatory requirements of the M.L.U.L and the Fair Housing Act are addressed below:

N.J.S.A. 52:27D-310.a. An inventory of the municipality's housing stock

This is provided in the attached Appendix A.

N.J.S.A. 52:27D-310.b. A projection of the municipality's housing stock

From 2000 through 2014, Chester Borough issued 60 certificates of occupancy (CO's) for residential development during the 15-1/2 year period.

**Table 1: Chester Borough's
Residential Certificates of Occupancy and Building Permits Issued
1/1/2000- 5/31/2015**

Year	Certificate of Occupancy (Units)	Demolitions (Units)
2000	7	2
2001	11	0
2002	2	0
2003	0	0
2004	2	0
2005	0	3
2006	2	1
2007	17	1
2008	11	0
2009	2	0
2010	3	0
2011	1	1
2012	0	0
2013	2	0
2014	0	0
Total	60	8

Source: NJDCA NJ Construction Reporter

Residential certificates of occupancy issued between 2000-2014 total 60. However, during that time the Borough issued a total of 8 demolition permits. CO's issued for residential development do not always equate to new residential units because construction officials issue certificates of occupancy at the end of the construction

process, when buildings are complete and ready for occupancy³, which includes new units as well as substantial renovation of existing residential units and residential additions. Nevertheless, the 8 CO's issued since 2009 indicate a severely slowing pace of residential development related to build-out of a 2004 subdivision approval and redevelopment. Slow growth is expected to be the new normal, which will be further influenced by build-out and growth capacity limits identified through Highlands plan conformance.

New home construction in the Borough since 2005 was primarily related to a 12 unit residential subdivision on Old Gladstone Road (Windy Top Farm) and a 10-unit apartment complex on Main Street (Black River Apartments) that includes an affordable rental apartment, which the Borough secured in connection with COAH's growth share provisions. Additional CO's issued for redevelopment projects include the substantial rehabilitation and reconstruction of 3 housing units in the Borough's historic district.

N.J.S.A. 52:27D-310.c. An analysis of the municipality's demographic characteristics

Provided in the attached Appendix A.

N.J.S.A. 52:27D-310.d. An analysis of the existing and probable future employment characteristics of the municipality

Appendix A documents the employment characteristics as detailed in the 2010 Census. Table 2 provides the actual non-residential growth within the Borough between 2000 and 2013, the last year for which DCA data is available.

**Table 2: Non-Residential Actual Growth by Use Group
By 2000-2013 Certificates of Occupancy Issued**

Source: NJ Department of Community Affairs

Year	Office (Sq. Ft)	Retail (Sq. Ft)	A-3 (Sq. Ft)	Multifam. Dormitory	Hotel/ Motel	Educational (Sq. Ft)	Storage	# Bldg. Demo's Permits
2000	0	6,801	0	0	0	0	0	1
2001	16,880	0	0	0	0	0	0	0
2002	6,982	0	0	0	0	3,600	0	2
2003	0	0	0	0	0	0	0	0
2004	6,981	7,958	7,845	0	0	0	0	3
2005	0	0	0	0	0	0	0	0
2006	0	0	144	0	0	3,600	2,766	0
2007	11,014	18,617	0	0	1,308	0	0	2
2008	960	0	0	9,130	0	0	0	0
2009	9,926	0	0	0	0	0	0	0
2010	0	0	0	0	0	0	0	1
2011	0	0	0	0	0	0	0	1
2012	0	0	0	0	0	0	0	2
2013	0	0	0	0	0	0	0	0
2014	0	0	0	0	0	0	0	0

³ New Jersey Department of Community Affairs – NJ Construction Reporter

TOTAL 52,743 33,376 7,989 9,130 1,308 7,200 2,766 9

Office development led the field in non-residential development in the Borough with a total of 52,743 sq. ft. receiving certificates of occupancy since 2000. Retail space receiving certificates of occupancy followed at 33,376 sq. ft., then followed by 9,130 sq. ft. of multi-family/dormitory space. 7,989 sq. ft. of A-3 Assembly space and 7,200 sq. ft. of educational space also received certificates of occupancy. In all, the last several years have seen no new non-residential development in the Borough and this trend is expected to continue, given the Borough's relatively "built-out" character. As a result, no significant employment growth is anticipated during the next 10 years and employment in the Borough is expected to remain relatively stable.

N.J.S.A. 52:27D-310.e. A determination of the municipality's present and prospective fair share for low and moderate income housing

The FHA provides that the municipal affordable housing obligation consists of two components – "**the present and prospective need**", which the Legislature specified in its findings at N.J.S.A. 52:27D-302, which states,

"a. The New Jersey Supreme Court, through its rulings in *South Burlington County NAACP v. Mount Laurel*, 67 N.J. 151 (1975) and *South Burlington County NAACP v. Mount Laurel*, 92 N.J. 158 (1983), has determined that every municipality in a growth area has a constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of its region's **present and prospective needs** for housing for low and moderate income families."

Consistent with this finding the Legislature required COAH to "adopt criteria and guidelines for: (1) Municipal determination of its **present and prospective** fair share of the housing need in a given region which shall be computed for a 10-year period." N.J.S.A. 52:27D-302 c.1

In Mount Laurel IV, the Supreme Court directed each municipality to also address its "**prior round**" obligations as COAH "had established in the second round":

"One, our decision today does not eradicate the prior round obligations; municipalities are expected to fulfill those obligations. As such, prior unfulfilled housing obligations should be the starting point for a determination of a municipality's fair share responsibility. Cf. In re Adoption of N.J.A.C. 5:96 & 5:97, supra, 416 N.J. Super. at 498-500 (approving, as starting point, imposition of "the same prior round obligations [COAH] had established as the second round obligations in 1993")." [see page 30 of the decision]

The Supreme Court did not expand the constitutional obligation, as defined by the Legislature, to impose an obligation for any obligation that some argue was created for "the gap" – the period between 1999, the end of Round 1, and July 1, 2015, the period generally being used to define the commencement of the 10 year prospective period. The

issue of whether municipalities have an obligation for the gap is a matter of ongoing litigation.

Step 1-The Initial Determinations Of Present and Prospective Need Plus The Prior Cycle Obligations

In light of the Legislature's definition of the fair share obligation as consisting of the "**present and prospective need**" and the Supreme Court's imposition of the obligation for the "**prior round**", the starting point for extrapolating the Borough's obligations is to identify the following three components of the need:

1. Prior Round Obligation (Rounds 1 and 2)
2. Round 3 Present Need
3. Round 3 Prospective Need

As to the prior round obligation, COAH reports it to be 16, Econsult Services, Inc. ("Econsult"), the expert retained by a consortium of over 280 municipalities, including Chester; and David N. Kinsey, the expert for Fair Share Housing Center ("FSHC"), agree that 16 is the correct number to use for the prior round obligation.

As to the Round 3 present need, Econsult reports a number of 11 and David N. Kinsey reports a number of 10 by comparison.

While there is no real dispute about the prior round obligation and the round 3 present need obligation, the Round 3 prospective need obligation is sharply in dispute. Econsult sets the number at 50 based upon a very recent report, dated March 24, 2015 while FSHC's expert sets the number at 131. This difference arises in large part based upon a dispute regarding "the gap". As discussed below, however, both analyses do not address the requirements of the Legislature in the Highlands Act – a legislative command that must be addressed

The Highland Act

In N.J.S.A. 13:20-23 of the Highlands Act, the Legislature specifically asserted that COAH "shall take into consideration the regional master plan prior to making any determination regarding the allocation of the prospective fair share of the housing need in any municipality in the Highlands Region under the "Fair Housing Act" P.L.1985, c.222 (C.52:27D-301 et al.) for the fair share period subsequent to 1999." The Appellate Division upheld validity of the Highlands RMP, Executive Order 114 and the October 30, 2008 Memorandum of Understanding between COAH and the Highlands Council:

Accordingly, we affirm the validity of the Highlands RMP, Executive Order 114 and the October 30, 2008 MOU. We dismiss as moot the part of appellant's appeal that challenges the validity of the COAH resolutions

extending the deadline for the filing of petitions for substantive certification by Highlands Region municipalities.⁴

[In re Highlands Master Plan, 421 N.J. Super. 614, 632 (App. Div. 2011)].

The RMP provides the basis for evaluating build out for each of the 88 Highlands municipalities. The data and research that were used to create the RMP is more detailed and more comprehensive than any analysis that has ever been conducted in the state. This information, as well as the underlying mapping that depicts the important resources of the region, led to the creation of the RMP goals and policies governing land use in the region. One of the basic products of this analysis is the individual municipal build-out model. This planning tool was created to identify development capacity for each of the 88 Highlands municipalities that reflects the implementation of the RMP and the underlying scientific research that supports it. The build out model is based upon a comprehensive set of criteria that determines the rational development capacity for each community. The Highlands Act requirement to consider the regional master plan necessarily requires a consideration of the build out analysis (a) that the Highlands Council prepared to assist COAH in determining the prospective need in consideration of the RMP; and (b) that COAH did consider in determining the prospective need.

Given the importance of the build out analysis in the RMP, any court should take into account that analysis in determining the prospective need of a Highlands municipality. At the very least, the build out analysis should be used in conjunction with the municipality's right to an adjustment to its prospective need. Applying 20 percent of the build out, which in the case of Chester Borough works out to a number of 2 units (20 percent of the build out number of 9 units equals 1.8, rounded up to 2) identifies the Borough's prospective share based upon consideration of the RMP. This 20 percent requirement is consistent with the Legislature's requirement in the Fair Housing Act that 20 percent of all residential projects in the Highlands be reserved for low and moderate income households unless the project is economically unfeasible with a set-aside requirement. N.J.S.A. 52:27D-329.9(a)

The build out figure in the RMP should serve as a cap to the prospective need, much like a cap to the new construction component of an obligation based upon the lack

⁴ The Court also stated: "We invalidate the August 12, 2009 COAH resolution and accompanying Guidance document on the ground it is an administrative rule COAH was required to adopt in accordance with the APA." The resolution is insignificant because it extended the deadlines for Highlands municipalities to file Round 3 plans with COAH and those issues are now moot. Also, the guidance document the court invalidated called for, in essence, applying a 20 percent limit to the build-out to determine a municipality's Round 3 obligation. However, the Court invalidated the Guidance documents on procedural grounds only: namely, for COAH's failure to implement its policies through formal rule-making. The Supreme Court in Mount Laurel IV indicated it would not punish municipalities for COAH's failure to do its job and adopt rules in a timely fashion. The Supreme Court also emphasized its intent to defer to the Legislature throughout Mount Laurel IV. Therefore, COAH's failure to adopt regulations should not obscure that the Legislature demands a consideration of the s RMP in conjunction with determining the prospective need obligation of municipalities "**for the fair share period subsequent to 1999**".

of vacant developable land. In this regard, Econsult has allocated a prospective need of 50 to Chester utilizing methods similar to those used in Rounds 1 and 2 in accordance with the charge of the Supreme Court in Mount Laurel IV. It did not, however, utilize the build out analysis in determining prospective need. Econsult notes that it is simply establishing the raw number and that municipalities are free to seek adjustments or credits against that number See March 24, 2016 Econsult Solutions Report at Page 6⁵. Pursuant to the authority provided in N.J.S.A. 52:27D-307(c), COAH has always had a process for a municipality to secure an adjustment to the new construction component of its fair share. The very purpose of a vacant land adjustment is to determine the development capacity within a given municipality, assign a density to each piece of vacant or underdeveloped land suitable for inclusionary development and assume a twenty percent set-aside. Again, step one in this process is to determine how many suitable vacant and underdeveloped acres are within the municipality in order to obtain the given municipality's capacity. In this case, the Highlands Council, in fulfillment of its duties to prepare a RMP that includes an inventory of resources, has already determined that the Borough's capacity is 9 units. This number, which could change if the Highlands Council updates Chester's Build Out Report, should then be multiplied by .2 to assume a twenty percent set-aside to produce an RDP of 2 units.

A Next Possible Step-The Adjustment Process

If the Court follows the mandate of the Highlands Act and takes the Highlands RMP and build out number into account, that would result in a prospective need obligation of 2 units because the RMP provides a build-out number for the Borough of 9 units. In the absence of taking the step mandated by the Legislature utilizing the build out figure produced in conjunction with the RMP, the Borough faces a Round 3 obligation of between 50 and 131. In such an event, the Borough should be entitled to adjust the initially calculated prospective need to 2 units. In this regard, it is not at all unusual that a municipality lacks sufficient vacant developable land to satisfy the obligation that is initially assigned to the community. Under such circumstances, the municipality is entitled to seek a "vacant land adjustment" to the new construction component of its fair share so that a determination can be made of a number that is known as the municipality's "realistic development potential" or "RDP". The realistic development potential represents the number of affordable units that could realistically be anticipated

⁵ The Econsult report at Page 6 provides as follows: "All calculations are based on data sets available uniformly on a statewide basis. At the municipal level, it is possible that there may be more accurate data than that available on a statewide level. Adjustments on the municipal level based on more accurate or recent data are outside the scope of this report, but may be addressed on a case by case basis through the municipal housing plan compliance process. In addition, this report does not quantify housing activity, credits or adjustments obtained by municipalities with respect to their assigned Prior Round (1987-1999) obligations. Nothing in this report should be construed to limit appropriate recognition of this activity, credits and adjustments within the municipal compliance process. FN" The footnote identified in the Econsult report reads as follows: "The Municipal Joint Defense Group engaged Econsult Solutions to prepare this report. Econsult did not have a list of the participating municipalities at the time this report was issued."

to be constructed if the municipality rezoned every last vacant or underdeveloped property at a density of at least 6 units per acre and imposed a 20 percent set-aside. The RDP is such an important number because applicable laws have required municipalities to create a realistic opportunity for satisfaction of the realistic development potential either by rezoning the land that contributed to the RDP or by using any of a combination of techniques that the municipality decides to use to satisfy its obligations.

COAH has developed protocols that have been in place virtually unchanged for roughly three decades to provide guidance how to extrapolate a municipality's realistic development potential. In essence, a municipality begins by inventorying all vacant and underdeveloped land. Then the municipality may remove some or all of these sites from the inventory based upon various factors spelled out in COAH regulations. In this way, an inventory of all vacant and underdeveloped land that might reasonably create a realistic opportunity for affordable housing if zoned for inclusionary development is established. The process then requires the assignment of an appropriate density to each remaining site or portions of each site in the inventory. The number of affordable units each remaining site could generate is determined by multiplying the portion of the site that has not been excluded from the inventory times the density times 20 percent (i.e. acres x density x .2). The municipality then has a choice. It can satisfy its realistic development potential by zoning the sites in the manner the RDP was determined; or it can satisfy its obligations in another way and preserve its right to control the zoning of the sites that contribute to the RDP. N.J.A.C. 5:93-4.2 (g).

Typically, Chester, like any other municipality, would rigorously follow the COAH protocols. However, in this instance, it is essential to take into consideration that the Borough is a Highlands community that is participating in a process encouraged by the Legislature to secure plan conformance.

To elaborate, Chester Borough is nearly fully developed and it is located in New Jersey's Highlands Region. The Highlands Act divides the Region into two areas, the Preservation Area and the Planning Area. According to the Highlands Act, the Borough is designated Planning Area. In many instances, the environmentally sensitive areas and natural resources that are inventoried in the Region are indistinguishable between areas designated Preservation Area or Planning Area. The RMP identifies subcategories of management areas within the Highlands Region, entitled "Land Use Capability Zones," one of which is the "Protection Zone"; and the Highlands' policies for the "Protection Zone" are substantially similar throughout the Region, irrespective of whether the designation is in the Planning Area or the Preservation Area. The Highlands Act created the NJ Highlands Council, and charged the Council with preparing the RMP including a resource assessment that establishes the basis for the RMP. Municipalities in the Highlands Region designated Planning Area, such as Chester Borough, may conform their local Master Plans and ordinances to the RMP and the Borough of Chester has initiated the process of seeking plan conformance in order to address the health and safety issue described above with failed septic systems. Since this is a draft Plan and the Borough is in the plan conformance process and since the Borough will undoubtedly secure plan conformance before this Plan is final, this Plan assumes that the Borough is a community that has achieved plan conformance and consistency with the RMP.

The Highlands RMP resource assessment is the basis for the “Land Use Capability Zones” or management area designations throughout the region. These designations are based upon a wide variety of factors that include, but are not limited to taking into account the character and extent of development, the presence of Highlands natural resources and the protection and maintenance of Highlands natural systems, which is the basis of the overall objective of maintaining the water supply for over 4,000,000 present residents of New Jersey and millions more in the future. In fact, the RMP designations are the result of an evaluative process known as the Land Use Analysis Decision Support (LANDS) model. The LANDS investigative tool and data gathering process is perhaps the most advanced and detailed basis for land use analysis in the State. The Highlands evaluation was conducted without regard to the Preservation / Planning area split, as a “blind to the line” process because the entire region is recognized for its environmental significance and Highlands natural resource characteristics commonly occur across the boundary. Thus, the Highlands Region and the protection of the natural systems that establish the source for this very important public resource serves a very important public health and safety purpose of New Jersey’s existing and future population that is based on scientific analysis of the region’s resources. Policies derived from that very detailed analysis, are consistent with the authorizing legislation, the Highlands Act, that the Legislature adopted to protect the drinking water for now and in the future for millions of New Jersey citizens. The Act states that:

2. The Legislature finds and declares that the national Highlands Region is an area that extends from northwestern Connecticut across the lower Hudson River Valley and northern New Jersey into east central Pennsylvania; that the national Highlands Region has been recognized as a landscape of special significance by the United States Forest Service; that the New Jersey portion of the national Highlands Region is nearly 800,000 acres, or about 1,250 square miles, covering portions of 88 municipalities in seven counties; and that the New Jersey Highlands Region is designated as a Special Resource Area in the State Development and Redevelopment Plan. [N.J.S.A. 13:20-2].

The Highlands RMP recognizes Chester Borough’s environmentally sensitive and natural resource base through its resource mapping and attendant management area designations that are identified as Land Use Capability Zones, which primarily include:

- Existing Community Zone that recognizes existing developed areas of the Borough;
- Existing Community Environmentally Constrained subzone, which within which natural resource goals and policy objectives override development and redevelopment objectives.
- Protection Zone that recognizes environmentally sensitive areas of the Borough where the natural resource base should be preserved to maintain its natural function and contributory functions to the overall objective of protecting and maintaining Highlands natural resources and protecting water supply; and

Redevelopment Plan, the Highlands RMP, and the County Wastewater Management Plan.

Whether the TF Site is suitable impacts the RDP the Court assigns to the Borough if the Court chooses not to follow the Highlands Act requirement to determine the Borough's prospective need subsequent to 1999 after taking into consideration the Highlands RMP and build out analysis. Consequently, as more fully explained in the RDP Report, alternate calculations are identified through COAH's traditional adjustment process. One alternative assumes that the Court will agree with the Borough's position that the site is unsuitable for inclusionary development and consequently assigns a 0 unit RDP to the site. The other alternative assumes that the Court will agree with TF's position that the site is suitable for inclusionary development and assign an RDP to the site. More specifically, if the assumption is that all 35.37 acres of the TF Site is suitable for inclusionary development – a proposition with which the Borough vigorously disagrees – the site will only generate an RDP of 42.4 units: 35.37 acres times six units per acre times a 20 percent set-aside.

To be clear, for the reasons set forth below, the Borough completely disagrees that the entire site is suitable for inclusionary development. However, even if the entire site is not disqualified, it is certainly expected that some portion of the site will be found to be unsuitable and that the site will therefore generate nothing close to a 42.4 RDP. The only reason the calculation is identified is that *if the Court were to make such a determination, then the Borough has a means of addressing the situation* with activities authorized in the rules, as provide in N.J.A.C. 5:93-4.2(g).

If, for whatever reason, the Court determines the Borough's prospective need without regard to the RMP and the build out analysis, and if the Court does not take into account the RMP and build-out number when evaluating the Borough's right to an adjustment, the Borough's RDP will range from 13 if the TF Site is found to be completely unsuitable to 55 units if the entire TF Site is found to be suitable. In either event, this plan addresses the Borough's RDP and, depending on the final obligation, generates a surplus that can be allocated to any additional obligation the Court may determine exists.

Summary of Fair Share Analysis

Based upon its expert's report, the Borough has a prior round obligation of 16 and a Round 3 present need obligation of 11. As to the Borough's prospective need for Round 3, the Court, in accordance with the mandate of Highlands Act, should take the regional master plan and the build out analysis into account. That analysis yields the Borough a prospective need of 2 units. Without relying upon the RMP and build out analysis, the Borough would face a Round 3 obligation ranging from 50 to 131 units; and it would be entitled to an adjustment of its obligations. If the Court finds the TF Site to be unsuitable, as the Borough contends, the RDP would be 14 units. If the Court finds the TF Site to be suitable, as TF contends, the RDP would be 55 units.

The Borough's response to its fair share obligation is identified below.

N.J.S.A 52:27D-310.f. A consideration of the lands and of the existing structures most appropriate for construction of conversion to, or rehabilitation for, low and moderate income housing, including consideration of lands of developers who have expressed a commitment to provide low and moderate income housing

Chester Borough seeks to address its Mount Laurel obligations through a combination of techniques, which recognize existing affordable housing resources that address the Borough's prior round obligations and existing and proposed projects that will address present and future affordable housing needs in the Borough. The Borough's Fair Share Plan identifies existing affordable housing and vacant, previously developed sites at locations and areas within the Borough that are appropriate for affordable housing. The chief objective is to provide affordable housing embedded within existing residential and mixed-use neighborhoods among Chester Borough's residents in a manner consistent with the goals and policies of the Highlands Act and plan conformance with the Highlands Council. In this way, housing opportunities will be effectively diversified and interspersed among community resources, including active recreation parks, commercial services, houses of worship and with connectivity to schools and other civic facilities and resources, which best reflects the quality of life enjoyed by the Borough's population.

As noted above, the owner of the site commonly referred to as the Turkey Farm Site made a proposal to develop its site for inclusionary development.

The Site

The Site consists of a total of 8 tax parcels, consisting of

- (a) four parcels located on Mill Ridge Lane that are vacant undeveloped lots in a five-lot residential subdivision, which are each approximately 2 acres in area (Block 101, Lots 12.07, 12.08, 12.10 & 12.11); and
- (b) a second adjacent tract approximately 26.9 acres in area located on the corner of Route 206 and West Main Street (Block 101, Lots 13 – 16), which are primarily vacant.

As to the Mill Ridge Lane site, the proposal, discussed below, contemplates development on a fifth parcel, Block 101, Lot 12.09, which is currently occupied by a recently constructed single-family detached dwelling under private separate ownership. For ease in reference, this plan will refer to this site with all five lots as "TF-Parcel A.

As to the second 26.9 acre site on Route 206 and West Main Street, approximately 12.9 acres devoted to a vacant restaurant, a vacant single-family dwelling and a farm, all of which are designated historic. An additional approximately .25 acres of the site is occupied by a cell tower and equipment compound. The remaining approximately 14 acres of the site is vacant and undeveloped. For ease in reference, this plan will refer to this site with 26.9 acre site as "TF-Parcel B.

For ease in reference, this plan will refer to the combined properties, TF-Parcel A and TF-Parcel B, as the “Turkey Farm Site” or “TF Site” even though only the second 26.9 acre site (TF Parcel B) is commonly referred to and known regionally as the Turkey Farm.

The Proposal

The owners of the Turkey Farm Site submitted a proposal to the New Jersey Department of Environmental Protection for the development of the site. That proposal seeks the right to construct 144 units with a 20 percent set-aside of 29 affordable units on TF-Parcel A and to use TF-Parcel B to serve as a site for a sewerage treatment plant and disposal fields. More specifically, on TF-Parcel A, the owner propose to construct four (4) 36-unit apartment buildings with a clubhouse, tot lot and sport court with associated driveways, parking and drainage facilities. On TF-Parcel B, the owners propose to use 4.6 acres to 6.9 acres of the site to construct a sewerage treatment plant and drainage disposal fields.

The Borough’s Response

The Borough is committed to satisfying its responsibilities voluntarily and has, in accordance with law, considered the proposal for the Turkey Farm Site. The Borough opposes the inclusion of the proposed project in its plan or the use of the site for inclusionary development. Indeed, an examination of the plans at different levels of government all discourage the intense development of the subject property. The State Development and Redevelopment Plan designates the site as Planning Area 5, the designation for environmentally sensitive lands. The Highlands Council designates the are of the site proposed for development as Protection Zone in its regional master plan. The County Wastewater Management Plan does not authorize the extension of sewer service into the area.

The Borough has commissioned a suitability analysis that further highlights the constraints on the site. The study, to be supplied, further explains why the site is unsuitable for inclusionary development.

Even if the site qualified as suitable despite the compelling reasons to find the site unsuitable, the Borough chooses to satisfy its obligations with other sites as it has every right to do so. In this regard, N.J.A.C. 5:93 -4.2(g) provides as follows:

The municipality may address its RDP through any activity approved by the Council, pursuant to N.J.A.C. 5:93-5. The municipality need not incorporate into its housing element and fair share plan all sites used to calculate the RDP if the municipality can devise an acceptable means of addressing its RDP. The RDP shall not vary with the strategy and implementation techniques employed by the municipality.

COAH has continuously maintained this policy, consistent with the principle, that municipalities should have the power to decide how best to satisfy their responsibilities in the absence of the award of site specific relief.

The evaluation of land and sites appropriate for affordable housing in Chester Borough were selected by applying sound planning principles that seek to locate affordable housing in appropriate locations within the Borough. Chester Borough's Fair Share Plan sites are (1) existing affordable housing sites or (2) vacant redevelopment sites. Two sites are located within existing developed areas of the Borough that are served by sidewalks with convenient accessibility and connectivity to community resources, including commercial, recreation, civic, cultural, and religious uses in the community without affordable housing residents having to cross crossing the major state arterial highway (US 206) that transects the Borough from north to south to access these destinations in the community. A third site is US Veterans apartments on a redevelopment site located on Route 206, which will provide van transportation for the Veterans that will occupy apartments.

2016 Fair Share Plan

As indicated above, the Borough's Round 3 obligations consist of the following three components of need:

Prior Round

- 1) Prior Round Obligation (1987-1999): 16 units – The Prior Round consists of the sum of the first and second round obligations, which were identified by COAH in 1993. The Borough's response to the prior round responsibilities is identified below.

Present Need

- 2) Rehabilitation Obligation: 11 units – Chester Borough will establish a municipal rehabilitation program and continue participation in the Morris County US HUD CDBG HOME Rehabilitation Program to address its 11 unit Present Need obligation.

Round 3 Prospective Fair Share

- 3) Prospective Share subsequent to 1999: 2 units – Chester Borough's response to its Prospective Fair Share subsequent to 1999 is identified below.

Prior Round Compliance Plan

Prior Round Compliance Parameters – Prior round compliance requires consistency with prior round compliance parameters, which include the following:

Prior Round -- Compliance parameters, minimums/maximums:

1. Rental minimum: .25 x 66 = 16.5 required
(N.J.A.C. 5:93-5.15 – 25% of the obligation)
2. Rental bonus maximum: .25 x 66 = 16.5 permitted
(N.J.A.C. 5:93-5.15(d) 3. – 25% of the obligation)
3. Age-restricted maximum: .25 x 66 = 16.5 permitted
(N.J.A.C. 5:93-5.14(a)1. – 25% of the obligation)

Chester Borough’s prior round compliance plan addressing the Borough’s prior round obligation of 16 units assigned by COAH in 1993 is comprised of affordable housing credits for completed units, as indicated in the table below:

Chester Borough’s Prior Round Affordable Housing Inventory

Prior Round:	16 units
Compliance Plan:	16 credits and bonus credits; 15 surplus age-restricted credits
Chester Borough Prior Round Compliance	
6	Project Hope, Inc.(91 Oakdale Road, Block 110, Lot 13, 6-bedroom group home) 6 bedroom existing group home
4	Bonus (N.J.A.C. 5:93-5.15(d) ⁶
1	Trematore (76 Main Street, LLC, Block 129, Lot 9; 1-rental apartment) 1 Existing rental apartment
4	Chester Area Senior Housing, Corp. (“CASH”) (245 Main Street, Block 110, Lot 48; 19-age-restricted apartments - 4 prior cycle .25 maximum (16 x .25) = 4) 19 units Existing
1	Asdal Development, LLC (265 Main Street) Block 110, Lot 38; inclusionary apartment in 9-unit apartment - 8 market-rate units plus one (1) affordable unit. 1 Existing rental apartment
16	TOTAL CREDITS AND BONUS CREDITS ADDRESSING PRIOR ROUND
+15	Surplus Age-restricted credits available for Round 3

1. Project Hope Inc., is located at 91 Oakdale Road block 110, lot 13, it is a 6-bedroom group home⁷ for special needs persons and is located within a residential neighborhood surrounded by single-family detached dwellings. The site is designated Existing Community in the Highlands RMP. The project was initially created as single-family dwelling conversion to a four bedroom Group Home, but was expanded to create additional living accommodations in approximately 2010.

- 6 credits
- 4 bonus credits

⁶ N.J.A.C. 5:93-5.15(d)1. provides that “A municipality shall receive two units (2.0) of credit for rental units available to the general public.”

⁷ Morris County DDD confirmation on 3/21/16.

2. The “Trematore” apartment is located at 76 Main Street, on Block 129, Lot 9. It is one rental apartment in a mixed-use configuration that includes residential additional non-affordable residential apartments on the second floor and commercial uses on the first floor of the building. The location is designated Existing Community Zone in the Highlands RMP. It is in Chester Borough’s downtown historic Main Street district, which is also the commercial center of the Borough.
 - 1 credit

3. Chester Area Senior Housing Corporation, or “CASH,” is located at 245 Main Street on block 110 lot 48. The site is designated Existing Community Zone in the Highlands RMP. This is a 38 unit age restricted apartment complex, all very low-income. This project consists of credits as it was built between 1980 and 1986. It was a partnership between Chester Borough and Chester Township. One-half, or 19, of the 38 age restricted apartments are creditable toward Chester Borough’s affordable housing obligations, however, the 25% age-restricted cap in the rules has prevented the municipality from applying all of the credits to the Borough’s affordable housing obligations in the prior round.
 - 4 credits
 - 15 surplus credits for Round 3

4. Asdal Apartment is located at 265 Main Street on Block 110 Lot 38 is not a traditional inclusionary development. The site is designated Existing Community Zone in the Highlands RMP. The apartment is one in a 9 unit apartment complex. The inclusionary formula applied to this project was the inclusionary set aside identified at the time Chapter 94 regulations were in effect, which is the time that the project came before the Zoning Board for site plan approval. Under the then growth share regulations, the Chester Borough Zoning Board required the developer to provide one affordable unit, non age restricted, in this otherwise age-restricted development.
 - 1 credit

The inventory above identifies a total of 12 credits and 4 bonus credits to address Chester Borough’s 16-unit prior round obligation and entirely comprised of rental units. 15 surplus credits of age-restricted rental housing are available to address the Borough’s Round 3 prospective fair share.

Chester Borough’s Prior Round Compliance Plan is consistent with prior round compliance parameters, as follows:

1. Rental obligation – 25% required: ($16 \times .25 = 4$)
 - 4 rental units required vs. 12 units provided (all rental units);
2. Rental bonus – 25% permitted: (4 units permitted)
 - 4 bonus credits permitted vs. 4 bonus credits claimed:
 - 4 bonus credits on Project Hope rental units.
3. Age-restricted (AR) max.– 25% permitted: ($16 \times .25 = 4$)
 - 4 age-restricted units permitted vs. 4 age-restricted units provided.

- 4 Chester Area Senior Housing (CASH) age-restricted rental units; and
4. Age-restricted (AR) bonus max. – 1.33 per unit shall be granted; however no more than 50% of the rental obligation (4 x .5) = 2) are permitted, further, no rental bonus shall be granted for rental units in excess of the rental obligation defined (4 rental bonus cap):
- 2 AR bonus permitted vs. zero (0) claimed (4 rental bonus cap, #1 above)

Present Need Compliance Plan

Chester Borough’s Present Need (rehabilitation) Share has been estimated at 11 units for Round 3. The Borough will conduct a structural conditions survey of its housing stock to verify the 11-unit estimate to determine the actual number of substandard housing units occupied by low and moderate income households. The Borough’s Rehabilitation program will address the actual Present Need determined through the structural conditions survey.

To address the present need, as ultimately determined, the Borough will continue participation in the Morris County CDBG Home Program as a component of the Borough’s rehabilitation program. The Borough will provide additional funding, as may be necessary, through a combination of (1) proceeds from the Borough’s affordable housing trust fund, (2) future development fee collections, (3) outside funding that may be available, and (4) through bonding that may be required to address any shortfall in funding that may be required.

Round 3 Compliance Plan

Before explaining the Borough’s approach to Round 3, it bears emphasis that this draft plan has been prepared in the absence of a determination of its fair share obligations. Consequently, Chester Borough reserves the right to adjust the plan accordingly once the court determines the Borough’s fair share.

After considering the RMP, Chester Borough’s Round 3 prospective share is established at 2 units as explained in more detail in the RDP report. Chester Borough’s Fair Share Plan includes a variety of housing projects that address various affordable housing needs including municipally sponsored projects and zoning to create additional opportunities for affordable housing in Chester Borough. The Borough’s Round 3 compliance plan is set forth in summary form in the table below, and is detailed in the narrative following the summary.

Chester Borough’s Round 3 Fair Share Plan

Prospective Fair Share Subsequent to 1999: “2” units
Compliance Plan: 55 credits and units

Units / Project:
credits

	15	CASH – Chester Area Senior Housing – existing age-restricted apartments, Block 110, Lot 48, 245 Main Street. 19 age-restricted rental units (4 prior round /15 available for Round 3)
	4	Community Hope Apartments – Municipally sponsored project including land and financial contributions to construct (4) very-low income affordable apartments for veterans, Block 101, Lot 11, 235 Route 206, Borough owned land – Proposed & under contract –
	16	Homeless Solutions Apartments – Municipally sponsored project including land and financial contributions to construct 16 affordable apartments, Block 119, Lot 8, 300 Main Street, Borough-owned land Proposed & under contract –
	10	Zoning Ordinance amendments to permit affordable mixed use apartments in the downtown Main Street and adjacent commercial areas.
	10	Accessory Apartment Program – Chester Borough will establish a 10 unit accessory apartment program as per provisions of N.J.A.C. 5:93-4.2(h).
Total:	55	15 existing age-restricted units 20 units municipal sponsorship contract 20 units zoning amendments
Bonus Credits:	25 ⁸	Actual bonus credit calculation to be made upon a final determination by the Court on the Borough’s Round 3 Prospective Need Obligation. See Footnote
Total with Bonus Credits:	80	

Chester Borough’s response to its Round 3 affordable housing obligation summarized above is described in the following narrative. Some of the compliance mechanisms identified in the Borough’s Fair Share Plan require municipal subsidy, which will be provided through a combination of (1) proceeds from the Borough’s affordable housing trust fund, (2) future development fee collections, (3) outside funding that may be available, and (4) through bonding that may be required to address any shortfall in funding that may be required. The Borough will adopt a resolution of intent to bond for any shortfall in funding that may exist once the Borough’s determination of its prospective fair share subsequent to 1999 has been determined by the Court and the Court approves the Fair Share Plan that responds to that determination.

1. Chester Area Senior Housing Corporation, or “CASH,” is located at 245 Main Street on block 110 lot 48. The site is designated Existing Community Zone in the Highlands RMP. This is a 38 unit age restricted apartment complex, all very low-income. It was a partnership between Chester Borough and Chester Township. One-half, or 19, of the 38 age restricted apartments are creditable toward Chester Borough’s affordable housing obligations, however, the 25% age-restricted cap in the rules has prevented the municipality from applying all of the credits to the Borough’s affordable housing obligations in the prior round. 4

⁸ Bonus Credits are subject to calculation once a final determination on the Borough’s Round 3 obligation is rendered by the Court; however, the regulations allow for:

- o .33 bonus credits per age-restricted unit (.33 x 15 = up to 5 bonus available for CASH);
- o 1 : 1 rental bonus (1 x 20 = 20; up to 20 available for Community Hope & Homeless Solutions)
- o Very low-income bonus for very low-income units not addressing the rental obligation (CASH (all V-LI up to 15 units) Community Hope (4 V-LI), Homeless Solutions (3-4 V-LI))

The system of bonus credits in the regulations and recognized by the Supreme Court include caps, depending on the number of units identified in the obligation.

credits are applied to addressing the prior round which leaves 15 of the 19 units available as surplus credits from the prior round to address the Round 3 prospective fair share.

- 15 credits (completed)
2. Community Hope Veterans Apartments is a proposed 4-unit rental apartment project for US Veterans that will be located on a vacant commercial redevelopment site acquired by Chester Borough. The site is designated Existing Community Zone in the Highlands RMP. The Borough acquired the site, Block 101, Lot 11 at 235 Route 206, in 2014 to redevelop the site for affordable housing. This site was formerly an Italian restaurant and includes a dilapidated vacant building that has to be replaced, an existing potable well, a septic system and improved gravel parking lot with curbs and drainage. Existing impervious coverage serves as a valuable redevelopment platform to reduce project costs. The improved parking area was constructed in anticipation of redevelopment by a previous owner of the site and Community Hope uses vans to transport Veterans to employment, which are easily accommodated in the parking lot. Chester Borough is under contract to provide Community Hope with the site to construct two 2-bedroom apartments for homeless veterans. The apartments will be very low-income alternative living arrangement rental units. The project will be affordable apartments for US Veterans and will qualify as very low-income housing.
 - 4 units (under contract)
 - 4 rental and/or very low-income bonus credits available
 3. The Homeless Solutions, Inc. apartment project is the result of a development contract with a private, non-profit developer to construct 16 apartments at 300 Main Street on Block 119, Lot 8, which is the site of the former Chester Borough Municipal Building. The site is designated Existing Community Zone in the Highlands RMP. Chester Borough replaced the over-crowded municipal building, police station, and road department maintenance yard and facilities with the acquisition of the Lucent tract, which includes an existing office building that now accommodates municipal offices, police, Public Works and the Chester Board of Education. Chester Borough is under contract with Homeless Solutions, Inc., of Morristown New Jersey, to build 16 rental apartments at 300 Main Street in accordance with UHAC bedroom mix requirements. The project will include: 8 moderate-income rental apartments, 4 low-income rental apartments and 4 very low-income rental apartments.
 - 16 units
 - 16 rental and / or very low-income bonuses available
 4. The Borough will adopt a zoning ordinance amendment to permit affordable mixed-use apartments in the commercial downtown Main Street area and adjacent commercial areas to encourage mixed-use affordable housing and commercial uses, such that residential uses will be permitted to be established above nonresidential ground floor uses. The ordinance will establish the use as a permitted use with no requirement for site plan approval, provided that certain

basic requirements are met, including (1) adequate off-street parking is provided during non-business hours, (2) there is no increase in the footprint of the building except to accommodate access and barrier free access improvements to the affordable unit, and (3) the property owner agrees to and executes the appropriate affordability control as a deed restriction requiring affordable household occupancy. The Borough will provide a municipal contribution toward the creation of a mixed use apartment. The Borough will rely upon affordable housing development fees, in part, to fund the creation of mixed use affordable apartments in the commercial district.

- 10 units

5. An accessory apartment program is proposed for a total of 10 units, which will conform to the regulatory provisions found in COAH's rules for the creation of accessory apartments. The Borough will undertake an affirmative marketing program, including an enhanced outreach to Borough residents to raise awareness of opportunities to create affordable apartments within all existing single-family detached dwelling residential neighborhoods in Chester Borough.

- 10 units

COAH's prior round regulations identify a system of compliance parameters that the municipality must address as part of Mount Laurel compliance. The regulations also identify a system of bonus credits that may be applied to the Borough's compliance plan. Pursuant to the Mount Laurel IV, the trial courts are charged with a final determination of the Borough's Round 3 affordable housing obligations. The compliance parameters and the bonus crediting system in the regulations are calibrated to the municipal fair share. Once the trial court makes a final determination of the Borough's Round 3 fair share, consistency with applicable compliance parameters and entitlement to bonus credits will be demonstrated for the projects listed in Chester Borough's Round 3 compliance plan for a final determination of Mount Laurel compliance by the court. In addition to the bonus credit system in the regulations, the Supreme Court identified certain bonuses that municipalities are entitled to in addressing the municipal obligation, which will also be addressed once the final determination of the Borough's fair share is made by the Court.

In combination, the "approvable, available, developable and suitable" criteria cited at N.J.A.C. 5:93-5.3 (b) establish a realm of planning considerations to designate sites in the Housing Plan that provide a realistic opportunity for affordable housing. The Borough's two proposed projects in the Round 3 compliance plan above, 235 Route 206 and 300 Main Street, are both designated Existing Community Zone in the Highlands RMP and each site meets the realistic development criteria cited above. In addition, the sites meet the Borough's objectives to locate affordable housing within developed areas of Chester Borough that will best serve the Borough future residents. A third site, "CASH" is centrally located in the Borough and is designated "Existing Community Zone" in the Highlands RMP.

Compliance Parameters

The following summary of compliance parameters has been compiled from Mount Laurel IV regarding municipal compliance with Round 3 Mount Laurel obligations:

1. Round 3 Regulations invalidated by the Court are beyond the scope of applicability to evaluating Round 3 compliance as indicated in the Supreme Courts March 15, 2015 decision.
2. The Supreme Court directed trial judges to use approaches similar to those used in Rounds 1 and 2 to determine the present and prospective regional need. However, the Supreme Court simply did not address the Legislature's pronouncement on the Highlands.
3. Family Rental Requirement – the trial courts should recognize the incentive bonuses established by COAH at N.J.A.C. 5:93-5.15, which sought to encourage and incentivize the creation of family rental housing. No “family rental requirement” is embodied in COAH's regulations that have not been invalidated by the Court.
4. Rental Bonus Credits – may be provided pursuant to N.J.A.C. 5:93-5.15(d), as follows:
 1. A municipality shall receive two units (2.0) of credit for rental units available to the general public.
 2. A municipality shall receive one and one-third (1 .33) units of credit for age restricted rental units. However, no more than 50 percent of the rental obligation defined in (a) and (b) shall receive a bonus for age restricted rental units unless:
 - i. The rental units have been constructed prior to the effective date of Chapter 93;
 - ii. The development has valid approval and the developer remains committed to building rental housing as of June 1994; or
 - iii. Any sub. cert. time limit imposed by COAH for constructing the rental units has not expired.
 3. No rental bonus shall be granted for rental units in excess of the rental obligation defined in (a) and (b).
 - a. Note that N.J.A.C. 5:93-5.15, Rental housing, subsection (a) requires that municipalities have an obligation to create an opportunity to construct rental units. For a municipality not receiving an adjustment pursuant to N.J.A.C. 5:93-4.2 (Lack of land), the rental obligation shall equal .25 (municipal pre-credited need - prior cycle credits - impact of the 20 percent cap - the impact of the 1,000 unit limitation pursuant to N.J.A.C. 5:93-14 - the rehabilitation component).
 - b. Note that N.J.A.C. 5:93-5.15 (c) provides that: The municipal approach to addressing the rental obligation may include, but not necessarily be limited to, any combination of the following:
 1. Alternative living arrangements pursuant to N.J.A.C. 5:93-5.8;
 2. Municipally sponsored or non-profit sponsored rental development;
 3. Agreements with developers for the municipality to purchase low and moderate income units and maintain them as rental units;
 4. Creation of accessory apartments pursuant to N.J.A.C. 5.93-5.9;
 5. Permitting inclusionary sites to be developed as sales or rental housing with a density increase if the developer chooses to build rental housing. The Council shall presumptively require a minimum density of ten units per acre and a maximum set-aside of 15 percent for rental housing.

- Municipalities that choose a zoning response to all or part of the rental obligation shall permit such densities and set-asides on all inclusionary sites until the requirement for rental housing has been addressed;
6. Agreements with developers to construct and administer low and moderate income rental units as part of an inclusionary development.
5. Age-restricted Housing Limits – Generally, 25% of the obligation as indicated in N.J.A.C. 5:93-5.14.
- a. Note that N.J.A.C. 5:93-5.15(d) 2. provides that:
 2. “A municipality shall receive one and one-third (1.33) units of credit for age restricted rental units. However, no more than 50% of the rental obligation defined in (a) and (b) above shall receive a bonus for age-restricted rental units unless:
 - i. The rental units have been constructed prior to the effective date of this rule.
6. Very-low income units - An allocation of a bonus credit to a municipality “for each unit that is affordable to the very poor, that is, a member of the general public earning thirty percent or less of the median income.” In Mount Laurel IV, the Supreme Court authorized very low-income bonuses, citing N.J.A.C. 5:94-4.20(d): “Notwithstanding the provisions of N.J.A.C. 5:94-4.20(d), a municipality shall receive two units of credit for affordable units available to households of the general public earning 30 percent or less of median income by region.” Very low-income units not receiving a rental bonus credit may receive one very low-income bonus credit per unit
- A 13% very low-income component as required for Round 3 compliance pursuant to the FHA amendments of 2008. The requirement applies prospectively (i.e. Round 3), *not to the Prior Round*.
7. Redevelopment Area Credits – Not applicable in Chester Borough’s compliance plan.
- 1.33 units of credit for each affordable unit addressing the obligation
8. Vacant Land Adjustments – Not applied in Chester Borough’s compliance plan.
9. Compliance Bonus – No “Substantial Compliance Reduction” in Prior Round certification. A compliance bonus may be available for the Asdal apartment.
10. Smart Growth Bonus – Allowable, but not applicable in Chester Borough’s Round 3 compliance plan (no designated redevelopment areas or rehabilitation areas designated in Round 3 Plan).
11. Extension of Controls – Allowable, but not included in Chester Borough’s Round 3 compliance plan. - “Extension of Controls” pursuant to N.J.A.C. 5:94-4.16, authorized as eligible for credit if the affordability controls are extended.
12. Standards for Objections to Compliance Plans – Not applicable to compliance calculation.
13. Review and Mediation Process – Not applicable to compliance calculation.

While not specifically addressed above, Chapter 93 also contains a 50% cap on the number of Regional Contribution Agreement units that may be included in a compliance plan, however this standard is not applicable to the Borough’s Round 3 Fair Share compliance plan.

Summary

Chester Borough's draft 2016 Amended Housing Plan Element and Fair Share Plan identifies a comprehensive plan to address the three components of affordable housing need, including:

- A rehabilitation program to address the Borough's rehabilitation obligation;
- A combination of strategies to address the prior round and the third round new affordable housing components of the Borough's obligation.

This draft Fair Share Plan anticipates that adjustments to the plan may be required once the Court makes a final determination regarding Chester Borough's Round 3 obligations.

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APPENDIX A

Inventory of Municipal Housing Units

The primary source of information for the inventory of the Borough's housing stock is the 2010 U.S. Census, with data reflecting conditions in 2010. While many of the datasets used in this analysis reflect the traditional 2010 data, the Census now provides data based on the American Community Survey 1, 3 and 5 year estimates. These sets are used particularly for physical housing characteristics. Because of the new data reporting methods, some differences in table totals may occur.

According to the 2010 Census, the Borough had 600 housing units, of which 559 (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 Borough largely consisted of one-family, detached dwellings (68% of the total, compared to 66.5% in the County), there were 194 units in attached or multi-family structures. The Borough had a relatively low percentage of renter-occupied units, 23%, compared to 24.1% in Morris County and 36% in the State.

Table 1: Units in Structure by Tenure

Units in Structure	Total Units	Vacant Units	Occupied Units		
			Total	Owner	Renter
1, detached	406	14	392	358	34
1, attached	42	0	42	36	6
2	17	0	17	0	17
3 or 4	17	0	17	2	15
5+	66	7	59	0	59
Other	0	0	0	0	0
Mobile Home	52	20	32	31	1
Total	600	41	559	427	132

Source: 2010 ACS 5 year estimates DP-04 and B25032

Table 2 indicates the year housing units were built by tenure, while Table 3 compares the Borough to Morris County and the State. The age of Chester's housing stock depicted a fairly new housing stock with 65.8% of the housing built after 1960. Prior to the 1960's, the housing stock showed modest increases between the 1940's and 1950's with 23% of the housing stock was produced prior to the 1940's, depicting the nature of the historic areas within the Borough. Owner-occupied units follow the same pattern as the year structures were built with the majority of owner occupied units being built after the 1970's and prior to 1940. Renter occupied units were typically built after 1960. The presence of an older housing stock is one of the factors which correlates highly with filtering. Filtering is a downward adjustment of housing need which recognizes that the housing requirements of

lower-income groups can be served by supply additions to the higher-income sections of the housing market. This trend also reflects the historic nature of the Borough.

Table 2: Year Structure Built by Tenure

Year Built	Total Units	% of Total	Vacant Units	Occupied Units		
				Total	Owner	Renter
2000-2010	29	4.8	0	29	23	6
1990 – 1999	107	17.9	13	94	63	31
1980 – 1989	54	9	14	40	35	5
1970 – 1979	116	19.3	0	116	87	29
1960 – 1969	89	14.8	7	82	69	13
1950 – 1959	42	7	0	42	40	2
1940 – 1949	25	4.1	0	25	15	10
Pre-1940	138	23	7	131	95	36

Source: 2010 ACS 5 year estimates DP-04 and B25036

Table 3 compares the year of construction for all dwelling units in the Borough to Morris County and the State. Chester had a larger percentage of units built prior to 1940 than did the State and a smaller percentage of units built between 1940 and 1960 and since 2000.

Table 3: Comparison of Year of Construction for Borough, County, and State

Year Built	%		
	Chester Borough	Morris County	New Jersey
2000 – 2010	4.8	8.7	8.4
1990 – 1999	17.8	11.9	8.9
1980 – 1989	9	12.6	11.6
1970 – 1979	19.3	15.4	13
1960 – 1969	14.8	15.8	14.2
1940 – 1959	11.2	21.4	25
Pre-1940	23	14.1	18.9
Median Year	1971	1969	1965

Source: 2010 ACS 5 year estimates DP-04

The 2010 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 69% of renter-occupied units having 2 persons or fewer compared to 55% of owner-occupied units. Table 5 indicates that renter-occupied units generally had fewer bedrooms, with 79% having two bedrooms or fewer, compared to 13% of owner-occupied units.

Table 4: Household Size in Occupied Housing Units by Tenure

Household Size	Total Units	Owner-occupied Units	Renter-occupied Units
1 person	159	81	78
2 persons	202	176	26
3 persons	75	62	13
4 persons	95	77	18
5 persons	58	48	10
6 persons	16	13	3
7+ persons	10	7	3
Total	615	464	151

Source: 2010 U.S. Census, SF-1.

Table 5: Number of Bedrooms per Unit by Tenure

Number of Bedrooms	Total Units	(%)	Occupied Units		
			Total	Owner	Renter
No bedroom	6	1	6	0	6
1 bedroom	95	15.8	81	13	68
2 bedrooms	109	18.2	96	50	46
3 bedrooms	158	26.3	144	132	12
4 bedrooms	207	34.5	207	207	0
5+ bedrooms	25	4.2	25	25	0

Source: 2010 ACS 5 year estimates DP-04 and B25042

Table 6 compares the Borough's average household size for all occupied units, owner-occupied units, and renter-occupied units in 2010 to those of the County and State. The Borough's average household size for owner-occupied occupied units was higher than those of the County and State.

Table 6: Average Household Size for Occupied Units for Borough, County, and State

Jurisdiction	All Occupied Units	Owner-occupied units	Renter- occupied units
Chester Borough	2.65	2.90	1.95
Morris County	2.68	2.85	2.25
New Jersey	2.72	2.81	2.43

Source: 2010 ACS 5 year estimates DP-04

The distribution of number of bedrooms per unit is shown in Table 7. The Borough had considerably fewer units with two or three bedrooms and higher four or more than the State and County in 2010.

Table 7: Percentage of All Units by Number of Bedrooms

Jurisdiction	None or one	Two or Three	Four or More
Chester Borough	16.8	44.5	39.7
Morris County	15.2	48.7	36.1
New Jersey	17.8	58	24.2

Source: 2010 ACS 5 year estimates DP-04

In addition to data concerning occupancy characteristics, the 2010 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. The surrogates used to identify housing quality, in addition to age (Pre-1940 units in Table 2), are the following, as described in COAH's rules.

Persons per Room	1.01 or more persons per room is an index of overcrowding.
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 Borough, County, and State for some of the above indicators of housing quality. The Borough had no overcrowding but more inadequate kitchens than the County and State.

Table 8: Housing Quality for Borough, County, and State

Condition	%		
	Chester Borough	Morris County	New Jersey
Overcrowding ⁹	0	1.2	3.7
Inadequate plumbing ²	2	.4	.5
Inadequate kitchen ²	2	.8	.8

Notes: ¹The universe for these factors is occupied housing units.

²The universe for these factors is all housing units.

Source: 2010 ACS 5 year estimates DP-04

The last factors used to describe the municipal housing stock are the assessed housing values and gross rents for residential units. In 2010, the median residential housing value was \$523,100 (Table 9) with most of the Borough's housing stock falling in the \$500,000 to \$999,999 price range.

Table 9: Value of Residential Units

Value	Number	%
Less than \$50,000	30	7
\$50,000 to \$99,999	17	4
\$100,000 to \$149,999	0	0
\$150,000 to \$199,999	3	.7
\$200,000 to \$299,999	19	4.4
\$300,000 to \$499,999	132	30.9
\$500,000 to \$999,999	212	49.6
\$1,000,000 or more	14	3.3
Median (dollars)	\$523,100	

Source: 2010 ACS 5 year estimates DP-04

Table 10 indicates that in 2010 the majority of renter-occupied units rented more than \$1,000 a month.

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

Contract Monthly Rent	Number	%
Less than \$200	6	4.7
\$200 to \$299	9	7
\$300 to \$499	17	13.2
\$500 to \$749	23	17.8
\$750 to \$999	6	4.7
\$1,000 to \$1,499	41	31.8
\$1,500 or more	27	20.9
No Cash Rent	3	0
Median (contract rent)	\$1,063	

Source: 2010 ACS 5 year estimates DP-04

The data in Table 11 indicate that in 2010 there were 50 households earning less than \$35,000 annually. A figure of 30% is considered the limit of affordability for housing costs.

Table 11: Household Expense in 2010 by as a Percentage of Household Income in 2010

Income	Number of Households	Less than 30%	More than 30%
< \$10,000	8	0	8
\$10,000 – 19,999	18	3	15
\$20,000 – 34,999	24	2	22
\$35,000 - \$49,999	33	14	19
\$50,000 - \$74,999	45	27	18
\$75,000 - \$99,999	28	8	20
\$100,000+	271	212	59

Note: ¹The universe for this Table is specified occupied housing units.

Source: 2010 ACS 5 year estimates C25095

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Analysis of Demographic Characteristics

As with the inventory of the municipal housing stock, the primary source of information for the analysis of the demographic characteristics of the Borough's residents is the 2010 U.S. Census. The Census data provide a wealth of information concerning the characteristics of the Borough's population in 2010.

The 2010 Census indicates that the Borough had 1,649 residents, or 14 more residents than in 2000, representing a population increase of approximately 1%. The Borough's 1% increase in the 2000's compares to a 5% increase in Morris County and an 4% increase in New Jersey.

The age distribution of the Borough's residents is shown in Table 12. There is a larger male population in the 20-34 age range with female predominance in the remaining categories.

Table 12: Population by Age and Sex

Age	Total Persons	Male	Female
0 – 4	83	43	40
5 – 19	395	196	199
20 – 34	174	96	78
35 – 54	490	242	248
55 – 69	308	150	158
70 +	199	87	112
Total	1,649	814	835

Source: 2010 U.S. Census, SF-1.

Table 13 compares the Borough to the County and State by age categories. The principal differences among the Borough, County, and State occur in the 70+ age categories where the Borough had a smaller proportion than the State. The Borough had fewer persons in the 0-4 and 20-34 age category, than the County and State.

Table 13: Comparison of Age Distribution for Borough, County, and State (% of persons)

Age	Chester Borough	Morris County	New Jersey
0 - 4	5	5.6	6.2
5 - 19	23.9	20.5	19.9
20 - 34	10.5	15.3	18.8
35 - 54	29.8	32	29.8
55 - 69	18.7	16.9	15.9
70 +	12.2	9.6	36.5
Median	43.1	41.3	39

Source: 2010 U.S. Census, SF-1.

Table 14 provides the Census data on household size for the Borough, while Table 15 compares household sizes in the Borough to those in Morris County and the State. The Borough differed from the County and State in terms of the distribution of household sizes by having fewer households of three or four persons and more one or two person households than the County and State.

Table 14: Persons in Household

Household Size	Total Units
1 person	159
2 persons	202
3 persons	75
4 persons	95
5 persons	58
6 persons	16
7+ persons	10
Total	615

Source: 2010 U.S. Census, SF-1.

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

Household Size	Borough	County	State
1 person	25.9	23.5	25.2
2 persons	32.8	30.6	29.8
3 persons	12.2	17.2	17.4
4 persons	15.4	17.6	15.7
5 persons	9.4	7.5	7.2
6 persons	2.6	2.3	2.7
7 or more persons	1.6	1.2	1.9
Persons per household	2.65	2.68	2.68

Source: 2010 U.S. Census, SF-1.

Table 16 presents a detailed breakdown of the Borough's population by household type and relationship. There were 1,427 persons in family households in the Borough and 203 persons in 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.

Table 16: Persons by Household Type and Relationship

	Total
In family Households:	1427
Spouse	369
Child	528
In Non-Family Households:	203
Male householder:	68
Living alone	59
Not living alone	9
Female householder:	109
Living alone	100
Not living alone	9
In group quarters:	19
Institutional	0
Non-institutional	19

Source: 2010 U.S. Census, SF-1.

Table 17 provides 2010 income data for the Borough, County, and State. The Borough's per capita and median incomes were higher than those of the State and County.

Table 17: 2009 Income for Borough, County, and State

Jurisdiction	Per Capita Income	Median Income	
		Households	Families
Chester Borough	\$51,728	\$101,705	\$144,911
Morris County	\$48,814	\$98,633	\$117,683
New Jersey	\$36,027	\$71,629	\$87,347

Source: 2010 U.S. Census ACS 5 Year Estimates DP-03

Table 18 addresses the lower end of the income spectrum, providing data on poverty levels for persons and families in 2010. According to the data in Table 18, the Borough had proportionately fewer persons qualifying for poverty status than the State or County.

Table 18: Poverty Status for Persons and Families for Borough, County, and State (% with 2010 income below poverty)

Jurisdiction	Persons (%)	Families (%)
Chester Borough	3.8	.7
Morris County	4.4	3.0
New Jersey	10.4	7.9

Source: 2010 ACS 5 year estimates DP-03

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 households who moved into their current residents in 1999; this is a surrogate measure of the mobility/stability of a population. The data indicate that the percentage of the year 2010 Borough residents residing in the same house as in 1999 exceeded that of the State but not the County.

Table 19: Comparison of Place of Residence for Borough, County, and State

Jurisdiction	Percent living in same house in 1999
Chester Borough	43.4
Morris County	44.8
New Jersey	40.2

Source: 2010 ACS 5 year estimates DP-04

Table 20 compares the educational attainment for Borough, County, and State residents over age 25. The data indicate that more Borough residents achieved a high school diploma or higher or a bachelor's degree or higher than the County and State.

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

Jurisdiction	Percent (%) high school graduates or higher	Percent (%) with bachelor's degree or higher
--------------	---	--

		higher
Chester Borough	94.2	56.3
Morris County	93.5	50
New Jersey	88.1	35.8

Source: 2010 ACS 5 year estimates DP-02

The 2010 Census also provides data on the means of transportation which people use to reach their place of work. Table 22 compares the Census data for the Borough, County, and State relative to driving alone, carpooling, using public transit, and using other means of transportation. The Borough 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 15.3% of workers who resided in the Borough and used other means of transportation to reach work, 61 workers worked from home.

Table 21: Means of Transportation to Work for Borough, 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
Chester Borough	72.3	7.9	4.5	15.3
Morris County	79.3	8.2	4.6	8
New Jersey	71.9	8.4	10.8	8.9

Source: 2010 ACS 5 year estimates DP-03

The 2010 Census also provided information on resident employment by industry. The most predominate industry of Borough residents is education and health care services followed by professional, scientific and management sector employment.

Table 22: Employment by Industry

Industry	Persons	%
Civilian employed population 16 years and over	717	
Agriculture, forestry, fishing and hunting, and mining	6	.8
Construction	23	3.2
Manufacturing	83	11.6
Wholesale trade	22	3.1
Retail trade	80	11.2
Transportation and warehousing, and utilities	11	1.5
Information	33	4.6
Finance and insurance, and real estate and rental and leasing	66	9.2
Professional, scientific, and management, and administrative and waste management services	90	12.6
Educational services, and health care and social assistance	149	20.8
Arts, entertainment, and recreation, and accommodation and food services	103	14.4
Other services, except public administration	35	4.9
Public administration	16	2.2

Source: 2010 ACS 5 year estimates DP-03

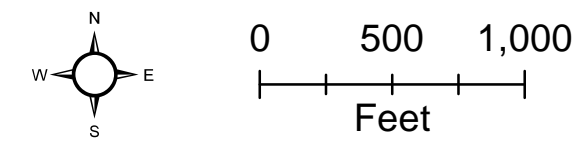
The employment rate, according to the 2010 census shows that the Borough had a higher percentage of people in the labor force than the State, as well as higher employment of those in the labor force than the State.

Table 23: Labor Force and Employment

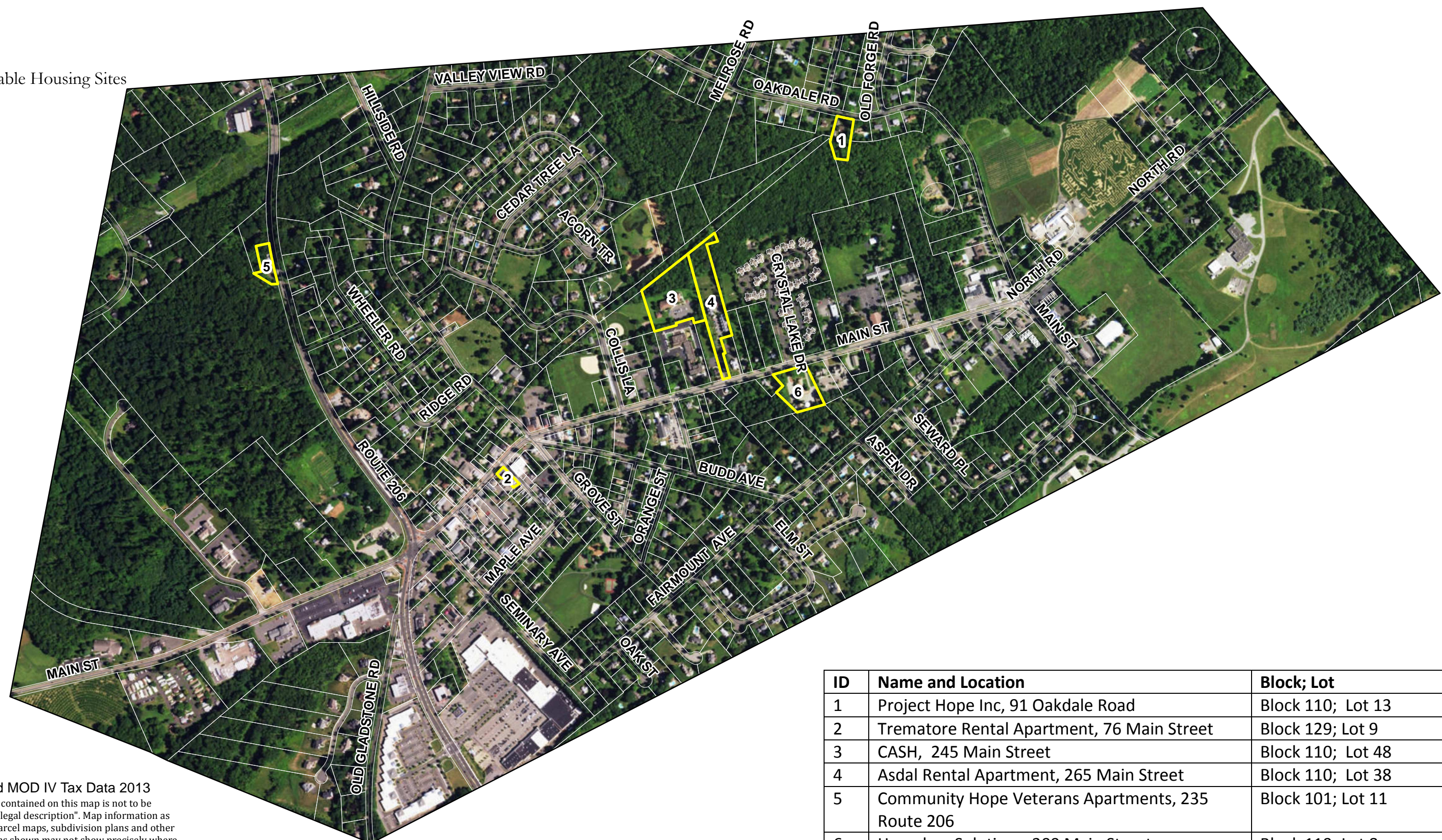
Jurisdiction	Percent in Labor Force	Employed	Unemployed
Chester Borough	67.4	62.6	4.8
Morris County	69.2	64.1	5.1
New Jersey	66.6	59.7	6.7

Source: 2010 ACS 5 year estimates DP-03

Figure 1:
Affordable Housing Sites
Chester Borough, Morris County
April 2016



Legend
 Affordable Housing Sites



ID	Name and Location	Block; Lot
1	Project Hope Inc, 91 Oakdale Road	Block 110; Lot 13
2	Trematore Rental Apartment, 76 Main Street	Block 129; Lot 9
3	CASH, 245 Main Street	Block 110; Lot 48
4	Asdal Rental Apartment, 265 Main Street	Block 110; Lot 38
5	Community Hope Veterans Apartments, 235 Route 206	Block 101; Lot 11
6	Homeless Solutions, 300 Main Street	Block 119; Lot 8

Data Sources:
 NJGIN Parcel and MOD IV Tax Data 2013
 *The parcel information contained on this map is not to be construed or used as a "legal description". Map information as shown is from county parcel maps, subdivision plans and other sources. Property lines as shown may not show precisely where the legal boundary lines are.

APPENDIX B
Planner’s Report Identifying Realistic Development Potential
For Borough of Chester, Morris County
March 2016

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Borough of Chester
Morris County

REPORT IDENTIFYING REALISTIC DEVELOPMENT POTENTIAL

A Threshold Issue: The Highland Act

As detailed below, the Legislature clearly requires COAH to consider the regional master plan ("RMP") "prior to" making any determination on the municipality's prospective need "for the fair share period subsequent to 1999" and the build out analysis is integral to the RMP. Therefore, any court should take into consideration the RMP and build out analysis that is inextricably intertwined with the RMP. If a court declines to take the RMP and build out analysis into consideration "prior to making any determination" on the prospective need, then surely it should do so when considering what portion of the obligations municipalities must satisfy of the numbers generated by applying formulas from Rounds 1 and 2 to determine the prospective regional need.

The Highlands Act Water and Protection Act, N.J.S.A. 13:20-1 et. seq., (hereinafter "Highlands Act" or "Highlands Legislation") provides that COAH "**shall take into consideration the regional master plan prior to making any determination regarding the allocation of the prospective fair share of the housing need in any municipality in the Highlands Region under the "Fair Housing Act" P.L.1985, c.222 (C.52:27D-301 et al.) for the fair share period subsequent to 1999.**" N.J.S.A. 13:20-23.

The Appellate Division explicitly upheld the validity of the RMP that the Highlands Council had adopted in accordance with the procedural requirements of the Highlands Act:

Accordingly, we affirm the validity of the Highlands RMP, Executive Order 114 and the October 30, 2008 MOU. We dismiss as moot the part of appellant's appeal that challenges the validity of the COAH resolutions extending the deadline for the filing of petitions for substantive certification by Highlands Region municipalities.

[In re Highlands Master Plan, 421 N.J. Super. 614, 632, 25 A.3d 1172, 1175 (App. Div. 2011)]

As the above passage reveals, the Appellate Division not only upheld the validity of the RMP, but also upheld the validity of Executive Order 114 and the October 30, 2008 Memorandum of Understanding.

Executive Order 114 provides that "**the Highlands Act directs that [COAH] shall take into consideration the [RMP] prior to making any determination regarding the allocation of the prospective fair share of the [affordable] housing need in any municipality in the Highlands Region**" and that "the [FHA] was amended [in 2008] to create a responsibility for the Highlands Council to plan for and create opportunities for affordable housing on a regional basis. Highlands Opinion at page 633.

The Memorandum of Understanding represents an agreement by the two state agencies to work together to implement the requirement of the Highlands Legislation to require COAH to consider the RMP before allocating fair share responsibilities.

The RMP provides the basis for evaluation of each of the 88 Highlands municipalities. The data and research that were used to create the RMP is more detailed and more comprehensive than any analysis that has ever been conducted in the state. This information led to the creation of the RMP goals and policies governing the region as well as the underlying mapping that depicts the important resources of the region as required by the Legislature in the Highlands Act. One of the basic products of this analysis is the individual municipal build-out model created for use by each of the 88 Highlands municipalities that reflect the implementation of the RMP and the underlying scientific research that supports it. Each individual build out is based upon a comprehensive set of criteria that determine the rational development capacity for each community. The requirement to consider the regional master plan necessarily requires a consideration of the build out analysis that is inextricably intertwined with the RMP and that was performed in large part to determine capacity for purposes of defining fair share obligations in Highlands municipalities.

In light of the above, any consideration of the prospective need for the Borough must take into account the build out analysis prepared by the Highlands Council that is based on the RMP. Although the Legislature mandated that a consideration of the RMP “prior to” “making any determination regarding the allocation of the prospective fair share” for “any” Highlands community and although the build out analysis should be part of that consideration, a consideration of the RMP and build out analysis certainly should take place, at a minimum, after allocating the obligation and considering a municipality’s right to an adjustment.¹

Background To The Constitutional Responsibilities Of Municipalities With Insufficient Land

¹ It also bears mentioning that the Appellate Division ruled that: “We invalidate the August 12, 2009 COAH resolution and accompanying Guidance document on the ground it is an administrative rule COAH was required to adopt in accordance with the APA.” Although the Court invalidated the Guidance document, it did so on procedural grounds only: namely, for COAH’s failure to implement its policies through formal rule-making. COAH failed to adopt regulations to cure this defect. In fact, COAH failed to adopt any regulations by the 2014 deadline the Supreme Court had imposed following its invalidation of all COAH regulations in 2013. COAH’s brazen failure to adopt regulations by the 2014 deadline the Supreme Court set culminated in Mount Laurel IV, which resulted in trial judges taking over many of the functions COAH previously performed. In this decision, the Court also promised not to punish municipalities for COAH’s failure to do its job and adopt rules in a timely fashion. The Supreme Court also emphasized its intent to defer to the Legislature throughout Mount Laurel IV. Therefore, COAH’s failure to adopt regulations should not obscure that the Legislature demands a consideration of the s RMP in conjunction with determining the prospective need obligation of municipalities “**for the fair share period subsequent to 1999**”.

The Fair Housing Act and COAH regulations have consistently recognized the following fundamentals:

- (1) The New Jersey Constitution requires municipalities to create a “realistic opportunity” for satisfaction of their fair share of the present and prospective regional need for affordable housing.
- (2) Municipalities may not have sufficient vacant and/or underdeveloped land to create a “realistic opportunity” for satisfaction of their fair share of the present and prospective need for affordable housing.
- (3) Therefore, as to the new construction component of their fair share, a municipality is entitled to adjust its Constitutional obligation to the number of affordable housing units that could *realistically* be produced if vacant and/or underdeveloped sites were developed at appropriate densities of at least 6 units per acre with a 20 percent set aside.

Since the point of obtaining a vacant land adjustment is to determine the number of affordable housing units that could realistically be provided through inclusionary zoning on suitable sites, COAH has coined a phrase that aptly describes the number that results from the adjustment process. Specifically, for over 20 years, COAH has labeled the adjusted number the “*realistic development potential*” or “*RDP*”; and appropriately, has imposed an obligation on municipalities to create a *realistic* opportunity for satisfaction of their *realistic* development potential.

In addition, for decades, COAH’s regulations have made equally clear that once a municipality identifies its realistic development potential, it is free to determine how it will create a realistic opportunity for satisfaction of its realistic development potential. Said another way, a municipality does not need to zone any of the sites that contributed to the realistic development potential for inclusionary zoning as long as it creates a realistic opportunity for satisfaction of its RDP through any permissible means. COAH regulations clearly give municipalities with insufficient land the choice as to how to satisfy their RDP.

COAH’s protocols for extrapolating a municipality’s realistic development potential remain largely unchanged through every iteration of COAH’s regulations. Since the Supreme Court in Mount Laurel IV directs trial judges to use methodologies similar to those from Rounds 1 and 2 to determine a municipality’s present and prospective need; and since a municipality’s right to a vacant land adjustment has a direct bearing on the municipality’s constitutional obligation, this report, subject to two qualifications, will use the Round 2 regulations, set forth in N.J.A.C. 5:93-4.2, to extrapolate the Borough of Chester’s realistic development potential.

First, in 2004, a decade after COAH adopted N.J.A.C. 5:93-4.2, the Legislature enacted the Highlands Act to protect the drinking water for roughly four million current New Jersey citizens and millions more in the future:

2. The Legislature finds and declares that the national Highlands Region is an area that extends from northwestern Connecticut across the lower Hudson River Valley and northern New Jersey into east central Pennsylvania; that the national Highlands Region has been recognized as a landscape of special significance by the United States Forest Service; that the New Jersey portion of the national Highlands Region is nearly 800,000 acres, or about 1,250 square miles, covering portions of 88 municipalities in seven counties; and that the New Jersey Highlands Region is designated as a Special Resource Area in the State Development and Redevelopment Plan.

N.J.S.A. 13:20-2

This important Legislation (Highlands Act), essential for the health and safety of our drinking water, calls for important protections to development of lands in the Highlands – particularly when the municipality, like the Borough of Chester, has initiated the process of seeking plan conformance. In this regard, in order to address a problem with health and safety resulting from failed septic systems, the Borough is completing a process it initiated for securing Plan Conformance from the Highlands Council. In accordance with N.J.S.A. 13: 20-8, the Highlands Act requires the Highlands Council to adopt a RMP; and, in accordance with N.J.S.A. 13: 20-11, the RMP must include

(1) A resource assessment which:(a) determines the amount and type of human development and activity which the ecosystem of the Highlands Region can sustain while still maintaining the overall ecological values thereof, with special reference to surface and ground water quality and supply; contiguous forests and woodlands; endangered and threatened animals, plants, and biotic communities; ecological factors relating to the protection and enhancement of agricultural or horticultural production or activity; air quality; and other appropriate considerations affecting the ecological integrity of the Highlands Region; and

The resource assessment is the basis for the build out analysis that determines the amount and type of human development and activity that can be sustained at the municipal level in the Highlands region. It is not just a critical element of the RMP, it serves as the most scientifically accurate foundation for identifying municipal build out capacity in accordance with the RMP as directed by the Legislature in the Act.

Since the point of any vacant land analysis is to determine the number of affordable units that could realistically result from rezoning all vacant and underdeveloped sites at a density of at least 6 units per acre with a 20 percent set-aside, the total number of units that should be constructed in any municipality should obviously impact on the maximum number of affordable units that should reasonably be anticipated. Therefore, although the Highlands Act required COAH to consider the RMP “prior to” making “any determination” of the prospective need of “any” Highlands municipality “**for the fair share period subsequent to 1999**”, certainly the RMP generally and the build out specifically should be taken into account when evaluating any right of any Highlands municipality to an adjustment.

Second, the Legislature enacted the Roberts Bill in 2008, roughly 14 years after the adoption of N.J.A.C. 5:93-4.2. This Legislation provided as follows: “When computing a municipal adjustment regarding available land resources as part of the determination of a municipality's fair share of affordable housing, the Council on Affordable Housing shall exclude from designating as vacant land: . . . (g) environmentally sensitive lands *where development is prohibited* by any State or federal agency.” N.J.S.A. 52:27D-310.1. On the other hand, no municipality should include in the sites that contribute to the RDP sites that would not realistically create the opportunity for affordable housing if zoned for inclusionary development because the whole point of an RDP analysis is to determine how many affordable units would realistically result if suitable sites were zoned for inclusionary development. At the risk of stating the obvious, it is not possible to create a realistic opportunity for satisfaction of the realistic development potential by rezoning for inclusionary development the sites that contributed to the RDP if it is unrealistic to expect that rezoning any of the sites that contributed to the RDP would generate affordable housing if zoned for inclusionary development.

Another useful perspective to clarify this point is to consider what would happen if a municipality sought approval of its affordable housing plan at a compliance hearing; if it provided the requisite notice of its application for approval of its affordable housing plan; and if an objector proved that the proposed rezoning of one of the sites in the plan for inclusionary development would not create a realistic opportunity for satisfaction of the municipality's constitutional obligation. The standard notice a municipality would have to provide in conjunction with its application for plan approval at a compliance hearing would have to say, in essence, that the Court will consider whether to approve the municipality's affordable housing plan and that the approval will depend upon whether the court concludes that plan creates a realistic opportunity for satisfaction of the municipality's obligations. If an objector then proves that a site that the municipality has relied upon does not create the requisite realistic opportunity, then court cannot approve the plan. So, just as a court cannot approve a plan with unrealistic sites, unrealistic sites cannot reasonably contribute to the realistic development potential calculation of a municipality with insufficient land. After all, a municipality should be able to satisfy its realistic development potential by rezoning sites for inclusionary development that contributed to the RDP if a municipality chooses to meet its responsibilities that way.

The Bottom Line

Scenario A

In light of the above, the Highlands Act is direct and unambiguous. COAH and, by extension any court, should take the RMP and build out analysis into consideration “prior to” making “any” determination of the prospective need for “any” Highlands municipality “**for the fair share period subsequent to 1999**”.

In any event, the RMP and build out analysis should be taken into consideration when considering whether the municipality has sufficient land to meet its present and prospective need obligations using standards similar to those used in rounds 1 and 2 to determine the municipality's present and prospective need.

From a planning perspective, since the build out analysis is based upon and inextricably intertwined with the RMP, it should be considered at the very least when considering a municipality's entitlement to an adjustment. More specifically, the RDP should be no greater than 20 percent of the build-out number provided by the Highlands Council. Only if the Court rejects the Highlands standard, which it should not, should we default to the COAH standard as modified by the Roberts Bill.

To elaborate, applying these standards, the correct adjusted obligation ("RDP") for the Borough of Chester is 2 units. This calculation represents the Borough's "Build out" number (9 units) as calculated by the Highlands Regional Master Plan (RMP) and multiplied by .20 to assume a 20% set aside for a total number of 2 units (9 units x .2 = 1.8, rounded to 2 units). This figure represents the most logical and appropriate calculation of the Borough's RDP in light of the significant public health and safety policy considerations of the Highland's Act and given the Borough's status in seeking plan conformance.

Since the Highlands Council conducted the build-out analysis in 2009 and we expect that the Highlands Council will do another build out analysis in conjunction with the Borough's efforts to secure plan endorsement, this build out analysis may very well change, which would indeed affect the RDP analysis under the Highlands scenario.

Scenario B

If, for whatever reason, the RMP is not considered before allocation of a prospective need number to a Highlands municipality and if the RMP, inclusive of the build-out analysis, is not considered when determining a municipality's right to an adjustment, applying the traditional COAH vacant land approach, modified by the Roberts Bill, yields an RDP of 13 units. This 13 unit RDP is based upon the conclusion that the Borough can remove the "Turkey Farm Site"²

² The "Turkey Farm Site" consists of a total of 8 tax parcels, consisting of

- (a) four parcels located on Mill Ridge Lane that are vacant undeveloped lots in a five-lot residential subdivision, which are each approximately 2 acres in area (Block 101, Lots 12.07, 12.08, 12.10 & 12.11); and
- (b) a second adjacent tract approximately 26.9 acres in area located on the corner of Route 206 and West Main Street (Block 101, Lots 13 – 16), which are primarily vacant.

As to the Mill Ridge Lane site, the proposal, discussed below, contemplates development on a fifth parcel, Block 101, Lot 12.09, which is currently occupied by a recently constructed single-family detached dwelling. For ease in reference, all five lots will be referred to as "TF-Parcel A.

As to the second 26.9 acre site on Route 206 and West Main Street, approximately 12.9 acres are devoted to a vacant restaurant, a vacant single-family dwelling and a farm, all of which are designated historic. An additional approximately .25 acres of the site is occupied by a cell tower and equipment compound. The remaining approximately 14 acres of the site is vacant and

from its vacant land inventory based upon the applicability of, at least four criteria COAH has identified for excluding vacant or underdeveloped sites from a vacant land inventory: (1) N.J.A.C. 5:93-4.2 (e)(2)(i) concerning areas of the state regulated by a regional planning entity; (2) N.J.A.C. 5:93-4.2(e)(2)(iii). concerning the Legislature’s adoption of legislation requiring the mapping of natural resources and providing a mechanism for their regulation, (3) N.J.A.C. 5:93-4.2 (e)(3) concerning historic and architecturally important sites; and (4) N.J.A.C. 5:93-4.2 (e)(6) concerning unsuitable sites. N.J.A.C. 5:93-4.2 (e) 6 provides as follows: “Individual sites that the Council determines are not suitable for low and moderate income housing may also be eliminated from the inventory described in (d) above.” The Borough concludes that the Turkey Farm Site is “not suitable for inclusionary development” for a number of reasons as articulated below and as expanded upon in the site suitability analysis that I prepared, dated November 2015, as will be revised. The Expert Report authored by Ben Spinelli and dated March 2016 provides additional information concerning the significance of Highlands principles and planning that are also considerations.

Scenario C

Finally, while the Borough contends that the Turkey Farm Site is unsuitable for inclusionary development, its owners contend that the site is suitable for inclusionary development. The Borough completely disagrees with the owners’ assessment. However if the assumption is that all 35.37 acres of the Turkey Farm Site is suitable for inclusionary development, the site will only generate an RDP of 42.4 units: 35.37 acres times six units per acre times a 20 percent set-aside equals 42.4. Adding the RDP from the Turkey Farm with the RDP from the other sites in town results in an RDP of 55.

Although the Borough contends the entire site is not suitable for inclusionary development, even if the entire site is not disqualified, we certainly expect some portion of the site will be found to be unsuitable. Therefore, the site will therefore generate nothing close to an RDP of 42.4.

For the purpose of formulating a Scenario C, this analysis will assume that the entire site is suitable for inclusionary development at density of six units per acre. The Borough completely disagrees that the site is suitable, however under such circumstances, the entire RDP of the Borough would be 55 units.

An elaboration of these three calculations follows.

undeveloped. For ease in reference, this plan will refer to this site with 26.9 acre site as “TF-Parcel B.

For ease in reference, this plan will refer to the combined properties, TF-Parcel A and TF-Parcel B, as the “Turkey Farm Site” or “TF Site” even though only the second 26.9 acre site (TF_Parcel B) is commonly referred to and known regionally as the Turkey Farm.

I. SCENARIO A: HIGHLANDS VACANT LAND ADJUSTMENT CALCULATION BUILD-OUT AND 20% CALCULATION

The New Jersey Legislature enacted the Highlands Act on June 7, 2004, and Governor Corzine signed it into law on August 10, 2004. The Highlands Act designated the Highlands Region, which included 88 municipalities inclusive of Chester Borough. The Act requires the mapping of natural resources; and it established a land use regulatory mechanism for managing growth and development and protection of the Highlands Region's valuable natural resources and the delicate ecosystem that provides water supply for approximately 4,000,000 of New Jersey's current residents. The Highlands Act established the Highlands Council and required the Council to prepare the Highlands Regional Master Plan (RMP) to include a resource assessment for the region to implement the Legislature's intent to protect the environment and water supply for millions of New Jersey's residents.

The Highlands Act

The Act states, "a. The Council on Affordable Housing shall take into consideration the regional master plan prior to making any determination regarding the allocation of the prospective fair share of the housing need in any municipality in the Highlands Region under the "Fair Housing Act," for their fair share period subsequent to 1999." N.J.S.A. 13:20-23(a).

The Response of COAH, the Highlands Council and The Governor To The Legislature's Mandate

COAH's response to Legislature's demand that it take into consider the RMP prior to making any determination of any prospective need obligation of any Highlands community requires an understanding that the Highlands Council did not adopt the RMP until July 17, 2008 and it did not become effective until September 5, 2008.

On May 6, 2008, COAH adopted the second iteration of Third Round regulations that became effective on June 2, 2008 when they were published in the New Jersey Register. See 40 N.J.R. 2690(a). Since there was no RMP, the regulations did not address it.

On June 16, 2008, COAH proposed amendments to the second iteration of the regulations it had adopted in May. However, there was still no RMP. Consequently, COAH could not and did not consider it when formulating these proposed amendments.

On July 17, 2008, the Highlands Council adopted the RMP. However, it did not become effective until September 5, 2008.

On September 5, 2008, Governor Corzine adopted Executive Order 114, which directed the Council to work in cooperation with COAH to "review COAH's third round growth projections for consistency with the Highlands Plan and [to] assist COAH in developing adjusted growth projections within the Highlands Region." 40 *N.J.R.* 5312, 5313 (Oct. 6, 2008). In addition, Executive Order 114 directed the Council and COAH to "enter into a joint Memorandum of Understanding" to implement the provisions of the Executive Order within 60 days of September 5, 2008. *Ibid.*

On September 22, 2015, COAH adopted the proposed amendments to the Round 3 rules it had proposed in June. Although we now had an RMP at the point COAH adopted the amendments, since COAH had proposed the amendments at a time when there was no RMP, the adopted amendments still did not address the RMP.

On October 30, 2008, in accordance with EO114, the Highlands Council and COAH entered into an MOU, providing in relevant part that “[t]he Highlands Council shall prepare adjusted growth projections ... through the development of a build out analysis at a municipal scale for conforming municipalities consistent with the RMP” and that “COAH shall ensure that any of the eighty-eight (88) municipalities in the Highlands Region under COAH's jurisdiction that choose to conform to the RMP utilize the adjusted growth projections prepared by the Highlands Council in the development of Housing Elements and Fair Share Plans.”

As explained by the Appellate Division, on August 12, 2009,

. . . COAH adopted a second resolution, the operative sections of which state: “COAH waives *N.J.A.C.* 5:97–2.3(a) and 5:97–2.4 [dealing with municipalities' projected growth share obligations under the revised third round rules] for municipalities located in the Highlands Region that petition COAH and petition the Highlands Council to conform with the RMP by June 8, 2010”; and that “Highlands municipalities that petition COAH and petition the Highlands Council to conform with the RMP shall follow the procedures set forth in the document entitled ‘Guidance for Highlands Municipalities that Conform to the Highlands [RMP],’ ” (hereinafter referred to as the “Guidance document”), which was attached to the resolution.

[In re Highlands Master Plan, 421 N.J. Super. 614, 621 (App. Div. 2011)].

The Guidance document provides:

The following document serves as guidance to municipalities within the Highlands Region that are conforming to the Highlands Regional Master Plan (RMP) for the preparation of a Fair Share Plan by June 8, 2010. Executive Order 114 and the MOU respectively set forth a process and an agreement whereby municipalities that conform to the Highlands RMP would utilize Highlands Municipal Build-Out results and then adjust the RMP Build-Out for the fair share period ending 2018. Specifically, the MOU requires that the Highlands Council and COAH cooperatively adjust “the local build-out consistent with the RMP for the fair share period from 2004 to 2018.” This document has been prepared by COAH in cooperation with the Highlands Council.

Thus, when COAH finally reached a point where it was able to consider the RMP in determining the obligations of Highlands municipalities, it focused on the build out analysis as the basis for establishing municipal Round 3 obligations as required by statute. This was appropriate because

it is consistent with the Legislature's directive to determine the amount and type of human development and activity which the ecosystem of the Highlands Region can sustain.

The Guidance document provided

2. Alternatively, municipalities conforming to the RMP may elect to continue to use the COAH Projected Growth Share Obligation pursuant to N.J.A.C. 5:97 et seq. in their COAH Fair Share Plan submission, provided they can do so within the constraints of the RMP.

Thus, COAH recognized that it had an obligation to consider the RMP in how it extrapolated the obligations of Highlands communities.

Appellate Division Decision 2011

FSHC challenged EO114 and the procedures set forth in the Highlands/COAH MOU. On August 15, 2011, the Appellate Division issued its decision, as follows:

Accordingly, we affirm the validity of the Highlands RMP, Executive Order 114 and the October 30, 2008 MOU. We dismiss as moot the part of appellant's appeal that challenges the validity of the COAH resolutions extending the deadline for the filing of petitions for substantive certification by Highlands Region municipalities. We invalidate the August 12, 2009 COAH resolution and accompanying Guidance document on the ground it is an administrative rule COAH was required to adopt in accordance with the APA. [pages 24-25]

Thus, the Court affirmed the validity of the Highlands RMP, Executive Order 114 and the October 30, 2008 MOU. However, the Court also concluded *the administrative procedure* used by COAH for assigning municipal Round 3 Highlands obligations should have been implemented in accordance with the procedures set forth in the Administrative Procedures Act (APA).

The Aftermath of The Appellate Division Decision

COAH never cured the APA procedural defect despite the validation of the RMP, EO114, and the MOU by the Appellate Division. By validating the RMP, the Appellate Division validated the process to determine the build out analysis, which established the basis for round 3 allocations subsequent to 1999. Consequently, the Appellate Division decision settles any question as to whether Highlands municipalities are entitled to a determination of their prospective share obligations subsequent to 1999 in accordance with the Highlands Act.

Highlands Act Determination of Prospective Share Subsequent To 1999

In 2009, the NJ Highlands Council extrapolated Chester Borough's total development capacity pursuant to EO114 and the October 30, 2008 MOU in the report entitled "Chester

Borough Municipal Build-Out Report” (Build-Out Report). The Build-Out Report identified a total development capacity of 9 dwelling units.

Applying the 20% affordable unit set-aside requirement found at N.J.A.C. 5:93-4.2(f) to Chester Borough’s 9-unit build-out yields an affordable housing obligation of 2 affordable units as the prospective need subsequent to 1999 (1.8 rounded to 2 units). This is also consistent with Section 329.9 a. of the Fair Housing Act, “there shall be required to be reserved for occupancy by low or moderate income households at least 20 percent of the residential units constructed, to the extent economically feasible” in the Highlands region.

Chester Borough’s Round 3 Fair Share

In accordance with the procedures required in Section 23 of the Highlands Act, and established by EO114 and the October 30, 2008 MOU between Highlands Council and COAH, all of which the Appellate Division validated in 2011, Chester Borough’s present need and prospective need should be as follows:

- Highlands Determination of Prospective Share subsequent to 1999: 2 affordable units
- Present Need (rehabilitation obligation): 11 units

As to the prospective need obligation, the Highlands Act requires the prospective need to be established for “any” Highlands municipality based upon a consideration of the RMP “prior to any” determination of the prospective need for the period subsequent to 1999. If the court declines to do that, then certainly the Court should consider capping the prospective need to 20 percent of the build out as explained above.

The Legislature’s amendment to the FHA, to require developers of residential projects in the Highlands to maintain a 20 percent set-aside unless it would be economically unfeasible adds further support to setting the prospective need at 20 percent of the build out (Section 329.9).

As noted, if Highlands Council updates the build-out analysis, that could affect the “determination of the prospective share subsequent to 1999. “

II. SCENARIO B: PROSPECTIVE NEED BASED UPON COAH’S CHAPTER 93 RDP PROCEDURES & RDP CALCULATION

For the reasons set forth in Section I above, the determination of prospective share subsequent to 1999 should not exceed 20 percent of the Highlands build-out. This approach is consistent with Section 23 of the Highlands Act, the RMP, EO114 and the October 30, 2008 MOU as validated by the Appellate Division in 2011 and the amendment to the FHA to require developers in the Highlands to maintain a 20 percent set-aside. If the obligation is not capped to 20 percent of the build out analysis, then applying the traditional COAH vacant land approach to calculate RDP, modified by the Roberts Bill, is identified at 13 units.

An understanding of the Chapter 93 standards used to extrapolate a municipality's realistic development potential is essential to understanding the basis for the conclusion that the RDP calculation for Chester Borough should be 13 units if the obligation is not capped at 20 percent of the build out number. The following analysis explains the standards for obtaining a vacant land adjustment without taking the build out into account before applying the standards to show the basis for an RDP of 13.

The Standard COAH Protocols For Extrapolating RDP

In its Round 2 regulations, COAH sets forth the standards to determine the RDP of any municipality in N.J.A.C. 5:93-4.2. Pursuant to N.J.A.C. 5:93-4.2 (b), a municipality seeking an adjustment must "submit an inventory of vacant parcels by lot and block that includes the acreage and owner of each lot." A municipality must treat underutilized properties as vacant sites:

(d) The Council shall review the existing land use map and inventory to determine which sites are most likely to develop for low and moderate income housing. All vacant sites shall initially be presumed to fall into this category. In addition, the Council may determine that other sites, that are devoted to a specific use which involves relatively low-density development would create an opportunity for affordable housing if inclusionary zoning was in place. Such sites include, but are not limited to: golf courses not owned by its members; farms in SDRP planning areas one, two and three; driving ranges; nurseries; and nonconforming uses. The Council may request a letter from the owner of sites that are not vacant indicating the site's availability for inclusionary development.

N.J.A.C. 5:93-4.2 (d).

Accordingly, under this methodology, Chester Borough has identified vacant and underdeveloped parcels in its alternative calculation of the RDP.

Pursuant to N.J.A.C. 5:93-4.2 (e), a municipality may then remove sites from the vacant land inventory based upon any one of six criteria. At least the following criteria for removing sites from the inventory apply: (1) N.J.A.C. 5:93-4.2 (e)(2)(i) concerning areas of the state regulated by a regional planning entity; (2) N.J.A.C. 5:93-4.2(e)(2)(iii). concerning the Legislature's adoption of legislation requiring the mapping of natural resources and providing a mechanism for their regulation, (3) N.J.A.C. 5:93-4.2 (e)(3) concerning historic and architecturally important sites; and (4) N.J.A.C. 5:93-4.2 (e) (6) concerning unsuitable sites. Through this process of removing sites from the inventory, you are left with sites that presumably would generate a realistic opportunity for the provision of affordable housing if rezoned for inclusionary development.

More specifically, pursuant to N.J.A.C. 5:93-4.2 (f), each portion of each site that is left after the removal process described above must be individually examined to determine an appropriate density. Applying a 20 percent set-aside to each of the sites and aggregating them yields the "realistic development potential" or RDP for the community. Said another way,

COAH designed this process to define the number of affordable units that the municipality could realistically generate if all suitable sites that survive the removal process proscribed in N.J.A.C. 5:93-4.2 (e) were developed with inclusionary projects. By labeling the number that results from this process the realistic development potential or RDP, COAH is, in effect, determining the number of affordable units that are realistically possible to generate in any given community.

Importantly, once a municipality determines its realistic development potential, it is free to satisfy that RDP through the full menu of compliance techniques available by applicable law. “The municipality need not incorporate into its housing element and fair share plan all sites used to calculate the RDP if the municipality can devise an acceptable means of addressing its RDP. The RDP shall not vary with the strategy and implementation techniques employed by the municipality.” N.J.A.C. 5:93-4.2 (g),

The Roberts Bill

COAH adopted N.J.A.C. 5:93-4.2 in its Round 2 regulations in 1994. However, an examination of the regulations and practices of COAH for Rounds 1, 2 and 3 reveal that the process for determining a municipality’s adjusted obligation remains essentially unchanged. Courts and COAH routinely use the process described above.

Nevertheless, the Legislature enacted the so-called Roberts Bill in 2008. N.J.S.A. 52:27D-310.1 provides as follows: “When computing a municipal adjustment regarding available land resources as part of the determination of a municipality’s fair share of affordable housing, the Council on Affordable Housing shall exclude from designating as vacant land: . . . (g) environmentally sensitive lands *where development is prohibited* by any State or federal agency.

If a state or federal regulation does not prohibit the removal of a site from the inventory because of its environmental sensitivity, however, that should not be the end of the inquiry. For example, even if no other exclusion applies, it is important to consider if rezoning the suitable portions of the site for inclusionary development would not create a realistic opportunity for affordable housing. It hardly makes sense to conclude that a site should contribute to the realistic development potential if rezoning the site for inclusionary zoning would not create the realistic opportunity for the provision of affordable housing. In fact, a municipality could be faulted for relying upon a site to meet its obligation to create a realistic opportunity for satisfaction of its realistic development potential if rezoning the site would not create the realistic opportunity for the provision of affordable housing.

Application of the Standards

The Removal Of The Turkey Farm Site From The Inventory

In extrapolating an RDP of 13 for the Borough, this analysis removes the Turkey Farm Site from the inventory based upon four criteria set forth in N.J.A.C. 5:93-4.2 (e) and based upon the fact that state or federal regulations prohibit the development of the site for inclusionary development. To be clear, as noted above, this analysis refers to the Turkey Farm Site to include

two sites even though one of the two sites by itself is often referred to as the Turkey Farm Site: (i) the Mill Ridge Lane (four vacant lots: Block 101, Lots 12.07, 12.08, 12.10 and 12.11) and (ii) (Block 101, Lots 13 – 16, comprised of three underdeveloped and underutilized lots and one vacant lot), which by itself is often identified as the Turkey Farm site. This vacant land analysis refers to both sites together as the “Turkey Farm Site” because the owners seek to develop both sites together as one project. To the extent that this report examines the two sites individually, however, it will refer to the Mill Ridge Lane site as Parcel A and the second site as Parcel B.

An examination of the attached 14-map series, attached hereto as Exhibit A, reveals why the Turkey Farm Site is unsuitable for inclusionary development. The Highland Regional Master Plan identifies the following designations and natural resource mapping for the Turkey Farm, which includes Highlands Regional Master Plan environmentally sensitive areas and natural resource areas:

1. Highlands RMP - Land Use Capability Map, showing the Existing Community Zone and Protection Zone designations for the sites; Parcel A is situated entirely within the Protection Zone; approximately one-half of Parcel B, including portions TF proposes for development, is designated Protection Zone.
2. Highlands RMP - Highlands RMP – Forest Resource Area, identifying Forest Resource Area designation on the Mill Ridge Lane site;
3. Highlands RMP - Open Water Buffers, extending across the northerly, northeast and central portions of the Turkey Farm site;
4. Highlands RMP - Riparian Area, identifying the riparian area extending into the northeast corner of the Turkey Farm site;
5. Highlands RMP - Steep Slopes, with designations of Highlands Moderately and Severely constrained slopes designated in the southwest area of the Mill Ridge Lane site and in the southwest corner of the Turkey Farm site;
6. Highlands RMP - Critical Wildlife Habitat, with critical habitat designation consuming the entire Mill Ridge Lane site and all but the southeast corner of the Turkey Farm site, which is included in the Borough’s NJSHPO Historic District and includes a designated site for the State and National Registers of Historic Places;
7. Highlands RMP - Prime Ground Water Recharge Area, which identifies Prime Ground Water Recharge Areas designated on the entirety of two Mill Ridge Lane lots, on two-thirds of another Mill Ridge Lane lots and occupying the northwest and north-central portion of the Turkey Farm Site;
8. Highlands RMP - Well Head Protection Areas – The entirety of both sites are designated Well Head Protection Areas. A Tier 2 public community well Well Head Protection Area occupying two of the Mill Ridge lots and the west, central and southerly portions of the Turkey Farm site; and Tier 3 public community well Well Head Protection Area occupying the remaining two lots on Mill Ridge Lane and the remaining northeast portion of the Turkey Farm site;
9. Highlands RMP - Historic designations, occupying the approximately the easterly half of the Turkey Farm site, including two existing structures (Isaac Corwin House and Nellie Topping House (Sunnyside), farmland and outbuildings on the Turkey Farm site, as well as public open space areas to the north of the Turkey Farm site;

10. Highlands RMP - Net Water Availability by HUC14 indicating that the entirety of both sites are included within a net water supply deficit area HUC14 (a deficit of -165,00 gallons per day); and the southeast corner of the Turkey Farm occupied by the Historic District Designation designated a HUC14 with 24,896 gallons per day of available water (approximately one-half of the water needed for a development proposal advanced by the property owner, which area of the site(s) is not included in the proposal); and
11. Highlands RMP - Forest Areas, which depict forest occupying the east and northeast corners of the Mill Ridge Lane site and the west side and northwest and north-central portions of the Turkey Farm site (within which total forest removal is proposed to construct a wastewater treatment plant and groundwater disposal beds in the development proposal).
12. Highlands RMP – Forest Integrity by HUC14; The Mill Ridge Lane and Turkey Farm sites are both identified as “Moderate” forest integrity by HUC14, with the exception of the developed southeast corner of the Turkey Farm site that is identified as “High” forest integrity by HUC14.
13. Watershed Values by HUC14; The Mill Ridge Lane and Turkey Farm sites are both identified as “Moderate” watershed value, with the exception of the developed southeast corner of the Turkey Farm site that is identified as “High” watershed value by HUC14.
14. Riparian Integrity by HUC14; The Mill Ridge Lane and Turkey Farm sites are both identified as “High” Riparian Integrity by HUC14, with the exception of the southeast corner of the Turkey Farm site that is identified as “Moderate” integrity.

These 14 maps depict a wide range of RMP designations, environmentally sensitive features and natural resource constraints that effectively render the Turkey Farm site unsuitable for inclusionary development. The combination of factors, rather than any factor alone, resulted in the Highlands Council designating the vast majority of the Turkey Farm in a Protection Zone and support the conclusion that the site is unsuitable for inclusionary development. Several of the reasons the reasons supporting this conclusion are listed below and are more fully explained in the Site Suitability Analysis, dated November 2015, revised through March 2016.

Parcel A (The Mill Ridge Lane Site consisting of Four Vacant Lots)

1. The site is comprised of four vacant lots that are all designated Protection Zone in the RMP. RMP policies prohibit the extension of wastewater infrastructure into the Protection Zone, thereby rendering the site undevelopable for inclusionary zoning densities.
2. Substantial portions are designated Highlands “Forest Resource Area.” RMP policies prohibit clearcutting of forest in the Forest Resource Area. Forest substantially occupies the site. Inclusionary zoning at prescribed densities would necessitate forest clearcutting and destruction, which is not permitted in the Forest Resource Area.
3. Lots 12.07, 12.08 and 12.10 include areas designated prime groundwater recharge areas. A limit of 15% impervious coverage on areas designated prime ground water recharge area significantly limits available land for development. The intensity of inclusionary zoning development under prescribed densities, including buildings, driveways, parking and related improvements would result in an impervious coverage development footprint that would well exceed the 15% limit.

4. Prime ground water recharge areas on Lots 12.07 and 12.08 coincide with a Tier 2 wellhead protection area for a public community well.
5. The site is entirely designated “Protection Zone” in the Highlands RMP because of the environmentally sensitive area and natural resources designated for the site. Highlands RMP policies seek to minimize and prohibit the creation or extension of sewer service areas in the Protection Zone, except on only a limited basis, pursuant to the following Highlands RMP policy:

- Policy 2J4: “To minimize ... the creation or extension of public water supply systems within the Protection Zone, the Conservation Zone and the Environmentally-Constrained Sub-zones of the Planning Area, *and to allow for the creation or extension of public water supply systems where appropriate within the ECZ.*” (page 171)
- Objective 2K3c: “**Prohibit** new, expanded, or extended public wastewater collection and treatment systems and community on-site treatment facilities within the Protection Zone, the Conservation Zone, and the Environmentally-Constrained Sub-zones of the Planning Area unless they are shown to be necessary for” . . . [waivers].

Without sewer service, the site is not developable at densities required to support inclusionary zoning development densities.

6. Highlands RMP policies prohibit new, expanded, or extended public water systems within the Protection Zone. In addition, the site is entirely located within a water supply deficit HUC14 subwatershed in the Highlands RMP. Public water supply cannot be extended to the site consistent with the following Highlands RMP policy objective.

- Objective 2J4a: “**Prohibit** new, expanded, or extended public water systems within the Protection Zone, the Conservation Zone, and the Environmentally-Constrained Sub-zones of the Planning Area unless they are shown to be necessary for” [waivers only when the project maximizes] “the protection of sensitive environmental resources such as Highlands Open Waters buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of ARAs, Steep Slopes, Prime Ground Water Recharge Areas and Critical Habitat. For” [clustered development] “the project must avoid disturbance of Highlands Open Waters buffer areas, Riparian Areas, Steep Slopes and Critical Habitat, and must minimize disturbance of the forested portion of the Forest Resource Area, agricultural lands of ARAs, and Prime Ground Water Recharge Areas...”

The Highlands RMP prohibits new, expanded, or extended public water systems in the Protection Zone. Therefore, the site is not developable at densities necessary to support inclusionary zoning. Highlands RMP also prohibits the creation of new water supply systems in areas of the Highlands designated water supply deficit areas, which includes the site.

7. Critical habitat designations extend across the entirety of each of the four sites. RMP policies *prohibit*:

- Policy 1F2: “**To prohibit** . . . the direct impact of new human development or expansion or increased intensity of existing development within Critical Habitat.” (Page 148)

- Objective 1F6a: ***“Prohibit*** direct impacts from new development or expansion or increased intensity of existing development that will jeopardize the continued existence of, or result in the likelihood of the destruction or adverse modification of Critical Habitat, ...” (page 149)
- Objective 1F6b: ***“Prohibit*** indirect impacts from activity that is off-site, adjacent to, or within Critical Habitat that will jeopardize the continued existence of, or result in the likelihood of the destruction or adverse modification of Critical Habitat, ...”

With the entirety of the site designated Critical Habitat, the site is unsuitable and undevelopable for inclusionary development at prescribed densities because it would result in the likelihood of the destruction or adverse modification of Critical Habitat.

8. The site cannot be designated a sewer service area in accordance with NJDEP’s Water Quality Management Planning rules, at N.J.A.C. 7:15-5.24, which state that (a) Sewer service may only be provided to *areas that are not identified* as environmentally sensitive areas. NJDEP’s definition of Environmentally Sensitive Areas includes Critical Habitat. The entire site is designated Critical Habitat, which prevents the designation of the site as a sewer service area that is necessary to support inclusionary zoning development densities, thereby rendering the site(s) unapprovable and undevelopable as well as unsuitable because of the critical habitat designation as well as the other environmentally sensitive features of the site, some of which are discussed above.
9. Insufficient water supply is available to support inclusionary zoning on the basis of ground water supply deficits identified for the site; the site is designated within a deficit net water availability watershed.
10. An electric utility easement occupies a depth of 50’ across the frontage of Lots 12.07 and 12.08, which appears to render these portions of the lots unavailable for development on the west side of the lot. The prime groundwater recharge area designation that occupies substantial portions of the two lots in combination with forest cover in the Forest Resource Area that would require forest removal for inclusionary development and the Critical habitat designation across the entirety of each of these two lots result in the lots being unsuitable, undevelopable and by easement, portions of the lots unavailable for development.

Parcel B (Three Underdeveloped and Underutilized Lots and One Vacant Lot)

1. The northerly portion of the site (approximately 12 acres) is designated Protection Zone in the RMP. The southerly approximately one-half of the site is designated Existing Community Zone. TF proposes development in the Protection Zone portion of the tract. Approximately the easterly half of the site is designated Historic. The extension of sewer service in the Protection Zone is prohibited in the Highlands RMP.
2. Highlands Open Water Buffers occupy the northerly portion of the site, extending to the southeast and west side of the site.
3. Highlands Riparian Area occupies the northeast portion of the site.
4. A minor area of Highlands moderately constrained slopes are designated in the southwest area of the site;

5. Critical Habitat is designated across the northerly half of the site and occupies the southwest area of the site. Prohibitions by the NJDEP and Highlands prevent the extension of sewer service to areas designated critical habitat, which render the site unsuitable and undevelopable.
6. Prime Ground Water Recharge Areas are designated across the northerly portion of the tract and extend to the southwest area of the tract. Construction of a sewage treatment plant and groundwater recharge beds is proposed by the property owner in this area of the site, which as noted above, is prohibited in the Protection Zone and Prime Ground Water Recharge areas. This renders the site unsuitable for inclusionary development.
7. The site is entirely designated well head protection area. A Tier 2 public community well Well Head Protection Area occupies the portion of the site that the property owner proposes for a wastewater treatment plant and groundwater disposal beds. This is prohibited in the Protection Zone in the RMP. Highlands policies prohibit this use in Well Head Protection Area designated Prime Ground Water Recharge Areas. The remainder of the site is designated a public community well Tier 3 Well Head Protection Area within which groundwater disposal beds for sewer service is proposed. The designation of sewer service and sewage treatment system disposal facilities in Well Head Protection Areas underlain by Prime Ground Water Recharge Areas is bad planning. These conditions render the site unsuitable for inclusionary development.
8. The east side of the site is designated historic. It extends into the southeast portion of the site designated Existing Community Zone, but includes the historic Isaac Corwin House and the Nellie Topping house, both of which are important historic resources, which render this portion of the site unsuitable for inclusionary zoning.
9. Approximately 75% of the site is designated a HUC14 water supply deficit area. The southeast corner of the site occupied by the Isaac Corwin House is not designated a water supply deficit HUC14, however available water is limited to approximately 24,000 gallons per day, which under Highlands policies is nontransferable. Therefore, the portion of the site included in a HUC14 with available water is in conflict with the historic site, which renders this area of the site unsuitable for inclusionary development (which isn't proposed by TF).
10. The northwest and west areas of the site are designated forest areas. Highlands RMP policies prohibit the clearcutting of forest, which would be necessary for development of a proposed sewage treatment plan and groundwater disposal beds. As such, the site is not developable for that use and is not suitable because it would result in the loss of existing forest.

The Borough's conclusion that the Turkey Farm Site is based on the summary of reasons above, which are more fully explained in the site suitability analysis for the site dated November 2015, as will be revised.

RDP Calculation – Table of Sites

The following table identifies the RDP for Chester Borough based on the Borough's conclusion that the Turkey Farm Site is not suitable for inclusionary development based upon the

above summary to be further detailed in the Turkey Farm Site Suitability Report. The computations in the following table, with one exception³, are based upon the six dwelling unit per acre minimum prescribed in the rule, which is appropriate given existing development densities and characteristics surrounding RDP sites (see inventory and discussion of sites included in this report below). The RDP computation for one 300 Main Street has been calculated at a slightly higher density (8 du/ac) for reasons explained in the narrative of individual sites below in the section entitled “Site Suitability Analysis.”

ID	Bl./Lot / Name	Gross Acres	Combined Constrained Areas - Acres	Unconstrained Acres	Units @ 6 du/ac
1	101/12.08 Mill Ridge Ln. (W.Chester Acq.)	2.12	2.12	0	0
2	101/12.07 Mill Ridge Ln. (W.Chester Acq.)	2.15	2.15	0	0
3	101/12.10 Mill Ridge Ln. (W.Chester Acq.)	1.98	1.98	0	0
4	101/12.11 Mill Ridge Ln. (W.Chester Acq.)	2.16	2.16	0	0
5	101/13-16 Rte-24 & W. Main (Turkey Farm Acq.)	26.96	25.92	1.04	0 ⁴
6	119 / 8 –300 Main St. (Boro)	1.95	0.02	1.93	16 ⁵
7	119 / 6 –280 Main St. (Braemar at Chester, LLC)	2.55	0	2.55	15
8	131 / 4 –65 Maple (Meenan Oil)	1.07	0	1.07	6
9	115/6 –Main & 50 North Rd. (Boro)	19.55	3	16.55	8 ⁶
10	115/17 –50 North Rd.	59.25	48.74	10.51	0 ⁷

³ The exception, 300 Main Street, is the site of the now vacant municipal building that once houses the Borough’s municipal offices, police station, DPW public works garage and a water tower with associated driveways and parking. The extensively developed character of this site and its proximity to multi-family dwelling allows for a slightly higher density calculation for the RDP for this site: 8 du/ac instead of 6 du/ac.

⁴ Developable area is an irregular and contorted and convoluted configuration around constrained areas and other existing exclusions and development. In addition site is not suitable due to historic mines that are known to exist on the site.

⁵ 8 du/ac. for reasons summarized in footnote 15 above.

⁶ Unavailable for inclusionary development - Portion of the Borough-owned Lucent Technologies industrial tract. It is a contaminated site. Lucent imposed a deed restriction on this portion of the lot with an 8 individual septic systems limit.

⁷ Unavailable for inclusionary development - Portion of the Borough-owned Lucent Technologies industrial tract. Lucent imposed a development restriction that states that “. . . development and groundwater uses may occur consistent with the permitted uses under Purchaser’s (Borough of Chester) current zoning requirements (whether currently applicable to the property or not). . .” The site is industrially zoned. Industrial zoning limits the use to

	(Boro)				
11	110/28 –437 Main St. (Chester Realty, LLC)	4.87	4.87	0	1
12	102 / 5 –310 Route 206 (DeFillipis)	5.37	4.74	0.63 ⁸	0 ⁹
13	101/11 –235 Rte 206 (Boro)	0.73	0.73	0	4 ¹⁰
14	101/9 –313 Rte. 206 (Storms)	15.64	15.64 ¹¹	0	0
15	101/29 – 11 Cherry Tree (Burd)	3.44	2.71	0.73	0 ¹²
16	Block 112, Lots 3,4 & 5 (Grace Bible Chapel)	4.16	3.20	.96 ¹³	5
17	Block 110, Lot 57 (Roskum)	5.6	3.75	1.85	11
18	Block114 , Lot 5 (Gasparine)	8.32	7.72	.60	0
					66 units
				66 x .20 = 13.2	13 aff. units

The RDP calculation above is based upon the procedures of N.J.A.C. 5:93-4.2(b) and (f) is 13 units. This calculation of the RDP is provided to illustrate the RDP calculation under traditional COAH protocols in the event that the important goals of the Highlands Act and the mechanisms the Highlands Council has used to protect those goals are ignored.

Exhibit B provides further details as to the COAH standards for extrapolating a municipality’s realistic development potential and also provides a “Site Suitability Analysis”. This Exhibit further explains the basis for the 13 unit RDP explained above under scenario B.

III. SCENARIO C: PROSPECTIVE NEED BASED UPON COAH’S CHAPTER 93 RDP PROCEDURES & RDP CALCULATION INCLUDING MILL RIDGE LANE AND TURKEY FARM SITES

industrial uses. Industrial uses require lots at least 5 acres in area for industrial use. This site generates no RDP.

⁸ Land remaining outside of electric power line easement

⁹ .63 acres is less than .83 acres, which is the minimum area needed to generate 5 dwelling units at a 6 du/ac density.

¹⁰ Assigned an RDP of 4 units because Borough owned site is under contract for reuse with 4 affordable apartments for US Veterans re-entering the community.

¹¹ Including 10.38 acres wetland area, which area does not include the required transition area.

¹² .73 acres < .83

¹³ Tract consists of Lots 3, 4, 5. Lots 3 & 4 are vacant = .96 acres. Grace Bible Church complex occupies Lot 5, which is excluded. Lots 3 & 4 were formerly designated Lots 1 & 2.

The Turkey Farm Site property owners assert that the entire site is suitable for inclusionary development. If they prove this despite the overwhelming facts that support a finding that the site is unsuitable, the site would generate an RDP of 42.4 units: 35.37 acres times six units per acre times 20 percent equals 42.4 units. The Borough contends that this result is entirely implausible. However, explaining it provides the opportunity to explain an important point. Even if the Court were to reach this conclusion despite all the reasons set forth above, the only significance of the Borough having an increased RDP is that the Borough must provide a plan to create a realistic opportunity to satisfy the increased number as set forth in NJAC 5:93-4.2 (g), which reads as follows:

(g) The municipality may address its RDP through any activity approved by the Council, pursuant to [N.J.A.C. 5:93-5](#). The municipality need not incorporate into its housing element and fair share plan all sites used to calculate the RDP if the municipality can devise an acceptable means of addressing its RDP. The RDP shall not vary with the strategy and implementation techniques employed by the municipality.

The Borough has a plan that creates a realistic opportunity for satisfaction of the 55 unit RDP that would result if the RDP was increased from 13 units by 42.4 units to 55-units. The Borough is committed to satisfying its obligations voluntarily and formulating a plan that it feels is the best plan for the community. NJAC 5:93-4.2 (g), which articulates a policy that COAH has remained true to for decades, gives the Borough that right.

EXHIBIT A
14 MAP SERIES

DRAFT

February 2016



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Legend



- Potential Sites
- Existing Community
- Conservation
- Conservation - Environmentally Constrained
- Protection

Data Sources:
 Morris County Planning Department parcels
 NJ Highlands Council

February 2016

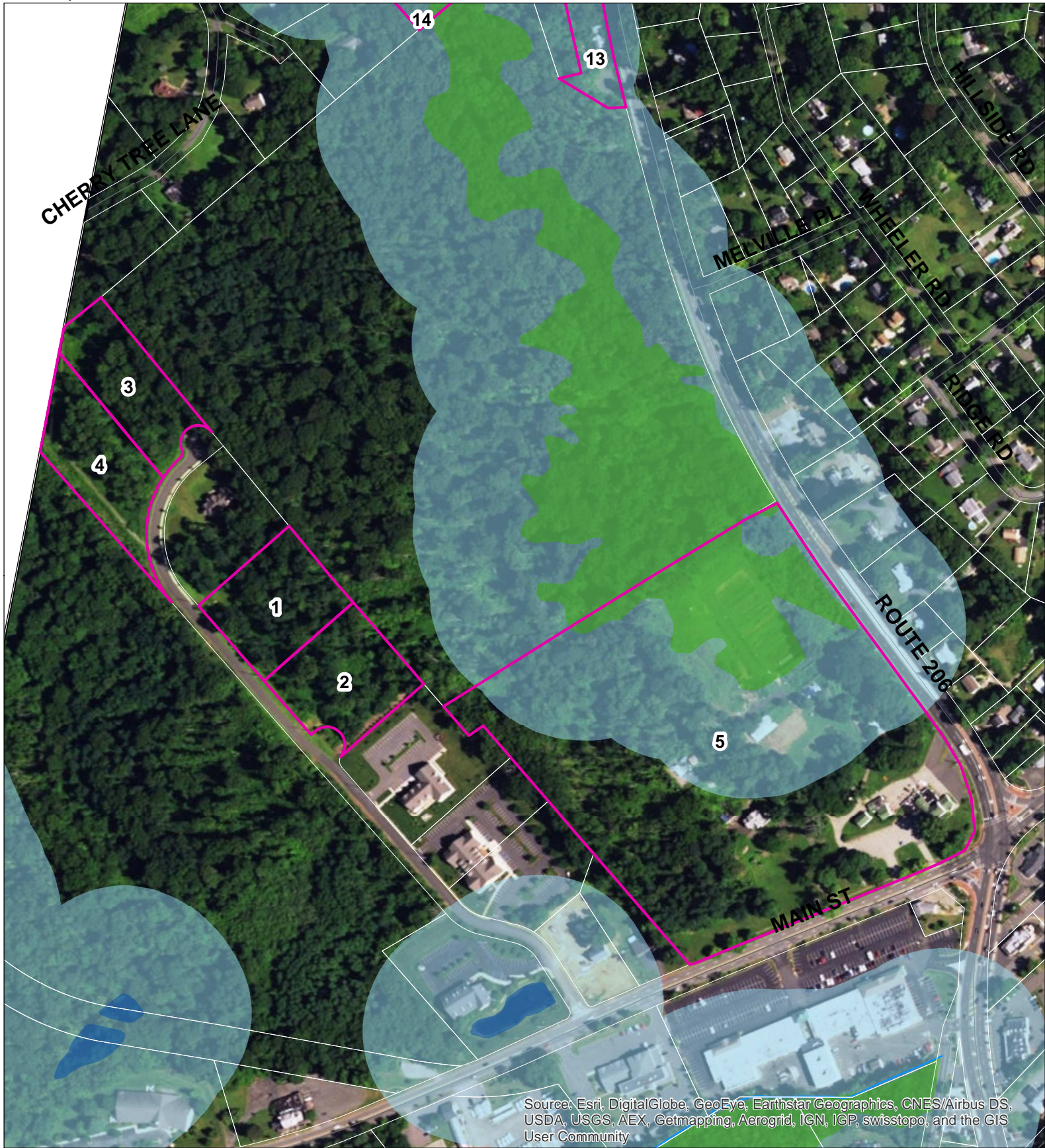


Legend

-  Potential Sites
-  Forest Resource Area

Data Sources:
Morris County Planning Department parcels
NJ Highlands Council

February 2016



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Legend

- Potential Sites
- Streams
- Water
- Wetlands
- Highlands Open Water Area

Data Sources:
Morris County Planning Department parcels
NJ Highlands Council

February 2016



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Legend

-  Potential Sites
-  Riparian Area




Data Sources:
Morris County Planning Department parcels
NJ Highlands Council

February 2016



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Legend

-  Potential Sites
-  Highlands Severly Constrained Slopes
-  Highlands Moderatly Constrained Slopes



Data Sources:
Morris County Planning Department parcels
NJ Highlands Council

February 2016



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Legend

-  Potential Sites
-  Critical Wildlife Habitat



Data Sources:
Morris County Planning Department parcels
NJ Highlands Council

February 2016



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Legend

-  Potential Sites
-  Prime Groundwater Recharge Areas

Data Sources:
Morris County Planning Department parcels
NJ Highlands Council

February 2016



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Legend

 Potential Sites

Wellhead Protection Areas

 2-year

 5-year

 12-year




Data Sources:
Morris County Planning Department parcels
NJ Highlands Council

February 2016



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Legend

-  Potential Sites
-  Historic Properties
-  Historic Districts and Properties

Data Sources:
Morris County Planning Department parcels
NJ Highlands Council

February 2016




Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community


Legend

 Potential Sites

Million Gallons Per Day (MGD)

 -0.164759274285

 -0.0227334457198

 0.0248961057099

Data Sources:
Morris County Planning Department parcels
NJ Highlands Council

February 2016



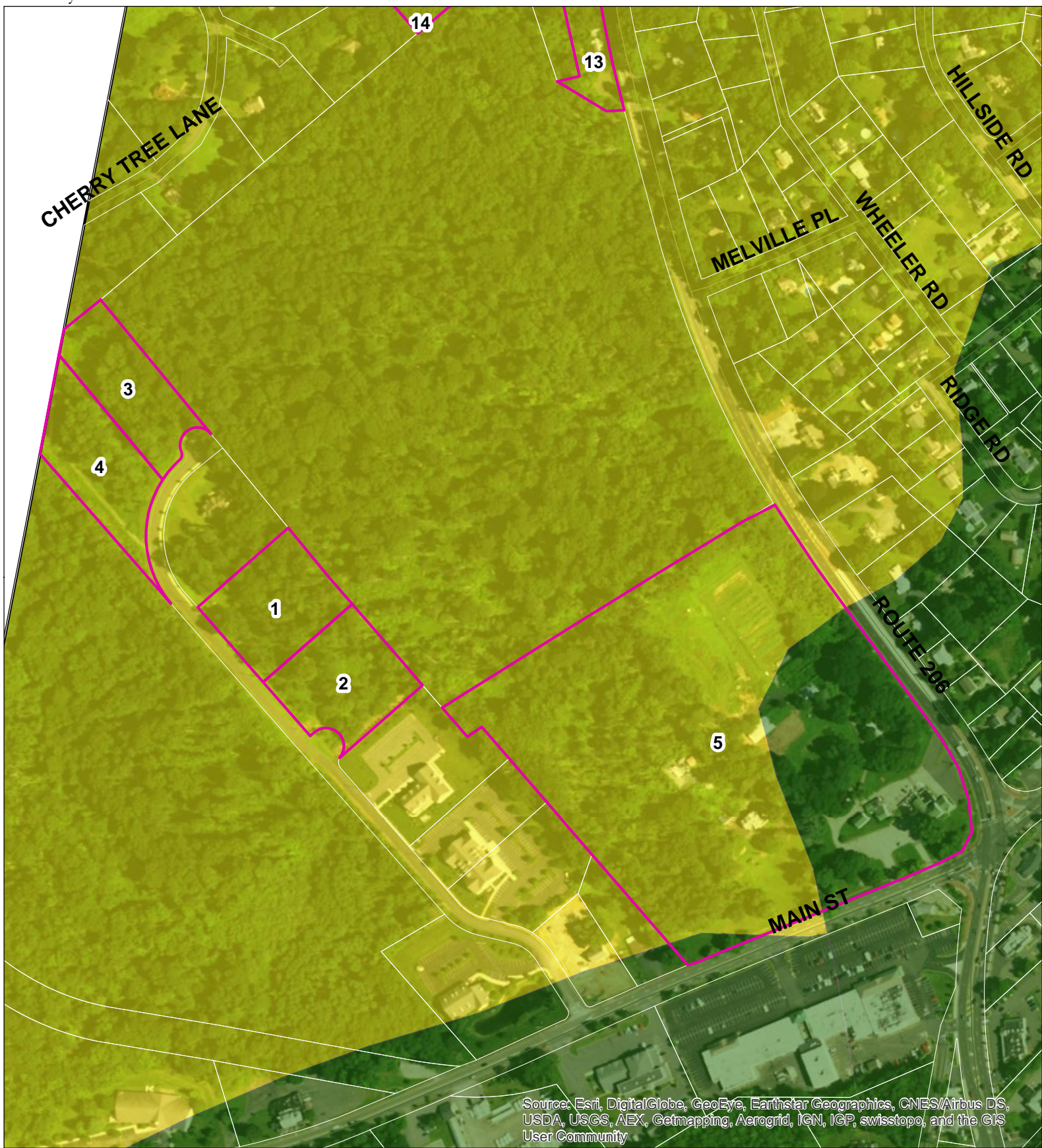
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Legend

-  Potential Sites
-  Forest




Data Sources:
Morris County Planning Department parcels
NJ Highlands Council

February 2016



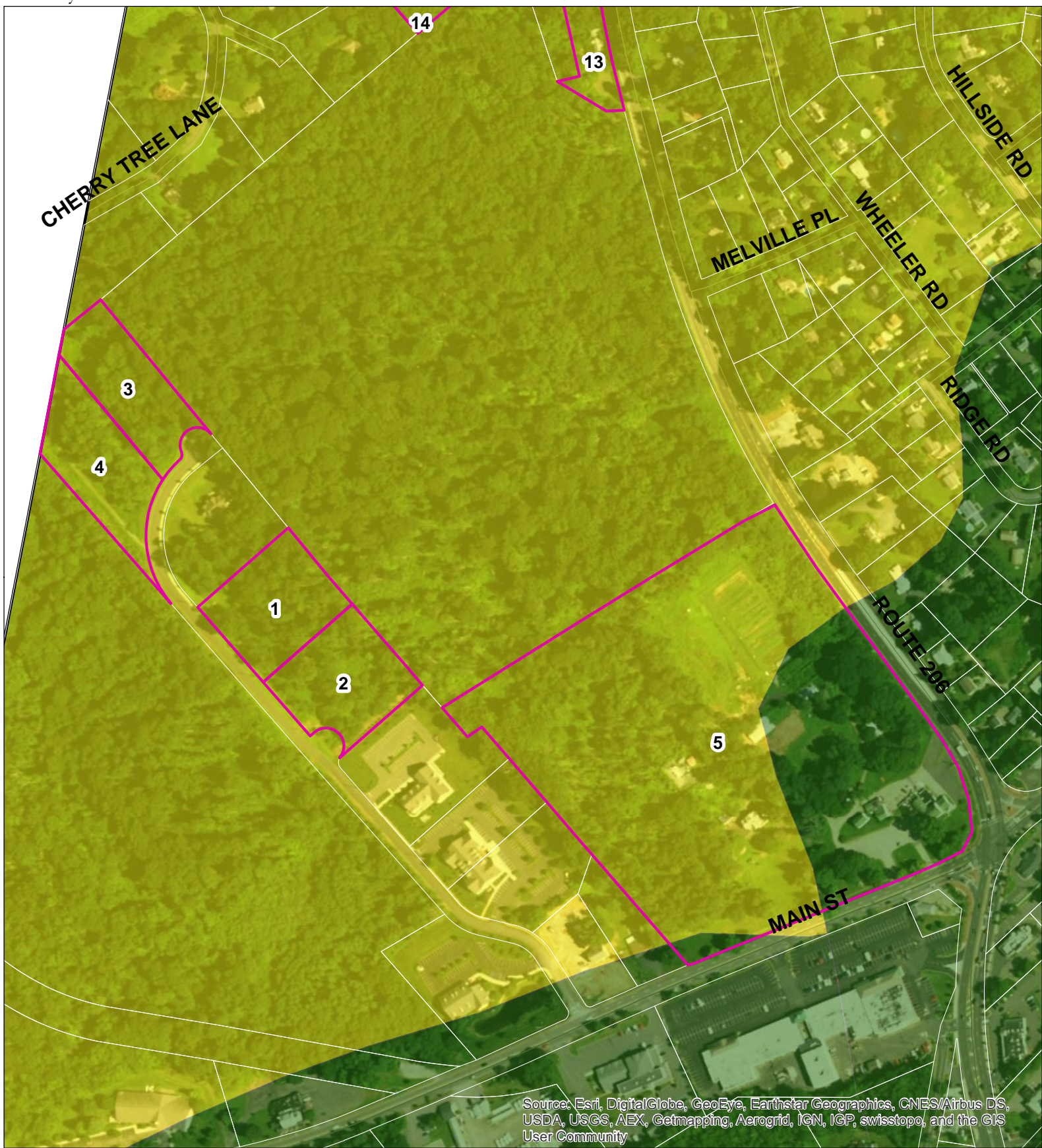
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Legend




-  Potential Sites
-  Moderate
-  High

Data Sources:
Morris County Planning Department parcels
NJ Highlands Council

February 2016

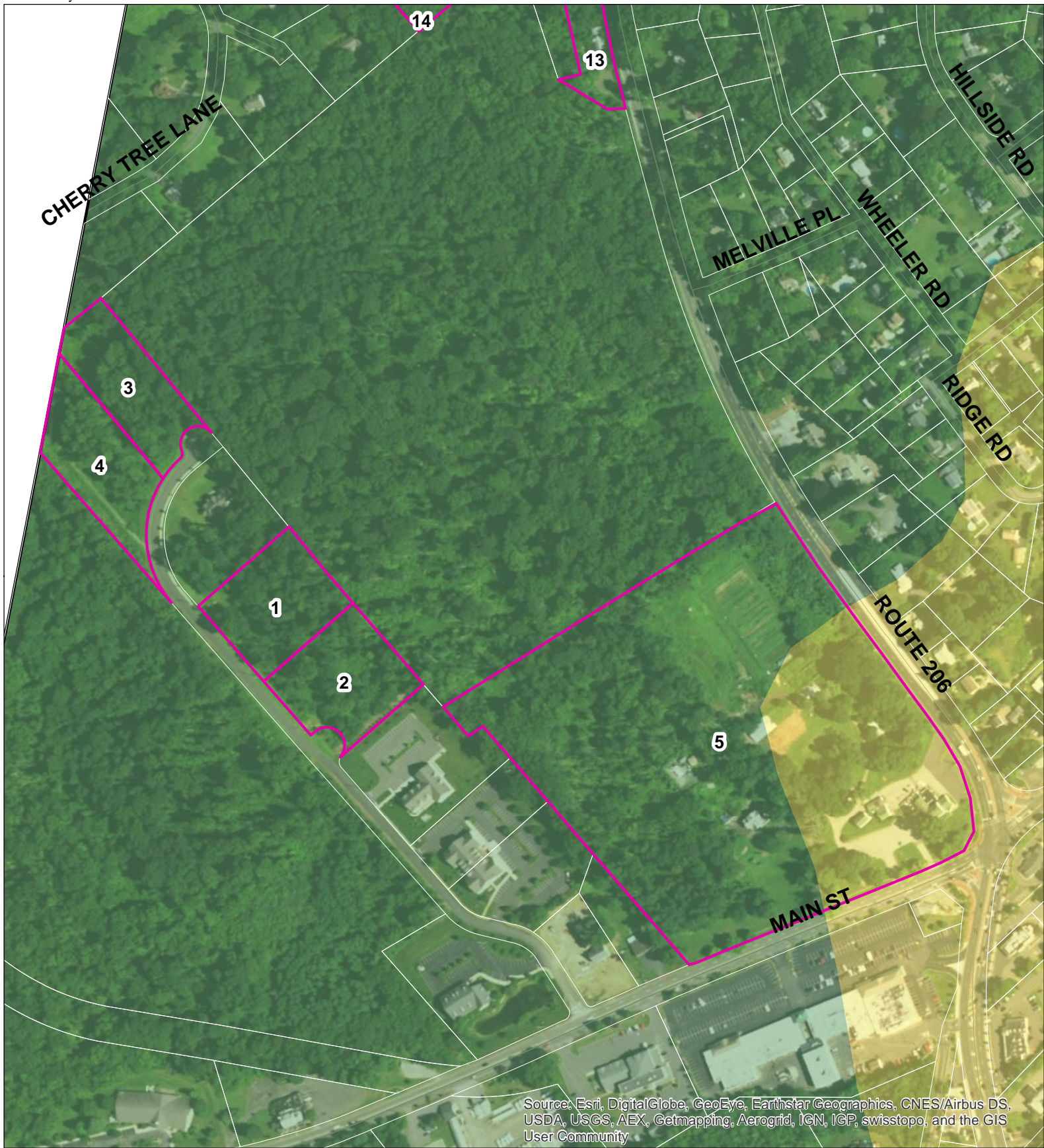


Legend

-  Potential Sites
-  Moderate
-  High

Data Sources:
Morris County Planning Department parcels
NJ Highlands Council

February 2016



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Legend

-  Potential Sites
-  Moderate
-  High

Data Sources:
Morris County Planning Department parcels
NJ Highlands Council

Exhibit B

Methodology for Identifying Alternative RDP Calculation

This section of the report elaborates on the methodology used to calculate the RDP calculation that is identified in Section II of this report. That calculation was derived from the application of the procedures for securing a vacant land adjustment set forth in N.J.A.C. 5:93-4.2.

COAH's Lack of land procedures (N.J.A.C. 5:93-4.2) Summarized

N.J.A.C. 5:93-4.2 "Lack of land," subsections 4.2 (a) – (e) identify the standards and procedures to identify vacant land and calculate the RDP, which are briefly summarized below.

- Identify existing land use - N.J.A.C. 5:93-4.2(a).
- Prepare a list of vacant parcels - N.J.A.C. 5:93-4.2(b), (included in this report below).
- Exclude municipal land designated for a purpose other than housing by municipal resolution prior to January 1, 1997 - N.J.A.C. 5:93-4.2(c) 1.
- Exclude vacant contiguous land that would result in less than 5 dwelling units, which requires a minimum area of .83 acres at COAH's 6 du/ac density. - N.J.A.C. 5:93-4.2(c)2.
- Identify sites most likely to develop for low- and moderate-income housing, which the regulations cite as sites such as, but not limited to "golf courses not owned by its members; farms in SDRP Planning Areas one, two and three; driving ranges; nurseries; and non-conforming uses" and treat such sites as vacant sites - N.J.A.C. 5:93-4.2(d).
- Identify sites or portions of sites to be excluded from the inventory using the criteria found in N.J.A.C. 5:93-4.2(e) 1. – 6. This criteria identifies a list of exclusions based on a number of factors including
 - preserved agricultural land ((e)1.),
 - environmentally sensitive land ((e)2.),
 - historic and architecturally important sites ((e)3.),
 - active recreation areas (up to 3% of the area of the municipality) ((e)4.),
 - conservation parklands and open space lands ((e)5.), and
 - individual sites determined to be "not suitable" for low-and moderate-income housing may be excluded ((e)6.)

The regulations provide that "Partial elimination of a site shall not necessarily eliminate an entire site as *unsuitable*." - N.J.A.C. 5:93-4.2(e)

Consistency with Mount Laurel II

The land exclusions identified in N.J.A.C. 5:93-4.2(e) subsections 1–6. are consistent with the Supreme Court's 1983 Mount Laurel decision, in which it opined that "The Constitution of the State of New Jersey does not require bad planning. ... There is nothing in our constitution that says that we cannot satisfy our constitutional obligation to provide lower income housing and, at the same time, plan the future of the state intelligently." S. Burlington Cty. N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158, 238 (1983). The Supreme Court additionally opined that "We emphasize here that our concern for protection of the environment is a strong one and that we intend nothing in this opinion to result in environmentally harmful consequences. ... *We are,*

however, convinced that meeting housing needs is not necessarily incompatible with protecting the environment. Mount Laurel II at page 331, footnote 68 . In 1985, in response to the overwhelming litigations sparked by Mount Laurel II and the reaction to the high fair share numbers generated by the AMG formula, the New Jersey Legislature enacted the Fair Housing Act. Recognizing that an adequate response to judicial mandates respecting housing for low and moderate-income persons requires sound planning to prevent sprawl and to promote suitable use of land, the Legislature also enacted the State Planning Act as companion legislation to the Fair Housing Act.

COAH Defers to State’s Regional Planning Authorities

COAH’s Chapter 93 including N.J.A.C. 5:93-4.2 establishing a procedure for a vacant land adjustment are the only regulations in effect because the Supreme Court invalidated the second iteration of Round 3 regulations (Subchapter 97) and because COAH failed to adopt replacement regulations. COAH adopted the procedures set forth in N.J.A.C. 5:93-4.2 in 1994, which predates enactment of the Highlands Act that created the Highlands Council and the statutory requirement for a Highlands RMP. Therefore, COAH did not address the requirements of the Highlands Legislation generally and the requirements to consider the RMP specifically when it enacted those Round 2 regulations in 1994. Therefore, while COAH deferred to the policies of other regional planning entities in its Round 2 regulations (i.e. Pinelands & Meadowlands Commissions, Division of Coastal Resources), there was no Highlands Council at that time to which COAH could have deferred. More specifically, N.J.A.C. 5:93.4.2(e)2.ii. states that “within the areas of the State regulated by [Pinelands & Meadowlands Commissions, Division of Coastal Resources (i.e. regional planning authority designated by the Legislature)] the Council shall adhere to the policies delineated [in their comprehensive plan, rules and zoning regulations]. Since the policies of the Highlands Council designed to safeguard the drinking water of millions of current and future New Jerseyans are entitled to no less deference than the policies of these other regional planning entities, I am applying the Highlands Council and RMP policies in Chester Borough’s “Lack of land” calculation as provided for in COAH’s regulations because Chester Borough is in the plan conformance process. More specifically, the Highlands Council has urged the Borough to conform to the Regional Master Plan and the Borough has made a commitment to plan conformance and is vigorously pursuing plan conformance process. Given the health and safety issues facing the community, securing plan conformance isn’t merely a desirable goal, it’s a necessity. In view of these and other facts, I have treated the Borough as a community with plan conformance for the purpose of this draft plan.

Highlands Act & FHA Consistency

The policies of COAH need to address the policies of the Highlands Council as reflected in the Highlands Regional Master Plan.

Highlands Act (2004):

In Section 2, under findings and declarations, “The Legislature further finds and declares that, since 1984, 65,000 acres, or over 100 square miles, of the New Jersey Highlands have been lost to development; that sprawl and the pace of development in the region has dramatically

increased, with the rate of loss of forested lands and wetlands more than doubling since 1995; that the New Jersey Highlands, because of its proximity to rapidly expanding suburban areas, is at serious risk of being fragmented and consumed by unplanned development; and that the existing *land use and environmental regulation system cannot protect the water and natural resources of the New Jersey Highlands against the environmental impacts of sprawl development.*”

Section 11: “a. The regional master plan shall include, but need not necessarily be limited to: (1) A resource assessment which: (a) determines the amount and type of human development and activity which the ecosystem of the Highlands Region can sustain while still maintaining the overall ecological values thereof, with *special reference to surface and ground water quality and supply; contiguous forests and woodlands; endangered and threatened animals, plants, and biotic communities; ecological factors relating to the protection and enhancement of agricultural or horticultural production or activity; air quality; and other appropriate considerations affecting the ecological integrity of the Highlands Region; and . . .*”

N.J.S.A. 13:20-23: “a. The Council on Affordable Housing shall take into consideration the regional master plan prior to making any determination regarding the allocation of the prospective fair share of the housing need in any municipality in the Highlands Region under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) for the fair share period subsequent to 1999.”

These three provisions of the Highlands Act illustrate that the Legislature clearly recognized that special protections were necessary to manage the future of the Highlands Region including special treatment in the Mount Laurel arena:

1. “. . . [T]he existing *land use and environmental regulation system cannot protect the water and natural resources* of the New Jersey Highlands against the environmental impacts of sprawl development.”
2. A Regional Master Plan and resource assessment should guide “*the amount and type of human development and activity which the ecosystem of the Highlands Region can sustain* while still maintaining the overall ecological values thereof, with special reference to surface and ground water quality and supply; contiguous forests and woodlands; endangered and threatened animals, plants, and biotic communities . . .”
3. The *determination of prospective fair share of the housing need in any municipality in the Highlands Region should take into consideration the regional master plan* “for the fair share period subsequent to 1999.”

Fair Housing Act

The Fair Housing Act also recognizes the need for protection of the environment, which is consistent with the Supreme Court’s emphasis in Mount Laurel II in fostering the production of affordable housing in accordance with sound planning. (cited above).

Section 307 c. (2) of the FHA (under Duties of the council), states that “(2) Municipal adjustment of the present and prospective fair share based upon available vacant and developable land, infrastructure considerations or environmental or historic preservation factors and adjustments *shall be made whenever*:

- (a) The preservation of historically or important architecture and sites and their environs or environmentally sensitive lands may be jeopardized,
- (b) The established pattern of development in the community would be drastically altered . . .” and
- (e) The pattern of development is contrary to the planning designations in the State Development and Redevelopment Plan prepared pursuant to sections 1 through 12 of P.L.1985, c. 398 (C.52:18A-196 et seq.), . . .”

The Fair Housing Act requires that COAH shall, in carrying out its duties, including prospective need estimates, “*give appropriate weight to pertinent research studies, government reports, decisions of other branches of government, and implementation of the State Development and Redevelopment Plan.*” (N.J.S.A. 52:27D- 307(d))

2008 Fair Housing Act amendments include a new **Highlands** requirement at Section 329.9 that “there shall be required to be reserved for occupancy by low or moderate income households at least 20 percent of the residential units constructed, to the extent economically feasible.”

In 2008, Section 310.1 (g) provides for the exclusion of land from the inventory when the land is “environmentally sensitive lands where development is prohibited by any State or federal agency.”

Section 307.c.(2) requires that adjustments to municipal obligations “shall be made” when “the preservation of historically or important architecture and site and their environs or environmentally sensitive lands may be jeopardized,” “when the established pattern of a community would be drastically altered” and where “the pattern of development is contrary to the planning designations in the State Development and Redevelopment Plan,” which are all directed at sound planning and the suitability of a site(s) to support development.

The Highlands Act designates the Highlands Region as a special resource area of the State and finds that the existing land use and environmental regulation system cannot protect the water and natural resources of the New Jersey Highlands against the environmental impacts of sprawl development.

The Highlands Act requires that any determination of the prospective need subsequent to 1999 for any municipality in the Highlands Region should only be made after a consideration of the RMP.

The purpose of a vacant land adjustment is to determine the municipality’s “realistic development potential” (also known as the “RDP”), which is the measure of how many affordable housing units are likely to result if all suitable vacant or underdeveloped sites were

rezoned for inclusionary development with a 20 percent set aside at a density of at least six units per acre. Since the purpose of a vacant land adjustment is to produce the municipality's "realistic" development potential, then, by definition, it should exclude sites that are not "realistic". Furthermore, land that is not suitable for inclusionary development should not contribute to the RDP since COAH requires municipalities to rely upon only suitable sites in their affordable housing plans.

The vacant land analysis was performed in light of the standards and principles discussed above.

Most Relevant Provisions of N.J.A.C. 5:93-4.2(e)

An elaboration of a few of the six criteria enumerated at N.J.A.C. 5:93-4.2(e) for removing land from the inventory for purposes of extrapolating an RDP is required:

First, as to N.J.A.C. 5:93 -4.2 (e) 2. i. concerning areas of the State regulated by regional planning entities, the Legislature enacted the Highlands Act on June 7, 2004, which was signed into law by Governor Corzine on August 10, 2004, ten years after COAH adopted Round 2 regulations on May 10, 1994. The Act, the Highlands Council and the Highlands RMP did not exist when COAH adopted Chapter 93, which explains why the Highlands Region and Council are not listed with the Pinelands Commission, Division of Coastal Resources and the Hackensack Meadowlands in N.J.A.C. 5:93-4.2(e)2.i in this provision of the regulations. However, since the point of this regulation is to direct COAH to adhere to regional planning authority policies, plans and zoning, I have applied the policies of the Highlands Council, which are expressed in the RMP, to the same extent as COAH requires adherence to the policies of other regional planning entities.

Second, as to N.J.A.C. 5:93 -4.2 (e) 6 concerning unsuitable sites, COAH has determined that all sites used for inclusionary zoning must be available, approvable, developable and suitable. N.J.A.C. 5:91-3.6(b)(3); N.J.A.C. 5:93-5.3(b); and N.J.A.C. 5:93-1. Sites may be eliminated from the inventory on the basis of any of these factors. COAH defined these terms as follows in N.J.A.C. 5:93-1.3:

"Available site" means a site with clear title, free of encumbrances which preclude development for low and moderate income housing.[Easements]

"Approvable site" means a site that may be developed for low and moderate income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate income housing.

"Developable site" means a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable areawide water quality management plan (including the wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by DEP.

“Suitable site” means a site that is adjacent to compatible land uses, has access to appropriate streets *and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.*

As noted, the definition of a suitable site refers to lands that are consistent with “*the environmental policies* enumerated at N.J.A.C. 5:93-4”. N.J.A.C. 5:93-4.2(e) subsections 1 - 6 includes, but is not limited to land with the following characteristics that may be removed from the inventory based upon environmental policies:

- (e)1. - preserved agricultural land;
- (e)2.i. – lands regulated by regional planning authorities adhering to the policies of regional plans;
- (e)2.ii. – wetlands, flood hazard areas, steep slope areas (in excess of 15%); and
- (e)2.iii. - lands where the Legislature adopts legislation that requires the mapping of natural resources and provides a mechanism for their regulation. This includes NJDEP regulations and also includes adhering to regional planning authority policies as *required* in N.J.A.C. 5:93-4.23(e)2.i.

Third, the provision at N.J.A.C. 5:93-4-2(e)2.iii. authorizes removal of a site from the inventory “[w]here the Legislature adopts legislation that requires the mapping of other natural resources and provides a mechanism for their regulation, the Council shall include such resources in its criteria and guidelines for municipal adjustment.” The Highlands Act, adopted in 2004, approximately 10 years after Chapter 94 was adopted by COAH mandates that the Highlands Council prepare a resource assessment (mapping) in the Regional Master Plan (N.J.S.A. 13:20-11a.). The Highlands Act provides a mechanism for natural resource regulation through voluntary Plan Conformance (N.J.S.A. 13:20-15.). Thus, consistent with N.J.A.C. 5:93-4.2(e)2.iii., the Legislature required comprehensive resource mapping in the Highlands Region and it established a mechanism to regulate natural resources in the Highlands Region, of which Chester Borough is a part. The mapping used to identify developable and suitable sites in the RDP calculation provided in Section II is based on Highlands RMP mapping as indicated by the goals, policies and objectives for the protection and maintenance of environmentally sensitive and natural resource areas in the Highlands RMP. This is consistent with N.J.A.C. 5:93-4.2.i.

Thus, COAH’s procedures for obtaining a vacant land adjustment require the removal of land from the municipal inventory of vacant land based on adhering to the policies of the regional planning authority (N.J.A.C. 4:93-4.2(e)2.i.) and removal of land when the Legislature requires mapping and regulation of resources (N.J.A.C. 5:93-4.2(e)2.iii.). Land has been removed from the Borough’s vacant land inventory in accordance with both of these provisions pursuant to the RMP to calculate the alternative RDP calculation identified in Sections II above.

The RDP calculation in Sections II is consistent with N.J.A.C. 5:93-4.2(e)6 which authorizes removal of sites found to be unsuitable for affordable housing. Therefore, as applied to Chester Borough, the provisions of the Highlands Act and RMP, as coequal legislation to the Fair Housing Act and its progeny, COAH’s regulations, are appropriately applied and adhered to as part of the RDP calculation in Section II.

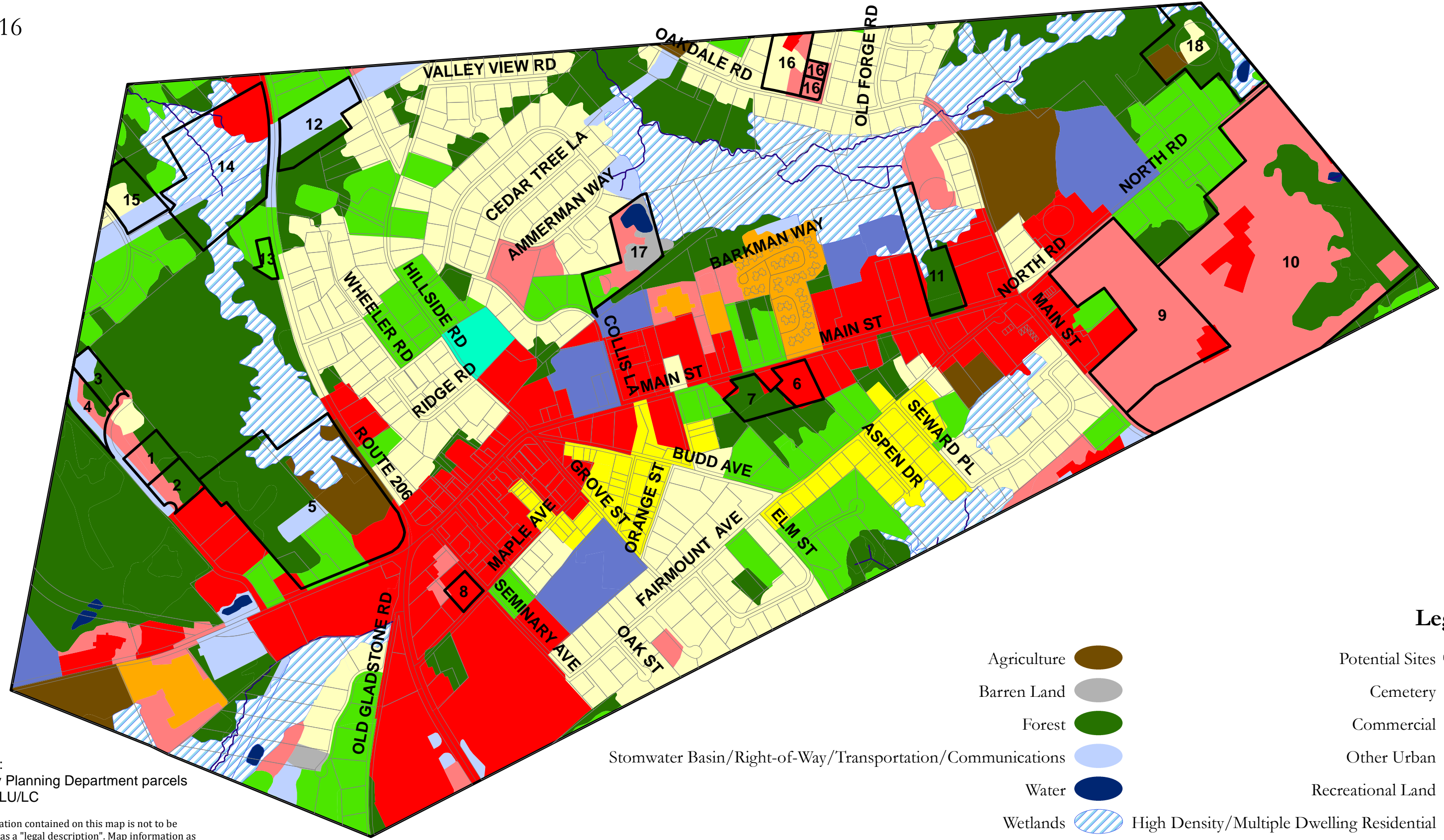
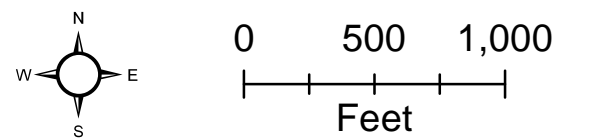
“Lack of Land” Mapping

An examination of the mapping provided in Exhibit A reveals land that is not “approvable,” “available,” “developable,” “suitable”:

- (1) Map entitled “2012 Land Use / Land Cover,” March 2016.
 - NJDEP 2012 Land Use/Land Cover, showing:
 - Agriculture
 - Barren Land
 - Forest
 - Stormwater Basin/R-O-W/Transportation/Communications
 - Water
 - Cemetery
 - Commercial
 - Other Urban
 - Recreational Land
 - High Density/Multiple Dwelling Residential
 - Rural Residential
 - Low Density Residential
 - Medium Density Residential
- (2) Map entitled “Property Tax Class,” March 2016.
 - Mod 4 Tax Data, showing:
 - Vacant
 - Residential
 - Farm Assessed
 - Farm Qualified
 - Commercial
 - Apartment
 - Public School
 - Public Property
 - Church
 - Cemetery
 - Other Exempt
 - No Data
- (3) Map entitled “Aerial Photography and Highlands RMP Constraints, March 2016.”
 - NJ Highlands Moderately Constrained Slopes 2012
 - NJ Highlands Severely Constrained Slopes 2012
 - NJ Highlands Open Water Protection Area 2012
(includes wetlands and Highlands buffers)
 - NJ Highlands Floodprone Areas 2012
 - NJ Highlands Critical Habitat 2012 (rank 3, 4 & 5)
 - NJDEP Historic Sites and districts V2011
 - NJDEP GEOWeb Groundwater Contamination Area Plume

2012 Land Use/Land Cover
 Chester Borough, Morris County

April 2016



Legend

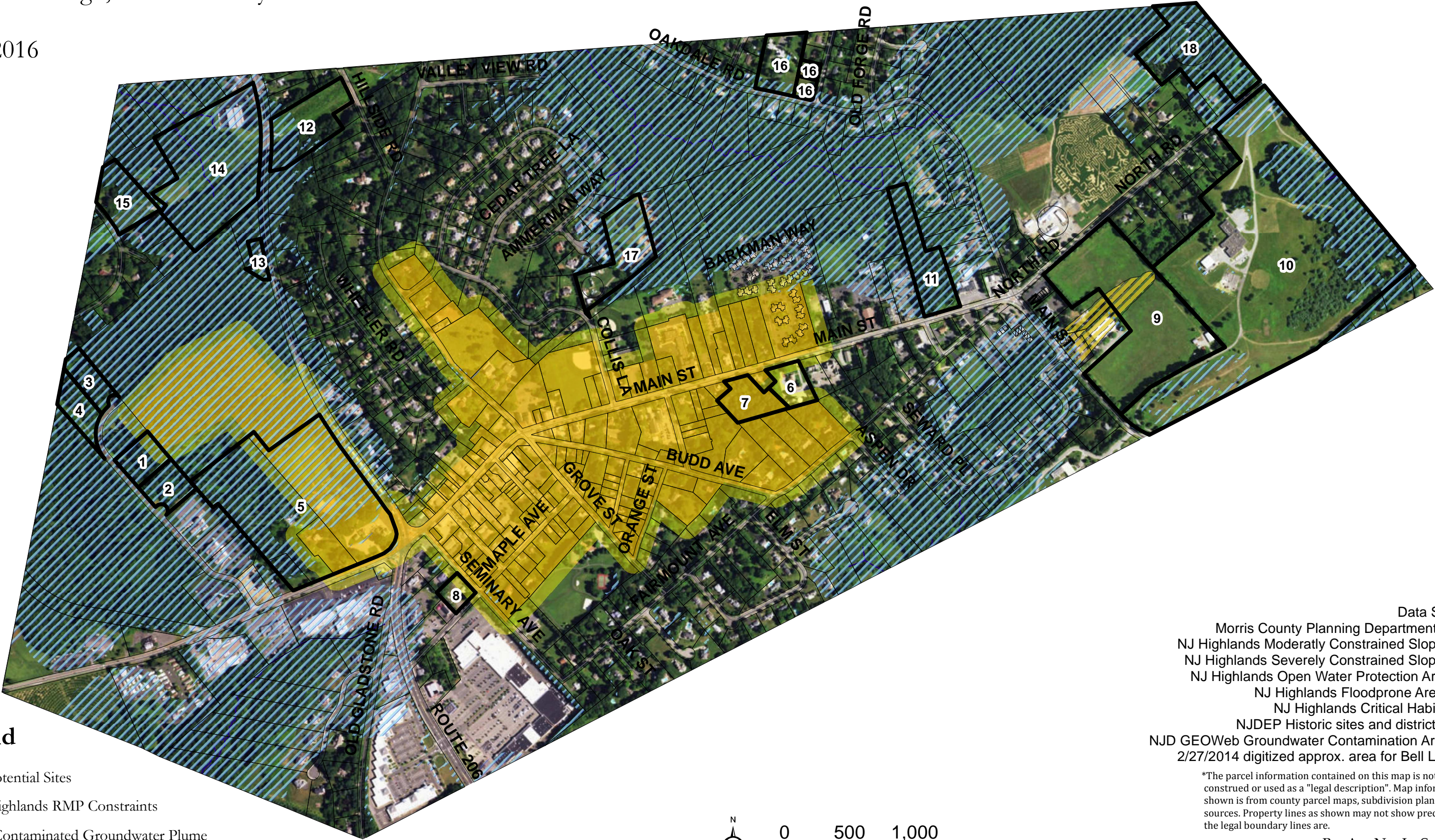
Agriculture		Potential Sites	
Barren Land		Cemetery	
Forest		Commercial	
Stomwater Basin/Right-of-Way/Transportation/Communications		Other Urban	
Water		Recreational Land	
Wetlands		High Density/Multiple Dwelling Residential	
		Rural Residential	
		Low Density Residential	
		Medium Density Residential	

Data Sources:
 Morris County Planning Department parcels
 NJDEP 2012 LU/LC

*The parcel information contained on this map is not to be construed or used as a "legal description". Map information as shown is from county parcel maps, subdivision plans and other sources. Property lines as shown may not show precisely where the legal boundary lines are.

Aerial Photography and
Highlands RMP Constraints
Chester Borough, Morris County

April 2016

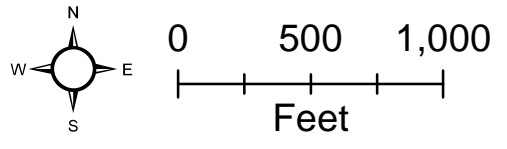


- Legend**
- Potential Sites
 - Highlands RMP Constraints
 - Contaminated Groundwater Plume
 - Historic Districts
 - Historic Districts 100' Buffer Area

Data Sources:
 Morris County Planning Department parcels
 NJ Highlands Moderatly Constrained Slopes 2012
 NJ Highlands Severly Constrained Slopes 2012
 NJ Highlands Open Water Protection Area 2012
 NJ Highlands Floodprone Areas 2012
 NJ Highlands Critical Habitat 2012
 NJDEP Historic sites and districts V2011
 NJD GEOWeb Groundwater Contamination Area Plum
 2/27/2014 digitized approx. area for Bell Labs Site

*The parcel information contained on this map is not to be construed or used as a "legal description". Map information as shown is from county parcel maps, subdivision plans and other sources. Property lines as shown may not show precisely where the legal boundary lines are.

B A N I S C H
 ASSOCIATES, INC.
 Planning and Design



The first two maps identify existing land use/land cover (Map (1)) and property tax classification (Map (2)). Map (3) is a composite map of environmental constraints of the natural resource factors listed and also includes 2012 NJDEP aerial photography of the Borough.

Map 3 is a composite of overlays compiled as land exclusions that include: lands where development is prohibited by any State or federal agency as well as Highlands environmentally sensitive lands and natural resource characteristics where Highlands policies and regulations render land unapprovable, unavailable, undevelopable or unsuitable for inclusionary zoning, thereby not contributing to the RDP. This mapping is consistent with:

- Section 310.1 of the FHA that states that “When computing a municipal adjustment regarding available land resources as part of the determination of a municipality's fair share of affordable housing, the Council on Affordable Housing shall exclude from designating as vacant land: “g) environmentally sensitive lands where development is prohibited by any State or federal agency;”
- Section 25 a of the Highlands Act that states that “a. The Council on Affordable Housing shall take into consideration the regional master plan prior to making any determination regarding the allocation of the prospective fair share of the housing need in any municipality in the Highlands Region under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) for the fair share period subsequent to 1999; and ”
- N.J.A.C. 5:93-4.2(e) 2.i., requires adherence to regional planning authority policies; and
- N.J.A.C. 5:93-4.2(e) 6, which provides that “[i]ndividual sites that the Council determines are not suitable for low and moderate income housing may also be eliminated from the inventory described in (d) above;” and

Excluded land mapped on Map (3) pursuant to N.J.A.C. 5:93-4.2(e) 1. – 6. is explained below. In addition, Highlands RMP natural resource and environmentally sensitive lands excluded according to RMP policies are also explained below.

1. Preserved farmland (N.J.A.C. 5:93-4.2(e) 1.) – *preserved farmland has been excluded, which land also is not available for inclusionary development;*
2. Environmentally sensitive lands (N.J.A.C. 5:93-4.2(e) 2.¹⁴ – Environmentally sensitive lands have been excluded, in part, in accordance with policies of the Highlands Regional Master

¹⁴ The NJ Highlands Council is a regional planning authority established pursuant to the Legislature’s adoption of the Highlands Act (2004). The Act designated Chester Borough within the Planning Area portion of the Highlands Region. Under the Act, Planning Area municipalities have the option of conforming to the RMP and Chester Borough has opted into the RMP. Development within the entire region and certain critical NJDEP approvals issued in the region are subject to review and comment by the Highlands Council. Indeed, the NJDEP regulations (N.J.A.C. 7:38-1.1(k))require the DEP to amend a Wastewater Quality Management Plan *only after receiving from the Highlands Council a determination of 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*

Plan (RMP) and in accordance with specifically authorized exclusions in COAH’s regulations. This provision requires that the Council *shall adhere to the policies of the regional planning authority*. A number of these policies are provided below in the section entitled “Highlands RMP Goals, Objectives and Policies – Certain Prohibitions.”

The Highlands RMP environmental features mapped in this report are based on the Highlands RMP resource assessment, required in the Highlands Act by the Legislature using a scientifically based Land Use Analysis Decision Support (LANDS) model which is in part the basis for comprehensive RMP land use and policy designations. As directed by the Legislature, and in accordance with N.J.A.C. 5:93-4.2(e)i., those are the policies applied in this report that guide development to appropriate areas and away from environmentally sensitive lands to protect those areas from destruction and to maintain natural resources and the natural systems that they support.

The RMP resource assessment is the basis for Highlands Council management area designations as identified on the Highlands Land Use Capability Map (LUCM), as required by the Highlands Act. The LUCM designates areas appropriate for development and areas inappropriate for development. For example, the RMP Existing Community Zone is the management area designated for development, redevelopment and necessary infrastructure; whereas the Protection Zone is designated for natural resource protection where RMP policies prohibit the extension of growth inducing infrastructure. However, the RMP also recognizes natural resources protection goals within the Existing Community Zone with an “Existing Community Environmentally Constrained Subzone” within which natural resource goals and policy objectives override development and redevelopment objectives. RMP natural resource protection policies are applicable in all Land Use Capability Zones to varying degrees, depending on the resources found to be existing within each Zone.

The Highlands RMP mapped environmentally sensitive land and natural resource designations serve as the basis for (1) exclusions in this report (as per N.J.A.C. 5:93-4.2 (e) 2 i.) that requires the “*Council shall adhere to the policies delineated*” by regional planning authorities, and (2) for site suitability conclusions pursuant to N.J.A.C. 5:93-4.2(e) 6. that permits exclusion of sites based on site suitability inclusionary zoning.

Highlands RMP environmentally sensitive land exclusions composite mapped on Map (3) in this report include, but are not limited to:

- (1) Highlands Forest Resource Area & Forests,
- (2) Wetlands, floodplains, riparian areas and Highlands Open Waters buffers
- (3) Slopes (moderate and severely constrained),
- (4) Critical Habitat (rank 3, 4 & 5, as per NJDEP water quality management planning rule that excludes these habitat ratings from sewer service areas).
- (5) Highlands Historic sites and districts as per the RMP mapping.

Management Plan amendment for a project proposed in the planning area or preservation area *without first obtaining a recommendation from the Highlands Council.*

Highlands Act Requirement – NJDEP Permit Approval Consistency with RMP

The Highlands Act requires the NJDEP to achieve consistency with the Highlands RMP and its policies. The NJDEP adopted the Highlands Water Protection and Planning Act rules N.J.A.C. 7:38-1.1 et seq. that seek consistency the RMP as required by the Highlands Act. At N.J.A.C. 7:38-1.1(k) the rule states that:

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.

The regulation seeks to codify the statutory requirement to achieve consistency and coordination between NJDEP water quality management planning and Highlands RMP policies that prohibit a variety of human activities and development in areas inappropriate for development under the RMP, as indicated in the RMP goals, policies and objectives cited above. This regulation is consistent with one of the Legislatures findings and declarations in Section 2 of the Highlands Act that states “. . . the existing land use and environmental regulation system cannot protect the water and natural resources of the New Jersey Highlands against the environmental impacts of sprawl development.”

NJDEP Water Quality Management Planning Rules - Prohibit Sewers in ESA's

NJDEP's Water Quality Management Planning rules, at 7:15-5.24 Delineation of sewer service areas, state that (a) Sewer service may only be provided to *areas that are not identified* as environmentally sensitive areas. N.J.A.C. 7:15-1.5, “Environmentally sensitive areas” means those areas identified in a Statewide or areawide WQM plan as land areas possessing characteristics or features which are important to the maintenance or improvement of water quality, or to the conservation of the natural resources of the State. *Environmentally sensitive areas include, but are not limited to*, areas mapped as endangered or threatened wildlife species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened or Other Priority Species, Natural Heritage Priority Sites, wetlands and riparian zones.

This is a substantial and significant provision in the rules because wastewater collection and treatment infrastructure is prohibited in environmentally sensitive areas by NJDEP Rules. This is substantial because inclusionary zoning relies on residential development densities that cannot be supported unless centralized wastewater collection and treatment facilities are provided. Without sewer service, development of inclusionary zoning densities is not possible, even though some level of development may be possible. This is also significant to the RDP analysis when viewed through the lens of the Highlands resource assessment in the Highlands RMP for at least two reasons:

1. DEP’s definition of environmentally sensitive areas at N.J.A.C. 7:15-1.5 states that “*Environmentally sensitive areas include, but are not limited to, areas mapped as endangered or threatened wildlife species habitat on the Department’s Landscape Maps of Habitat for Endangered, Threatened or Other Priority Species, Natural Heritage Priority Sites, wetlands and riparian zones.*” The definition does not exclude recognizing other environmentally sensitive areas characteristics such as, for example, Highlands RMP natural resource areas.
2. N.J.A.C. 5:93-4.2(e)2.iii. provides that environmentally sensitive land shall be excluded “iii. Where the Legislature adopts legislation that requires the mapping of other natural resources and provides a mechanism for their regulation, the Council shall include such resources in its criteria and guidelines for municipal adjustment.” The Legislature required Highlands Region resource mapping in the Highlands Act and established a mechanism for the regulation of those resources.

Thus, NJDEP permitting rules coupled with the Highlands RMP resource assessment and Highlands policies to protect and maintain environmentally sensitive lands establish a sound planning basis for excluding land in accordance with N.J.A.C. 5:96-4.2(e) i. - 2(e) iii. and assessing site suitability in accordance with N.J.A.C. 5:93-4.2(e) 6. because DEP’s regulations prohibit development in environmentally sensitive areas.

3. Historic and architecturally important sites (N.J.A.C. 5:93-4.2(e)3.) – sites are mapped in accordance with the Highlands RMP as per NJDEP Historic Sites and districts V2011.
4. Active recreational lands (N.J.A.C. 5:93-4.2(e)4.) – up to 3%:

Chester Borough is 1,596 sq. mi. in area, which equates to 1,021.44 acres in area. 3% of the Borough is 30.64 acres. The Township inventory of active recreation lands is as follows:

Location	Name	Block	Lot(s)	Acres
West Main	Library	101	21	10.7
Grove Street	Grove Street Park	127	4 & 13	10.59
Main Street	Municipal Field	107	11 & 13	4.15
Collis Lane	Borough Park	110	47	2.22
			Total:	27.66

A total of 27.66 acres or 2.7% is devoted to active recreation land (2.7% < 3%).

5. Conservation, parklands and open space lands (N.J.A.C. 5:93-4.2(e)5.) –

Passive Open Space Land

Location	Name	Block	Lot(s)	Acres
West Main	Chubb Park	101	18	40.74
West Main	Railroad R-O-W	101	19	3.3
Route 206	Larison’s Woods	101	12	44.00

North Road	Lucent Open Space	115	17	65.01
				153.05

The Borough has 153.05 acres of passive open space areas in its open space inventory.

6. Sites not suitable (N.J.A.C. 5:93-4.2(e)5.) – Individual sites that the “Council” determines are not suitable for low and moderate income housing may also be eliminated from the inventory (N.J.A.C. 5:93-4.2(e) 6.) – These are explained in the discussion of RDP sites below.

The Borough mapped land exclusions applying the criteria discussed above on the map entitled “Aerial Photography and Highlands RMP Constraints, March 2016 (Map 3). Each of the sites identified on this map are discussed in the site suitability analysis below.

Site Suitability Analysis

Sites #1, 2, 3 & 4: Block 101, Lots 12.07, .08, .10 & .11 are vacant sites located on Mill Ridge Lane. A discussion of site suitability is provided in Section B. above, in a report to be supplied by Benjamin L. Spinelli and an updated suitability analysis to be supplied concerning the Turkey Farm Site. The site(s) are unsuitable for inclusionary zoning due to inconsistency with Highlands RMP policies that prohibit this type of development proposed in the Protection Zone.

Site #5: This site is the corner of West Main Street (County Route 513) and US 206, and includes Block 101, Lots 13-16. A discussion of site suitability is provided in Section B. above, in a report to be supplied by Benjamin L. Spinelli and an updated suitability analysis to be supplied concerning the Turkey Farm Site. The portion of the site designated by the property owner for development is unsuitable for inclusionary zoning and development due to inconsistency with Highlands RMP policies that prohibit this type of development within the Protection Zone.

Site #6 – 300 Main Street – Block 119, Lot 8 is the site of the former Chester Borough municipal building and police station. It is designated Existing Community Zone in the RMP. The site is located on the south side of Main Street in the Borough’s LBT Limited Business Transitional zoning district. No mapped constraints exist on the site and it is included in the inventory as a site contributing to the Borough’s RDP at a density of 8 du/ac. Adjacent development to the north across Main Street includes low-density residential to the north (two single-family dwellings on lots of 1.14 and 1.5 acres), commercial retail (.37 acres), attached apartments (Asdal Apts. 2.94 acres 12 units, 4.08 du/ac) an age-restricted attached condominiums complex (Chestertown – 41 units, 21.6 acres at density of 1.89 du/ac.), another low-density use on 1.7 acres and the Catholic church on 12.65 acres. To the south, 300 Main adjoins single-family dwellings on residential lots ranging from .92 – 2.2 acres in area – very low density. One single-family dwelling is located adjoining northwest corner of 300 Main Street on a lot .47 acres in area. The site is adjacent to compatible commercial development along its easterly boundary. Due to the adjacency to compatible non-residential development and adjacency and proximity to the multi-family Chestertown and Asdal apartment developments, the RDP is calculated for 300 Main Street at a density of 8 du/ac.

Site #7 – 280 Main Street – Block 119, Lot 6 is located directly adjacent to 300 Main Street to the west. It is wooded, vacant and located entirely within the Borough’s Historic District and is designated Existing Community Environmentally Constrained Subzone in the RMP. As a result of adjacent land use characteristics, and in view of its environmentally constrained subzone designation in the RMP it is calculated at the minimum 6 du/ac in the RDP calculation. The lot has a somewhat irregular configuration in conjunction with two adjoining residential lots – one in the northeast and another on the northwest corner of the lots. The residential density characteristics of the surrounding area are substantially similar to 300 Main Street, however it only adjoins residential development on the north, south and west and the now vacant municipal building site on the east side of the parcel. To the west are a few smaller residentially developed lots with single-family detached dwellings. Lot areas for those lots directly adjoining Lot 6 to the south and west are Block 119/Lot 21: 2.05 ac; Lot 22: 2.06 ac; Lot 23: 2.21 ac; Lot 24: 1.10 ac; Lot 25: 2.03 ac; Lot 26: 2.03 ac; Lot 3: .58 ac. On the basis of adjacency to 300 Main Street, Chestertown and Asdal apartments, the RDP calculated for 280 Main Street is 6 du/ac in the table above.

Site #8 – 65 Maple Avenue – Block 131, Lot 4 is the former Meenan Oil site, which is comprised of 1.07 acres. The site is designated Existing Community Zone in the RMP. It is surrounded by commercial development to the north, east and west and directly to the south. To the southeast, however, there are three residential lots containing single-family dwellings located on the following lot sizes: Block 127, Lot 14: 1.6 ac; Lot 16: .4 ac; Lot 17: .35 ac. Lot 18: .37 ac. A municipal park is located within one-half a block to the southeast. On the basis of low-density residential adjacent development densities, the RDP for 65 Maple Avenue is based upon the minimum density of 6 du/ac. Although the site was previously contaminated, the site is in the final stages of clean-up and therefore I am accepting an RDP for this site.

Sites #9 & #10 – Both of these sites are owned by Chester Borough. These sites are the former Bell Labs / Lucent Technologies industrial research facility and office building. The Borough acquired these sites from Lucent Technologies in 2008. The Lucent site is characterized by a groundwater contamination plume. As a result, Lucent imposed development restrictions on both sites when the sites were sold to Chester Borough. No portion of either site is capable of being developed at a density of 6 du/ac on the basis of Lucent’s development restrictions, which was as a condition of sale of the sites to the Borough.

- Site #9 – Block 115, Lot 6: The tract is located along Main Street and North Road in Chester Borough on the northeast side of Main Street at the easterly limit of the Borough and extends to the south side of North Road. It is 19.55 acres in area. Lucent imposed a restriction on the property that limits future development of the site to 8 septic systems because increases in groundwater discharges could negatively impact the groundwater contamination plume to the detriment of nearby lots. An overall development capacity of 8 dwelling units for this portion of the site is identified in the RDP calculation because Lucent imposed that restriction on development at the time the tract was sold to Chester Borough.
- Site #10 – Block 115, Lot 17: The tract is 59.25 acres in area and is located at 50 North Road. The site includes what has been commonly referred to as the “pole farm” which

was a series of poles buried in the ground with short extensions above ground that were wired in series for research and development by Bell Labs. The Chester Borough municipal offices and the Chester Board of Education now occupy the former Lucent office building on the site. At the time of purchase, Lucent imposed a development restriction that limits development of the tract, which states that “. . . development and groundwater uses may occur *consistent with the permitted uses* under Purchaser’s (Borough of Chester) current zoning requirements (whether currently applicable to the property or not). . .” The zoning in effect at that time is I-Industrial, as shown on Chester’s zoning map today. I-Industrial zoning limits development to industrial uses and requires lots at least 5 acres in area for industrial use. The use and development restrictions imposed by Lucent the tract is not developable for residential development. The site does not contribute to the RDP because it cannot be developed at prescribed inclusionary zoning densities.

Site # 11 – Block 110, Lot 28, 437 Main Street. This tract consists of 4.87 acres of land, which is entirely designated environmentally constrained. Approximately two-thirds of the lot is designated Existing Community Environmentally Constrained Subzone in the RMP and the remaining third is designated Existing Community Zone. However, wetland and wetland transition area constraints occupy the entirety of the site. The entire site is excluded from the RDP calculation. It is observed that even if a hardship variance were to be secured for the site and NDJEP granted relief from wetlands and transition area requirements, it is not reasonably expected to yield a development benefit for inclusionary development in these regulated areas, nor are site conditions suitable for development. The site is not approvable, developable or suitable for inclusionary zoning on the basis of its extensive environmental constraints.

Site #12 – Block 102, Lot 5, 310 Route 206 – This 5.37 acre parcel of undeveloped property, designated Protection Zone that includes environmental constraints and a 245’ wide utility power line easement that traverses the site from east to west. The utility easement leaves just .63 acres of land unconstrained by the overhead power easement and lines, which is insufficient to generate RDP because at the minimum 6 du/ac density, fewer than five (5) dwellings would result. As such the site has no capacity to support inclusionary zoning and is not suitable. Adjoining and surrounding residential lots with single-family dwellings are .45 acres, .71 acres, 1.1 acres and 1.2 acres and the tract is not served by centralized wastewater collection facilities. The site does not contribute to the RDP.

Site #13 – Block 101, Lot 11, 235 Route 206 - This tract consists of .73 acres of land, which is designated Existing Community Zone. The site is the former Little Italian Kitchen site including the building and parking lot. The site is excluded from COAH’s minimum 6 du/ac density in the RDP calculation because the size of the lot is less than .83 acres, which is insufficient to develop at least of five (5) dwelling units; however the site is assigned a yield of 4 units because the site is owned by the Borough and it is an affordable housing site. The Borough has a contract with Community Hope to redevelop the building and reuse the parking lot for two 2-bedroom apartments for US Veterans reentering the community.

Site #14 – Block 101, Lot 9, 313 Route 206 is 15.64 acres of land that includes approximately 1.5 acres of commercially developed property that is designated Existing

Community Zone and the balance of the tract is forest and designated Protection Zone and is entirely occupied by wetlands and wetland transition areas. The site is occupied by Chester Lighting, which has long been and continues to be a profitable commercial business on the Highway so no redevelopment potential is reasonably expected. The store and associated parking occupies the entirety of the tract that is not encumbered by wetlands. This tract is part of the same Protection Zone that occupies the northwest area of the Borough complex including natural environmentally sensitive areas that extend to the south to West Main Street as well as beyond municipal boundaries to the north, east and west. Environmental constraints include Highlands Open Water areas, primarily consisting of wetlands and transition areas, and include forested and critical habitat areas in the Highlands Protection Zone. This site is excluded on the basis that the vacant portions of the site are located in wetlands or wetland transition areas and the rest of the site is developed.

Site #15 – Block 101, Lot 29, 11 Cherry Tree Lane– This is a residential developed parcel totaling 3.44 acres in area. It is designated Protection Zone in the RMP. 1.2 acres is occupied by a electric utility power line easement. 2.71 acres of the tract is environmentally constrained, which leaves just .73 acres of unconstrained land. Environmental constraints include critical habitat designations. The entire site is excluded from the RDP calculation because .73 acres of unconstrained land is less than .83 acres, which is the minimum unconstrained area needed to develop at least of five (5) dwelling units at a minimum density of 6 du/ac. The site is not approvable and it is not suitable.

Site #16 – Block 112, Lots 3, 4 & 5 (Grace Bible Chapel), 100 Oakdale Road – The site includes the Grace Bible Church, which is a complex of buildings (sanctuary, day care, community center and residential use) on Lot 5, consisting of 3.2 acres, and two vacant parcels, Lots 3 & 4 (formerly Lots 1 & 2) that total .96 acres. An observation well is located on Lot 3, the purpose of which is unknown, however, the site is listed by NJDEP as a contaminated site and it is apparent that some sort of groundwater monitoring program has either been completed or is ongoing on this site¹⁵. The two lots are located on Cathy Lane. Lot 4 is a corner lot with frontage on both Oakdale Road and Cathy Lane. The lots are zoned for residential low density RLD 2, which requires a minimum lots size of 2-acres in this residential zone. The lots are both included in the Borough’s sewer service area. Lots 3 & 4 together total .96 acres in area, which is sufficient to generate 5 dwelling units and exceeds the minimum lot size under the regulations (.83 acres) to generate one affordable unit with a 20% inclusionary set-aside.

Site #17 – Block 110, Lot 57, (Roskum), 64 Collis Lane – This is a 5.6 acre tract that is a farm parcel, portions of which are located in the Existing Community Zone with a small Conservation Zone designation. 3.75 acres of the parcel are designated with a Highlands open water protection area and includes a pond. 1.85 acres of the tract are located outside of environmentally sensitive lands and are free of natural resource constraints. The parcel adjoins the Borough’s sewer service area.

¹⁵ NJDEP Site Remediation Program lists this site on its “Closed Sites with Remediated Contamination” as of 3/18/2016.

Site #18 – Block 114, Lot 5, (Gasparine), North Road – this is an 8.32 acre tract with a single-family dwelling located in the Protection Zone. The site includes 7.72 acres of a variety of environmental constraints with only a limited area, .6 acres, that would be available for development. The site is excluded from generating RDP on the basis that developable area of the tract is less than the .83 acre minimum area necessary to generate at least one affordable unit at the minimum density of 6 du/ac. Additionally, the developable portion of the site is not reasonably accessible from a public road.

The mapping included with this report identifies vacant parcels that are not addressed in the list above, as follows:

- Two other noncontiguous parcels identified as vacant are of an insufficient size for inclusionary zoning and are excluded on that basis. (Block 102, Lot 26 (.52 ac.) & Block 107, Lot 2 (.82 ac.))
- Block 110, Lot 18, 77 Oakdale Road, is a farm assessed lot that is a total of 5.5 acres in area, and which has only .68 acres of land located outside of wetland and 150' wetland transition areas. The site is entirely occupied by Highlands Open Water Buffer. The site is not counted toward the RDP because of the environmental constraints that occupy the site.

EXHIBIT C

Highlands RMP Goals, Objectives and Policies – Certain Prohibitions

The Highlands RMP identifies a series of goals, policies and objectives that are comprehensively set forth in the RMP. For the protection and maintenance of Highlands environmentally sensitive lands and natural resources, the RMP identifies the following goals, policies and objectives that identify a series of prohibitions, which, in part, inform the bases for the conclusions in this report:

Part 1, Natural Resources, Subpart A, Forest Resources:

GOAL 1A Protection Of Large Areas Of Contiguous Forested Lands Of The Highlands Region To The Maximum Extent Possible (page 138)

- Objective 1A2d: ***“To prohibit*** ... the expansion or creation of public water supply systems or public wastewater collection and treatment systems or community-based on-site wastewater facilities into forested areas of the Forest Resource Area within the Planning Area, ...”
- Policy 1A5: ***“To prohibit*** ... forest clearcutting within the Forest Resource Area except in accordance with a Forest Management Plan approved by the State Forester.”

GOAL 1B: Protection And Enhancement Of Forests In The Highlands Region (Page 139):

- Policy 1B7: ***“To prohibit*** clear-cutting of forest lands except pursuant to an approved Forest Management Plan approved by the State Forester.” (Page 140)

GOAL 1D: Protection, Restoration, And Enhancement Of Highlands Open Waters And Riparian Areas. Page 141:

- Objective 1D5c: ***“Prohibit*** modifications to Riparian Areas in the Protection Zone except where a waiver is approved...”

GOAL 1F: Protection And Enhancement Of Critical Wildlife Habitats, Significant Natural Areas, And Vernal Pools. (Page 148)

- Policy 1F2: ***“To prohibit*** . . . the direct impact of new human development or expansion or increased intensity of existing development within Critical Habitat.” (Page 148)
- Objective 1F6a: ***“Prohibit*** direct impacts from new development or expansion or increased intensity of existing development that will jeopardize the continued existence of, or result in the likelihood of the destruction or adverse modification of Critical Habitat, ...” (page 149)
- Objective 1F6b: ***“Prohibit indirect impacts from activity that is off-site, adjacent to, or within Critical Habitat*** that will jeopardize the continued existence of, or result in the likelihood of the destruction or adverse modification of Critical Habitat, ...”

GOAL 2D: Maintenance Of Hydrologic Integrity Through The Protection Of Ground Water Recharge. (page 164)

- Policy 2D4: “... to protect, restore and enhance the functionality and the water resource value of Prime Ground Water Recharge Areas *by restricting development and uses of land within a Prime Ground Water Recharge Area* that reduce natural ground water recharge volumes or may directly or indirectly contribute to or result in water quality degradation.” (Page 165)

- Objective 2D4e: ***Prohibit*** . . . the expansion or creation of public water supply systems or public wastewater collection and treatment systems or community-based on-site wastewater facilities into a Prime Ground Water Recharge Area within the Protection or Conservation Zone within the Planning Area ..." (Page 166)

GOAL1F: Protection And Enhancement Of Critical Wildlife Habitats, Significant Natural Areas, And Vernal Pools.

- Policy 1F2. ***To prohibit*** ... the direct impact of new human development or expansion or increased intensity of existing development within Critical Habitat." (page 148)
- Objective 1F6a. ***Prohibit*** direct impacts from new development or expansion or increased intensity of existing development that will jeopardize the continued existence of, or result in the likelihood of the destruction or adverse modification of Critical Habitat, except as permitted through the issuance of a waiver ..." (page 149)
- Objective 1F6b. ***Prohibit*** indirect impacts from activity that is off-site, adjacent to, or within Critical Habitat that will jeopardize the continued existence of, or result in the likelihood of the destruction or adverse modification of Critical Habitat, except as permitted through the issuance of a waiver ..." (page 149)

GOAL2G: Protection, Restoration And Enhancement Of The Water Quality of The Highlands Region. (page 167)

- Objective 2G3a: ***Prohibit*** land uses that would increase pollutant loadings to waters for which TMDLs have been adopted by the NJDEP unless in compliance with the relevant TMDL. (Page 167)

GOAL2H: Limitation Of The Type And Amount Of Human Development In The Wellhead Protection Areas Of Public Water Supplywells. (page 168)

- Objective 2H2a: ***Prohibit*** land uses that have a significant potential to result in the discharge of pathogens (including, but not limited to, septic systems and engineered stormwater infiltration from surfaces with significant potential for contact with pathogenic contaminants) to ground water or to the land surface within a designated Tier 1 Wellhead Protection Area, ..." (Page 169)
- Objective 2H2b: ***Prohibit*** land uses that have a significant potential to result in the discharge of persistent organic or toxic chemicals sources . . . to ground water or to the land surface within a designated Tier 2 Wellhead Protection Area, such that they may degrade or contribute to the degradation of ground water quality. (page 169)
- Objective 2H2c: "Require that land uses that have a significant potential to result in major discharges of persistent organic or toxic pollutants to ground water or to the land surface" [to]... "incorporate ongoing management of toxic chemical sources and prohibition of unregulated discharges, so that the potential for ground water contamination is minimized and the opportunity for discharge discovery and control is maximized. (Page 169)

Subpart D Sustainable Development and Water Resources

GOAL2J: All Existing And Future Development In The Highlands Region That Use Public Water Supply Systems Are Served By Adequate And Appropriate Infrastructure.

- Policy 2J4: "To minimize ... the creation or extension of public water supply systems within the Protection Zone, the Conservation Zone and the

Environmentally-Constrained Sub-zones of the Planning Area, *and to allow for the creation or extension of public water supply systems where appropriate within the ECZ.*” (page 171)

- Objective 2J4a: **“Prohibit** new, expanded, or extended public water systems within the Protection Zone, the Conservation Zone, and the Environmentally-Constrained Sub-zones of the Planning Area unless they are shown to be necessary for” [waivers only when the project maximizes] “the protection of sensitive environmental resources such as Highlands Open Waters buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of ARAs, Steep Slopes, Prime Ground Water Recharge Areas and Critical Habitat. For” [clustered development] “the project must avoid disturbance of Highlands Open Waters buffer areas, Riparian Areas, Steep Slopes and Critical Habitat, and must minimize disturbance of the forested portion of the Forest Resource Area, agricultural lands of ARAs, and Prime Ground Water Recharge Areas...”
- Policy 2J5: **“To prohibit,** ... new or increased water resource transfers between subwatersheds unless it is demonstrated that no other option exists to meet public health, safety and welfare objectives and where such transfers do not result in impairment of resources in the subwatershed from which water is proposed to be transferred.” (page 172)

GOAL 2K: All Existing And Future Development In The Highlands Region That Use Public Wastewater Treatment Systems Are Served By Adequate And Appropriate Infrastructure.

- Objective 2K3c: **“Prohibit** new, expanded, or extended public wastewater collection and treatment systems and community on-site treatment facilities within the Protection Zone, the Conservation Zone, and the Environmentally-Constrained Sub-zones of the Planning Area unless they are shown to be necessary for” . . . [waivers only when the project maximizes] . . . “the protection of sensitive environmental resources such as Highlands Open Waters buffer areas, Riparian Areas, the forested portion of the Forest Resource Area, agricultural lands of ARAs, Steep Slopes, Prime Ground Water Recharge Areas and Critical Habitat. . . For” . . . [clustered development] . . . “the project must avoid disturbance of Highlands Open Waters buffer areas, Riparian Areas, Steep Slopes and Critical Habitat, and must minimize disturbance of the forested portion of the Forest Resource Area, agricultural lands of ARAs, and Prime Ground Water Recharge Areas. . . The choice of extension or creation of systems shall follow the requirements in Objective 2K3d (2 and 3).”
- Objective 2K3d: **Clustered development served by a public wastewater collection and treatment system or community on-site treatment facility within the Protection Zone**, the Conservation Zone, and the Environmentally-Constrained Sub-zones of the Planning Area shall be approved only if the following conditions are met:
 2. Extension of an existing public wastewater collection and treatment system will occur only where the cluster development is within or immediately adjacent to an Existing Area Served with available capacity;
 3. Creation of a community on-site treatment facility will occur only where such development is not within or immediately adjacent to an Existing Area Served with available capacity, where the proposed system

is designed, permitted, and constructed at a capacity limited to the needs of the clustered development, and where the system does not create the potential for future expansion into areas that are not the subject of cluster developments immediately adjacent to the initial cluster served;

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