

B A N I S C H

ASSOCIATES, INC.

Planning and Design

REPORT OF THE SPECIAL MASTER

REGARDING THE FAIRNESS OF

A SETTLEMENT AGREEMENT BETWEEN

SADDLE RIVER BOROUGH

AND

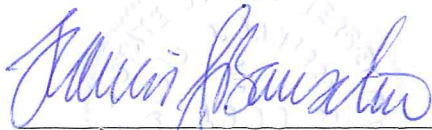
FAIR SHARE HOUSING CENTER

IN THE MATTER OF THE APPLICATION
OF THE BOROUGH OF SADDLE RIVER
DOCKET No. BER-L-6120-15

Prepared by:

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The original document was appropriately signed and sealed on July 27, 2020 in accordance with Chapter 41 of Title 13 of the State Board of Professional Planners.



Francis J. Banisch III, PP/AICP
Professional Planner #1686

Introduction

The purpose of this report is to present my review and recommendations as the Court-appointed Special Master regarding whether a Settlement Agreement (“Settlement”) and Amendment to the Settlement Agreement between the plaintiff Borough of Saddle River ("Borough") and interested party Fair Share Housing Center ("FSHC") is fair and reasonable to low and moderate income households.

Notice of the fairness hearing scheduled for July 30, 2020, which was provided in accordance with the Court's instructions, included a description of the Settlement Agreements and indicated the February 10, 2020 Settlement Agreement and June Amendment to the Settlement Agreement were available for inspection and photocopying on the Borough of Saddle River website.

This report addresses the fairness of the Settlement to the protected class of low- and moderate-income households as it relates to the provision of affordable housing. It also provides a preliminary assessment of the Borough’s eligibility for a judgment of compliance and repose and the steps needed to complete the process of securing such judgment.

Fairness of Settlement Agreement

The Settlement Agreement between the Borough and FSHC has been reviewed to determine whether any element of the Settlement would not be fair to the interests of existing and future low and moderate income households in Saddle River's housing region.

In evaluating the fairness of the Settlement, guided by the general principles and standards set forth in *Morris County Fair Housing Council v. Boonton Twp.* 197 N.J. Super. 359, 369-71 (Law Div. 1984), I have used the criteria set forth in *East/West Venture v. Borough of Fort Lee*, 286 N.J. Super 311, 329 (App. Div. 1996), which outlines the fairness issues involved in approving a settlement of *Mount Laurel* litigation.

According to the Settlement, the Borough will address a fair share obligation consisting of

- present need (rehabilitation share) - TBD
- prior round obligation (1987-1999) - 162 units
- prospective need obligation (1999-2025) - 244 units

Addressing the Present Need

The Settlement acknowledges that the Borough will conduct a structural survey in accordance with COAH rules (NJAC 5:97-6.2(a) to determine the final number of present need unit obligation. The survey must be completed within sixty days of the Settlement Agreement execution and provided during the compliance period. If the Borough is not able to demonstrate that no rehabilitation program is required, they will be required to develop a program during the compliance period.

Addressing the Prior Round Obligation

The Borough has fully addressed the prior round obligation of 162 units with 156 actual units and 6 rental bonus credits as identified in Table 1 below:

Table 1: Prior Round Compliance Mechanisms

Prior Round Obligation Compliance Mechanisms	Block/Lot	Units	Bonus Credits	Credits Toward Prior Round Obligation	Status
Villa Marie Claire – Senior/Alternative Living Arrangement		18	0	18	Completed
Saddle River Properties Family and Senior Rental	Block 1302, Lots 1, 3 & 4	76	6	82	Completed
City of Passaic - RCA		18	0	18	Completed
Borough of Ridgefield - RCA		22	0	22	Completed
Borough of Ogdensburg – RCA		22	0	22	Completed
Total		156	6	162	

Addressing the Third Round RDP

The Settlement provides that Saddle River Borough has a Realistic Development Potential (RDP) of 132 units which will be satisfied as follows:

Table 2: Third Round RDP Compliance Mechanisms

Compliance Mechanisms	Block/Lot	Units	Bonus Credits	Credits Toward Third Round Obligation
SRI Allendale Road	Block 1402, Lots 23, 24 & 25	8	0	8
SRI 14 Algonquin Trail	Block 1603, Lots 1 & 2; Block 1602, Lot 1	12	0	12
Choctaw Trail Borough (56 out of 88 units project)	Block 1601, Lot 10, 10.01 & 11	56	33	89
E. Allendale Road Borough Special Needs Housing	Block 1605, Lot 1	23	0	23
Total		99	33	132

The Borough has a 36-unit surplus over the 132-unit RDP. Of the Choctaw Trail 88-unit 100% affordable housing project, 56 units are used to satisfy the RDP.

SRI Sites

The Borough and developer have agreed to provide ordinances allowing for the full development of the SRI sites within 45 days of the execution of the Settlement Agreement. The terms of the ordinances provide for 52 market rate and 8 family affordable units on Block 1402, Lots 23, 24, and 25 and 48 market rate and 12 family affordable units on Block 1603, Lots 1 and 2. The ordinances will include appropriate provisions for buffering along applicable roadway frontages and from adjoining properties.

The Settlement outlines a schedule by which the ordinances associated with SRI developments are to be submitted reviewed and agreed to. Ordinance 20-992 and 20-993 were adopted on June 4, 2020.

Allendale Road (Block 1605, Lot 1)

The Allendale Road development will include 23 units of special needs housing. The Borough will rezone the site, designate a developer, and provide a proforma during the compliance phase. Construction will commence no later than September 20, 2021.

Addressing the Third Round Unmet Need

After subtracting the RDP from the third round obligation, the Borough has an unmet need of 112 units, which will be addressed in part through the following mechanisms:

Table 3: Third Round Unmet Need Compliance Mechanisms

Prior Round Obligation Compliance Mechanisms	Block/Lot	Units	Bonus Credits	Credits Toward Obligation
Choctaw Trail Borough (56 out of 88 units project)	Block 1601, Lot 10, 10.01 & 11	32		32
Woodcliff Lake Road - 100% affordable housing	Block 17.03, Lot 15	16		16
Mandatory Overlay Ordinance	Block 1302, Lots 1.02, 1.03 & 1.04			
Accessory Apartment Program		10		10
Borough-wide Mandatory Set-aside Ordinance				
Total		58		58

32-unit surplus

The Choctaw Trail project is an 88-unit 100% affordable housing project, of which 56 units are applied to the Borough’s RDP mechanisms. The remaining 32 units are credited to the unmet need for the third round.

Choctaw Trail (Block 1601, Lot 10, 10.01 and 11)

The project will consist of an 88-unit 100% affordable family rental housing development. The Borough will acquire the three lots within one year of the Settlement Agreement and commence construction no later than September 30, 2022. The Borough will provide information regarding NJHMFA scores, or other sources of funding, during the compliance phase and will commit to any funding no later than December 31, 2021.

Woodcliff Lake (Block 1703, Lot 15)

The Woodcliff Lake development will consist of 16 family rental units, and the Borough agrees to acquire the property within a year of the Settlement Agreement and agrees to be responsible for all costs associated with servicing the site with water and sewer. The Borough will bond or provide funding by September 1, 2020 with construction starting no later than September 1, 2022.

Mandatory Overlay Ordinance - Block 1302, Lots 1.02, 1.03 & 1.04

The Borough will modify its current ordinance to provide for a mandatory overlay on Block 1302, Lots 1.02 through 1.04 for a multi-family residential building with 30 unit/acre density at a 20% set-aside. In addition, the ordinance will allow greater development flexibility to achieve appropriate build-out of the site. The revised set-aside ordinance will be provided for review during the compliance phase.

Accessory Apartment Program

The Borough will update and revise the current accessory apartment ordinance in accordance with N.J.A.C. 5:97-6.8 to allow for at least 10 units of accessory apartments. The revised program will be provided during the compliance phase.

Borough-wide Mandatory Set-aside Ordinance

The Borough will prepare revisions to the existing Mandatory Set-Aside Ordinance to require for multi-family residential development of 5 units or more with a set aside of 20%. The ordinance shall not preclude the Borough from requiring a higher-aside when appropriate. The ordinance will be reviewed during the compliance phase.

Review of Objections

John L. Schettino, Esq., on behalf of the Borough of Woodcliff Lake to Russell Huntington, Esq, dated April 7, 2020

The Borough of Woodcliff Lake has presented an objection to the proposed 100% affordable housing project identified as 78 Woodcliff Lake Road, Block 1703, Lot 15, which abuts the Saddle River municipal boundary with Woodcliff Lake Borough. The zoning in the area of the proposed development on the Woodcliff Borough side is zoned for single family dwellings. Woodcliff Lake Borough seeks to have Saddle River consider the following development regulations when creating the ordinance for the proposed development:

- The building height be limited to two-stories
- Appropriate rear and side yard setbacks along the boundary with Woodcliff Lake

- Adequate landscaping buffer of evergreens of sufficient height along the side and rear of the property abutting Woodcliff Lake Borough
- Ingress and egress be limited to Woodcliff Lake Road and the berm along Woodcliff Lake Road and Apple Ridge Road is not disturbed
- Drainage be installed to prevent runoff

Joseph A. Paparo, Esq., on behalf of Zhanna Torres, to Honorable Gregg A. Padovano, dated April 10, 2020

Mr. Paparo presented a letter objecting the Borough's Settlement Agreement regarding the proposed 100% affordable housing development at 78 Woodcliff Lake Road and requesting an adjournment of the Fairness Hearing. Mr. Paparo states that the Settlement Agreement does not provide a realistic opportunity for the creation of affordable housing, utilizes a property that has traffic challenges, and that the Borough failed to consider more appropriate sites for development. In support of Ms. Torres' position, three professional reports were included; "Affordable Housing Site Suitability Analysis for the Property Locates at 78 Woodcliff Road" prepared by John McDonough, LA, AICP, PP dated April 9 2020, "Environmental Constraints Report for the Affordable Residential Housing Redevelopment of 78 Woodcliff Lake Road" prepared by Evan M. Jacobs, PE, PP, CFM dated April 10, 2020, and "Saddle River Affordable Housing Traffic Review for the Affordable Housing Redevelopment of 78 Woodcliff Lake Road" prepared by Brian A. Intindola, PW, CMA, dated April 10, 2020.

Planner's Report, "Affordable Housing Site Suitability Analysis", prepared by John McDonough, LA, AICP, PP, dated April 9, 2020

Mr. McDonough's report provides an analysis of the 78 Woodcliff Lake Road site's suitability for development based on the COAH criteria requiring that a site must be available, approvable, developable, and suitable for development.

Mr. McDonough states that the site appears to have free title and that the property recently went under contract on March 23, 2020, but the site is not free of environmental encumbrances, such as a C-1 stream and associated 300-foot riparian buffer, wetlands and wetland transitional areas. The report states that an alternative site, 153 East Saddle River Road, is less environmentally constrained and in a more centralized area of the Borough.

Next, the report evaluates the site's compatible land uses and access to appropriate streets. The report states that the proposed development of 10.4 units per acre is inconsistent with the existing zoning and typical density of the area which is .5 to 1.5 dwellings per acre. In addition, the report asserts that 10.5 dwellings per acre exceeds the presumptive densities in the regulations of 6-8 acres and that the site is not in a transitional area where an increase in density may serve as a progression into a more developed area. Suggesting that such a development will only be a break in the existing development pattern, Mr. McDonough cites the traffic report prepared by Brian Intindola, PE CME as an indication that the existing street network will not support a high density development because the intersection of Woodcliff Lake Road and Apple Ridge Road would need to be reconstructed to meet

current design standards. The increase in traffic would also exceed the ability of the current roadway system in the area.

The report states that that the site located at 153 East Saddle River Road would more closely align to the site suitability for compatible land uses and access to appropriate streets based on its central location in Saddle River, R-1 zoning, and access to the town center. The report then reviews the adequacy of the water and sewer infrastructure to the site. The report states that the Settlement Agreement acknowledges that the site, in addition to other sites, does not have sewer and water infrastructure and that the Borough is required to provide such service to the 10% affordable housing projects.

The last suitability criteria reviewed is the determination if the project can meet RSIS standards. The report states that not enough information has been provided to determine if the 78 Woodcliff Lake Road site can meet RSIS standards.

The report concludes that the 78 Woodcliff Lake Road site is not appropriate for the proposed development and that the 153 East Saddle River Road site is more appropriate for development of an affordable housing project.

“Environmental Site Constraint Report for the Affordable Residential Housing Redevelopment of 78 Woodcliff Lake Road”, prepared by Evan M. Jacobs, PE, PP, CFM dated April 10, 2020

Ms. Torres provided an environmental constraints report prepared by Mr. Jacobs to determine the site suitability of the 78 Woodcliff Lake Road site. The report identifies that the property includes a portion of the 300-foot riparian buffer for the Musquapsink Brook, a C-1 stream. The riparian buffer extends onto the property in the southeastern portion of the site. The report identifies the occurrence of skunk cabbage on the property which may be an indication of the presence of hydric soils or freshwater wetlands. Finally, the report refers to sightings of the Black-Crowned Night Heron, a State threatened species on an adjoining property which may result in a 150-foot buffer.

The report then evaluates the developability of the site for the proposed development. The report reviews the proposed 24-unit development using the R-1 zoning standard and associated environmental constraints. The report concludes that given the R-1 zone standards, constraints and required site improvements for a 24-unit development, the site cannot accommodate the proposed development.

Mr. Evans report goes on to review additional site constraints including utility service access, water service and sewer service. The analysis states that the proposed development will require connection to water and sewer service and that Saddle River is responsible for the costs associated with those improvements. The report states that both connections may require additional permitting and costs that are not identified in the Settlement Agreement and will have to be provided to determine if the municipal water and sewer systems are able to accommodate the proposed development.

The report concludes with an analysis of 153 East Saddle River Road and a finding that the site is free of constraints including C-1 stream buffers, wetlands, threatened and endangered

species and flood hazard areas and has access to existing transportation networks and infrastructure that make the site more developable.

“Saddle River Affordable Housing Traffic Review for the Affordable Residential Housing Redevelopment of 78 Woodcliff Lake Road”, prepared by Brian A. Intindola, P.E, CME dated April 10, 2020

Mr. Intindola has prepared a traffic report on behalf of Ms. Torres to review the impact of the proposed 78 Woodcliff Lake Road site development. The report reviews the existing conditions surrounding the 78 Woodcliff Lake Road site, including roadway networks, pedestrian connectivity, and public transportation and notes that the Borough’s access to public transportation is available in adjoining municipalities. Most residents rely on individual vehicles to access goods and services, with limited pedestrian and bikeway accommodations in the Borough, and Woodcliff Lake Road primarily services single family homes.

Mr. Intindola provides traffic counts in the area available through NJDOT traffic reports to indicate the typical traffic counts at peak hours in the area. The report then identifies that peak hour additional demand for the project will constitute 8-12 weekday morning trips and 9-14 additional trips during weekday evening peak hour. The report states that at least one access point on Woodcliff Road and an access point on Apple Ridge Road may need to be required for public safety and better access. The report concludes that the majority of issues stemming from the development would be an increase in cut-through traffic and impacts to the intersection of Woodcliff Lake Road and Apple Ridge Road, requiring improvements to accommodate the increased use.

Joseph A. Paparo, Esq., on behalf of Zhanna Torres, to Honorable Gregg A. Padovano, dated May 11, 2020

A letter was provided by Mr. Paparo on May 11 via eCourts supplementing the April 10 submission. The letter identifies that an additional property, 11 Arrowhead Lane was found that could also be developed in accordance with COAH regulations. The letter provides a summary report from Evan Jacobs, PE, PP, CME regarding environmental constraints of 11 Arrowhead Lane and a Planner’s Report summary report from John McDonough, LA, PP, AICP regarding site suitability for the 11 Arrowhead Lane site. In terms of environmental constraints, Mr. Jacob’s letter stated that the 11 Arrowhead Lane site does not contain any freshwater wetlands, flood hazard areas or C-1 streams and associated riparian areas. Mr. McDonough’s letter states that the site meets the four suitability requirements in that the site is currently for-sale, has access to major transportation networks and services, has less sewer and water costs associated with development, and can be developed consistent with RSIS standards.

Thomas P. Scrivo, Esq., on behalf of SR Residents LLC-NJ, to Honorable Gregg A. Padovano, dated May 11, 2020

SR Residents filed an objection to the Settlement Agreement and a motion to Revoke the Intervener Status of Saddle River Investors, LLC.

The brief submitted on behalf of SR Residents objecting to the Settlement Agreement includes five key arguments:

- SRI's status as an intervener should be revoked because they do not have control over the O'Donnell and Algonquin sites
- the SRI sites are not suitable or developable for affordable housing
- the SRI sites are not financially feasible and will not lead to the creation of affordable housing
- alternative sites that would satisfy the Borough's affordable housing are available
- the Court should adjourn the fairness hearing based on SRI's refusal to provide documentation related to the Settlement Agreement.

Available

SR Residents state that SRI's, and subsequent SRI-I's, status as an intervener should be revoked because they do not have control or ownership of the subject properties and that SRI was granted intervener status because they had an interest in the parcels for inclusionary development. The objection also states that the SRI-I affiliation and inclusion in the process has never been made clear and that the subject properties are not under SRI control.

Suitable

The second point of the argument states that the SRI sites are not suitable for development of affordable housing, claiming the proposed high-density developments are not compatible with the adjacent large-lot residential area. Multi-story affordable housing projects located on smaller residential roads will contrast with the typical development in the area according to the Scrivo argument.

It is also alleged that the sites also do not have access to water and sewer infrastructure. The proposed sites are within a water and sewer service area but will require a substantial investment in construction to connect the properties to existing lines. The Settlement Agreement acknowledges this deficiency and identifies the cost associated with providing the infrastructure, however, the report states that too little information has been provided in the agreement to determine if such an investment is feasible and how it will be achieved.

The O'Donnell site is identified as including steep slopes and a 150-foot riparian buffer which would impede development of the site. In addition, it is claimed that a portion of the Algonquin site is within the Saddle River Center Historic District and near homes listed on the State and National Registers of Historic Places within the Saddle River Crossing Historic District. The proposed development would distract from the historic district and be out of scale with surrounding historic buildings, it is argued.

Developable

The brief states that the SRI sites are not financially feasible and therefore will not lead to the construction of affordable housing. SRI has not disclosed any financial information to provide determination that SRI has the resources to construct the project, including documentation of the costs of its development, the infrastructure improvements, or the profitability of the proposed density. SRI has not proved itself as a recognized developer with an established record of constructing affordable housing projects.

As mentioned previously, the objection reiterates that the sewer improvements are required to development the sites, however, additional information on how such improvements will be funded has not been provided.

Finally, SRI has not provided information regarding the detailed information regarding the affordable units, how they will be managed, maintained, and made available to low- and moderate-income households, according to the brief.

Alternate Sites

SR Residents contend that there are other available sites within the Borough that could be developed for affordable housing that are more appropriate.

The first site is identified as the Allendale Site, located on Block 1605, Lot 2 at 22 East Allendale Road. The site is .56 acres and located adjacent to the Borough's existing affordable housing project. The site is already connected with water and sewer and has better access to the roadway network from East Allendale Road and Route 17.

The second proposed site is the Tall Trees Site which is located on Block 1202, Lots 1, 2, 3, 4, and 38. The area has been identified for affordable housing in the report because it has no threatened or endangered species habitat, limited steep slopes or other significant environmental constraints and is on the more compatible with the Borough's adjacent R-4 zoning.

Traffic Study

Finally, the report states that the Court should adjourn the fairness hearing because SRI has failed to produce documentation regarding its developments and the inability of SR Residents to conduct an accurate traffic study due to the COVID-19 pandemic.

Additional documentation provided by SR Residents

Documents in support of SR Residents' Objection have been provided in Volumes I, II and III. I have determined that the documents in Volumes II and III are not relevant to my review of the fairness of the Settlement Agreement. Documents contained in Volume I are summarized below.

Documents in Support of the SR Residents Objections (Volume I)

SR Residents have supplied the following documents in support of the objections (Volume I):

- Planner's Report prepared by Paul Ricci, PP, dated May 11, 2020
- Site Evaluation Report, prepared by Stonefield Engineering and Design, LLC, dated May 11, 2020

- Historic Preservation Report prepared by Barton Ross and Partners LLC dated May 11, 2020
- Excerpts from the Boroughs 2010 Master Plan
- Section 210-6 of the Borough's zoning code
- Excerpts from the Critique of the 2019 Housing Element and Fair Share Plan by FSHC, dated December 10, 2019
- Excerpts from the Borough's 2019 Housing Element and Fair Share Plan
- Excerpts from the Borough's 2016 Housing Element and Fair Share Plan
- The Borough's 2017 Housing Element and Fair Share Plan

Planner's Report prepared by Paul Ricci, PP, dated May 11, 2020

SR Residents have supplied a Planner's Report as part of their objection. The report reviews the site suitability of Block 1603, Lots 1 and 2 (Algonquin Trail) and Block 1403, Lots 23, 24, and 25 (East Allendale Road/O'Donnell site) for inclusionary development. The report identifies existing conditions including location, surrounding land uses, zoning, proposed development, constraints, and infrastructure.

Site Suitability Analysis

The report states that the Algonquin Trail property includes a portion of a 150-foot wetlands transition area that may be applied based on the presence of wetlands and endangered species habitat on an adjoining property, which could reduce the developability of the site. The report notes that the location of the buffer is also in the area of the proposed access to the site.

The East Allendale Road site may include a riparian buffer area associated with Packer Brook which would be provided if the presence of threatened and endangered habitat is found in the corridor, according to the planner, who notes that the site has no flood hazard area but there may be an associated flood hazard area from the Packer Brook drainage area that could result in a reduction of developable area on the site.

The report acknowledges that while both sites lack sewer service, they are within a sewer service area. The costs associated with connecting the two properties to a peripheral line is characterized as prohibitive and requiring extensive construction.

The report reviews Saddle River's steep slope ordinance restriction as a determination that site developability would be further reduced based on the steep slope areas.

The report also notes that both sites are located within and in proximity to historic sites and districts as cited below. The Algonquin Trail site is located within the Saddle River Center Historic District, which is found on the State and National Registers of Historic Places. The Algonquin Trail property is not listed as a contributing site in the district but is in close proximity to contributing properties. The Allendale Road site abuts the Saddle River Crossing Historic District and is in close proximity to the oldest buildings in Saddle River, the 1725 Van Buskirk House, and the Zion Evangelical Lutheran Church. The Allendale Road site development would also result in the demolition of the Gallo House, a large home

built in 1928 and of significance to the districts. The proposed development on both sites would significantly impact the character of the area and would be a detriment to the historic districts. COAH regulations recognize the importance of protecting historic areas at both N.J.A.C. 5:97-3.13(b)5 and N.J.A.C. 5:93-4.2.3.

The report reviews two alternative sites that the author finds to be more suited for affordable housing. The first is Block 1202, Lots 1 through 44 and 38. These properties are located on Tall Tree Lane and developed with large single-family homes. The other site, Block 1605, Lots 2 and 3, is located at East Allendale Road and Route 17 and also developed with single family homes. The sites are identified as being fairly free of constraints and have better access to water and sewer lines.

Site Evaluation Report prepared by Matthew Seckler, PE and Jeffrey Martell, PE, Stonefield Engineering and Design, dated May 11, 2020

This report outlines the environmental constraints, lack of infrastructure, land use patterns, and historic characteristics of the proposed Algonquin Trail and O'Donnell site, as otherwise identified previously in this report. The report provides an analysis of the two proposed sites, Tall Trees Lane and East Allendale Road, which are both depicted as free of constraints, in close proximity to sewer and water lines, and in areas where higher density development would be less intrusive.

The report cites the developed nature of the lots and provides an analysis of the proposed sewer line requirements for each property and constructability, again highlighting the cost of construction and the physical requirements to extend sewer lines to the sites. The report states that the proposed sites are in a much better location to have access to the sewer lines and would significantly reduce the costs associated with the work.

Finally, the report provides a traffic analysis reviewing the existing roadway networks for all the sites and anticipated traffic volume, trips generated, access, connectivity (pedestrian and vehicular and access to local services. While the report states additional data collection is not available at this time due to COVID-19, the results of available data from generally accepted data sources and information indicate impacts traffic impacts from the proposed developments could negatively impact the immediate area.

Historic Preservation Report prepared by Barton Ross and Partners LLC dated May 11, 2020

A Historic Report prepared by Barton Ross AIA, AICP, LEED AP BD+C to review the proposed sites and historic documentation. The report provides an overview of Saddle River's Historic Districts and significant sites in relation to the proposed developments. As mentioned previously, the report states that the affordable housing developments would significantly alter the historic district character and negatively impact the surrounding land uses. Any new construction in historic areas should be context sensitive, and in Saddle River's case, provide a mixed use context rather than a full residential use, which would allow for more flexibility and better design, in keeping with the historic nature of the area.

The alternative sites proposed by SR Residents would be able to be developed in a way that would reduce the impact to the historic character of the Borough.

SR Residents Volume I summary

The remaining exhibits in Volume I of SR Residents includes excerpts from the Borough's Master Plan, Land Use Ordinance, Housing Element and Fair Share Plan and critiques by FSHC. The inclusion of the documents is intended to further elaborate on the character of the Borough's land development patterns and goals and objectives to retain the rural and historic nature of the Borough and low density residential development, with high density, non-residential development in context-sensitive areas of the Borough.

John L. Schettino, Esq., on behalf of the Borough of Woodcliff Lake, to Honorable Gregg A. Padovano, dated May 15, 2020

The letter brief dated May 15, 2020 states that the Woodcliff Lake Borough did not receive notice of the Fairness Hearing Scheduled for June 2, 2020 as shown on the May 4, 2020 proof of service notice, Woodcliff Lake did not receive notice and therefore did not receive the May 11 deadline to submit objections. In addition, the letter states that no resident of Woodcliff Lake adjacent to the 78 Woodcliff Lake Road property received notice.

The letter also states that the 78 Woodcliff Lake Road site is not suitable for development of a 24-unit affordable housing project.

Woodcliff Lake states that the proposed Affordable Housing District proposed for the 78 Woodcliff Lake Road site project is out of character with the abutting properties in Woodcliff Lake. The 78 Woodcliff Lake Road site is within Saddle River's R-1 residential Zone and abuts the Woodcliff Lake R-30 residential zone. The letter brief notes that Woodcliff Lake zoning restricts development to single family homes throughout the Borough, with the exception of the AH-2 and ARHO Districts. In addition the letter states that the proposed development at the 78 Woodcliff Lake Road site may impact the character of the surrounding area since the development may be required to be more than 2 stories in height, while Woodcliff Lake Borough has a maximum building height of 2.5 stories.

The letter cited Woodcliff Lake's 2019 Reexamination Report, which identifies various goals and objectives that any proposed development must consider the surrounding land uses, traffic impacts and environmental constraints. The letter also claims that 78 Woodcliff Lake Road site has three potential constraints including a 300-foot riparian buffer associated with a C-1 Stream, freshwater wetlands, and the presence of Black-crowned Night Heron, a State threatened bird in New Jersey.

The 78 Woodcliff Lake Road site does not have access to sewer services at this time, and the Settlement Agreement does not provide additional information regarding the sewer service facilitator to the site and if the Borough has capacity to handle the additional 24-units with the existing infrastructure, according to Mr. Schettino.

Finally, Woodcliff Lake believes that the construction of the affordable housing units will change the character of the streets. The Borough states that the proposed development seeks access from Apple Ridge Road, which is a Woodcliff Lake road and that Woodcliff Lake is not prepared to make changes or incur the costs of such changes to the roadway system.

John L. Schettino, Esq., on behalf of the Borough of Woodcliff Lake, to Honorable Gregg A. Padovano, dated May 21, 2020

Woodcliff Lake submitted a letter brief on May 21, 2020 stating that the Borough did not receive notice of the Fairness Hearing scheduled on June 2, 2020. The Borough is in receipt of a concept plan to provide a 24 bed residential dwelling for disabled veterans and Woodcliff Lake is acceptable to the proposal provided that the necessary setbacks and landscape buffering are included in the development of the site. However, the Borough has concerns if the development were to be a 24-unit structure. As discussed in previous letter briefs, the Borough has concerns over the 78 Woodcliff Lake Road site based on impact to neighborhood character, site suitability, traffic and roadway impacts and sewer availability.

Thomas P. Scrivo, Esq., on behalf of SR Residents LLC-NJ, to Honorable Gregg A. Padovano, dated May 21, 2020

Mr. Scrivo requested an adjournment of the Fairness Hearing to permit adequate comment on the motion filed by SR Residents. Should SRI be removed as an intervener, the Settlement Agreement will be significantly altered and, should they not be removed, SR Residents intends to provide testimony as to the site suitability of their properties. SR Residents has also not received any records or documentation from SRI demonstrating the purchasing, financial information, proformas and construction costs associated with the development of their sites. Finally, SR Residents questions the ability of the public to participate in a fairness hearing conducted via video conferencing and cites the lack of direction identified in the notice for those who wish to participate.

Robert F. Simon Esq., on behalf of Drs. Paul and Laurie Galitsis, 9 Tall Trees Lane, to Honorable Gregg A. Padovano, dated May 22, 2020

Drs. Paul and Laurie Galitsis have submitted an objection to the SR Residents NJ filings to the Court which has improperly identified their property as part of "alternative properties for the construction of low- and moderate-income housing". The Galitsis' do not desire to sell their property or agree to construction of affordable housing on their property, as identified in the SR Residents planner's report provided to the court on May 11, 2020.

The letter states that the property located at 9 Tall Trees Lane is not suitable for development since the owners are not interested in selling the property or converting the existing single-family home into affordable housing. In addition, the site is not identified in the Borough's affordable housing plan or Settlement Agreement.

Thomas P. Scrivo, Esq., on behalf of SR Residents LLC-NJ, to Honorable Gregg A. Padovano, dated May 28, 2020

Mr. Scrivo presented a letter in lieu of a formal brief on May 28 in opposition to the motion filed by SRI-I to quash the subpoena issues to Michael Kasparian, David Kasparian, and Fred Suljic, PP to compel their testimony and the production of documentation at the Fairness Hearing.

Eric Bernstein, Esq. on Behalf of Saddle River Investors I, LLC, to Honorable Gregg A. Padovano, dated June 1, 2020

This letter brief comes in response to SR Residents' opposition to SRI's motion to quash the notices in lieu of subpoena to Michael Kasparian, David Kasparian, and Fred Suljic, PP. The letter outlines that a fairness hearing is not a trial on merits and there is a limit on the information necessary for the Court's scope of review. SRI states that they have provided documentation sufficient for the Court's review to evaluate the fairness of the Settlement Agreement.

Ms. Lynn K. Hobson, The Julius Hobson Foundation for Racial Injustice, to Honorable Gregg A. Padovano, dated July 10, 2020

Ms. Hobson submitted a letter of objection regarding the ordinance for the O'Donnell property in which she states the low- and moderate-income units are to be segregated from the market rate units. Ms. Hobson requests that proof for the reasoning for the units being segregated be provided. The letter states segregating units is not fair and reasonable to the region's low- and moderate-income households.

Letter from Eric M. Bernstein, Esq. to Honorable Gregg A. Padovano dated June 30, 2020

Mr. Bernstein goes on record to acknowledge the Borough's June 9, 2020 two-party agreement with FSHC and to insist that no aspect of the two-party agreement should have the effect of modifying the three-party agreement among SRI, Saddle River and FSHC.

Letter from Eric M. Bernstein, Esq. to Honorable Gregg A. Padovano dated July 14, 2020

Transmits redacted versions of Purchase and Sale Agreement and Letter Agreement for Block 1603, Lot 1 and Lot 2.01.

Letter from Thomas P. Scrivo, Esq. to Honorable Gregg A. Padovano dated July 14, 2020

This supplemental letter brief alleges "improper motives behind SRI's participation in this case" related to non-payment of funds as required by the divorce settlement agreement between David Kasparian and Ani Hovanessian. The referenced complaint does not appear to prevent the construction of market and affordable housing according to zoning requirements adopted by the Borough.

Letter from Eric M. Bernstein, Esq. to Honorable Gregg A. Padovano dated July 15, 2020

Transmits the signature page of the Purchase and Sale Agreement for Block 1603, Lot 1 and Lot 2.01.

Letter from Thomas P. Scrivo, Esq. to Honorable Gregg A. Padovano dated July 16, 2020

Responds to the redacted documents by alleging that SRI misrepresented its interest in Block 1603, Lot 1 and Lot 2.01. The referenced objection does not appear to prevent the construction of market and affordable housing according to zoning requirements adopted by the Borough.

Letter from Michael Kovacs of Ecolsciences, Inc. to Michael Kasparian, dated July 17, 2020

This report reviews criteria found in the Flood Hazard Area Control Act Rules N.J.A.C. 7:13 with regard to Packer Brook and finds that the stream is not classified as Category One, which would require a 300' riparian zone, and is not classified trout production or trout maintenance (which would require a 150' riparian zone). Rather, these non-trout waters require a 50' riparian zone since no threatened or endangered animals or plants are present within one mile downstream of the East Allendale Road site (Block 1402, Lots 23, 24 and 25).

Letter from Thomas P. Scrivo, Esq. to Honorable Gregg A. Padovano dated July 20, 2020

This letter informs the Court that SR Residents filed an Action in Lieu of Prerogative Writs to invalidate the adoption of Ordinance 2020-992 and Ordinance 2020-993.

Letter from Adam F. Gordon, Esq. to Honorable Gregg A. Padovano dated July 20, 2020

This letter characterizes the SR Residents filings of July 14 and July 16 as irrelevant and notes that the creation of the realistic opportunity for affordable housing does not require "... an inquiry into the financial wherewithal of the applicant".

Fairness Evaluation of the Settlement Agreement

The fairness of a settlement to the protected class of low and moderate income households has long been a concern of the Court. The question of whether or not "the settlement adequately protects the interests of the lower-income persons on whose behalf the affordable units proposed by the settlement are to be built" led the Appellate Court to establish a five-part analysis for evaluating the fairness of a settlement in a *Mount Laurel* lawsuit in East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-329 (App. Div. 1996) as follows:

1. **Consideration of the number of affordable units being constructed.**

The Settlement Agreement acknowledges that the Borough has a 244-unit third round fair share obligation. The Settlement Agreement confirms the Borough's commitment to implement inclusionary, overlay zoning and the construction of 100% affordable housing development. The construction of the 100% affordable housing units are estimated to cost \$25-30 Million which the Borough has acknowledged and has assumed responsibility to find or provide funding sources. In addition, all parties have agreed to provide sewer service to the sites, which will need to be detailed during the compliance phase.

2. **The methodology by which the number of affordable units provided is derived.** The settlement offered by FSHC, which forms the basis for this Settlement, is derived from a methodology based on the opinion written by the Hon. Mary C. Jacobson A.J.S.C. and that FSHC asserts follows the prior round methodology as directed by the Court.

3. **Other contributions by the developer.** This prong of the East/West Venture test is not strictly applicable to a settlement that does not involve a builder/plaintiff. However, the terms of the Settlement provide that:

- a) at least half of all affordable housing units addressing the Third Round Prospective Need will be available to family households;
- b) the Borough will require at least 13 percent of all of the new affordable housing units in its Plan to be affordable to very low income households earning 30 percent or less of median income and that at least half of these units will be available to families;
- c) at least 25 percent of the Third Round Prospective Need obligation will be met with rental units, of which at least 50 percent shall be available to families;
- d) no more than 25 percent of affordable units are to be age-restricted;
- e) rental bonuses shall be as set forth at N.J.A.C. 5:93 and shall not exceed the rental obligation (at least 25 percent of the Borough's new construction fair share obligation);
- f) at least 50 percent of all affordable units in each inclusionary site will be affordable to low income and very low income households with the remainder affordable to moderate income households;
- g) the Borough will comply with affirmative marketing and affordability regulations set forth at N.J.A.C. 5:80-26.1, *et seq.* (UHAC) except that in lieu of the requirement at N.J.A.C. 5:80-26.3(d) for 10 percent of all low and moderate income rental units to be affordable to households earning 35 percent or less of median income, the requirement shall be that 13% of all low and moderate income rental units shall be affordable to households earning 30 percent or less of median income;
- h) the Borough will expand the list of community and regional organizations that will receive notice of the availability of affordable housing units (in the

Affirmative Marketing Plan) the following additional organizations: Fair Share Housing Center, the New Jersey Conference of the NAACP, the Latino Action Network, Bergen County NAACP, Bergen County Urban League, Bergen County Housing Coalition, and the Supportive Housing Association;

i) within 90 days of the Court's approval of the settlement agreement, the Borough will adopt the Housing Element and Fair Share Plan and all required implementing ordinances to ensure that all of the foregoing occurs. (See Attachment A)

4. **Other components of the Agreement that contribute to the satisfaction of the constitutional obligation.** The process of obtaining the Court's approval of the Borough's Third Round Housing Element and Fair Share Plan, the scrutiny that document has received from FSHC, and the conditions contained in the Settlement and this report requiring the Borough to adopt certain master plan and ordinance amendments will allow the Borough to move forward in the satisfaction of its constitutional obligation.

5. **Other factors that may be relevant to the fairness of the settlement.** This Settlement is designed to ensure that the interests of lower income households will be advanced through the Court's approval. The Agreement provides for a continuing monitoring program throughout its duration and a spending plan amendment will require a review of its provisions by the Court.

Another factor that may be relevant to the fairness inquiry involves whether some sites proposed for inclusionary or 100% affordable housing are acceptable in terms of the COAH rules regarding "approvable," available," "developable" and "suitable" sites. A series of objections claim some of the compliance sites are not appropriate for affordable housing. Since the Borough and the other concerned parties will have an opportunity to present arguments and evidence in this regard at the fairness hearing, I will reserve judgment on these issues pending testimony at the hearing.

Conclusion and Conditions

This report has been prepared in anticipation of the upcoming Fairness Hearing before the Honorable Gregg A. Padovano, J.S.C. in the matter of the Application of the Borough of Saddle River for a Determination of *Mount Laurel* Compliance (Docket No. BER-L-6120-15). The Court is being asked to determine whether the interests of low- and moderate-income households will be served by the approval of the Saddle River Settlement Agreement with FSHC.

Based upon the analysis undertaken herein, and assuming that Saddle River can demonstrate the sites satisfy the COAH criteria as approvable, available, developable and suitable, I find the Settlement between Saddle River, SRI and FSHC to be fair to low and moderate income households and recommend its favorable consideration by the Court.

I note that the FSHC, an affordable housing advocate and party to the Settlement Agreement, has concluded that the compliance plan contained in the Settlement Agreement

is fair and reasonable to the interests of low and moderate-income households. This is significant, in light of the holding in *Morris County Fair Housing Council v. Boonton Twp.*, 197 N.J. Super, 359 (Law Div. 1984), *aff'd o.b.* 209 N.J. Super, 108 (App. Div. 1986), wherein the Court concluded that "...it may be assumed that generally a public interest organization will only approve a settlement which it conceives to be in the best interest of the people it represents."

Additionally, for the reasons provided herein, I find that Saddle River's allocation of units and credits for its prior round and third round obligation is designed to implement the March 10, 2015 decision of the N.J. Supreme Court In Re N.J.A.C. 5:96 and 5:97, insofar as can be determined at this time.

Subject to supplementation as outlined in Attachment A, I also find that Saddle River Borough will have created a realistic opportunity for satisfaction of the Borough's affordable housing obligation for the period from 1987 through 2025, pursuant to the Mount Laurel decisions, the Fair Housing Act, applicable COAH regulations, and the Supreme Court's decision in *Re N.J.A.C. 5:96 and N.J.A.C. 5:97*, 221 N.J. (2015).

ATTACHMENT A
REQUIRED ELEMENTS OF FINAL AFFORDABLE HOUSING COMPLIANCE PLAN
Borough of Saddle River, Bergen County
July 27, 2020

1. The compliance proposals contained in Tables 1, 2 and 3 and narrative of this report and the applicable terms of the executed Settlement with FSHC shall be referenced in the Housing Element and Fair Share Plan, which, following review by the Special Master, shall be adopted and submitted to the Court for approval as part of the final Judgment of Compliance and Repose.

The HE/FSP shall provide documentation of the creditworthiness of all existing units and shall be prepared according to the requirements of the Fair Housing Act (FHA), which identifies the “Essential components of the municipality's housing element” at N.J.S.A. 52:27D-310, as follows:

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:

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.

2. Prior to the entry of an Order granting a final Judgment of Compliance and Repose, the Fair Share Plan shall be reviewed by the Special Master for compliance with the terms of the executed Settlement Agreement, the Fair Housing Act and the UHAC regulations before being adopted and submitted to the Court. The Fair Share Plan document should include any proposed Ordinances and Resolutions needed to implement the Plan, including zoning amendments, an Affordable Housing Ordinance, a Development Fee Ordinance, an Affirmative Marketing Plan, a Rehabilitation Program description and Manual (not applicable to the Borough), a Spending Plan, resolutions appointing an Administrative Agent and a Municipal Affordable Housing Liaison, a resolution adopting the Housing Element and Fair Share Plan (Planning Board) and a resolution endorsing the Housing Element and Fair Share Plan (Governing Body).

3. The Spending Plan shall be prepared, submitted to the Special Master for review and comment, adopted by the Planning Board as part of the Plan and by the Borough Committee as a separate action and submitted to the Court for approval before the Borough will be permitted to expend any funds from its Affordable Housing Trust Fund.

4. All proposed inclusionary and 100 percent affordable housing development zoning amendments shall be prepared, reviewed by the Special Master, and adopted and submitted to the Court prior to the entry of an Order granting a final Judgment of Compliance and Repose.

5. The Borough shall prepare and adopt an Affordable Housing Ordinance that reflects all provisions of the Settlement Agreement, as well as applicable UHAC and COAH Rules and an Affirmative Marketing Plan Resolution consistent with the terms of the Settlement Agreement. These documents shall be reviewed by the Special Master and FSHC, adopted and submitted to the Court prior to the entry of an Order granting a final Judgment of Compliance and Repose.

6. If it has not done so already, the Borough will need to contract with one or more Administrative Agents, responsible to the Borough but paid for by the owners of the affordable housing units created in the Borough, to administer the affordability controls on all of the low and moderate income units that have been or will be created in the Borough. This should be accomplished and submitted to the Court prior to the entry of an Order granting a final Judgment of Compliance and Repose.

7. If it has not done so already, the Borough will need to create the position of Municipal Housing Liaison by Ordinance and fill that position by Resolution of the Governing Body. This should be accomplished and submitted to the Court prior to the entry of an Order granting a final Judgment of Compliance and Repose.

Upon its timely compliance with all of the foregoing and approval of the final submission by the Court, I believe that Saddle River will be entitled to a final Judgment of Compliance and Repose through July 1, 2025.