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January 26, 2016

Hon. William J. Meehan, J.S.C.
Bergen County Justice Center
10 Main Street
Hackensack, New Jersey 07601

Re: In the Matter of the Application of the Borough of East Rutherford for a Judgment of Compliance and Repose
Docket No.: BER-L-5925

Your Honor:

As you may recall I represent the Plaintiff, the Borough of East Rutherford.

As the last Case Management Conference, I inquired of the court as to the process to be followed if our extension of immunity was necessary. At that time, I was instructed to contact Chambers when and if necessary.

Last week, I contacted your Chambers to discuss the issue and learned that you were on vacation. I was advised by your staff to write this letter outlining the issue for your consideration.

Enclosed is a certification which sets forth the current status of the Housing Element and Fair Share Plan actions of the Borough. For the reasons set forth the Borough requests an extension of immunity. Note that the Special Master has endorsed the Borough's extension request.

Please advise as to any additional or formal requirements you may have.

Respectfully,

Richard J. Allen, Jr.

RJA:ca
Enclosures
cc: Elizabeth K. McManus, LEED, AP, PP, AICP, Special Master
All Parties on the attached service list (with enclosure)

KIPP & ALLEN, L.L.P.
By: Richard J. Allen, Jr., Attorney No. 023041981
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Attorneys for Plaintiff Borough of East Rutherford

IN THE MATTER OF THE APPLICATION OF THE BOROUGH OF EAST RUTHERFORD FOR A JUDGMENT OF COMPLIANCE AND REPOSE

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-BERGEN COUNTY

DOCKET NO. : BER-L-005925-15

Civil Action
(Mount Laurel)

CERTIFICATION OF RICHARD J. ALLEN, JR. IN SUPPORT OF THE APPLICATION FOR EXTENSION OF IMMUNITY

Richard J. Allen Jr., Esq., hereby certifies as follows:

1. I am an Attorney at Law of New Jersey and a partner of the law firm of Kipp & Allen, L.L.P. and counsel for Plaintiff Borough of East Rutherford in this matter. I make this Certification upon personal knowledge in support of the Notice of Motion and Extension of Immunity filed herein on behalf of the Borough of East Rutherford ("East Rutherford").

2. On July 8, 2015, the East Rutherford filed a Complaint for Declaratory Judgment in for Declaratory Judgment in accordance with the New Jersey Supreme Court's March 10, 2015 decision, ***In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. I (2015) ("Mount Laurel IV").***

3. Thereafter, East Rutherford filed a Notice of Motion for Immunity and, by Order dated August 26, 2015, the Honorable William Meehan, J.S.C. granted the Motion for Immunity, and set forth that such temporary immunity would expire on January 26, 2016.

4. The calculation of affordable housing obligations for New Jersey municipalities has been within the purview of the Council on Affordable Housing ("COAH") in accordance with the Fair Housing Act, ***N.J.S.A. 52:27d-301, et. seq***. However, due to no fault of East Rutherford, COAH has not been able to promulgate valid municipal affordable housing regulations since its Second Round rules expired in 1999.

5. Following the Supreme Court's ruling in ***Mount Laurel IV***, municipalities throughout the State banded together to obtain an expert with the knowledge and experience to calculate affordable housing obligations using the methodology prescribed by the Supreme Court; eventually entering into a "Municipal Shared Services Defense Agreement" (the "MSSDA") to collectively retain Rutgers University and Dr. Robert Burchell to develop that methodology and provide a determination as to each municipality's affordable housing obligation.

6. East Rutherford executed the MSSDA thus joining the various other New Jersey municipalities which sought to retain Dr. Burchell's expertise.

7. At the time the relationship with Dr. Burchell was created, it was contemplated that his final report would be issued by September 30, 2015, and thereafter the municipalities would then be in a position to develop or update their various Fair Share Plans in accordance with the obligations determined under the methodology developed by Dr. Burchell.

8. Unfortunately, at the end of July, 2015, the municipal participants in the MSSDA, including East Rutherford, learned that Dr. Burchell had suffered a stroke and would be unable to complete the work required. In fact, on September 11, 2015, Rutgers terminated the Agreement between it and the MSSDA for Dr. Burchell's services thus requiring the municipalities to obtain another expert.

9. In response to that termination it was necessary to locate and retain another expert. The various municipalities participating in the MSSDA, including East Rutherford, entered into an agreement with Econsult Solutions, Inc. ("Econsult") for the purpose of determining municipal affordable housing obligations. Econsult had previously undertaken related work on behalf of COAH and had knowledge of municipal affordable housing obligations under COAH's prior round methodologies.

10. Econsult's report finally became available on December 30, 2015 (the "Econsult Report".) It is currently under review by East Rutherford's Municipal Planner.

11. East Rutherford is now in a position to consider the Econsult report, complete its Housing Element and Fair Share Plan ("HEFSP") and present it to the Special Master and the Court, on notice to the various interested parties.

12. It is anticipated that East Rutherford's HEFSP will be completed to the point where it can be presented to the East Rutherford Planning Board for adoption in February of 2016. It will thereafter be presented to the Mayor and Council for endorsement. At that point, the HEFSP, as approved and endorsed, would be presented to the Court for review. There is no way of knowing how much time Court review process will take.

13. That conceptual schedule is the most expeditious schedule that can be presented in view of the scheduled meeting dates of the various public bodies. Changes which, including any requisite public hearings, result from that review process could cause the process to slip, and consequently delay the adoption and endorsement of the HEFSP. As a result, even acting in good faith, East Rutherford cannot guaranty the adoption and endorsement of the HEFSP within that time.

14. In ***Mount Laurel IV***, the Supreme Court referenced an initial 5 month period of immunity against builders remedy suits. The Supreme Court recognized in ***Mount Laurel IV*** that extensions of the period of immunity may be necessary and appropriate if the municipality was proceeding in good faith. The Court wrote:

> "Thus, in all constitutional compliance cases to be brought before the courts, on notice and opportunity to be heard, the trial court may enter temporary periods of immunity prohibiting exclusionary zoning actions from proceeding pending the court's determination of the municipality's presumptive compliance with its affordable housing obligation. Immunity, once granted, should not continue for an undefined period of time; rather, the trial court's orders in furtherance of establishing municipal affordable housing obligations and compliance should include a brief, finite period of continued immunity, allowing a reasonable time as determined by the **48 court for the municipality to achieve compliance."

See ***Mount Laurel IV, 221 N.J. at 88.*** That immunity was recognized in the Court's August 26, 2015 Case Management Order.

15. Moreover, the Supreme Court's order in ***Mount Laurel IV*** recognizes that more than the initial period of immunity would be appropriate. The Court provided in its order:

> "In all declaratory judgment and constitutional compliance cases to be brought before the courts, on notice and opportunity to be heard, the trial court may grant temporary periods of immunity prohibiting exclusionary zoning actions from proceeding, as set forth in our opinion. (Emphasis added)

See ***Mount Laurel IV, Id. at 35.*** The Supreme Court's use of the term "periods of immunity" must mean more than one such period. Moreover, the Court provided that builders remedy actions could proceed:

> "Only after a court has had the opportunity to fully address constitutional compliance and has found constitutional compliance wanting shall it permit exclusionary zoning actions and any builder's remedy to proceed in a given case."

See ***Mount Laurel IV Id. at 35-36.*** In this matter, the court is not yet in a position to

"fully address constitutional compliance…" therefore, an extension of immunity is appropriate.

16. East Rutherford has proceeded with this affordable housing process, including this Declaratory Judgment Action, in good faith. East Rutherford timely filed an application for substantive certification with COAH, supported by a HEFSP prepared in accordance with COAH's rules. This Declaratory Judgment Action was timely filed in accordance with ***Mount Laurel IV***. East Rutherford timely submitted its Summary of Plan to the Special Master and promptly responded to comments submitted by interested parties on that Summary of Plan.

17. Both prior to and during the pendency of this action, East Rutherford has been meeting its Affordable Housing obligations. As was outlined in the Verified Complaint filed in this matter, all development in East Rutherford is reviewed by the Court Appointed Monitor to determine if the site involved in that land use application is appropriate for affordable housing. All land development since that time on property appropriate for Affordable Housing has included affordable housing components.

18. On top of all that, the schedule proposed on Paragraph 12 above for consideration of East Rutherford's HEFSP, as it may need to be extended as described in Paragraph 13, is reasonable under the circumstances.

19. Under the circumstances here, East Rutherford has proceeded with both this Declaratory Judgment Action and its affordable housing obligations in good faith. Any delay in the process was the result of Dr. Burchell's stroke; something clearly outside the control of East Rutherford. East Rutherford submits that the Court should grant its request and extend the Borough's immunity from affordable housing (builder's remedy) lawsuits during the remaining pendency of this matter.

20. On January 21, 2016, the Court's Special Master Elizabeth McManus issued a

report which, among other things, recommended an extension of immunity. ***See January 21, 2016 report of Elizabeth McManus, page 9 (copy attached as Exhibit A).*** The comments or conditions will be addressed under separate cover.

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

Dated: January 25, 2016

Richard J. Allen, Jr.

Exhibit

A

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The Honorable William C. Meehan, J.S.C.
Superior Court of New Jersey
Law Division, Bergen County
10 Main Street, 4th Floor
Hackensack, NJ 07601

January 21, 2016

Re: IMO the Application of the Borough of East Rutherford
Docket No. BER-L-5925-15

Dear Judge Meehan,

This letter report on the Fair Share Plan Summary of the Borough of East Rutherford, Bergen County, is submitted pursuant to Your Honor's Case Management Order, dated October 29, 2015. In accordance with that Order, on November 16, 2015 special Mount Laurel counsel Richard Allen Jr. provided to the Court East Rutherford's *Summary of Plan for Fair Share Obligation and Explanatory Notes*. The following report provides a summary of the affordable housing obligation identified by the Borough, reviews the identified crediting mechanisms, identifies issues of concern, and addresses continued immunity from exclusionary zoning litigation.

For reasons set forth below, I recommend that the Court grant an extension to the Borough, subject however to certain conditions intended to ensure that the Borough adopts and endorses a compliant Third Round Housing Element and Fair Share Plan in a timely manner.

Materials Reviewed

In addition to the relevant case law, I have reviewed the following in preparation of this report:

- Complaint for a Declaratory Judgment and supporting exhibits for the Borough of East Rutherford, filed June 25, 2015
- Case Management Order issued by Your Honor on October 29, 2015
- East Rutherford Borough's initial filing of *Summary of Plan For Total Fair Share Obligation and Explanatory Notes*, dated November 25, 2015 (hereinafter the "*Plan Summary*", or "*Submission*")

- East Rutherford Borough's revised filing of *Summary of Plan For Total Fair Share Obligation and Explanatory Notes*, dated January 21, 2015 (hereinafter the "*Plan Summary*", or "*Submission*")
- Tomu Development Co. Comment Letter prepared by Robert Kasuba, Esq. and dated December 11, 2015
- Fair Share Housing Center Comment Letter prepared by Joshua Bauers, Esq. and dated December 21, 2015
- Catalyst Development Partners Comment Letter prepared by Steven M. Lydon, AICP and dated December 15, 2015, with cover letter prepared by Thomas Bruinooge, Esq. and dated December 15, 2015
- Municipal Response Letter prepared by Richard Allen, Jr., Esq. of Kip and Allen, and dated January 6, 2016
- Municipal Response Letter prepared by George Stevenson, Jr., PP, AICP of Remington, Vernick and Arango Engineers and dated January 5, 2016

Standard for Review

Before addressing the substance of the Borough's submissions, it is useful to review the guidance on immunity provided to the Trial Courts by the Supreme Court in *Mount Laurel IV*.[1]

The Court emphasized that the position of "unfortunate uncertainty" in which municipalities find themselves was due to "COAH's failure to maintain the viability of the administrative remedy" and that the judicial review process which the Court was setting in motion was "not intended to punish the Towns" 221 N.J. at 23. It then set forth a process for municipalities to obtain temporary immunity from exclusionary zoning litigation while the Courts determined municipal affordable housing obligations and compliance standards. It intended further that municipalities would prepare third round housing elements and fair share plans during this time that would be the subject of requests for Judgments of Compliance and Repose. In this regard, the Court stated,

> *Our approach in this transition is to have the courts provide a substitute for the substantive certification process that COAH would have provided for towns that have sought its protective jurisdiction. And as part of the Court's review, we also authorize, as more fully set forth hereinafter, a Court to provide a Town whose plan is under review immunity from subsequently filed challenges during the Court's review*

[1] In re Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. 1 (2015)

> *proceedings, even if supplementation of the plan is required during the proceedings.* 221 N.J. at 24 (emphasis added)

The Supreme Court made it clear that while trial Courts should be "generously inclined" to grant applications for temporary immunity during the review of municipal plans, that review should not be "unreasonably protracted." 221 N.J. at 26. As stated below, the Supreme Court instructed the Trial courts to authorize exclusionary zoning actions seeking a builder's remedy if the Town is "determined to be constitutionally noncompliant."

> *The courts should endeavor to secure, whenever possible, prompt voluntary compliance from municipalities in view of the lengthy delay in achieving satisfaction of towns' Third Round obligations. If that goal cannot be accomplished, with good faith effort and reasonable speed, and the town is determined to be constitutionally noncompliant, then the court may authorize exclusionary zoning actions seeking a builder's remedy.* 221 N.J. at 33 (emphasis added)

In addition to the guidance offered by *Mount Laurel IV*, it is important to emphasize there has been no determination by the Court of the appropriate methodology for calculating municipal affordable housing obligations, much less an assignment of the municipal affordable housing obligation. Nor has there been a determination of the specific standards with which to measure municipal compliance. Absent these determinations, there can be no quantitative assessment of municipal constitutional compliance. As such, this letter report is intended to assist the Court determine if the municipality is proceeding in good faith in identifying its affordable housing obligation and identifying compliance strategies, consistent with guidance provided by *Mount Laurel IV*, to satisfy the affordable housing obligation once assigned.

Land Use Jurisdiction

The majority of land in East Rutherford is subject to the zoning and development regulations of the New Jersey Sports and Exposition Authority (hereinafter the "NJSEA"; formerly the New Jersey Meadowlands Commission, hereinafter the "NJMC"). All lands east of Route 17 – are under this jurisdiction; the remaining portion – lands west of Route 17 – are not and, therefore, are subject to East Rutherford's zoning and development regulations.

While the February 2015 "Meadowlands Consolidation Act" granted the 14 municipalities within the District, including East Rutherford, a choice of continuing the development review and approval process that occurred under the NJMC (now NJSEA)

or of retaking local control of these powers for the first time since 1969, local control may only be transferred if the NJMC's master plan policies, zoning, redevelopment area designations and regulations are also adopted as the local land development standards for the municipality. As such, the majority of land within the Borough is guided by the zoning and development regulations in the NJSEA's *Interim Policies Governing Affordable Housing Development in the Meadowlands District* adopted July 24, 2008 and amended July 27, 2011.

As municipal affordable housing obligations are assigned, coordination with the NJSEA will become more important. At that time municipalities will better understand to what extent land within NJSEA jurisdiction should be used to satisfy the obligation.

Municipal Affordable Housing History

On November 28, 2005 the Honorable Jonathan N. Harris, J.C.S granted a builder's remedy[2] to Tomu Development Co., Inc. ("Tomu Development"). The order provided for 420 total units, including 60 affordable units, and not more than 38,000 square feet of ancillary development to be built on Block 107.03, Lots 2, 5, and 7 (approximately 22 acres - 5.3 developable acres). This order went on to require the adoption of a compliant Housing Element and Fair Share Plan by February 28, 2006.

Prior to this Order, on May 13, 2005, an Order Imposing Scarce Resource Constraints was issued by Honorable Jonathan N. Harris, J.C.S. In summary, this Order declared public sewer and public water in East Rutherford a scarce resource and further stated any new connections to public sewer or public water required prior approval of the Court, with specified exemptions. Additionally, the order declared land, "whether currently vacant or redevelopable" to be a scarce resource in East Rutherford and stated any application for development and/or redevelopment of any parcel of land larger than 20,000 square feet, including land under the jurisdiction of the NJMC (now NJSEA), must receive Court approval, excluding specified exemptions.

While the Borough took steps towards addressing the Judge's November 2005 Order, on June 1, 2006 Honorable Jonathan N. Harris, J.C.S issued an Order indicating that the Borough's submitted housing element and fair share plan was insufficient. As a result, the Judge assigned a *Mount Laurel* Implementation Monitor, Robert Regan, Esq., who had the authority to adopt new land use rules and regulations, oversee all development reviews, prepare a Housing Element and Fair Share Plan and act in the municipality's

[2] 2005 Tomu Development Co., Inc. v. Borough of Carlstadt and Borough of East Rutherford, Docket No. BER-L-5894-03,

place in connection with development applications before the NJMC (now NJSEA). Mr. Regan continues to serve in this role today.

The Borough adopted a Housing Element and Fair Share Plan on December 15, 2008 and filed its petition with COAH for Substantive Certification on December 31, 2008. This Plan was deemed complete by COAH on June 8, 2009.

The Borough filed for Declaratory Judgement on June 25, 2015.

Review of Plan Summary

The Borough's submittal relies on the affordable housing obligation calculated in COAH's unadopted 2014 Substantive Rules, *N.J.A.C.* 5:99. It may be of note to the Court that Judge Miller in Hunterdon, Somerset and Warren Counties authorized municipalities to use COAH's un-adopted 2014 Third Round Rules for preliminary planning purposes.

However, the Borough's reliance on this source for the rehabilitation is tempered. The Borough states it anticipates conducting a structural conditions survey, as permitted in *N.J.A.C.* 5:93-5.2(a), in order to modify (presumably a reduction) the rehabilitation obligation. Additionally, the Borough states the following in regard to its prior round obligation:

> *The Borough recognizes that the 2014 3rd Round rules proposed by COAH but not adopted provided for a Round 2 need of 70 units. Notwithstanding that, in Tomu Development Co., Inc. v. Borough of East Rutherford, et al. Docket No.: BER-L-5895-03, the Court determined that East Rutherford's then current need (now the Prior Round Obligation) was 70 units. Since this was determined after a full trial on the merits, and affirmed on appeal...the determination in the Tomu matter is binding.*

This decision states the following in regard to East Rutherford's new construction obligation:

> *East Rutherford's current 14 cumulative affordable housing obligation as determined by COAH is 104 units. Thirty-four of these units represent satisfaction of an indigenous need and the balance of 70 units represents East Rutherford's new construction component.*

Accordingly, the Borough identifies the following obligation in its *Plan Summary:*

East Rutherford's Identified Affordable Housing Obligation	
Component of Need	Total Obligation
Rehabilitation	132 units
Prior Round: 1987 – 1999	70 units
Prior Round: 1999 – 2014	- 2 units
Third Round: 2014 – 2024	24 units
Total New Construction	94 units

Between the first version of their third round rules (*N.J.A.C.* 5:94) and the second version of the third round rules (*N.J.A.C.* 5:97), COAH recalculated prior round new construction obligations. The result of this recalculation is an increase in East Rutherford's prior round obligation from 70 units to 90 units. This recalculation, while the magnitude of the difference varies, was performed for all municipalities.

Econsult Solutions, Inc. (hereinafter "Econsult") released their report calculating municipal affordable housing obligations, *New Jersey Affordable Housing Need and Obligations* (dated December 30, 2015). This obligation, as well as the obligation calculated by Fair Share Housing Center (hereinafter "FSHC") in *New Jersey Low and Moderate Income Housing Obligations for 1999-2025 Calculated Using the NJ COAH Prior Round (1987-1999) Methodology* (dated April 16, 2015, revised July 2015), serve as useful comparisons to the Borough's Submission for determining the potential range of the municipal affordable housing obligation. Additionally, the Borough has indicated that Econsult has been retained as an expert for the Borough.

Comparison of Affordable Housing Obligations Calculated for East Rutherford			
	Obligation & Source		
Component of Need	Plan Summary	Econsult	FSHC
Rehabilitation	132	175	130
Prior Round: 1987 – 1999	70	90	90
Prior / Third Round: 1999 – 2014	- 2	40	857
Third Round: 2014 – 2024	24		
Total New Construction	94	130	947

The Borough's *Plan Summary* identifies a variety of inclusionary housing projects that will contribute toward satisfaction of the prior round and third round; however, the Borough did not indicate the income levels. The *Plan Summary* indicates that the Prior Round obligation will be addressed through 60 units from the inclusionary Tomu Development and 15 rental bonus credits, which creates a 5 credit surplus. Additionally, the Borough's Submission states the Third Round obligation will be addressed through 35 units of "completed" inclusionary development, 55[3] units of "proposed" development, and 6 rental bonus credits. The following table provides additional detail on the credits identified in the *Plan Summary*.

East Rutherford's Prior Round Compliance Strategies			
Strategy	Credit Type	Credits	Status
Tomu Development	Inclusionary housing	60 family rental units	Builder's Remedy Awarded
Rental Bonuses	Tomu Development	15 credits	Not applicable
Total		*75 credits*	

East Rutherford's Third Round Compliance Strategies			
Strategy	Credit Type	Credits	Status
132 Union, LLC	Inclusionary housing	3 units	Existing
Group at 3	Inclusionary housing	32 units	Existing
M&M Investment	Inclusionary housing	3 units	Approved
GFM Builders, LLC	Inclusionary housing	5 units	Approved

[3] The Borough has indicated 58 units in its *Plan Summary*. Three (3) of these units are from payments-in-lieu regarding the M&M Investment. Payments-in-lieu are not eligible for credit without a designated mechanism (100% affordable, etc.) to receive the funding.

East Rutherford's Third Round Compliance Strategies			
Strategy	Credit Type	Credits	Status
Capodagli	Inclusionary housing	9 units	Approved
384 Paterson, LLC	Inclusionary housing	1 units	Approved
Sterling	Inclusionary housing	30 units	Approved
Housing Authority of Bergan County	Inclusionary housing	2 units	Approved
Rental Bonuses	Tomu Development	6 units	Not applicable
Total		*106 credits*	

In addition to those listed above, the Borough also notes that Group 3 anticipates a Phase II of their project that will include 44 affordable units. Should this project receive approval, the total third round credits would rise to 150.

Comments Received

In response to the Borough's *Plan Summary* submission, comments were received from Fair Share Housing Center (hereinafter "FSHC"), Catalyst Development Partners, and Tomu Development, respectively dated December 21, 2015, December 15, 2015 and December 11, 2015.

FSHC comments raise several questions about the *Plan Summary*, including the reliance on *N.J.A.C.* 5:99, lack of coordination with the NJSEA, and multiple issues regarding crediting mechanisms. The comments state the usage of *N.J.A.C.* 5:99 constitutes bad faith. They also state the Borough should submit additional information regarding crediting mechanisms, should undertake a vacant land analysis due to the potential increased obligation, and indicate how the very low/low and moderate income obligation will be addressed. The Borough responded by indicating that the obligation, as indicated in *N.J.A.C.* 5:99, was purely a place holder, that the Borough's Monitor has been in

contact with NJSEA, and that the *Plan Summary* is only a summary and the actual plan will fully discuss set-aside.

The Catalyst Development Partners comments raise several questions about the *Plan Summary*, including its reliance on *N.J.A.C.* 5:99, the lack of proof indicating that the Tomu Development site is a realistic development opportunity, and the miscalculation of numbers indicated in the *Plan Summary*. The Borough responded by indicating that the obligation, as indicated in *N.J.A.C.* 5:99, was purely a place holder and that the Tomu Development was a realistic development opportunity as Tomu notified the Borough that it was seeking to intervene in this declaratory judgment action to protect the previously granted builder's remedy.

The Tomu Development's letter states only that considering the Borough has indicated their development in the *Plan Summary*, they have no objections to the documentation.

Findings & Recommendations

The Plan Summary provides a foundation for a future housing element and fair share plan. The Borough has identified a total of 145 units[4] (excluding rental bonuses) in its Submission. This number exceeds the total new construction obligation identified in the Econsult Report and *N.J.A.C.* 5:99 (these figures include the increased prior round obligation), but is less than that identified by FSHC.

In consideration of the Borough's *Plan Summary* submittal and in consideration that absent determinations on the municipal obligation and applicable compliance standards, there can be no quantitative assessment of municipal constitutional compliance, I recommend the Court grant an extension of temporary immunity. Doing so will provide the municipality with the time it needs to finalize and adopt a compliant Third Round Housing Element and Fair Share Plan once the magnitude of its fair share obligation has been established by the Court. Notwithstanding, I recommend that the following conditions be considered for any extension of temporary immunity:

1. Given COAH's recalculation of the prior round obligation, it appears East Rutherford's prior round obligation is 90 units, rather than the 70 units identified in the Plan Summary. The Borough should provide a reallocation of credits to indicate how this increased obligation can be satisfied and the remaining affordable units that will contribute toward the third round.

[4] Adjusted for the three (3) units identified as payments-in-lieu (M&M Investment)

2. The Borough should gather documentation in support of the compliance strategies identified in the Submission and others anticipated for inclusion in a forthcoming third round housing element and fair share plan. This should include but not be limited to project approvals (Planning Board resolutions, etc.), affordability controls, and unit/project documentation (bedroom count, household characteristics, tenure, etc.). In particular, this should include the income levels of the affordable units to confirm the projects meet the very low income obligation and the low / moderate income split.

3. The Borough should provide documentation indicating that the Tomu Development Site remains a realistic development opportunity. This documentation should include the status of the project and any approving resolutions or related approval documentation.

4. The Borough should begin the Structural Conditions Survey in order to determine the appropriate modification to the rehabilitation obligation.

5. The Borough should indicate what program, if any, will be utilized regarding the 3 credits indicated as payments-in-lieu. Credit may only be granted to the specified compliance mechanism that will utilize the funds.

The above recommended conditions would advance the Borough's constitutional compliance and can be done prior to the Court's determination of municipal affordable housing obligations.

I would be pleased to respond to any questions or requests for further information Your Honor may have on this report.

Sincerely,

Elizabeth McManus, PP, AICP, LEED AP

c. Kevin Walsh, Esq.
Robert Kasuba, Esq.
Robert Regan, Esq.
Richard Allen, Jr.
Joshua Bauers, Esq.
Thomas Bruinooge, Esq.

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