

2025 HOUSING ELEMENT AND FAIR SHARE PLAN

June 2025

**Hardyston Township
Sussex County, New Jersey**

Adopted by the Hardyston Land Use Board
June 24, 2025

Prepared By:

Carrine Piccolo-Kaufer, PP
Township Planner

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NJ PP License # 33LI00613500

The original of this report was signed and
Sealed in accordance with N.J.S.A. 45:14A-12.



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I. INTRODUCTION

Purpose

The following Housing Element and Fair Share plan has been prepared for the Township of Hardyston in order to address the Township's constitutional obligation to plan for affordable housing for low- and moderate-income households in accordance with the Fair Housing Act and the Municipal Land Use Law. This plan addresses the period from 2025-2035, known as the Fourth Round.

The plan will provide updated information on population, housing and development patterns since the 2008 Housing Element and Fair Share Plan and 2016 Amendment & Supplement were adopted, utilizing data from the 2020 US Census and 5-year estimates from the 2023 American Community Survey.

In addition, the Fair Share Plan will address the Township's 4th round affordable housing obligation in accordance with the process established by P.L. 2024 c. 2, while giving consideration to the prior round rules, Hardyston's 3rd Round Substantive Certification, and 2016 Declaratory Judgment granted by the Courts.

Municipal Summary

Hardyston Township is 32 square miles in size and has localized developed areas with less developed environmentally constrained outlying areas, especially in the west. The Township is bounded by several municipalities including Vernon Township, West Milford Township, Jefferson Township, Sparta Township, Borough of Ogdensburg, Lafayette Township, and Wantage Township. Moreover, Township itself surrounds the Borough of Hamburg and the Borough of Franklin.

The population of Hardyston Township has decreased from 8,213 in 2010 to 8,125 in 2020. This modest decrease followed years of significant population growth in the early 2000s, when the population increased by 25 percent from 6,171 to 8,213. The 2023 American Community Survey estimates the population to be 8,239. The 2020 median age in Hardyston Township was 47.7 years, which was slightly older than the Sussex County median age of 43.2 years. The average household size continues to shrink, with a median household size of 2.26 as of 2023.

The housing stock of the Township is predominantly single-family detached dwelling units of which a majority were built after 1980.

Hardyston Township is in affordable housing Region 1, a region that consists of Sussex, Bergen, Hudson and Passaic counties.

Affordable Housing History

In the case of Southern Burlington County NAACP v. the Township of Mount Laurel, (commonly known as Mount Laurel I), the New Jersey Supreme Court established the doctrine that developing municipalities in New Jersey have a constitutional obligation to provide a realistic opportunity for the construction of low- and moderate-income housing in their communities. In its Mount Laurel decision, decided on January 20, 1983 (Mount Laurel II), the Supreme Court expanded the Mount Laurel doctrine by stating that this constitutional responsibility extended to all municipalities in New Jersey. The Court also established various remedies, including the "builder remedy" or court-imposed zoning, to ensure that municipalities addressed this obligation.

In response to the Mount Laurel II decision, the New Jersey Legislature adopted the Fair Housing Act in 1985 (Chapter 222, Laws Of New Jersey, 1985). The Fair Housing Act established a Council on Affordable Housing (COAH) as an administrative alternative to the courts. COAH was also given the responsibility of establishing various housing regions in the state, determining regional and municipal fair share affordable housing obligations and adopting regulations establishing the guidelines and approaches that municipalities may use in addressing their affordable housing need.

New Jersey municipalities, by and through the voluntary process known as Substantive Certification, would petition COAH to endorse and approve the municipal housing element and fair share plan component of a municipal master plan. The Substantive Certification process previously assured administrative protection to municipalities from legal challenges to their respective municipal housing elements and fair share plans for municipalities that chose to participate in the substantive certification process. The Substantive Certification process was organized into three separate rounds of compliance, known as First, Second and Third Round Substantive Certification, whereby municipalities would submit separate First, Second and Third Round Municipal Housing Elements and Fair Share Plans.

From 2005, COAH and the Substantive Certification process were in a constant state of flux. The Third Round Substantive Certification process and rules as set forth in N.J.A.C. 5:97-1, et seq were invalidated by the New Jersey Supreme Court, followed by numerous legal challenges and multiple revisions of the rules that were drafted by never adopted

On March 10, 2015, the New Jersey Supreme Court issued an order in response to previous legal action filed by the Fair Share Housing Center. The Supreme Court Order authorized the courts to hear and decide actions addressing municipal compliance with constitutional Mount Laurel obligations by municipalities that had previously sought the protection of the FHA through COAH. The Supreme Court Order effectively eliminated the substantive certification administrative process as overseen and enforced by COAH, through which Municipal Housing Elements and Fair Share Plans were previously endorsed and approved. The new process permitted municipalities to file a Declaratory Judgment Action during a 30-day window between June 8 and July 8, 2015. This would enable the municipality to comply voluntarily with its constitutional obligation to provide a realistic opportunity for the construction of its fair share of the region's low- and moderate-income households.

On January 18, 2017, the Supreme Court ruled that municipalities are responsible for obligations accruing during the so-called "gap period," the period between 1999 and 2015. However, the Court stated that the gap obligation should be calculated as a never-before calculated component of Present Need (also referred to as Rehabilitation Obligation), which would serve to capture Gap Period households that were presently in need of affordable housing as of the date of the Present Need calculation.

Between 2015 and 2024, municipalities that elected to voluntarily comply with their constitutional obligation participated in mediation sessions, reached settlement agreements, adopted Housing Elements and Fair Share Reports, and most municipalities concluded the process with a judgement from the Court.

As a result of the inability of COAH to adopt rules and the subsequent court process, the Third Round period spanned from 1999 to 2025, a 26-year long period as opposed to the 6-year periods for the first and second rounds. The Third Round is set to expire on June 30, 2025.

On March 20, 2024, Governor Murphy signed P.L. 2024 C. 2 into law. This sweeping legislation amended the Fair Housing Act (FHA) by abolishing COAH and creating a new process that involved the creation of an entity known as the Affordable Housing Dispute Resolution Program (the Program), which is overseen by a panel of judges. The Program has modified the

procedures for establishing municipal obligations and the approval of Housing Elements and Fair Share Plans. The process is now overseen at the trial court level and the DCA and the Administrative Office of the Courts (AOC) assist the Program and the trial courts with this process. In addition, the DCA has various responsibilities within the new law, including providing calculations of municipal present and prospective need and collecting monitoring information on affordable units and municipal trust funds.

In October 2024, DCA published a report on its calculations of regional need and municipal present need (Rehabilitation Obligation) and prospective fair share obligations (Fourth Round Obligation). The report is entitled "Affordable Housing Obligation of 2025-2035 (Fourth Round) Methodology and Background.

In addition, municipalities were required to adopt a binding resolution outlining their present and prospective fair share obligations by January 31, 2025, and prepare and file an updated Housing Element and Fair Share Plan by June 30, 2025.

History of Affordable Housing Compliance

For more than two decades, Hardyston Township has willingly and proactively participated in the affordable housing process in New Jersey.

Hardyston received Second Round Substantive Certification of its Municipal Housing Element and Fair Share Plan from COAH on November 7, 2001. The Township's obligation was addressed using a combination of existing group homes, a proposed group home, and rental bonuses.

Hardyston received Third Round Substantive Certification of its Municipal Housing Element and Fair Share Plan from COAH on May 14, 2009, prior to the invalidation of the rules set forth in N.J.A.C. 5:97-1, et. seq. by the NJ Supreme Court. The Township of Hardyston Municipal Housing Element and Fair Share Plan, adopted December 5, 2008, fully addressed the prior round obligation, rehab obligation, and growth share obligation as determined by the methodology adopted in the Third-Round rules set forth in N.J.A.C 5:97-1, et seq. The Township's Third Round obligation was addressed using a combination of proposed group homes, approved inclusionary developments, and a market-to-affordable program. In 2009, the Township entered in a Settlement Agreement with the Fair Share Housing Center regarding the Township's plan for very-low family housing, and the New Jersey Superior Court Appellate Division issued a

settlement order and consent order of dismissal, dismissing FSHC's objections to the Township's 2008 HEFSP. In 2015, Hardyston Township proactively participated in the judicial process outlined by the Supreme Court and filed a Declaratory Judgement Action with Judge Hansbury in April 2015. Through the court process the Township entered into a subsequent settlement agreement with the Fair Share Housing Center accepting their affordable housing obligation for the revised third round (1999-2025) and agreeing to the adoption of an amended Housing Element and Fair Share Plan and revised Spending Plan.

The Township adopted the 2016 Amendment & Supplement to the 2008 Housing Element and Fair Share Plan on March 24, 2016, and subsequently was granted Substantive Certification and a Judgment of Compliance and Repose on September 26, 2016.

Hardyston Township continues to participate in the affordable housing process in the new fourth round. The DCA calculated Hardyston Township's prospective need obligation as 674 (utilizing the 20% population cap). Using the process outlined by P.L. 2024 C. 2, the Township conducted a vacant land capacity analysis and adopted a binding resolution outlining their present and prospective fair share obligation on January 22, 2025.

The Township also filed a "Complaint for a Declaratory Relief" pursuant to Directive #14-24 on January 24, 2025.

The New Jersey Builders Association (NJBA) filed an objection to the Township's prospective need obligation adopted by the Township using the vacant land and capacity analysis. The Township entered into a Settlement Agreement with NJBA, as memorialized by Judge Hansbury's Decision and Order dated March 31, 2025, establishing a 4th Round prospective need obligation of 647 units.

Content of the Housing Element & Fair Share Plan

Pursuant to both the Fair Housing Act and the Municipal Land Use Law (MLUL), municipalities in New Jersey are required to include a housing element in their master plans. The principal purpose of the housing element is to provide for methods of achieving the goal of access to affordable housing to meet the municipality's low- and moderate-income housing needs. The statutory required contents of the housing element are:

- 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.
- b. A projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing, for the 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.

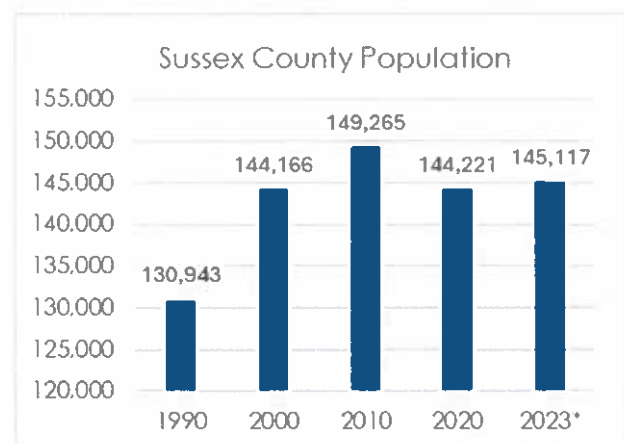
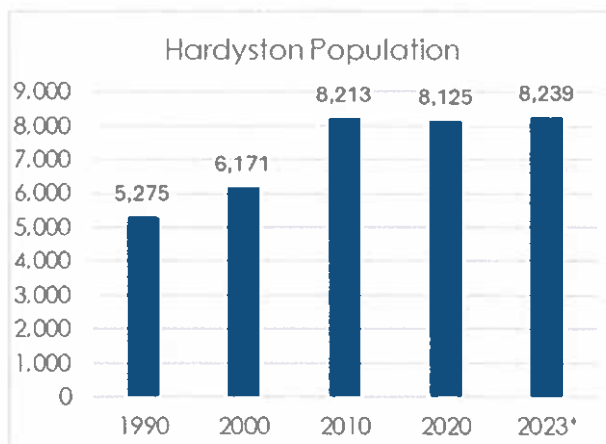
II. DEMOGRAPHICS

POPULATION

In 2020, the population of Hardyston Township was 8,125, a modest decrease of 1 percent from the 2010 population. Hardyston experienced significant population growth in the early 2000's prior to the 2008 economic recession. The large population growth is a result of the housing boom in the early 2000's and the development of a few large-scale residential and resort-oriented developments. Since then, the population has remained flat, with the 2023 American Community Survey estimating Hardyston's population to be 8,239. The population trends experienced in Hardyston Township, Sussex County and the State of New Jersey from 1930 through 2023 are shown below.

Populations Trends, 1930 to 2020									
Year	Hardyston Township			Sussex County			New Jersey		
	Population	Change		Population	Change		Population	Change	
		Number	Percent		Number	Percent		Number	Percent
1930	947	-	-	27,830	-	-	4,041,334	-	-
1940	1,034	88	9.3	29,632	1,802	6.5	4,160,165	118,831	2.9
1950	1,279	245	23.7	34,423	4,791	16.2	4,835,329	675,164	16.2
1960	2,206	927	72.5	49,255	14,832	43.1	6,066,782	1,231,453	20.3
1970	3,499	1,293	58.6	77,528	28,273	57.4	7,171,112	1,104,330	18.2
1980	4,553	1,054	30.1	116,119	38,591	49.8	7,365,011	463,899	6.5
1990	5,275	722	15.9	130,943	14,824	12.8	7,730,188	365,177	5.0
2000	6,171	896	16.9	144,166	13,223	10.1	8,414,350	684,162	8.9
2010	8,213	2,042	33.1	149,265	5,099	3.5	8,791,894	377,544	4.5
2020	8,125	-88	-1	144,221	-5,044	-3.3	9,288,994	497,100	5.7
2023*	8,239	114	1.4	145,117	896	.6	9,267,014	-21,980	-.25

Data source: U.S. Census Bureau, Decennial Census and 2023: ACS 5-Year Estimates Data Profiles



POPULATION COMPOSITION BY AGE

The largest increases in the Township occurred in the 55 to 64 and 65 and over age cohorts, which experienced increases of 13.1 % and 60.6%, respectively. There was a decline in all other age cohorts with the exception of the 25 to 34 cohort.

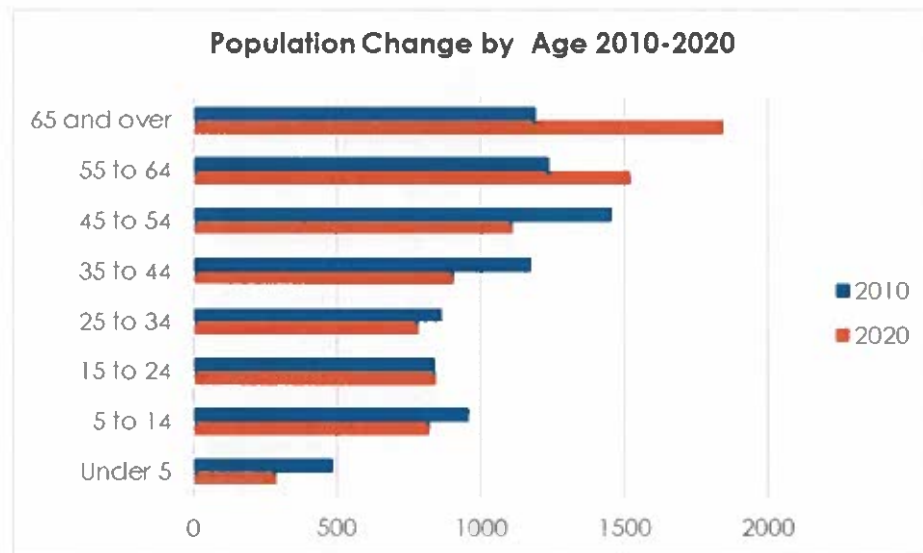
Population by Age 2010 and 2020, Hardyston Township						
	2010		2020		Change, 2010 to 2020	
Population	Number	Percent	Number	Percent	Number	Percent
Under 5	487	6.0	290	3.6	-197	-40.5
5 to 14	959	11.8	823	10.1	-136	-14.2
15 to 24	839	10.3	844	10.4	5	0.6
25 to 34	864	10.6	785	9.7	-79	-9.1
35 to 44	1,174	14.4	906	11.2	-268	-22.8
45 to 54	1456	17.9	1112	13.7	-344	-23.6
55 to 64	1240	15.3	1520	18.7	280	22.6
65 and over	1194	14.7	1845	22.7	651	54.5
Total	8,213	101.1	8,125	100.0	-88	-1.1

Population by Age, 2010 and 2020, Sussex County						
	2010		2020		Change, 2010 to 2020	
Population	Number	Percent	Number	Percent	Number	Percent
Under 5	7,963	5.5	6,447	4.5	-1,516	-19.0
5 to 14	20,571	14.3	15,707	10.9	-4,864	-23.6
15 to 24	18,528	12.8	16,964	11.8	-1,564	-8.4
25 to 34	14,178	9.8	16,265	11.3	2,087	14.7
35 to 44	21,480	14.9	16,288	11.3	-5,192	-24.2
45 to 54	27,845	19.3	20,921	14.5	-6,924	-24.9
55 to 64	20,850	14.5	24,827	17.2	3,977	19.1
65 and over	17,850	12.4	26,802	18.6	8,952	50.2
Total	149,265	103.4974	144,221	100	-5,044	-3.4

Data source: U.S. Census Bureau, Decennial Census 2010 & 2020

The County also saw significant increases in the 55 to 64 and 65 and over age cohorts, and a significant decrease in all other age cohorts except the 25 to 34 age cohorts. The median age of Hardyston Township in 2023 was 47.7 years, 3 years older than 2010 census. An analysis of age group characteristics provides insight regarding the actual changes in population. Available

data makes it clear that both Hardyston and the County are experiencing little to no growth and that the existing population is aging. Population trends indicate that younger singles and families are leaving for other places. This comparison is helpful to determine the impacts of these changes on housing needs, community facilities and services for the municipality and County overall.



Data source: U.S. Census Bureau, Decennial Census 2010 & 2020

HOUSEHOLDS

A household is defined as one or more persons, whether related or not, living together in a dwelling unit. In 2020, there were a total of 3,111 households in Hardyston Township. The average number of persons per household for the Township in 2020 was 2.5, slightly lower than the County's average of 2.57. Both the Township's and the County's largest percentage of households was two-person households (37 and 35 percent respectively)

HOUSEHOLD SIZE- Occupied Housing Units, 2020 Hardyston Township and Sussex County				
	Township	Percent	County	Percent
1-person household	789	25	12,451	23
2-person household	1,137	37	19,121	35
3-person household	413	13	9,526	18
4-person household	772	25	12,978	24
Average Household Size	2.5		2.57	

Family households are defined as two or more persons, living in the same household related by blood, marriage or adoption. The largest percentage of households was family households comprising 67 percent with the average family size being 3.08. Furthermore, the majority of the family households were married-couple families (84%) with 31 percent of them having children under the age of 18. Only 22 percent of households were one-person households with 12.2 percent being female and 9.8 percent being male. Non-family households are defined as a household that consists of a householder living alone or where the householder shares the home exclusively with people whom he/she is not related. These households only comprised 5 percent of the Township while other family households comprised 13.1 percent.

Household Size & Type, 2020		
	Total	Percent
	3,111	100
1-person household:	789	25.4
2 or more person household:	2,322	74.6
Family households:	2,076	66.7
Married-couple family:	1,747	56.2
With own children under 18 years	690	22.2
No own children under 18 years	1,057	34.0
Other family:	329	10.6
Male householder, no wife present:	31	1.0
With own children under 18 years	15	0.5
No own children under 18 years	16	0.5
Female householder, no husband present:	298	9.6
With own children under 18 years	119	3.8
No own children under 18 years	179	5.8
Non-family households:	246	7.9
Average Family Size	3.08	

Data source: U.S. Census Bureau, Decennial Census and 2020: ACS 5-Year Estimates Subject Tables S1101

INCOME

Hardyston Township had a higher median household income compared to the County and the State. As measured in the 2023 American Community Survey by the U.S. Census Bureau, the median income in Hardyston Township was \$119,103, \$8,318 more than the County and \$17,953

more than the State's median income. Approximately 38 percent of the households within the Township had a household income greater than \$150,000 per year.

Per Capita and Household Income 2023 Hardyston Township, Sussex County, New Jersey		
	2023 Per Capita	2023 Median Household
Hardyston Township	59,920	\$119,103
Sussex County	56,471	\$110,785
New Jersey	53,118	\$101,150

Data source: U.S. Census Bureau, 2023: ACS 5-Year Estimates Detailed tables

	Hardyston Township		Sussex County	
	Number	Percent	Number	Percent
Total households	3,631	100.0	57,328	100.0
Less than \$10,000	160	4.4%	1,833	2.7%
\$10,000 to \$14,999	69	1.9%	1,153	1.2%
\$15,000 to \$24,999	261	7.2%	3,157	3.9%
\$25,000 to \$34,999	192	5.3%	3,467	3.8%
\$35,000 to \$49,999	167	4.6%	5,196	6.2%
\$50,000 to \$74,999	345	9.5%	9,884	12.2%
\$75,000 to \$99,999	414	11.4%	9,480	13.0%
\$100,000 to \$149,999	643	17.7%	13,066	22.0%
\$150,000 to \$199,999	759	20.9%	4,662	14.3%
\$200,000 or more	625	17.2%	3,944	20.6%
Median household income	\$ 119,103		\$ 110,785	

Data source: U.S. Census Bureau, Decennial Census and 2023: ACS 5-Year Estimates Subject Tables

POVERTY STATUS

Of the 8,235 persons in Hardyston in 2023, 7.5 percent lived in poverty (an increase of 3.7% since 2014). Fourteen percent of those living in poverty are below the age of 18.

Poverty Status 2023 Hardyston Township and Sussex County				
	Hardyston Township		Sussex County	
		Percent		Percent
Total persons	8,235	100	143,936	100
Total persons below poverty level		7.5		5.4
Under 18		13.6		7.4

18 to 65		6		4.7
Over 65		6.7		5.9

HOUSEHOLD COSTS

The tables below show the expenditure for housing for those who own and rent in Hardyston Township. Approximately 67 percent of renters spend 30 percent or more of their household income on housing. Moreover, approximately 27 percent of owners spent 30 percent or more of their household income on housing. The general affordability standard used is that no more than 30 percent of gross income should be allocated for housing costs.

Selected Monthly Owner Costs as a Percentage of Household Income in Hardyston Township 2023		
	Number	Percent
Total owner-occupied housing units	2946	100
Less than 20 percent	1587	53.9
20 to 24 percent	360	12.2
25 to 29 percent	186	6.3
30 to 34 percent	117	4.0
35 percent or more	696	23.6
Not computed	0	

Gross Rent as a Percentage of Household Income Hardyston Township 2023		
	Number	Percent
Total renter-occupied housing units	620	100
Less than 15 percent	101	16.3
15 to 19 percent	47	7.6
20 to 24 percent	45	7.3
25 to 29 percent	12	1.9
30 to 34 percent	208	33.5
35 percent or more	207	33.4
Not computed	65	

Data source: U.S. Census Bureau, 2023: ACS 5-Year Estimates Data Profiles

III. EXISTING HOUSING CONDITIONS

HOUSING UNIT DATA

According to the 2023 American Community Survey, Hardyston Township had a total of 3,946 housing units. This is an increase of 1,702 units since 1990.



Of the 3,641 occupied housing units, 2,946 or 81.2 percent were owner occupied while 549 or 13.9 percent were renter-occupied. As result of the housing boom in the early 2000's, approximately 31% of the housing stock was built from 2000 to 2019. The Township has experienced additional growth since 2020, following the COVID-19 pandemic and the increased demand for housing.

HOUSING DATA Hardyston Township		
	Total	Percent
HOUSING UNITS		
Total Occupied Units	3631	100
TENURE		
Owner occupied	2,945	81.1
Renter occupied	685	18.9
YEAR STRUCTURE BUILT		
Built 2020 or later	0	0
Built 2010 to 2019	146	4
Built 2000 to 2009	1084	27.3
Built 1990 to 1999	612	21.8
Built 1980 to 1989	220	5.6

Built 1970 to 1979	567	14.4
Built 1960 to 1969	346	8.8
Built 1950 to 1959	537	13.6
Built 1940 to 1949	253	6.4
Built 1939 or earlier	181	4.6

Source: U.S. Census, 2023: ACS 5-Year Estimates Data Profiles, DP04

HOUSING TYPE AND SIZE

A majority of housing stock in Hardyston Township is single-family detached housing. In 2023, there were 2,182 single-family detached homes representing 55.3 percent of the housing stock. The second largest type, with 28 percent, was single-family attached. All multi-family housing represented approximately 16 percent of the housing stock within the Township.

The median number of rooms within housing structures in the Township was 6.1 with the largest percentage of structure (24.1%) having six rooms. Approximately 65 percent of the structures had six or more rooms while 35 percent had four or less rooms.

HOUSING TYPE AND SIZE Hardyston Township		
UNITS IN STRUCTURE		
Total	3946	100
1, detached	2182	55.3
1, attached	1108	28.1
2	116	2.9
3 or 4	80	2
5 to 9	253	6.4
10 to 19	162	4.1
20 or more	14	.4
Mobile home	0	0
Boat, RV, van, etc.	31	.8
ROOMS		
1 room	46	1.2
2 rooms	207	5.2
3 rooms	175	4.4
4 rooms	466	11.8
5 rooms	504	12.8
6 rooms	773	19.6
7 rooms	765	19.4
8 rooms	37	8.5
9 or more rooms	673	17.1
Median number of rooms	6.2	

Source: U.S. Census, 2023: ACS 5-Year Estimates Data Profiles, DP04

OCCUPANCY

According to the 2023 American Community Survey, out of the 3,946 units in Hardyston Township, 3,631 or 92 percent were occupied while 315 or 8 percent were vacant.

OCCUPANCY STATUS Hardyston Township		
	Total	Percent
Total	3,946	100
Occupied	3,631	92
Vacant	315	8

Source: U.S. Census, 2023: ACS 5-Year Estimates Data Profiles, DP04

HOUSING VALUES AND CONTRACT RENTS

Housing values for owner-occupied housing units in 2023 are listed in the table below along with the contract rents. 41.7 percent of the owner-occupied housing has a value that falls within \$300,000 to \$399,999. The second highest value range was \$200,000 to \$299,999 followed by housing values in the \$500,000 to \$999,999 range. The median value in Hardyston Township was 4332,300 and, of the owner-occupied units 1,065 or 36.2 percent have no mortgage. The median contract rent in Hardyston Township in 2023 was \$1,760. The largest group of renters (49%) paid rents greater than \$2,000.

VALUE FOR ALL OWNER-OCCUPIED HOUSING UNITS Hardyston Township		
	Total	Percent
Total	2,946	100
Less than \$50,000	73	2.5%
\$50,000- \$99,999	0	0%
\$100,000- \$149,999	57	1.9%
\$150,000- \$199,999	116	3.9%
\$200,000 to \$299,999	987	33.5%
\$300,000 to \$499,999	1,229	41.7%
\$500,000 to \$999,999	484	16.4%
\$1,000,000 or more	0	0%
Median value	\$ 332,300	
MORTGAGE STATUS		
Housing units with a mortgage, contract to purchase, or similar debt:	1,881	63.8%
Housing units without a mortgage	1,065	36.2%

Source: U.S. Census, 2023: ACS 5-Year Estimates Data Profiles, DP04

CONTRACT RENT Hardyston Township		
	Total	Percent
Total renter occupied units	620	100
Less than \$500	0	0
\$500-\$999	0	0
\$1,000-\$1,499	178	28.7
\$1,500-\$1,999	138	22.3
\$2,000- \$2,499	147	23.7
\$2,500-\$2,999	129	20.8
\$3,000 or more	28	4.5
Median Contract Rent	1,655	

Source: U.S. Census, 2023: ACS 5-Year Estimates Data Profiles, DP04

HOUSING CONDITIONS

The table below details the condition of housing within Hardyston Township based on heating fuel, plumbing facilities, kitchen facilities, telephone service and overcrowding. These factors are utilized in determining housing deficiency. According to the 2023 American Community Survey, Hardyston Township only had 26 units lacking in plumbing facilities and 32 lacking in complete kitchen facilities. Moreover, only 63 or 1.7 percent of the units had no telephone service. In addition, with 100 percent of the units having one or less occupant per room, overcrowding is not an issue in Hardyston Township.

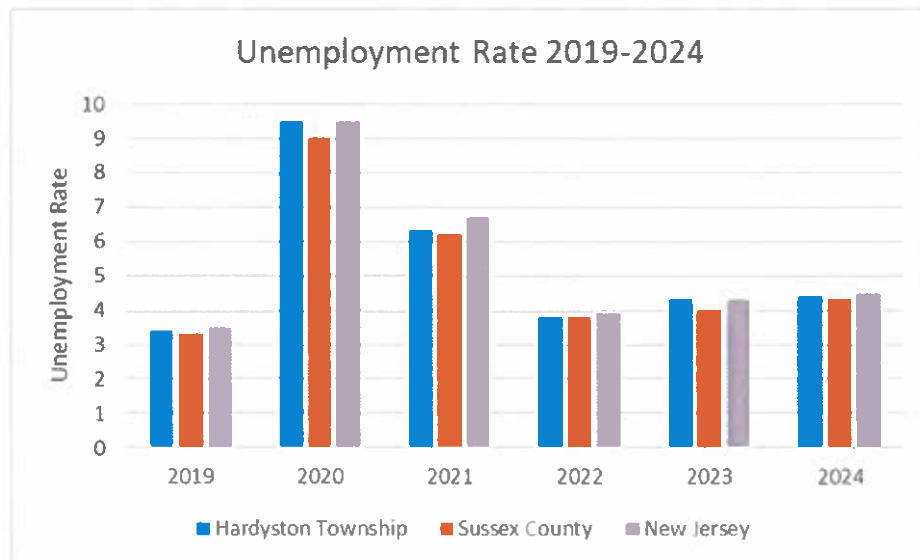
Housing Conditions Hardyston Township		
	Total	Percent
House Heating Fuel- Occupied housing units		
Total	3,631	100
Utility gas	1,778	49
Bottled, tank, or LP gas	243	6.7
Electricity	374	10.3
Fuel oil, kerosene, etc.	1,041	28.7
Coal or coke	0	0
Wood	118	3.2
Solar energy	0	0
Other fuel	46	1.3
No fuel used	31	.3
Occupants per Room-Occupied housing units		
Total	3,631	100
1.00 or less	3,574	98.4
1.01 to 1.50	57	1.6
1.51 or more	0	0
Facilities- Total units		

Total	3,631	100
Lacking complete plumbing facilities	24	.7
Lacking complete kitchen facilities	0	0
No Telephone Service	63	1.7

Source: U.S. Census, 2023: ACS 5-Year Estimates Data Profiles, DP04

IV. EMPLOYMENT DATA

The chart details the unemployment rate for Hardyston, Sussex County and the State from 2019 to 2024. The unemployment rate for Hardyston Township has been consistently lower than the lower than or equal to the State, and slighter higher than Sussex County. The unemployment rate in 2024 for Hardyston Township was 4.2 percent.



Source: New Jersey Department of Labor and Workforce Development, Office of Research and Information, Annual Labor Force Estimates: 2010-2024.

CLASS OF WORKER AND OCCUPATION

The majority of workers living in Hardyston Township were a part of the private wage and salary worker group (86.1%). The second largest category was government workers (10.2%) followed by those who were self-employed (3.1%). Those that worked within the private wage field were concentrated heavily in management /professional positions and sales and office occupations. These two categories of workers equaled 63.9 percent of employed residents within Hardyston Township (38% and 25.9% respectively).

Class of Worker, 2023 Hardyston Township		
	Number	Percent
Total	4,362	100
Private wage and salary worker	3,755	86.1
Government worker	447	10.2
Self-employed worker	134	3.1
Unpaid family worker	26	.6

Source: U.S. Census 2023: ACS 5-Year Estimates Subject Tables, S2406

Occupation, 2023 Hardyston Township		
	Number	Percent
Employed civilian population 16 years and over	4,362	100
Management, professional, and related occupations	1,657	38
Service occupations	671	15.4
Sales and office occupations	1,129	25.9
Natural resources, construction, and maintenance occupations	464	10.6
Production, transportation, and material moving occupations	441	10.1

Source: U.S. Census 2023: ACS 5-Year Estimates Subject Tables, S2406

COMMUTING TO WORK

According to the 2023 American Community Survey, the mean travel time to work for those who lived in Hardyston Township was approximately forty-one (41) minutes. Thirty percent traveled more than an hour to get to work while 12 percent traveled less than fifteen minutes. The largest proportion of workers commuted by automobile (76.8%). Of the percentage that traveled by automobile, an overwhelming 71 percent drove alone while only 5.8 percent carpoolled. Those who used public transportation only comprised 1.3 percent. The percentage of people who worked from home increased from 8% in 2014 to 19.9% in 2023. This dramatic increase is in large part due to an expansion of work from home policies for many employers as a result of the COVID-19 pandemic.

Travel Time to Work, 2023 Hardyston Township	
	Percent
Workers who did not work at home	100
Less than 10 minutes	6.5
10 to 14 minutes	5.2
15 to 19 minutes	9.3
20 to 24 minutes	12.8

25 to 29 minutes	3.6
30 to 34 minutes	4.9
35 to 39 minutes	4.2
40 to 44 minutes	4.3
45 to 59 minutes	19.4
60 to 89 minutes	23.7
90 or more minutes	6.2
Mean travel time to work (minutes)	41.4

Source: U.S. Census 2023: ACS 5-Year Estimates Detailed Tables, B08303

Means Of Commute, 2023 Hardyston Township	
	Percent
Workers 16 years and over	100
Car, truck, or van	
Drove alone	79.8
Carpooled	6.7
Public transportation	2.9
Walked	0.6
Other means	1.7
Worked at home	8.4

Covered Employment

There is currently very limited information available on actual job opportunities within municipalities. The Department of Labor collects information on covered employment, which is employment and wage data for private employees covered by unemployment insurance. The tables below provide a snapshot of private employers located within Hardyston Township. The first table reflects the number of jobs covered in private employment from 2019 through 2023. The second table reflects the disbursement of jobs by industry as per NAICS classification and salaries in 2023.

Private Wage Covered Employment: 2019-2023, Hardyston

Year	Number of Jobs	# Change	% Change
2019	1,349		
2020	709	-640	-47
2021	946	237	33
2022	1,069	123	13
2023	1,098	29	3

Source: New Jersey Department of Labor Quarterly Census of Employment and Wages

According to the New Jersey employment & wages annual municipality report by private sector (NAICS based), in 2023 the largest number of jobs were in the arts and entertainment industry followed by health/social services. While the highest annual wage could be found in the construction industry.

Private Employment and Wages 2023, Hardyston Township

Industry	Employment					Wages		
	March	June	Sept	Dec	Average	Total	Annual	Weekly
Utilities	.	.	.	.	.	.	.	.
Construction	35	43	36	38	38	\$2,135,541	\$56,822	\$1,093
Manufacturing	.	.	.	.	.	.	.	.
Wholesale Trade	.	.	.	.	.	.	.	.
Retail Trade	8	7	7	6	7	\$200,971	\$28,710	\$552
Transportation/Warehousing	.	.	.	.	.	.	.	.
Information	.	.	.	.	.	.	.	.
Finance/Insurance	.	.	.	.	.	.	.	.
Real Estate	.	.	.	.	.	.	.	.
Professional/Technical	.	.	.	.	.	.	.	.
Admin/Waste Remediation	.	.	.	.	.	.	.	.
Education	.	.	.	.	.	.	.	.
Health/Social	81	85	80	89	83	\$3,586,967	\$43,435	\$835
Arts/Entertainment	131	135	136	141	143	\$2,861,689	\$20,047	\$386
Accommodations/Food	.	.	.	.	.	.	.	.
Other Services	33	44	53	39	43	\$1,235,830	\$29,021	\$558
Unclassified	.	.	.	.	.	.	.	.
PRIVATE SECTOR TOTALS	954	1,228	1,142	1,047	1,098	\$45,667,428	\$41,576	\$800

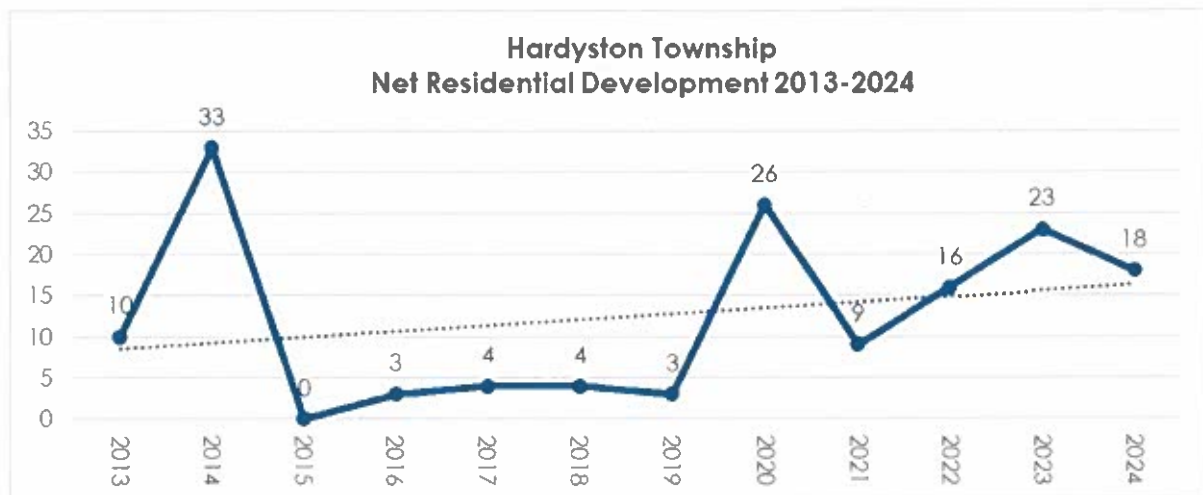
Source: New Jersey Department of Labor Quarterly Census of Employment and Wages, 2023.

IV. PROJECTED FUTURE HOUSING STOCK

The Municipal Land Use Law requires the Municipal Housing Element to consider future housing stock. In the previous 2008 Housing Element and Fair Share Plan, Hardyston Township relied upon the residential and non-residential growth projections for the period 2008-2018 prepared by the Council on Affordable Housing as part of the invalidated third-round growth share methodology.

Since the growth share methodology has been invalidated, municipalities must rely on other regional forecasts and projections as well as historical trends and actual growth data to project future growth.

Residential building permit data serves as an indicator of development trends. The chart below depicts the net change in residential development over the course of the last ten years. Housing growth has not returned to the level that existed prior to the recession, however increased housing demand since the COVID-19 pandemic has seen the resurrection of several previously approved residential developments. Projects that have been languishing for years have been completed or are nearing completion. This increase in new development has generated twenty-two additional affordable housing units.



The North Jersey Transportation Planning Authority (NJTPA) completes projections for population, households and employment for the New York/New Jersey metropolitan area every four years. The 2021 report provides projections for the period between 2015 and 2050. The 2021 report projects minimal change with an annualized percentage change of less than 1% for population, households, and employment.

Category	2015 Population	2050 (projected)	Annualized % Change 2015-2050	Overall Change %	Overall Change #
Population	7,952	8,381	0.2%	5%	429
Housholds	3,231	3,550	0.3%	10%	319
Employment	1,582	1,924	0.6%	22%	342

Source: NJTPA Municipal Forecasts, dated 9/13/2021

Given the lack of available developable land within approved sewer service areas and limited wastewater and water capacity it is anticipated any new residential development that would occur over the next ten years would likely be part of existing developments with approvals that incorporate affordable housing as part of the Township's inclusionary zoning practices and noted in the Township's 2008 Housing Element and Fair Share Plan and 2016 Amendment.

V. AFFORDABLE HOUSING OBLIGATION

Housing Element & Fair Share Plan Obligation

Hardyston Township is located in Hardyston Township's Affordable Housing Region 1, which encompasses Bergen, Hudson, Passaic and Sussex Counties. Low- and moderate-income housing is defined as housing that is affordable for households earning less than 50 percent of median income for low-income households and between 50 and 80 percent for moderate income households. Median household income is determined based on housing region.

The 2025 income limits were established by the New Jersey Housing Mortgage and Finance Agency as follows:

UHAC 2025 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE								
	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
Median	\$89,100	\$101,800	\$114,500	\$127,200	\$137,400	\$147,600	\$157,800	\$168,000
Moderate (80%)	\$71,280	\$86,520	\$91,600	\$101,760	\$109,920	\$118,080	\$126,240	\$134,400
Low (50%)	\$44,550	\$50,900	\$57,250	\$63,600	\$68,700	\$73,800	\$78,900	\$84,000
Very Low (30%)	\$26,730	\$30,540	\$34,350	\$38,160	\$41,220	\$44,280	\$47,340	\$50,400

Hardyston Township's total obligation is as follows:

Hardyston Township Obligation	
Present Need (Rehabilitation Obligation)	22
Prior Round Obligation (1987-1999)	18
3 rd Round & Gap Period Obligation (1999-2025)	378
Fourth Round Obligation (2025-2035)	647
Total Obligation	1,065

Development Analysis – Addressing the Obligation

The following will examine the key factors affecting the future development potential of Hardyston Township and the ability for the Township to address the affordable housing obligation as detailed above. Hardyston Township is impacted by a number of significant environmental and regulatory constraints as well as limited public water and sewer infrastructure/capacity

Infrastructure

Sussex County Wastewater Management Plan – Sewer Service Areas

In July 2013, the Sussex Countywide Wastewater Management Plan (WMP) Map was approved by the Sussex County Freeholders and the New Jersey Department of Environmental Protection. The following map depicts the existing and future sewer service areas for the Township.

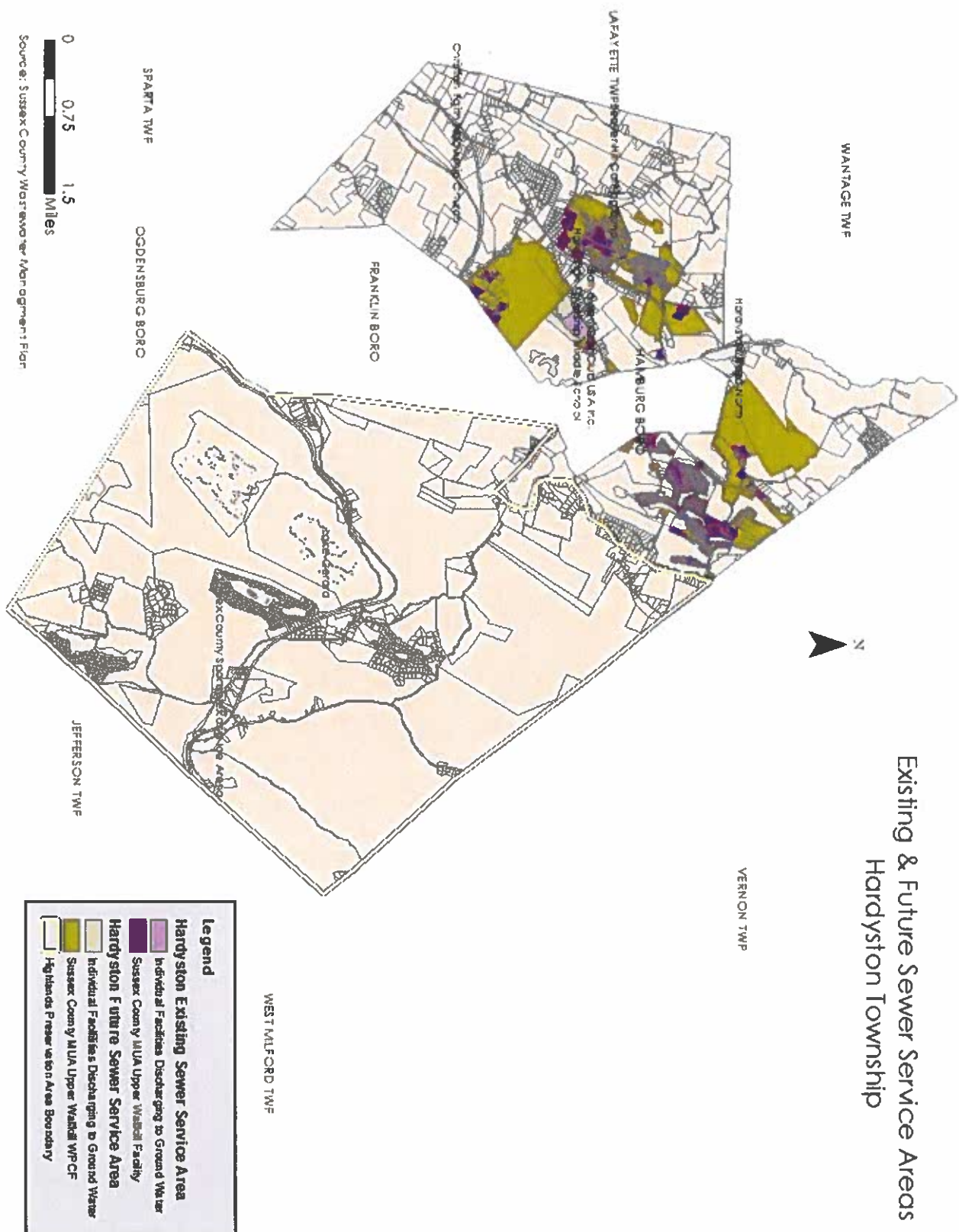
The existing and future sewer service area are serviced by the existing wastewater treatment facility (NJPDES Permit No. NJ0053350), located on Route 94 North in Hardyston Township. This facility serves Hamburg Borough, Franklin Borough, Hardyston Township (Hardyston Township MUA and the Walkill Sewer Company, Vernon Township, the Borough of Sussex, Sparta Township, Wantage Township, SCMUA Sludge/Septage Recycle and leachate from the SCMUA Landfill.

The current annual average flow for this facility is approximately 1,800,000 GPD. The permitted discharge from this facility to the Walkill River is 3,265,000 GPD. This facility is owned and operated by the Sussex County Municipal Utilities Authority. The planning agencies for sewers in Hardyston Township are the Hardyston Township Municipal Utilities Authority and the Walkill Sewer Company.

The total sewer allocation to Hardyston Township is 607,000 GPD of which 452,000 GPD is administered through the Hardyston Township MUA and 155,000 GPD is administered through the Walkill Sewer Company. Sewer allocations in the Township are described as follows:

- Carlton/Walden Village & Ridgefield Commons – This residential and commercial development is located along Route 94 just south and abutting the Indian Field Development noted below. The Walkill Sewer Company has reserved 155,000 gpd of sewer allocation for this sewer service area.
- Crystal Springs – This residential and commercial village center development is located along both sides Route 94 just north of Hamburg Borough municipal boundary. The Hardyston Township MUA has reserved 335,500 gpd of sewer allocation for this project.
- North Church Technical Center – This industrial development is located along North Church Road (County Route 631) just west of the Franklin Borough Municipal Boundary. Franklin Borough has reserved sewer allocation for this project.
- Walkill Valley Regional High School – This regional high school is located at the intersection of Grumm Road (County Route 673) and Beaver Run Road. The Hardyston Township MUA has reserved 17,000 gpd of sewer allocation for this facility.
- Sussex County YMCA – This facility is located along Wits End Road abutting the Carlton/Walden Village/Ridgefield Commons Development. The Hardyston Township MUA has reserved 10,000 gpd of sewer allocation for this regional facility.
- Storage Solutions – A storage facility located adjacent to the SCMUA treatment facility. The Hardyston Township MUA has 350 gpd of sewer allocation.
- Uncommitted Allocation – 1,650 gpd. This available allocation represents approximately 7 additional residential units at an average flow of 226 gpd.

Of the committed allocation, 578,000 gpd (97% of the Township's total allocation) is committed and paid for by developers of three inclusionary projects, Crystal Springs, Indian Fields and Ridgefield Commons. Except for the 1,650 gallons of uncommitted gallonage, there is no additional capacity available. While there are a few undeveloped parcels in future sewer service areas on the Future Sewer Service Area Map these areas do not have existing allocation and are not zoned for residential development. Further details on the suitability of these sites is provide in the Fair Share Plan.



Furthermore, based on the recent update to the County Wastewater Management Plan and the NJDEP rules governing the expansion of sewer service areas it is not anticipated that additional future sewer service areas will be permitted.

Public Water Systems

There are several public community water systems in Hardyston Township. These include Lake Stockholm which is owned and operated by the Lake Stockholm Community Association, Lake Tamarack which is owned and operated by the Lake Tamarack Community Association, Summit Lake which is owned and operated by Aqua New Jersey, Crystal Springs Water System and Indian Field Water System which are both owned and operated by the Hardyston Township MUA and the Aqua New Jersey – Walkill System which owns and operates the system serving Carlton/Walden Village/Ridgefield Commons. Each of these systems use groundwater wells as their source of water for each of these water systems. All other development within Hardyston Township is serviced by individual on-site wells.

The existing water allocation permits for each of these public water systems are as follows:

Indian Fields – monthly allocation 4.74 mgm / annual allocation 40.88 mgy

Crystal Springs – monthly allocation 21.59 mgm / annual allocation 215.18 mgy

Ridgefield Commons – monthly allocation 5 mgm / annual allocation 30 mgy

Newark Watershed Properties

A significant section of Southern Hardyston is owned by the Newark Watershed Conservation and Development Corporation (NWCDC). The lands owned by the NWCDC make up approximately 35,000 acres in the region in three counties and several municipalities. Of that, the land within Hardyston constitutes 4,274 acres. This land constitutes the main potable water supply for the City of Newark. These lands are under moratorium by the State and no development can occur on these lands at this time.

State Development and Redevelopment Plan

The State Planning Commission is currently undergoing the planning process for the final adoption of the updated State Development and Redevelopment Plan. The Draft SDRP was approved by the State Planning Commission in December 2024. The Office of Planning Advocacy is currently overseeing the Cross-Acceptance process by which municipalities determine their consistency with the Draft State Plan. It is anticipated that this process should be

completed by the end of summer 2025 and the State Development and Redevelopment Plan will be adopted by the end of 2025. Due to the ongoing nature of this process, this document is unable to provide a consistency determination.

In addition, the State Planning Areas were used as part of the land capacity analysis in determining municipal affordable housing obligations in the DCA's "Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background Report". Land located in Planning Areas 1, 2, and designated centers were given a weighted factor of 1, while land in Planning Areas 4 and 5 outside of an approved sewer service area were given a factor of 0. This methodology relies on the requirements of the Fair Housing Act, Mount Laurel decisions and the stated objectives of the State Planning Act and the SDRP, that the designated growth areas, corridors and centers depicted on the State Plan Map are the areas in which future affordable housing obligations should be located and enforced. No portion of Hardyston Township is located in any such growth area, corridor or center under the SDRP despite the fact that the Township requested the Hardyston Township Village Center be a designated center. Therefore, Hardyston should bear the responsibility for the affordable housing obligation for which it has already planned or accommodated, and no more. All expert allocation models should use the lowest weighting factor for vacant land due to the fact that all the available vacant land in Hardyston is in Planning Areas 4 or 5 and not designated for growth.

Highlands

Hardyston Township is also a part of the Highlands Region. The New Jersey Highlands Region (Highlands Region) is an area of 859,358 acres located in the northwest part of the State and includes 88 municipalities and parts of seven Highlands counties – Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex, and Warren.

The Highlands Water Protection and Planning Act was enacted on August 10, 2004. The Act serves to protect, preserve and enhance water resources, open space and natural resources within the Highlands Region, limit development, which is incompatible with such preservation, and encourage appropriate development consistent with the State Plan. The latest Highlands Regional Master Plan was approved on July 17, 2008, by the Highlands Water Protection and Planning Council (Highlands Council).

As currently mapped, the eastern part of the Township is included in the Highlands Preservation Area – 12,557 acres or about 60% of the Township area, while the western part is part of the Highlands Planning Area – 8,254 acres or about 40% of the Township. Both designations affect

how development can and will occur in the Township since specific regulations vary depending on whether a site or municipality is within the Highlands Planning Area or the more restrictive Highlands Preservation Area.

Plan Conformance is required for the portions of the Township located in the Preservation Area and voluntary for the Planning Area. Hardyston Township has not opted into the RMP for the Planning Area and therefore is still subject to the SDRP and the planning objectives for Planning Areas 4 and 5.

Hardyston Township received Basic Plan Conformance on September 15, 2011, for the portion of the Township in the Preservation Area. Hardyston Township has provided through its land use regulations, sound land use, and long-range planning a realistic opportunity for a fair share of its region's present and prospective needs for housing for low- and moderate-income families as stated in the Highlands Regional Master Plan, Policy No. 607.

While the Preservation Area severely limits development by permitting one new residential unit for every 88 acres, the Planning Area has the effect of requiring more stringent reviews and requirements from additional State agencies including the NJDEP. Those restrictions apply regardless of whether a municipality has voluntarily conformed to the Highlands Regional Master Plan.

Multigenerational Family Continuity Evaluation

A previous amendment to the Fair Housing Act requires "an analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021, c.273 (C.52:329.20)." As of the date of this Housing Plan there have been no recommendations by the Multigenerational Family Housing Continuity Commission for which to provide an analysis.

VII. FAIR SHARE PLAN

The Fair Share Plan will include the following:

- Descriptions of any specific project(s) intended to provide for the total municipal fair share of affordable housing, which shall include rehabilitation programs, ECHO units, municipally sponsored construction projects, supportive and special needs housing, assisted living residences, market to affordable programs, accessory apartments, zoning for inclusionary development, municipally sponsored and 100 percent affordable programs, assisted living residences, affordable housing partnership programs, extension of expiring controls, and other innovative approaches.
- Descriptions of any bonuses
- Descriptions of any adjustments or waivers that are being requested regarding the fair share obligation

As outlined previously, Hardyston Township has a total obligation of 1,065 units; a Present Need obligation of 22 units, an 18-unit Prior Round (1987-1999) obligation, a 378 3rd Round Obligation, and a 647 Prospective Need Obligation. The following outlines the measures that the Township will enlist to meet its fair share obligation and constitutes the Township's Fair Share Plan.

Present Need (Rehabilitation Share) Obligation

Hardyston Township has a Present Need obligation of 22 units. Hardyston has previously met its rehab obligation through a joint affordable housing rehabilitation program that was funded through a regional Small Cities Grant. The Township will address its present need obligation through a municipal rehab program. The Township will dedicate funds from the development fee trust fund. In addition, the Township has \$67,907 in recaptured small cities funds. The Township will continue to identify and seek additional funding sources to complete any unfunded units.

Prior Round Obligation (1987-1999)

Hardyston Township received COAH 2nd round substantive certification in November of 2001. The 18-unit obligation from the 1987-1999 prior round is addressed through a combination of alternative living arrangement/supportive housing and rental bonuses. The Township has a total of 4 group homes with 14 bedrooms for 14 credits. The Township will apply 13 of those credits to

the prior round and seek 5 rental bonuses to address the balance of the obligation. Detailed information on each of the group homes was submitted as part of the 2008 HEFSP.

Third Round & Gap Period (1999-2025)

Hardyston had a 378 Third Round and Gap Period obligation. The Township utilized approved mechanisms to meet the Fair Share Obligation including:

- Market to Affordable Program Units
- Supportive and Special Needs Housing
- Inclusionary Zoning

Market to Affordable Housing Program

In a market to affordable program units are purchased at market rate prices and then sold or rented to low- and moderate-income households. The new affordable units must have 30 year deed restrictions and comply with the Uniform Housing Affordability Controls.

Hardyston Township met a portion of the Township's 3rd Round Obligation with twenty-five (25) market to affordable units. The Township committed trust fund monies to purchase structurally sound houses and then re-sell the units to income qualified households at the low to moderate income sales prices with 30-year deed restrictions. The money received from the sale of the units went back to the trust fund essentially establishing a revolving fund for the purchase of affordable units.

To date, the Township has created eight (8) moderate income units through the Market to Affordable Program. The current housing market, coupled with the difficulties in finding qualified purchasers for the existing market to affordable unit resales over the last 5 years, has temporarily paused further implementation.

Supportive and Special Needs Housing

Supportive and special needs housing is a compliance mechanism for addressing a municipality's fair share obligation. Supportive and special needs housing include group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services. The unit of credit for group home is based on the bedroom. The units are required to be affordable to low-income households, must serve populations that are 18 years of age or older.

Hardyston Township addressed a portion of the Township's 3 Round Obligation with fourteen (14) group home credits. The Township has completed 2 group homes since the certification of the 2008 HEFSP for a total of 5-bedroom credits. Those units were created with partnerships with SEED Corp. and Capitol Care Inc. The Township utilized municipal trust fund dollars to help subsidize the costs of the projects. The Township will partner with other supportive housing providers to create additional group home credits.

Inclusionary Zoning

Hardyston Township currently has six inclusionary development sites that have received prior land use approvals. Combined, the six inclusionary development sites will produce one-hundred-ninety (190) units of affordable housing. The following sites were included in the Township's plan to address the 3rd Round Obligation for the 1999-2025 time period:

- Crystal Springs Village Center
- Crystal Springs Grand Cascades Hotel
- Ridgefield Commons: Phases 5 -12
- Indian Fields: Phases IV & V
- Forest Knolls
- Emerald Estates – CJS

Crystal Springs Village Center

The Crystal Springs Village Center received preliminary site plan and minor subdivision approval in November 2007. Pursuant to the Township's Village Center ordinance and the developer's agreement, at least 143 affordable units shall be constructed as part of the Village Center Planned Development. To date, Crystal Springs Village Center has not been constructed. In, 2021 Hardyston declared the property an area in need of redevelopment to attract new interest in the development of the property. In August of 2024, the Township adopted a redevelopment plan that requires a minimum of 143 affordable rental units.

Crystal Springs Grand Cascades Lodge

The Crystal Springs Grand Cascades Lodge is located in the Crystal Springs Resort Development. As part of the conditions for development approval the owner and developer, Crystal Springs Builders, LLC, entered into a developer's agreement dated May 23, 2006 to provide for 8 units of

affordable housing which are to be located off-site within the Crystal Springs Development. A subsequent amendment to the developer's agreement requires the units to be constructed as part of the Village Center.

Ridgefield Commons/Mountain Ridge

Ridgefield Commons, owned by SMS Hardyston LLC, is a residential development located off of Route 94 in Hardyston Township. The property was by a new developer in 2012 after going into foreclosure and underwent a zone change to permit apartments rather than townhomes. The amended zoning resulted in a subdivision and site approval for Mountain Ridge in 2016 160 rental units, including twenty-four (24) affordable rental housing units in connection with the construction of the market rate units. To date the project has completed 14 affordable housing units.

Indian Fields Phases IV & V

Indian Fields Phases IV & V, are part of the larger Indian Fields residential development. Indian Fields is a residential and commercial development located along Route 94 just south of the intersection of Beaver Run Road (County Route 661) and Route 94. The proposed inclusionary development is located in the R-4 zone.

As part of the Indian Fields development, the developer submitted an application for an affordable housing plan for the construction of eight (8) affordable family units in Phases IV and V. Four units are to be located in Phase IV, and four units are to be located in Phase V. The affordable housing plan received Hardyston Township Planning Board approval on September 28, 2006. The project remains unbuilt. Renewed interest in the project may result in an amended approval that would be subject to a future 20% set-aside for affordable housing. Any additional affordable housing units would be applied to the Township's 3rd round unmet need.

Forest Knolls

Forest Knolls, owned by Peter Babalo and Andrea Zeibekis, is a proposed residential development located at the intersection of Franek Road and Route 94 in Hardyston Township, Block 72, Lots 5.01 and 21. The proposed inclusionary development is in the MIDD-5 zone. The development project received preliminary and final subdivision approval from the Township Planning Board on February 28, 2008. The project received approval to subdivide the above-mentioned parcels into 26 lots. As a condition of approval, the developer is required to enter into a developer's agreement with the Township to locate 3 units of affordable housing on one

of the lots. Currently, the developer has not entered into an approved developer's agreement but will be required to do so prior to construction. To date the project remains unbuilt.

Emerald Estates- CJS Investments

Emerald Estates, owned by CJS Investments, is a proposed residential development located on Wheatsworth Road in Hardyston Township, Block 63, Lots 26 and 27. The proposed inclusionary development is located in the MIDD-5 zone. The development project received preliminary and final subdivision approval from the Township Planning Board on September 27, 2007. The residential development will include twenty-nine (29) single family market rate lots, and one lot which will contain four affordable housing units. The developer entered into a developer's agreement with the Township on July 1, 2008, for the construction of four affordable housing units to be located at Block 63, Lot 26.01. The four affordable housing units were built and received certificates of occupancy in April 2025. The 4-unit rental property is managed by Pillar Care Continuum.

Horse Valley

Horse Valley, owned by Crystal Springs North, is a proposed residential development located off of Orts Road in Hardyston Township, Block 14, Lots 30.01, 30.03 and 31. The proposed inclusionary development is located in the MIDD-5 zone. The development project received preliminary and final subdivision approval from the Township Planning Board on June 23, 2011. The residential development is a twenty-three (23) lot subdivision that will include twenty-one (21) single family market rate lots and two (2) additional lots with five (5) affordable housing units. To date the project remains unbuilt.

Rental Bonuses

The Court in their March 2015 decision approved the allowance of bonus credits towards meeting the municipality's affordable housing obligation. Rental bonuses are awarded on a 2 for 1 basis for the construction of new rental units. However, the number of rental bonuses cannot exceed the number of rental units required as part of the municipal obligation. N.J.A.C 5:94 and 5:95 require that twenty-five (25) percent of the municipality's obligation be addressed through the creation of rental units. As such, rental bonuses are limited to twenty-five (25) percent of the municipality's obligation. Using this methodology, Hardyston's rental bonuses were calculated as follows:

Rental Projects	Units	Bonus
<i>Crystal Springs Village</i>	143	143
<i>Grand Cascades Lodge</i>	8	8
<i>Ridgefield Commons</i>	24	24
Total	175	175

Rental Obligation = Total Obligation (378)*.25

94.5 ≈ 95

Maximum permitted bonuses = 95

Vacant Land/Infrastructure Adjustment

Hardyston Township conducted a vacant land and infrastructure analysis as part of the 3rd round Fair Share Plan and sought a vacant land/infrastructure adjustment to its municipal obligation based on the findings. The Township sought a vacant land/infrastructure adjustment of 49 units. Utilizing sewer service areas, sewer allocation, zoning standards and septic density standards the Township estimated a realistic development potential of fifteen (15) additional affordable housing units resulting in an unmet need of thirty-four (34) units. Any unmet need was to be addressed through inclusionary zoning for future development projects resulting in five or more residential units.

Fourth Round (2025-2035)

The NJ Department of Community Affairs Affordable Housing Obligations for the 2025-2035 (Fourth Round) Methodology and Background Report calculated the Township's non-binding Round 4 gross Prospective Need Obligation as 1,622 units, before accounting for and/or applying the 1,000-unit cap and 20% population cap. After applying the 20% population cap, the prospective need obligation was reduced to 674 units.

The obligation calculated by the DCA is non-binding, and as such the Township's professionals conducted an analysis of the data used to calculate the Township's land capacity factor. Ultimately, the Township adopted Resolution #16-25 on January 22, 2025, calculating its Fourth Round Prospective Need Obligation as 548 units.

The New Jersey Builders Association filed an objection to the number set forth by the Township. After a settlement conference with Judge Hansbury, the Township entered into a Settlement Agreement with NJBA, as memorialized by Judge Hansbury's Decision and Order dated March 31, 2025, establishing a 4th Round prospective need obligation of 647 units.

Compliance Mechanisms

Inclusionary Zoning

Lam Development – Crystal Springs

The subject property known as Block 16.31, Lot 1, Block 16.32, Lots 1 and 2 and Block 16.33, Lot 1 received amended subdivision and site plan approval in August 2019. The subject property was previously included as part of the July 2, 2007, Affordable Housing Developer's Agreement with Crystal Springs Builders, LLC. Pursuant to that agreement the subject property was required to pay a developer's fee equal to 1% of the equalized assessed value for each market rate unit constructed. The amended subdivision and site plan approval was a substantial deviation from the original approvals that were included in the 2007 Developer's Agreements, requiring the approved development to be subject to the requirements of the Township's Low- and Moderate-Income Housing Ordinance. The approved project includes 48 residential units, requiring a set-aside of 10 affordable housing units. The 10 affordable units are to be applied to the unmet need from the Third Round.

Mixed Use Overlay Zone

The Township is proposing the adoption of a mixed-use overlay zone for commercially zoned properties along the Route 94 corridor allowing mixed-use and multi-family development to encourage the development of affordable housing at appropriate densities.

Durational Adjustment for Lack of Sewer & Water

The Township of Hardyston is seeking a durational adjustment for the 4th Round Prospective Need of 647 units due to insufficient sewer and/or water capacity.

According to NJAC 5:93-4.3, a municipality may seek a durational adjustment for the unmet portion of the realistic development potential. Given the fact that there was insufficient capacity to address the full Third Round Obligation, the Township is requesting a durational adjustment for the entirety of the 4th Prospective Need Obligation.

As has been previously stated, Hardyston Township has limited future development potential as a result of NJDEP and NJ Highlands restrictions on septic densities and sewer expansion through the wastewater management planning regulations and the Highlands Regional Master Plan.

As indicated previously, the Township's sewer service area and available sanitary sewer allocation is severely limited. Of the Township's 607,000-gallon allocation 97 percent is committed to existing, approved inclusionary projects located in the portion of the Township identified as suitable for higher density and mixed-use development.

In addition to the lack of sewer services and existing capacity, it is important to note that the Township of Hardyston does not control the available allocation. Hardyston's allocation is managed by an independent municipal utility authority.

Outside the sewer service area, Hardyston Township is served by individual sub-surface disposal systems (septic systems). The Sussex County Wastewater Management Plan (WMP) determines the number of new septic systems permitted under the NJDEP standards based on HUC-11 Watershed. Hardyston Township consists of three (3) HUC-11 watersheds; the Paulins Kill (above Stillwater Village), the Walkkill River (above road to Martins) and the Pochuk Creek. The NJDEP standards permit one new septic system for every 4.8 acres. Based on this standard, there is no suitable land outside the sewer service area to support the densities needed (6 dwelling units/acre) to construct additional affordable housing.

In the event that additional residential projects in the future receive approval for more than five (5) dwelling units, the Township will require the construction of affordable housing at a twenty (20) percent set-aside using the appropriate mechanisms and incentives.

In addition, the Township proposed the adoption of an overlay zone for commercial zoned properties along with the Route 94 corridor allowing mixed-use and multi-family development to encourage the development of affordable housing.

Summary of Total Fair Share Obligation

Hardyston Township Obligation	
Present Need (Rehab Share)	22
<i>Municipally Sponsored Program</i>	22
Total Obligation	0
2nd Round	18
<i>Alternative Living Arrangements</i>	-13
<i>Rental Bonus Credits</i>	-5
Total Obligation	0
3rd Round/Gap Period	378
<i>Crystal Springs Village</i>	-143
<i>Grand Cascades Lodge</i>	-8
<i>Ridgefield Commons</i>	-24
<i>Indian Fields</i>	-8
<i>Forest Knolls</i>	-3
<i>Emerald Estates</i>	-4
<i>Horse Valley</i>	-5
<i>Lam Development Crystal Springs</i>	-10
<i>Market to Affordable</i>	-25
<i>SEED Corp. Group Homes</i>	-1
<i>Capitol Care Group Homes</i>	-4
<i>Municipal Partnership Group Homes</i>	-9
<i>Rental Bonus</i>	-95
Total Remaining Obligation	39
Vacant Land/Infrastructure Adjustment	39
RDP	15
3rd Round Unmet Need	4
4th Round	647
Infrastructure Adjustment	-647
4th Round Unmet Need	647

APPENDIX A

HARDYSTON TOWNSHIP

RESOLUTION #16-25

RESOLUTION OF THE TOWNSHIP OF HARDYSTON, COUNTY OF SUSSEX AND STATE OF NEW JERSEY, ADOPTING THE TOWNSHIP'S AFFORDABLE HOUSING PRESENT AND PROSPECTIVE NEED OBLIGATION FOR THE PERIOD OF JULY 1, 2025 THRU JULY 1, 2035 IN ACCORDANCE WITH P.L. 2024 C.2, AND RESERVING ALL RIGHTS

WHEREAS, the Township of Hardyston (hereinafter "Township") is Highlands Region municipality, where development is governed and restricted by the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq. ("Highlands Act") and the Highlands "Regional Master Plan"; and

WHEREAS, approximately 12,603 acres of land in the Township is located within the Highlands "Preservation Area", and approximately 8,281 acres of land in the Township is located within the Highlands "Planning Area," as those terms are defined in the Highlands Act; and

WHEREAS, Highlands Region municipalities provide safe drinking water for approximately 70% of the residents of the State; and

WHEREAS, the Highlands Act and the Highlands Regional Master Plan place significant constraints on development throughout the Township, including with respect to affordable housing, for the purpose preserving the State's drinking water; and

WHEREAS, nonetheless, the Township has a demonstrated history of voluntary compliance with the Mount Laurel doctrine and the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq. ("FHA"); and

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), in July 2015, the Township filed a Declaratory Judgment Action in the Superior Court, Law Division, Sussex County under Docket No. SSX-L-000431-15 ("2015 Action") seeking, amongst other things, a judicial declaration that the Township's Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), to be amended as necessary, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the "Mount Laurel doctrine"; and

WHEREAS, the Township's 2015 Action ultimately culminated in a Court-approved Housing Element and Fair Share Plan and a Final Judgment of Compliance and Repose, issued by the Honorable Stephan C. Hansbury, P.J.S.C. on September 19, 2016, which entitles the Township to immunity and precludes Mount Laurel lawsuits and exclusionary zoning litigation, including builder's remedy lawsuits and constitutional compliance lawsuits, from being filed against the Township until after July 1, 2025; and

WHEREAS, on March 20, 2024, Governor Murphy signed into law, P.L. 2024, c.2, which among other things, amended various provisions of the FHA, abolished the Council on Affordable Housing ("COAH") and established the Affordable Housing Dispute Resolution Program ("Program"); and

WHEREAS, P.L. 2024, c.2, sets forth that Fourth Round period of affordable housing obligations shall run from July 1, 2025 through June 30, 2035 ("Fourth Round" or "Round Four"); and

WHEREAS, pursuant to P.L. 2024, c.2, the Township is located in Housing Region 1, which is comprised of Bergen, Hudson, Passaic and Sussex Counties; and

WHEREAS, the amendments to the FHA require the Department of Community Affairs ("DCA") to prepare and publish a report on the calculations of the regional need and each municipality's present and prospective need affordable housing obligations for the Fourth Round within seven months of March 20, 2024; and

WHEREAS, on October 18, 2024 the DCA published its report on the calculations with respect to Statewide regional need and municipal present and prospective need affordable housing obligations for the Fourth Round (the "DCA Report"); and

WHEREAS, pursuant to P.L. 2024, c.2, the DCA has calculated the total statewide prospective need obligation to be 84,698 units, which equates to a statewide new construction obligation of over 8,400 affordable units per year; and

WHEREAS, the DCA Report calculates the Township's non-binding Round 4 obligations as follows: 1) a Present Need or Rehabilitation obligation of 22; and 2) a gross Prospective Need or New Construction Obligation of 1,622, before accounting for and/or applying the 1,000-unit cap and 20% cap; and

WHEREAS, pursuant to N.J.S.A. 52:27D-304.1e of the FHA, the calculations in the DCA Report are not binding on municipalities; and

WHEREAS, rather, pursuant to N.J.S.A. 52:27D-304.1 of the FHA, each municipality is required to determine its respective Fourth Round present and prospective need fair share obligations, and adopt a binding resolution describing the basis for the municipality's determination on or before January 31, 2025; and

WHEREAS, P.L. 2024, c.2, directs that each municipality shall determine its Fourth Round present and prospective need fair share obligations, with consideration of the calculations in the DCA Report, and in accordance with the formulas established in N.J.S.A. 52:27D-304.2 and -304.3 of the FHA using "necessary datasets that are updated to the greatest extent practicable"; and

WHEREAS, section 10 of P.L. 2024, c.2 amends N.J.S.A.13:20-23 of the Highlands Act, and expressly requires that the Highlands Regional Master Plan be taken

into account when determining the allocation of Fourth Round prospective need fair share obligations for Highlands Region municipalities; and

WHEREAS, section 7 of P.L. 2024, c.2 requires that a weighting factor of "0" must be applied to all property within the Highlands Preservation Area and conforming Highlands Planning Areas; and

WHEREAS, N.J.S.A. 52:27D-304.1f(2)(a) of the FHA provides that a municipality may "lower its prospective need obligation to the extent necessary to prevent establishing a prospective need obligation that requires the municipality to provide a realistic opportunity for more than 1,000 housing units, after the application of any excess credits, or to prevent a prospective need obligation that exceeds 20 percent of the total number of households in a municipality according to the most recent federal decennial census, not including any prior round obligation [;]" and

WHEREAS, N.J.S.A. 52:27D-304.1f(2)(a) of the FHA further provides that "[i]f a municipality is subject to both a 1,000 unit cap or 20 percent cap, it may apply whichever cap results in a lower prospective need obligation [;]" and

WHEREAS, both the DCA Report and the DCA's "Fourth Round Calculation Workbook" which was released by the DCA at the time publication of the DCA Report, confirms that in calculating the Township's non-binding Fourth Round Prospective Need Obligation, the DCA determined that the Township would be entitled to the benefit of either the 1,000 unit cap or 20 percent cap; and

WHEREAS, the DCA Report and the DCA's "Fourth Round Calculation Workbook" further indicates that the DCA took into consideration the total number of existing residential households within the Township and determined that according to 2020 Federal Census data, the Township currently has 3,371 total households existing within the Township; and

WHEREAS, based upon above, according to the DCA Report, the DCA determined that the Township was entitled to apply 20% cap on its Fourth Round Prospective Need Obligation, and therefore the DCA determined that the Township is permitted to reduce its Fourth Round Prospective Need Obligation to "674" or 20% of the 3,371 total residential households existing within the Township; and

WHEREAS, assuming the DCA correctly calculated the land capacity, equalized non-residential valuation, income capacity and average allocation factors in arriving at the Township's Prospective Need Obligation in the DCA Report, the DCA correctly determined that the Township is, at best, entitled to a reduced Fourth Round Prospective Need Obligation of 674, which equates to 20 percent of the 3,371 total existing households within the Township in accordance with N.J.S.A. 52:27D-304.1f(2)(a); and

WHEREAS, pursuant to Mount Laurel case law and COAH's prior round regulations, municipalities are permitted to reduce their Prospective Need Obligation by applying a 20 percent cap under these circumstances based on the recognition that the imposition of a large or onerous municipal housing obligation in a relatively short period of time may well cause a "sudden and radical transformation" of the municipality overnight see Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158, 280 (1983)("Mount Laurel II"); and

WHEREAS, nonetheless, the Township's Planner, Township Engineer and the Township's attorneys have reviewed the DCA Report along with the underlying data and data sets relied upon by the DCA in reaching its non-binding calculations for the Township, and have also carefully considered and analyzed the most up-to-date localized data pertaining to the Township, including amongst other verifiable data, local land use approvals, prior round sites currently zoned for inclusionary development, existing open space restrictions, environmental constraints and other site specific information, construction permits, and MOD-IV data maintained and on file with the Township with regard to the land capacity and equalized non-residential valuation allocation factors; and

WHEREAS, based upon same, Township is satisfied with the estimate and calculations set forth within the DCA Report with respect to the Township's Present Need Obligation of "22", and accepts same at this time, subject to the completion of a structural conditions survey or similar exterior conditions survey; and

WHEREAS, however, based upon the above analysis, the Township Planner and Township Engineer have further determined that the DCA's non-binding calculation with respect to both the Township's gross Prospective Need Obligation of "1,622" and the reduced Prospective Need Obligation or "674," based on the 20 percent cap, is/are incorrect and erroneous for multiple reasons; and

WHEREAS, in particular, the Township Planner and Township Engineer have confirmed that the DCA arrived at the Township's land capacity factor using incorrect assumptions and inaccurate data to erroneously determine that approximately 325.548 acres of land within the Township is "developable"; and

WHEREAS, using the most up-to-date localized verifiable data and information available to the Township, the Township Planner has determined that only 83.870 acres of land within the Township is "developable" after consideration is given to applicable land uses, preserved land/parkland and open space, existing third-round affordable housing sites currently zoned for inclusionary development, deed restrictions, stormwater control/drainage basins, environmental constraints and restrictions (including wetlands, wetland buffers, forest resource areas, groundwater recharge areas, and steep slopes), local land use approvals, construction permit data, and MOD-IV data, amongst other updated verifiable localized data and information; and

WHEREAS, the Township Planner and Township Engineer have further independently calculated the Township's Fourth Round Prospective Need affordable

housing obligation based on the formulas, criteria, methodology and datasets required by sections 6 and 7 of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.2 and -304.3), and have arrived at a Fourth Round Prospective Need Obligation that accurately reflects the most up-to-date pertinent factual data specific to the Township; and

WHEREAS, based upon the calculations and analysis performed by the Township Planner and Township Engineer, the Township has determined that its Fourth Round Prospective Need or New Construction Obligation is 548; and

WHEREAS, the Township Planner and Township Engineer have prepared a report setting forth this analysis, which includes a summary of all relevant factors, considerations and the basis for such conclusions, which is summarily incorporated by reference above and which such report is attached hereto as Exhibit "A"; and

WHEREAS, N.J.S.A. 52:27D-304.1f(1)(b) provides that: "the municipality's determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7 of P.L. 2024, c.2 ... [;]" and

WHEREAS, the Township's calculation of its Present Need and Prospective Need obligations is/are entitled to a "presumption of validity" because it complies with sections 6 and 7 of P.L. 2024, c.2; and

WHEREAS, the Township, however, specifically reserves the right to adjust its Present Need Obligation and/or Prospective Need Obligations, including for any of the foregoing adjustments: 1) a Structural Conditions Survey or similar exterior survey which accounts for a lower present need; 2) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 3) a Durational Adjustment (whether predicated upon lack of sewer or lack of water); and/or 4) an adjustment predicated upon regional planning entity formulas, inputs or considerations, including, but not limited to the Highlands Regional Master Plan and its build out; and

WHEREAS, in addition to the foregoing, the Township specifically reserves all rights to revoke this Resolution and commitment to its Fourth Round affordable housing obligations herein, in the event of: (1) a successful challenge to P.L. 2024, c.2 as a result of the pending litigation entitled: Township of Montvale et al, v. State of New Jersey, et al., Docket No.: MER-L-1778-24; (2) any other successful challenge to P.L. 2024, c.2, or any directive or regulation adopted pursuant thereto; and/or (3) any subsequent legislative or regulatory enactment which alters or changes the deadlines, calculations, methodology and/or other requirements of P.L. 2024, c.2; and

WHEREAS, the Township further specifically reserves the right to take a position that its Fourth Round Present Need and/or Prospective Need Obligation(s) are lower than described herein in the event that a third party challenges the calculations provided for in this Resolution (a reservation of all litigation rights and positions, without prejudice); and

WHEREAS, in addition, nothing in P.L. 2024, c. 2 requires or can require an increase in the Township's Fourth Round Present Need and/or Prospective Need Obligation(s) based on a successful downward challenge of any other municipality in the Region since the plain language and clear intent of P.L. 2024, c.2, is to establish, for example, unchallenged numbers by default as of March 1, 2025; and

WHEREAS, in light of the above, the Mayor and Township Council of the Township of Hardyston finds that it is in the best interest of the Township to declare its commitment to the above-listed Fourth Round obligations by resolution in accordance with P.L. 2024, c.2.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Township Council of the Township of Hardyston, in the County of Sussex, and State of New Jersey, as follows:

1. All of the Whereas Clauses set forth above are hereby incorporated into the operative clauses of this Resolution by reference.

2. The Township hereby commits to a Fourth Round Present Need Obligation of "22" and a Fourth Round Prospective Need Obligation of "548" as described in this Resolution, and which such commitment to the Township's Fourth Round Affordable Housing Obligations be and is hereby subject to the Township's reservation of all rights it may have, as described in this Resolution or otherwise, to revoke, repeal, suspend, amend or modify this Resolution by further action of the Township, including but not limited to, the following:

- a) The right to adjust, modify, cancel, withdraw or revoke the Township's commitment to its Fourth Round Present Need and/or Prospective Need Obligation(s), and/or to otherwise revoke, repeal, suspend, amend, or modify this Resolution should additional information or evidence become available or discoverable to the Township in the future;
- b) The right to adjust the Township's Present Need Obligation based on the results of a structural conditions survey or similar exterior survey;
- c) The right to adjust the Township's Present Need and/or Prospective Need Obligation(s) based on lack of available vacant and developable land (vacant land adjustment), sewer and/or water (durational adjustment), and/or due to regional planning inputs, formulas or considerations, including, but not limited to the Highlands Regional Master Plan and its build out, or any combination of the above;
- d) The right to further adjust the Township's Present Need and/or Prospective Need Obligation(s), with such adjustment based upon and applied in accordance with applicable statutory "caps" and/or adjustments, as set forth in P.L. 2024, c. 2, Mount Laurel case law,

and/or as codified in COAH's prior round regulations, or any combination thereof;

- e) All rights to revoke this Resolution in the event of a successful legal challenge to P.L. 2024, c.2, a legislative change to P.L. 2024, c. 2, or any successful challenge to any directive or regulation adopted pursuant to P.L. 2024, c.2, or any change or amendment to such directives or regulations;
- f) All rights to take a position that the Township's Fourth Round Present Need and/or Prospective Need Obligation(s) are lower than described herein in the event that a third party challenges the calculations provided for or relied upon in this Resolution or the DCA Report; and/or
- g) All rights to take a position that the Township's Fourth Round Present Need and/or Prospective Need Obligation(s) is/are lower than described herein in the event a third party claims the Township's Fourth Round Present Need and/or Prospective Need Obligation(s) require an increase based on a reallocation or modification of the Regional present need and/or prospective need obligation(s) allegedly due from a successful reduction of the allocated present and prospective need obligations assigned to another municipality in the Region.

3. The Township's calculation of its Fourth Round Present Need and Prospective Need Obligations is/are entitled to a "presumption of validity" because the calculations comply with sections 6 and 7 of P.L. 2024, c.2.

4. In accordance with N.J.S.A. 52:27D-304.1, the Township hereby directs the Township's Land Use Board Attorney to file an action with the Affordable Housing Dispute Resolution Program along with this Resolution and to take all necessary and proper steps to address any challenges to same by any interested parties.

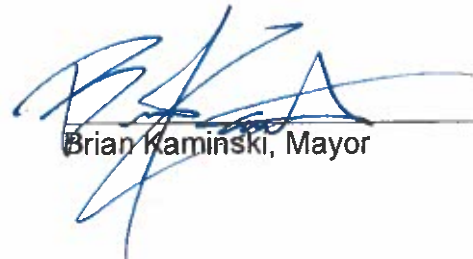
5. The Township further commits to adopt its housing element and fair share plan pursuant to N.J.S.A. 52:27D-304.1f(2) based on the determination of the Township's Fourth Round affordable housing obligations on or before June 30, 2025, and hereby further directs the Township Attorney, Township Land Use Board Attorney, Township Planner and Township Engineer to begin taking steps to prepare same.

6. A copy of this Resolution, along with filing date of the Township's action with the Program, shall be placed on the Township's website.

7. A copy of this Resolution shall remain on file in the Township Clerk's office and available for public inspection.

8. This Resolution shall take effect immediately, according to law.


Jane Bakalarczyk, Township Clerk


Brian Kaminski, Mayor

I hereby certify the above to be a true copy of the Resolution passed by the Hardyston Township Council at a duly convened meeting held on January 22, 2025.


Jane Bakalarczyk, Township Clerk

Exhibit A



111 Howard Boulevard, Suite 110
Mt. Arlington, NJ 07856
862-284-1100

Memorandum

To: Township of Hardyston Mayor and Council
Cc: Carrine Piccolo-Kaufer, P.P., Township Manager/Planner
Fred Semrau, Township Attorney
Thomas Molica, Township Land Use Board Attorney
Anne-Marie Wilhelm, Land Use Administrator

From: Michael Vreeland, Township Engineer

Date: January 22, 2025

Re: Analysis and Response
Fourth Round Affordable Housing Obligations
Hardyston Township
Sussex County
Housing Region 1
VCEA# HDY-1000.001

With the passage of P.L.2024, c.2 on March 20 2024, the Council on Affordable Housing (COAH) was abolished. Each municipality within the State is now responsible for determining its present and prospective need affordable housing obligations. Obligations are to be determined in accordance with formulas established pursuant to sections 6 and 7 of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3). Municipalities must also adopt a binding resolution committing the municipality to its Fourth Round affordable housing obligations by January 31, 2025.

P.L. 2024, c. 2 further establishes that the Department of Community Affairs ("DCA") is responsible to conduct a calculation of the regional and municipal present and prospective need obligations and prepare and publish a report. Each municipality may take into consideration the calculations in the DCA's report when determining the municipality's Fourth Round affordable housing obligations. However, P.L. 2024, c. 2 explicitly makes clear that the calculations and determinations set forth in the DCA's report shall not be binding on each municipality.

OFFICE LOCATIONS

www.vancleefengineering.com

Hillsborough, NJ
908-359-8291

Mt. Arlington, NJ
862-284-1100

Phillipsburg, NJ
908-454-3080

Doylestown, PA
215-345-1876

Pottstown, PA
610-323-4040

Hamilton, NJ
609-689-1100

Toms River, NJ
732-573-0490

Freehold, NJ
732-303-8700

Bethlehem, PA
610-332-1772



In addition to the above, P.L. 2024, c. 2 also establishes the Affordable Housing Dispute Resolution Program ("Program") and outlines new procedures for municipalities to achieve compliance with the Mount Laurel doctrine and the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., (FHA) and obtain a "compliance certification". Compliance certification entitles the participating municipality to immunity from Mount Laurel compliance suits and exclusionary zoning litigation (including builder's remedy suits) for each successive 10 year affordable housing round.

The process for Fourth Round affordable housing compliance and the criteria, methodology and formulas each municipality must rely upon to determine its present and prospective need obligation are now set forth within N.J.S.A. 52:27D-304.1 thru 304.3 of the FHA. The March 8, 2018 unpublished decision of the Superior Court, Law Division, Mercer Count, In re Application of Municipality of Princeton ("Jacobson Decision") is also to be referenced as to datasets and methodologies that are not explicitly addressed in N.J.S.A. 52:27D-304.3.

Both the Jacobson Decision and N.J.S.A. 52:27D-304.3a of the FHA explain that the datasets and information must be reliable and updated to the greatest extent practicable. For example, N.J.S.A. 52:27D-304.3a explicitly states: "[t]hese calculations of municipal present and prospective need shall use necessary datasets that are updated to the greatest extent practicable." Likewise, the Jacobson Decision quotes Judge Serpentelli's guiding principles in AMG with regarding to the fair share methodology:

Any reasonable methodology must have as its keystone three ingredients: reliable data, as few assumptions as possible, and an internal system of checks and balances. Reliable data refers to the best source available for the information needed and the rejection of data which is suspect. The need to make as few assumptions as possible refers to the desirability of avoiding subjectivity and avoiding any data which requires excessive mathematical extrapolation. An internal system of checks and balances refers to the effort to include all important concepts while not allowing any concept to have a disproportionate impact.

In accordance with the deadlines established in P.L. 2024, c. 2, the DCA prepared and published a report (Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background) on its calculation for regional needs and municipal obligations on October 18, 2024 ("DCA Report").



DCA Figures

The following table summarizes Hardyston Township's non-binding Present and Prospective Need, as sourced from the DCA report:

Present Need	Equalized Non-Residential Valuation Factor	Land Capacity Factor	Income Capacity Factor	Average Allocation Factor	Prospective Need	Capped Prospective Need
22	0.39%	16.44%	0.71%	5.85%	1622	674

DCA Analysis

The DCA Land Capacity Factor was computed by determining the total developable acreage utilizing available land use / land cover (LULC) data from the New Jersey Department of Environmental Protection, available MOD-IV Property Tax List data from the Division of Taxation in the Department of the Treasury, and DCA construction permit data. In an effort to identify and remove ineligible parcels, the DCA also manually reviewed approximately 22,000 vacant parcels.

The DCA has published the output from its Land Capacity Analysis and identified 100 parcels totaling ±325.548 acres within Hardyston Township.

Consistent with sections 6 and 7 of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3), on behalf of the Township we have considered the DCA Report, along with the underlying data and data sets relied upon by the DCA in reaching its non-binding calculations for the Township, and have further carefully considered and analyzed the most up-to-date localized data pertaining to the Township, including amongst other verifiable information, land use approvals, environmental constraints (including wetlands, wetland buffers, and steep slopes) and other site specific information, construction permits, and MOD-IV data maintained and on file with the Township, and conservation easements and other deed restrictions.

Based upon our analysis of the DCA Report, the data and data sets relied upon by the DCA and our analysis of the Township's up-to-date localized verifiable data, we have determined that the DCA arrived at the Township's land capacity factor using incorrect assumptions and outdated data and/or or incorrect or inaccurate data, including geospatial artifacts or anomalies.



This analysis has led us to conclude that the DCA erroneously included approximately 242 acres of land as part of the above-referenced 325.548 total acres. Accordingly, it is our professional opinion that the Township's land capacity allocation should be reduced to 83.870 acres.

Supplemental Analysis

As explained in the section immediately above, given characteristics of the source data sets and limitations of the DCA analysis work (which the DCA admits in the DCA Report to have inaccuracies and flaws), pursuant to N.J.S.A. 52:27D-304.3a and the Jacobson Decision, our office along with the Township Manager/Planner have further examined the published DCA Land Capacity Factor dataset based on up-to-date verifiable localized data.

In accordance with same, the following table identifies and summarizes the ineligible parcels included in the DCA's published Land Capacity Analysis GIS Composite Layer dataset that should not have been determined to be developable, along with the basis for our conclusion:

OBJECTID	Shape_Acres	Location	Characteristics
28798	1.578	182 North Church Rd B. 62, L. 18.16	Flex warehouse facility
28799	1.311	9 Park Drive B. 62, L. 18.05	Flex warehouse facility
28800	0.145	216 North Church Rd B. 62, L. 10	Geospatial artifact, North Church Gravel
28801	20.714	216 North Church Rd B. 62, L. 10	North Church Gravel
28802	0.074	105-137 Wheatsworth Rd B. 62, L. 24.01	Geospatial artifact, Ballyowen Golf Course
28803	1.201	216 North Church Rd B. 62, L. 10	Geospatial artifact, North Church Gravel
28804	0.291	105-137 Wheatsworth Rd B. 62, L. 24.01	Geospatial artifact, Ballyowen Golf Course
28805	97.497	216 North Church Rd B. 62, L. 10	North Church Gravel
28806	0.096	28 Bunn Rd B. 67, L. 2.02	Geospatial artifact
28810	2.437	149 Wheatsworth Rd B. 62, L. 33.04	Geospatial artifact, municipality building



28811	0.062	3437 Rt 94 B. 67, L. 16.03	Geospatial artifact
28812	0.135	3500 Rt 94 B. 63, L. 1.05	Geospatial artifact, SCMUA
28813	0.228	3500 Rt 94 B. 63, L. 1.05	Geospatial artifact, SCMUA
28817	0.094	B. 67.30, L. 1	Geospatial artifact
28825	1.149	20 Old Quarry Rd B. 17, L. 20	Geospatial artifact, conservation easements
28826	0.148	B. 67.29, L. 1	3rd Rd Housing Element & Fair Share Plan
28827	0.069	B. 67.29, L. 1	3rd Rd Housing Element & Fair Share Plan
28828	1.317	B. 67.29, L. 1	3rd Rd Housing Element & Fair Share Plan
28829	1.383	B. 67.29, L. 1	3rd Rd Housing Element & Fair Share Plan
28830	0.227	B. 67.29, L. 1	3rd Rd Housing Element & Fair Share Plan
28831	0.444	B. 67.29, L. 1	3rd Rd Housing Element & Fair Share Plan
28832	0.264	B. 67.29, L. 1	3rd Rd Housing Element & Fair Share Plan, utilities
28833	1.129	B. 67.30, L. 1	Detention basin, drainage, wetlands
28834	0.655	B. 67.29, L. 1	3rd Rd Housing Element & Fair Share Plan
28835	0.918	B. 67.30, L. 1	Detention basin, drainage, wetlands
28836	2.016	B. 17.02, L. 67 B. 17.03, L. 1.02	HOA common area
28838	0.273	4511 Rudetown Rd B. 16, L. 1.01	Geospatial artifact
28839	0.075	B. 17.02, L. 67	Geospatial artifact, HOA common area
28840	0.571	3610 Rt 94 B. 16, L. 8.01	Geospatial artifact, 3rd Rd Housing Element & Fair Share Plan
28841	0.571	3605 Rt 94 B. 14, L. 24.01	Geospatial artifact, 3rd Rd Housing Element & Fair Share Plan
28842	0.274	3610 Rt 94 B. 16, L. 8.01	Geospatial artifact, 3rd Rd Housing Element & Fair Share Plan
28845	1.055	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28849	0.059	3610 Rt 94 B. 16, L. 6.01	Geospatial artifact, 3rd Rd Housing Element & Fair Share Plan
28852	0.074	3610 Rt 94 B. 16, L. 6.01	Geospatial artifact, 3rd Rd Housing Element & Fair Share Plan



28853	22.234	3610 Rt 94 B. 16, L. 6.01	3rd Rd Housing Element & Fair Share Plan
28854	0.434	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28855	0.074	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28856	0.076	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28857	0.572	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28858	0.172	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28859	8.783	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28860	0.092	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28861	18.848	3605 Rt 94 B. 14, L. 24.01	Geospatial artifact, 3rd Rd Housing Element & Fair Share Plan
28862	3.484	3660 Rt 94 B. 16, Lot 3.03	3rd Rd Housing Element & Fair Share Plan
28863	2.681	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28864	0.113	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28865	0.103	3601 Rt 94 B. 14, L. 22.01	Quarry
28866	0.217	3601 Rt 94 B. 14, L. 22.01	Quarry
28867	0.455	3601 Rt 94 B. 14, L. 22.01	Quarry
28868	0.626	3601 Rt 94 B. 14, L. 22.01	Quarry
28869	0.178	3601 Rt 94 B. 14, L. 22.01	Quarry
28870	1.235	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28871	0.290	3601 Rt 94 B. 14, L. 22.01	Quarry



Analysis and Response
Fourth Round Affordable Housing Obligations
Hardyston Township
January 22, 2025

28872	0.163	3601 Rt 94 B. 14, L. 22.01	Quarry
28873	0.083	3601 Rt 94 B. 14, L. 22.01	Quarry
28874	0.175	3601 Rt 94 B. 14, L. 22.01	Quarry
28875	0.168	3601 Rt 94 B. 14, L. 22.01	Quarry
28876	0.240	3601 Rt 94 B. 14, L. 22.01	Quarry
28877	0.225	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28878	0.176	3601 Rt 94 B. 14, L. 22.01	Quarry
28879	0.114	3601 Rt 94 B. 14, L. 22.01	Quarry
28880	0.067	3601 Rt 94 B. 14, L. 22.01	Quarry
28881	2.935	90 Tarrington Rd B. 16.36, L. 1	Pembridge
28882	0.099	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28883	34.361	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28884	0.100	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28885	0.690	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28886	0.147	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28887	0.129	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28888	0.066	3601 Rt 94 B. 14, L. 22.01	Quarry open space
28889	0.307	3601 Rt 94 B. 14, L. 22.01	Quarry
28890	0.178	3601 Rt 94 B. 14, L. 22.01	Quarry open space



28891	1.058	3601 Rt 94	Quarry open space
		B. 14, L. 22.01	
28892	0.527	3601 Rt 94	Quarry
		B. 14, L. 22.01	
28893	0.075	3601 Rt 94	Quarry open space
		B. 14, L. 22.01	
28894	0.073	3601 Rt 94	Quarry open space
		B. 14, L. 22.01	
28895	0.136	3601 Rt 94	Quarry
		B. 14, L. 22.01	
28896	0.185	3601 Rt 94	Quarry
		B. 14, L. 22.01	
Total	241.678		

Based on these findings, the land capacity acres for Hardyston Township should be reduced from ±325.548 acres to ±83.870 acres.

Using the formulas, criteria, methodology and datasets required by sections 6 and 7 of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.2 and 304.3), we have further arrived at the Township's updated land capacity factor, which in turn results in the reduction in the Township's average allocation factor and ultimately the Township's Prospective Need Obligation.

The reduction in the Township's developable acres from 325.548 acres to ±83.870 acres, results in a revision to Region 1's land capacity from 1,980 acres to 1,738 acres. Taken together, this revises Hardyston Township's Land Capacity Allocation Factor, as set forth in the DCA Report, from 16.44% to **4.83%**.

Holding the DCA's calculated Equalized Non-Residential Valuation Factor and Income Capacity Factor consistent, this corrected Land Capacity Factor changes Hardyston Township's Average Allocation Factor from 5.85%, as set forth in the DCA Report, to $((0.39 + 4.83 + 0.71) / 3) = \mathbf{1.97\%}$. This in turn, reduces the Township's Prospective Need for the Fourth Round from the DCA's non-binding gross Prospective Need calculation of 1,622 units (before consideration was given by the DCA to application of the 20 percent statutory cap) to **548** units.

This determination is of course subject to further adjustments and reductions as permitted in the FHA and regulations associated therewith, including adjustments for: lack of vacant developable land ("vacant land adjustment"); lack of available sewer or water infrastructure ("durational adjustment"); consideration of the Highlands Regional Master Plan inputs, formulas or its build out; or the application of any applicable statutory "caps" and/or other adjustments set forth in



P.L. 2024, c. 2, Mount Laurel case law, and/or as codified in COAH's prior round regulations, or any combination thereof.

Conclusion and Recommendations

The methodology used to identify and exclude parcel types listed in the analysis is consistent with the published DCA Fourth Round report. The data, data sources, methodology, criteria and formulas relied upon in completing this analysis and arriving at these opinions, including the calculation of the Township's Prospective Need Obligation, was performed in accordance with sections 6 and 7 of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3) and the Jacobson Decision. All opinions and conclusions set forth herein are within a reasonable degree of professional planning and engineering certainty. We reserve the right to amend and supplement our findings, opinions and conclusions should additional information be made available at a later date.

Please contact me should you have any questions.

APPENDIX B

VOEL, CHAIT, COLLINS AND SCHNEIDER, P.C.
25 Lindsley Drive, Suite 200
Morristown, New Jersey 07960
Phone (973) 538-3800
Fax (973) 538-3002
Attorneys for Declaratory Plaintiff, Township of Hardyston
Attorney ID 019442000 (Molica)

**IN THE MATTER OF THE
APPLICATION OF THE TOWNSHIP OF
HARDYSTON, COUNTY OF SUSSEX,
STATE OF NEW JERSEY**

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: SUSSEX COUNTY**

DOCUMENT NO.: SSX-L-0000

CIVIL ACTION

**AFFORDABLE HOUSING
PER DIRECTIVE 14-24**

**COMPLAINT FOR DECLARATORY
RELIEF PURSUANT TO DIRECTIVE 14-24**

Declaratory Plaintiff, the Township of Hardyston, County of Sussex, State of New Jersey ("Hardyston," the "Township," "Declaratory Plaintiff" or "Plaintiff"), a municipal corporation of the State of New Jersey, having its municipal office located at the Township of Hardyston Municipal Building, 149 Wheatsworth Road, Hardyston, New Jersey 07419, by way of the filing of this Complaint (the or this "Complaint") in this Declaratory Judgment action (the or this "DJ Action" or "Action"), as authorized under Directive 14-24 of the New Jersey Administrative Office of the Courts, hereby alleges and avers as follows:

Background

1. Hardyston is a municipal corporation of the State of New Jersey.

2. The Township was created and organized under the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq., (the “MLUL”) and other applicable laws, and it has, among other duties and obligations, an obligation to endorse the Township’s Housing Element and Fair Share Plan (the “HEFSP”) of the Township Master Plan, which will be adopted by the Township of Hardyston Land Use Board (the “Board”).

3. By and through the prosecution of this DJ Action and as set forth herein, Hardyston seeks the following relief regarding its Fourth Round (2025-2035) affordable housing obligation: (a) to secure the jurisdiction of the Affordable Housing Alternative Dispute Resolution Program (the “Program”) pursuant to P.L. 2024, c.2 (the “Act”) and the Superior Court of New Jersey, Law Division (the “Court”), pursuant to Directive □14-24; (b) to have the Program and the Court approve the Township’s Present and Prospective affordable housing obligations as set forth in the Township’s binding January 22, 2025 Resolution □16-25 inclusive of the report entitled “Analysis and Response Fourth Round Affordable Obligations Hardyston Township,” as adopted by the Township Council on January 22, 2025, collectively attached hereto and filed in this DJ Action as **Exhibit 1** (the “Resolution” or “Exhibit 1”), and fully incorporated herein by reference; (c) to have the Program and the Court approve the Township’s HEFSP, to be adopted by the Board and endorsed by the Township Council, and to issue a conditional or unconditional “Compliance Certification” pursuant to the Act, or other such similar declaration in the Township’s favor; (d) to the extent it is not automatically granted pursuant to the Act, through the filing of this DJ Action and Resolution, to have the Program and the Court confirm Hardyston’s immunity from all exclusionary zoning litigation, including “builder remedy” lawsuits, during the pendency of the process outlined in the Act and for the duration of Fourth Round, i.e., through June 30, 2035; and (e) to have the Program and the Court take such other actions and grant such other relief as may

be appropriate to ensure that the Township receive and obtain all protections as afforded to it in complying with the requirements of the Act, including, without limitation, all immunities and presumptions of validity necessary to satisfy its affordable housing obligations voluntarily without having to endure the expense and burdens of unnecessary third party litigation, including and not limited to third parties that are not joined in this Action, such as intervening developers, affordable housing advocates (collectively and generally, the “Third Parties”).

COUNT I

ESTABLISHMENT OF JURISDICTION UNDER P.L.2024, C. 2

4. The Township repeats and realleges each and every allegation as set forth in the previous paragraphs of this Complaint as if set forth herein in full.

5. The Act substantially revises the New Jersey Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. (the “FHA”).

6. Among other things, the Act abolished the Council on Affordable Housing (“COAH”), and replaced it with seven (7) retired, on-recall Court judges, collectively designated as the Program. Furthermore, the Act authorized the Director of the Administrative Office of the Courts, (respectively, the “Director” and the “AOC”) to create a framework to process municipal applications for compliance certification(s).

7. On or about December 13, 2024, the Director issued Directive □ 14-24, which among other things, required municipalities seeking compliance certification to file an action in the form of a declaratory judgment complaint and Civil Case Information Statement in the County in which the municipality is located within forty eight (48) hours after the municipality’s adoption of a binding resolution as authorized under the Act and attach a copy of said binding resolution to the Complaint filed in a declaratory judgment action such as this DJ Action.

8. On January 22, 2025, the Township adopted the Resolution establishing its present and prospective affordable housing obligations within the statutory period required and set forth in the Act, and in accordance with the methodology and formula set forth in the Act. As set forth herein, a certified copy of the Resolution is attached to this Complaint and filed in this DJ Action as **Exhibit 1**, and is fully incorporated herein by reference.

9. As set forth herein, the Township has established the jurisdiction of the Program and the Court in regard to this DJ Action for a compliance certification.

☐ **HEREFORE**, Plaintiff seeks a Declaratory Judgment for the following relief:

- a. Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding Resolution attached as Exhibit 1 to this DJ Action and Complaint, or to adjust such determination(s) consistent with the Act and any and all other applicable laws;
- b. Declaring the present and prospective affordable housing obligations of the Township under the Act;
- c. Declaring the approval of the Township's HEFSP subsequent to its adoption by the Board and its endorsement by the Township Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing

obligations; (v) an adjustment based upon any ruling in litigation involving municipal affordable housing obligations; (vi) any other applicable adjustment permitted in accordance with the Act, the FHA, and/or applicable COAH regulations; (vii) any and all applicable adjustments permitted pursuant to the Highlands Act, P.L. 2004 c.120 (the "Highlands Act");

- d. Declaring that the Township continues to have full immunity from exclusionary zoning and any and all other litigation related to its affordable housing obligations as established under the Program, brought by Third Parties or otherwise;
- e. Declaring and issuing compliance certification and full immunity from exclusionary zoning litigation and all other litigation related to the Township's Fourth Round affordable housing obligation and HEFSP in accordance with the Act and Directive □ 14-24 to the Township for the period beginning July 1, 2025 and ending June 30, 2035; and
- f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act, applicable COAH regulations and any and all other applicable laws.

COUNT II

DETERMINATION OF THE PRESENT AND PROSPECTIVE NEED OF THE TOWNSHIP OF HARDYSTON

10. The Township repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

11. The Act adopted the methodology to calculate every municipality's present and prospective need affordable housing obligation for the Fourth Round (2025-2035) and beyond.

12. The Act directed the New Jersey Department of Community Affairs (the "DCA") to apply the methodology and to render a non-binding calculation of each municipality's present and prospective affordable housing obligations to be contained in a report to be issued not later than October 20, 2024.

13. The DCA issued its report on October 18, 2024 (the "DCA Report").

14. Pursuant to DCA Report, Hardyston's present and prospective affordable housing obligations are as follows:

PRESENT NEED (REHABILITATION OBLIGATION)	FOURTH ROUND PROSPECTIVE NEED OBLIGATION (2025-2035) (1,000/20% POPULATION CAP)
22	674

15. Pursuant to the Act, a municipality desiring to participate in the Program is obligated to adopt a "binding resolution" determining its present and prospective affordable housing obligations to which it will commit based upon the methodology set forth in the Act.

16. Hardyston adopted such Resolution, a copy of which is attached hereto, made a part hereof as Exhibit 1 to this DJ Action and Complaint, and fully incorporated herein by reference.

17. The Resolution states that the Township's Present ("Rehabilitation") Need obligation is 22 and its Prospective Need obligation is 548, without any further applying any

further adjustments that the Township may seek in accordance with applicable law and for which the Township accordingly reserves all rights.

18. Hardyston seeks the approval of and confirmation by the Program and the Court of the Present and Prospective affordable housing obligations as set forth in the Resolution made a part hereof as **Exhibit 1**, and any and all applicable adjustments of those obligations consistent with and available pursuant to the Act, the FHA, applicable COAH regulations, and other applicable laws.

19. Pursuant to the Resolution, the Township reserves all rights to amend its affordable housing obligations pursuant to events such as a successful legal challenge or legislative change(s) to the Act.

20. Pursuant to the Resolution, Hardyston specifically reserves the right to seek and obtain (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving municipal affordable housing obligations; (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations; and (vii) an adjustment pursuant to the Highlands Act, P.L. 2004, c.120 and the FHA.

☐ **HEREFORE**, Plaintiff seeks a Declaratory Judgment for the following relief:

- a. Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set

forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;

- b.** Declaring the present and prospective affordable housing obligations of Hardyston under the Act;
- c.** Declaring the approval of Hardyston's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations; and (vii) an adjustment pursuant to the Highlands Act, P.L. 2004, c.120 and the FHA.
- d.** Declaring that the Township continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e.** Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive □ 14-24 to Hardyston for the period beginning July 1, 2025, and ending June 30, 2035; and

- f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT III

HOUSING ELEMENT AND AIR SHARE PLAN

21. The Township repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

22. Pursuant to the Act, the HEFSP must be prepared, adopted by the Board, and endorsed by the Township on or before June 30, 2025.

23. Hardyston hereby commits for its professionals and associated staff to prepare the appropriate HEFSP to address its affordable housing obligations, as determined by the Program and the Court, and which HEFSP shall apply as appropriate, any and all applicable adjustments, including, without limitation, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations; and (vii) an adjustment pursuant to the Highlands Act, P.L. 2004, c.120 and the FHA.

☐ **HEREFORE**, Plaintiff seeks a Declaratory Judgment for the following relief:

- a. Declaring that Hardyston has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the Resolution attached as Exhibit 1 to this DJ Action, or to adjust such determinations consistent with the Act;
- b. Declaring the present and prospective affordable housing obligations of Hardyston under the Act;
- c. Declaring the approval of the HEFSP subsequent to its adoption by the Board and its endorsement by the Council, including, as appropriate and applicable,
 - (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations; and (vii) an adjustment pursuant to the Highlands Act, P.L. 2004, c.120 and the FHA.
- d. Declaring that the Township continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive □ 14-

24 to the Township for the period beginning July 1, 2025, and ending June 30, 2035; and

- f. Declaring such other relief that the program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT IV

CONFIRMATION OF IMMUNITY

24. The Township repeats and realleges each and every allegation set forth in the previous paragraphs of this declaratory judgment complaint as if set forth herein in full.

25. Pursuant to the Act, a municipality that complies with the deadlines in the Act for both determining present and prospective affordable housing obligations affordable housing obligations and for adopting an appropriate HEFSP shall have immunity from exclusionary zoning litigation.

26. The Township has fully complied with the deadline for the adoption and filing of its binding Resolution (and the filing of this DJ Action in accordance with Directive 14-24) not later than January 31, 2025, by adopting the Resolution on January 22, 2025 (a copy of which is attached hereto and filed in this DJ Action as Exhibit A-1, and fully incorporated herein by reference), and filing this DJ Action on January 24, 2025, and has committed to the adoption of its HEFSP on or before June 30, 2025.

WHEREFORE, Plaintiff seeks a Declaratory Judgment for the following relief:

- a. Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set

forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;

- b. Declaring the present and prospective affordable housing obligations of Hardyston under the Act;
- c. Declaring the approval of Hardyston's HEFSP subsequent to its adoption by the Board and its endorsement by the Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations; and (vii) an adjustment pursuant to the Highlands Act, P.L. 2004, c.120 and the FHA.
- d. Declaring that Hardyston continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive ☐ 14-24 to Hardyston for the period beginning July 1, 2025, and ending June 30, 2035; and

- f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

VOGEL, CHAIT, COLLINS AND
SCHNEIDER, P.C.
25 Lindsley Drive, Suite 200
Morristown, NJ 07960
Attorneys for Declaratory Plaintiff,
Township of Hardyston

By: /s/ Thomas J. Molica, Jr.

Dated: January 24, 2025

Thomas J. Molica, Jr., Esq.

CERTIFICATION PURSUANT TO R. 4:5-1

Thomas J. Molica, Jr., Esq., of full age, hereby certifies as follows:

1. I am a member of the Firm of Vogel, Chait, Collins and Schneider, P.C., attorneys for Declaratory Plaintiff, Township of Hardyston.
2. To the best of my knowledge, there is no other action pending in any court or any pending arbitration proceeding of which the matter in controversy herein is the subject and no such other action or arbitration proceeding is contemplated. To the best of my knowledge, there are no other parties who should be joined in this action.
3. The within Complaint was filed and served (as applicable) within the time prescribed by the New Jersey Rules of Court and applicable law.

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

VOGEL, CHAIT, COLLINS AND
SCHNEIDER, P.C.
25 Lindsley Drive, Suite 200
Morristown, NJ 07960
Attorneys for Declaratory Plaintiff,
Township of Hardyston

Dated: January 24, 2025

By: /s/ Thomas J. Molica, Jr.
Thomas J. Molica, Jr., Esq.

CERTIFICATION PURSUANT TO R. 1:38-7(b)

Thomas J. Molica, Jr., Esq., of full age, hereby certifies as follows:

1. I am a member of the firm of Vogel, Chait, Collins and Schneider, P.C., attorneys for Declaratory Plaintiff, Township of Hardyston.
2. I certify that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

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

VOGEL, CHAIT, COLLINS AND
SCHNEIDER, P.C.
25 Lindsley Drive, Suite 200
Morristown, NJ 07960
Attorneys for Declaratory Plaintiff,
Township of Hardyston

Dated: January 24, 2025

By: /s/ Thomas J. Molica, Jr.
Thomas J. Molica, Jr., Esq.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, notice is hereby given that Thomas J. Molica, Jr., Esq., attorney for Declaratory Plaintiff, the Township of Hardyston, is designated as trial counsel in the above captioned matter.

VOGEL, CHAIT, COLLINS AND
SCHNEIDER, P.C.
25 Lindsley Drive, Suite 200
Morristown, NJ 07960
Attorneys for Declaratory Plaintiff
Township of Hardyston

Dated: January 24, 2025

By: /s/ Thomas J. Molica, Jr.
Thomas J. Molica, Jr.

EXHIBIT A-1

Township Resolution with Report dated January 22, 2025: EFILED AS EXHIBIT A-1

APPENDIX C

HARDYSTON TOWNSHIP

RESOLUTION #29-25

**RESOLUTION OF THE MAYOR AND COUNCIL OF THE
TOWNSHIP OF HARDYSTON
APPROVING A SETTLEMENT ORDER AND AGREEMENT
WITH NEW JERSEY BUILDER'S ASSOCIATION
IN THE MATTER DOCKETED IN THE
SUPERIOR COURT OF NEW JERSEY, LAW DIVISION AS SSX-L-54-25
AND AUTHORIZING APPROVAL OF THE MARCH 31, 2025 SETTLEMENT ORDER
ENTERED BY THE COURT AND THE NEGOTIATION AND
EXECUTION OF ANY FURTHER REQUIRED FORMS OF SETTLEMENT
AGREEMENT AND ANY AND ALL OTHER RELATED AND NECESSARY
DOCUMENTS, AND AUTHORIZING THE CONDUCTING AND PARTICIPATION IN
ANY AND ALL FURTHER HEARINGS OR PROCEEDINGS
NECESSARY TO IMPLEMENT THE TERMS OF THE SETTLEMENT ORDER
AND AGREEMENT**

DECIDED AND ADOPTED: APRIL 9, 2025

WHEREAS, in accordance with the *Mount Laurel* doctrine, the Township of Hardyston (the "Township" or "Hardyston") and all municipalities in the State of New Jersey have a constitutional obligation to create a realistic opportunity for producing a fair share of the regional present and prospective need for housing affordable to very low-, low-, and moderate-income families; and

WHEREAS, on March 20, 2024, Governor Murphy signed into law an Amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) (the "Amended FHA"); and

WHEREAS, the Amended FHA requires the New Jersey Department of Community Affairs (the "DCA") to produce non-binding estimates of affordable housing need on or before October 20, 2024; and

WHEREAS, the DCA issued a report on October 18, 2024 (the "DCA Report") wherein it reported its estimate of the obligation for all municipalities based upon its interpretation of the standards in the Amended FHA; and

WHEREAS, the DCA Report calculates the Township's Round 4 (2025-2035) affordable housing obligation(s) as follows: a Present Need or Rehabilitation Obligation of "22" and a Prospective Need or New Construction Obligation of "1622" (prior to the application of caps, credits or adjustments available to the Township); and

WHEREAS, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support lower calculations of Round 4 affordable housing obligations; and

WHEREAS, the Amended FHA specifically provides that "[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by COAH unless those regulations are contradicted by statute, including P.L. 2024, c.2, or biding court decisions" (N.J.S.A 52:27D-311 (m)); and

WHEREAS, COAH regulations authorize vacant land adjustments as well as durational adjustments; and

WHEREAS, based on the foregoing, the Township reviewed the DCA calculations as set forth in the DCA Report of the Township's affordable housing obligations and on January 22, 2025, the Township Council adopted Resolution #41-2025 (the "4th Round Commitment Resolution"), committing to a 4th Round Present Need Obligation of "22" and 4th Round Prospective Need Obligation of "548" (the "Township 4th Round Calculations"); and

WHEREAS, the 4th Round Commitment Resolution includes the basis for the Township 4th Round Calculations, as well as detailed report of the calculations which was annexed to and incorporated by reference therein; and

WHEREAS, In preparation for conducting its analysis and calculations, the Township professionals reviewed the DCA Report, calculations and underlying supporting data, and in addition, also reviewed the Township's up-to-date localized data, amongst other verifiable information, including recent land use approvals, updated environmental constraints (including wetlands, wetland buffers, steep slopes), conservation easements, deed restrictions and other site specific information, construction permits, and MOD-IV data maintained and on file with the Township, and ultimately determined that "...the DCA arrived at the Township's land capacity factor using incorrect assumptions and outdated data and/or incorrect or inaccurate data, including geospatial artifacts and anomalies,,,"; and

WHEREAS, accordingly, the Township excluded 241.678 acres from the Township's land capacity factor, and determined that only 83.870 acres is developable, reducing the Township's land capacity factor from 16.44 to 4.83, and therefore reducing the DCA allocation of prospective need as set forth in the DCA Report from 1622 to 548; and

WHEREAS, on January 23, 2025, the Township filed its declaratory judgment complaint (the "DJ Complaint") along with its 4th Round Commitment Resolution with the Affordable Housing Dispute Resolution Program ("Program") in accordance with L. 2024, c. 2 and Administrative Directive #14-24, "Civil – Affordable Housing Dispute Resolution Program – Implementation of L. 2024, c. 2" (Dec. 13, 2024); and

WHEREAS, on February 27, 2025 the New Jersey Builders Association ("NJBA") filed a non-conforming Answer and non-conforming challenge to the Township's calculation of its 4th Round Prospective Need Obligation, which relate solely to the Township's 4th Round Prospective Need Obligation (the "NJBA Challenge"); and

WHEREAS, NJBA and the Township participated in settlement negotiations before the Hon. Stephan Hansbury, J.S.C. (ret.) on March 31, 2025, and agreed to settle the NJBA Challenge by establishing a 4th Round Prospective Need Obligation of 647 units (the "Township 4th Round Prospective Need Calculation"), as memorialized in the attached Decision and Order dated March 31, 2025, attached hereto as Exhibit A (the "Settlement Order"); and

WHEREAS, the Mayor and Council has reviewed the Settlement Order and the Township 4th Round Prospective Need Calculation and hereby approves same, and furthermore hereby authorizes Special Counsel to execute any and all documentation required in furtherance of the Settlement Order on behalf of the Township and the Mayor and Council, and further authorizes the Township Manager, Township Engineer, Township Planners, Township Mayor, Township Clerk, and any all such other individuals as may be necessary, to execute any and all such documentation, if required.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Council of the Township of Hardyston, County of Sussex, State of New Jersey, as follows:

1. Special Counsel for the Township is authorized to negotiate, finalize, and execute any and all documentation required in furtherance of the Settlement Order on behalf of the Township and the Mayor and Council, if required.

2. The Township Manager, Township Engineer, Township Planners, Township Mayor, Township Clerk, and any all such other individuals as may be necessary, is authorized to execute any and all documentation required in furtherance of the Settlement Order on behalf of the Township and the Mayor and Council, if required.

3. The Township Mayor and Council and/or the Township Land Use Board are authorized to conduct any hearings necessary to implement the Settlement Order.

4. The Township's 4th Round Housing Element and Fair Share Plan shall incorporate reference to the Settlement Order and include the Township 4th Round Prospective Need Calculation therein.

This Resolution shall take effect immediately.

The undersigned does hereby certify that the foregoing is a true copy of the action taken by the Mayor and Council of the Township of Hardyston at its meeting of April 9, 2025.


JANE BAKALARCZYK, RMC/CMC
TOWNSHIP CLERK


HON. BRIAN KAMINSKI, MAYOR

APPENDIX D

Township of Hardyston, NJ

§ 185-90.1. Very-low-, low- and moderate-income housing. [Amended 4-20-2004 by Ord. No. 2004-5; 12-30-2004 by Ord. No. 2004-12; 7-12-2005 by Ord. No. 2005-08; 8-15-2006 by Ord. No. 2006-14; 6-10-2008 by Ord. No. 2008-05; 6-9-2009 by Ord. No. 2009-08; 5-10-2017 by Ord. No. 2017-03]

A. Affordable housing requirements.

(1) Purpose.

- (a) This subsection is intended to assure that very-low-, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very-low-, low- and moderate-income households shall occupy these units. This subsection shall apply except where inconsistent with applicable law.
- (b) The Township of Hardyston Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the New Jersey Municipal Land Use Law at N.J.S.A. 40:55D-1 et seq. The Fair Share Plan has been endorsed by the Township Council of the Township of Hardyston. The Fair Share Plan describes the ways the Township of Hardyston shall address its fair share for very-low-, low-, and moderate-income housing as documented in the Housing Element.
- (c) This subsection implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:93-1 et seq., as effective June 6, 1994,¹ and all COAH rules and regulations. These rules are pursuant to the Fair Housing Act of 1985 and the Township of Hardyston's constitutional obligation to provide for its fair share of very-low-, low-, and moderate-income housing under COAH regulations and the Township's Declaratory Judgment and Order of Repose dated September 26, 2016. All units provided by applicants shall meet all requirements needed for the Township to obtain credit under prior COAH rules and judicial decisions, including but not limited to Mt. Laurel IV.
- (d) The Township of Hardyston shall file monitoring reports in accordance with the agreement, tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring shall be available to the public at the Township of Hardyston Municipal Building, Municipal Clerk's Office, 149 Wheatsworth Road, Hardyston, New Jersey.

(2) Definitions. The following terms, as used in this subsection, shall have the following meanings:

ACT — The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.).

ADAPTABLE — Constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.²

ADMINISTRATIVE AGENT — The entity responsible for the administration of

1. Editor's Note: 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, expired on 10-16-2016.

2. Editor's Note: See now N.J.A.C. 5:23-3.14(b).

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affordable units in accordance with this subsection, N.J.A.C. 5:80-26.1 et seq., and any and all other applicable statutes and regulations of the State of New Jersey.

AFFIRMATIVE MARKETING — A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

AFFORDABILITY AVERAGE — The average percentage of median income at which restricted units in an affordable housing development are affordable to very-low-, low- and moderate-income households.

AFFORDABLE — A sales price or rent within the means of a very-low-, low- or moderate-income household as defined in N.J.A.C. 5:97-9,³ in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

AFFORDABLE DEVELOPMENT — A housing development, all or a portion of which consists of restricted units.

AFFORDABLE HOUSING DEVELOPMENT — A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

AFFORDABLE HOUSING PROGRAM(S) — Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE UNIT — A housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97-4,⁴ and/or funded through an affordable housing trust fund.

AGE-RESTRICTED UNIT — A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80% of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

AGENCY — The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

ASSISTED LIVING RESIDENCE — A facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

CERTIFIED HOUSEHOLD — A household that has been certified by an

3. Editor's Note: The provisions of N.J.A.C. 5:97 expired on 6-2-2015.

4. Editor's Note: The provisions of N.J.A.C. 5:97 expired on 6-2-2015.

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administrative agent as a very-low-, low- or moderate-income household.

COAH — The Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

DCA — The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT — A housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load-bearing structural systems.

DEVELOPER — Any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development, including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT — The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

INCLUSIONARY DEVELOPMENT — A development containing both affordable units and market-rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a nonresidential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

MAJOR SYSTEM — The primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building, which include, but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load-bearing structural systems.

MARKET-RATE UNITS — Housing not restricted to very-low-, low-, and moderate-income households that may sell or rent at any price.

MEDIAN INCOME — The median income by household size for the applicable county, as adopted annually by COAH.

MODERATE-INCOME HOUSEHOLD — A household with a total gross annual household income in excess of 50% but less than 80% of the median household income.

MODERATE-INCOME UNIT — A restricted unit that is affordable to a moderate-income household.

NONEXEMPT SALE — Any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a

result of inheritance; the transfer of ownership through an executor's deed to a Class A beneficiary and the transfer of ownership by court order.

RANDOM SELECTION PROCESS — A process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

REGIONAL ASSET LIMIT — The maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by COAH's adopted Regional Income Limits published annually by COAH.

REHABILITATION — The repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

RENT — The gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

RESTRICTED UNIT — A dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under UHROP or MONI.

UHAC — The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

VERY-LOW-INCOME HOUSEHOLD — A household with a total gross annual household income equal to 30% or less of the median household income.

VERY-LOW-INCOME UNIT — A restricted unit that is affordable to a very-low-income household.

WEATHERIZATION — Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

- (3) Affordable housing programs. The Township has determined that it will use the following mechanisms to satisfy its affordable housing obligations:

- (a) A market-to-affordable program.

- [1] A market-to-affordable program is established to permit the purchase or subsidization of units through a written agreement with the property owner and sold or rented to very-low-, low-, and moderate-income households. Subject to the provisions of Subsection A(3)(a)[2][c] below, the market-to-affordable programs may produce very-low-, low- and moderate-income units. (The program may be limited to only very-low- or low-, or only moderate-income units as per the Fair Share Plan.)

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[2] The following provisions shall apply to market-to-affordable programs:

- [a] At the time they are offered for sale or rental, eligible units may be new, pre-owned or vacant.
- [b] The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.
- [c] The municipality will provide a minimum of \$25,000 per unit to subsidize each moderate-income unit and/or \$30,000 per unit to subsidize each low-income unit, with additional subsidy depending on the market prices or rents in a municipality.
- [d] The maximum number of creditable market-to-affordable units shall be equal to no more than 10 for-sale units and 10 rental units or a combined total of 10% of the fair share obligation, whichever is greater. (Additional units may be approved by COAH if the municipality demonstrates the successful completion of its initial market-to-affordable program.)

[3] The units shall comply with UHAC with the following exceptions:

- [a] Bedroom distribution [N.J.A.C. 5:80-26.3(b) and (c)];
- [b] Low-/moderate-income split [N.J.A.C. 5:80-26.3(a)]; and
- [c] Affordability average [N.J.A.C. 5:80-26.3(d) and (e)]; however:
 - [i] The maximum rent for a moderate-income unit shall be affordable to households earning no more than 57.5% of median income. The maximum rent for a low-income unit shall be affordable to households earning no more than 44% of median income; and the maximum rent for a very-low-income unit shall be affordable to households earning no more than 30% of median income.
 - [ii] The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70% of median income, and the maximum sales price for a low-income unit shall be affordable to households earning no more than 40% of median income, and the maximum sales price for a very-low-income unit shall be affordable to households earning no more than 30% of median income.

(4) Inclusionary zoning.

- (a) Presumptive densities and set-asides. To ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, inclusionary zoning permits minimum presumptive densities and presumptive maximum affordable housing set-asides as follows:

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- [1] Inclusionary zoning in existing or proposed sewer service areas outside of Planning Areas 1 or 2 permits residential development at a presumptive minimum gross density of four units per acre and a presumptive maximum affordable housing set-aside of 20% of the total number of units in the development;
 - [2] Inclusionary zoning outside of a sewer service area in Planning Areas 3, 4 and 5 permits a presumptive density increase of 40% over the existing zoning. The presumptive maximum affordable housing set-aside shall be 20% of the total number of units in the development; and
 - [3] Where an executed development agreement and/or a Planning Board approval resolution exists for affordable housing on a specific site or sites, list the sites below and identify the density and set-aside for each.
 - [a] Crystal Springs Village Center South: 13 units/acre; 25% set-aside.
 - [b] Ridgefield Commons: 2.7 units/acre; 11% set-aside.
 - [c] Indian Fields: 2.2 units/acre; 12.5% set-aside.
 - [d] Forest Knolls: 0.2 unit/acre; 13% set-aside.
 - [e] Emerald Estates/CJS Investments: 0.2 unit/acre; 12% set-aside.
 - [4] Additional incentives to subsidize the creation of affordable housing available to very-low-income households may be included in the zoning section of this subsection or specified in a developer's or redeveloper's agreement.
- (b) Phasing. In inclusionary developments, the following schedule shall be followed:

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Very-Low-, Low- and Moderate-Income Units Completed
25	0
25+1	10
50	50
75	75
90	100

- (c) Design. In inclusionary developments, to the extent possible, very-low-, low- and moderate-income units shall be integrated with the market units.
- (d) Payments-in-lieu and off-site construction. The standards for the collection of payments in lieu of constructing affordable units or standards for constructing affordable units off-site shall be in accordance with N.J.A.C. 5:97-6.4,⁵ and/or other applicable laws, statutes or regulations.

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- (e) Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.
- (5) New construction. The following general guidelines apply to all newly constructed developments that contain low- and moderate-income housing units, including any currently unanticipated future developments that will provide very-low-, low- and moderate-income housing units.
 - (a) Low/moderate split and bedroom distribution of affordable housing units:
 - [1] The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.
 - [2] In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units.
 - [3] Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - [a] The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total very-, low- and moderate-income units, if applicable;
 - [b] At least 30% of all very-low-, low-, and moderate-income units shall be two-bedroom units, if applicable;
 - [c] At least 20% of all very-low-, low-, and moderate-income units shall be three-bedroom units, if applicable; and
 - [d] The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
 - [4] Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted very-low-, low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.
 - (b) Accessibility requirements:
 - [1] The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7⁶ and N.J.A.C. 5:97-3.14.⁷
 - [2] All restricted townhouse dwelling units and all restricted units in other

5. Editor's Note: The provisions of N.J.A.C. 5:97 expired on 6-2-2015.

6. Editor's Note: See now N.J.A.C. 5:23-3.14(b).

7. Editor's Note: The provisions of N.J.A.C. 5:97 expired on 6-2-2015.

multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:

- [a] An adaptable toilet and bathing facility on the first floor;
 - [b] An adaptable kitchen on the first floor;
 - [c] An interior accessible route of travel on the first floor;
 - [d] An interior accessible route of travel shall not be required between stories within an individual unit;
 - [e] An adaptable room that can be used as a bedroom, with a door, or the casing for the installation of a door, on the first floor; and
- [3] An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7⁸ and N.J.A.C. 5:97-3.14,⁹ or evidence that the Township of Hardyston has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
- [a] Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - [b] To this end, the builder of restricted units shall deposit funds within the Township of Hardyston's Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 - [c] The funds deposited under Subsection A(5)(b)[3][b] above shall be used by the Township of Hardyston for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - [d] The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Township of Hardyston.
 - [e] Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township of Hardyston's Affordable Housing Trust Fund in care of the Municipal Treasurer, who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and

8. Editor's Note: See now N.J.A.C. 5:23-3.14(b).

9. Editor's Note: The provisions of N.J.A.C. 5:97 expired on 6-2-2015.

appropriately earmarked.

- [f] Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7¹⁰ and N.J.A.C. 5:97-3.14.¹¹

(c) Maximum rents and sales prices.

- [1] In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and in COAH, utilizing the regional income limits previously established by COAH.
- [2] The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted very-low-, low- and moderate-income units shall be affordable to households earning no more than 52% of median income.
- [3] The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for very-low-income, low-income and moderate-income units.
 - [a] At least 10% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income.
- [4] The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and very-low- and low-income ownership units must be available for at least two different prices for each bedroom type.
- [5] In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
 - [a] A studio shall be affordable to a one-person household;
 - [b] A one-bedroom unit shall be affordable to a one-and-one-half-person household;
 - [c] A two-bedroom unit shall be affordable to a three-person household;
 - [d] A three-bedroom unit shall be affordable to a four-and-one-half-person

10. Editor's Note: See now N.J.A.C. 5:23-3.14(b).

11. Editor's Note: The provisions of N.J.A.C. 5:97 expired on 6-2-2015.

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household; and

[e] A four-bedroom unit shall be affordable to a six-person household.

[6] In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:

[a] A studio shall be affordable to a one-person household;

[b] A one-bedroom unit shall be affordable to a one-and-one-half-person household; and

[c] A two-bedroom unit shall be affordable to a two-person household or to two one-person households.

[7] The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

[8] The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

[9] The price of owner-occupied very-low-, low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

[10] The rent of very-low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed 9% in any one year. Rents for units constructed pursuant to very-low- and low-income housing tax credit regulations shall be indexed pursuant to the regulations governing very-low- and low-income housing tax credits.

[11] Utilities. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

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(6) Affirmative marketing requirements.

- (a) The Township of Hardyston shall adopt by resolution an affirmative marketing plan, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- (b) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 1 and covers the period of deed restriction.
- (c) The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 1, comprised of Bergen, Sussex, Passaic, and Hudson Counties.
- (d) The administrative agent designated by the Township of Hardyston shall assure the affirmative marketing of all affordable units consistent with the affirmative marketing plan for the municipality.
- (e) In implementing the affirmative marketing plan, the administrative agent shall provide a list of counseling services to very-low-, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (f) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- (g) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by Township of Hardyston.

(7) Occupancy standards.

- (a) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the administrative agent shall strive to:
 - [1] Provide an occupant for each bedroom;
 - [2] Provide children of different sexes with separate bedrooms; and
 - [3] Prevent more than two persons from occupying a single bedroom.
- (b) Additional provisions related to occupancy standards (if any) shall be provided in the municipal operating manual.

(8) Control periods for restricted ownership units and enforcement mechanisms.