

**MASTER'S REPORT ON AN AMENDED SETTLEMENT AGREEMENT
AND AMENDED COMPLIANCE MECHANISMS
FOR THE *MOUNT LAUREL* FAIRNESS HEARING
TOWNSHIP OF MOUNT HOLLY
BURLINGTON COUNTY, NEW JERSEY**

IMO Application of the Township of Mount Holly
Docket No. BUR-L-1623-15

February 2, 2022

Prepared for:

**The Honorable Jeanne T. Covert, A.J.S.C.
Superior Court of New Jersey
Burlington County Courts Facility
49 Rancocas Road, 7th Floor
Mount Holly, NJ 08060**

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Clarke Caton Hintz



100 Barrack Street
Trenton, New Jersey 08608

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1.0 INTRODUCTION

This report addresses a Settlement Agreement dated December 13, 2021 ("the 2021 Agreement") that, if approved, will replace in its entirety the Settlement Agreement dated February 11, 2019 ("the 2019 Agreement") between Fair Share Housing Center ("FSHC") and the Township of Mount Holly ("Mount Holly" or "the Township"). The 2019 Agreement, previously approved by the Court following a Fairness Hearing, resolved Mount Laurel litigation through the establishment of a Third Round fair share obligation for the Township in the case entitled In the Matter of the Application of the Township of Mount Holly, County of Burlington, Docket No. BUR-L-1623-15. As discussed in more detail below, the Township had previously received a Final Judgment of Repose per Court Order dated June 20, 2020. This report on the 2021 Agreement has been prepared in light of the upcoming Fairness Hearing scheduled on February 8, 2022 before the Honorable Jeanne T. Covert, A.J.S.C.

The purpose of the Fairness Hearing is for the Court to determine whether the terms of the 2021 Agreement between the Township and FSHC are fair and reasonable to the interests of low- and moderate-income households in the region. I am writing in my capacity as Special Master previously appointed by the Honorable Ronald E. Bookbinder, A.J.S.C. (now retired) in the above-captioned matter per Court Order of December 8, 2015.

Mount Holly filed a Complaint for Declaratory Judgment on July 8, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., in accordance with the New Jersey Supreme Court's March 10, 2015 decision In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, (2015). The Court approved the 2019 Settlement Agreement by Order dated May 23, 2019 after a duly noticed Fairness Hearing on April 22, 2019. The 2019 Agreement established the Township's fair share obligation, including a Third Round Rehabilitation Share of 13 units, a 0-unit Prior Round (1987-1999) obligation, and a 0-unit Third Round (1999-2025) Gap and Prospective Need obligation. My April 16, 2019 Fairness Report recommended approval of the 2019 Settlement Agreement, and recommended preliminary approval of the Township's proposed measures to capture future affordable housing opportunities as they arise. The May 23, 2019 Order found the Agreement fair to the interests of the protected class, required the Township to satisfy the conditions set forth in my report within 120 days of the Order.

For the January 30, 2020 Compliance Hearing I issued a Compliance Report dated January 21, 2020, in which I found that the Township had satisfied the majority of conditions enumerated in my fairness report and recommended the Court grant the Township a Judgment of Repose ("JOR") subject to the provision of

additional crediting documentation. After the Township supplied all the required documents, I submitted a letter to the Court dated June 15, 2020 indicating that all compliance conditions had been met, and Your Honor granted the Township a final JOR on June 20, 2020.

As will be discussed in more detail below, in June 2021 the owner of the Virtua Hospital site that the Township believed was to become available in the Third Round and so, pursuant to the 2019 Agreement, adopted overlay zoning intended to create a realistic opportunity for the development of affordable housing, filed a motion for relief from the JOR, noting its site was no longer available. Subsequent negotiations between the Township and FSHC have resulted in the 2021 Agreement.

The 2021 Agreement preserves and reiterates the Court-approved fair share obligation, removes the mechanism discussed above by which the Township was to provide a realistic opportunity for the future provision of affordable units, and replaces it with alternative mechanisms. Continuing the settlement of the Township's Third Round implementation mechanisms is clearly a preferable approach to resolving affordable housing disputes because it avoids the time and expense of a Court action.

Public notice of the February 8, 2022 Fairness Hearing on the 2021 Agreement was published on December 29, 2021 in accordance with established Mount Laurel case law. The notice properly summarized the salient points of the 2021 Agreement, directed any interested members of the public to the Township Clerk's office where they could review the 2021 Agreement, described the purpose of the Court hearing that is to be held on February 8, 2022, and invited written comments on the Agreement to be filed no later than January 21, 2022 at 4:00 p.m. I am not aware of any comments or objections filed by the public.

This report recommends approval of the 2021 Settlement Agreement between FSHC and Mount Holly and recommends preliminary approval of the change in the Township's proposed mechanisms to create realistic opportunities for future development of affordable housing.

2.0 BACKGROUND

In 1989, following First Round certification, the Township was designated an Urban Aid Municipality. On June 5, 1996 the Township received Council on Affordable Housing ("COAH") certification for its Second Round Plan. This Second Round certification expired on June 5, 2002 and on August 3, 2002 COAH granted a one-year extension. As a result of filing a Complaint for Declaratory Judgment, on August 2, 2002 the Township received a jurisdictional and protective order from the New Jersey Superior Court, signed by the Honorable John A. Sweeney, A.J.S.C. (now retired). This Order barred any litigation regarding the

Township's Second Round Plan, and further stated that the Township should submit a Third Round plan within such time frames as would be established by either the Courts or COAH. In November 2005 Mount Holly adopted a Third Round Housing Element and Fair Share Plan ("HEFSP") in accordance with the Third Round rules, and on February 16, 2006 was granted a Third Round Judgment of Compliance and Repose.

On March 10, 2015, the New Jersey Supreme Court issued a ruling on FSHC's Motion in Aid of Litigant's Rights (In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 578 [2015]). Providing a new direction for New Jersey municipalities in their effort to comply with the constitutional requirement to provide their fair share of affordable housing, the Court transferred responsibility for review and approval of housing elements and fair share plans from COAH to designated Mount Laurel trial judges. In accordance with the process laid out by the Supreme Court, Mount Holly filed a declaratory judgment motion on July 8, 2015. Due to its prior Third Round petition before COAH and its declaratory judgment motion in the Superior Court, the Township is deemed to be a "participating municipality" per the New Jersey Supreme Court's March 10, 2015 decision. The Township was granted immunity by the Court from exclusionary zoning lawsuits while the Township was negotiating the terms of the 2019 Settlement Agreement.

The Township's Planning Board adopted a Third Round HEFSP on November 25, 2019, and the Township's governing body endorsed it on November 25, 2019. In a Compliance Report dated January 21, 2021, I recommended the Court grant the Township a Third Round Judgment of Compliance and Repose ("JOR"), subject to the fulfilment of certain conditions included in the report. As noted above, after a duly noticed Compliance Hearing on January 30, 2020, Your Honor granted a JOR on May 23, 2020, subject to the fulfilment of the conditions in my Master's Report. Having subsequently found that the Township had satisfied all remaining outstanding conditions enumerated in the May 23, 2020 Order, Your Honor granted a final JOR on June 26, 2020, giving the Township immunity and protection from any Mount Laurel builder's remedy actions through July 1, 2025.

While the Court-approved 2019 Settlement Agreement stipulated that the Township had no Prior Round or Third Round obligation, the Township agreed to create future opportunities for affordable housing through the implementation of an inclusionary overlay zoning district on the lots that comprise the Memorial Hospital site, owned by Virtua Health, Inc. Virtua had previously received state approval to construct a new regional facility in neighboring Westampton Township and planned to vacate the site in the Township, thus providing Mount Holly with what the Township's 2019 Plan called "a significant opportunity for provision of affordable housing through overlay zoning." However, on June 25, 2021,

counsel for Virtua filed a Motion to Intervene and for relief from the June 26, 2020 JOR. Virtua's Motion noted that the company had notified the Township that its plans had changed, and it was now intending to undertake a significant redevelopment and expansion of the existing Memorial Hospital, rather than constructing a new complex elsewhere. Through subsequent negotiations with Virtua, the Township has agreed to abandon the adopted overlay zoning on the Virtua site, and has identified four alternative sites on which it intends to adopt an affordable housing overlay zone. In addition, the Township will adopt a Township-wide Mandatory Inclusionary Overlay Zone for the production of affordable housing in residential developments of five (5) or more units approved with a density of six units per acre. Those changes are memorialized in the 2021 Agreement, and are the subject of the "fairness" portion of this report.

3.0 THE CONTEXT FOR REVIEW

Before addressing the 2021 Settlement Agreement, I would like to acknowledge the parties' ongoing efforts in achieving settlement of the Township's Third Round compliance mechanisms that create a realistic opportunity for future development of affordable homes. Settlement of Mount Laurel litigation, so long as it meets the appropriate standards for judicial approval, is clearly preferable to the adjudication of a builder's remedy dispute or other Mount Laurel dispute.

The 2021 Agreement must be evaluated according to guidelines established by the Court in two principal cases: Morris County Fair Housing Council v. Boonton Twp. 197 N.J. Super. 359, 369-71 (Law Div. 1984) and East/West Venture v. Borough of Fort Lee 286 N.J. Super. 311 (App. Div. 1996). These cases require agreements in Mount Laurel litigation to be subject to a Fairness Hearing. The scope of the Fairness Hearing was determined by the Appellate Division in a decision that upheld the hearing process conducted by then-Assignment Judge Peter Ciolino in East/West Venture, a case in which Philip Caton, PP FAICP, served as Special Master. In its 1996 decision, the Appellate Court ruled that a settlement between a builder plaintiff and municipal defendant in a Mount Laurel case may be approved by the Trial Court after a hearing which established that the settlement "adequately protects the interest of lower-income persons on whose behalf the affordable units proposed by the settlement are to be built" 286 N.J. Super. 311, 329 (App. Div. 1996). The Appellate Court provided specific factors for Trial Courts to consider in making fairness determinations. These factors, as modified for relevance in a case with a settlement between an intervener (FSHC) and a municipality, will be detailed in a subsequent section of this report.

Notwithstanding the continued uncertainty in the statewide affordable housing realm, I have endeavored to utilize the Second Round regulations of COAH to the greatest extent practicable in the course of this

review for the Court. This approach will encourage uniformity in the interpretation of the Mount Laurel doctrine and is consistent with both legislative and judicial directives. The Fair Housing Act (P.L. 1985, c. 222) states,

"The interest of all citizens, including low and moderate income families in need of affordable housing, would be best served by a comprehensive planning and implementation response to this constitutional obligation." (N.J.S.A. 52:27D-302(c))

Furthermore, the New Jersey Supreme Court, in its decision in The Hills Development Co. v. Town of Bernards, 103 N.J. 1 (1986) (commonly known as Mount Laurel III) upheld the constitutionality of the Fair Housing Act, and stated,

"Instead of varying and potentially inconsistent definitions of total need, regions, regional need, and fair share that can result from the case-by-case determinations of courts involved in isolated litigation, an overall plan for the entire state is envisioned, with definitions and standards that will have the kind of consistency that can result only when full responsibility and power are given to a single entity." (103 N.J. at 25)

Lastly, in the decision, the Supreme Court also stated that to the extent that Mount Laurel cases remained before the courts,

"...any such proceedings before a court should conform whenever possible to the decisions, criteria and guidelines of the Council." (103 N.J. at 63)

On March 10, 2015, the New Jersey Supreme Court delivered a unanimous decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing. This decision acknowledged COAH's inability or unwillingness to adopt administrative rules for the so-called "Third Round" of municipal affordable housing compliance. In the absence of regulatory guidance from COAH (or of legislative action), the decision instructs the trial courts to serve once again as the first resort for evaluating the constitutionality of municipal fair share plans.

While the Court has invalidated COAH's last two attempts to promulgate Third Round rules, the Second Round rules (N.J.A.C. 5:93) are still largely intact. In fact, these rules and Third Round rules specifically upheld by the Supreme Court have been relied upon by the trial courts in numerous compliance and fairness hearings to evaluate the settlement agreements before the Court in order to promote the uniformity of approach which is evident in the Court's decision. I have been guided by these principles of uniformity and consistency in the review of this Settlement Agreement.

4.0 THE 2019 SETTLEMENT AGREEMENT AND 2021 SETTLEMENT AGREEMENT

The 2019 Settlement Agreement was fully executed on February 25, 2019 by Mayor Jason Jones for the Township and by former Executive Director Kevin Walsh, Esq. for FSHC. Your Honor's May 23, 2019 order approving the Settlement Agreement declared that the Township's Settlement Agreement "adequately protects the interests of low- and moderate-income households in the Township and creates a realistic opportunity for the Township to meet its fair share of the regional need for low and moderate income housing."

As discussed above, Virtua notified the Township that it was now intending to undertake a significant redevelopment and expansion of the existing Memorial Hospital in the Township, rather than constructing a new complex elsewhere. Through subsequent separate negotiations with both Virtua and FSHC, the Township has agreed to abandon the inclusionary overlay zoning it had adopted on the Virtua site as part of its compliance with the terms of the 2019 Settlement Agreement, and has identified four (4) alternative sites on which it intends to adopt an affordable housing inclusionary overlay zone. In addition, the Township has agreed to adopt a municipal-wide mandatory inclusionary affordable housing set-aside ordinance. These changes are memorialized in the 2021 Agreement.

I have reviewed the 2021 Settlement Agreement between FSHC and the Township of Mount Holly in the context of the required fairness analysis. The Agreement was signed on November 28, 2021 by Executive Director Adam M. Gordon, Esq. for FSHC and executed for the Township on December 13, 2021 by Mayor Jason Jones, and was placed on file in the Township Clerk's office for public review. The 2021 Agreement:

- Reiterates the Township's Third Round affordable housing obligations.
- Acknowledges that, per the June 26, 2020 JOR, the Township has satisfied its entire 13-unit Rehabilitation obligation, and notes that notwithstanding this, the Township intends to continue administering a municipal rehabilitation program for both owner-occupied and renter-occupied units, and to continue its participation in the Burlington County Home Improvement Program.
- Requires the Township to rescind the inclusionary overlay ordinance on the Virtua Memorial Hospital site, which it adopted in 2019 via Ordinance no. 2019-II.
- Requires the Township to adopt an overlay inclusionary zoning ordinance within 90 days of Court approval of the 2021 Agreement on four new sites in the Township as discussed in more detail below, to permit multi-family apartments and townhomes up to four stories tall at a density of 20 units per acre, with a 20% affordable housing set-aside. The Agreement requires the overlay inclusionary zoning to remain in place for at least 20 years.

- Requires all new affordable units in the inclusionary overlay zone to be available to families, a new provision not included in the 2019 Agreement.
- Recognizes that rescinding the inclusionary overlay zoning on the Virtua Memorial Hospital site represents a loss of affordable housing opportunity, and requires the Township to compensate for this loss by also adopting a municipal-wide mandatory affordable housing set-aside ordinance within 90 days of Court approval of the 2021 Agreement, another additional provision not included in the 2019 Agreement.
- Reiterates the requirements that at least 50% of all new affordable units generated either by the mandatory set-aside or in the overlay zone must be affordable to low-income or very low-income households; that 13% of all new affordable units generated must be affordable to very low-income households, defined as households earning 30% or less of area median income, and at least half of the very low-income units must be available to families; and requires that at least 25% of all new affordable units created be rental units, at least half of which must be available to families.

As a reminder, the Township's total Third Round fair share obligation consists of:

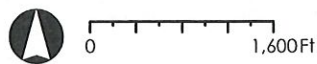
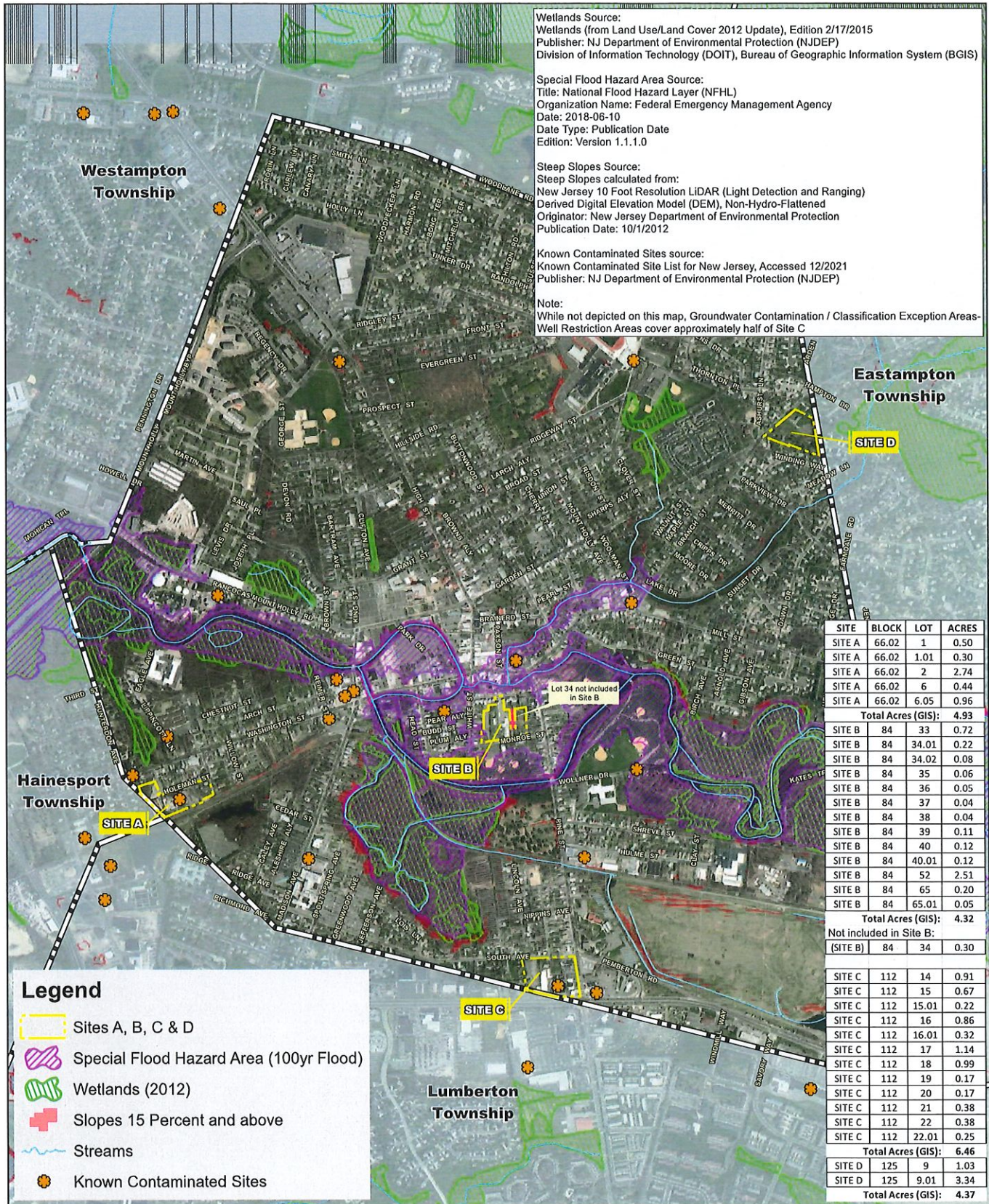
- Third Round Rehabilitation Share: 13 units
- Prior Round (1987-1999) Obligation: 0 units
- Third Round (1999-2025) Obligation: 0 units

Rehabilitation Share: The 2021 Agreement acknowledges that Mount Holly has met its 13-unit Rehabilitation obligation, but will nonetheless continue to participate in both its municipal Rehabilitation program and the County-administered Home Improvement Program, in order to capture future rehabilitation opportunities.

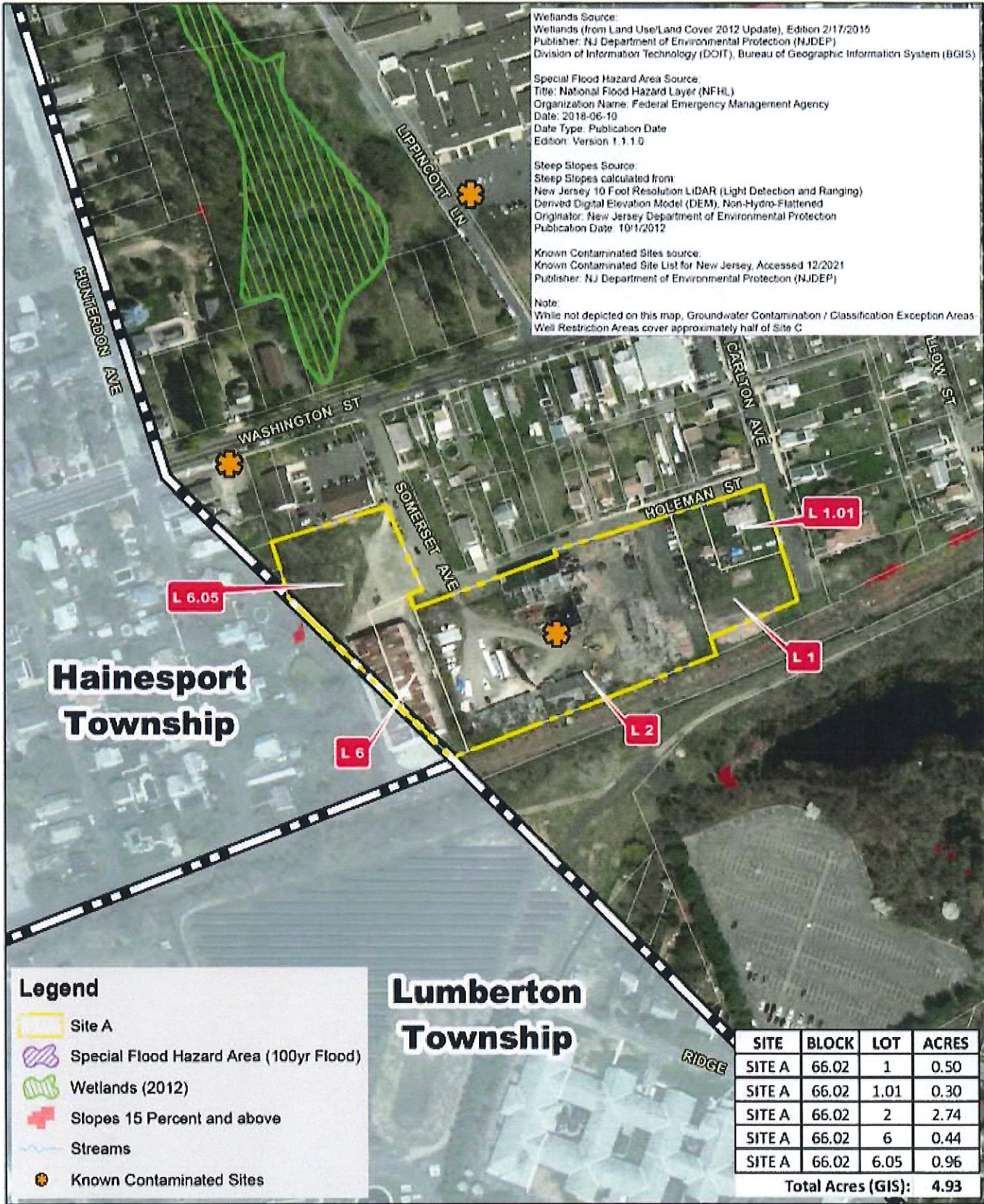
Prior Round: The Township has a Prior Round obligation of zero (0) units and therefore no action is required to satisfy the Prior Round obligation.

Third Round: The Township has a Third Round Gap and Prospective Need of zero (0) units and therefore no action is required to satisfy the Third Round obligation.

Additional Affordable Housing Opportunities: As in the 2019 Settlement Agreement, the 2021 Agreement requires the Township to create opportunities for the provision of affordable housing despite the lack of formal Prior or Third Round affordable housing obligations. The Township has agreed to do this via the mechanisms discussed below.



Inclusionary Overlay Sites



Wetlands Source:
 Wetlands (from Land Use/Land Cover 2012 Update), Edition 2/17/2015
 Publisher: NJ Department of Environmental Protection (NJDEP)
 Division of Information Technology (DOIT), Bureau of Geographic Information System (BGIS)

Special Flood Hazard Area Source:
 Title: National Flood Hazard Layer (NFHL)
 Organization Name: Federal Emergency Management Agency
 Date: 2018-06-10
 Date Type: Publication Date
 Edition: Version 1.1.1.0

Steep Slopes Source:
 Steep Slopes calculated from:
 New Jersey 10 Foot Resolution LiDAR (Light Detection and Ranging)
 Derived Digital Elevation Model (DEM), Non-Hydro-Flattened
 Originator: New Jersey Department of Environmental Protection
 Publication Date: 10/1/2012

Known Contaminated Sites source:
 Known Contaminated Site List for New Jersey, Accessed 12/2021
 Publisher: NJ Department of Environmental Protection (NJDEP)

Note:
 While not depicted on this map, Ground-water Contamination / Classification Exception Areas
 Well Restriction Areas cover approximately half of Site C

**Hainesport
 Township**

**Lumberton
 Township**

Legend

- Site A
- Special Flood Hazard Area (100yr Flood)
- Wetlands (2012)
- + Slopes 15 Percent and above
- ~ Streams
- * Known Contaminated Sites

SITE	BLOCK	LOT	ACRES
SITE A	66.02	1	0.50
SITE A	66.02	1.01	0.30
SITE A	66.02	2	2.74
SITE A	66.02	6	0.44
SITE A	66.02	6.05	0.96
Total Acres (GIS):			4.93

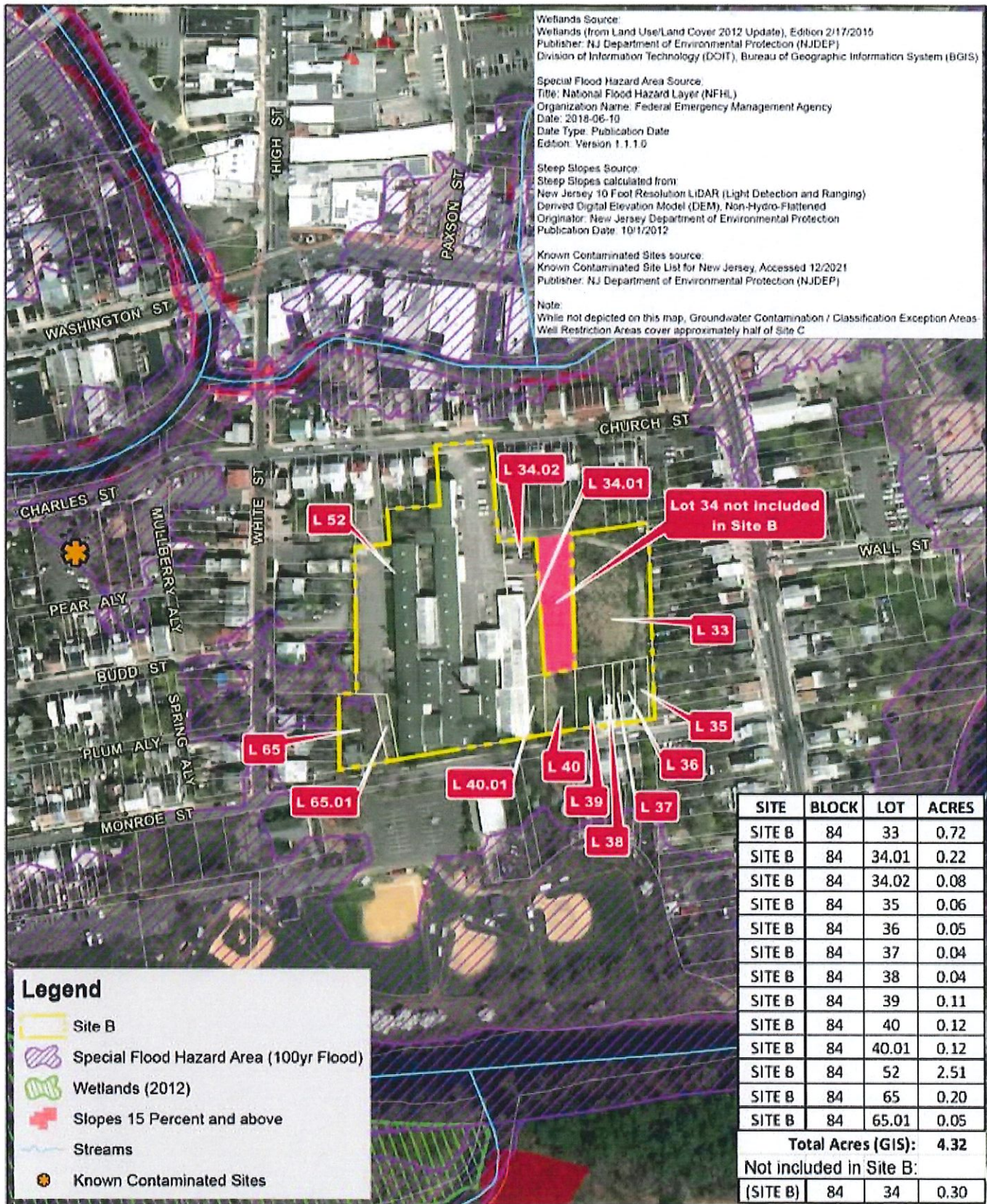


Clarke Caton Hintz ● ● ●
 Architecture
 Planning
 Landscape Architecture

Inclusionary Overlay Site A

LOCATION:
 Mount Holly, Burlington County, NJ

DATE:
 February 2022



Wetlands Source:
 Wetlands (from Land Use/Land Cover 2012 Update), Edition 2/17/2015
 Publisher: NJ Department of Environmental Protection (NJDEP)
 Division of Information Technology (DOIT), Bureau of Geographic Information System (BGIS)

Special Flood Hazard Area Source:
 Title: National Flood Hazard Layer (NFHL)
 Organization Name: Federal Emergency Management Agency
 Date: 2018-06-19
 Date Type: Publication Date
 Edition: Version 1.1.1.0

Steep Slopes Source:
 Steep Slopes calculated from:
 New Jersey 10 Foot Resolution LiDAR (Light Detection and Ranging)
 Derived Digital Elevation Model (DEM), Non-Hydro-Flattened
 Originator: New Jersey Department of Environmental Protection
 Publication Date: 10/1/2012

Known Contaminated Sites source:
 Known Contaminated Site List for New Jersey, Accessed 12/2021
 Publisher: NJ Department of Environmental Protection (NJDEP)

Note:
 While not depicted on this map, Groundwater Contamination / Classification Exception Areas / Well Restriction Areas cover approximately half of Site C



Clarke Caton Hintz ● ● ●
 Architecture
 Planning
 Landscape Architecture

Inclusionary Overlay Site B

LOCATION:
 Mount Holly, Burlington County, NJ

DATE:
 February 2022

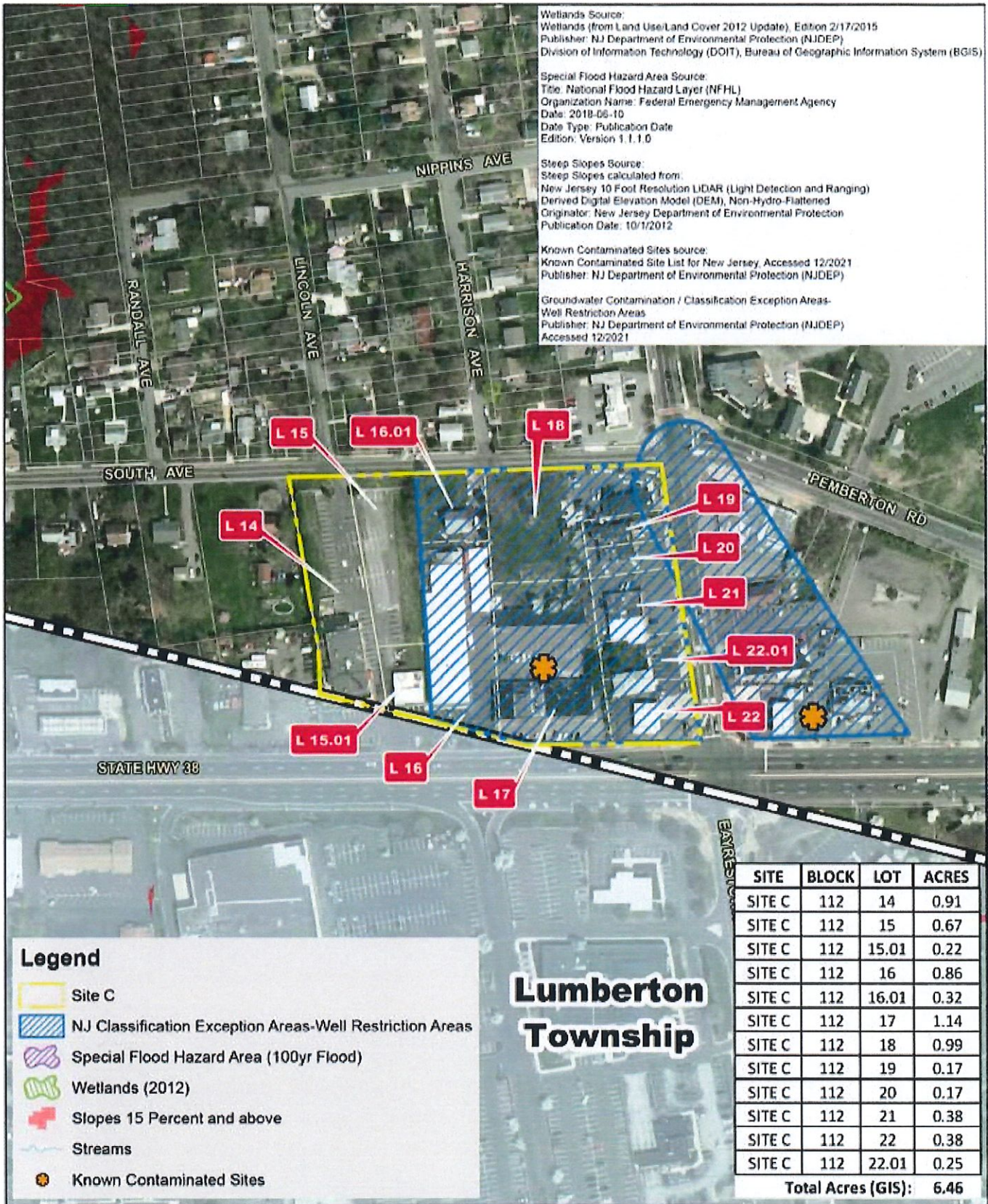
Wetlands Source:
 Wetlands (from Land Use/Land Cover 2012 Update), Edition 2/17/2015
 Publisher: NJ Department of Environmental Protection (NJDEP)
 Division of Information Technology (DOIT), Bureau of Geographic Information System (BGIS)

Special Flood Hazard Area Source:
 Title: National Flood Hazard Layer (NFHL)
 Organization Name: Federal Emergency Management Agency
 Date: 2018-06-10
 Date Type: Publication Date
 Edition: Version 1.1.1.0

Steep Slopes Source:
 Steep Slopes calculated from:
 New Jersey 10 Foot Resolution LIDAR (Light Detection and Ranging)
 Derived Digital Elevation Model (DEM), Non-Hydro-Flattened
 Originator: New Jersey Department of Environmental Protection
 Publication Date: 10/1/2012

Known Contaminated Sites source:
 Known Contaminated Site List for New Jersey, Accessed 12/2021
 Publisher: NJ Department of Environmental Protection (NJDEP)

Groundwater Contamination / Classification Exception Areas-
 Well Restriction Areas
 Publisher: NJ Department of Environmental Protection (NJDEP)
 Accessed 12/2021

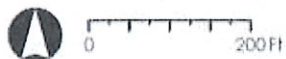


Legend

- Site C
- NJ Classification Exception Areas-Well Restriction Areas
- Special Flood Hazard Area (100yr Flood)
- Wetlands (2012)
- + Slopes 15 Percent and above
- ~ Streams
- * Known Contaminated Sites

**Lumberton
Township**

SITE	BLOCK	LOT	ACRES
SITE C	112	14	0.91
SITE C	112	15	0.67
SITE C	112	15.01	0.22
SITE C	112	16	0.86
SITE C	112	16.01	0.32
SITE C	112	17	1.14
SITE C	112	18	0.99
SITE C	112	19	0.17
SITE C	112	20	0.17
SITE C	112	21	0.38
SITE C	112	22	0.38
SITE C	112	22.01	0.25
Total Acres (GIS):			6.46

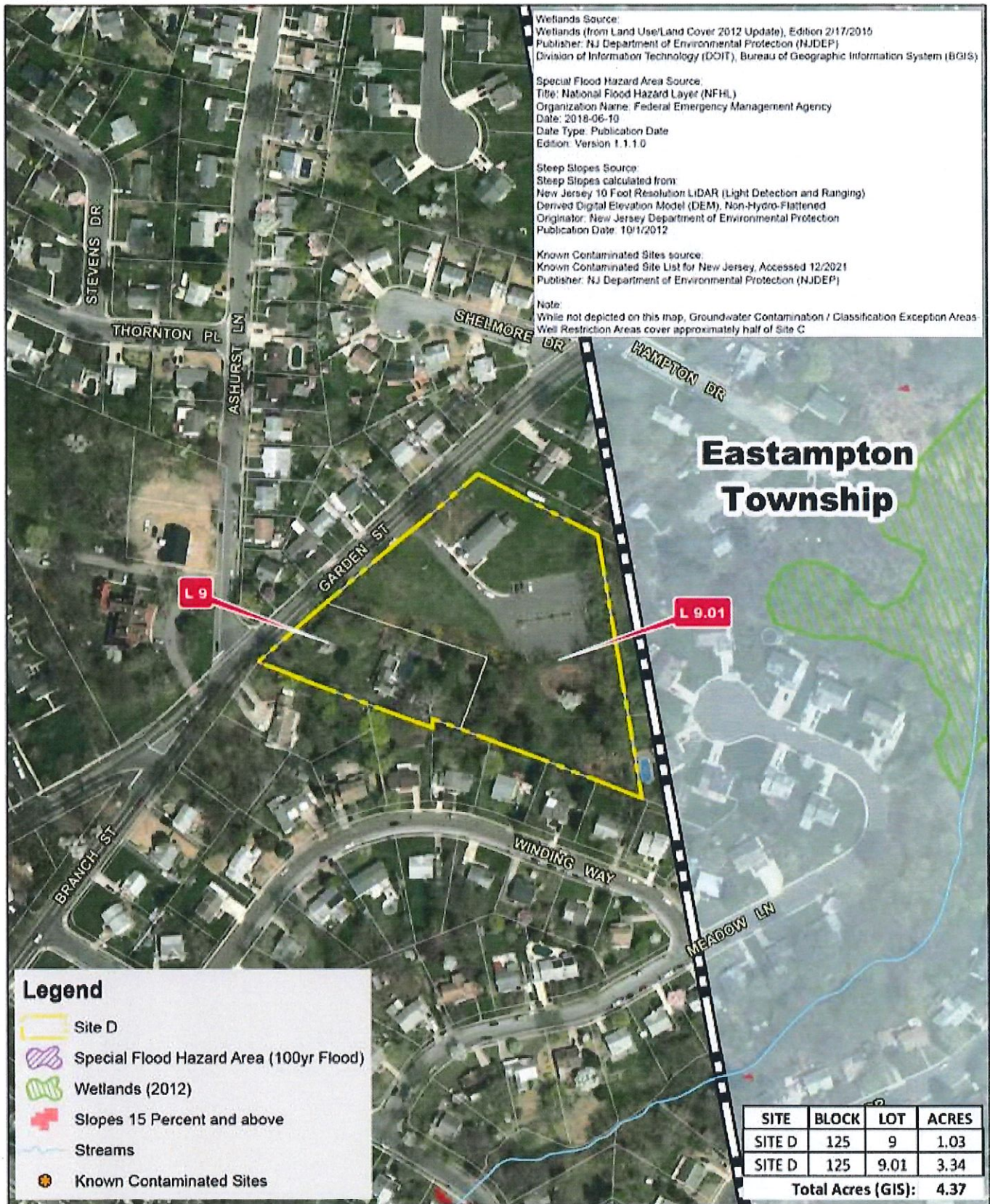


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 Planning
 Landscape Architecture

Inclusionary Overlay Site C

LOCATION:
 Mount Holly, Burlington County, NJ

DATE:
 February 2022



Wetlands Source:
 Wetlands (from Land Use/Land Cover 2012 Update), Edition 2/17/2015
 Publisher: NJ Department of Environmental Protection (NJDEP)
 Division of Information Technology (DOIT), Bureau of Geographic Information System (BGIS)

Special Flood Hazard Area Source:
 Title: National Flood Hazard Layer (NFHL)
 Organization Name: Federal Emergency Management Agency
 Date: 2018-06-19
 Date Type: Publication Date
 Edition: Version 1.1.1.0

Steep Slopes Source:
 Steep Slopes calculated from:
 New Jersey 10 Foot Resolution LIDAR (Light Detection and Ranging)
 Derived Digital Elevation Model (DEM), Non-Hydro-Flattened
 Originator: New Jersey Department of Environmental Protection
 Publication Date: 10/1/2012

Known Contaminated Sites source:
 Known Contaminated Site List for New Jersey, Accessed 12/2021
 Publisher: NJ Department of Environmental Protection (NJDEP)

Note:
 While not depicted on this map, Groundwater Contamination / Classification Exception Areas
 Well Restriction Areas cover approximately half of Site C

Eastampton Township

Legend

- Site D
- Special Flood Hazard Area (100yr Flood)
- Wetlands (2012)
- Slopes 15 Percent and above
- Streams
- Known Contaminated Sites

SITE	BLOCK	LOT	ACRES
SITE D	125	9	1.03
SITE D	125	9.01	3.34
Total Acres (GIS):			4.37



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 Architecture
 Planning
 Landscape Architecture

Inclusionary Overlay Site D

LOCATION:
 Mount Holly, Burlington County, NJ

DATE:
 February 2022

**Township of Mount Holly, Burlington County
Ownership Information for Proposed Inclusionary Overlay Sites**

Site	Block	Lot	Acreege	Address	Owner of Record	Notes
Site A	66.02	1	0.5	280 HOLEMAN ST	280 HOLEMAN ST LLC	
Site A	66.02	1.01	0.3	24 CARLTON ST	FRANKLIN, MARVIN F	
Site A	66.02	2	2.74			Tax records say included with lot 1
Site A	66.02	6	0.44	400 WASHINGTON ST	NEW JERUSALEM HOUSE OF GOD	
Site A	66.02	6.05	0.96	10 S SOMERSET AVE	PARAGON VAN LINES	
Site B	84	33	0.72	59 MONROE STREET REAR	30 CHURCH ST DEVELOPMENT GROUP LLC	
Site B	84	34.01	0.22			
Site B	84	34.02	0.08			Tax records say included with lot 52
Site B	84	35	0.06	59 E MONROE ST	THE SALT & LIGHT CO	
Site B	84	36	0.05	57 E MONROE ST	MINKA	
Site B	84	37	0.04	55 E MONROE ST	MINKA	
Site B	84	38	0.04	53 E MONROE ST	FRIA PROPERTIES, LLC	
Site B	84	39	0.11			Tax records say included with lot 38
Site B	84	40	0.12			Tax records say included with lot 52
Site B	84	40.01	0.12			Tax records say included with lot 52
Site B	84	52	2.51	30 CHURCH ST	30 CHURCH ST DEVELOPMENT GROUP LLC	
Site B	84	65	0.2	15 E MONROE ST	9TH GENERATION ACQUISITIONS LLC	
Site B	84	65.01	0.05			Tax records say included with lot 52

**Township of Mount Holly, Burlington County
Ownership Information for Proposed Inclusionary Overlay Sites**

Site	Block	Lot	Acreage	Address	Owner of Record	Notes
Site C	112	14	0.91	1643 ROUTE 38	GEMCAP DEVELOPMENT LLC	Tax records say PSE&G easement granted June 2021
Site C	112	15	0.67			
Site C	112	15.01	0.17	1645 ROUTE 38	DURELLI, STEVEN P & PATRICIA L	
Site C	112	16	0.22	1647 ROUTE 38	AJP PROPERTIES, LLC	
Site C	112	16.01	0.38	114 SOUTH AVE	BORDEAUX, ROBERT JR	
Site C	112	17	0.86	1649 ROUTE 38	ERRV LLC % PESKIN REALTY CO LLC	
Site C	112	18	0.32	426 PINE ST	CHRIST THE REDEEMER CHURCH	
Site C	112	19	1.14	434 PINE ST	TAI YUN, INC	
Site C	112	20	0.99			Tax records say included with lot 19
Site C	112	21	0.17	436 PINE ST	TAI YUN, INC	
Site C	112	22	0.38	1651 ROUTE 38	255 LAKE AVENUE ST JAMES LLC	
Site C	112	22.01	0.25	440 PINE ST	255 LAKE AVENUE ST JAMES LLC	
Site D	125	9	1.03	600 GARDEN ST	MAY, CURTIS A & KAYREN A	
Site D	125	9.01	3.34	GARDEN ST	N J CONF ASSOC SEVENTH-DAY ADVNT	

Inclusionary Overlay Zoning: Because of Virtua's change in plans, the Township will rescind the previously adopted inclusionary overlay zoning on various lots within Blocks 97 through 101, the hospital site. In its place, the Township has agreed to adopt inclusionary overlay zoning, permitting multi-family apartments and townhomes up to four stories in height at a density of 20 units per acre, and requiring a 20% affordable housing set-aside, on the following four sites (see aerial map of sites above with site labels as depicted below):

- Site A - Block 66.02, lots 1, 1.01, 2, 6, and 6.05 (+/- 4.5 acres);
- Site B - Block 84, lots 33, 34.01, 34.02, 35 through 40, 40.01, 52, 65, and 65.01 (+/- 4.5 acres);
- Site C - Block 112, lots 14 through 21, 15.01, 16.01, 22.01, and 22 (+/- 6 acres);
- Site D - Block 125, lots 9 and 9.01 (+/- 4 acres).

Below is a preliminary site suitability analysis of each of the new sites. As part of its amended Housing Element and Fair Share Plan (HE/FSP), the Township must fully address COAH's site "suitability" requirements at N.J.A.C 5:93-5.3. At the hearing, the Township should provide testimony on any preliminary information the Township may have on the issues of environmental contamination on Site A and Site C noted below, with additional information provided in the Township's full site suitability discussion in the Township's amended HE/FSP (Condition 1).

Site A includes five lots at the very southwestern edge of the Township at its boundary with Hainesport Township, fronting on the west side of South Somerset Avenue and the south side of Holeman Street. South Somerset Avenue meets Washington Street, which is County Route 537, a short distance to the north of the site, and Holeman Street dead-ends to the east at Carlton Avenue, which also provides access to Washington Street. Two NJ Transit bus routes, with service between Philadelphia and Asbury Park and between Florence and the Walter Rand Transportation Center in Camden, have stops on Washington Street within a quarter-mile walk. The site is in state Planning Area 2 (PA 2), the Suburban Planning area, where infill redevelopment is encouraged, and is within the Township's public water and sewer service areas. There are no wetlands or floodplains that would impede inclusionary residential development on the site.

Behind the lots that front on South Somerset Avenue are residences in the Township of Hainesport, and across Holeman Avenue are residences and a church, food pantry and community center. The land immediately to the south of the Holeman Street lots is vacant, with dirt-road access to a large-scale solar installation in Hainesport. There is a residential structure with an address of 24 Carlton Avenue on Lot 1; Lot 1.01 is vacant, and wraps around Lot 1 with frontage on both Carlton Avenue and Holeman Street; the former Arrow Safety Devices facility on Lot 2 has been demolished to its foundation; and a disused commercial/storage structure sits on Lot 6 and a portion of Lot 6.05. The state Department of

Environmental Protection's (DEP's) GeoWeb mapping shows there is a small area of known groundwater contamination on Lot 2, with a Remedial Action Report due by the end of February 2022.

Site B comprises 13 lots on the north side of East Monroe Street, a one-way street that runs west from Pine Street. The state DEP's GeoWeb additionally shows a Lot 34 that is not included among the 13 lots listed in the Settlement Agreement, but is surrounded on three sides by included lots and has no street access except via lot 34.01. TaxMaps shows no lots numbered 34 in Block 84.

The Township must verify the current numbers of the lots to be included in Site B (Condition 2).

The site is two blocks from Mill Street, which is County Route 621, near where Mill Street intersects with Washington Street. Across Pine Street to the east is Mill Dam Park, and across East Monroe Street to the south is Monroe Park, beyond which is the south branch of the Rancocas Creek. Two NJ Transit bus routes, with service between Philadelphia and Asbury Park and between Florence and the Walter Rand Transportation Center in Camden, have stops on Washington Street and Pine Street within a quarter-mile walk. The site is within state PA 2 where infill redevelopment is encouraged. The site is also within the Township's public water and sewer service areas. There are no wetlands on the site that would impede inclusionary residential development. A small portion of one lot is in a flood hazard area, but not of a size or in a location that would affect inclusionary residential development.

The site is surrounded by smaller-lot single-family and duplex residential development. Some of the lots that comprise the site are vacant, others have existing dwellings on them, and Lots 34.01, 40.01 and 52 contain a large disused industrial/commercial building accessed from Church Street to the north.

Site C sits at the southern edge of the Township at its border with Lumberton Township. The site is bounded to the north by East South Avenue and to the east by Pine Street. Across East South Avenue are residential development and Creek Island Park; across Pine Street is residential development; and to the south of the site state Route 38 runs east-west. Two NJ Transit bus routes, with service between Philadelphia and Asbury Park and between Florence and the Walter Rand Transportation Center in Camden, have stops on Pine Street within a quarter-mile walk. The site is within state PA 2 where infill redevelopment is encouraged. The site is also within the Township's public water and sewer service areas.

There are a variety of buildings on the lots, including residences, a church, some neighborhood amenity retail and restaurants, and a disused former industrial/commercial facility. Access to some of the lots is currently most readily available from Route 38 in Lumberton. Lot 17, the site of the Holly Edge Shopping

Center, is listed as having known groundwater contamination, and the entire eastern portion of the site, including lots 16, 16.01, and 17-22, is listed as a CEA groundwater contamination area.

Site D fronts on the southeastern side of Garden Street, which is County Route 537, in the northeastern edge of the Township on its border with Eastampton Township. It is surrounded by single-family residential, and the Village Square Apartments are a short distance to the southwest. The site is within state PA 2 where infill redevelopment is encouraged. The site is also within the Township's public water and sewer service areas. There are no wetlands or floodplains that would impede inclusionary residential development on the site. There is a single-family home on Lot 9 and a house of worship and associated parking on Lot 9.01.

Unlike the overlay zoning adopted on the 20.55-acre hospital site, which permitted densities of between five and 18 units per acre depending on the type of dwelling, and only required multi-family inclusionary development on 80% of the zoned acreage, the newly proposed inclusionary overlay zoning will require a 20% affordable housing set-aside and permit multi-family and townhouse development at a density of 20 dwelling units per acre on the four sites that total 19 acres. In addition, the 2021 Agreement requires that all affordable units generated by the overlay inclusionary zoning be family units, while the overlay zoning on the hospital site permitted 25% of all affordable units developed to be age-restricted. As with the 2019 Agreement, the 2021 Agreement requires the overlay zoning to remain in place for at least 20 years.

The Township must rescind the inclusionary overlay zoning previously adopted on the Virtua Hospital site, and must submit for review and then, within 90 days of Court approval of the 2021 Agreement, adopt an overlay zoning ordinance covering the four sites listed above (Condition 3).

Mandatory Affordable Housing Set-Aside: Recognizing that the rescission of the inclusionary overlay zoning on the hospital site represents a loss of affordable housing opportunity, the 2021 Agreement includes a new provision requiring the Township to adopt a mandatory inclusionary affordable housing set-aside ordinance. The set-aside ordinance would require a 20% affordable housing set-aside if the affordable units are for sale, and a 15% set-aside if the affordable units are for rent, for any residential development, including the residential portion of a mixed-use development, that consists of five or more new residential units at a density of six units per acre or higher, that results from a municipal rezoning or zoning amendment, a use or density variance, or the adoption of a new or amended redevelopment or rehabilitation plan. The 2021 Agreement provided draft language for the ordinance.

Within 90 days of Court approval of the 2021 Agreement, the Township must adopt the mandatory set-aside ordinance in essentially the form provided as part of the 2021 Agreement (Condition 4).

The Township has agreed to ensure that all affordable units provided through the inclusionary overlay zone and the mandatory affordable housing set-aside comply with COAH and Uniform Housing Affordability Controls ("UHAC") requirements as summarized in both the 2019 and 2021 Settlement Agreements.

Amended Housing Element and Fair Share Plan

Within 90 days of Court approval of the 2021 Agreement, the Township must adopt an amended Housing Element and Fair Share Plan that notes the substitution of compliance mechanisms, includes site suitability analysis per N.J.A.C. 5:93-5.3 for each of the four sites subject to the new inclusionary overlay zone, and includes the adoption of the mandatory set-aside ordinance as a new compliance mechanism (Condition 5).

5.0 THE FAIRNESS ANALYSIS

The Township's 2021 Settlement Agreement with FSHC must be subjected to the fairness analysis embodied in the East/West Venture case referenced above. Before doing so, it is worth noting, as the Court did in Morris County Fair Housing Council v. Boonton Township 197 N.J. Super, that "...it may be assumed that generally a public interest organization will only approve a settlement which it conceives to be in the best interest of the people it represents." FSHC was involved in all aspects of this case including the prior determination of the Township's fair share allocation and the on-the-ground identification of four new sites for inclusionary overlay zoning that will replace the Virtua Hospital overlay zone. FSHC is a public interest advocacy organization in New Jersey devoted to promoting the production of housing affordable to low- and moderate-income households. Consequently, FSHC's endorsement of the 2021 Settlement Agreement is a compelling indication that it believes the Agreement to be fair and reasonable.

Under the East/West Venture case, the Court established criteria for evaluating the fairness of settlements between municipalities and builder plaintiffs in exclusionary zoning cases. By contrast, this settlement involves a municipality and a public interest organization. Consequently, the East/West Venture fairness criteria must be adapted to serve the instant matter.

The first step under the East/West Venture case is to evaluate the number and rationale for the affordable housing units to be provided by the developer(s). However, the fairness of the Settlement Agreement between Mount Holly and FSHC must be viewed from a Township-wide perspective.

First, the number and rationale for the affordable housing units to be provided must be considered by evaluating the Township's amended compliance mechanisms. As the Court previously approved the Township's three-part fair share obligation and preliminarily approved the Township's Rehabilitation compliance measures by Order entered May 23, 2019, this analysis will focus on the amended compliance mechanisms.

The four sites that will be the subject of new inclusionary overlay zoning total approximately 19 acres, which is similar in total area to the hospital site. However, unlike the overlay zoning on the hospital site, the overlay zoning on these sites will require an affordable housing set-aside across all 19 acres, and at a higher density of 20 units per acres. In addition, all affordable units in the new inclusionary overlay zones will be required to be family affordable rentals, where the hospital overlay zoning permitted 25% of affordable units to be age-restricted. The higher density and the requirement for family affordable rental units are additional steps intended to maximize the potential for these sites to produce as many or possibly more units than the hospital site would have, and to ensure that all affordable housing developed on these sites is accessible to families, including very low-income families.

Second, under the fairness analysis, any other contributions made by the municipality or FSHC must be considered. Through the settlement, Mount Holly and FSHC are able to avoid delays and the expense of a trial, which results in the Township's focus on providing additional affordable housing opportunities.

As stipulated in the 2021 Settlement Agreement, Mount Holly has fully addressed its Rehabilitation obligation. The Township is not subject to any Prior or Third Round affordable housing obligations, but has agreed to implement inclusionary overlay zoning on various lots to replace the overlay zoning previously adopted on the site of the existing Virtua Memorial Hospital. The Memorial Hospital overlay zoning will be rescinded.

Because of the loss of the hospital inclusionary overlay zoning, the 2021 Agreement also requires the Township to adopt a mandatory inclusionary affordable housing set-aside ordinance as discussed above, that is intended to capture additional future affordable housing opportunities. This is a new compliance mechanism not previously included in the 2019 Agreement or in the Township's Fair Share Plan, and, along with the higher density in the proposed inclusionary overlay zoning of the four sites than in the zone to be rescinded, represents the Township's good-faith effort to provide for future development of affordable units.

Lastly, the Court is to consider any other components of the Agreement that contribute to the municipality's satisfaction of its Mount Laurel obligation. The 2021 Agreement reiterates, expands upon, or updates a number of provisions from the 2019 Agreement that facilitate the Township's satisfaction of its fair share housing responsibilities both now and into the future, as follows:

- Within 90 days of the Court's approval of the 2021 Agreement, the Township must introduce and adopt ordinances providing for the amendment of the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of the 2021 Agreement (see **Conditions 3 and 4, above**), and must adopt an amended Housing Element and Fair Share Plan in conformance with the 2021 Agreement (see **Condition 5, above**). Although the 2021 Agreement also requires an amendment of the Township's 2019 Spending Plan, I would request that FSHC agree to accept the Township's prior court-approved 2019 Spending Plan, as there are no new contemplated expenditures set forth in the 2021 Agreement.
- The 2021 Agreement specifies a date certain, December 22, as the date each year by which the Township must provide annual reports of all housing activity and trust fund activity, and details the information that must be included in the reports. The reports must be posted on the Township's municipal website with a copy to FSHC.
- Within 90 days of the Court's approval of the 2021 Agreement, the Township must adopt an affirmative marketing plan that includes FSHC and other organizations listed in the 2021 Agreement in its list of community and regional organizations that must be notified when affordable units are available (**Condition 6**), and to include posting on the New Jersey Housing Resource Center website in accordance with applicable law. Both the Township and any other developers or administrative agents conducting affirmative marketing must provide notice to those organizations of any available affordable units.
- All affordable units provided through the inclusionary overlay zone or the mandatory affordable housing set-aside must fully comply with UHAC, including but not limited to the required bedroom and income distribution, with the sole exception that 13% of all affordable units referenced in the Township's compliance plan (fractional units must be rounded up) must be affordable to households earning 30% or less of the regional median income, with at least half of the very low-income units being available to families.
- At least half of all affordable units provided through the inclusionary overlay zone or the mandatory affordable housing set-aside must be affordable to low-income households (which includes the requirement that 13% of all new affordable units be affordable to very low-income households); the remainder may be made affordable to moderate-income households.

- At least 25% of all affordable units provided through the inclusionary overlay zone or the mandatory affordable housing set-aside must be rental units, at least half of which must be available to families.
- All new affordable units are to be subject to affordability controls of at least 30 years from the date of initial occupancy, and to affordable deed restrictions as provided for by UHAC, with the sole exception that very low-income is defined as at or below 30% of the median income, pursuant to the Fair Housing Act.
- The Township must maintain the affordability controls unless and until the Township, in its sole discretion, takes action to extend or release the affordable unit from such controls in accordance with UHAC and applicable law. If, after at least 30 years, the Township acts to release an affordable unit from such controls, the Township must ensure that the affordability controls remain in effect until the date on which a rental unit becomes vacant due to the voluntary departure of the occupant household in accordance with N.J.A.C. 5:80-26.11(b).
- All new affordable units in an inclusionary development must be integrated to the extent possible with the market-rate units. Where the market-rate and affordable units are of the same tenure, there will be a strong presumption that it is possible for the affordable and market-rate units to be fully integrated. In buildings with multiple dwelling units, the affordable units must be generally distributed within each building along with the market-rate units, and must not be concentrated in separate buildings or in separate areas or floors from the market-rate units. The residents of the affordable units must have full and equal access to all of the entryways, amenities, common areas, and recreation areas and facilities as do the residents of the market-rate units.
- Construction of all new affordable units in an inclusionary development must be phased in compliance with N.J.A.C. 5:93-5.6(d).

These provisions, many of which are new with the 2021 Agreement, are affirmative actions the Township has agreed to take in order to foster the development of future affordable units and to ensure that any new affordable units developed are fully compliant with all regulatory and statutory requirements, thereby contributing to the satisfaction of the Township's Mount Laurel obligation on a continuing basis.

6.0 CONCLUSION AND RECOMMENDATIONS

Based on my review above, I find that the 2021 Settlement Agreement between FSHC and the Township of Mount Holly is fundamentally fair to the interests of low- and moderate-income households in the region, and I recommend that Your Honor approve the Agreement.

In addition, notwithstanding the required additional documentation for inclusion in the Township's subsequent amended compliance plan as contemplated by the Agreement, I would recommend that Your Honor preliminarily approve the Township's new compliance measures, subject to the conditions herein. The Court may wish to reference the conditions noted above in any Court Order approving the 2021 Settlement Agreement.

I would be happy to answer any questions that Your Honor or the parties may have either prior to or at the Fairness Hearing.