

**AFFORDABLE HOUSING  
THIRD ROUND MIDPOINT REALISTIC OPPORTUNITY REVIEW  
BOROUGH OF HO-HO-KUS  
BERGEN COUNTY, NEW JERSEY**

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July 1, 2020

**PURPOSE**

The requirement for a midpoint realistic opportunity review derives from the Fair Housing Act (“FHA”) at N.J.S.A. 52:27D-313, which provides: “[t]he Council (Council on Affordable Housing or COAH) shall establish procedures for a realistic opportunity review at the midpoint of the certification period and shall provide for notice to the public.” Although COAH failed to adopt regulations or procedures for a midpoint realistic opportunity review, the purpose and process is set forth in Ho-Ho-Kus Borough’s Court-approved Settlement Agreement with Fair Share Housing Center (“FSHC”).

The purpose of the midpoint realistic opportunity review is for Ho-Ho-Kus to provide a status report as to the Borough’s implementation of its Court-approved Housing Element and Fair Share Plan (“Plan”), an analysis of whether any unbuilt sites or unfulfilled mechanisms towards its realistic development potential (“RDP”) continue to present a realistic opportunity and an update on unmet need mechanisms. Pursuant to the Ho-Ho-Kus/FSHC Agreement, there’s a requirement for the Borough to post this status report on its website, with a copy to FSHC and the Intervenors in the Borough’s Declaratory Judgment matter (Docket No. BER-L-4253-15). The Agreement also contemplates review of unmet need mechanisms, though the realistic opportunity for the development of unmet need mechanisms during the compliance period is not applicable. In the event the Court determines that an RDP site or mechanism no longer presents a realistic opportunity and should be replaced or if the Court determines that any unmet need mechanisms should be revised or supplemented, then Ho-Ho-Kus Borough shall have the opportunity to supplement or revise its plan to correct any RDP or unmet need deficiency.

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To facilitate the review process, in addition to posting this Mid-Point Review Report on its website and submitting copies to FSHC and the Intervenors, Ho-Ho-Kus Borough will place on file a copy of this report for public inspection at the office of the Ho-Ho-Kus Borough Clerk or, if the municipal building is still closed due to the pandemic, interested parties may request a copy be mailed. Lastly, the Borough will provide newspaper notice of the availability of this report. The Borough's notice to the public of this Mid-Point Review Report will include a 30-day deadline for any interested party/Intervenor comments/ requests for a court hearing to be submitted.

## **BACKGROUND**

The Ho-Ho-Kus/FSHC Settlement Agreement was executed on January 12, 2017. Following a March 30, 2017 Fairness Hearing, the Settlement Agreement was approved by Superior Court Order, dated May 16, 2017, which found the Agreement and the Borough's Preliminary RDP and Unmet Need Compliance Measures fair to the interests of low- and moderate-income citizens of the region. Ho-Ho-Kus prepared a Housing Element and Fair Share Plan which was initially adopted by the Borough's Planning Board on July 20, 2017 and subsequently amended on March 18, 2018. The Borough's Plan was reviewed at a Court Compliance Hearing on December 18, 2017 at which time the Court issued a Conditional Judgment of Repose and, subsequently, Ho-Ho-Kus received a final Judgment of Compliance and Repose ("JOR") on June 11, 2018. This final JOR approved the Borough's 2018 Plan including the Borough's RDP and unmet need compliance measures described below and provided Ho-Ho-Kus with immunity from builder remedy lawsuits through July 1, 2025.

As reflected in the Borough's Court-approved Settlement Agreement and 2018 Plan, the Borough's Third Round Fair Share obligation is as follows:

- Third Round Rehabilitation Share: 7
- Prior Round 1987-1999 Obligation: 83
- Third Round 1999 – 2025 Gap and Prospective Obligation: 195
- Combined Prior Round/Third Round RDP = 30, Unmet Need = 248.  
The Settlement Agreement and JOR reflect the Court's approval of Ho-Ho-Kus Borough's vacant land adjustment ("VLA"), which adjusts the 278-unit cumulative

Prior Round (83) and Third Round (195) obligations to a 30-unit realistic development potential (“RDP”) and a 248-unit unmet need.

Bergen County Rehabilitation Program Update – To address its Rehabilitation Share, the Borough participates in the Bergen County Home Improvement Loan Program. According to County Program Staff, there have been no applications yet for rehabilitation work from income-eligible homeowners in the Borough. The Court approved a waiver from the requirement for a local rental rehabilitation program to be established.

**REALISTIC OPPORTUNITY REVIEW - RDP COMPLIANCE MECHANISMS**

Per the COAH Prior Round regulations as upheld by the NJ Supreme Court, the realistic opportunity standard applies to all mechanisms for non-VLA municipalities and to RDP mechanisms for VLA municipalities such as the Borough of Ho-Ho-Kus. The Borough continues to provide a realistic opportunity for each Court-approved RDP compliance mechanism as shown in the chart below:

<u>Compliance Mechanisms</u>	<u>Description</u>	<u>Status</u>	<u>Notes/Additional Information</u>
The Crossings at Ho-Ho-Kus	Inclusionary Development	All approvals granted, developer filing for construction permits	10 affordable family rental units
Bergen County United Way - 100% Affordable Development	Family and Special Needs affordable rental units	Construction – site work began in Spring 2020	13 total affordable rental units (10 family and 3 special needs units)
Maple Avenue Site	Inclusionary Development	Planning Board approval received on 2/13/20, Borough anticipates developer filing for construction permits	1 affordable family rental unit

**UNMET NEED**

The Borough has adopted a number of unmet need mechanisms including a development fee ordinance as well as overlay zoning and a Borough-wide mandatory setaside ordinance to help address its 248-unit combined unmet need. According to William Jones, Ho-Ho-Kus Borough Administrator, except for the inclusionary/100% affordable developments listed in the Borough’s Plan and noted above, there have been no development proposals or development applications received by the Borough, no rezonings and no redevelopment plans adopted by the Borough since the HHK/FSHC Agreement was approved by the Court that would have triggered an inclusionary development instead of a Borough-required affordable housing development fee. Additionally, no development has occurred or has been proposed within the Borough’s new Downtown overlay inclusionary zoning or to trigger the new Borough-wide mandatory setaside ordinance as listed below. Lastly, per Mr. Jones, there have been no changed circumstances that resulted in additional parcels becoming available for inclusionary development that were neither previously identified in calculating the Borough’s RDP nor included in the Downtown inclusionary overlay zone.

<u>Unmet Need Mechanisms</u>	<u>Ordinance Adopted</u>	<u>Additional Information</u>
Borough Development Fee Ordinance	Yes	See Borough’s annual 2020 trust fund monitoring report posted to the Borough’s website. Most, if not all, of the collected trust funds will fund the required very-low income affordability assistance to, and new construction of, the municipally-sponsored BC UW 100% affordable site.
Downtown Overlay Zoning (Inclusionary Overlay Zoning)	Yes	No applications have been put forth for development that would trigger the inclusionary set-aside requirements of the inclusionary overlay zones.
Borough-wide Mandatory Set-Aside Requirement	Yes	No applications have been put forth for development that would trigger the inclusionary set-aside requirements of the Borough-wide ordinance.

**VERY LOW-INCOME ANALYSIS**

For more details, see the Borough’s very-low income monitoring report posted to the Borough’s website. The Borough has fully addressed its very-low income requirements. Also, the Borough has addressed its family very-low income requirements with three (3) of the four (4) very-low income units required to be family rentals.

<u>Affordable Units Approved/Built Since 2008</u>	<u>Very Low Income Requirement</u>	<u>Number of Very- Low Income Units Proposed/Provided</u>	<u>Status</u>
The Crossings at Ho-Ho-Kus	10 total affordable units x 0.13 = 1.3	2 very-low income family rentals	Permitting Stage
BCUW 100% Affordable Development	13 total affordable units x 0.13 = 1.69	2 very-low income rentals (1 family, 1 special needs)	Construction has begun
Maple Avenue	1 affordable unit x 0.13 = 0.13	0	
<b>Total</b>	<b>3.12</b>	<b>4</b>	

**CONCLUSION**

The Borough’s Court-approved compliance mechanisms addressing its RDP create a realistic opportunity as each compliance mechanism has met the development requirements (as extended by FSHC) set forth in the Court-approved Settlement Agreement and in the Court’s 2018 JOR. The Borough maintains sufficient mechanisms for addressing unmet need. In the event the Court determines that an RDP site or mechanism no longer presents a realistic opportunity and should be replaced or if the Court determines that any unmet need mechanisms should be revised or supplemented, then Ho-Ho-Kus Borough shall have the opportunity to supplement or revise its plan to correct any RDP or unmet need deficiency.

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