

**THIRD ROUND AFFORDABLE HOUSING  
MIDPOINT REALISTIC OPPORTUNITY REVIEW  
CITY OF ABSECON  
ATLANTIC COUNTY, NEW JERSEY**

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*IMO Application of the City of Absecon  
Docket No. ATL-L-2726-12*

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*Prepared By:*



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## 1.0 PURPOSE

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The City of Absecon’s 2018 Settlement Agreement with Fair Share Housing Center (“FSHC”) requires that the City comply with the statutory midpoint review requirements of the Fair Housing Act (“FHA”) and N.J.S.A. 52:27D-313, which provides: “[t]he Council shall establish procedures for a realistic opportunity review at the midpoint of the certification period and shall provide for notice to the public.” Pursuant to the FSHC Settlement Agreement, that review requires the City to post on its website, with a copy to FSHC and an opportunity for comment, a status report regarding its fair share compliance mechanisms and whether or not unbuilt sites/unfulfilled mechanisms continue to present a realistic opportunity for construction of affordable housing. This report has been prepared to comply with those statutory midpoint review requirements.

## 2.0 BACKGROUND

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Following the New Jersey Supreme Court’s 2015 Mount Laurel decision, the City filed its Declaratory Judgment action with the Superior Court on July 2, 2015. Through the declaratory judgment process, the City and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over the matter to review. The City of Absecon entered into a Settlement Agreement with FSHC dated April 30, 2018. Following a fairness hearing conducted on May 25, 2018, the municipality’s affordable housing proposal was deemed fair to the low- and moderate-income citizens of the state, and an order approving the settlement agreement was entered on August 6, 2018. This report has been prepared to comply with the terms of that Settlement Agreement, which require a review at the midpoint of the Third Round (July 1, 2020) of whether the unbuilt compliance mechanisms included in the Settlement Agreement and the Housing Element and Fair Share Plan (“HEFSP”) continue to present a realistic opportunity for the development of affordable housing.

The Settlement Agreement established the City’s Third Round Fair Share obligations as follows:

- Rehabilitation Share/Present Need: 29 units

- Prior Round Obligation: 144 units
- Third Round Gap and Prospective Need Obligation: 94 units

### **3.0 REHABILITATION OBLIGATION REVIEW**

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The City has a Rehabilitation Obligation/Present Need of 29 units, which, at the time the HEFSP was adopted, was to be addressed through a continued agreement with the Atlantic County Improvement Authority (“ACIA”).

The City completed one rehabilitation, located at 120 N. New Road, unit in 2014. The hard cost incurred on the rehabilitation was \$12,445. As such, the City’s Rehabilitation Obligation may be reduced to 28 units.

### **4.0 PRIOR ROUND REVIEW**

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The City’s Prior Round obligation of 144 units was fully satisfied with 108 affordable housing units and 36 associated rental bonus credits. These units are comprised of credits without controls, prior cycle Arc of Atlantic County group home credits, Caring Inc. and Community Quest special needs facilities, Absecon Gardens, the senior rental portion of AB Visions, and part of Conifer/Clayton Mill Run. With the exception of Absecon Gardens (discussed below), all of these developments are completed and occupied.

#### **Absecon Gardens**

It is our understanding that Absecon Gardens has not built the remaining seven (7) affordable units required by the City’s Settlement Agreement with FSHC. At the time the HEFSP was adopted, only five (5) of the required twelve (12) affordable units were completed; however, the City received credit for the remaining seven (7) units, as evidence of a realistic opportunity was established through existing zoning and approvals.

With 48 of Absecon Gardens' proposed 58 units completed during Phase I, the outstanding seven (7) affordable units are required to be constructed during Phase II of development. However, given that Phase II is planned to have ten (10) townhouse units, it is not financially viable for the builder to restrict seven townhomes for low and moderate income residents (a 70% set-aside). To address this issue while maintaining the City's commitment to providing affordable housing, this office recommended that the developer be required to convert seven (7) of the existing market-rate apartments to affordable units as a condition of approval to proceed with the construction of Phase II for ten (10) market-rate townhouses.

## **5.0 THIRD ROUND REVIEW**

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The City has satisfied its 94-unit Third Round obligation with 70 units of inclusionary and 100% affordable housing developments and 24 associated rental bonus credits. This obligation is satisfied by the family rental portion of AB Visions and the majority of the Conifer/Clayton Mill Run development. Both of these projects are constructed and occupied. Additionally, pursuant to the Settlement Agreement, the City was required to amend the existing Train Station Overlay zoning district to permit high density development with affordable housing set-asides.

### **Train Station Overlay**

Following the adoption and endorsement of the City's HEFSP, on November 1, 2018 the City of Absecon adopted Ordinance 14-2018 amending the Train Station Overlay District. This amendment to §224-281 A(2)(a) of Absecon's Land use and Development Ordinance requires any development with over six dwelling units per acre to include affordable housing. It also permits a density of 35 units per acre with the inclusion of a 15% affordable housing rental set-aside and a 20% affordable housing for-sale set-aside.

## **6.0 VERY LOW INCOME ANALYSIS**

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The amended Fair Housing Act requires the City to ensure that 13% of all affordable units built, approved, or proposed since July 2008 are affordable to very low income

households with incomes of 30% or less of regional median income. Compliance mechanisms in Absecon's Plan that meet that criterion provide a total of 160 affordable units, of which at least 21 must be affordable. Of those 21, at least 10 must be available to families.

The City meets its minimum very low income requirements with 21 bedrooms from Caring Inc. and Community Quest special needs facilities, five units from AB Visions senior rentals, eight from AB Visions family rentals, and nine from Conifer/Clayton Mill Run, for a total of 43 units, 22 units greater than the 21-unit minimum. The City also exceeds the 10-unit minimum very low income family rental requirement with 17 units from AB Visions and Conifer/Clayton Mill Run.

## **7.0 TRUST FUND ANALYSIS**

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The City of Absecon has not adopted a Development Fee Ordinance and, therefore, does not maintain an Affordable Housing Trust Fund. However, pursuant to the Settlement Agreement, the City reserves the right to adopt a Development Fee Ordinance and prepare a spending plan. In this event, the City has agreed to not spend any Trust Fund monies without Court approval.

## **8.0 SUMMARY**

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The City of Absecon has taken all measures required by the Settlement Agreement to ensure that the proposed compliance mechanisms included in its adopted Housing Element and Fair Share Plan continue to present a realistic opportunity for the development of affordable housing, and anticipates that all contemplated units will be completed and occupied between now and the end of the Third Round in 2025. The income and bedroom distribution of these units will meet UHAC and FHA requirements, and the City will continue to meet its obligation to ensure that 13% of all units are affordable to very low-income households.