



# The Crisis of Fair, Affordable Housing on Long Island: An Analysis of the Long Island Workforce Housing Act

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## Executive Summary

Long Island, New York, a sprawling suburban region of over a hundred towns, has faced an increasing crisis of housing affordability in the last several decades. While originally developed as an affordable bedroom community for families seeking a better life, the dearth of affordable housing options now undercuts the region's founding vision. New developments tend to target well-off families, with middle and lower-income residents forced to pay a large portion of their income to cover high rents and to live far from transportation, quality schools, and job opportunities. Although the economy has begun to recover since the 2008 crash, the housing crisis continues to impact the region: more than half of all Long Islanders can barely afford their rent payments. Indeed, the lack of affordable housing hits residents at essentially every level of the income scale, save the very well off. A recent report by the Regional Plan Association found that workers in professions like electricians, computer support specialists, and licensed practical nurses—in addition to lower-income residents—are in dire need of affordable housing options.<sup>1</sup>

At the same time, enduring racial segregation on Long Island exacerbates the affordability crisis for the region's communities of color, in particular African American residents and the growing Latino immigrant population.<sup>2</sup> While racial diversity has increased on Long Island in recent years, a majority of communities remain over 90% white. A recent front-page Federal District Court ruling in Garden City shows that discriminatory zoning ordinances persist in the region, reinforcing residential segregation.<sup>3</sup>

Prior to the crash of 2008, home prices had risen to an all-time high, prompting Long Island housing advocates to press the New York State legislature to enact comprehensive affordable housing legislation for the region. In 2008, the state passed the Long Island Workforce Housing Act ("the Act"), which was intended to increase the supply of affordable housing in Nassau and Suffolk Counties by requiring some affordable units in most new developments. The Act mandates that local governments on Long Island require developers to make 10 percent of their housing "affordable" in developments with 5 or more units, in exchange for a density bonus of at least 10 percent over the density permitted under the existing zoning scheme.<sup>4</sup> Developers can build the affordable units in the main development, in another development in the jurisdiction, or choose to pay a fee in lieu of constructing the affordable units. Affordability under the Act is set at 130% of the "area median income" or "AMI."

Has it worked? Seven years after the passage of the Act, there have been no published assessments of its impact by New York State, the covered localities, private developers, or housing advocates. Because the Act constitutes New York State's primary legislative effort to increase the availability of affordable housing on Long Island, its efficacy—or lack thereof—should be a matter of significant public concern.

To fill this gap, the Long Island Community Foundation commissioned the Center for Popular Democracy to conduct an in-depth study of the Act in 2014 to determine whether it has in fact led to the creation of affordable housing, and if so, how such housing has impacted the affordability crisis and the problem of racial segregation in the region. The study included an exploration of recent trends in the housing market in the Long Island region; interviews with government officials in ten Long Island towns and cities, prominent housing advocates, and major Long Island housing developers; Freedom of Information Law requests; and a review of studies of state and local legislation promoting affordable housing throughout the country.

The evidence reviewed indicates that the Act has not been effective in fostering the construction of additional affordable housing. Of the 20 experts we spoke to, only one could point to a single unit of affordable housing that had been approved because of the requirements of the Act, and even that one unit had not yet been built.<sup>5</sup> A number of commentators have noted that the Act has indirectly spurred some positive movement, including greater attention to issues of affordable housing, local action to revise inclusionary zoning laws to match or surpass the requirements of the Act and increased funding for affordable housing and smart-growth development. But while these are promising signs of progress, it is clear that the Act has not solved the crisis of affordable housing in the region.

To be sure, housing development overall, including development of affordable housing, dramatically slowed in the years after the 2008 collapse—nationally, and on Long Island. Our research indicates, however, that there are fundamental problems with the Act itself, suggesting that even in a robust housing development market, the Act would have limited impact. As explored in more detail below, the Act:

- **Sets affordability too high** (at 130% of AMI) and the set-aside of “affordable” housing too low (10% of units or a fee in lieu) meaning that the Act, at best, will stimulate construction of essentially market-rate units;
- Includes **loopholes**, such as allowing developers to build affordable units off-site, that could exacerbate racial segregation, and failing to define what housing expense qualifies as affordable;
- Includes no requirements that towns keep and **report information** about affordable housing construction to the state to facilitate analysis of compliance with the Act;
- Includes **no enforcement mechanisms** to allow residents or the state to hold towns or developers accountable for violations and **no public education** on its requirements; and
- Has significant drafting and **technical problems** that complicate interpretation and application of the law.

In light of these problems, and a lack of public education efforts by the state, local governments on Long Island have continued to pursue—or not pursue—plans for housing creation on their own terms. As noted, some local governments are engaged in modest efforts to promote affordable housing development, but many others continue to oppose change.

In this report, we outline the technical fixes that the state would have to make to the Act to close loopholes and provide for meaningful enforcement. But those changes alone will do little to solve the crisis of affordability on Long Island, as long as the law requires only modest set-asides and stimulates essentially market-rate construction at 130% of AMI.

Effectively tackling the affordable housing crisis, and the problem of residential segregation that this crisis reinforces, will require the region and the state to undertake a truly comprehensive, holistic approach at both the state and local level. New York should explore successful models used in other states (including California, Massachusetts, and New Jersey) and:

- Implement a statewide system that would require localities and developers to meet the need for affordable housing in an equitable manner and guarantee access to quality housing for *all* New Yorkers at all income levels;
- Target investment in high-poverty areas while also ensuring that new development does not lead to displacement of low-income residents and communities of color;
- Use zoning laws to create greater value for developments that encompass affordable housing, particularly for developments targeting very low-income residents (through minimum set-aside requirements and tiered incentives); and
- Create a system of integrated and proactive record-keeping, enforcement and oversight at the state level, to ensure compliance and efficacy.

Further, localities can pursue a range of policies on their own, without any state authorization or intervention, to spur creation of affordable housing and residential desegregation, including anti-discrimination testing, regulation, and enforcement; meaningful engagement of low-income communities and communities of color in local planning; revitalization of regions of concentrated poverty while protecting against displacement; and programs (incentives, requirements, funding, etc.) to promote new affordable housing in high-opportunity areas.<sup>6</sup>

The stakes are high. The devastation of Superstorm Sandy demonstrated the region's vulnerabilities. Housing development has picked up pace on Long Island already. And if, as many analysts expect, the coming years witness a stronger economy and the return of housing development, there will be a valuable opportunity to use state mandates or incentives to create affordable housing in the region. Indeed, Long Island stands at a crossroads: the region will either tackle the problems of the lack of affordable housing and enduring racial segregation, or the region will quickly become one where even middle income families cannot afford to live. Long Island families cannot afford to wait.



# I: The Long Island Housing Market

## a. Overview

Long Island is a very affluent suburban region with a population of approximately three million people and a proliferation of local governments. It is made up of two cities, thirteen towns and over one hundred incorporated villages and unincorporated hamlets. The variation in income, political views, and backgrounds is so great that residents sometimes refer to the island as a “community of communities.”

During the past decade, Long Island has witnessed many significant demographic changes. Some of these changes are positive, such as increased racial diversity. Others have been more problematic, such as the so-called brain drain of young professionals out of the region.<sup>8</sup>

Residential segregation continues to be a serious problem: studies show that segregation on Long Island is *double* the national average.<sup>9</sup> Although 23.5 percent of Long Island residents are racial or ethnic minorities, the Island is still extremely segregated, and many communities remain over 90 percent white.<sup>10</sup> Indeed, Long Island is the tenth most segregated region in the nation for black-white segregation. Recent studies also show that as the Hispanic population grows, so does white-Hispanic segregation. Additionally, the vast majority of white Long Islanders own their own homes, while more than a third of black and Hispanic residents rent.<sup>11</sup>

The housing market has failed to keep pace with the changing demographics: there are very few housing options for seniors, young professionals and lower-income residents.<sup>12</sup> Further, housing patterns have tended to reinforce the enduring problems of segregation, even as the Island becomes more diverse. Several factors account for these problems.

First, Long Island lacks adequate housing options and lags behind neighboring regions in the creation of multi-family dwellings and development in general. As of 2012, there were only sixteen residential building permits issued for every 1,000 Long Island residents, about half as many as in Hudson Valley or in Northern New Jersey.<sup>13</sup> Furthermore, less than a quarter of these permits are being issued for multi-family units, compared to about a third in other suburbs. On a related note, rental units, which are more likely to be in multi-family developments, make up only 21 percent (175,977) of the homes on Long Island and over a quarter of these homes are located in just ten communities, out of nearly three hundred.<sup>14</sup> By contrast, in New Jersey and Westchester, over a third of all homes are rental apartments.<sup>15</sup>

Further, the units that do exist are not affordable.<sup>16</sup> The number of affordable and available rental units per one hundred households on Long Island is consistently below that of other New York City suburbs, particularly for incomes at or below 50 percent of the area median income (Long Island AMI is just over \$92,000).<sup>17</sup> While this problem impacts low-income families most acutely, the lack of affordable housing is a challenge for all but the most well off on Long Island. Indeed, on Long Island 56 percent of renters pay more than 30 percent of their income for housing and almost 40 percent of renters pay more than 35 percent.<sup>18</sup> Even when higher-density units are constructed for seniors or young professionals, which are meant to be more affordable than market-rate single family homes, the results are high-priced. A prime example is the 720 unit age-restricted Meadowbrook Pointe in Westbury, which is among the largest developments under construction and has one-bedroom apartments starting at \$460,000.<sup>19</sup> This problem extends to homeowners as well, and it is growing.<sup>20</sup> Ten years ago fewer than 30 percent of Long Islanders spent over 35 percent of their

income on housing.<sup>21</sup> Today, an average family of four on Long Island with two wage earners would need an annual salary of over \$80,000 in order to have access to basic expenses such as housing, transportation, and child care.<sup>22</sup> This problem is widespread, 64 percent of renters on Long Island would not be able to afford a two bedroom apartment for their families.<sup>23</sup> These renters are extremely diverse with regard to their income level and their race and ethnicity. About 47 percent of renters are white, 30 percent are of Hispanic origin, 16 percent are black and 6 percent are Asian.<sup>24</sup>

This shortage is not just caused by a lack of developable land. By some estimates, Long Island has over 8,000 acres of underutilized property in its downtowns that have access to public transportation.<sup>25</sup> Many of these properties currently serve as either above ground parking or are vacant.<sup>26</sup> Proper usage of this land could spur the creation of thousands of units of affordable housing. Other barriers stand in the way, however.

## **b. Barriers to Affordable Housing Creation**

A variety of factors has caused the ongoing lack of affordable housing on Long Island, and has complicated efforts to address the problem. And as noted above, the impact is not only on lower-income families, but essentially all families on Long Island, save the very well off.

Formal and informal exclusionary housing policies remain common at the local level.<sup>27</sup> Examples include zoning practices that restrict or entirely exclude multi-family housing development,<sup>28</sup> local preference rules that prioritize existing residents (and maintain status quo) for new housing, source of income discrimination against tenants using government subsidies such as Section 8 vouchers, and the predominance of one-bedroom rentals instead of rental housing appropriate for families.<sup>29</sup> Notably, Suffolk County enabled legislation in 2014 to ban source of income discrimination in housing, which does represent an important step forward.

Furthermore, extensive zoning restrictions and red tape make it more expensive for developers to undertake multifamily construction, ultimately causing some projects to become unprofitable. Since there are very few areas on Long Island that are zoned for high-density residential complexes, most large developments on Long Island go through a series of time-consuming approvals by local and county planning and zoning boards in order to get a zoning variance.<sup>30</sup> Localities often prefer it when developers build high density housing for seniors and young professionals, but not those targeted for low or moderate income families, and they give out zoning changes accordingly.<sup>31</sup> The application processing delays vary, which makes costs unpredictable and development of less popular projects challenging.<sup>32</sup>

Notably, however, recent polls find that a majority of Long Islanders support zoning changes that would allow greater density and accessory apartments.<sup>33</sup> Young people are particularly supportive of apartments in downtown areas, with 70 percent of residents under the age of 34 supporting such zoning changes.<sup>34</sup> Additionally, even though the number of building permits issued on Long Island as of 2014 was at an all-time low, the percentage of permits issued for multifamily homes is currently higher than prior to the recession.<sup>35</sup>



## II: Summary of the Long Island Workforce Housing Act

The Long Island Workforce Housing Act (the “Act”), Article 16-A of the New York State General Municipal Law, was enacted in 2008 to increase the availability of “workforce housing” on Long Island by requiring that new multi-family developments include some affordable units.\* Workforce housing is typically intended to serve the “essential” workforce of the communities in which it is built, such as police, fire fighters, nurses, and teachers.<sup>36</sup> As such, workforce housing is typically aimed at moderate-income families, rather than lower-income residents.

### a. Passage of the Act in the New York State Legislature

In 2006, housing prices on Long Island had reached an all-time high: the median price of a house was just above \$500,000 prior to the collapse of the market, a rise of over \$200,000 in just six years.<sup>37</sup> State Senator Dean Skelos, the Republican Majority Leader from Long Island, worked closely with then-Assemblyman Thomas P. DiNapoli, the Long Island Association, and the Long Island Builders Institute, influential groups backed by Long Island businesses, to promote the provisions of the Act.<sup>38</sup> The Act was also generally supported by County and State executives.<sup>39</sup>

Even at the time of passage, legislators acknowledged that one of the Act’s weaknesses was the modest nature of the incentives it provided to developers. Additionally, the bill’s opponents worried that the Act’s weakness would actually exacerbate Long Island’s racial and economic segregation. Because the Act allows developers to build the affordable units off-site, Senator Liz Krueger from Manhattan was concerned that affordable housing could be isolated in certain communities and deficient in others.<sup>40</sup> Senator Krueger had backed a version of the bill that set benchmarks for equal distribution of affordable units throughout each area and granted rewards to governments that were successful in creating affordable housing within their borders.<sup>41</sup> However, that measure stalled, as had similar efforts in 2006 and 2007.<sup>42</sup>

Notably, in the six years since the Act took effect, amendments have been introduced to broaden the Act’s income targets to benefit lower income residents and to provide implementation assistance to localities. These amendments have languished in committee.<sup>43</sup>

### b. The Substance of the Act

In essence, the Act creates modest mandates on local governments to facilitate construction of market-rate, multi-family developments when developers propose such plans. The Act relies on developers to drive the process, rather than requiring a comprehensive analysis of the housing needs in the region and creation of an integrated plan to address them. The Act also fails to provide legal hooks for developers to achieve zoning changes in resistant jurisdictions.

Specifically, the Act requires that all new developments with five or more units in Nassau and Suffolk Counties include a percentage of “affordable” units. In return, local governments are required to grant a density bonus of at least 10 percent over the otherwise allowed maximum residential density for the proposed site. Developers can meet the affordable housing requirement by setting aside 10 percent of the units in the development (not counting the additional units allowed by the density

\*The term multi-family is used throughout this text and refers to all construction of developments with five or more units.

bonus) for affordable housing, setting aside an equivalent number of units in a different development within the same local jurisdiction, or paying a fee in lieu of the affordable units into a trust fund run by either the local government or the Long Island Housing Partnership, a not-for-profit housing developer. Local governments are also permitted to provide other types of incentives pursuant to individual agreements with developers. Affordable units are defined as those that are affordable for individuals and families with income at or below 130 percent of area median income.

Despite the clear intent that the Act mandate certain obligations on local governments, the understanding of the goal of the Act has shifted over time. Coverage of the bill at the time of passage reflected the legislature's intent to create a mandate on local governments to spur construction of affordable housing when developers sought to build multi-unit developments.<sup>44</sup> Interviews with those active in the bill's passage confirm this understanding.<sup>45</sup> However, many now view the Act as providing an *optional* density bonus incentive to developers, rather than an affordable housing *mandate* on local governments.<sup>46</sup> While the text of the law does not support such an interpretation, some localities seem to follow it—perhaps to avoid requiring construction of affordable housing.<sup>47</sup>

It is worth noting that there are significant technical issues with the statute that complicate interpretation of the density bonuses, set asides, and fees in lieu of development. Most local inclusionary zoning laws set a bonus of 10 percent above the number of units proposed, rather than 10 percent above the density otherwise allowed. Thus, a project proposing 100 units would be granted a 10-unit density bonus (10 percent of the total) and be built with 110 units. The Act does not follow this convention, however. The Act defines the density bonus as at least 10 percent of the maximum allowable units *as of the date of the application*. In many instances, developers will be seeking to develop land that is zoned for single-family homes: here the maximum allowable density at the time of application would be just one unit, and the required density bonus would be a single additional unit (10% of 1, rounded to the nearest whole number). This renders the required density bonuses and set-asides largely meaningless, because both are tied to the *initial* number of units (one unit) that is allowed prior to the application of the Act.<sup>48</sup> The fee-in-lieu provision is also written to suggest either that the fees would be incredibly high (applied to all the additional units built, in this example all units beyond the single unit otherwise allowed) or very low (applied to the minimum required density bonus of one unit beyond the one already permitted). Finally, the Act does not make clear whether its requirements are in addition to, or instead of, existing local inclusionary zoning laws, complicating interpretation and enforcement of its provisions.<sup>49</sup>

### c. Inadequate Affordability

A fundamental problem of the Act, noted at the time of its passage, is the requirement that developers set aside workforce units for households with incomes at or below 130 percent of the area median income or "AMI." Since the area median income on Long Island is just over \$92,000, the units must be affordable to families of four with an income of approximately \$119,600 per year. Households with such income levels can typically afford to rent or buy housing without overextending their budget, absent any affordability programs. The Act does nothing to incentivize creation of affordable housing for lower-income families by, for example, increasing the density bonus available if affordable housing units target those at 80 or 50 percent of the area median income. Because of this, a developer seeking to maximize profits while still complying with the Act would almost certainly target their affordable housing units to the highest allowable incomes. A developer at Mill Creek stated that in select communities units meeting the affordability requirements of the Act could easily be priced on par with market rate units.<sup>50</sup>

A further problem is that the Act states that workforce units must be “affordable” to households at or below 130 percent of the area median income, but it does not define “affordable.” It is unclear under the Act whether affordable housing should cost a specified percentage of gross income and what that percentage should be. The definition of an affordable unit used by HUD and most housing policy experts is a unit priced at 30 percent or less of a household’s annual income per year. However, since no definition is officially adopted by the Act, localities are free to follow their own internal guidelines, which may or may not be consistent with the goals of the Act. Some planning departments are holding off on setting any standards until they are confronted with a qualifying development, but that they would typically follow their own guidelines. The problem with this ambiguity is that developers do not have a key piece of information that they need to make calculations regarding the feasibility of their projects.<sup>51</sup>

Many believe that the fees in lieu of development are so low that developers can continue to construct high-density developments without setting aside any affordable units and not paying localities enough to develop an equivalent number of units.<sup>52</sup> Depending on the interpretation of the fee-in-lieu provision, it is possible that developers would be given the option to pay approximately \$210,000 for each additional unit which results from a density bonus. But such a fee is very low in comparison to the price of land and cost of development across Long Island, and would be inadequate to cover the cost of actual affordable housing creation.

#### **d. Lack of Enforcement Mechanisms**

Meaningful enforcement requires effective oversight and monitoring by the State, thorough analysis of the extent of local compliance, technical assistance to local governments in administering the law, and proactive enforcement where localities are failing to comply. The Act includes none of these critical enforcement tools.

The Act does not designate a state agency or official for enforcement, monitoring, or guidance to localities seeking to implement the law. No state regulations have been issued pursuant to the Act, and no information about the Act is available on state websites. To address implementation questions, some localities have turned to each other or the Long Island Housing Partnership, the only entity mentioned by name in the Act.<sup>53</sup> Since the passage of the Act, state officials appear not to have made any efforts to reach out to local officials to verify compliance. Local government officials on Long Island’s largest municipalities were not able to identify any instances of communication between their governments and officials from the state regarding the Act.<sup>54</sup> Furthermore, the Act does not require local governments to keep records or notify the state of development applications or approvals that could facilitate an analysis of the Act’s impact or local compliance.

As noted, the Long Island Workforce Housing Act fails to designate any state-level agency to monitor compliance with the Act or to enforce its provisions. This flaw, along with the other limitations of the act, must be fixed for the Act to have a meaningful impact. There are, however, two offices in New York State that have enforcement authority to tackle issues of fair and affordable housing. The New York State Attorney General has broad power to enforce state law, including an in-house testing program to investigate fair housing violations, and has taken action to protect fair housing rights, including enforcement of local source of income anti-discrimination laws. Similarly, the New York State Comptroller has legal authority to monitor localities’ compliance with state law.

### III: Impact of the Long Island Workforce Housing Act

In light of the shortcomings discussed above, it is perhaps not surprising that the Long Island Workforce Housing Act has not effectively stimulated the creation of adequate affordable housing units and mixed income communities on Long Island. In 2014, CPD conducted over twenty interviews with key players in the Long Island affordable housing market, including local government officials, and leaders of major affordable housing advocacy organizations.<sup>55</sup>

Given the lack of clear guidance by the state, localities diverge in their approaches to implementation. Some localities, such as Southampton, Sag Harbor and East Hampton, adopted the provisions of the Act as part of their town code. But despite this affirmative step, these localities were unable to provide information on whether any developments had triggered application of the law or resulted in construction of workforce housing. Other localities claimed it was unnecessary for the town to take any steps until presented with a multifamily development plan.<sup>56</sup> Other towns, such as Southold and Huntington, have existing local inclusionary zoning laws that they believe put them into compliance with the Act.<sup>57</sup> Initial reviews of those local laws suggest, that at least in certain aspects, the Act may include mandates on local governments that are beyond what the local laws require. In many cases, local officials were aware that the Act became law in 2008, but they have not engaged in official discussions regarding its administration.<sup>58</sup> Ultimately, CPD was only able to identify a single development that was required to include affordable units because of the Act.<sup>59</sup> And though localities blame the slow housing market, data shows that permits were issued for development of nearly 1500 total units between 2009 and 2012—some of which likely may have triggered application of the Act.<sup>60</sup>

The lack of comprehensive or accessible data kept by localities, or centralized at the state level, makes it nearly impossible to track or analyze the impact of the Act on the ground. But anecdotes from the field do suggest that localities are failing to apply the law to certain projects that should be covered. Confusion may result from the fact that there is limited as-of-right multifamily zoning on Long Island which leads many large developments to request a zoning variance or rezoning to up-zone from the existing single-family or commercial zoning in place.<sup>61</sup> A pervasive—but incorrect—belief is that these developments do not fall under the purview of the Act.<sup>62</sup> Other localities have gone out of their way to define “plats” and “site plans” so narrowly that localities with slightly different terms in their zoning codes can claim the Act does not apply to their approved projects.<sup>63</sup>

All told, there appear to be few affordable housing units built on Long Island as a direct result of the Act. In some instances that may be due to localities’ belief that they have met the dictates of the Act, or that the Act does not apply. But more fundamentally, as noted above, it is because the requirements of the Act itself are inadequate to foster creation of truly affordable housing at every income level for all residents across the region.

#### Overview of Best Practices

##### Massachusetts

Massachusetts has a long-standing state housing law that seeks to promote affordable housing by giving developers the power to appeal to the state where localities with restrictive and exclusive zoning practices prevent development. Chapter 40B allows local zoning boards of appeals to approve developments that would not otherwise meet zoning requirements if 20 to 25 percent of the units are set aside as affordable.<sup>64</sup> Developers can dedicate either 25 percent of units for moderate income households<sup>65</sup> or 20 percent of units for low income households.<sup>66</sup> Chapter 40B ensures that localities are in compliance by allowing developers to appeal adverse local decisions to the state if the development is in a community where less than 10 percent of the housing is affordable.<sup>67</sup> Communities can also become exempt from the appeals process by adopting a housing production plan and meeting its goals.<sup>68</sup> Chapter 40B has been successful in creating 58,000 affordable units of various types since its inception.<sup>69</sup> Furthermore, a 2010 study shows that development under Chapter 40B resulted in economic activity totaling \$9.25 billion and 47,683 jobs between the years 2000 and 2010.<sup>70</sup>

## California

In California, all localities are required to have a housing plan that makes adequate provisions for the housing needs of all economic segments of the community. The Housing Element Law does not require that municipalities actually develop the housing units, but does require them to take specific steps, including rezoning, to meet their fair share of the regional needs for affordable housing.<sup>71</sup> In order to facilitate compliance, many California jurisdictions have instituted local inclusionary zoning laws. As of 2006, about 32 percent of jurisdictions in the state of California had adopted inclusionary programs, up from only 12 percent which had such programs in 1994.<sup>72</sup> California also has a long-standing state-mandated density bonus law in addition to numerous local inclusionary zoning laws. Cities and counties are required to grant a density bonus to developers that meet one of several affordable housing requirements.<sup>73</sup>

## Connecticut

Connecticut implemented a state-wide housing incentive statute in 2007 in order to boost the supply of multifamily affordable housing in certain pre-approved areas such as transit hubs.<sup>74</sup> The Connecticut Housing Program for Economic Growth provides funding for municipalities to create Incentive Housing Zones within their borders. The program initially gives a planning grant to municipalities to study the housing needs of their communities without any obligations, thereby allowing for significant input from municipalities on the manner in which they want to promote affordable housing.<sup>75</sup> After the planning stage, the municipality can choose to implement an Incentive Housing Zone in which at least 20 percent of units developed in the zone must be affordable for households with incomes at or below 80 percent of the area median income and where the zoning allows as-of-right moderate density housing.<sup>76</sup> In return, the municipality receives \$20,000<sup>77</sup> at implementation and additional building permit grants (which can add up to \$50,000) when actual units are developed.<sup>78</sup> The program is implemented and administered by the Connecticut Department of Housing. As of 2012, the program had already been utilized by more than fifty municipalities.<sup>79</sup>

## New Jersey

In 1975, the New Jersey Supreme Court first held that the New Jersey constitution prohibited local governments from using economic discrimination through their zoning and planning powers. As a result of several decisions, known as the *Mount Laurel* decisions, New Jersey obligates all municipalities to plan for their fair share of middle and low income housing.<sup>80</sup> The state facilitates more effective enforcement through the use of the builder's remedy, which allows a developer to proceed with higher density projects if it allocates some units to affordable housing.<sup>81</sup> The Fair Housing Act created the Council on Affordable Housing (COAH) in order to even out the process by which localities' fair share was determined. Localities that voluntarily devise a plan with the COAH to facilitate affordable housing immunize themselves from developer lawsuits. As of 2013, 60,000 homes for low- and moderate-income families (and another 40,000 under construction) have been created in New Jersey since the *Mount Laurel* doctrine took hold.<sup>82</sup>

## Fairfax County, VA & Montgomery County, MD

Two of the longest-standing inclusionary zoning programs in the country are in Montgomery County, Maryland and Fairfax County, Virginia, affluent suburbs of Washington, DC. Both programs have produced a large number of units, usually correlated with the performance of the overall housing market.<sup>83</sup> Montgomery County's Moderately Priced Dwelling Unit Law has a requirement for a set aside of 12.5 percent, but provides a density bonus as an incentive for developers who choose to include a higher percentage of affordable units. The Affordable Dwelling Unit law in Fairfax County has a sliding scale for calculation of density bonuses under which developers can receive a greater bonus for setting aside more units. The Fairfax law does allow developers to pay fees in lieu of units but only under special circumstances, which have not been met to date. Both programs are mandatory for large developments and are rigorously enforced by county governments. County planning boards and development agencies are in charge of setting affordability standards and ensuring compliance. The target incomes range from low income at around 50 percent of area median incomes for rental units to moderate incomes of around 100 percent of area median income for sale units. The levels of compliance are so high that it is extremely rare for county officials to take any actions against developers. What makes both of these inclusionary laws so effective is consistent enforcement. The requirements are so entrenched in the development landscape that developers do not consider the inclusionary zoning law to be an impediment to development, but rather just another element of the regulatory process.

## IV: Proposals for Improvement of the Act

It is clear that the Long Island Workforce Housing Act has not solved the crisis of affordability on Long Island. At best, the Act is unlikely to produce more than just housing for the well off, but technical drafting problems and a lack of enforcement make even this unlikely. Truly tackling the crisis of affordability on Long Island will require comprehensive, ambitious action at two levels: local and state.

### a. State Action

It is incumbent on New York State to address the affordable housing shortage on Long Island and across the region. Rather than simply fix the technical flaws in the Act, the State should take the opportunity to craft an ambitious, holistic approach to solving the crisis of affordability and residential segregation that continues to plague the region and other parts of the State. A reformed state policy should go beyond the limited scope of the original Act, which intended to create housing for relatively well-off families. Instead, it should strive to ensure housing creation and preservation that: is affordable for middle-income as well as very low-income families; matches unit type to the demographics of families across Long Island and region-wide; fosters creation of mixed-income communities; sites new affordable housing near transportation, jobs, and good schools; and furthers the goal of racial desegregation across the region.

Such a state-level approach must follow these guiding principles:

- **Require and incentivize jurisdictions to accommodate their share of the regional affordable housing need:** State law should ensure that every local jurisdiction is doing its part to facilitate the development of regional affordable housing, particularly in areas that have erected exclusionary zoning barriers. Other states offer a variety of models to do this effectively. For instance, some state systems allocate specific housing need numbers by income level to each locality based on their fair share of the regional need. Localities are not required to build this housing, but they are required to plan for it by identifying sites, conducting necessary rezonings, and adopting other programs needed to achieve the housing allocation. Other states set a single threshold of affordable housing units for all jurisdictions—e.g. 10 percent of all housing units in the locality must be affordable—and, if a jurisdiction does not meet that threshold, developers are provided with judicial or administrative remedies to override local exclusionary zoning practices. A third model provides state funding incentives to jurisdictions to plan for their share of the affordable housing need. These various housing requirements and planning incentives systems could be combined as appropriate for New York State.
- **Encourage deep, long-term affordability:** The State should target requirements to meet the need for housing affordable to very low-income families in addition to housing for middle-income families. The State law should target different income levels based on the type of housing that is being developed. Moderate incomes (50 percent to 80 percent of the area median income) should be targeted for sale units and very-low incomes (10 percent to 50 percent of the area median income) should be targeted for rental units. Affordability must be long-term—ideally permanent.
- **Promote inclusive, mixed-income communities:** It is critical that the State address the affordable housing crisis in a manner that breaks down residential segregation and promotes equitable access to high-opportunity areas—communities with good schools,

transit, and other amenities. The State, counties, and entitlement jurisdictions that receive Community Development Block Grants and other formula funds from the U.S. Department of Housing and Urban Development are already required to take such action to comply with their obligation to take affirmative steps to further fair housing.

- **Invest in high poverty areas to promote revitalization while protecting against displacement:** These same fair housing obligations also require State affordable housing programs and local planning and investment decisions to consider and address the needs of racially concentrated areas of poverty. With the New York metro area’s strong markets and rapidly changing neighborhoods, it is critical that efforts to invest in high-poverty neighborhoods are tied to anti-displacement and preservation strategies.
- **Encourage jurisdictions to capture value for community benefits:** State-level reform should encourage or require local jurisdictions to capture the value provided to private land owners and developers through zoning changes to help meet low-income housing needs. For example, localities should require affordable housing set-asides in market rate projects in exchange for incentives, such as density bonuses. Further, localities should provide greater incentives for units that are affordable to very and extremely low-income families.
- **Ensure effective oversight and enforcement:** Impact on the ground requires effective, proactive enforcement and oversight by the State. This may require creation of a new division or new programs within New York State Homes and Community Renewal (“Division”) to promulgate regulations and guidelines to instruct local jurisdictions on their obligations, including how the State law intersects with local housing policy. In addition, State oversight is needed to monitor compliance and sanction noncompliance. Systems will be needed for developers and advocates to file complaints with the Division and for the Division to investigate complaints of non-compliance. The State should also require cities to keep records, to facilitate enforcement.

The principles outlined above would ensure that New York State develops a truly comprehensive approach to affordable housing state-wide, that progress made on affordable housing does not lead to displacement of low-income residents, and that the State furthers fair housing goals. Recognizing that the Long Island Workforce Housing Act is an ineffective solution to the crisis of affordability on Long Island provides a critical opportunity for the State as a whole to envision an inclusive, equitable approach to housing on Long Island and beyond.

## b. Local Action

While comprehensive reform will require State action, localities already have a range of tools they can use to tackle the affordability crisis and problem of enduring segregation. Many of the most effective local strategies were developed and centralized in the 2014 New York/Connecticut Sustainable Communities Consortium’s Fair Housing Equity Assessment (FHEA)—a HUD-required analysis of segregation patterns and opportunity disparities in the region and policy recommendations for local action from the Consortium’s FHEA Advisory Committee.<sup>84</sup> The FHEA policy recommendations, as well as other local processes and models, suggest that localities should:

- Promote new affordable housing in high-opportunity areas.
  - Adopt and enforce mandatory inclusionary zoning legislation, particularly for low-income and very low-income residents at less than 50 percent of the AMI.

- Build support for affordable housing and mixed-income communities through community outreach and education.
  - Eliminate the use of preferences for housing in areas where such a preference has a disparate impact or perpetuates racial, ethnic, or economic segregation.
  - Implement and enforce effective affirmative marketing requirements.
  - Develop a fair-share housing plan, as suggested by the Long Island Regional Planning Council in its LI 2035 Sustainability Plan, that will spur creation of next generation, workforce housing while encompassing regional consensus.
- 
- Invest and plan to revitalize concentrated areas of poverty while protecting against displacement of existing residents. Approaches include:
    - Investing in equitable transit-oriented housing aimed towards mixed-income communities with some very low and extremely low-income housing.
    - Dedicating local resources to rehabilitate occupied housing for extremely low-income residents.
    - Rehabilitating existing public housing units and, where rehabilitation is not possible, replacing these units in a manner that creates mixed-income high-opportunity communities.
    - Ensuring that any replacement or rehabilitation does not result in loss in the number of available units.
    - Funding local job training and placement services and instituting income-based hiring practices and living wage requirements related to new construction.
- 
- Engage in anti-discrimination testing and enforcement.
    - Finance and conduct fair housing testing to challenge and raise public awareness about discrimination in rental, sale, real estate, and lending practices.
    - Adopt and enforce local “source of income” anti-discrimination laws.
    - Require condominiums and cooperatives to disclose their reasons for rejecting applications.
- 
- Fund meaningful engagement and education of low-income people and underrepresented racial and ethnic minorities in local and regional planning through partnerships with community-based organizations.
    - Create a dedicated entity to give marketing support for affordable housing units and provide application assistance and education for the public on finding and obtaining such units.



Other strategies not included in the FHEA but worth exploring include use of Land Trusts and legalizing accessory dwellings (typically illegal additional apartments within existing houses or buildings). In addition, Nassau and Suffolk counties should also take actions to coordinate, require, and incentivize localities to further these local strategies.

## VI: Conclusion

Long Island stands at an important crossroads. As housing construction picks up, and prices start to rise steeply, the region will quickly become one that is simply unaffordable to working families. At the same time, enduring racial residential segregation will likely worsen if it is not directly addressed. While a first step to tackle the crisis of affordable housing on Long Island at a regional level, the data shows that the Long Island Workforce Housing Act has had too little impact on the ground. Rather than simply press to fix the technical flaws in the Act, residents of Long Island—and across the State—should take the opportunity to envision public policies that *truly* ensure access to affordable, quality housing for all New Yorkers, that foster diverse, mixed-income communities, and that further fair housing goals.

## Notes

- 1 Regional Plan Association, Long Island's Rental Housing Crisis (September 2013) (hereinafter Long Island's Rental Housing Crisis) (available at <http://www.licf.org/Portals/0/Uploads/Documents/Long-Islands-Rental-Housing-Crisis.pdf>).
- 2 Long Island Regional Planning Council, Sustainable Strategies for Long Island 2035, pg. 108 (December 2010) (hereinafter Sustainable Strategies) (available at <http://regionalcouncils.ny.gov/assets/documents/2035-plan.pdf>).
- 3 David Winzelberg, LI's Racial Real Estate Divide, Long Island Business News (December 13, 2013) (available at <http://www.eraseracismny.org/press-room/7-erase-racism-in-the-news/305-long-island-business-news-lis-racial-real-estate-divide>).
- 4 The Act contains an exception for instances where developers seek to build at less than the maximum density allowed under the local government's zoning ordinance or comprehensive plan. N.Y. Gen. Municipal Law § 699-B (2). Since much of Long Island is zoned for single family homes, this exception will rarely if ever apply because developers of multi-unit developments will by definition be seeking to build more than the density already permitted.
- 5 One plot with six or seven single family units was approved in Brookhaven in 2011, with a set aside pursuant to the Workforce Housing Act, and the developer (AI Lofaso Realty LLC) expects to begin construction in 2015.
- 6 Many of these local strategies were developed and centralized in the 2014 New York/Connecticut Sustainable Communities Consortium's Fair Housing Equity Assessment (FHEA) – a HUD-required analysis of segregation patterns and opportunity disparities in the region and policy recommendations for local action from the Consortium's FHEA Advisory Committee.
- 7 Marcelle S. Fischler, The Island's Changing Face, The New York Times (2009) (available at [http://www.nytimes.com/2009/09/27/realestate/27lizo.html?\\_r=0](http://www.nytimes.com/2009/09/27/realestate/27lizo.html?_r=0)).
- 8 There is an annual out-migration of young people and seniors to New York City and to Florida, respectively. U.S. Department of Housing and Urban Development, Comprehensive Market Analysis: Long Island, New York (October 2011) (hereinafter HUD Long Island) (available at [http://www.huduser.org/publications/pdf/LongIslandNY\\_comp\\_12.pdf](http://www.huduser.org/publications/pdf/LongIslandNY_comp_12.pdf)).
- 9 Douglas Ready, Inter-District and Intra-District Segregation on Long Island, Columbia Teacher's College (2012) (available at <http://www.longislandindex.org/explore/bd7975ba3fb128139cbda7400391b0e6#sthash.pFZK1o6L.dpuf>).
- 10 Sustainable Strategies.
- 11 Inter-District and Intra-District Segregation on Long Island, Douglas Ready, Columbia Teachers' College (April 2012) (available at [https://lii-production.s3.amazonaws.com/lii-data/download/bd7975ba3fb128139cbda7400391b0e6/download\\_tcSegregationReport.pdf](https://lii-production.s3.amazonaws.com/lii-data/download/bd7975ba3fb128139cbda7400391b0e6/download_tcSegregationReport.pdf)); Housing segregation and Long Island's large number of school districts results in school districts that are extremely segregated. This type of segregation is extremely troubling because it allows for greater differentiation between schools than would otherwise be possible. 14 percent of Long Island children attend classes in high-need school districts and 76% of all students in the high need districts are either black or Hispanic. The amount of money spent per student in the high income and the low income schools varies by almost \$8 thousand. ERASE Racism, Survey Research Report: Housing & Neighborhood Preferences of African Americans on Long Island (2012) (available at [http://www.eraseracismny.org/storage/documents/FINAL\\_ERASE\\_Racism\\_2012\\_Housing\\_Survey\\_Report\\_web\\_version.pdf](http://www.eraseracismny.org/storage/documents/FINAL_ERASE_Racism_2012_Housing_Survey_Report_web_version.pdf)). ERASE Racism Comments to Amendment 6 of the NYS CDBG-DR Action Plan (2014) (available at [http://eraseracismny.org/storage/documents/ERASE\\_Racism\\_Comments\\_to\\_Amendment6\\_-\\_Revised\\_Edit\\_March\\_28\\_2014\\_2.pdf](http://eraseracismny.org/storage/documents/ERASE_Racism_Comments_to_Amendment6_-_Revised_Edit_March_28_2014_2.pdf)).
- 12 C.J. Hughes, Confronting Long Island's Rental Shortage, The New York Times (2013) (available at <http://www.nytimes.com/2013/09/22/realestate/confronting-long-islands-rental-shortage.html?pagewanted=all>).
- 13 Long Island Index 2012 Profile Report (available at [https://lii-production.s3.amazonaws.com/lii-data/download/liipr\\_r/download\\_LI\\_Profile\\_2012.pdf](https://lii-production.s3.amazonaws.com/lii-data/download/liipr_r/download_LI_Profile_2012.pdf)).
- 14 Communities with a high proportion of rental housing are also the ones with the greatest racial diversity and highest concentration of low-income households. These communities include Hempstead, Long Beach, Coram, Freeport, Glen Cove, Bay Shore, Brentwood, Huntington Station, West Babylon and Central Islip. Long Island's Rental Housing Crisis (2013).
- 15 Long Island Index, Infographic (2012) (available at [http://www.longislandindex.org/explore/coliaosn\\_i](http://www.longislandindex.org/explore/coliaosn_i)).

- 16 Housing is typically considered “affordable” if households spend less than 30 percent of their income on housing costs, including utilities. Notably incomes on Long Island are fairly high: the median income is approximately \$105,000 for both counties and the mean income is around \$90,000 per year. HUD Long Island (2011).
- 17 National Low Income Housing Coalition, Congressional District Profiles for Congressional Districts 1,2,3, and 4 (2014) (hereinafter NLIHC Profiles) (available at <http://nlihc.org/sites/default/files/2014-CDP-NY.pdf>).
- 18 See Rental Housing Crisis (2013).
- 19 HUD: Long Island (2011).
- 20 Long Island Index, Long Island Households with Housing Cost Burdens, 2000-2012, Chart (available at <http://www.longislandindex.org/explore/c23c3c2c-bc47-4737-ac9a-ed29786fd3ee>).
- 21 In 2000, the proportion of Long Islanders who paid more than 35 percent of their income on housing costs was one quarter of the population, by 2007 that group grew to more than a third of households. Rental Housing Crisis (2013). It is also important to note that an additional 23 percent of annual household income is spent on transportation. The further low and moderate-income Long Islanders are forced to move away from their jobs in order to secure affordable housing, the more they have to pay in transportation costs. Affordability is not just a problem for low income Long Islanders, over 58 percent of residents of all income levels have reported that paying their monthly rent or mortgage is difficult for them. Long Island Index, Long Island by the Numbers, Infographic (available at <http://www.longislandindex.org/explore/7dddec31-0e0d-4fdd-89a8-8e1884dafd9e>).
- 22 Long Island Index, How Much it Costs to Make Ends Meet on Long Island (2010) (available at [https://lii-production.s3.amazonaws.com/lii-data/download/hmdictmemo\\_l\\_i/download\\_makeendsmeet.jpg](https://lii-production.s3.amazonaws.com/lii-data/download/hmdictmemo_l_i/download_makeendsmeet.jpg)).
- 23 Long Island’s Rental Housing Crisis (2013).
- 24 Id.
- 25 Long Island Index, The Power of 8,300, Infographic (2013) (available at <http://www.longislandindex.org/explore/c4c20302-aadb-4a5d-bcba-c13c719aaa25>).
- 26 Id.
- 27 Babcock & Bosselman Exclusionary Zoning: Land Use Regulation and Housing in the 1970s (1973).
- 28 Vickie Moller, Rental Housing Crisis Straining Long Island’s Economy, LongIsland.com (September 2013) (available at <http://www.longisland.com/news/09-24-13/rental-housing-crisis-straining-long-islands-economy.html>).
- 29 Interview with Elaine Gross, President of ERASE Racism NY on October 8, 2014.
- 30 Long Island Index, The Building Permit Process: VA vs. LI, Infographic (available at <http://www.longislandindex.org/explore/0ba7b685e6ee2b96e1fad8f8f56515a8>). See also, Interview with Mitch Pally of the Long Island Builders Institute.
- 31 Interview with John Venditto of Oyster Bay on 11/21/13.
- 32 Zucker Systems & Long Island Index, Long Island Government Review: Permit Review Process and Downtown Development (January 2011) (available at [https://lii-production.s3.amazonaws.com/lii-data/download/2177022434/download\\_Permit\\_Review\\_Process\\_and\\_Downtown\\_Development.pdf](https://lii-production.s3.amazonaws.com/lii-data/download/2177022434/download_Permit_Review_Process_and_Downtown_Development.pdf)).
- 33 An accessory apartment is legally defined as a separate housekeeping unit, usually with its own kitchen and bathroom, either within or adjacent to an existing one-family house. Mary McAleer Vizard, A New Look at Accessory Apartments, The New York Times (July 1991) (hereinafter Residential Satisfaction) (available at <http://www.nytimes.com/1991/07/07/realestate/a-new-look-at-accessory-apartments.html>); Stony Brook University: Center for Survey Research, Tracking Residential Satisfaction on Long Island (2012) (available at [https://lii-production.s3.amazonaws.com/lii-data/download/trsolisr\\_r/download\\_Tracking\\_20Residential\\_20Satisfaction\\_20on\\_20LI\\_20Poll\\_20Report\\_202012.pdf](https://lii-production.s3.amazonaws.com/lii-data/download/trsolisr_r/download_Tracking_20Residential_20Satisfaction_20on_20LI_20Poll_20Report_202012.pdf)).
- 34 Residential Satisfaction.
- 35 Long Island Index, Housing Affordability Report (2013) (hereinafter Housing Affordability) (available at <http://www.longislandindex.org/explore/dbdbdc67-b2ee-45df-ac22-824e8b27af0f>).
- 36 While affordable housing is often thought to target lower-income residents, workforce housing often targets a population otherwise not eligible for affordable housing programs. Fannie Mae , Fannie Mae and Workforce Rental Housing (2011) (available at [https://www.fanniemae.com/content/fact\\_sheet/wpworkhouse.pdf](https://www.fanniemae.com/content/fact_sheet/wpworkhouse.pdf)).
- 37 See Housing Affordability.
- 38 Interview with Jim Morgo formerly of the Long Island Housing Partnership and Suffolk County Industrial Development Agency on 12/13/13.

- 39 Bill Jacket to Senate Bill 6832-A, Laws of 2008.
- 40 Online Office of New York State Senator Liz Kruger of the 26th District (hereafter Liz Krueger’s Office) (available at <http://www.lizkrueger.com/news/news419.html>).
- 41 See *id.*
- 42 S04626 from the 2007-08 legislative session (would have created a tax exemption for the creation of affordable housing) (also S7393 from the 2005-06 legislative session). Previous versions of the Act (introduced in 2007 and 2006) had lower income thresholds but they were rejected by the legislature. In 2007, a version of the Long Island Workforce Housing Act was introduced (S3428), it targeted incomes at less than 80 percent of the area median income. The bill allowed developers to pay fees in lieu of development only in cases where the local government finds that the construction of the units would have an adverse effect on health, safety or the environment. That bill specified 30 years as the affordability period. This bill failed to pass either house. The other bill (S3966) with similar provisions was introduced in 2006 and also voted down by the legislature.
- 43 *Id.*
- 44 Sweeney Workforce Housing Act Now Law, Assemblyman Robert K. Sweeney’s Website, August 8, 2008 (available at <http://assembly.state.ny.us/mem/Robert-K-Sweeney/story/28837/>).
- 45 Interviews with Mitch Pally at the Long Island Builders Institute on 3/31/14 & Michael Deering at the Long Island Power Authority on 4/7/14.
- 46 Kabot Contends Workforce Housing Act Favors Developers, Kelly Carroll, August 5, 2008 (available at <http://www.hamptonsonline.com/article.php?articleID=4505#.U1BHfPldVNM>); Workforce Housing Included, January 23, 2009 (available at <http://sagharboronline.com/sagharborexpress/tag/long-island-workforce-housing-act>).
- 47 See N.Y. Gen. Municipal Law §699-B (2). One possible reason for this confusion is that the Act excludes from coverage, projects that seek to utilize less than the maximum allowable residential density at the time of the application. But because essentially all multi-unit developments on Long Island seek to be built at more than the otherwise allowed density of a single family unit (or nonresidential, in the case of areas zoned for commercial use), this exception would rarely if ever apply. Multi-family developments are built almost exclusively as a result of spot rezoning and variances. Therefore, for most of Long Island, all multi-family developments by definition are seeking to build at more than the maximum allowable density. It is possible the exception was intended to apply in those few areas already zoned for multiple unit construction, such as in some downtown regions that were rezoned to provide that density. In that case, a developer might seek to build a 10-unit development on a plot zoned for 20 units. In that case, the affordable housing requirement would not apply, as the developer would be seeking less than the otherwise allowable density. It is also possible that the “maximum allowable residential density” referred to in subsection 2 means the largest possible residential zoning in the zoning ordinance and comprehensive plan for the whole locality. If that is the case then the exception does not necessarily swallow the whole rule, but that is still debatable.
- 48 See N.Y. Gen. Municipal Law § 699-A. A local government would only be required to grant a 100 unit project - 1/10 of a unit as a density bonus in return for the developer meeting affordable housing set aside requirements based on the actual number of units approved. To be sure, if a development with 100 units gains approval for a zoning variance it is already receiving 100 times more density than was allowed under the original zoning code. To that extent, the density bonus required by the law is in essence both meaningless and insufficient. The definitions further state that units resulting from the density bonus should not be included when calculating the number of affordable set aside units. If every unit a developer is allowed to build above the baseline of one is considered a part of the density bonus, then only one of the units would be used to calculate the number of affordable units. If this is the case, then only one unit would ever need to be set aside. This, clearly, is not the intent of the Act. Furthermore, the calculation of fees under the Act is based on the same calculation of density bonuses. Developers can elect to pay a fee to municipalities instead of setting aside units as part of their developments. The fee is based on the number of units the project would be entitled to under the density bonus. If any density increase resulting from either the Act or a zoning variance falls under the definition of a density bonus, then a development with 100 units would be required to either include ten affordable units or pay a fee equal to almost \$20 million. Again, this does not seem to be the intent of the Act.
- 49 Localities on Long Island have a patchwork of local zoning laws that are similar to, but different, from the Act. There is no clarity on whether

- developments benefit from, and must meet obligations, under both the Act and the local laws, or if the Act is intended to override similar local laws. For example, in Islip, the town code designates a district in which 10 percent of all dwellings must be set aside for affordable housing, if more is set aside then the town grants a density bonus to the developer. In Huntington, the town code requires that all developments with five or more units that resulted from an applicant initiated zone change designate at least 20 percent of units as affordable. In Southold, the town code allows for the creation of affordable housing districts in which zoning allows high density housing and requires that it is leased or sold to tenants who meet affordability requirements. In Brookhaven, the town code requires developments in a designated district to set aside 10 percent of all units for workforce housing.
- 50 Interview with Jamie Stover of Mill Creek.
- 51 Interview with John Venditto of Oyster Bay.
- 52 See N.Y. Gen. Municipal Law § 699-B (1). Developers are permitted to pay fees into a local affordable housing trust fund or to the LIHP in lieu of setting aside affordable units. The number of units for which fees must be paid is calculated based on the number of units created through the density bonus. These calculations may be confusing and inconsistent because in some cases a density bonus may be interpreted as the entire increase in density from an initial density of one unit to the final density of one hundred units.
- 53 LIHP's role in the administration of the Act is limited to management of a trust fund to hold fees paid by developers in lieu of affordable housing units.
- 54 Interviews with officials from Brookhaven, East Hampton, Huntington, Islip, Long Beach, Oyster Bay, North Hempstead, Patchogue, Smithtown, and Southold.
- 55 Officials from Brookhaven, East Hampton, Huntington, Islip, Oyster Bay, North Hempstead, Patchogue, Smithtown, and Southold, developers at Mill Creek and AvalonBay were interviewed for the report.
- 56 Officials provided many explanations for their inability to show any workforce units produced under the Act. The main explanation is that the slow post-recession economy has caused a complete halt to multi-family development and that no applications for developments with five or more units have been received. Frank DeRubeis of Smithtown on 11/18/13, John Venditto of Oyster Bay, & Greg Kalnitsky of Long Beach. However, there appear to be many new developments that fit the criteria of the Act in some of these jurisdictions, as indicated by County records. Eric Alexander of Vision Long Island on 11/26/13 and Richard Koubek of the Huntington Township Housing Coalition on 12/11/13.
- 57 Interviews with Heather Lanza of Southold, Joan Cergol of Huntington on 11/26/13, Jessica Joyce of Islip on 11/27/13, and a Planning Department Official in North Hempstead on 11/26/13. Documents received through Freedom of Information Law requests for documents related to the Act to the Town of Huntington, the City of Long Beach and the Town of Southold included the text of these municipalities' local inclusionary zoning laws. Southold's Affordable Housing District Law, Islip's Resident CA District Law, and Brookhaven's MF Residence District Law apply to specific areas of these localities as opposed to any place where a multifamily development is approved. The Affordable Housing Law in Huntington requires that all multifamily developments that were approved due to an applicant initiated zone change that resulted in increased density must set aside at least 20 percent of the development to affordable housing.
- 58 Interview with Joan Cergol of Huntington, Planning Official from North Hempstead, Jessica Joyce of Islip, Greg Kalnitsky of Long Beach on 11/18/13, Frank DeRubeis of Smithtown, John Venditto of Oyster Bay, and Marian Russo of Patchogue.
- 59 This development has been approved by the Town of Brookhaven. Planning Documents show that at least one unit will be set aside as affordable as a result of the Long Island Workforce Housing Act.
- 60 HUD Records of Building Permit Issuances (available at <http://socds.huduser.org/permits/>).
- 61 Interview with Jamie Stover of Mill Creek on 12/2/13.
- 62 Interviews with Frank DeRubeis of Smithtown and John Venditto of Oyster Bay. The reasoning behind this belief is not entirely clear, and Richard Koubek of the Huntington Township Housing Coalition believes that it is entirely unfounded and that the individualized agreement or zoning variance should incorporate the provisions of the Act. Interview with Richard Koubek of the Huntington Township Housing Coalition.
- 63 Interview with an official at Nassau County.

- 64 Massachusetts Executive Office of Housing and Economic Development (captured July 2014 at <http://www.mass.gov/hed/community/40b-plan/>).
- 65 Households at or below 80 percent of the area median income.
- 66 Households at or below 50 percent of the area median income.
- 67 Citizens' Housing and Planning Association, State's Affordable Housing Zoning Law (2011) (hereinafter State's Affordable Housing Zoning Law) (available at <http://www.chapa.org/chapter-40b>).
- 68 State's Affordable Housing Zoning Law.
- 69 58,000 may not seem like a large number for a State with a population of almost seven million, these results are actually indicative of a successful inclusionary zoning program. Inclusionary zoning laws do not typically produce housing units in numbers that are as high as financial incentives. (captured in December 2013 at [http://www.inclusionaryhousing.ca/wp-content/uploads/2010/01/ResourceUS\\_APA\\_IZ-PracticesSep04.pdf](http://www.inclusionaryhousing.ca/wp-content/uploads/2010/01/ResourceUS_APA_IZ-PracticesSep04.pdf)).
- 70 University of Massachusetts at Donahue, Economic Contributions of Housing Permitted Through Chapter 40B: Economic and Employment Linkages in the Massachusetts Economy from 2000 to 2010 (2010).
- 71 California Housing Element Manual, Public Interest Law Project, June 2013 (available at <http://pilpca.org/wp-content/uploads/2010/10/California-Housing-Element-Manual-3rd-Ed.-Law-Advocacy-and-Litigation-June-2013.pdf>).
- 72 Non Profit Housing Association of Northern California, Affordable by Choice: Trends in California Inclusionary Zoning Programs (2007).
- 73 David H. Blackwell, The Density Bonus Law: Has its Time Finally Arrived?, California Real Property Journal (hereinafter The Density Bonus Law) (available at [http://www.allenmatkins.com/~media/Files/Attorney percent20Written percent20Articles/2012/01/thedensitybonuslaw.ashx](http://www.allenmatkins.com/~media/Files/Attorney%20Written%20Articles/2012/01/thedensitybonuslaw.ashx)) (cited throughout this section).
- 74 Partnership for Strong Communities, HOMEConnecticut Program (available at <http://pschousing.org/homeconnecticut-program>).
- 75 Id.
- 76 Moderate density zoning is equal to 6 single family, 10 townhouses/condos, 20 multifamily housing units per acre. State of Connecticut, Office of Policy and Management (hereinafter Office of Policy and Management) (available at <http://www.ct.gov/opm/cwp/view.asp?A=2985&Q=413024>).
- 77 The initial \$20,000 grant is given to the municipality so that it can conduct studies to determine the best location for an overlay zone and the best manner in which to implement it.
- 78 Office of Policy and Management.
- 79 Id.
- 80 New Jersey Legal Library, History of the Mount Laurel Decisions (available at <http://njlegallib.rutgers.edu/mtlaurel/aboutmtlaurel.php>).
- 81 Id.
- 82 The Mount Laurel Doctrine, Editorial, The New York Times, January 28, 2013 (available at <http://www.nytimes.com/2013/01/29/opinion/the-mount-laurel-doctrine.html>).
- 83 U.S. Department of Housing and Urban Development, Expanding Housing Opportunities Through Inclusionary Zoning: Lessons from Two Counties (December 2012).
- 84 The full set of strategy recommendations can be found here: [www.sustainablynct.org/SCIImplementationPlan20140602Final.pdf](http://www.sustainablynct.org/SCIImplementationPlan20140602Final.pdf).



