FAIR SHARE
HOUSING CENTER

Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.
Joshua D. Bauers, Esq.
Ashley J. Lee, Esq.
Esmé M. Devenney, Esq.
Ariela Rutbeck-Goldman, Esq.
Joelle L. Paull, Esq.

August 30, 2025

**Via eCourts and Electronic Mail**
Hon. Thomas C. Miller, A.J.S.C. (ret.)
Affordable Housing Dispute Resolution Program
Richard J. Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625

**Re: IMO the Application of the Township of Verona**
**Docket No. ESX-L-594-25**

Dear Judge Miller and Members of the Program:

Please accept this letter as Fair Share Housing Center's ("FSHC") challenge to the Township of Verona's ("Township" or "Verona") Fourth Round Housing Element and Fair Share Plan ("HEFSP"), adopted on June 19, 2025, and filed in the above-captioned matter on June 20, 2025, pursuant to the Fair Housing Act, P.L. 2024, c.2 ("FHA"), and Administrative Directive #14-24 ("Directive"). This letter is provided in accordance with N.J.S.A. 52:27D-304.1(f)(2)(b) to challenge Verona's HEFSP due to the Township's noncompliance with the FHA and the Mount Laurel doctrine, which protect the constitutional rights of low- and moderate-income New Jerseyans.

Based on the deficiencies in Verona's HEFSP and its failure to provide a realistic opportunity for its fair share of the regional need for affordable housing, the Program should deny the Township's request for a Compliance Certification until it is determined to come into constitutional compliance. As explained in greater detail in section II below, to resolve this challenge and come into compliance, Verona must: (1) provide additional information to properly evaluate its progress in fulfilling its prior round obligations; (2) revise its Housing Element and

Fair Share Plan, especially its vacant land adjustment (VLA) as the VLA does not follow the legal requirements for a VLA, and a properly completed VLA will demonstrate that the Township is not entitled to as large of an adjustment as it claims; (3) identify realistic sites for affordable housing in accordance with the applicable standards; and (4) commit to revise its HEFSP, ordinances, resolutions, affirmative marketing plan, spending plan, and program manuals to comply with applicable law.

## ARGUMENT

### I. Objective Compliance Standard

When there is a challenge to a municipality's HEFSP, the program "shall apply an objective assessment standard to determine whether a municipality's housing element and fair share plan is compliant with the 'Fair Housing Act,' P.L. 1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine." N.J.S.A. 52:27-304.2(b) (emphasis added).

The New Jersey Supreme Court defined the "objective" standard in Mount Laurel II:

> Satisfaction of the Mount Laurel obligation shall be determined solely on an objective basis: if the municipality has in fact provided a realistic opportunity for the construction of its fair share of low- and moderate-income housing, it has met the Mount Laurel obligation to satisfy the conditional requirement; if it has not, then it has failed to satisfy it. Further, whether the opportunity is 'realistic' will depend on whether there is in fact a likelihood – the extent economic conditions allow – that the lower income house will actually be constructed.
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> [S. Burlington Cnty. NAACP v. Mount Laurel, 92 N.J. 158, 220-22 (1983) (Mount Laurel II) (footnotes omitted).]

The Court was clear that "[t]he municipal obligation to provide a realistic opportunity for low and moderate income housing is not satisfied by a good faith attempt. The housing opportunity

provided must, in fact, be the substantial equivalent of the fair share." Id. at 216. The Court was also clear that "it is the municipality" that must "prove every element of compliance." Id. at 306.

The statute demands the same actual compliance as Mount Laurel II. In addition to the specific incorporation of the "objective" standard into the text of the statute, the findings of the statute state that "The Legislature declares that the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), as amended and supplemented by P.L.2024, c.2 (C.52:27D-304.1 et al.), is intended to implement the Mount Laurel doctrine." N.J.S.A. 52:27D-302(p). And notably, unlike in the numbers phase of the Program, the Legislature required proof of objective compliance even absent a challenge, highlighting the importance of this standard. The Program "shall apply an objective standard" to determine whether the HEFSP "enables the municipality to satisfy the fair share obligation, applies compliant mechanisms, meets the threshold requirements for rental and family units, does not exceed limits on other unit or category types, and is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine." Id. The statute then clearly states that a municipality shall receive a compliance certification "unless these objective standards are not met." N.J.S.A. 52:27-304.2(b). This objective standard, which has been interpreted through decades of case law and regulatory development, provides the appropriate basis for the review of this challenge.

## II. The Township's Fourth Round HEFSP does not provide sufficient information to demonstrate compliance with the Fair Housing Act and the Mount Laurel doctrine.

A challenge to a municipal fair share plan "shall specify with particularity which sites or elements of the municipal fair share plan do not comply with the 'Fair Housing Act,' P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine, and the basis for alleging such non-compliance." N.J.S.A. 52:27-304.2(b). In several areas, Verona's HEFSP does not definitively demonstrate compliance with the FHA and/or the Mount Laurel Doctrine. These areas are as

follows: (1) the Township's plan inadequately assesses the extent to which it has met its fair share obligation from prior rounds; (2) the vacant land adjustment was improperly conducted, producing an inaccurate realistic development potential (RDP); even if this RDP were to be accepted, the Township does not sufficiently address its unmet need; (3) the sites selected by the Township do not all present a realistic opportunity; and (4) several of the necessary compliance items and documents exhibit flaws.

**A. The Township does not adequately evaluate its progress in meeting its Third Round fair share obligation.**

As part of the process of adopting and seeking approval of Fourth Round fair share plans the Legislature was clear that the starting point for any review is an "assessment of the degree to which the municipality has met its fair share obligation from the prior rounds of affordable housing obligations as established by prior court approval, or approval by the council." N.J.S.A. 52:27D-304.1(f)(2)(a). As part of this assessment, the municipality is required to analyze the "extent this obligation remains unfulfilled" and "if a prior round obligation remains unfulfilled or a municipality never received an approval from court or the council for any prior round, the municipality shall address such unfulfilled prior round obligation in its housing element and fair share plan." Ibid.

Here, Verona's Fourth Round HEFSP filing does not provide sufficient documentation to prove compliance for each of its Prior Round and Third Round sites, claiming that the amended FHA does not require it to re-examine zoning or projects if they were put in place prior to July 1, 2020. While re-examination of unbuilt sites may not yet be required for the Township's mechanisms, documentation and analysis of mechanisms, especially those that have received

approvals or certificates of occupancy, is needed in order for units to be properly credited. The Township should fully document and justify the following mechanisms:

1. **Verona Flats/Cameco (Block 2301, Lots 11, 12, 14-19)** – This is a municipally sponsored 100% affordable redevelopment project with 95 affordable units. The Township should provide the certificate of occupancy and deed restrictions for the development, as well as the final income and bedroom distributions.
2. **Sunset Avenue/Spectrum 360 (Block 303, Lot 4)** – This is an inclusionary family rental project with 15 affordable units and the rest of the set-aside fulfilled via a payment in lieu of constructing affordable housing. The Township should provide the site plan approvals, construction permits, and documentation of the extension sought for water approvals. Additionally, the Township should commit to providing deed restrictions when they are available.

The Township should provide such documentation and supplemental information for its Third Round projects to receive credit.

### B. The Township's vacant land adjustment does not comply with the Fair Housing Act.

As part of Verona's HEFSP submission, the Township requested a vacant land adjustment ("VLA") pursuant to N.J.S.A. 52:27D-310.1. The VLA provided is inadequate under the applicable legal standards, namely COAH's longstanding VLA standards which are incorporated by reference by the Amended Act. N.J.S.A. 52:27D-311(m). FSHC contends and will demonstrate below that a properly calculated realistic development potential (RDP) pursuant to N.J.S.A. 52:27D-310.1 and N.J.A.C. 5:93-4.2 will result in an RDP that exceeds the Township's calculation of fifty-seven (57)

#### 1. The process for vacant land adjustments is well established by over three decades of law.

The Amended FHA retains the longstanding legal framework for conducting a vacant land analysis as has been developed through COAH regulations and case law. Verona does not follow

this precedent. The Amended Act, recognizing that decades of precedent existed in reviewing compliance and that the Legislature wanted to continue that precedent, made clear that all parties "shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by [the Amended Act], or binding court decisions." N.J.S.A. 52:27D-311(m). In the statutory section regarding vacant land adjustments, besides changes to strengthen requirements around "unmet need" and redevelopment further addressed below, the Legislature simply shifted the forum of resolution of challenges from COAH to the Program and kept the substantive standards intact. The process for conducting an adjustment under this section of the statute is well-known and has been utilized for over thirty (30) years with the primary regulations governing said adjustment being N.J.A.C. 5:93-4.2, initially adopted in 1994 as part of COAH's Second Round rules.

Under N.J.A.C. 5:93-4.2, a municipality's RDP is calculated by determining how many acres are appropriate for residential development and multiplying that by an appropriate density. N.J.A.C. 5:93-4.2(f). The regulations require a municipality seeking an adjustment due to lack of land to "submit an inventory of vacant parcels by lot and block that includes the acreage and owner of each lot." N.J.A.C. 5:93-4.2(b). The regulations made clear that "all vacant sites shall initially be presumed to fall into this category." N.J.A.C. 5:93-4.2(d).

Notably, the regulations require analysis of redevelopment sites in addition to vacant sites. This analysis must include sites "that are devoted to a specific use which involves relatively low-density development" and would create a realistic opportunity if inclusionary zoning were in place. Id. The COAH rules provide direct guidance that properties "have the potential to develop or

redevelop over time and, as such development takes place, the Council has determined that such sites shall contribute toward the housing obligation." N.J.A.C. 5:93-4.1(c).

Once the inventory including vacant and potential redevelopment sites is complete, the municipality may provide information to exclude or eliminate certain sites from the inventory. A municipality may only exclude lands for the specifically denoted reasons in the regulations which are all related to developability of each site such as: the presence of environmental constraints, the existence of a deed restriction prohibiting development, or use as recreational lands within the municipality. N.J.A.C. 5:93-4.2(e).

After the appropriate and applicable exclusions are removed from the inventory the analysis moves to the next stage – determining the density for each property. The regulations demand two criteria be utilized in this assessment, the character of the area surrounding the site and the need to provide affordable housing. N.J.A.C. 5:93-4.2(f). The lowest density that may be assigned is six (6) dwelling units per acre. Id. Once each site is assigned its own density after completing this required analysis, each site's land area is multiplied by the applicable density. The final step is to multiply each site by a 20% set-aside. Id. The resulting product is the realistic development potential (RDP) for the site. Id.

**2. Verona's VLA fails to comply with N.J.S.A. 52:27D-310.1 and N.J.A.C. 5:93-4.2 because it artificially undercounts the Township's realistic development potential.**

The Township's VLA fails to comply with this longstanding precedent in a number of ways, resulting in a larger adjustment than the Township is truly eligible for.

First, the Township's VLA suffers from a basic problem of incomplete information. The inventory of vacant land provided does not include all the parcels analyzed, making it impossible

to analyze if all exclusions of parcels were valid according to the statute and regulations. The VLA's methodology states that of the lots excluded from the RDP calculation, only lots listed in a ROSI and some developed properties were preserved in the inventory "to demonstrate that the analysis was comprehensive." This, however, is not enough to demonstrate that the analysis was comprehensive. Parcels such as Block 1201, Lot 3.01 which appear undeveloped and unconstrained are excluded without rationale.

However, even without specific rationale for each parcel, it can be gleaned that Township included only vacant, not underutilized and potentially redevelopable, sites in their VLA. As detailed above, N.J.A.C. 5:93-4.2 requires a VLA to consider redevelopment sites in addition to vacant sites. This analysis was not performed. Here, the Township's VLA methodology explicitly states its belief that "If the site is developed, it does not contribute to the RDP."

It is well settled that this using this as a blanket rationale for exclusion is improper. In municipalities that request a vacant land adjustment, sites that are appropriate for an inclusionary use, but that were approved for another purpose during the Third Round, may generate RDP. In a January 2017 decision, the New Jersey Supreme Court held that Mount Laurel obligations accrued during the "gap period" from 1999-2015. In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017). The Court held "that there could be no hiatus in the constitutional obligation" and agreed with lower courts "that the need that arose during the gap period was a responsibility of the municipalities." Id. at 521–22. The Court ruled as follows:

> There is no fair reading of this Court's prior decisions that supports disregarding the constitutional obligation to address pent-up affordable housing need for low- and moderate-income households that formed during the years in which COAH was unable to promulgate valid Third Round rules. The opportunity for immunity provided by this Court's substitute for substantive certification was premised on the value of the efforts of towns that received

> substantive certification from COAH during that interval or that otherwise could show steps taken to address affordable housing needs. Mount Laurel IV, supra, 221 N.J. at 21, 24–29. That necessarily meant addressing the need of low- and moderate-income households that came into existence since 1999, and that still exists today.
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> [Id. at 521 (emphasis added).]

See also id. at 512-13 ("For the last sixteen years, while the Council on Affordable Housing (COAH) failed to promulgate viable rules creating a realistic opportunity for the construction of low- and moderate-income housing in municipalities, the Mount Laurel constitutional affordable housing obligation did not go away. Municipal responsibility for a fair share of the affordable housing need of low- and moderate-income households formed during that period was not suspended.").

Consistent with the Court's holding in the "gap period" decision, during the Third Round declaratory judgment proceedings, courts, litigants, and special masters, considered both currently available sites and sites that were available but that were squandered by the municipality in evaluating municipalities' requests for a vacant land adjustment. For example, in Englewood Cliffs, a matter that ultimately required a trial on the merits to determine RDP, the trial court found that a site which was under construction as a large-scale office building should generate RDP and required the Borough to address that RDP during the Third Round.[1]

Furthermore, the Township's VLA fails to include sites that it later proposes to satisfy its RDP. In the Township's fair share plan, it assesses the suitability of five redevelopment sites ranging in availability and proposes to apply at least 33 units from these sites towards RDP obligation. The Township has therefore recognized the ability of all five sites to produce affordable

[1] In the Matter of the Borough of Englewood Cliffs, January 17, 2020 Order and Decision, https://www.dropbox.com/work/4th%20Round%20Citation%20to%20COAH%20Decisions.

housing by the fact that they are included in its plan, but refuses to account for the additional RDP that they generate. For instance, the Hillcrest Farms site is currently occupied by a garden center and farmers market business, a type of use that N.J.A.C. 5:93-4.2(d) identifies as a low-density development that may create an opportunity for affordable housing if inclusionary zoning was in place. ("Such sites include, but are not limited to: golf courses not owned by its members; farms in SDRP planning areas, one, two and three; driving ranges; nurseries; and nonconforming uses.") The Township states that it has even been in negotiation with an interested developer to redevelop the Hillcrest Farms site. Despite all this, the tract is excluded from the Township's RDP calculation. Thus, in multiple cases, the Township claims that a site is not available for development for the purposes of its vacant land analysis, but then claims it is available for the purposes of taking credit towards its fair share plan. The Township should be required to put all of these sites back into the RDP.

For the foregoing reasons, and likely others, the Township is not eligible for as large of an adjustment as it claims.

**3. The Township does not adequately address its unmet need.**

The Township has a constitutional and statutory obligation to also address the unmet need – the difference between the Fourth Round prospective need obligation and RDP. But in its HEFSP, Verona fails to identify sufficient mechanisms to fulfill its unmet need obligation.

A municipality that has a vacant land adjustment "must identify potential sites for development, and a method to generate additional affordable units should those sites become available." In re Petition of Borough of Montvale, 386 N.J. Super. 119, 122 (App. Div. 2006). In

In re Fair Lawn Borough, 406 N.J. Super. 433, 441-442 (App. Div. 2009), the Appellate Division wrote:

> COAH's regulations recognize that some towns may not have enough currently developable land to meet their fair share requirements, although they may have vacant land that is capable of future development for that purpose. A municipality may receive a "vacant land" adjustment, conditioned on adopting zoning geared at allowing the eventual development of affordable housing on those properties. N.J.A.C. 5:93-4.1, -4.2.
>
> [(citations omitted).]

Unmet need is not "'a permanent adjustment to municipal affordable housing obligations.'" In re Adoption of N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1, 87-88 (App. Div.), certif. denied, 192 N.J. 71 (2007) (quoting 36 N.J.R. 5770 (December 20, 2004)).

This requirement dates to the earliest days of Mount Laurel wherein the Supreme Court required in Mount Laurel II an answer to unmet obligations because of a lack of land. The Court recognized that there may be some municipalities that do not have sufficient vacant land for development finding municipalities and courts will need to determine in those cases "what kind of remedy is appropriate to ensure that as land becomes available, a realistic opportunity exists for the construction of lower income housing[.]" Mount Laurel II, supra, 92 N.J. at 248, n 21.

The Appellate Division has found that COAH's approach to unmet need met the requirements of the Mount Laurel doctrine because it must be satisfied through, for instance, overlay zoning. In re Adoption of N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1, 87-88 (App. Div.), certif. denied, 192 N.J. 71 (2007). See also 40 N.J.R. 5965(a), 6005 (October 20, 2008) (COAH's regulations are intended to "require meaningful plans for unmet need"); In re Fair Lawn, 406 N.J. Super. at 445 (noting in case in which COAH required overlay zoning that COAH "carefully

scrutinized" a municipality's "plan to be sure the vacant land adjustment did not become a hollow promise"); N.J.A.C. 5:93-5.6(b)(1)("When a municipality is receiving an adjustment pursuant to N.J.A.C. 5:93-4.2 [vacant land adjustment] the municipality shall be required to zone inclusionary sites . . . with a 20 percent set-aside.").

To be constitutional under the Mount Laurel doctrine, unmet need mechanisms must provide for affordable housing through, for instance, overlay zoning that captures affordable housing opportunities as they arise. See, e.g., N.J.A.C. 5:93-5.6(b)(1)("When a municipality is receiving an adjustment pursuant to N.J.A.C. 5:93-4.2 [vacant land adjustment] the municipality shall be required to zone inclusionary sites . . . with a 20 percent set-aside."); N.J.A.C. 5:93-4.2(h) ("[A]fter [a vacant land] analysis, the Council may require at least any combination of the following in an effort to address the housing obligation: . . . . (2) Overlay zoning requiring inclusionary development . . . .").

While the Legislature retained the vacant land adjustment process in the Amended Act as is, the Legislature also strengthened requirements to address unmet need in a recognition of the increasing trend towards redevelopment in New Jersey. As a part of the unmet need obligation, Franklin is required to identify parcels with the likelihood to redevelop and to adopt realistic zoning on those parcels to address 25% of its unmet need, that is, that would produce enough affordable housing to meet at least 25% of the obligation that has been adjusted. See N.J.S.A. 52:27D-310.1.

The 2024 amendments to the Fair Housing Act affirm and strengthen the long recognized unmet need obligation by requiring towns to ensure that their unmet need mechanisms provide affordable housing for *at least* 25% of the adjusted obligation through overlay zoning on sites

"likely to redevelop." Indeed, municipalities that receive a vacant land adjustment are required to "identify sufficient parcels likely to redevelop during the current round of obligations to address at least 25 percent of the prospective need obligation that has been adjusted and adopt realistic zoning that allows for such adjusted obligation or demonstrate why the municipality is unable to do so." N.J.S.A. 52:27D-310.1 (emphases added).

Here, the only mechanism proposed by the Township to address its unmet need is an amendment to its Town Center (TC) zone. This amendment purports to eliminate barriers to mixed-use development, but it does not create a meaningful incentive to produce residential development. The zoning as amended still does not permit a residential density that would likely yield a meaningful amount of units in the Fourth Round: the plan states that the amendment would yield more than 25 affordable units only if the entire TC zone were to be redeveloped. While the Township's correctly recognizes the requirement to create additional opportunities for redevelopment, its plan falls short of adopting realistic zoning to meet that requirement.

### C. The Township's HEFSP does not create a realistic opportunity for its fair share because the sites in the HEFSP do not create a realistic opportunity.

The bedrock principle in determining whether a municipality has complied with Mount Laurel is for the housing plan to show how it has created a "realistic opportunity" for the municipality's fair share of the regional need. Mount Laurel II, supra, 92 N.J. at 221-222. The Supreme Court demanded an analysis that focused on actual construction of affordable homes and determined that "whether the opportunity is 'realistic' will depend on whether there is in fact a likelihood—to the extent economic conditions allow—that the lower income housing will actually be constructed." Id.

One of the critical components of the realistic opportunity evaluation is whether the sites proposed for affordable housing development are "suitable." In Mount Laurel II, the Supreme Court established general site suitability standards that are still valid decades later: "… the proposed project ... [must be] ... located and designed in accordance with sound zoning and planning concepts, including its environmental impact." Also, "it is only if the proposed development ... is contrary to sound planning principles, or represents a substantial environmental hazard, that it should be denied." For the last thirty years COAH rules have articulated these principles and standards with more precision, with a dozen site suitability criteria, such as access to appropriate streets, compliance with flood hazard area constraints, and adjacent to compatible land uses (see N.J.A.C. 5:93-5.3(b) and N.J.A.C. 5:97-3.13). And courts have further developed precedent around these standards, including in In Re Petition For Substantive Certification, Twp. Of Southampton, 338 N.J. Super. 103, 115 (App. Div. 2001), certif. denied, 169 N.J. 610 (2001), in which the Appellate Division held that for existing developed sites, finding such sites realistic requires evidence of "communicat[ion] with the owners to determine their plans for future use of the site and whether they would be interested in using the property for high density residential development which would include affordable housing," and "the impact of [existing] development upon potential future development for affordable housing." As with the vacant land adjustment process, the Legislature in the Amended Act incorporated longstanding COAH regulations as to "compliance mechanisms," which notably include these site suitability standards. N.J.S.A. 52:27D-311(m).

FSHC has identified the following issues with the sites selected by the Township:

1. **Town Center Mixed Use Overlay** – This was an overlay zone adopted as an additional term in Verona's Third Round fair share plan, though it was not necessary for the Township to meet its Third Round obligation. Here, the

Township proposes the same overlay zone to produce at least 11 affordable units towards its Fourth Round obligation. However, since the overlay was adopted in 2022, no applications have been submitted for redevelopment within the zone. Because the zone is being proposed for the Fourth Round, the Township should reassess at this time whether this site continues to present a realistic opportunity for affordable housing and provide information on whether any developers or owners have interest in proceeding with redevelopment.

For starters, N.J.A.C. 5:93-5.6(b)(1) requires that municipalities receiving a VLA must zone inclusionary sites with a 20% set-aside. Currently, the TCMU Overlay requires only a 15% set-aside for rental units. This should be amended.

2. **Grove Avenue Assisted Living** – This is a site rezoned in 2024 to produce up to 25 affordable age-restricted units. FSHC agrees that the site is suitable, developable, and approvable; however, the Township has not demonstrated here that it is available, i.e. provided information showing that the property owner/developer has interest in proceeding with a development using the new zoning. Additionally, the zoning ordinance should be amended to require a 20% set-aside. N.J.A.C. 5:93-5.6(b)(1).

3. **320 Bloomfield Avenue and 11 Church Street** – This is a redevelopment site producing 2 affordable family units. The Township has provided a draft redevelopment plan for the site and stated that there is an interested developer. The Township should revise the redevelopment plan to require a 20% set-aside in accordance with N.J.A.C. 5:93-5.6(b)(1), and to add language ensuring compliance with the Uniform Housing Affordability Controls (UHAC). The Township should also provide more information on why the developer is requesting to delay the adoption of the Redevelopment Plan, and whether this would affect the realistic opportunity of the site to produce affordable units within the Fourth Round.

4. **Hillcrest Farms, 420 Bloomfield Avenue, 176 Bloomfield Avenue** – These are redevelopment sites for which the Township has provided concept plans and stated that there is an interested developer. The Township should additionally provide an adopted zoning ordinance for each site to ensure that the developments will move forward as planned and in accordance with the Uniform Housing Affordability Controls (UHAC); this zoning ordinance should require a 20% set-aside, which would increase the number of affordable units on each site, pursuant to N.J.A.C. 5:93-5.6(b)(1).

5. **885 Bloomfield Avenue** – This is a redevelopment site that the Township states will produce at least 4 affordable units. The Township has provided a concept plan and is in negotiations with an interested developer. The Township should additionally provide an adopted zoning ordinance for each site to ensure that the developments will move forward as planned and in accordance with the Uniform Housing Affordability Controls (UHAC). The Township should

provide the final site plan when it is available and commit to amending its HEFSP should it produce a lower number of units than is proposed here.

6. **Hillwood/Verona Senior Housing** – This is a senior housing facility that was completed in 1979 with 159 affordable units. The Township was able to apply 59 of these units to the Prior Round and Third Round and is now proposing to apply 8 units to the Fourth Round obligation. The Township should provide documentation that affordability controls will extend on the site throughout the Fourth Round, a current contract with the administrator, as well as a certificate of occupancy and a certificate of habitability for the facility.

**D. The Township's HEFSP contains additional flaws that should be addressed by the Program.**

As discussed earlier, it is the municipality that must demonstrate every element of compliance. See Mount Laurel II, supra, 92 N.J. at 306. FSHC has identified the following additional items that must be addressed by the Program before the Township can be deemed to have complied with Mount Laurel.

1. The Township should show how it meets the very-low-income and low-income requirements. The statute requires that "at least 13 percent of the housing units made available for occupancy by low-income and moderate-income households to address a municipality's prospective need obligation will be reserved for occupancy by very low income households, [. . .] with at least half of such units made available for families with children." N.J.S.A. 52:27D-329.1. Relatedly, the statute requires a "minimum 50 percent of the housing units required to be made available for occupancy by low-income households to address a municipality's prospective need obligation." Id.
2. The Township should be required to include the following language in all of its zoning ordinances and redevelopment plans for inclusionary sites:
    a. Twenty percent (20%) of the residential units shall be restricted to low and moderate income households.
    b. All affordable housing units shall comply with the Township's affordable housing regulations in its Affordable Housing Ordinance, as well as the NJ Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), and the Uniform Housing Affordability Control Rules (N.J.A.C. 5:80-26.1 et seq.). This shall include but is not limited to:
        i. The requirement that at least thirteen percent (13%) of the affordable units within each bedroom distribution shall be required to be for very low income households earning thirty percent (30%) or less of median income,

ii. Appropriate bedroom distribution of 1-, 2-, and 3-bedroom units,

iii. Recording of appropriate affordability controls of not less than forty (40) years for rental units and not less than thirty (30) years for sale units, and

iv. Minimum unit sizes by square footage for affordable housing units.

c. The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include the community and regional organizations identified by the Township, and it shall also include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law.

d. The affordable units shall be integrated with the market-rate units, and the affordable units shall not be concentrated in separate building(s) or in separate area(s) or floor(s) from the market-rate units. In buildings with multiple dwelling units of similar tenure, this shall mean that the affordable units shall be generally distributed within each building with market units. The residents of the affordable units shall have full and equal access to all of the amenities, common areas, and recreation areas and facilities as the residents of the market-rate units. The affordable units shall be the same type of housing unit as the market rate units, meaning that a market rate building available to families shall not be developed to provide age-restricted housing units.

e. Construction of the affordable units in inclusionary developments shall be phased in compliance with N.J.A.C. 5:93-5.6(d).

3. The Township should recalculate its administrative expense maximum in the Spending Plan pursuant to N.J.S.A. 52:27D-329.2(b)(5), which requires that "[n]ot more than 20 percent of the revenues collected from development fees shall be expended on administration, in accordance with rules of the department." No extraneous funds may be used in the calculation of the administrative expense maximum, including interest on development fees or development fee revenue that was previously allocated in a prior Spending Plan.

4. The Township should update its Spending Plan, Affordable Housing Ordinance, Development Fee Ordinance, Affirmative Marketing Plan, and other administrative documents in accordance with the forthcoming regulations at N.J.A.C. 5:80-26.1, et seq, and N.J.A.C. 5:99 after they are adopted and before March 15, 2026.

Thank you for your attention to this matter. As noted above, part of FSHC's challenge is as to the failure to provide sufficient information and documentation to support its plan in

compliance with the FHA and Mount Laurel; FSHC reserves its rights to provide supplemental responses in response to further submissions by the Township.

Respectfully submitted,

Ariela Rutbeck-Goldman

Dated August 30, 2025

Ariela Rutbeck-Goldman, Esq.
Counsel for Fair Share Housing Center

**SUPREME COURT OF NEW JERSEY**

Pursuant to Rule 1:13-2(a), it is ORDERED that the payment of filing fees, other fees, and charges of public officers for service of process in connection with actions filed by the Fair Share Housing Center shall be waived; this Order is effective immediately and until further order of the Court.

For the Court:

Chief Justice

Dated: January 16, 2007