

Master's Report: Fairness Hearing/Compliance Hearing

**Township of Moorestown
Burlington County, New Jersey**

*In the Matter of Township of Moorestown, County of Burlington
Docket No. BUR-L-1604-15*

December 15, 2020

Prepared for:

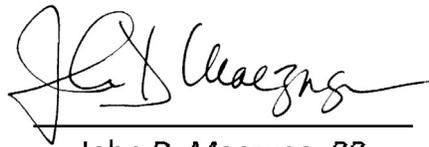
The Honorable Paula T. Dow, P.J.Ch.

Superior Court of New Jersey, Burlington County
Historic Courthouse
120 High Street
Mount Holly, NJ 08060

Prepared by:

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A handwritten signature in black ink, appearing to read "John D. Maczuga", written over a horizontal line.

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1 — Introduction

The Township of Moorestown and Fair Share Housing Center (FSHC) reached an initial Settlement Agreement, dated March 16, 2018, in the above-captioned matter. A Fairness Hearing before Judge Bookbinder was held on August 8, 2018 to consider whether the Settlement Agreement between the Township and FSHC, and the preliminary compliance plan contained in the Settlement Agreement, were fair, reasonable and adequately protected the interests of low- and moderate-income households in the region. At the Fairness Hearing, the Court considered the analysis and recommendations of Special Master Elizabeth McKenzie, PP, which were included in her letter/report of July 31, 2018 and her testimony before the Court on August 8, 2018, as well as the testimony of the additional witnesses and comments of Counsel. Per Judge Bookbinder's August 28, 2018 Order, the Court determined that the Township's March 16, 2018 Settlement Agreement with FSHC, and the preliminary compliance plan contained therein, met the judicial standards prescribed by the Appellate Division in East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996) and was fair, reasonable and adequately protected the interests of low- and moderate-income households and, therefore, conditionally approved the Settlement Agreement.

1.1 — First Amendment to Settlement Agreement

Subsequent to the March 16, 2018 Settlement Agreement and the August 28, 2018 Order conditionally approving same, changed circumstances developed involving several properties included in the Township's preliminary compliance plan. These changed circumstances required amendment of the Settlement Agreement. FSHC and the Township agreed to an amendment to the original Settlement Agreement. The Amendment was signed by FSHC on May 17, 2019, and by the Township on June 10, 2019, and is hereafter referred to as the "First Amendment."

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The approved, March 16, 2018 Settlement Agreement established the Township's 1987-2025 affordable housing obligation as follows: present need (rehabilitation obligation) — 19 units; Prior Round (1987-1999) obligation — 621 units; and, Third Round (1999-2025) obligation — 1,167 units. The approved, March 16, 2018 Settlement Agreement further established the Township's realistic development potential (RDP) at 606 units, leaving a Third Round unmet need of 561 units.

The key modifications of the March 16, 2018 Settlement Agreement, as set forth in the First Amendment, included the following:

1. The parties agreed to a reduction in the Township's prior-round obligation from 621 units to 606 units, in recognition of the previous approval of the 606-unit obligation by the Council on Affordable Housing (COAH) as part of its grant of substantive certification of Moorestown's second-round fair share plan on July 9, 1997.
2. The parties agreed to an increase in the Township's third round (1999-2025) realistic development potential from 606 units to 633 units, attributing potential development to three additional sites: the Land Resource Solutions site (Block 1101, Lots 12-16 and Block 1102, Lots 40-44) — 4 units; the Diocese of Trenton site (Block 8801, Lot 3.01) — 17 units; and, the Pennrose site (Block 4801, Lot 12) — 6 units, if the Miles Technology site (Block 3201, Lot 7) were to be substituted for the Pennrose site.
3. The March 16, 2018 Settlement Agreement, the Court Master's July 31, 2018 letter/report, and the August 28, 2018 Order identified the issue as to "availability" of the Pennrose site. Separate litigation related to a determination of the "availability" of the Pennrose site ensued. The First Amendment required the Township to demonstrate that the Pennrose site was "available" for development prior to the June 24, 2019 Fairness Hearing. The Township did not show the Pennrose site to be available,

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- and in lieu of thereof, the First Amendment provided an alternative compliance mechanism to offset the 75 affordable units contemplated on the Pennrose site (i.e., the Miles Technology site). The First Amendment provided for the Miles Technology site to be developed as a municipally sponsored, 100-percent affordable, 75-unit, family-rental development.
4. The First Amendment provided a modification of the Township's preliminary compliance plan whereby the intervenor for the Centerton Road site would enter into an agreement with the Township in which the anticipated inclusionary component of the project (i.e., 81 age-restricted units) that was provided for in the original Settlement Agreement would instead be met through a payment-in-lieu and land donation by the intervenor, and the Township would assume the obligation to develop a minimum of 75 age-restricted affordable units as part of a 100-percent affordable, municipally sponsored project.
 5. The First Amendment provided for a zoning amendment that allowed for a new inclusionary development site, the Diocese of Trenton site with 83 total units, 20 percent, or 17, of which would be affordable units.
 6. The First Amendment modified the market-to-affordable compliance program in the Township's Third Round RDP Compliance Plan reducing the number of units to be converted from 30 to 12.
 7. The First Amendment further modified the Township's Third Round RDP Compliance Plan to reflect the changes described above.

A second Fairness/Preliminary Compliance Hearing was conducted on June 24, 2019 before Judge Bookbinder. By Order dated July 19, 2019, the Court determined that the Township's affordable housing obligation and preliminary compliance plan set forth in the First Amendment "is facially constitutionally compliant and provides a fair and reasonable opportunity for the Township to meet its obligation under Mount Laurel IV" subject to conditions set forth in said Order.

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1.2 — Second Amendment to Settlement Agreement

Following the July 19, 2019 Order, the Township attempted to negotiate the acquisition of the Miles Technology site. During the course of the negotiations, the Township “discovered another parcel that is available for the 75-unit affordable rental housing project” (i.e., the Harper Drive site) in lieu of the Miles Technology site. The Township and FSHC subsequently agreed to a “Second Amendment” to the original Settlement Agreement, dated March 16, 2018, and First Amendment, dated June 10, 2019. The Second Amendment, dated September 9, 2019, contained the following key provisions:

1. The Harper Drive site replaced the Miles Technology site (75-unit family rental, 100-percent affordable, municipally sponsored project) in the Township’s compliance plan.
2. The Township’s Realistic Development Potential (RDP) remained at 633 units, as provided and approved by the Court in the First Amendment, provided however, that the 15 units of RDP formerly assignable to the Miles Technology site would now be assignable to the Harper Drive site.
3. The Township was required to obtain site control of the Harper Drive site no later than October 20, 2019.
4. All other dates set forth in the First Amendment remained in effect.
5. The parties acknowledged the need for approval by the Court of the Second Amendment after a duly noticed Fairness Hearing, with such Fairness Hearing to be held coincident with a Final Compliance Hearing.

1.3 — Second Fairness and Compliance Hearing

A Fairness and Compliance Hearing before Your Honor on the Second Amendment was scheduled for March 11, 2020. As a result of objections filed by Counsel for both Pennsylvania Real Estate Investment Trust (PREIT) and ILM Center Associates, LP (ILM), the March 11, 2020 Fairness and Compliance Hearing was converted to into a

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Fairness Hearing, limited in scope to whether the Second Amendment was fair, reasonable and adequately protected the interest of low- and moderate-income households. The Court, after review of the evidence submitted, including my February 28, 2020 report and testimony before the Court, and the comments of Counsel for the parties, determined per Order dated April 14, 2020 that the Second Amendment “continues to be fair, reasonable and adequately protects the interest of low- and moderate-income households” and, therefore, approved the Second Amendment.

Your Honor’s April 14, 2020 Order further provided that the Township’s compliance plan, summarized in the Second Amendment, “is facially constitutionally compliant and provides a fair and reasonable opportunity for the Township to meet its obligation under Mount Laurel IV.” The Order provided for a future Final Compliance Hearing on the Township’s compliance plan.

Your Honor’s April 14, 2020 Order further directed the Township and FSHC to separately confer with PREIT and ILM to attempt to resolve the respective objections raised or advise the Court that “a consensus proposal could not be reached.”

Notwithstanding discussions and mediation in which I participated, the Township and ILM could not reach agreement on further modifications to the overlay zoning adopted by the Township (Ordinance No. 38-2019).

Lengthy and detailed discussions and negotiations, including a number of mediation sessions in which I participated, were conducted between the Township and PREIT, with input from FSHC. These efforts resulted in the preparation of a proposed PREIT settlement agreement to be considered for authorization by the Moorestown Governing Body on November 30, 2020. The proposed settlement agreement is on file with the Township (see Section 2 of this report). The Governing Body, on November 30, 2020, authorized signature of the Settlement Agreement subject to

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several additional amendments. PREIT subsequently agreed to the amendments and signed the settlement agreement on December 10, 2020.

1.4 — Further Amendments to Township's HE&FSP

My February 28, 2020 Report, prepared for the March 11, 2020 Fairness Hearing, addressed the Township's Housing Element and Fair Share Plan (HE&FSP), which was adopted by the Moorestown Planning Board on December 5, 2019. The February 28, 2020 report recommended adoption of an amended HE&FSP addressing the comments and 22 conditions set forth in the report. The Moorestown Planning Board, on December 3, 2020 adopted a document entitled *Housing Element and Fair Share Plan, Third Round Plan*, prepared by Clarke Caton Hintz, PC, bearing a last revision date of December 2020. The December 2020 HE&FSP amends the compliance plan contained in the Second Amendment that was approved by the Court pursuant Your Honor's April 14, 2020 Order. The amendments can be summarized as follows:

- A. The Centerton Road municipally sponsored, 100-percent affordable project is modified in its Third Round Plan whereby the project description is updated to reflect the selection by the Township of Community Development Strategies (CIS) as the project developer and the submission of a 2020 NJHMFA low-income tax credit program application for 60 age-restricted units and 21 special needs units, differing from the previous 81 age-restricted units to be generated by the project.
- B. Under all previous compliance plans since the original Settlement Agreement the municipally owned Nagle Tract was to be developed as a 152-unit family rental project with a 45-unit (i.e., 30-percent) affordable family rental unit set aside. The Township's December 2020 HE&FSP modifies the project whereby the Township will solicit developers and apply for funding in 2021 under the NJHMFA Mixed Income Set-Aside Program which, if successful,

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- would provide for a 50-percent affordable set-aside and yield 76 affordable family rental units in its Third Round Plan and allow the Township eliminate the units originally proposed in the Third Round Plan under the market-to-affordable and accessory apartment programs i.e. 12 and 15 units respectively. Per Consent Order dated December 9, 2020, the schedule for the Market-to-Affordable and Accessory Apartment Programs set forth in the Settlement Agreement are tolled pending the outcome of the application for funding under the NJHMFA Mixed Income Set-Aside Program for the Nagle Tract project.
- C. The Prior Round:Third Round split of the ten (previously 11) units in the Oaks Integrated Care facilities is modified from seven:four to eight:two.
 - D. The December 3, 2020 resolution of the Planning Board adopting the December 2020 HE&FSP recommended an amendment of the zoning of the Sbar site increasing the permitted density from the current 13 dwelling units per acre to 14 dwelling units per acre.
 - E. The December 2020 HE&FSP rearranges the projects for which Third Round rental bonus credits are claimed and number of rental bonus credits for the individual projects. The total number of rental bonus credits claimed is reduced from 159 to 151. Rental bonus credits (RBC) are no longer claimed for the MRD project (35 RBC) and Nagle Tract (40 RBC), but now claimed for Land Resource Solutions (4 RBC), Oaks Integrated Care (2 RBC) and Sbar Boulevard (36 RBC). The number of rental bonus credits claimed for the modified Centerton Road project would increase from zero to 25.
 - F. The number of rental bonus credits claimed in the Township's Prior Round Plan is modified as follows: increased by one (from seven to eight) for Oaks Integrated Care; increased to one (zero to one) for the Stokes Place Project; and reduced by two (13 to 11) for the Lenola School Project.

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- G. The Township's Spending Plan is updated and modified to reflect the changes above.

2 — Notice

Counsel for the Township has provided a draft of the notice for the December 22, 2020 Fairness and Compliance Hearing. Counsel for the Township advises that the notice was to be published in the *Courier Post* and *Burlington County Times* on *November 30, 2020*. The notice properly summarized the purpose of the hearing and advised interested members of the public of the availability and location for inspection of the Township's Housing Element and Fair Share Plan, a draft settlement agreement with PREIT and other related documents. The notice further invited written comments and objections on or before December 11, 2020. Counsel for the Township should provide proof of publication of the notice at the December 22, 2020 Hearing.

The notice further provides that the Joint Fairness and Compliance Hearing will default to a compliance hearing only in the event the Township and PREIT cannot finalize and execute a Settlement Agreement prior to the December 22, 2020 hearing date. A Settlement Agreement was finalized and fully executed on December 10, 2020.

2.1 — Comments and Objections

- A. On February 20, 2020, Cheryl Lynn Walters, Esq. of Nehmad Perillo Davis and Goldstein, PC, on behalf of intervenor ILM Center Associates, LP filed an objection to Moorestown's application for a determination of compliance with its affordable housing obligation and a motion to file a builder's remedy claim, or in the alternative, to enforce settlement. The compliance component of the March 11, 2020 Fairness Hearing was adjourned. Efforts to negotiate settlement of the objections were unsuccessful and per letter to Your Honor

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- from ILM Counsel dated December 11, 2020 the previously filed reports and pleadings in support of the objection were supplemented.
- B. Per letter to me dated and electronically received on December 11, 2020, from George W. Matteo, Jr. of Matteo & Associates, LLC, representing Intervenor MRD Moorestown, LLC, an objection to approval of the Township's HE&FSP and the grant of Compliance and Repose has been filed. The objection cites "unresolved issues" related to the MRD inclusionary development site considered by MRD "to be unnecessary cost generative requirements imposed by the Town" as the reason for the objection.

3 — Report Purpose

The purpose of this report is twofold. First, this report addresses and provides the Court with an opinion on the limited issue as to whether the PREIT Settlement Agreement meets the judicial standards set forth in Morris County Fair Housing Council v Boonton Tp. and East/West Venture v. Borough of Fort Lee and, therefore, is fair, reasonable and adequately protects the interests of low- and moderate-income households in the region. The Court has previously determined the original Settlement Agreement and the First and Second Amendments (and the preliminary compliance plans contained therein), in Orders dated July 19, 2019, August 28, 2018, and April 14, 2020 respectively, to be fair, reasonable, and adequately protect the interests of low- and moderate-income households in the region.

Secondly, this report will evaluate the Township's compliance plan, as set forth in the December 2020 HE&FSP.

4 — Fairness Analysis

The original Settlement Agreement, dated March 16, 2018, the First Amendment, dated June 10, 2019, and the Second Amendment, dated September 9, 2019 and the

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Township's affordable housing obligation for the period 1987 to 2025 established therein, were determined by the Court after Fairness Hearings on August 18, 2019, June 24, 2019, and March 11, 2020, respectively, to be constitutionally compliant and fair, reasonable and adequate to protect the interests of low- and moderate-income households in the region. The Court's determination is set forth in Orders dated August 28, 2018, July 19, 2019, and April 14, 2020.

My February 28, 2020 report, prepared for the March 11, 2020 Fairness Hearing, contained a detailed compliance analysis of the Township's December 5, 2019 HE&FSP. The report contained comments, including recommended amendments to the HE&FSP, as well as 22 conditions to any forthcoming grant of Compliance and Repose. The modifications to the Township's compliance plan from the December 5, 2019 HE&FSP, as set forth December 2020 HE&FSP, are summarized in Section 1.4 of this report. These modifications do not change any of the components of the Township's fair share obligation (see Section 5 of this report) that was previously approved by the Court.

The modifications to the Centerton Road project do not result in any reduction in the number of units in the Township's compliance plan and, therefore, in my opinion, do not raise any fairness issues. The modifications to the Nagle Tract project have already been approved pursuant to a separate Consent Order dated December 9, 2020. The remaining modifications from the Township's December 5, 2019 HE&FSP, which was determined by the Court to be fair and reasonable, I would characterize as shifts and/or recategorization of certain projects and credits within the parameters of COAH rules. Therefore, in my opinion, none of the modifications to the Township's HE&FSP set forth in the December 2020 HE&FSP, with the possible exception of the PREIT Settlement Agreement (see Section 4.1 of this report), raise any fairness issue not already addressed and approved by the Court.

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4.1 — PREIT Settlement Agreement

The owners of the Moorestown Mall and the Township reached a Settlement Agreement (PREIT Settlement Agreement) dated December 10, 2020. The Township's adopted HE&FSP and the PREIT Settlement Agreement provide for the adoption of a Redevelopment Plan to permit a three-phase, mixed-use inclusionary development on the Moorestown Mall property which provides for up to 1,065 residential units, including up to 213 affordable housing units, and a full-service hotel, while maintaining parts of the existing mall.

The judicial standards for approval of Mount Laurel settlement agreements are set forth in East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996). The overarching principle of East/West is whether or not "the settlement adequately protects the interests of the lower-income persons on whose behalf the affordable units proposed by the settlement are to be built." East/West further provides a five-pronged analysis in evaluating the fairness of a settlement agreement, as follows:

1. **Consideration of the Number of Affordable Units Being Constructed:**
The Court-approved, original Settlement Agreement and both amendments thereto, as well as the December 2020 HE&FSP, include the Moorestown Mall site as a mechanism to address a portion of the Township's "unmet need" obligation (i.e., the difference between RDP and the Third Round obligation [present and prospective need]). Per the court-approved settlement agreements, the Township's unmet need is 534 units (i.e., 1,167 minus 633). The PREIT Settlement Agreement, providing for up to 213 affordable units, or nearly 40 percent of the Township's unmet need obligation that otherwise may not be realized, is very significant.
2. **The Methodology by which the Number of Affordable Units Provided is Derived:** The Settlement Agreement provides that 20 percent of all

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dwelling units developed on the property be set-aside as affordable units and further provides that all affordable units be family rental units. The generally accepted standard for affordable housing set-asides for inclusionary development are: 20 percent for for-sale housing units; and 15 percent for rental units. The freely negotiated increased set-aside above the standard 15-percent set-aside is significant (n.b., it is 213 units as opposed to 160 units).

3. **Other Contributions by the Plaintiff:** The Settlement Agreement provides for the potential three-phase redevelopment of the Moorestown Mall site and the addition of a full-service hotel. Strengthening the viability of a major tax ratable and focal point of the community, while at the same time producing substantial affordable housing and employment opportunities, is a significant contribution to the general welfare of the community as a whole.
4. **Other Components of the Settlement that Contribute to the Satisfaction of the Constitutional Obligation:** The Settlement Agreement provides that the affordable units be restricted for a period of 30 years per N.J.A.C. 5:80-26.1 (UHAC) requirements but permits the Township to extend the affordability controls beyond 30 years, provided that the PILOT is extended or a new PILOT agreement is reached.
5. **Other Factors that May Be Relevant to the Fairness of the Settlement:** The Settlement Agreement was freely negotiated and is supported by FSHC, a recognized affordable housing advocate. The Settlement Agreement resolves the objection filed by PREIT on February 20, 2020 and moves the Township one step closer to addressing its constitutional obligation.

Based upon the foregoing, I am of the opinion that the settlement agreement between the owner of the Moorestown Mall site and the Township is fair,

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reasonable and adequately protects the interests of low- and moderate-income households and, as such, should be approved by the Court.

5 — Fair Share Obligation

The Court’s April 14, 2020 Order approved the Second Amendment and the following components, which represent the Township’s fair share obligation for the period from January 1, 1987 through July 1, 2025:

1. Present Need (Rehabilitation Obligation): 19 units
2. Prior Round (1987–1999) Obligation: 606 units
3. Third Round (1999–2025) Obligation: 1,167 units
4. Realistic Development Potential (RDP): 633 units
5. Unmet Need (Third Round Obligation — RDP): 534 units

6 — Compliance Plan Analysis

On December 3, 2020 the Moorestown Township Planning Board adopted a *Housing Element and Fair Share Plan, Third Round* (December 2020 HE&FSP) prepared by Clarke Caton Hintz, and signed by Brian Slaugh, PP, AICP. The Township has provided this office with a copy of this document and the analysis and comments contained in this report relate to this document.

6.1 — Present Need (Rehab Obligation)

The Township’s present need (i.e., rehabilitation obligation) is 19 units. The Township proposes to satisfy its rehabilitation obligation through participation in the Burlington County Home Improvement Program, which is funded through the Federal Community Development Block Grant (CDBG) Program, and through the creation of a municipal housing rehabilitation program. The HE&FSP, at Appendix M, contains a draft rehabilitation program manual and a Governing Body resolution (Resolution 211-2020, dated October 19, 2020) adopting the program manual

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“substantially in the form attached hereto.” The HE&FSP indicates that the Township has retained Community Grants, Planning & Housing, a qualified administrative agent, to administer the rehabilitation program in accordance with a program manual that is “substantially consistent” with the one contained in Appendix M. The description of the satisfaction of the Township’s 19-unit rehabilitation obligation in the December 2020 HE&FSP contains insufficient detail as to how the obligation is to be satisfied. The Spending Plan, which is provided in Appendix N of the HE&FSP, provides \$50,000 over 5-year period (2021-2025) to rehabilitate two rental units. Presumably, the remaining 17-unit rehabilitation obligation is anticipated to be satisfied under the Burlington County Home Improvement Program. The Township should document that both rental- and owner-occupied units are eligible for participation in the Burlington County Home Improvement Program and the Moorestown Township rehabilitation program. Documentation should also be provided, that based upon historic data or other means, that it is reasonable to expect that the Burlington County Program could be anticipated to satisfy the remaining 17-unit rehabilitation obligation, or, in the alternative, the local program is to be expanded. **(Condition 1)**.

6.2 — Prior Round Obligation

The Township’s compliance plan for satisfaction of its 606-unit Prior Round obligation, per Table 28 of the December 2020 HE&FSP, is replicated in the following Table 1.

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Table 1: Prior Round Compliance Plan

Mechanism	Units	Bonus Credits	Rental	Senior	Special Needs
Special Needs Housing					
Family Service/Kings Highway, Inc.	3	3	3	—	3
Oaks Integrated Care (8 of 10)	8	8	8	—	8
New Jersey Mentor/Foundation for the Challenged	4	4	4	—	4
A.D.E.P.T. Programs Group Home	5	5	5	—	5
<i>Subtotal</i>	<i>20</i>	<i>20</i>	<i>20</i>	<i>—</i>	<i>20</i>
Municipally Sponsored 100-Percent Affordable Housing					
Courthouse	8	—	8	8	—
Firehouse	8	—	8	8	—
66-68 East Second Street	3	3	3	—	—
124 East Second Street	1	1	1	—	—
203-205 West Second Street	2	2	2	—	—
411 South Lenola Road	1	1	1	—	—
528 Bethel Avenue	1	1	1	—	—
Albany Acres	9	9	9	—	—
Baylor Arms	45	45	45	—	—
Cedar Court	8	—	—	—	—
Creed I	12	12	12	—	—
Colonial Arms	21	21	21	—	—
Lenola School	33	11	33	33	—
Stokes Place (10 of 16)	10	1	10	10	—
Teaberry Run	24	—	24	24	—
<i>Subtotal</i>	<i>186</i>	<i>107</i>	<i>178</i>	<i>83</i>	<i>—</i>
Regional Contribution Agreement					
Beverly City	75	—	—	—	—
Mount Holly Township	199	—	—	—	—
<i>Subtotal</i>	<i>274</i>	<i>—</i>	<i>—</i>	<i>—</i>	<i>—</i>
Subtotals	480	127	198	83	20
Total Units and Bonus Credits	607				

Of the 480 affordable housing units claimed for crediting in the Township’s Prior Round Plan, all are built and occupied, and 460 of the units were accepted for crediting in plans previously certified by the COAH. Twenty (20) special needs housing units, as measured by the number of bedrooms, in seven existing special needs facilities are also proposed for crediting toward the Township’s Prior Round obligation, including: Family Services/King’s Highway — three bedrooms; New

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Jersey Mentor/Foundation for the Challenged — four bedrooms; A.D.E.P.T. Programs Inc. — five bedrooms; and Oaks Integrated Care — ten bedrooms in four facilities (n.b., only eight of the ten bedrooms in the Oak Integrated Care facilities are claimed for crediting in the prior round; the remaining two bedrooms are claimed in the Third Round).

I recommend that all 460 units in Table 28 of the Township's HE&FSP, as previously approved by COAH and replicated in Table 1 of this report, be accepted by the Court toward satisfaction of the Township's Prior Round obligation. Documentation contained in Appendix H of the HE&FSP adequately supports the Township's claim for crediting for all 20 special needs credits claimed in the Township's Prior Round Plan (and two additional special needs units/credits in the Oaks Integrated Care facility claimed in the Third Round) and, therefore, should be accepted by the Court toward the Township's Prior Round and Third Round obligation, respectively.

In addition to the 480 existing units, the Township claims 127 rental bonus credits for a total of 607 units/credits to satisfy its 606-unit Prior Round obligation with one unit to be carried forward to the Third Round.

The Township's December 2020 HE&FSP Prior Round Compliance Plan correctly calculates and demonstrates compliance, per COAH rule, with the following:

- Minimum Rental Units: 152 units required — 198 units provided:
- Maximum Rental Bonus Credits: 152 permitted — 127 credits claimed (n.b., 152 rental units used in RBC calculation):
- Maximum RCA Units: 303 units permitted — 274 units claimed; and,
- Maximum Age-Restricted Units: 83 units permitted — 83 units claimed.

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6.3 — Third Round Obligation

Your Honor’s April 14, 2020 Order approved the Township’s RDP at 633 units. The compliance plan modifications proposed by Township and included in the December 2020 HE&FSP, subsequent to the April 14 Order, do not change the approved RDP. The Township’s compliance plan for satisfaction the 633-unit third round RDP is summarized in the following Table 2, which replicates the information provided in Table 30 of the December 2020 HE&FSP.

Table 2: Third Round RDP Obligation Compliance Plan

Mechanism	Units	Bonus Credits	Rental	Senior	Special Needs
Prior Round Surplus	1				
Special Needs Housing					
Community Options Group Homes	20	—	20	—	20
Oaks Integrated Care (2 of 10)	2	—	2	—	2
<i>Subtotal</i>	<i>22</i>	<i>—</i>	<i>22</i>	<i>—</i>	<i>22</i>
Extensions of Expiring Controls					
66-68 East Second Street	3	—	3	—	—
124 East Second Street	1	—	1	—	—
528 Bethel Avenue	1	—	1	—	—
Beech Street	18	—	18	—	—
Clover Apartments	5	—	5	—	—
Lenola School	33	—	33	33	—
Moorestown Court	8	—	8	8	—
Musser Court	16	—	16	—	—
Stokes Place	16	—	16	16	—
<i>Subtotal</i>	<i>101</i>	<i>—</i>	<i>101</i>	<i>57</i>	<i>—</i>
Municipally Sponsored 100-Percent Affordable Housing (Existing Units)					
428 Camden Avenue	1	1	1	—	—
Creed II	8	8	8	—	4
Linden Place	26	—	26	26	—
<i>Subtotal</i>	<i>35</i>	<i>9</i>	<i>35</i>	<i>26</i>	<i>4</i>

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Table 2: Third Round RDP Obligation Compliance Plan (Continued)

Mechanism	Units	Bonus Credits	Rental	Senior	Special Needs
Municipally Sponsored 100-Percent Affordable Housing (Proposed Units)					
Harper Drive	75	75	75	—	—
Centerton Road (21 of 81 units-special needs)	21	21	21	—	21
Centerton Road (60 of 81 units-age restricted)	60	4	60	60	—
<i>Subtotal</i>	<i>156</i>	<i>100</i>	<i>156</i>	<i>60</i>	<i>21</i>
Inclusionary Development (Proposed Units)					
Sbar Boulevard	36	36	36	—	—
MRD	35	—	—	—	—
Diocese of Trenton	17	—	—	—	—
Nagle Tract	76	—	76	—	—
Land Resource Solutions	4	—	4	—	—
<i>Subtotal</i>	<i>168</i>	<i>40</i>	<i>116</i>	<i>—</i>	<i>—</i>
Subtotals	483	151	430	143	47
Total Units and Credits Surplus Credit Above RDP			634		1

The Township’s Third Round RDP Compliance Plan provides for a total of 634 units/credits and includes: one unit/credit carried forward from the Prior Round; 22 units/credits for special needs units (incl., remaining two of ten units in existing Oaks Integrated Care facilities claimed in Prior Round Plan and 20 units/credits for proposed special needs facilities to be developed per agreement with Community Options, Inc.); 101 units/credits by way of extension of affordability controls for 30 years beyond the date of their original expiration on 101 units on nine sites; 35 units and nine rental bonus credits (i.e., 43 total credits) credits for 35 existing 100-percent affordable units on three sites not claimed for crediting in the Prior Round compliance plan; two proposed 100-percent affordable housing sites (incl.: the Harper Drive site with 75 family rental units and 75 rental bonus credits [150 total credits]; and, the Centerton Road site with 60 age-restricted units and 21 special needs units/credits and 25 rental bonus credits [106 total credits]; and, five proposed inclusionary development sites proposed to generate a combined total of

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168 affordable units and 40 rental bonus credits (i.e. 208 total credits). The 634 units/credits exceed the Township's RDP obligation by one unit.

The following comments are provided relative to the various components of the Township's Third Round RDP Compliance Plan:

6.3.1 — Special Needs Housing

1. **Community Options Inc. Group Homes:** The Township claims 20 credits for four to eight proposed scattered site special needs housing facilities to be developed by Community Options, Inc. The Township and Community Options have entered into an agreement dated February 25, 2020 providing for the development of 20 special needs units (i.e., bedrooms) within the Township. The agreement provides for \$1,000,000 in funding from the Township's affordable housing trust fund. The executed agreement contains a schedule for completion of the 20 units matching that contained in the original FSHC Settlement Agreement (i.e., five units by July 1, 2020 and five additional units by July 1 of each year from 2021 through 2023). The December 2020 HE&FSP indicates the Township will seek relief from the schedule for completion of the units in light of the circumstances revolving around the COVID-19 pandemic. The Township and FSHC have agreed to the following modification of the schedule: eight units to be completed by July 1, 2021; six units completed by July 1, 2022; and, the remaining six units completed by July 1, 2023. I recommend that the Court approve the Township's claim for 20 credits toward its RDP obligation as part of any forthcoming grant of compliance and repose. The parties should confirm their agreement to modify the schedule and any forthcoming grant of compliance and repose should reference the agreement and reflect this change. **(Condition 2)**.
2. **Oaks Integrated Care:** The Township's Third Round RDP Compliance Plan includes the remaining two of the ten units/credits claimed for existing

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special needs in the facilities operated by Oaks Integrated Care. Sufficient documentation has been submitted to support the Township's claim for these units.

6.3.2 — Extension of Expiring Controls

The Township claims 101 credits for the extension of expired or expiring controls for the 101 units that are controlled by MEND in the following locations: 66-68 East Second Street; 124 East Second Street; 528 Bethel Avenue; Beech Street; Clover Apartments; Lenola School; Moorestown Court; Musser Court; and, Stokes Place. Per an executed agreement dated November 13, 2017, and made between the Township and MEND, the Township is required to pay MEND \$3,045,000 for the extension of expired or expiring controls on the 101 units. The down payment of five percent for the bond ordinance to finance the agreement was made from the Township's affordable housing trust fund and bond proceeds were subsequently transferred to MEND. Controls on all units are extended for 30 years commencing on the date of the expiration of the original affordability controls. Sufficient documentation has been provided that the controls on all units have been filed extending controls for an additional 30 years, thereby entitling the Township to claim 101 credits toward its Third Round RDP obligation.

6.3.3 — Municipally Sponsored 100-Percent Affordable Housing (Existing)

Sufficient documentation has been submitted or provided in the appendices of the HE&FSP to support the Township's claim for a total of 27 units and one rental bonus credit for the existing units in the 428 Camden Avenue and Linden Place developments.

The Township claims eight units and eight rental bonus credits for the existing Creed II facility completed in 2007. All units within the development are one-bedroom units and, therefore, do not meet the UHAC bedroom distribution requirements or N.J.A.C. 5:80-2.6(b)1 limiting the number of one-bedroom units and

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efficiencies to no more than 20 percent on any one site. The Township seeks Court approval of a waiver from this requirement. The HE&FSP indicates that the units have 30-year affordability controls from January 2007. I support the Township's request for waiver and recommend that the Court approve same as part of any forthcoming grant of repose and compliance. **(Condition 3).**

6.3.4 — Municipally Sponsored 100-Percent Affordable Housing (Proposed)

1. **Harper Drive:** The Township's Third Round RDP Compliance Plan includes a 3.68-acre, municipally owned property that is located on Harper Drive to be developed as a 100-percent affordable, 75-unit, municipally sponsored family rental housing development. The Township has entered into a developer's agreement with Pennrose Properties to develop the site as proposed. An application by Pennrose for project funding under the Low Income Tax Credit program (2020 cycle) was unsuccessful. The developer's agreement permits Pennrose to apply in two additional LITC application funding rounds. The Township is entitled at this time to claim 75 units and 75 rental bonus credits for the proposed development. As a condition of any forthcoming grant of compliance and repose, should application for LITC funding in the next two application cycles be unsuccessful the Township shall either provide alternative funding or be required to amend its HE&FSP to address the 150-unit RDP obligation shortfall. **(Condition 4).**
2. **Centerton Road:** The Township's Third Round RDP Compliance Plan provides for an additional 100-percent affordable project consisting of 60 age-restricted units, 21 special needs units, and 21 rental bonus credits attached to the special needs units (104 total units/credits). Following a RFQ/RFP process, the Township selected Community Investment Strategies (CIS) to develop the property. Upon selection, the Township and CIS agreed to modify the project from an 81-unit age-restricted project to the currently proposed 60 age-restricted units/21 special needs unit proposal contained in

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the HE&FSP. Application was made for funding under the 2020 LITC funding cycle. The Township has very recently learned that the 2020 LITC application for this project has not been funded. The December 2020 HE&FSP provides that “[s]hould the 2020 application not be successful, CIS will apply again in 2021 in the senior round, and the project will be developed as originally envisioned, with 81 affordable age-restricted units.” The return to an all age-restricted 81-unit would necessitate a significant revision to the Township’s Third Round RDP plan. I believe the Third Round plan could likely be reconfigured to satisfy the 633 unit RDP obligation without the necessity of adding new sites to the compliance plan. Counsel for the Township has suggested that the Township be permitted to eliminate the language in the current plan indicating the reversion of the project to an 81-unit age-restricted format. I recommend that, as a condition of any forthcoming grant of compliance and repose, the Township either amend its HE&FSP eliminating the “reversion” language and recommitting the Township to pursue funding for the 60-unit, age-restricted/21-unit special needs project in future LITC funding rounds or amend its Third Round Plan to include the Centerton Road site as an 81-unit, age-restricted site. The latter may necessitate an additional Compliance Hearing. I recommend that a timetable for the satisfaction of this condition be set: 90 days for the amendment of the HE&FSP eliminating the reversion language and recommitting to a 60-unit age-restricted/21-unit special needs project; or, in the alternative, 120 days for the preparation and adoption of an amended Third Round plan that includes the site as an 81-unit, age-restricted site. **(Condition 5).**

6.3.5 — Inclusionary Development

The Township’s Third Round RDP compliance plan contains five proposed inclusionary development sites. Per N.J.A.C. 5:93-5.3, all sites shall be available,

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approvable, developable, and suitable as those terms are defined in N.J.A.C. 5:93-1.3. The sites are detailed individually below.

1. **Sbar Boulevard:** The Township has rezoned two properties on either side of Sbar Boulevard, formerly zoned SRI (Special Restricted Industrial), to facilitate the development of a total of 184 units, 36 of which (i.e., 20 percent) are to be affordable units. Per Ordinance No.15-2019, creating the AMF-3 Zone, the permitted density is thirteen dwelling units per acre. The Township claims 36 units and 36 rental bonus credits. The Township has received written commitment from the property owner to develop family rental units. The HE&FSP contains a suitability analysis of the site concluding the site is available, approvable, developable, and suitable as defined in N.J.A.C. 5:93-1.3. The December 2020 HE&FSP recommended an increase in the permitted density from the current density of 13 dwelling units/acre to 14 dwelling units/acre. A zoning amendment is required to implement this recommendation. Subject to adoption of this zoning amendment, the Township is entitled to crediting for 72 units/credits. **(Condition 6)**.
2. **MRD:** The Township claims 35 affordable units for a proposed development of 173 total units on this 11.78-acre property. The property has been rezoned from R/PO (Residential/Professional Office) to AMF-4 which would permit multi-family development at a density permitting 173 total units. The ordinance requires a 20-percent affordable unit set-aside (35 units). The HE&FSP contains a suitability analysis of the site concluding the site is approvable, developable, and suitable as defined in N.J.A.C. 5:93-1.3. The Township is entitled to claim 35 units for this project pending the outcome of the objection filed by ILM.

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3. **Nagle Tract:** The Township purchased the Nagle Property in 1988 for the purpose of developing a 100-percent affordable housing project. The site was approved as such as part of the First Round and original Second Round affordable housing plans certified by COAH. The Township's 2019 HE&FSP for the property provided for solicitation of proposals from qualified developers to develop the site for 152 rental units (incl., townhouse, stacked townhouse, and/or multi-family), 45 of which (i.e., 30 percent) were to be affordable units. The Township's December 2020 H&FSP modifies the project whereby tax credit funding would be sought under NJHMFA's Mixed Income Set-Aside Program, which would support a 50-percent affordable set-aside or 76 affordable units. The 31 affordable unit increase would allow the Township to eliminate the 12-unit market-to-affordable and 15-unit accessory apartment programs contained in the 2019 HE&FSP. The Township's current HE&FSP provides that in the event Mixed Income Set-Aside funding is not received in the 2021 funding cycle the Township "...would have the option either a) to revert to the original plan to have the site developed with an inclusionary housing project, and to implement the market-to-affordable program and accessory apartment program as compliance mechanisms on an accelerated schedule so that all contemplated units would be developed by 2025; or b) to fund the increased set-aside with trust fund monies, municipal subsidies, and any available outside funding, such as 4% tax credits."

Your Honor has entered a Consent Order, dated December 9, 2020, tolling, for one year, the timing requirements related to the market-to-affordable (MTA) program and accessory apartment (AA) program set forth in the Original Settlement Agreement. The tolling will afford the Township the opportunity to pursue 2021 mixed-income tax credit funding to support a

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50-percent inclusionary development set-aside. The Order further provides that, in the event that the mixed-income tax credit application is unsuccessful, the MTA and AA programs shall be required to produce units in accordance with the following schedule: eight MTA units by July 1, 2022; 12 MTA units by July 1, 2024; and 15 AA units by July 1, 2025. In addition to the provisions of the December 9, 2020 Consent Order, I would recommend that as a condition of any forthcoming grant of compliance and repose that, in the event 2021 Mixed Income Tax Credit is not received and the project reverts to an inclusionary development, within 18 months of the 2021 Mixed Income Tax Credit application decision, the Township shall have entered into a developer's agreement to fund and build an inclusionary development yielding a minimum of 45 family affordable housing units. **(Condition 7).**

Should the MTA and AA programs be reactivated, the Township shall amend its Spending Plan to provide adequate funding for the programs and provide proof of the retention of a qualified administrative agent to oversee these programs. **(Condition 8).**

4. **Land Resource Solutions:** In January 2019, the Moorestown Zoning Board of Adjustment granted approval of a development application to permit the construction 26 rental units, including four affordable units (incl., one very low-, one low- and two moderate-income units). The Township claims four units and four rental bonus credits (eight total units/credits) for the affordable units proposed for the site. The Township is entitled to claim crediting for these units.

5. **Diocese of Trenton Site:** The Township claims 17 credits for affordable units as part of a proposed 83-unit total inclusionary development of the

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17.8-acre property. The HE&FSP contains a suitability analysis of the property and determined the site to be available, approvable, developable and suitable. The property has been rezoned per Ordinance No. 33-2019, which was adopted on December 16, 2019, to permit the development as proposed. The Township is entitled to claim 17 credits toward its Third Round RDP obligation at this time.

6.4 — Unmet Need

Unmet need is determined by subtracting the municipal realistic development potential from the Third Round (1999-2025) affordable housing obligation. Judge Bookbinder's July 19, 2019 Order approved the First Amendment to the original Settlement Agreement establishing the Township's adjusted RDP in the original Settlement Agreement at 633 units, and an unmet need of 534 units. The approved Second Amendment did not modify either the municipal RDP or the unmet need. N.J.A.C. 5:93-4.2 sets forth potential compliance mechanisms to address or partially address unmet need. Per the original Settlement Agreement, and unmodified by the first or second amendments thereto, the Township proposes to address its 534-unit unmet need as described in the following subsections.

6.4.1 — Moorestown Mall

The HE&FSP and the PREIT Settlement Agreement provide for the adoption of a Redevelopment Plan to facilitate the redevelopment of the Moorestown Mall site with a three-phased, mixed-use inclusionary development that provides for up to 1,065 residential units, including up to 213 affordable units (20 percent set-aside), and a full-service hotel while maintaining parts of the existing shopping mall.

6.4.2 — Kmart Center

The Township adopted Ordinance No. 2-2020 to create affordable housing overlay zoning to promote the redevelopment of the Kmart Center site from a single-use retail center to a mixed-use center. The adopted zoning allows a gross density of 14

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dwelling units per acre potentially yielding up to 390 units, of which 20 percent (78 units) are required to be affordable units.

6.4.3 — Lenola Shopping Center

On December 16, 2019, the Township adopted Ordinance No. 38-2019, which permits up to 60 multi-family residential dwelling units as a conditional use on the Lenola Shopping Center site. Prior to the scheduled March 11, 2020 Fairness/Compliance Hearing in this matter, Intervenor ILM Center Associates, LP (ILM), owners of the site, filed, on February 20, 2020, both an objection to the grant of repose and compliance sought by the Township and a motion to file a builder's remedy claim, or, in the alternative, to enforce settlement. Your Honor's April 14, 2020 Order directed the Township and ILM to attempt to resolve the objections raised, or advise the Court that a resolution could not be reached. The Township and ILM were not able to reach agreement on modifications to the overlay zoning adopted by the Township pursuant to Ordinance No. 38-2019.

6.4.4 — Mandatory Set-Aside Ordinance

Per the original Settlement Agreement the Township, dated December 10, 2018, the Moorestown Town Council adopted a Township-wide mandatory set-aside ordinance (Ordinance No. 23-2018). Ordinance No. 23-2018 requires an affordable housing set-aside (viz., 20 percent for for-sale units and 15 percent for rental units) for any new multi-family or single-family attached development, Township-wide, of five or more units over and above what would be permitted as a matter of right.

6.5 — Rental Unit Requirement (Third Round)

The HE&FSP correctly calculates the minimum rental unit requirement pursuant to COAH rules to be 159 units for the Third Round. The Township's compliance plan provides 430 units in the Third Round satisfying this requirement.

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6.6 — Family/Family Rental Units

The Township correctly calculates its Third Round family unit requirement to be 237 units. The Third Round RDP Compliance Plan contains 293 family units to satisfy this requirement. The HE&FSP correctly calculates the minimum family rental requirement for the Third Round to be 80 unit and the compliance plan includes 242 family rental units. The Township's compliance plan meets the minimum family and family rental unit requirements.

6.7 — Low- and Moderate-Income Split and Very-Low Income Requirements

The HE&FSP correctly calculates the minimum low-income unit requirement to be 191. The Third Round Compliance Plan provides 227 low-income units exceeding this requirement.

The HE&FSP correctly calculates the minimum very low-income unit requirement to be 45 units and the minimum very low-income family rental unit requirement to be 23 units. The Third Round RDP Compliance Plan provides a total of 77 very low-income units, a minimum of 33 of which are to be very low-income family rental units. This requirement is met.

6.8 — Age-Restricted Unit Cap

The Township's HE&FSP correctly calculates the Township's Third Round age-restricted cap as 158 units, and the Third Round RDP Compliance Plan includes 143 units. The Township's compliance plan meets the maximum age-restricted units cap.

6.9 — Rental Bonus Credits Cap

The HE&FSP correctly calculates the maximum number of Third Round rental units for which rental bonus credits may be claimed pursuant to COAH rules to be 159. The Township claims 151 rental bonus credits for 159 rental units in its Third Round compliance plan. This is consistent with COAH rules.

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7 — Other HE&FSP Requirements

7.1 — Spending Plan

Appendix N of the HE&FSP contains an undated Spending Plan entitled *Spending Plan of the Housing Element and Fair Share Plan, Township of Moorestown, Burlington County, With Revenues as of September 30, 2020*. The submitted Spending Plan is consistent with the HE&FSP and COAH rules as to form and content.

Appendix D of the HE&FSP is entitled *Resolution of Endorsement of Plan, Approval of Spending Plan by the Town Council*; however, no resolution is contained therein. Any forthcoming grant of compliance and repose should be conditioned upon submission of documentation of the Governing Body's endorsement of the December 2020 HE&FSP and approval of the Spending Plan. **(Condition 9)**.

7.2 — Affirmative Marketing Plan

Appendix K of the adopted HE&FSP contains the Township's Affirmative Marketing Plan which includes the community and regional organizations cited in Section 14 of the original Settlement Agreement. The Affirmative Marketing Plan is acceptable as to form and content; however, no documentation of approval of the Affirmative Marketing Plan by the Governing Body is contained in the HE&FSP notwithstanding the reference to same in the list of appendices contained in the HE&FSP.

Documentation of adoption of the Affirmative Marketing Plan should be a condition of any forthcoming grant of compliance and repose. **(Condition 10)**.

7.3 — Reporting and Monitoring Requirements

The Township is reminded of the monitoring and reporting requirements set forth in the original Settlement Agreement, and it is recommended that compliance with these requirements be made a condition of any forthcoming grant of compliance and repose. **(Condition 11)**.

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8 — Conclusions and Recommendations

On the narrow “fairness” issue of whether the PREIT Settlement Agreement is fair, reasonable and protects the interests of low- and moderate-income households, I believe the East/West analysis contained herein clearly supports the “fairness” of the agreement and recommend the Court so find and approve same.

Upon satisfaction of the conditions set forth in this report, including the grant of the waiver referenced in Condition 3 herein, I believe the Township’s compliance plan contained in the December 2020 HE&FSP creates a reasonable opportunity for the creation of affordable housing to satisfy the Township’s Court-approved affordable housing obligation for the period from 1987 through July 1, 2025. Please note, however, that the filed objection is related to the MRD site in the Township’s Third Round RDP Compliance Plan and its outcome could, potentially, change this conclusion. Similarly, the Court’s decision on the ILM objections, which are related to this unmet need site, could potentially alter my conclusions and recommendations.

Following the conclusion of the compliance hearing in this matter, and provided that the Court’s decisions on the filed objections do not modify the Township’s compliance plan, I recommend that the Court grant the waiver referenced in Condition 3, as well as Final Compliance and Repose subject to satisfaction of the remaining conditions set forth in this report.