

FOURTH ROUND HOUSING ELEMENT AND FAIR SHARE PLAN

Harding Township
Morris County, New Jersey

June 12, 2025

Adopted by the Planning Board on June 23, 2025

Prepared By:



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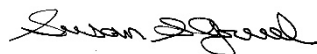
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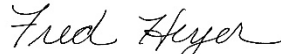
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EXECUTIVE SUMMARY

The following Fourth Round Housing Element and Fair Share Plan has been prepared for the Township of Harding in the County of Morris in accordance with the Fair Housing Act as most recently amended (P.L.2024, c.2).

Harding Township is a 20.1 square mile community located within the southern portion of Morris County. The Township shares municipal boundaries with Mendham Township to the west, Madison to the northeast, Chatham Township to the east, Morris Township to the north, Long Hill Township to the southeast, and Bernardsville and Bernards Township to the southwest and south respectively. Primary County and State routes, including Route 202 and Interstate 287 run through the Township.

Harding Township is home to a portion of the Morristown National Historic Park in the northeast and the Great Swamp National Wildlife Refuge in the southeast. According to the State Development and Redevelopment Plan (SDRP), Harding Township is located in the PA 5 Environmentally Sensitive Planning Area and Parks and Natural Area boundaries. Further, it is entirely located within the Highlands Region Planning Area. Harding is a fully compliant Highlands community, even though conformance with the Highlands Regional Master Plan is voluntary for the Planning Area.

According to the 2020 Census, Harding Township's population was 3,871, which represents an increase of 0.9% from 2010. In 2020, the Township's median age was 50.4 years, representing a 3.1% increase from the median age of 48.9 years in 2010. The Township's average household size in 2023 was 2.55 persons, which was slightly below the average at the County level (2.61 persons).

The housing stock of the Township is predominantly single-family detached dwelling units. Approximately 80% of the housing stock was built prior to 1990. According to the guidelines originally established by COAH, the Township is located in Housing Region 2, a region that consists of Essex, Morris, Union, and Warren Counties. Based on the 2025 Regional Income Limits (released by Affordable Housing Professionals of New Jersey on May 5, 2025), the median income in Region 2 for a four-person household is \$135,300, the moderate-income is \$108,240, the low-income is \$67,650, and the very-low-income level is \$40,590.

Affordable housing obligations in New Jersey are divided into "housing rounds," as will be discussed in detail later in this Plan. Each municipality in New Jersey has a constitutional obligation to provide their fair share of the calculated regional need for affordable housing within the respective housing round. These obligations to construct new affordable housing are known as the "Prospective Need" obligation. Municipalities also have an obligation to rehabilitate units that are deemed substandard, pursuant to the criteria of the Fair Housing Act. This obligation is known as the Present Need, or Rehabilitation Share. The housings rounds are as follows: Prior Round (1987-1999), Third Round (1999-2025), and Fourth Round (2025-2035).

The Township of Harding has participated in each of the previous housing rounds. In the Third Round, the Township entered into a Settlement Agreement with Fair Share Housing Center to establish the town's Third Round affordable housing obligation. The subsequent compliance efforts were approved by the Court in a Judgement of Compliance and Repose, dated June 17, 2020, confirming the town satisfied its Third Round obligations.

The Township was able to fully meet its Prior Round and Third Round obligations through credit-worthy units that are existing, under construction, or proposed, as well as rental bonus credits.

The Township has a Fourth Round obligation as follows:

Rehabilitation Share: 0

Prospective Need: 75

The 75-unit prospective need will be addressed via a 100% project, as described below, 19 bonus credits and 2 unclaimed and existing credits from the "Farm".

INTRODUCTION

The need to provide a realistic opportunity for the construction of affordable housing in New Jersey, the country's most densely populated state, has been recognized for decades. In the case of Southern Burlington County NAACP v. the Township of Mount Laurel 67 N.J. 151 (1975), (commonly known as Mount Laurel I), the New Jersey Supreme Court established the doctrine that developing municipalities in New Jersey have a constitutional obligation to create a realistic opportunity for their fair share of low- and moderate-income housing.

In Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158, 456 A.2d 390 (1983), decided on January 20, 1983 (commonly known as Mount Laurel II), the Supreme Court responded to the response of municipalities to Mount Laurel II. The builder's remedy created a mechanism for developers to sue non-compliant municipalities and force them to comply. Mount Laurel II also created the Judgment of Repose to incentivize municipalities to comply. A Judgment of Repose protected municipalities from potential lawsuits and those who would claim entitlement to a builder's remedy or other relief based upon the claim that the municipality was noncompliant.

In the wake of Mount Laurel II, developers sued municipalities seeking builder's remedies. The wave of builder's remedy lawsuits created the impetus for legislation to protect municipalities from builder's remedies. A decision by Judge Serpentelli, one of three judges appointed by Chief Justice Wilentz to implement Mount Laurel II, increased the need for a legislative cure. More specifically, in 1984, Judge Serpentelli issued the "AMG decision" (AMG Realty Co. v. Warren Twp), which established a formula for any developer to determine the fair share obligation of any municipality.

The pressure of builder's remedy suits, combined with the ease in determining the fair share of any municipality through the AMG formula, culminated in the enactment of the New Jersey Fair Housing Act in 1985. The Fair Housing Act (FHA) is found at N.J.S.A. 52:270-301, et seq. The FHA established the Council on Affordable Housing (COAH) as an administrative alternative to builder's remedy lawsuits and the concomitant jurisdiction of the courts. COAH was given the responsibility of dividing the state into housing regions, determining regional and municipal fair share affordable housing obligations, and adopting regulations that would establish the guidelines and approaches that municipalities may use in addressing their affordable housing need.

In 2008, the Legislature amended the FHA to add requirements for very low-income housing. Very low-income households are those in which the gross household income is 30% or less than the region's median household income. Low-income households are those with incomes no greater than 50% of the region's median household income. Moderate-income households are those with incomes no greater than 80% and no less than 50% of the region's median household income. Each is adjusted for household size and is in relation to the median gross income of the housing region in which the municipality is located.

FIRST AND SECOND ROUNDS

The First and Second Rounds under COAH are collectively referred to as the "Prior Round." The Prior Round obligation is the cumulative 1987-1999 fair share obligation. The First Round consists of the six-year period between 1987 and 1993 for which COAH first established a formula for determining municipal affordable housing obligations (N.J.A.C. 5:92-1 *et seq.*). Then in 1994, COAH established amended regulations (N.J.A.C. 5:93-1.1 *et seq.*) and produced additional municipal affordable housing obligations for the years 1993 to 1999. This second round of obligations is known as the Second Round. When COAH adopted regulations for Round 2, it made the Round 1 and 2 obligations cumulative for both periods.

THIRD ROUND

Housing rounds were originally established by the Fair Housing Act as six-year periods, but in 2001 the Legislature extended the rounds to 10-year periods. This should have meant that the Third Round ran from 1999 to 2009. However, COAH didn't establish new rules for the Third Round until the end of 2004 (N.J.A.C. 5:94-1 and 95-1 *et seq.*). The Third Round time period was therefore extended to 2014. The Third Round rules established a new method for calculating a municipality's affordable housing obligation, known as "growth share." This method required municipalities to project future residential and non-residential development, and then derive their obligation from that growth.

After the New Jersey Appellate Court invalidated several components of the Third Round rules, COAH released revised rules in 2008. The Third Round was once again extended to 2018 to provide municipalities with the time to apply the amended rules and establish mechanisms to meet their obligations. The revised

Third Round rules, like the initial Third Round, rules established the obligations based on a growth share approach.

On October 8, 2010, in response to numerous legal challenges to the second iteration of COAH's Third Round regulations, the Appellate Divisions ruled that COAH could not allocate obligations through a "growth share" formula and directed COAH to use similar methods to those used in the First and Second Rounds. COAH proposed Third Round regulations a third time in 2014 using a formula similar to the ones it had used in the first and second rounds. However, when COAH met to consider adopting these rules on October 20, 2014, it deadlocked.

On March 10, 2015, the New Jersey Supreme Court decided In re Adoption of N.J.A.C. 5:96 & 5:97 by the N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (Mount Laurel IV), wherein it responded to COAH's failure to adopt defensible rules for Round 3. This decision changed the landscape by which municipalities are required to comply with their constitutional obligation to provide their fair share of affordable housing. The Supreme Court held that since COAH was no longer functioning, trial courts were to resume their role as the forum of first instance for evaluating municipal compliance with Mount Laurel obligations, and also established a transitional process for municipalities to seek temporary immunity and ultimately a Judgment of Compliance and Repose ("JOR") from a Court, which was the "judicial equivalent" of Substantive Certification from COAH.

On January 18, 2017, the Supreme Court decided In Re Declaratory Judgment Actions Filed by Various Municipalities, County of Ocean, Pursuant To The Supreme Court's Decision In In re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) ("Mount Laurel V"), which held that need having accrued during the Gap Period (1999-2015) was part of the Present Need, not Prospective Need. The Supreme Court held that there is an obligation with respect to that period for households that came into existence during that gap that are eligible for affordable housing, that are presently (as of 2015) in need of affordable housing, and that are not already counted in the traditional present need.

As the methodology and obligations from the Gap and Prospective Need had not been fully adjudicated at that time, various trial judges issued opinions on the appropriate methodology and 354 municipalities reportedly settled with Fair Share Housing Center wherein they negotiated the obligations for Round 3.

Municipal obligations were therefore broken down in Round Three Housing Element and Fair Share Plans as Present Need/Rehabilitation, Prior Round (1987-1999), and Third Round and Gap Period (1999-2015). Municipalities that received their Final Judgement of Compliance and Repose were guaranteed immunity from builders' remedy lawsuits through the end of the Third Round, June 30, 2025.

FOURTH ROUND

On March 18, 2024, the affordable housing legislation known jointly as Senate Bill S50 and Assembly Bill A4 passed both houses of the legislature. Governor Murphy signed the bill (P.L.2024, c.2) into law on March

20, 2024, establishing a new methodology for determining municipalities' affordable housing obligations for the Fourth Round and beyond. The new legislation, which comprehensively amends the FHA, overhauled the process that municipalities undertake to establish and plan for their constitutionally mandated affordable housing obligation. Most notably, this legislation formally abolished COAH while transferring its functions to the New Jersey Department of Community Affairs (DCA) and Housing Mortgage and Finance Agency (HMFA). As a result, the legislation codified the method for calculating regional and municipal affordable housing needs and returned most of the process from the Courts to state administrative departments.

The amended FHA called on the DCA to issue a non-binding report on the new Present Need Obligation (commonly referred to as the rehab obligation) and the Prospective Need for Round 4 and subsequent rounds. The amended FHA requires the DCA to base its analysis of the obligations for each municipality based upon the standards set forth in the amended FHA. Accordingly, on October 18, 2024, the DCA released a report outlining the Fourth Round (2025-2035) Fair Share methodology and its calculations of low- and moderate-income obligations for each of the State's municipalities. The amended FHA gave municipalities until January 31, 2025, to review the obligation reported by the DCA and perform their own analysis of their obligation based on the methodology in the legislation and previously established by the Courts. If any municipality wished to commit to an obligation different from the one reported by the DCA, the amended FHA required the municipality to adopt a resolution by January 31, 2025, committing to the number that it contended was the appropriate obligation. If a municipality wished to commit to the numbers that the DCA reported, the amended FHA required the municipality to adopt a resolution committing to the DCA numbers.

The amended FHA required any municipality that wished to participate in the new process that the Act created to file a declaratory relief action within 48 hours of adopting the resolution committing to the numbers the municipality deemed appropriate.

The amended FHA gave any interested party who wished to oppose the numbers to which any municipality committed to file an Answer by February 28, 2025 which included a particularized objection to the numbers to which the municipality committed.

The amended FHA gave "the program" until March 31, 2025, to try to resolve any disputes over the fair share numbers to which a municipality committed through an "Affordable Housing Dispute Resolution Program." The program is a new entity created by the amended FHA. It is staffed with seven current or retired judges and the judges have the authority to use adjudicators to assist it in mediating disputes over the obligations of municipalities.

The amended FHA gives municipalities until June 30, 2025, to file a Housing Element and Fair Share Plan and related documents showing how the municipality will comply with its obligations. The Fourth Round

Plans will follow the same general format as they have with certain updates to their requirements dealing with various types of housing and the bonus credit calculation system. Notably, HEFSPs are required to be consistent with the State Development and Redevelopment Plan (SDRP) (a new draft SDRP was released in late 2024 and has yet to be adopted) and the Highlands Regional Master Plan and its buildout for conforming municipalities. As part of the HEFSP, municipalities shall include an assessment of the degree to which the municipality has met its fair share obligation from the prior rounds of affordable housing (i.e. First, Second, and Third Rounds).

HARDING TOWNSHIP'S HISTORY OF AFFORDABLE HOUSING

Harding has a long history of compliance with COAH's regulations. The Township petitioned COAH for Second Round Certification on December 13, 1995, and received Second Round substantive certification on November 6, 1996. The Township received extended substantive certification on September 14, 2005, which expired on December 20, 2005.

The Township also participated in the Third Round Certification process. The Township Planning Board adopted a Third Round Housing Element and Fair Share Plan on November 17, 2008. Harding Township petitioned the Council on Affordable Housing on December 30, 2008 for substantive certification. Harding Township was one of a small handful of municipalities that received Third Round Certification from COAH (received on May 14, 2009), before the Third Round Rules were invalidated by the Court.

In response to Mount Laurel IV, the Township filed a declaratory judgement action ("Action") on July 7, 2015. In an Order dated September 1, 2015, the Township was granted temporary immunity from builder's remedy actions while they negotiated in good faith to develop a Housing Element and Fair Share Plan.

A settlement agreement with the S/K Mt. Kemble Associates, LLC was executed on February 9, 2018. An additional settlement agreement was executed between the Township of Harding and the Fair Share Housing Center ("FSHC") incorporating the Mt. Kemble Agreement on September 27, 2018. These settlement agreements can be found in the Court-approved Third Round Housing Element and Fair Share Plan, dated December 7, 2018.

A Fairness Hearing was held November 2, 2018 in which the Court approved the settlement agreement between the Township and FSHC and deemed the agreement fair and reasonable and that it adequately protects the interest of low- and moderate-income households. An Order was issued by the Honorable Maryann L. Nergaard, J.S.C. on November 14, 2018 (see Appendix A) approving the settlement agreement with FSHC. The Court found that the Township is entitled to a durational adjustment in accordance with N.J.A.C. 5:93-4.3, due to the lack of sufficient infrastructure to accommodate the entirety of its Third Round obligation. The Court also found that the requested waiver of N.J.A.C. 5:93-4.3(c)4, which requires the Township to permit affordable housing development on any site not included in this Fair Share Plan, is appropriate for the Township.

Following a public meeting on December 17, 2018, where the Planning Board heard a presentation on the amended Housing Element and Fair Share Plan, Harding Township adopted their Third Round Housing Element and Fair Share Plan on February 19, 2019. The Township was granted a Conditional Declaratory Judgement of Compliance on March 28, 2019, and the Special Master advised the Court that all conditions were satisfied by letter on June 2, 2020. The Township was then granted Third Round Final Judgement of Compliance and Repose on June 17, 2020 (see Appendix B).

As New Jersey enters the Fourth Round of affordable housing, Harding Township continues to take steps to satisfy its affordable housing obligation. On January 22, 2025, in accordance with the requirements established by the amended FHA and described above, the Township adopted Resolution #25-070 (Appendix C). This resolution established a 67-unit Fourth Round Prospective Need obligation for the Township. The 67-unit obligation, 16 less than the DCA's original calculation of 83, was based on a land capacity analysis, which determined a lower land capacity factor. The adoption of Resolution #25-070 guaranteed protection from builders' remedy suits through June 30, 2025. Subsequently, in accordance with the standards established by the amended FHA and described above, the Township filed a Complaint (Docket No. MRS-L-000198-25) seeking the entry of a declaratory judgment (Appendix C).

The Township's reduced Fourth Round Prospective Need obligation of 67 was challenged by the New Jersey Builders' Association on February 27, 2025. Subsequently, May 1, 2025, a Mediation Agreement before the Affordable Housing Dispute Resolution Program was made between the Township and the Builders' Association establishing Harding's Fourth Round Prospective Need obligation as 75 units (Appendix D).

On June 3, 2025, the Township entered into a voluntary settlement agreement with Fair Share Housing Center (FSHC) to define the material terms and conditions of Harding's Fourth Round Housing Element and Fair Share Plan. The settlement agreement (attached as Appendix E) recognizes that This Fourth Round HEFSP intends to fully satisfy its Present Need obligation, Prior Round obligation, Third Round obligation, and Fourth Round obligation. Both the Township and FSHC acknowledge that the Fourth Round HEFSP is ultimately subject to the approval of the Affordable Housing Dispute Program, as defined in the amended Fair Housing Act.

This Fourth Round HEFSP sets forth mechanisms implemented to address the Borough's affordable housing obligations and has been prepared in accordance with the Fair Housing Act as most recently amended (P.L.2024, c.2).

PLANNING FOR AFFORDABLE HOUSING

Pursuant to both the FHA (N.J.S.A. 52:27D-310, et seq.) and the Municipal Land Use Law (MLUL) (N.J.S.A. 40:55D-28), municipalities in New Jersey are required to include a housing element in their master plans. The principal purpose of the housing element is to describe the specific, intended methods that a

municipality plans to use in order to meet its low- and moderate-income housing needs. Further, the housing element is meant to demonstrate the existing zoning or planned zoning changes that will allow for the provision of adequate capacity to accommodate household and employment growth projections, to achieve the goal of access to affordable housing for present and future populations. The statutorily required contents of the housing element are:

- a. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low and moderate-income households and substandard housing capable of being rehabilitated;
- b. A projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;
- c. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;
- d. An analysis of the existing and probable future employment characteristics of the municipality;
- e. A determination of the municipality's present and prospective fair share for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing, as established pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1);
- f. A consideration of the lands that are most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing;
- g. An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20);
- h. For a municipality located within the jurisdiction of the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), an analysis of compliance of the housing element with the Highlands Regional Master Plan of lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands conforming municipalities. This analysis shall include consideration of the municipality's most recent Highlands Municipal Build Out Report, consideration of opportunities for redevelopment of existing

developed lands into inclusionary or 100 percent affordable housing, or both, and opportunities for 100 percent affordable housing in both the Highlands Planning Area and Highlands Preservation Area that are consistent with the Highlands regional master plan; and

- i. An analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.

PART 1: HOUSING ELEMENT**DEMOGRAPHIC CHARACTERISTICS****Population**

Table 1 below depicts the population trends experienced in Harding Township, Morris County, and the State of New Jersey in the 93-year period between 1930 and 2023. In 2023, there were 3,882 residents in Harding Township, which indicates a small increase of 11 people (0.3%) from 2020. Harding Township has experienced steady growth over the past 93 years, with just two minor decreases, -13 residents (-0.4%) between 1970 and 1980 and -460 (-12.6%) between 1990 and 2000. Overall, the Township has seen a growth of 2,676 residents during this time frame, reflecting a 221.9% increase in its population. Proportionally speaking, the Township's most significant period of growth occurred in the decade between 1950 and 1960 when the Township saw a 36.2% increase in its population. These trends are reflected at the County and State level, as well, which saw a similarly significant increase in population throughout the 1950s. While population growth has been steady during this time period in Morris County and the State of New Jersey as a whole, the Township's overall growth (221.9%) has proportionally underperformed that of the County (362.1%) and exceeded the State (129.2%).

| Table 1: Population Trends, 1930-2023 Harding Township, Morris County, and New Jersey | | | | | | | | | |
|--|-------------------------|---------------|----------------|----------------------|----------------|----------------|-------------------|------------------|----------------|
| Year | Harding Township | | | Morris County | | | New Jersey | | |
| | Population | Change | | Population | Change | | Population | Change | |
| | | Number | Percent | | Number | Percent | | Number | Percent |
| 1930 | 1,206 | - | - | 110,445 | - | - | 4,041,334 | - | - |
| 1940 | 1,565 | 359 | 29.8% | 125,732 | 15,287 | 13.8% | 4,160,165 | 118,831 | 2.9% |
| 1950 | 1,970 | 405 | 25.9% | 164,371 | 38,639 | 30.7% | 4,835,329 | 675,164 | 16.2% |
| 1960 | 2,683 | 713 | 36.2% | 261,620 | 97,249 | 59.2% | 6,066,782 | 1,231,453 | 25.5% |
| 1970 | 3,249 | 566 | 21.1% | 383,454 | 121,834 | 46.6% | 7,171,112 | 1,104,330 | 18.2% |
| 1980 | 3,236 | -13 | -0.4% | 407,630 | 24,176 | 6.3% | 7,365,011 | 193,899 | 2.7% |
| 1990 | 3,640 | 404 | 12.5% | 421,353 | 13,723 | 3.4% | 7,730,188 | 365,177 | 5.0% |
| 2000 | 3,180 | -460 | -12.6% | 470,212 | 48,859 | 11.6% | 8,414,350 | 684,162 | 8.9% |
| 2010 | 3,838 | 658 | 20.7% | 492,276 | 22,064 | 4.7% | 8,791,894 | 377,544 | 4.5% |
| 2020 | 3,871 | 33 | 0.9% | 509,285 | 17,009 | 3.5% | 9,288,994 | 497,100 | 5.7% |
| 2023 | 3,882 | 11 | 0.3% | 510,375 | 1,090 | 0.2% | 9,261,699 | -27,295 | -0.3% |
| Total Change | - | 2,676 | 221.9% | - | 399,930 | 362.1% | - | 5,220,365 | 129.2% |

Source: 1930-2020 U.S. Decennial Census; 2018-2023 American Community Survey 5-Year Estimates Table S0101

Population Composition by Age

Analysis of age group characteristics provides insight into the actual changes in population. This comparison is helpful in determining the impacts these changes have on housing needs, community facilities and services for the municipality. As detailed in Table 2 below, the entire composition of Harding Township experienced notable shifts in the years between 2010 and 2020. The most significant shift occurred in the population aged 15 to 34, which saw a 251-person increase (46.1%) and in ages 55 and up, with an increase of 201 (14%). Simultaneously, the Township experienced a significant decrease in its population between the ages 35 to 54 of 255 (-22.6). This data suggests that a portion of the Township's residents are transitioning into the senior citizen age range, which will require the Township to consider planning tools and approaches that encourage aging-in-place.

| Table 2: Population by Age, 2010 to 2020 Harding Township | | | | | | |
|--|---------------|----------------|---------------|----------------|------------------------------|----------------|
| Population | 2010 | | 2020 | | Change (2010 to 2020) | |
| | Number | Percent | Number | Percent | Number | Percent |
| Under 5 years | 139 | 3.6% | 132 | 3.4% | -7 | -5.0% |
| 5 to 14 | 569 | 14.8% | 439 | 11.3% | -130 | -22.8% |
| 15 to 24 | 396 | 10.3% | 557 | 14.4% | 161 | 40.7% |
| 25 to 34 | 148 | 3.9% | 238 | 6.1% | 90 | 60.8% |
| 35 to 44 | 408 | 10.6% | 309 | 8.0% | -99 | -24.3% |
| 45 to 54 | 719 | 18.7% | 563 | 14.5% | -156 | -21.7% |
| 55 to 64 | 627 | 16.3% | 705 | 18.2% | 78 | 12.4% |
| 65 and over | 805 | 21.0% | 928 | 24.0% | 123 | 15.3% |
| Total population | 3,838 | 100.00% | 3871 | 100.00% | 33 | 0.9% |
| Median Age | 48.9 | | 50.4 | | 1.5 | 3.1% |

Source: U.S. Decennial Census, 2010 and 2020

Morris County experienced population fluctuation as well. The County saw a shift of roughly 28% in its population aged 55 and over, which was proportionally lower than the increase experienced at the Township level (14%). The County experienced rather significant decreases in its population aged 14 and below as well as those aged 35 to 54 (-13.7). This data is displayed in Table 3 below.

| Table 3: Population by Age, 2010 to 2020 Morris County | | | | | | |
|---|----------------|----------------|----------------|----------------|------------------------------|----------------|
| Population | 2010 | | 2020 | | Change (2010 to 2020) | |
| | Number | Percent | Number | Percent | Number | Percent |
| Under 5 years | 27,342 | 5.6% | 24,214 | 4.8% | -3,128 | -11.4% |
| 5 to 14 | 68,510 | 13.9% | 60,037 | 11.8% | -8,473 | -12.4% |
| 15 to 24 | 56,672 | 11.5% | 64,249 | 12.6% | 7,577 | 13.4% |
| 25 to 34 | 51,794 | 10.5% | 58,180 | 11.4% | 6,386 | 12.3% |
| 35 to 44 | 72,187 | 14.7% | 62,874 | 12.3% | -9,313 | -12.9% |
| 45 to 54 | 85,379 | 17.3% | 73,156 | 14.4% | -12,223 | -14.3% |
| 55 to 64 | 62,237 | 12.6% | 76,704 | 15.1% | 14,467 | 23.2% |
| 65 and over | 68,155 | 13.8% | 89,871 | 17.6% | 21,716 | 31.9% |
| Total population | 492,276 | 100.0% | 509,285 | 100.0% | 17,009 | 3.5% |
| Median Age | 41.3 | | 42.6 | | 1.3 | 3.1% |

Source: U.S. Decennial Census, 2010 and 2020

Households

A household is defined as one or more persons, either related or not, living together in a housing unit. In 2020 there was a total of 1,419 households in Harding Township. Over half of the Township's households comprised two or less people. In fact, Two-person households were the most common household size at both the Township (36.8%) and County (30.9%) levels, followed by one-person households. The average household size of the Township in 2020 was 2.55, which was slightly lower than that of the County's average of 2.61.

| Table 4: Household Size of Occupied Housing Units, 2020 Harding Township and Morris County | | | | |
|---|-------------------------|----------------|----------------------|----------------|
| | Harding Township | | Morris County | |
| | Number | Percent | Number | Percent |
| 1-person household | 258 | 18.2% | 44,379 | 23.5% |
| 2-person household | 522 | 36.8% | 58,173 | 30.9% |
| 3-person household | 221 | 15.6% | 33,159 | 17.6% |
| 4-person household | 213 | 15.0% | 33,087 | 17.6% |
| 5-person household | 156 | 11.0% | 13,172 | 7.0% |
| 6-person household | 37 | 2.6% | 4,364 | 2.3% |
| 7-or-more-person household | 12 | 0.8% | 2,162 | 1.1% |
| Total Households | 1,419 | 100.0% | 188,496 | 100.0% |
| Average Household Size (2023) | 2.55 | | 2.61 | |

Source: US Decennial Census, 2020; 2018-2023 American Community Survey 5-Year Estimates, Table S1101

According to the United States Census, family households are defined as two or more persons living in the same household, related by birth, marriage, or adoption. As shown in Table 5, most (79.3%) of all households in the Township in 2023 were categorized as family. Approximately 25% of the married-couple families within the Township had children under the age of 18.

In providing more detail on American households, the 2023 Census includes the sub-groups of non-traditional households, including “Other Family” and “Non-Family” households. “Other Family” households accounted for 16.3% of all households, broken down into 11.1% female householders with no spouse or partner present and 5.1% male householders with no spouse or partner present. “Non-Family” households are defined as those that consist of a householder living alone or sharing the home exclusively with people to whom he/she is not related. Non-family households comprised approximately 20.7% of all households in the Township.

| Table 5: Household Size and Type, 2023 Harding Township | | |
|--|--------------|----------------|
| | Total | Percent |
| Total Households | 1,516 | 100.0% |
| Family Households | 1202 | 79.3% |
| Married couple family | 955 | 63.0% |
| With children | 380 | 25.1% |
| Without children | 575 | 37.9% |
| Other Family | 247 | 16.3% |
| Male householder, no spouse | 78 | 5.1% |
| With children | 20 | 1.3% |
| Without children | 58 | 3.8% |
| Female householder, no spouse | 169 | 11.1% |
| With children | 80 | 5.3% |
| Without children | 89 | 5.9% |
| Nonfamily household | 314 | 20.7% |
| Male householder | 134 | 8.8% |
| Living alone | 134 | 8.8% |
| Not living alone | 0 | 0.0% |
| With children | 0 | 0.0% |
| Female householder | 180 | 11.9% |
| Living alone | 162 | 10.7% |
| Not living alone | 18 | 1.2% |
| With children | 0 | 0.0% |

Source: 2018-2023 American Community Survey 5-Year Estimates, Tables B11005 and B11010

Income

As measured in 2023, Harding Township had a significantly higher median household income compared to Morris County and the State of New Jersey. The median income in Harding Township was \$178,810, which was roughly \$43,881 greater than that of the County and \$77,760 greater than that of the State. The per capita income in Washington Township exceeded that of the County and State significantly. This data is outlined in Table 6 below.

| Table 6: Per Capita and Household Income, 2023 Harding Township, Morris County, and New Jersey | | |
|---|--------------------------|--------------------------------|
| | Per Capita Income | Median Household Income |
| Harding Township | \$125,144 | \$178,810 |
| Morris County | \$69,226 | \$134,929 |
| New Jersey | \$53,118 | \$101,050 |

Source: 2018-2023 American Community Survey 5-Year Estimates, Table S1901

In 2020 roughly 68% percent of all households in the Township earned an income of \$100,000 or more, as compared to roughly 62% of households in the County. The income range that accounted for the most Township households was \$200,000 or more, which comprised nearly 48% of households in Harding; this was also the case across Morris County as a whole, but at a lower percentage of 31%. The second largest income bracket in the Township was \$100,000 to \$149,999, comprising 13% of households. At the County level, this same income bracket accounted for 18% of households. This suggests that the Township's household income distribution is very slightly skewed toward these higher income brackets as compared to the County, which may at least partially help explain the stark difference between the median income reported at the Township (\$178,810) and County (\$134,929) levels.

| Table 7: Household Income, 2023 Harding Township and Morris County | | | | |
|---|---------------------------|----------------|---------------------------|----------------|
| | Harding Township | | Morris County | |
| | Number¹ | Percent | Number¹ | Percent |
| Less than \$10,000 | 47 | 3.1% | 5,372 | 3% |
| \$10,000 to \$14,999 | 136 | 9.0% | 2,686 | 1% |
| \$15,000 to \$24,999 | 139 | 9.2% | 5,372 | 3% |
| \$25,000 to \$34,999 | 11 | 0.7% | 7,290 | 4% |
| \$35,000 to \$49,999 | 114 | 7.5% | 10,551 | 6% |
| \$50,000 to \$74,999 | 129 | 8.5% | 19,376 | 10% |
| \$75,000 to \$99,999 | 36 | 2.4% | 19,376 | 10% |
| \$100,000 to \$149,999 | 197 | 13.0% | 35,107 | 18% |
| \$150,000 to \$199,999 | 106 | 7.0% | 26,858 | 14% |
| \$200,000 or more | 725 | 47.8% | 59,854 | 31% |
| Total Households | 1,516 | 100.0% | 191,840 | 100.0% |
| Median Household Income | \$178,810 | | \$134,929 | |

Source: 2018-2023 American Community Survey 5-Year Estimates, Table S1901

¹Due to the data being estimates, the number in each row does not add up with the "total" row.

Poverty Status

Of the 3,882 people in Harding Township for which poverty status was determined, 146 (3.8%) individuals lived in poverty in 2023; this was slightly lower than the County's poverty rate of 4.6%. Of Harding Township's population that fell below the poverty level in 2023, nearly all were between the ages of 18 to 64; at the County level nearly half of the population in poverty fell within the same age category. Proportionally the Township saw lower percentages of children living in poverty than the County, with the Township having 0% compared to the County's 1%. This data is presented in Table 8 below.

| Table 8: Poverty Status, 2023 Harding Township and Morris County | | | | |
|---|-------------------------|---------------------------|----------------------|---------------------------|
| | Harding Township | | Morris County | |
| | Number | % of Total Persons | Number | % of Total Persons |
| Total persons | 3,882 | 100.0% | 507,823 | 100.0% |
| Total persons below poverty level | 146 | 3.8% | 23392 | 4.6% |
| Under 18 | 0 | 0.0% | 5304 | 1.0% |
| 18 to 64 | 125 | 3.2% | 11831 | 2.3% |
| 65 and over | 21 | 0.5% | 11831 | 2.3% |

Source: 2018-2023 American Community Survey 5-Year Estimate, Table1701

Household Costs

Tables 9 and 10 below show the expenditures for housing as a percentage of household income for those who own and rent in Harding Township and Morris County. In 2023 a majority of Township residents lived in homes they owned, which was the same at the County level as well. General affordability standards set a limit at 30% of gross income to be allocated for owner-occupied housing costs and 28% of gross income to be allocated for renter-occupied housing costs. Approximately 33.8% of Township residents who owned the units they occupied spent 30% or more of their household income on housing, as compared to 80.8% of Township residents who rented the units they occupied. Ownership figures were on par with those of the County, however the Township far exceeded the County's percentage of renters paying 30% or more of their income on housing.

| Table 9: Selected Monthly Owner Costs as a Percentage of Household Income, 2023 Harding Township and Morris County | | | | |
|---|-------------------------|----------------|----------------------|----------------|
| | Harding Township | | Morris County | |
| | Number | Percent | Number | Percent |
| Total Owner-Occupied Housing Units | 1,232 | 100.0% | 140,864 | 100.0% |
| Less than 20.0% | 700 | 56.8% | 71,541 | 50.8% |
| 20.0 to 24.9% | 73 | 5.9% | 19,630 | 13.9% |
| 25.0 to 29.9% | 42 | 3.4% | 12,956 | 9.2% |
| 30.0 to 34.9% | 67 | 5.4% | 9,026 | 6.4% |
| 35.0% or more | 350 | 28.4% | 27,711 | 19.7% |
| Not computed | 13 | 1.1% | 907 | 0.6% |

Source: 2018-2023 American Community 5-Year Estimates, Table DP04

| Table 10: Gross Rent as a Percentage of Household Income, 2023 Harding Township and Morris County | | | | |
|--|-------------------------|----------------|----------------------|----------------|
| | Harding Township | | Morris County | |
| | Number | Percent | Number | Percent |
| Total Renter-Occupied Housing Units | 271 | 100.00% | 50,069 | 100.00% |
| Less than 10.0% | 20 | 7.4% | 1,691 | 3.4% |
| 10.0 to 14.9% | 10 | 3.7% | 3,957 | 7.9% |
| 15.0 to 19.9% | 13 | 4.8% | 7,232 | 14.4% |
| 20.0 to 24.9% | 0 | 0.0% | 8,015 | 16.0% |
| 25.0 to 29.9% | 9 | 3.3% | 5,855 | 11.7% |
| 30.0 to 34.9% | 0 | 0.0% | 3,276 | 6.5% |
| 35.0 to 39.9% | 22 | 8.1% | 2,828 | 5.6% |
| 40.0 to 49.9% | 0 | 0.0% | 4,481 | 8.9% |
| 50.0% or more | 153 | 56.5% | 10,596 | 21.2% |
| Not computed | 44 | 16.2% | 2,138 | 4.3% |

Source: 2018-2023 American Community 5-Year Estimates, Table B25070

EXISTING HOUSING CONDITIONS**Housing Unit Data**

Harding Township's housing stock is largely comprised of structures built prior to the year 1979. In 2023, Harding Township had a total of 1,574 occupied housing units, roughly 79% of which were owner-occupied and 17% of which were renter-occupied. The Township experienced housing booms in 1939 or earlier and between 1970 and 1990, during which approximately 20% and 28.7% of the Township's housing structures were constructed, respectively. According to 2018-2023 American Community Survey Estimates, the Township has seen very few housing structures built after 2010. The median year of construction for the housing stock in Harding Township is 1969. This data is outlined in Tables 11 and 12 below.

| Table 11: Housing Data, 2023 Harding Township | | | |
|--|---------------|---------------------------------|------------------------------------|
| | Number | % of Total Housing Units | % of Occupied Housing Units |
| Total Housing Units | 1,574 | 100.00% | - |
| Occupied Housing Units | 1,516 | 96.3% | 100.00% |
| Owner Occupied | 1,245 | 79.1% | 82.1% |
| Renter Occupied | 271 | 17.2% | 17.9% |
| Vacant Housing Units | 58 | 3.7% | - |

Source: 2018-2023 American Community Survey 5-Year Estimates, Table DP04

| Table 12: Year Structure Built, 2023 Harding Township | | |
|--|---------------|----------------|
| | Number | Percent |
| Total Housing Units | 1,574 | 100.00% |
| Built 1939 or earlier | 315 | 20.0% |
| Built 1940 to 1949 | 127 | 8.1% |
| Built 1950 to 1959 | 225 | 14.3% |
| Built 1960 to 1969 | 136 | 8.6% |
| Built 1970 to 1979 | 180 | 11.4% |
| Built 1980 to 1989 | 272 | 17.3% |
| Built 1990 to 1999 | 153 | 9.7% |
| Built 2000 to 2009 | 115 | 7.3% |
| Built 2010 to 2019 | 43 | 2.7% |
| Built 2020 or later | 8 | 0.5% |
| Median Year Structure Built | 1969 | |

Source: 2018-2023 American Community Survey 5-Year Estimates, Tables B25034 and B25035

According to the 2020 Census, Harding Township has a high occupancy rate, with very few of their housing units vacant. Of Harding Township's 1,574 housing units, 1,516 (96.3%) were occupied and only 58 (3.7%) were vacant. More than half (53.4%) of vacant units could be attributed to "For Seasonal, Recreational or Occasional Use", with "Other Vacant" accounting for the remaining 46.6%. This data is represented in Table 13 below.

| Table 13: Housing Occupancy, 2020 Harding Township | | | |
|---|--------------|-------------------------------------|--------------------------------------|
| | Total | % of Total Housing Units | % of Vacant Housing Units |
| Total Housing Units | 1,574 | 100.00% | - |
| Occupied | 1,516 | 96.3% | - |
| Vacant Housing Units | 58 | 3.7% | 100.0% |
| For Rent/Rented Not Occupied | 0 | 0.0% | 0.0% |
| For Sale Only | 0 | 0.0% | 0.0% |
| Sold, not occupied | 0 | 0.0% | 0.0% |
| For Seasonal, Recreational or Occasional Use | 31 | 2.0% | 53.4% |
| Other Vacant | 27 | 1.7% | 46.6% |

Source: US Decennial Census, 2020

Housing Type and Size

In 2023, single-family detached housing made up the vast majority of the Township's housing stock at 84.8%. Single-family attached homes were the next most common housing type, representing 8.9% of the Township's housing stock. The median number of rooms within housing structures in the Township was 9.0 or more, with 55.7% of housing units having a minimum of 9 rooms and less than 2% of housing units having 3 or less rooms.

| Table 14: Housing Type and Size, 2023 Harding Township | | |
|---|--------------|----------------|
| Units in Structure | Total | Percent |
| 1, detached | 1,335 | 84.8% |
| 1, attached | 140 | 8.9% |
| 2 | 0 | 0.0% |
| 3 or 4 | 21 | 1.3% |
| 5 to 9 | 67 | 4.3% |
| 10 to 19 | 0 | 0.0% |
| 20 or more | 11 | 0.7% |
| Mobile home | 0 | 0.0% |
| Boat, RV, van, etc. | 0 | 0.0% |
| Total Housing Units | 1,574 | 100.00% |
| Rooms | Total | Percent |
| 1 room | 0 | 0.0% |
| 2 rooms | 0 | 0.0% |
| 3 rooms | 22 | 1.4% |
| 4 rooms | 102 | 6.5% |
| 5 rooms | 82 | 5.2% |
| 6 rooms | 138 | 8.8% |
| 7 rooms | 200 | 12.7% |
| 8 rooms | 153 | 9.7% |
| 9 or more rooms | 877 | 55.7% |
| Total Housing Units | 1,574 | 100.00% |
| Median number of rooms | 9.0+ | |

Source: 2018-2023 American Community Survey 5-Year Estimates, Tables DP04 and B25024

Housing Growth and Projections

In terms of residential growth, the issuance of building permits serves as one of the indicators that help to determine housing needs in a given municipality. Table 15 below illustrates the number of building permits that were issued over the 10-year period between January 2014 through November 2024, when the Township issued building permits authorizing the development of 61 housing units. Within this time frame, the building permits were issued at a fairly steady rate. The entirety of the permits issued during this time frame were for single- and two-family homes.

In addition to the anticipated residential development determined by the last decade of building permits, there are several additional developments with site plan approval that were part of the Third Round Housing Plan. The Hurstmont site is expected to begin construction this year and will produce 250 units. The KRE site, which will produce 96 units, is also expected to begin construction this year. Additional affordable housing developments are expected to come to fruition within the Route 202 Overlay, therefore 50

additional units have been added to the projection. In Table 15 below, these anticipated developments have been included in the 10-year projection.

Further, throughout the same 10-year period, Harding issued permits authorizing the demolition of 37 units, which averages out to approximately 3.7 units per year. The average demolition rate is approximately 61% of the abovementioned development rate (i.e., a home net increase of around 39%). If the demolition rate were to remain relatively constant over the next approximately 10-year period, an additional 37 residential units could be expected to be demolished between January 2023 and the end of 2035, resulting in a projected net increase of 24 units.

| Table 15: Housing Units Authorized by Building Permits, 2014-2024 Harding Township | | | | |
|---|-------------------------|---------------------|------------------|--------------|
| Year | 1 & 2 Family | Multi Family | Mixed-Use | Total |
| 2014 | 5 | 0 | 0 | 5 |
| 2015 | 7 | 0 | 0 | 7 |
| 2016 | 8 | 0 | 0 | 8 |
| 2017 | 3 | 0 | 0 | 3 |
| 2018 | 8 | 0 | 0 | 8 |
| 2019 | 4 | 0 | 0 | 4 |
| 2020 | 5 | 0 | 0 | 5 |
| 2021 | 2 | 4 | 0 | 6 |
| 2022 | 6 | 0 | 0 | 6 |
| 2023 | 5 | 0 | 0 | 5 |
| 2024 | 4 | 0 | 0 | 4 |
| Total 2014-2024 | 57 | 0 | 0 | 61 |
| 10-Year Average | | | | 6.1 |
| 10-Year Permit Projection (2025-2035) | | | | 457 |

Source: State of New Jersey Department of Community Affairs Building Permits: Yearly Summary Data

| Table 16: Housing Units Demolished by Building Permits, 2014-2024 Harding Township | | | | |
|---|-------------------------|---------------------|------------------|--------------|
| Year | 1 & 2 Family | Multi Family | Mixed-Use | Total |
| 2014 | 4 | 0 | 0 | 4 |
| 2015 | 5 | 0 | 0 | 5 |
| 2016 | 5 | 0 | 0 | 5 |
| 2017 | 4 | 0 | 0 | 4 |
| 2018 | 1 | 0 | 0 | 1 |
| 2019 | 3 | 0 | 0 | 3 |
| 2020 | 7 | 0 | 0 | 7 |
| 2021 | 1 | 0 | 0 | 1 |
| 2022 | 2 | 0 | 0 | 2 |
| 2023 | 2 | 0 | 0 | 2 |
| 2024 | 3 | 0 | 0 | 3 |
| Total 2014-2024 | 37 | 0 | 0 | 37 |
| 10-Year Average | | | | 3.7 |
| 10-Year Demolition Projection (2025-2035) | | | | 37 |

Source: State of New Jersey Department of Community Affairs Building Permits: Yearly Summary Data

Township of Harding
Fourth Round Housing Element and Fair Share Plan

June 12, 2025

Housing Values and Contract Rents

According to the 2018-2023 American Community Survey, more than half (57.1%) of the owner-occupied housing stock in Washington Township in 2020 was valued at over \$1,000,000, as compared to 10.1% of the County's housing stock. In addition, the Township's median home value (\$1,177,300) exceeded that of the County (\$557,000) by an estimated \$620,300. This data is outlined in Table 17 below.

| Table 17: Value for Owner-Occupied Housing Units, 2023 Harding Township and Morris County | | | | |
|--|-------------------------|----------------|----------------------|----------------|
| | Harding Township | | Morris County | |
| | Number | Percent | Number | Percent |
| Total | 1,245 | 100.0% | 141,771 | 100.0% |
| Less than \$50,000 | 0 | 0.0% | 1404 | 1.0% |
| \$50,000 to \$99,999 | 19 | 1.5% | 1,480 | 1.0% |
| \$100,000 to \$149,999 | 0 | 0.0% | 878 | 0.6% |
| \$150,000 to \$199,999 | 0 | 0.0% | 1,472 | 1.0% |
| \$200,000 to \$299,999 | 20 | 1.6% | 9,969 | 7.0% |
| \$300,000 to \$499,999 | 42 | 3.4% | 44,816 | 31.6% |
| \$500,000 to \$999,999 | 450 | 36.1% | 67,465 | 47.6% |
| \$1,00,000 and greater | 714 | 57.3% | 14287 | 10.1% |
| Median Value | \$1,177,300 | | \$557,000 | |

Source: 2018-2023 American Community Survey 5-Year Estimates, Tables B25075 and B25077

As shown on Table 18 below, it is estimated that 49.9% of owner-occupied units in the Township were financed by a primary mortgage, contract to purchase, or similar debt. Of these units, approximately 6% were tied to multiple mortgages, 41.8% were associated with just a primary mortgage, and the remaining 50.1% were without a mortgage. Proportionally there were less owner-occupied housing units with a primary mortgage, contract to purchase, or similar debt at the County level; more specifically, 65.5% of such units. Of those units in the County tied to a primary mortgage, 8.5% had additional lines of credit associated with the unit, with 7.6% associated with a home equity loan and primary mortgage.

**Table 18: Mortgage Status
Harding Township and Morris County, 2023 Estimates**

| | Washington Township | | | Warren County | | |
|---|---------------------|------------------|---------------------|---------------|------------------|---------------------|
| | Number | % of Total Units | % of Mortgage Units | Number | % of Total Units | % of Mortgage Units |
| Total Owner-Occupied Units | 1,245 | 100.00% | - | 141,771 | 100.00% | - |
| Housing units with a mortgage, contract to purchase, or similar debt: | 621 | 49.9% | 100.00% | 92,847 | 65.5% | 100.00% |
| Housing units with no second mortgage and no home equity loan | 520 | 41.8% | 83.7% | 77,376 | 54.6% | 83.3% |
| Housing units with multiple mortgages: | 75 | 6.0% | 12.1% | 12,041 | 8.5% | 13.0% |
| Mortgage with both second mortgage and home equity loan | 9 | 0.7% | 1.4% | 249 | 0.2% | 0.3% |
| Mortgage, with only home equity loan | 66 | 5.3% | 10.6% | 10,836 | 7.6% | 11.7% |
| Mortgage, with only second mortgage | 0 | 0.0% | 0.0% | 956 | 0.7% | 1.0% |
| Home equity loan without a primary mortgage | 26 | 2.1% | 4.2% | 3,430 | 2.4% | 3.7% |
| Housing units without a mortgage | 624 | 50.1% | - | 48,924 | 34.5% | - |

Source: 2018-2023 American Community Survey 5-Year Estimates, Table B25081

As shown in Table 19 below, the highest percentage of renters in the Township paid between \$3,000 or more for monthly rent (32.8%), followed by less than \$500 (24.7%), and \$500 to \$999 (19.6%). At the County above half (52.4%) of renters paid between \$1,000 to \$1,999 for monthly rent. This data suggests that rent in the Township has a range much wider than the County as a whole.

**Table 19: Contract Rent, 2023
Harding Township and Morris County**

| | Harding Township | | Morris County | |
|------------------------------------|------------------|---------------|----------------|---------------|
| | Number | Percent | Number | Percent |
| Total Renter-Occupied Units | 271 | 100.0% | 50,069 | 100.0% |
| Less than \$500 | 67 | 24.7% | 2,553 | 5.1% |
| \$500 to \$999 | 53 | 19.6% | 2,602 | 5.2% |
| \$1,000 to \$1,499 | 0 | 0.0% | 11,385 | 22.7% |
| \$1,500 to \$1,999 | 11 | 4.1% | 14,853 | 29.7% |
| \$2,000 to \$2,499 | 0 | 0.0% | 8004 | 16.0% |
| \$2,500 to \$2,999 | 7 | 2.6% | 4406 | 8.8% |
| \$3,000 or More | 89 | 32.8% | 4637 | 9.3% |
| No Rent Paid | 44 | 16.2% | 1629 | 3.3% |
| Median Contract Rent | - | | \$1,759 | |

Source: 2018-2023 American Community Survey 5-Year Estimates, Tables B25056 and B25058

Housing Conditions

Table 20 below details the conditions of the Township's housing stock in 2023. Overcrowding and age, plumbing, and kitchen facilities are used to determine housing deficiency. In 2023, over two-thirds (83.8%) of the Townships housing stock relied on utility gas for heating, followed by fuel oil and kerosene (11.1%). A total of 12 (0.8%) occupied housing units experienced overcrowding (more than one person per room).

Throughout the Township, there were no occupied housing units that lacked complete plumbing or kitchen facilities, and only 26 (1.7%) units lacked telephone service.

| Table 20: Housing Conditions, 2023 Harding Township | | |
|--|---------------|----------------|
| | Number | Percent |
| House Heating Fuel-Occupied Housing Units | | |
| Total | 1,516 | 100.0% |
| Utility gas | 1,271 | 83.8% |
| Bottled, tank, or LP gas | 42 | 2.8% |
| Electricity | 27 | 1.8% |
| Fuel oil, kerosene, etc. | 168 | 11.1% |
| Coal or coke | 0 | 0.0% |
| Wood | 0 | 0.0% |
| Solar energy | 0 | 0.0% |
| Other fuel | 0 | 0.0% |
| No fuel used | 8 | 0.5% |
| Occupants per Room – Occupied Housing Units | | |
| Total | 1,516 | 100.0% |
| 1.00 or Less | 1,504 | 99.2% |
| 1.01 to 1.50 | 0 | 0.0% |
| 1.51 or More | 12 | 0.8% |
| Facilities – Total Units | | |
| Total | 1,547 | 100.0% |
| Lacking complete plumbing facilities | 14 | 0.0% |
| Lacking complete kitchen facilities | 41 | 0.0% |
| Telephone Service – Occupied Housing Units | | |
| Total | 1,516 | 100.0% |
| No Service | 26 | 1.7% |

Source: 2018-2023 ACS 5-Year Estimates DP04, B25047, and B25051

EMPLOYMENT DATA

Tables 21, 22, and 23 below detail the changes in employment between the years 2010 and 2023 in Harding Township, Morris County, and New Jersey, respectively. Throughout this thirteen-year period, the Township saw an overall 2.2% decrease in its unemployment rate; although the Township experienced a 3.7% spike in unemployment between 2019 and 2020 due to the COVID-19 pandemic, it has rebounded to a considerably lower unemployment rate in recent years. This overall trend is mirrored at both the County and State level as well, although in comparison the Township has consistently exhibited a lower unemployment rate throughout this time period. In 2023, the Township's unemployment rate was 3.5%, which was 0.2% lower than the County (3.7%) and 0.9% lower than the State (4.4%).

| Table 21: Employment and Residential Labor Force, 2010 to 2023 Harding Township | | | | |
|--|--------------------|-------------------|---------------------|--------------------------|
| Year | Labor Force | Employment | Unemployment | Unemployment Rate |
| 2010 | 1,894 | 1,787 | 108 | 5.7% |
| 2011 | 1,843 | 1,757 | 86 | 4.7% |
| 2012 | 1,626 | 1,521 | 105 | 6.5% |
| 2013 | 1,601 | 1,512 | 89 | 5.6% |
| 2014 | 1,588 | 1,512 | 76 | 4.8% |
| 2015 | 1,588 | 1,533 | 55 | 3.5% |
| 2016 | 1,575 | 1,524 | 51 | 3.2% |
| 2017 | 1,603 | 1,556 | 47 | 2.9% |
| 2018 | 1,597 | 1,556 | 41 | 2.6% |
| 2019 | 1,607 | 1,568 | 39 | 2.4% |
| 2020 | 1,547 | 1,453 | 94 | 6.1% |
| 2021 | 1,567 | 1,494 | 73 | 4.7% |
| 2022 | 1,613 | 1,564 | 49 | 3.0% |
| 2023 | 1,644 | 1,587 | 57 | 3.5% |

Source: NJ Dept. of Labor & Workforce Development Labor Force Estimates, Municipal Historical Annual Data, 2010-2023

| Table 22: Employment and Residential Labor Force, 2010 to 2023 | | | | |
|---|--------------------|-------------------|---------------------|--------------------------|
| Morris County | | | | |
| Year | Labor Force | Employment | Unemployment | Unemployment Rate |
| 2010 | 265,315 | 245,371 | 19,944 | 7.5% |
| 2011 | 265,652 | 246,892 | 18,760 | 7.1% |
| 2012 | 267,164 | 248,090 | 19,074 | 7.1% |
| 2013 | 264,216 | 247,611 | 16,605 | 6.3% |
| 2014 | 261,190 | 248,086 | 13,104 | 5.0% |
| 2015 | 260,137 | 248,914 | 11,223 | 4.3% |
| 2016 | 259,565 | 249,498 | 10,067 | 3.9% |
| 2017 | 264,573 | 255,195 | 9,378 | 3.5% |
| 2018 | 263,695 | 255,399 | 8,296 | 3.1% |
| 2019 | 267,830 | 260,529 | 7,301 | 2.7% |
| 2020 | 261,177 | 241,666 | 19,511 | 7.5% |
| 2021 | 262,393 | 248,469 | 13,924 | 5.3% |
| 2022 | 268,634 | 260,117 | 8,517 | 3.2% |
| 2023 | 273,903 | 263,900 | 10,003 | 3.7% |

Source: NJ Dept. of Labor & Workforce Development Labor Force Estimates, County Historical Annual Data, 2010-2023

| Table 23: Employment and Residential Labor Force, 2010 to 2023 | | | | |
|---|--------------------|-------------------|---------------------|--------------------------|
| New Jersey | | | | |
| Year | Labor Force | Employment | Unemployment | Unemployment Rate |
| 2010 | 4,559,778 | 4,118,982 | 440,796 | 9.7 |
| 2011 | 4,561,786 | 4,134,708 | 427,078 | 9.4 |
| 2012 | 4,576,286 | 4,147,221 | 429,065 | 9.4 |
| 2013 | 4,528,019 | 4,147,661 | 380,358 | 8.4 |
| 2014 | 4,493,894 | 4,191,318 | 302,576 | 6.7 |
| 2015 | 4,494,606 | 4,237,876 | 256,730 | 5.7 |
| 2016 | 4,492,821 | 4,271,201 | 221,620 | 4.9 |
| 2017 | 4,614,953 | 4,406,151 | 208,802 | 4.5 |
| 2018 | 4,604,787 | 4,420,713 | 184,074 | 4.0 |
| 2019 | 4,687,390 | 4,525,044 | 162,346 | 3.5 |
| 2020 | 4,638,386 | 4,200,980 | 437,406 | 9.4 |
| 2021 | 4,648,814 | 4,337,793 | 311,021 | 6.7 |
| 2022 | 4,736,213 | 4,552,563 | 183,650 | 3.9 |
| 2023 | 4,829,671 | 4,615,722 | 213,949 | 4.4 |

Source: NJ Dept. of Labor & Workforce Development Labor Force Estimates, State Historical Annual Data, 2010-2023

Employment Status

It is estimated that over half (52.4%) of Harding Township's population over the age of 16 was in the labor force in 2023, which was slightly lower than the County's rate of 68.5%. Of the Township's labor force, 100% of workers were civilians and a vast majority (93.2%) was employed. At the County level, 99.9% of workers were civilians and 94.7% of the labor force was employed, indicating that the Township and County exhibited similar trends. This data is shown in Table 24 below.

| Table 24: Employment, 2023 Harding Township and Morris County | | | | | | |
|--|----------------------------|----------------------------|-------------------------|----------------------|----------------------------|-------------------------|
| | Washington Township | | | Warren County | | |
| | Number | % of 16+ Population | % of Labor Force | Number | % of 16+ Population | % of Labor Force |
| Population 16 years and over | 3,146 | 100.0% | - | 417,893 | 100.0% | - |
| In labor force | 1,650 | 52.4% | 100.0% | 286,057 | 68.5% | 100.0% |
| Civilian Labor Force | 1,650 | 52.4% | 100.0% | 285,821 | 68.4% | 99.9% |
| Employed | 1,538 | 48.9% | 93.2% | 270,937 | 64.8% | 94.7% |
| Unemployed | 112 | 3.6% | 6.8% | 14,884 | 3.6% | 5.2% |
| Armed Forces | 0 | 0.0% | 0.0% | 236 | 0.1% | 0.1% |
| Not in labor force | 1,496 | 47.6% | - | 131,836 | 31.5% | - |

Source: 2018-2023 American Community Survey 5-Year Estimates, Table DP03

Class of Worker and Occupation

According to the 2018-2023 American Community Survey Estimates, the majority of workers (68.6%) living in Harding Township were a part of the private wage and salary worker group. This group includes people who work for wages, salary, commission, and tips for a private for-profit employer. The next largest category was self-employed worker or unpaid family worker (13.7%), followed by those who were private not-for-profit wage and salary workers (7.2%). This data is outlined in Table 25 below.

| Table 25: Class of Worker, 2023 Harding Township | | |
|---|---------------|----------------|
| | Number | Percent |
| Total Civilian Employed Workers (Age 16+) | 1,538 | 100.0% |
| Private Wage and Salary Worker | 1,055 | 68.6% |
| Private not-for-profit wage and salary workers | 111 | 7.2% |
| Local Government Worker | 62 | 4.0% |
| State Government Worker | 67 | 4.4% |
| Federal Government Worker | 33 | 2.1% |
| Self-Employed Worker or Unpaid Family Worker | 210 | 13.7% |

Source: 2018-2023 American Community Survey 5-Year Estimates, Table S2408

The occupational breakdown shown in Table 26 below includes only private wage and salary workers. Township residents who worked within the private wage field were concentrated heavily in Management,

Business, Science, and Arts occupations, followed by Sales and Office occupations. Collectively, the two fields accounted for over 87% of the entire resident workforce over the age of 16.

| Table 26: Resident Employment by Occupation, 2023 Harding Township | | |
|---|---------------|----------------|
| | Number | Percent |
| Employed Civilian Population 16 Years and Over | 1,538 | 100.0% |
| Management, business, science and arts occupations | 1,113 | 72.4% |
| Service occupations | 61 | 4.0% |
| Sales and office occupations | 238 | 15.5% |
| Natural resources, construction and maintenance occupations | 74 | 4.8% |
| Production Transportation and material moving occupations | 52 | 3.4% |

Source: 2018-2023 American Community Survey 5-Year Estimates, Table DP03

As portrayed in Table 27, the industry that employed the greatest number of Harding Township residents in 2023 was the Educational Services, and Health Care and Social Assistance sector, which accounted for 20.2% of the Township's resident workforce. The second most common industry during this time was the Professional, scientific, and management, and administrative and waste management services sector, which accounted for 17.8% of jobs occupied by Township residents.

| Table 27: Employment by Industry, 2023 Harding Township | | |
|--|---------------|----------------|
| Industry | Number | Percent |
| Employed Civilian Population 16 Years and Over | 1,538 | 100.00% |
| Agriculture, forestry, fishing and hunting, mining | 0 | 0.0% |
| Construction | 68 | 4.4% |
| Manufacturing | 129 | 8.4% |
| Wholesale Trade | 65 | 4.2% |
| Retail Trade | 146 | 9.5% |
| Transportation and Warehousing, and Utilities | 22 | 1.4% |
| Information | 64 | 4.2% |
| Finance and insurance, and real estate and rental and leasing | 270 | 17.6% |
| Professional, scientific, and management, and administrative and waste management services | 274 | 17.8% |
| Educational services, and health care and social assistance | 311 | 20.2% |
| Arts, entertainment, and recreation, and accommodation and food services | 100 | 6.5% |
| Other Services, except public administration | 70 | 4.6% |
| Public administration | 19 | 1.2% |

Source: 2018-2023 American Community Survey 5-Year Estimates, Table DP03

Commuting to Work

In 2023, it is estimated that over half (60.0%) of the employed population that did not work from home commuted less than 30 minutes to their place of work. Approximately 19% of the township's workers commuted between 30 minutes and an hour, with the last 21% of the population traveling between over an hour to get to work. A vast majority (69.4%) of the Township's working population drove alone as their primary means of travel to work. Roughly 15% of workers carpooled or utilized public transportation, a taxicab, motorcycle, bike, or other means of transportation to commute to work. It is estimated that no residents utilized walking as their primary means of transportation to work in 2020. This data is outlined in Tables 28 and 29 below.

| Table 28: Travel Time to Work, 2023 Harding Township | | |
|---|---------------|----------------|
| | Number | Percent |
| Workers who did not work at home | 1,282 | 100.0% |
| Less than 5 minutes | 44 | 3.4% |
| 5 to 9 minutes | 87 | 6.8% |
| 10 to 14 minutes | 87 | 6.8% |
| 15 to 19 minutes | 197 | 15.4% |
| 20 to 24 minutes | 159 | 12.4% |
| 25 to 29 minutes | 195 | 15.2% |
| 30 to 34 minutes | 134 | 10.5% |
| 35 to 39 minutes | 17 | 1.3% |
| 40 to 44 minutes | 37 | 2.9% |
| 45 to 59 minutes | 58 | 4.5% |
| 60 to 89 minutes | 91 | 7.1% |
| 90 or more minutes | 176 | 13.7% |
| Mean Travel Time to Work (minutes) | 34.3 | |

Source: 2018-2023 American Community Survey 5-Year Estimates, Tables B08303 and DP03

| Table 29: Means of Travel to Work, 2023 Harding Township | | |
|---|---------------|----------------|
| | Number | Percent |
| Workers 16 years and over | 1,519 | 100.0% |
| Car, truck, van - Drove Alone | 1,054 | 69.4% |
| Car, truck, van - Carpooled | 26 | 1.7% |
| Public Transportation | 185 | 12.2% |
| Walked | 0 | 0.0% |
| Taxicab, Motorcycle, Bike, or Other | 17 | 1.1% |
| Worked at home | 237 | 15.6% |

Source: 2018-2023 American Community Survey 5-Year Estimates, Table DP03

Covered Employment

There is currently very limited information available on actual job opportunities within municipalities. The Department of Labor and Workforce Development collects information on covered employment, which is

employment and wage data for private employees covered by unemployment insurance. The following table provides a snapshot of private employers located within Harding. The first table reflects the number of jobs covered by private employment insurance from 2013 through 2023.

According to data from the New Jersey Department of Labor and Workforce Development, the highest number of covered jobs in Harding between 2012 and 2022 was in 2021 when 417 jobs were covered by unemployment insurance. Private employment has remained relatively steady in Ship Bottom since 2012, with its largest loss occurring between 2018 and 2019 (-10.9%), and largest gain occurring between 2019 and 2020 (15.2%) when Harding Township experienced a gain of 72 jobs.

| Table 30: Private Wage Covered Employment 2013 - 2023 Harding Township | | | |
|---|-----------------------|-----------------|-----------------|
| Year | Number of Jobs | # Change | % Change |
| 2013 | 572 | - | - |
| 2014 | 549 | -23 | -4.0% |
| 2015 | 548 | -1 | -0.2% |
| 2016 | 513 | -35 | -6.4% |
| 2017 | 492 | -21 | -4.1% |
| 2018 | 531 | 39 | 7.9% |
| 2019 | 473 | -58 | -10.9% |
| 2020 | 545 | 72 | 15.2% |
| 2021 | 590 | 45 | 8.3% |
| 2022 | - | - | - |
| 2023 | 417 | 417 | - |

Source: NJ Dept. of Labor & Workforce Development Labor Force Estimates

In-Township Establishments and Employees by Industry: 2022

Table 31 below depicts the average annual number of establishments and employees by industry sector that exist within the Township, as reported in the Quarterly Census of Employment and Wages (QCEW) published by the New Jersey Department of Labor and Workforce Development (NJDLWD). The QCEW provides a quarterly accounting of employment, establishments, and wages throughout the State of New Jersey, and accounts for over 95% of available jobs in the state. The annual municipal reports group data according to the North American Industry Classification System (NAICS). The QCEW considers an establishment to be a single economic unit, which is located at one physical location and engaged in one type of economic activity. The NJDLWD specifies that establishments differ from firms or companies in the sense that the latter can have multiple establishments.

In 2023, the Township had an annual average of 76 establishments employing an average of 417 persons in the private sector. In the private sector, the annual averages were broken out as follows: local government education had an average of 1 units employing an average of 66 people; local government had an average of 2 units employing an average of 110 people; and federal government had an average of 2 unit employing

5 people. The accommodations and food sector was the Township's predominant private sector, accounting for 24 units and an average employment of 239 people.

| Table 31: Average Number of Establishments and Employees by Industry, 2023 Harding Township | | | |
|--|------------------------------|---------------------------------|-------------------|
| Industry ID and Description | | 2022 Average¹ | |
| | | Units | Employment |
| 11 | Agriculture | - | - |
| 21 | Mining | 4 | 8 |
| 22 | Utilities | - | - |
| 23 | Construction | - | - |
| 31 | Manufacturing | - | - |
| 44 | Retail Trade | - | - |
| 48 | Transp/Warehousing | 5 | 8 |
| 52 | Finance/Insurance | - | - |
| 53 | Real Estate | - | - |
| 54 | Professional/Technical | 5 | 30 |
| 56 | Admin/Waste Remediation | 1 | 66 |
| 61 | Education | 9 | 31 |
| 62 | Health/Social | - | - |
| 71 | Arts/Entertainment | - | - |
| 72 | Accommodations/Food | 24 | 239 |
| 81 | Other Services | - | - |
| | Private Sector Totals | 76 | 417 |
| 61 | Local Government Education | 1 | 66 |
| | Local Government Totals | 2 | 110 |
| | Federal Government Totals | 2 | 5 |

Source: NJ Dept. of Labor & Workforce Development Labor Force, Quarterly Census of Employment and Wages (QCEW), Municipal Report by Sector (NAICS Based), 2023

¹ Data has been suppressed (-) for industries with few units or where one employer is a significant percentage of employment or wages of the industry.

Probable Future Employment Opportunities

The North Jersey Transportation Planning Authority (NJTPA) completes regional forecasts for the New York/New Jersey metropolitan area every four years for population, households, and employment. The most recent report was released in 2021, documenting projections between 2015 and 2050. The 2021 report predicts that the Township's population (0.0%), households (0.2%), and employment (0.3%) will see steady annualized growth through 2050. It is estimated that the population will see an overall 1.5% increase, while households will increase by 6.6% and employment will increase by 12.6%.

| Table 32: Population and Employment Projections, 2015 to 2050 | | | | | |
|--|-------------|-----------------------------|--------------------------------------|---------------------------------|----------------|
| Washington Township | | | | | |
| Category | 2015 | 2050 (Projected) | Annualized Percent Change | Overall Projected Change | |
| | | | | Number | Percent |
| Population | 3,851 | 3,910 | 0.00% | 59 | 1.5% |
| Households | 1,501 | 1,600 | 0.20% | 99 | 6.6% |
| Employment | 1,451 | 1,634 | 0.30% | 183 | 12.6% |

Source: NJTPA Municipal Forecasts, dated 9/13/2021

PART 2: FAIR SHARE PLAN**INTRODUCTION**

The following Fair Share Plan ("Plan") details Harding's Prior Round (1987-1999), Third Round (1999-2025), and Fourth Round (2025-2035) Prospective Need obligations, as well as the Township's Fourth Round Present Need. This Plan proposes mechanisms by which the Township can realistically provide opportunities for affordable housing for those moderate-, low-, and very low- income households.

| | |
|---|-----|
| Prior Round Obligation | 83 |
| Third Round Obligation | 176 |
| Fourth Round Prospective Need | 75 |
| Fourth Round Present Need / Rehabilitation Obligation | 0 |

HIGHLANDS REGIONAL MASTER PLAN

The New Jersey Highlands Region extends across the northwestern part of the state, covering nearly 860,000 acres and includes 88 municipalities. The Highlands Water Protection and Planning Act (Highlands Act) was enacted in 2004, finding that "the New Jersey Highlands is an essential source of drinking water...for over one-half the State's population..." and that it "contains other exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds and habitat for fauna and flora." The Highlands Act established the New Jersey Highlands Water Protection and Planning Council (Highlands Council) to act as the regional planning entity charged with implementing the Act.

As previously discussed, the amended Fair Housing Act included a new requirement for Housing Elements and Fair Share Plans in relation to the Highlands Regional Master Plan:

"For a municipality located within the jurisdiction of the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), an analysis of compliance of the housing element with the Highlands Regional Master Plan of lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands conforming municipalities. This analysis shall include consideration of the municipality's most recent Highlands Municipal Build Out Report, consideration of opportunities for redevelopment of existing developed lands into inclusionary or 100 percent affordable housing, or both, and opportunities for 100 percent affordable housing in both the Highlands Planning Area and Highlands Preservation Area that are consistent with the Highlands regional master plan."

The Highlands Act divided land within the Highlands region into two areas: the Preservation Area and the Planning area. The Act requires all municipalities within the Preservation Area to conform to the Highlands Regional Master Plan (RMP) and permits those municipalities within the Planning Area to voluntarily

conform to the RMP. The intent of the RMP is to provide a comprehensive “blueprint” for the future of the Highlands Region; it serves as a plan by which to ensure protection of the Region’s vital water supply and other critical natural resources, while also providing for areas of growth and development through sufficient infrastructure. The Council’s follow-up mission is to guide areas such as Harding Township and assist in seeing that vision realized.

Harding Township prepared an Initial Assessment Report in December 2023 and adopted Resolution TC 24-081 on February 20, 2024, to “Accept the Highlands Water Protection and Planning Act” to bring all lands within Harding Township into conformance with the Highlands Regional Master Plan. On July 22, 2024, the Harding Township Planning Board adopted a Master Plan Reexamination Report. The Township then adopted Ordinance 18-2024 on August 19, 2024, for “Highlands Council Regional Master Plan Conformance”. The Ordinance created a new section to Chapter 225 Land Use and Development Ordinance, Part 6, “Highlands Regional Master Plan Requirements”.

On October 23, 2024, the Executive Director of the Highlands Council sent a letter to Harding Township informing the Township that the Highlands Council deemed the entire Township in conformance with Highlands Regional Master Plan (see Appendix F). As a conforming Highlands community, Harding will submit this Housing Element and Fair Share to the Highlands Council for their review and consistency determination with the RMP.

In reviewing sites for future development, the Highlands Council has the authority to review all proposals for the extension of infrastructure in their conforming municipalities to determine whether it is appropriate given the specific conditions of a particular site. As part of this Fourth Round process, Harding Township initiated conversations with Highlands staff to conceptually review the proposals of this Housing Element and Fair Share Plan to seek guidance and feedback on the viability of each proposed project.

Harding’s Land Use Capability Zones

The Land Use Capability Zone Map, developed by the Highlands Council and included in the Regional Master Plan, is a land use capability map and a comprehensive statement of policies for planning and managing the development and use of land within the Highlands Region. Overlay zones are superimposed over existing municipal zoning and provide government and the public with an indication of areas where special consideration is required to protect regionally significant resources. Harding Township is overlaid with a total of five different zones. The largest portion of the Township is part of the Protection Zone, followed by the Wildlife Management Sub-Zone. Additional zones in Harding are the Conservation Zone – Environmentally Constrained Sub-Zone, the Existing Community Zone, and the Existing Community Zone – Environmentally Constrained Sub-Zone.

The Protection Zone (PZ) consists of lands that are important to maintaining water quality, water quantity, and sensitive ecological resources. Land acquisition is a priority in the Protection Zone and development

activities are extremely limited and subject to stringent limitations on water use and other environmental impacts.

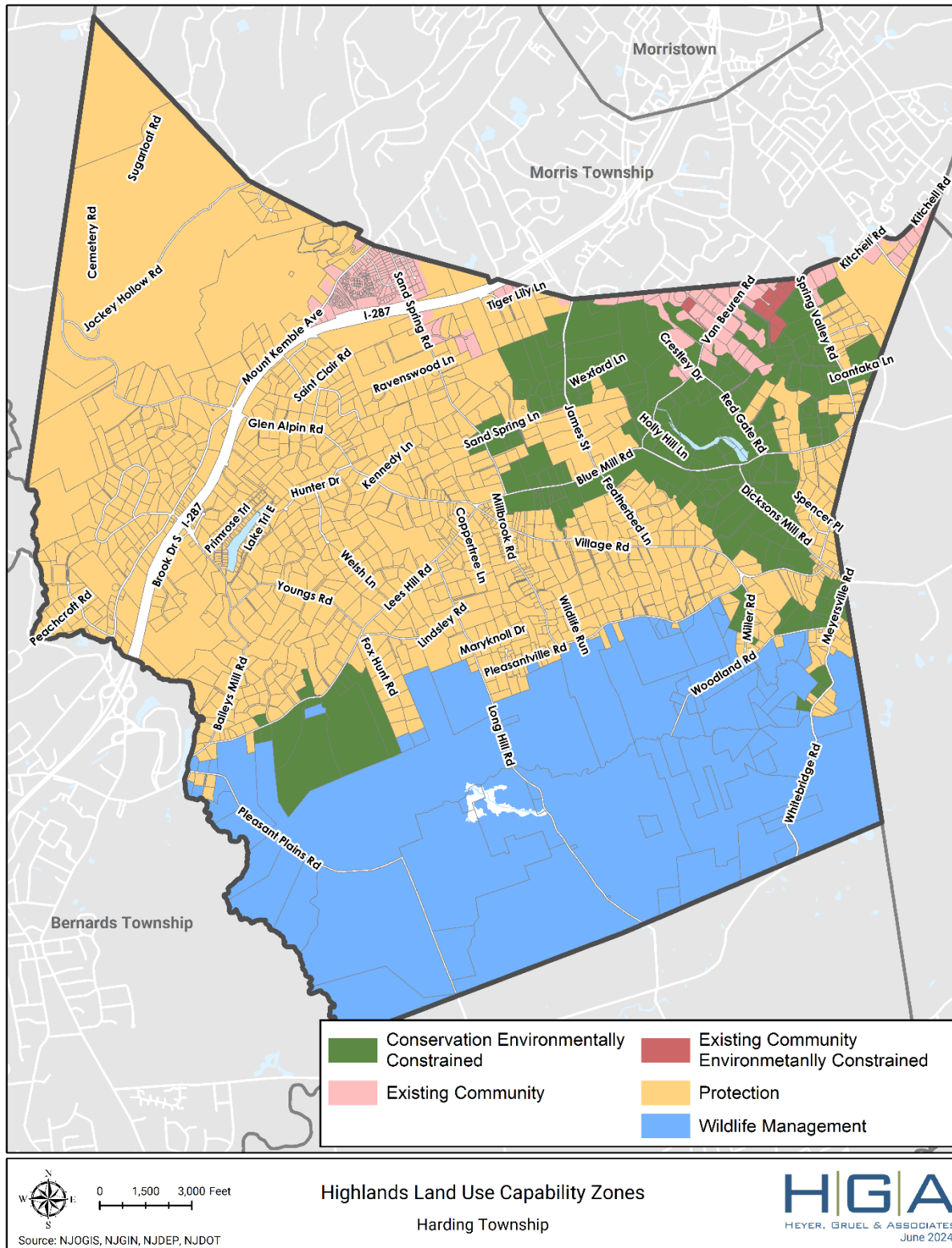
The Wildlife Management Sub-Zone (WM) consists of all National Wildlife Refuges managed by the United States Fish and Wildlife Service and Wildlife Management Areas. These areas are dedicated to conservation, management, as well as restoration of fish, wildlife, and plant resources and their habitats. These areas allow compatible wildlife-dependent recreational uses, such as hunting, fishing, and environmental education. In Harding, this area contains the Great Swamp National Wildlife Refuge Wilderness.

The Conservation Zone – Environmentally Constrained Sub-Zone (CZ-EC) is a sub-zone of the Conservation Zone which consists of areas with environmental features that should be preserved when possible. The Sub-Zone more specifically provides for areas that should be preserved and protected from non-agricultural development. Development is constrained through restrictions on the extension or creation of water supply and wastewater services.

The Existing Community Zone (ECZ) consists of areas with regionally significant concentrated development which often have limited environmental constraints and existing infrastructure that can support development and redevelopment. The Existing Community Zone – Environmentally Constrained Sub-Zone (ECZ-EC) includes areas with significant environmental features within the Existing Community Zone that should be protected from further fragmentation. Development in these areas is constrained through restrictions on the extension and the creation of water supply and wastewater services.

Township of Harding
Fourth Round Housing Element and Fair Share Plan

June 12, 2025



Highlands Municipal Build-Out

The Highlands methodology for its Municipal Build-Out was first released in 2009 to help effectuate the intents of both the Fair Housing Act and the Highlands Act. The build-out addresses land, sewer, and water capacity issues in the context of the Highlands Region and Highlands conforming municipalities.

On November 1, 2024, the Highlands Council released a Highlands Municipal Build-Out Update with revised methodology. The Highlands Council has created the Highlands Build-Out Review Portal, an online portal that provides a GIS tool for professionals to review and update parcels with missing information as well as to review parcels that the Highlands Council has determined to be “developable,” based on their methodology. The Highlands Council’s build-out methodology differs from that utilized by the DCA which determines a town’s land use capacity factor, an input used to establish each municipality’s Fourth Round obligation. The Highlands’ build-out is not intended to be comparable but rather serves as a tool to address the Fourth Round obligation.

Using the Highlands Build-Out Review Portal, a review was conducted of all parcels that the Highlands Council marked as “developable” or with missing information. After reviewing the subject properties, any edits to the information were submitted to the Highlands through this portal. Upon review, it was determined that none of the properties the Highlands Council identified as “developable” are in fact developable, establishing a realistic build-out for Harding Township as 0 units. That said, the Township petitioned the Highlands for a map adjustment to change the designation on the Round 3 overlay zone to include it in the Existing Community Zone. In a letter dated June 11, 2025 from Benjamin L. Spinelli, Esq., Executive Director for the Highlands Council, confirmed that the “area meets the Highlands HMP criteria...to be placed within the Existing Community Zone” (Appendix G). In the context of affordable housing, the change in Land Use Capability Zones should not impact the buildout, because it is a preexisting commitment with an inclusionary component permitted. In terms of the 100% project, if it were to generate buildout, it would be satisfied and exceeded by the 100% project.

It should be noted, however, that despite a buildout of 0 and a lack of sewer and water, the Township has committed to satisfy its entire Round 4 obligation by working with the Highlands on a site for a 100% development in a manner that is maximally efficient in terms of affordable housing production measured against Highlands RMP consistency. In other words, the Township is not seeking to adjust its number downward based on any legal theory.

That commitment is contingent upon approval of this plan.

CURRENT STANDARDS

The amended Fair Housing Act includes a number of changes associated with the application of various categories of credits. The below walks through the current standards applicable to the Township’s Fourth Round obligation.

Age-Restricted Housing

A municipality may not satisfy more than 30% of the affordable units, exclusive of bonus credits, to address its prospective need affordable housing through the creation of age-restricted housing.

Transitional Housing

Transitional housing units, which will be affordable for persons of low- and moderate-income, were not previously categorized by the Fair Housing Act as a standalone housing type. The amended legislation includes such transitional housing units as a new category which may be included in the HEFSP and credited towards the fulfillment of a municipality's fair share obligations. This is limited to a maximum of 10% of the municipality's obligations, however.

Veterans Housing

Up to 50% of the affordable units in any particular project may be prioritized for low- and moderate-income veterans.

Families with Children

A minimum of 50% of a municipality's actual affordable housing units, exclusive of bonus credits, must be made available to families with children.

Rental Units

A minimum of 25% of a municipality's actual affordable housing units, exclusive of bonus credits, shall be satisfied through rental units. At least half of that number shall be available to families with children.

Very-Low Income Requirement

At least 13% of the housing units made available for occupancy by low-income and moderate-income houses shall be reserved for low-income households earning 30% or less of the median income pursuant to the Fair Share Housing Act, N.J.S.A. 52:27D-301, et seq. Half of the very low-income units will be made available to families with children.

Low/Moderate Income Split

At least 50% of the units addressing the Township's obligation shall be affordable to very-low income and low-income households, and the remaining may be affordable to moderate-income households.

Affordability Controls

Newly created rental units shall remain affordable to low-and moderate-income households for a period of not less than 40 years, 30 years for for-sale units, and 30 years for housing units for which affordability controls are extended for a new term of affordability, provided that the minimum extension term may be limited to no less than 20 years as long as the original and extended terms, in combination, total at least 60 years.

Affirmative Marketing

The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law, to include the community and regional organizations identified in the agreement as well as the posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law.

Uniform Housing Affordability Controls (UHAC)

All affordable units created through the provisions of this Plan shall be developed in conformance with the Uniform Housing Affordability Controls (UHAC) pursuant to N.J.A.C. 5:80-26.1 et seq. as amended.

Unit Adaptability

All new construction units shall be adaptable in conformance with P.L.2005, c.250/N.J.S.A. 52:27D-311a and -311b and all other applicable laws.

Bonus Credits

Bonus credits shall not exceed 25% of a municipality's prospective need obligation, nor shall a municipality receive more than one type of bonus credit for any one unit. Bonus credits may be granted on the following schedule:

| Unit Type | Unit Credit | Bonus Credit |
|---|--------------------|---------------------|
| Each unit of low- or moderate-income housing for individuals with special needs or permanent supportive housing, as those terms are defined in section 2 of P.L. 2004, c.70 (C.34:1B-21.24). | 1 | 1 |
| Each low- or moderate-income ownership unit created in partnership sponsorship with a non-profit housing developer. | 1 | 0.5 |
| Each unit of low- or moderate-income housing located within a one-half mile radius, or one-mile radius for projects located in a Garden State Growth Zone, as defined in section 2 of P.L.2011, c.149 (C.34:1B-243), surrounding a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations. ¹ | 1 | 0.5 |
| A unit of age-restricted housing, provided that a bonus credit for age-restricted housing shall not be applied to more than 10 percent of the units of age-restricted housing constructed in compliance with the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency in a municipality that count towards the municipality's affordable housing obligation for any single 10-year round of affordable housing obligations. | 1 | 0.5 |
| A unit of low- or moderate-income housing constructed on land that is or was previously developed and utilized for retail, office, or commercial space. | 1 | 0.5 |
| Each existing low- or moderate-income rental housing unit for which affordability controls are extended for a new term of affordability, in compliance with the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency, and the municipality contributes funding towards the costs necessary for this preservation. | 1 | 0.5 |

| | | |
|---|---|-----|
| Each unit of low- or moderate-income housing in a 100 percent affordable housing project for which the municipality contributes toward the costs of the project. ² | 1 | 1 |
| Each unit of very low-income housing for families above the 13 percent of units required to be reserved for very low-income housing pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1). | 1 | 0.5 |
| Each unit of low- or moderate-income housing created by transforming an existing rental or ownership unit from a market rate unit to an affordable housing unit. ³ | 1 | 1 |

¹ The distance from the bus, rail, or ferry station to a housing unit shall be measured from the closest point on the outer perimeter of the station, including any associated park-and-ride lot, to the closest point of the housing project property.

² This contribution may consist of: (a) real property donations that enable siting and construction of the project or (b) contributions from the municipal affordable housing trust fund in support of the project, if the contribution consists of no less than three percent of the project cost.

³ A municipality may only rely on this bonus credit as part of its fair share plan and housing element if the municipality demonstrates that a commitment to follow through with this market to affordable agreement has been made and: (a) this agreement has been signed by the property owner; or (b) the municipality has obtained ownership of the property.

REVIEW OF PREVIOUS ROUND COMPLIANCE

As part of any Housing Element and Fair Share Plan, a municipality shall include an assessment of the degree to which the municipality has met its fair share obligation from the previous rounds of affordable housing obligations as established by prior court approval or approval by COAH and determine to what extent this obligation is unfulfilled or whether the municipality has credits in excess of its previous round obligations. If a previous round obligation remains unfulfilled, or a municipality never received an approval from the court or COAH for any previous round, the municipality shall address such unfulfilled previous round obligation in its Housing Element and Fair Share Plan.

In addressing previous round obligations, the municipality shall retain any sites that, in furtherance of the previous round obligation, are the subject of a contractual agreement with a developer, or for which the developer has filed a complete application seeking subdivision or site plan approval prior to the date by which the Housing Element and Fair Share Plan are required to be submitted, and shall demonstrate how any sites that were not built in the previous rounds continue to present a realistic opportunity.

Prior Round Compliance 1987-1999

The Township had a Prior Round obligation of 83 units. Per the court-approved Third Round settlement agreement and the Township's Third Round JOR, Harding Township has met their Prior Round obligation through the following mechanisms:

| Summary of Harding's Prior Round of 83 | |
|---|-----------|
| Regional Contribution Agreement with the City of Orange <i>(Funds transferred 1996)</i> | 41 |
| The Farm at Harding <i>(100% rental affordable)</i> | 21 |
| <i>Rental Bonus Credits</i> | 21 |
| TOTAL PRIOR ROUND | |
| | 83 |

Regional Contribution Agreement (RCA) with the City of Orange

The RCA program allowed one municipality ("sending" municipality) to pay a fee to another municipality ("receiving" municipality), which would agree to provide affordable housing units that fulfilled up to half of the sending municipality's COAH obligation. In 1996, Harding entered into an RCA with the City of Orange and transferred 43 of its 83-unit obligation to Orange. The transfer of the funds was completed on December 31, 1996. When the legislature amended the FHA in July 2008, it removed the RCA program as a permitted option for municipal compliance with the FHA.

The Township applied 41 of the 43 credits to its Prior Round obligation.

The Farm at Harding

The Farm at Harding is a 24-unit 100% rental affordable project. The site was acquired by the Township in 1994 and is situated on 8.3 acres at the intersection of Kitchell Road and Woodland Avenue (700 Woodland Avenue; Block 2 Lot 16). In 1997, the State Planning Commission extended the Planning Area 1 boundary from Morris Township to include this site. Each of the 24 units received their certificate of occupancy on August 11, 2006. The development is comprised of five (5) one-bedroom units, 14 two-bedroom units, and five (5) three-bedroom units.

Of the 24 constructed units, 21 were applied to the Township's Prior Round obligation. All associated documentation can be found in the appendix of the Township's most recent Court-approved Third Round Housing Element and Fair Share Plan, adopted February 19, 2019.

Assessment of the Degree to which Harding has met its Prior Round Obligation

As demonstrated above, Harding has fully satisfied its Prior Round obligation with credit-worthy mechanisms that were previously approved by COAH and/or a Court of competent jurisdiction. The units are constructed, occupied, and subject to the appropriate use controls.

Third Round Compliance

The Township had a Third Round obligation of 176 units. Per the court approved Third Round settlement agreement and the Township's Third Round JOR. Pursuant to the Township's Agreement with FSHC, the 176-unit Round 3 obligation is met as follows:

| Summary of Harding's Third Round of 176 | | |
|---|-------|---------------|
| | Units | Bonus Credits |
| Regional Contribution Agreement with the City of Orange <i>from Prior Round</i> | 2 | - |
| The Farm at Harding <i>from Prior Round</i> | 3 | 1 |
| The Farm <i>100% Affordable Family Rental</i> | 2 | - |
| Universal Institute <i>Supportive/Special Needs Housing</i> | 5 | 5 |
| Pillar Care Continuum <i>Supportive/Special Needs Housing</i> | 4 | 4 |
| Accessory Apartment Program | 10 | - |
| Mt. Kemble Development <i>Approved Inclusionary Development – Family Rental</i> | 16 | 16 |
| Hurstmont <i>Approved Inclusionary Development – Age-Restricted Rental</i> | 40 | - |
| Durational Adjustment <i>AHO-2 Overlay Zone:</i> <i>Block 46.01 Lots 9, 9.01, 10, 8, 13.02</i> <i>Block 33.03 Lots 4, 8, 18, 19, 3.01</i> <i>Block 32 Lots 4, 1.02, 9.01, 9.02</i> <i>Block 46.01 Lot 9</i> 1105 Mt. Kemble Road (5 Affordable Units) | 78* | |
| Totals | 160 | 26 |
| TOTAL THIRD ROUND | | 186 |

*While the Township's Third Round settlement agreement and JOR approved 73 units within the overlay, the 2024 amendment to the overlay zone would allow a theoretical build-out of 78 units, thereby increasing the available credits. A total of 186 units is therefore applied toward the Third Round.

Regional Contribution Agreement with the City of Orange (From Prior Round)

The Township applied the remaining 2 units from the RCA with the City of Orange to its Third Round obligation.

The Farm (From Prior Round)

The Township applied the remaining three (3) rental units from The Farm to its Third Round obligation.

The Farm (existing 100% affordable)

At the time of adoption of the 2018 HEFSP, the development consisted of 24 affordable family rental units ranging from one- to three-bedrooms, which were issued certificates of occupancy on August 11, 2006, and are deed restricted for 30 years through June 30, 2035. The Township executed an agreement requiring Mt. Kemble Associates to finance, in part, the construction of at least two (2) additional affordable family rental units in accordance with the adopted 2018 HEFSP. As discussed in the Court-approved Third Round HEFSP, the bedroom and income breakdown for the original 24 units are as follows:

- One bedroom: 3 low income; 2 moderate income
- Two bedroom: 7 low income; 7 moderate income
- Three bedroom: 2 low income; 3 moderate income

On August 11, 2020, L&T Affordable Housing Urban Renewal Corporation, a non-profit entity affiliated with the Borough of Madison Housing Authority, received site plan and variance approval for the construction of four (4) additional units: three two-bedroom units and one three-bedroom unit. On November 20, 2020, a deed was recorded with Morris County that allowed the Township to convey the property to L&T Affordable Housing Urban Renewal Corporation and restrict the property's use to affordable housing purposes only. Construction of the four (4) new units has been completed, and each one has been occupied. The four (4) units consists of three (3) two-bedroom units and one (1) three-bedroom unit; the three-bedroom unit and a two-bedroom unit are rented to a very low-income household, and the remaining two-bedroom units are rented to low-income households.

The new units are deed restricted for a minimum of 30 years, and the Township will receive credit for two (2) units in the Third Round and claim future credits for the other two (2) units. Additional documentation for the new units can be found in Appendix H of this Plan.

Universal Institute (existing supportive/special needs housing)

Universal Institute Group Home is a licensed group home located at 41 Tiger Lily Lane (Block 23, Lot 5). The facility has five (5) permanent supportive housing units for adults with traumatic brain injuries. The facility first opened in 2001 and is licensed through the NJ Department of Human Services Division of Developmental Disabilities but is a self-funded institute.

Universal Institute was approved as a component of the Township's Third Round Certification and the Township claimed all 5 credits in the Third Round. All associated documentation can be found in the appendix of the Township's most recent Court-approved Third Round Housing Element and Fair Share Plan, adopted February 19, 2019.

Pillar Care Continuum (existing supportive/special needs housing)

The Pillar Care Continuum Facility is a licensed group home with four (4) permanent supportive housing units for seven (7) individuals with developmental disabilities and other special needs. The project is

located at 1050 Mt. Kemble Avenue (Block 46.01, Lot 7) and is the only parcel within the AHO-1 Affordable Housing 1 Zone. The site was sold from the Township to Cerebral Palsy of North Jersey (CPNJ) for a nominal sum of \$1 pursuant to N.J.S.A. 40A:12-21 for its use. A deed restriction was filed for the site on August 1, 2019, and the site received approval from the Township's Board of Adjustment for variance relief on March 17, 2020.

Four (4) of the units were applied to the Township's Third Round Obligation. The deed restriction and Board of Adjustment approval can be found in Appendix I. All other associated documentation can be found in the appendix of the Township's most recent Court-approved Third Round Housing Element and Fair Share Plan, adopted February 19, 2019.

Accessory Apartment Program

Enacted by Ordinance #5-09 on June 10, 2009, the Township's Affordable Accessory Residence Program permits affordable accessory residences in the R-1 and RR Zoning Districts on lots of at least 5 acres in size. In accordance with N.J.S.A. 5:93-5.9, up to 10 accessory apartments may be created and used to address a municipal housing obligation. The 2009 ordinance (Section 225- 166 of the Township's Land Use and Development Chapter of the General Code) establishes the Township's Administrative Agent as the consultant who will administer the program. To encourage the production of accessory apartments, the Township provides a one-time subsidy to each property owner establishing a residence pursuant to the 2009 ordinance.

The Township adopted Ordinance #06-2019 on January 28, 2019, to update its Accessory Apartment Program standards to reflect current affordable housing legislation. The Township and Court agreed that this program was appropriate for Harding given the large, older housing stock and the prevalence of existing "carriage houses" that may lend themselves to being converted into an accessory apartment. The program was approved under the Township's Third Round JOR and is being implemented in accordance with N.J.A.C. 5:93-5.9.

As part of its Round 4 commitment, the Township has agreed to increase the subsidy on the Accessory Apartment Program to \$30,000 and has increased its Round 3 credits by 10 total units in the event that the Accessory Apartments are now treated as a deferred mechanism.

Mt. Kemble Development (inclusionary development)

The Mt. Kemble Development (also referred to as "KRE") is a fully approved inclusionary development located between Route 202 (Mt. Kemble Avenue) and Interstate 287 on Lot 5 in Block 23.02 of the Township's official tax map. As detailed in the settlement agreement with Mt. Kemble Associates ("Mt. Kemble Agreement"), the project site was rezoned via Resolution #6-2018, which was adopted July 9, 2018. The ordinance created the new "TH-1 Townhouse Zone 1" to permit single-family, twin house, and/or townhouse development on the project site with an affordable housing set-aside of 16 units. The

developers received site plan approval from the Township's Planning Board on August 23, 2021. The parties entered into an amended agreement in 2023, which required the affordable units to be family rental units (see Appendix J for Planning Board approval and amended agreement).

Access to the project is proposed through a property in neighboring Morris Township. The developers submitted an application to Morris Township's Board of Adjustment, which was approved at their October 24, 2022 meeting. As discussed earlier, Mt. Kemble has paid \$700,000 to the Township's Affordable Housing Trust Fund, which has been used to finance, in part, the creation of four (4) additional affordable family rental units at The Farm.

The Development required a site-specific amendment to the Northeast Water Quality Management Plan (WQMP) by the New Jersey Department of Environmental Protection. The developer submitted its application to NJDEP, which in turn, referred the application to the Highlands Council to review for Net Water Availability NWA. The site's source subwatershed of potable water differs from the discharge subwatershed, thereby resulting in a groundwater recharge deficit. Because of this deficit, the Highlands Council required the Township to develop a Water Use and Conservation Management Plan (WUCMP).

The WUCMP, which was adopted by the Harding Planning Board in July 2024 included the identification of water sources and uses, an analysis of Net Water Availability within the Township, resources for potential funding opportunities, potential water conservation/deficit mitigation and water conservation/deficit reduction and elimination strategies. The WUCMP additionally included an Implementation Plan, and

Mt. Kemble Associates (KRE) has received the necessary land use approvals, and the site is currently under construction. All associated documentation can be found in the appendix of the Township's most recent Court-approved Third Round Housing Element and Fair Share Plan, adopted February 19, 2019.

Hurstmont (proposed inclusionary development)

The property located at 679 Mt. Kemble Avenue known as the "Hurstmont Site" is proposed to be developed with an age-restricted facility with townhomes, multifamily independent living units, and assisted living and dementia care. The proposal includes 40 age-restricted affordable rental units within the independent living component of the developer. A Redevelopment Plan for the site was adopted on June 24, 2019 and amended September 30, 2019 and again on February 14, 2023 to permit the development as described above. In May 2023, the developer submitted a proposed development plan, including the necessary site plans, architectural plans, and traffic and environmental reports and statements to the Township Committee, who acts as the Redevelopment Entity. This development plan was deemed to be consistent with the Redevelopment Plan and Redevelopment Agreement (Resolution TC 23-115), and an amended redevelopment agreement was approved (Resolution TC 23-116) on May 15, 2023. Site plan approval for the Senior Living District (Block 27, Lot 2) was granted by the Planning Board on July 31, 2023.

The applicant received an extension of approvals from the Planning Board on October 28, 2024, as the applicant continues to seek approvals and permits from the NJDEP. Tree clearing has begun on the site, and they are expected to break ground in Fall 2025. Documentation for the Hurstmont Site can be found in Appendix K of this Plan.

Durational Adjustment - AHO-2 Overlay Zones

The Township of Harding received the Court's approval during its Third Round Fairness Hearing for a durational adjustment for 73 units of its Third Round obligation based upon the lack of sufficient water, sewage capacity, and sewer infrastructure within the Township. Pursuant to N.J.S.A. 52:27D-307(c)(2) and N.J.A.C. 5:93-4.1-4.3, a municipality can seek a durational adjustment based on a lack of infrastructure. The adjustment allows the municipality to defer its low- and moderate-income housing obligation until the infrastructure required to develop additional housing is implemented.

As part of the settlement agreement with FSHC, the Township received a waiver of the requirement to permit affordable housing development on any site not included in this Fair Share Plan, even if NJDEP approves a proposal for sewer and water services to that site as set forth in N.J.A.C. 5:93-4.3(c)4. The Court granted the durational adjustment as well as the aforementioned waiver at the Fairness Hearing, held on November 2, 2018.

The Township identified a number of sites that total approximately 49 acres at the southern end of the Route 202 corridor for overlay zoning to permit inclusionary development if sufficient water and/or sewer become available. Ordinance #05-2019, establishing two new overlay zoning districts, the AHO-1 and AHO-2 Zones, was adopted on January 28, 2019.

The AHO-2 Zone provides for the development of multifamily with densities that range from 6 to 10 units per acre, with affordable set-asides of 15 or 20%. It can take several years for a town to see the outcomes of a new zoning ordinance, given various factors such as existing leasing and market demands. However, in 2024 Harding Township determined it was appropriate to amend the AHO-2 to provide for greater flexibility in the ways in which the overlay can be developed in order to encourage developers to take advantage of the overlay option. Amendments to the zoning standards include additional permitted uses, additional height in certain locations, and density bonuses when additional affordable units are provided beyond the required set-asides. With this added flexibility and feasibility, the Township expects increased interest in the overlay zone. The overlay zone was amended on December 9, 2024, via Ordinance #27-2024. The amended zoning ordinance can be found in Appendix L of this Plan. The amended ordinance permits up to 78 affordable units as of right.

Development within the Overlay Zone

On February 14, 2025, a Land Use Application was submitted for 1105 Mt. Kemble Avenue (Block 33.03 Lot 18), located within the AHO-2 Affordable Housing Overlay 2 Zone. The project proposes to take advantage

of the affordable housing overlay with the development of five (5) affordable units and twenty (20) market rate units in a multifamily inclusionary development. The application is currently being heard in front of the Planning Board. As of the writing of this Plan, the application has been deemed complete, a Board site visit was conducted on May 14, 2025. While the applicant is currently scheduled to be heard in front of the Planning Board on June 23, 2025, it is understood that there has been recent discussions about adding an additional lot to this development proposal.

The proposed development at 1105 Mt. Kemble meets the suitability criteria as follows:

- *Available:* The property was recently sold to a developer who intends to develop the site with an inclusionary development. The site has no easements or title issues preventing its development.
- *Suitable:* The site is located in the AHO-2 Affordable Housing Overlay 2 Zone, which specifically permits multifamily affordable housing. Additionally, the site is located along a major thoroughfare, providing adequate and appropriate access to the site. The property is within Planning Area 5: Environmentally Sensitive, in which housing development that accommodates projected growth and minimizes impact on surrounding sensitive lands is encouraged.
- *Developable:* The site plans propose an onsite treatment facility for waste and groundwater recharge field. The site is not constrained by wetlands or any special flood hazard areas and the proposed development would have no significant environmental or social impacts to the general public and Harding community.
- *Approvable:* The site is located in the AHO-2 Affordable Housing Overlay 2 Zone, which permits multifamily inclusionary development. Affordable units will be deed restricted in accordance with affordability requirements. The proposal is scheduled to be heard by the Township Planning Board.

The property at 1300 Mount Kemble (Block 46.01 Lot 10) is currently developed with a large office building and associated surface parking. The previous office tenant has vacated the site, and the property has been purchased by an entity known as Tavistock Acquisitions, LLC ("Tavistock"), who tends to construct an inclusionary development on this site, which will produce at least 20 affordable units in conformance with AHO-2 Overlay Zone standards. Tavistock intends to extend sewer infrastructure to support the development, and is currently in discussions with the Township, the Highlands Council, and the adjoining municipalities. The Township will support the developer's petition to extend infrastructure to the site.

The Township has additionally petitioned the Highlands Council to amend the Regional Master Plan to place the entire affordable housing overlay in the Existing Community Land Use Capability Zone. The properties within the overlay all contain existing improvements, including buildings, parking lots, curbs, etc. and have been developed in such a manner for well over two decades, some of which have been developed

since the early 1980s. None of the lots are vacant or undeveloped. These lots contain substantial impervious areas and are appropriate to be placed in the Existing Community Land Use Capability Zone.

The proposed and planned developments discussed above, 1105 Mt. Kemble Avenue and 1300 Mt. Kemble Avenue, are evidence of the continued viability of the AHO-2 Overlay Zone. The planned developments exhibit that the zone is not only viable, but that there is active intention to create new affordable housing opportunities within these zones.

The Township will continue to provide status of development opportunities in its overlays as required by applicable statutory and regulatory monitoring standards.

Assessment of the Degree to which Harding has met its Third Round Obligation

As demonstrated above, Harding has fully satisfied its Third Round obligation with credit-worthy mechanisms that were previously approved by COAH and/or a Court of competent jurisdiction. The planned inclusionary developments at the KRE site and the Hurstmont site have their approvals and have begun site clearing and construction. The AHO-1 Overlay Zone was developed as Pillar Care Continuum, and the AHO-2 Overlay Zone is showing momentum with one development before the Planning Board and another in the design phase and initiating discussions with the Township and the Highlands Council. The Township amended its AHO-2 ordinance to encourage more developers to take advantage of the overlay, and is requesting a map change amendment from the Highlands Council to help facilitate such growth.

FOURTH ROUND OBLIGATION

The amended FHA called on the DCA to issue a non-binding report on the new Present Need Obligation (commonly referred to as the rehabilitation obligation) and the Prospective Need for Round 4 and subsequent rounds. The amended FHA requires the DCA to base its analysis of the obligations for each municipality based upon the standards set forth in the amended FHA.

On October 18, 2024, the New Jersey Department of Community Affairs ("DCA") released a report outlining the Fourth Round (2025-2035) Fair Share methodology and its calculations of present need and prospective need low- and moderate-income obligations for each of the State's municipalities. The obligations were calculated in alignment with the formulas and criteria found in P.L.2024, c.2. The DCA calculated a Present Need obligation for the Township of 0 units, and a Perspective Need obligation of 83 units.

The amended Fair Housing Act affirms that the DCA report is not binding on any municipality and that "a municipality shall determine its present and prospective fair share obligation for affordable housing in accordance with the formulas established in sections 6 and 7 of P.L.2024, c.2...by resolution..."

On January 23, 2025 the Township Committee adopted a binding resolution (Resolution #25-070, see Appendix C) establishing its Fourth Round Present and Prospective Need obligations of 0 and 67, respectively. Further, on January 23 2025, in accordance with the standards established by the amended

FHA and described above, the Borough filed a Complaint (Docket No. MRS-L-000198-25) seeking the entry of a declaratory judgment.

The Township's reduced Fourth Round Prospective Need obligation of 67 was challenged by the New Jersey Builders' Association on February 27, 2025. Subsequently, May 1, 2025, a Mediation Agreement before the Affordable Housing Dispute Resolution Program was made between the Township and the Builders' Association to establish Harding's Fourth Round Prospective Need obligation to 75 units (Appendix D).

Consideration of Lands Offered for Inclusionary Development

The Township considered all the proposals for affordable housing that it received. Ultimately, the Township elected to comply with a 100% project that was acceptable to the Highlands as opposed to other proposals which would demonstrably violate the Highlands Regional Master Plan.

Addressing the Present Need / Rehabilitation Obligation

Present Need was previously determined in N.J.A.C. 5:93-1.3 to be the sum of a municipality's indigenous need, the deficient housing units occupied by low- and moderate-income households, and the reallocated present need, which is the portion of a housing region's present need that is redistributed throughout the housing region. Under the Second Round rules, evidence for deficient housing included: year structure was built, persons per room, plumbing facilities, kitchen facilities, heating fuel, sewer service, and water supply. (N.J.A.C. 5:92, Appendix A).

The Third Round Rules (N.J.A.C. 5:97-1.1 et seq.) reduced the number of criteria of evidence of deficient housing to three: pre-1960 over-crowded units, which are units that have more than 1.0 persons per room; incomplete plumbing, and incomplete kitchen facilities. (N.J.A.C. 5:97, Appendix B). This reduction in the number of criteria was found to be by the Appellate Division to be within the Council's discretion and was upheld in the Supreme Court's decision in Mount Laurel IV.

The previously discussed Mount Laurel IV decision found that the reallocated need is no longer a component in the determination of Present Need. Therefore, the Present Need now equates to indigenous need, which means the obligation is based on deficient housing as determined by pre-1960 over-crowded units, incomplete plumbing, and incomplete kitchen facilities.

The Township has a Fourth Round Rehabilitation Obligation of zero (0).

Addressing the Prospective Need Obligation**The Farm (Prior Round / Third Round Credits Carried Over)**

The Township intends to apply the remaining two (2) rental units from The Farm to its Fourth Round obligation.

Kitchell Road Site (100% Affordable – Family)

The Township owned site, located at Kitchell Road and Woodland Avenue (Block 1 Lot 10), will be made available for affordable housing development. The site is located in the northeastern portion of the Township within the PL Public Land Zone. The Township proposes a 54-unit development that will include at least 40 family units and 10-15 special need bedrooms, which are “units” under COAH regulations. The special need units will provide a bedroom count that reaches the 54-unit total. The property will be deed restricted for a minimum of forty (40) years in accordance with N.J.S.A. 52:27D-321(f). In income and bedroom breakdown will be pursuant to the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.).

The project intends to extend sewer capabilities to support the development of the site. The subject property is located in the Highlands Existing Community Land Use Capability Zone, which consists of lands with concentrated development that have limited environmental constraints and often existing infrastructure that can support development and redevelopment. Block 1 Lot 10 is not currently within the sewer service area, but is surrounded by properties that are, including The Farm development, located across Woodland Avenue from the subject property, which is serviced by Morris Township Woodland Avenue Sewage Treatment Plant. Additionally, all properties across Kitchell Road, located within Morris Township, are within the sewer service area. The Township will support the development in pursuing the required approvals from the relevant entities to access the nearby sewer and water. The Township is confident that extension to Block 1 Lot 10 is a suitable candidate for infrastructure extension to support a larger development on site. It’s Harding’s opinion that because of its uniquely situated location, extension of infrastructure to this site is consistent with the Highlands Regional Master Plan.

The Township secured a Letter of Interpretation from the Department of Environmental Protection on January 29, 2024. The Letter of Interpretation which shows there is sufficient land outside of the wetlands and wetlands buffer area to construct the proposed development and verifies the boundary of the freshwater wetlands and/or State open waters on the property. The property was determined to have a required buffer of 50 feet to protect the wetlands on the site, as identified in the DEP approved map of the site.

Additionally, the Township has presented the project to the Fair Share Housing Committee for preemptive approval. The proposal to FSHC outlines a number of terms related to the project. Terms include that the Township shall be entitled to three attempts at 9% tax credits. The Township’s agreement also requires

the Township to bond in the event of shortfall. This provision does not preclude the Township from seeking additional outside subsidy. The intent of this provision is to make sure the project is funding irrespective of outside subsidy.

Documentation for the Kitchell Road site, including the LOI verification and the draft rezoning ordinance, can be found in Appendix M.

The site meets the suitability criteria as follows:

- *Available:* The Township owned property is available for residential development. The site has no easements or title issues preventing its development.
- *Suitable:* The site location is adjacent to established residential uses. The site is zoned as Public Land; however, the Township will rezone the property to permit 54 affordable housing on site.
- *Developable:* The project intends to extend sewer capabilities to support the development of the site as infrastructure is located across the street at The Farm as well as in Morris Township. The site has access to appropriate public streets with frontage on Kitchell Road. While a portion of the site is constrained by wetlands, sufficient area remains to provide unencumbered and available for development. As discussed above, an LOI has been secured from the DEP, which shows there is sufficient land outside of the wetlands and wetlands buffer area to construct the proposed development.
- *Approvable:* The Township is undertaking the appropriate steps to make the property approvable. The Township will rezone the property to permit 54 affordable housing units. Additionally, the Township is actively seeking developer partners and is reviewing funding options.

The Township will apply 19 bonus credits toward the Kitchell Road 100% affordable development. Bonus credits are applied through the credit category that allows each unit of low- or moderate-income housing in a 100 percent affordable housing project for which the municipality contributes toward the costs of the project. Such contribution includes the donation of land which enables the siting and construction of the project. The Township's intends to donate the land to the qualified developer. Harding additionally agrees to adopt a resolution of intent to fund.

Documentation for this development can be found in Appendix M.



Kitchell Road Site – Block 1, Lot 10
Aerial Map



*Kitchell Road Site – Block 1, Lot 10
Sewer Service Area Location Map*

Additional Mechanisms**Affordable Housing Development Fees Ordinance (Ord. #03-2019)**

The Development Fees Ordinance, adopted on January 28, 2019, requires that residential development requires a fee payment of 1.5% of the equalized assessed value and a payment of 2.5% for nonresidential development. The Ordinance identifies exemptions and additional conditions for development fee collection. The ordinance further discusses collection procedures and appeal procedures.

The Ordinance creates the Township's Affordable Housing Trust Fund for the purpose of depositing collected development fees and additional funds. The Ordinance outlines appropriate and permissible use of funds from the Affordable Housing Trust Fund, monitoring procedures, and procedures for the ongoing collection of fees. The updated Spending Plan (a draft of which is included in Appendix XX) provides for the expected collection and expenditures of funds associated with the Trust Fund.

Ordinance for Highlands Council Regional Master Plan Conformance (Ord. #18-2024)

The Ordinance, adopted on August 19, 2024, includes an Affordable Housing section. The Affordable Housing section requires that any new residential development must have a 20% affordable set aside, in compliance with the Fair Housing Act. The Ordinance states that development exempt from the Highlands Act is not exempt from the 20% set aside requirement.

Affordable Housing Ordinance

An Affordable Housing Ordinance was adopted by the Township on January 29, 2019 (Ordinance No. 04-2019), establishing the criteria for implementing affordable housing units in conformance with the Uniform Housing Affordability Controls (UHAC). While this Plan acknowledges that an amendment to the UHAC was released on an emergency basis in December 2024, those rules are set to expire in December 2025. It is also the understanding that the Housing Mortgage and Finance Agency (HMFA), the entity currently responsible for the UHAC regulations, is in the process of establishing further amendments to those rules. The Township will adopt an amendment to its Affordable Housing Ordinance stating that the December 2024 rules apply and commit to a future amendment when final UHAC rules and amendments to N.J.A.C. 5:99-1.1 et. seq. are adopted. The Township acknowledges that the December 2024 UHAC rules adopted under emergency measures are the current governing regulations.

Fourth Round Summary

| Summary of Harding's Fourth Round Obligation 75 | | |
|---|-----------|---------------|
| | Units | Bonus Credits |
| The Farm at Harding <i>carried over</i> <i>100% Affordable Rental</i> | 2 | - |
| Kitchell Road Site <i>100% Affordable Family Rental & Special Needs</i> | 54 | 19 |
| | | |
| TOTAL FOURTH ROUND | 56 | 19 |
| | 75 | |

STATE PLAN CONFORMANCE

In accordance with the amended Fair Housing Act, Housing Elements and Fair Share Plans shall provide an analysis of consistency with the State Development and Redevelopment Plan (SDRP), including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.

Sites that are located in the Metropolitan Planning Area 1 or Suburban Planning Area 2 of the SDRP, or are located in an existing sewer service area, are the preferred location for municipalities to address their fair share obligation.

New Jersey adopted its last SDPR in 2001. A draft amendment to the SDRP was prepared in 2011 but ultimately never adopted. The Office of Planning Advocacy released a new draft SDRP on December 4, 2024. The State is currently going through the Plan conformance process.

Harding Township contains a significant amount of environmentally sensitive land. The New Jersey State Development and Redevelopment Plan identifies the majority of the Township as Planning Area 5 Environmentally Sensitive land. The only other planning area present in Harding is parkland. There are currently no State Plan Centers in Harding. Nearby centers are located in Bernards Township, Mendham Township, and Morris Township.

The adopted 2001 SDRP identifies the following intents of the Environmentally Sensitive Planning Area:

- Protect environmental resources through the protection of large contiguous areas of land.
- Accommodate growth in Centers.
- Protect the character of existing stable communities.
- Confine programmed sewers and public water services to Centers.
- Revitalize cities and towns.

The 2024 draft SDRP maintains and expands upon the 2001 intensions:

- Protect environmental resources.
- Protect both large and small contiguous areas of land.
- Promote restoring habitats and bio-diversity.
- Accommodate growth only in Centers.
- Confining programmed sewers and public water services to Centers.
- Revitalize cities, towns, and older traditional settlements.
- Protect, enhance, and diversify the existing character of stable communities.

The policy objectives for the Rural Environmentally Sensitive Planning Area are those of the Environmentally Sensitive Planning Area (PA5). Relative objectives include:

- **Land Use:** Protect natural systems and environmentally sensitive features by guiding development and redevelopment into Centers and establishing Center Boundaries and buffers and greenbelts around these boundaries. Maintain open space networks, critical habitat and large contiguous tracts of land in the Environs by a variety of land use techniques. Development and redevelopment should use creative land use and design techniques to ensure that it does not exceed the capacity of natural and infrastructure systems and protects areas where public investments in open space preservation have been made. Development and redevelopment in the Environs should maintain and enhance the natural resources and character of the area.
- **Housing:** Provide for a full range of housing choices primarily in Centers at appropriate densities to accommodate projected growth. Ensure that housing in general—and in particular affordable, senior citizen, special needs and family housing—is developed with access to a range of commercial, cultural, educational, recreational, health and transportation services and facilities. Focus multi-family and higher-density, single-family housing in Centers. Any housing in the Environs should be planned and located to maintain or enhance the cultural and scenic qualities and with minimum impacts on environmental resources.

Harding's proposed mechanisms for meeting its Fourth Round obligation are consistent with the 2001 SDRP and the draft 2024 SDRP as the Township is proposing a 100% affordable development that will account for the majority of its obligation. By proposing a realistic opportunity for a 100% affordable development, the Township is protecting its environmental resources and existing character of the community. While not located in a designated Center, the location of the proposed housing is located adjacent to sewer and water infrastructure.

MULTIGENERATIONAL FAMILY HOUSING CONTINUITY COMMISSION

A previous amendment to the Fair Housing Act requires “an analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family

continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20)." As of the date of this Housing Plan there have been no recommendations by the Multigenerational Family Housing Continuity Commission in which to provide an analysis.

USE OF SURPLUS CREDITS

Any surplus credits generated would be applied to any future obligation that the Township may have.

SUMMARY OF FAIR SHARE COMPLIANCE

| Summary of Harding Township's Obligation | | |
|---|------------|---------------|
| | Units | Bonus Credits |
| Fourth Round Present Need Obligation | 0 | |
| Prior Round Obligation | 83 | |
| Regional Contribution Agreement (RCA) with the City of Orange | 41 | - |
| The Farm | 21 | 21 |
| TOTAL PRIOR ROUND | 83 | |
| Third Round Obligation | 176 | |
| The Farm (from Prior Round) | 3 | 1 |
| RAC with City of Orange (from Prior Round) | 2 | - |
| The Farm | 2 | - |
| Universal Institute | 5 | 5 |
| Pillar Care Continuum | 4 | 4 |
| Accessory Apartment Program | 10 | - |
| Mt. Kemble Development | 16 | 16 |
| Hurstmont | 40 | - |
| Durational Adjustment | 78 | |
| TOTAL THIRD ROUND | 186 | |
| Fourth Round Obligation | 75 | |
| The Farm (from Prior Round) | 2 | - |
| Kitchell Road Site – New Development | 54 | 19 |
| TOTAL FOURTH ROUND | 75 | |

HARDING TOWNSHIP
DRAFT AH-2 AFFORDABLE HOUSING 2 ZONE STANDARDS

1. May have a footprint (including the pad) not to exceed 20 square feet per unit.
2. Shall not exceed four feet in height.
3. Shall abide by the setbacks and standards associated with patios and decks found in Subsection G(7) above.
4. Shall be appropriated screened/buffered by non-deciduous plantings (subject to seasonal planting timing limitations) and/or a fence so as to minimize visibility from all lot lines from which the setback is less than the minimum applicable to buildings and structures.
- 6) One monument sign shall be permitted pursuant to the standards the AH Affordable Housing Zone, articulated in §225-120E of the Municipal Code.
- 7) Parking shall be provided at a minimum ratio of 1 space per unit.

Appendix A:
2018 Order Approving Settlement Agreement with Fair
Share Housing Center

Steven A. Kunzman, Esq. (Arty I.D. # 012731981)
Our File No.: C22242

**DI FRANCESCO, BATEMAN, KUNZMAN,
DAVIS, LEHRER & FLAUM, P.C.**

15 Mountain Boulevard
Warren, New Jersey 07059
Tele: 908-757-7800

Attorneys for Township of Harding

FILED

NOV 14 2018

Maryann L. Norgaard
J.S.C.

IN THE MATTER OF THE ADOPTION OF
THE TOWNSHIP OF HARDING FOR A
JUDGMENT OF COMPLIANCE OF ITS
THIRD ROUND HOUSING ELEMENT AND
FAIR SHARE PLAN.

SUPERIOR COURT OF NEW JERSEY
CIVIL DIVISION: MORRIS COUNTY
DOCKET NO: MRS-L-1672-15

Civil Action

**ORDER ON FAIRNESS AND
PRELIMINARY COMPLIANCE HEARING**

THIS MATTER having been opened to the Court by DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys for the Township of Harding (hereinafter referred to as “Township” or “Harding”), Steven A. Kunzman, Esq., along with Mark R. Roselli of Roselli, Griegel, Lozier & Lazzaro, P.C.. appearing, and Kevin D. Walsh, Esq., attorney for Interested Party, Fair Share Housing Center, Inc. (hereinafter “FSCH”), and John P. Inglesino, Esq., and Derek W. Orth, Esq., of Inglesino, Webster, Wyciskala, & Taylor, LLC., for Intervenor, S/K Mount Kemble Associate, LLC. (“S/K”), and John M. Mills, III, Esq., of Mills & Mills, P.C., on behalf of Morris Township (“Morris Township”), an interested party, by way of a Fairness and Preliminary Compliance Hearing held pursuant to and in accordance with East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996); and sufficient notice of this hearing having been given in accordance with In the Matter of the Adoption of N.J.A.C. 5:96 & 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”) and

Morris County Fair Housing Council v. Boonton Tp., 197 N.J. Super. 359 (Law Div. 1984); and the Court having considered the report dated October 28, 2018 and the testimony of the Court-appointed Special Master, Elizabeth C. McKenzie, AICP, PP, and the Court having considered the Settlement Agreement entered into between Harding and FSHC that was signed by the Township on September 21, 2018, which includes as an attachment a Settlement Agreement entered into between S/K and the Township, that was signed by the Township on February 12, 2018 (Plaintiff's Exhibit 1 in Evidence); and the Court having considered the testimony and presentations of the Township, the Special Master, FSHC, S/K and Morris Township at the time of the hearing; and good cause having been shown;

IT IS on this 14th day of November 2018, **ORDERED** that:

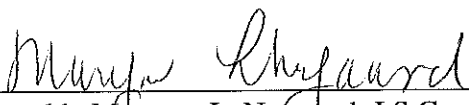
1. The Court finds that the Township provided appropriate notice of the Fairness and Preliminary Compliance Hearing.
2. The Court finds that the Settlement Agreements between Harding and FSHC and between Harding and S/K are fair and adequately protect the interests of low and moderate income persons within Harding's housing region based upon the criteria set forth in East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996) for approving a settlement of Mount Laurel litigation; and
3. The Court finds that the Township is entitled to a Durational Adjustment in accordance with N.J.A.C. 5:93-4.3, due to the lack of sufficient infrastructure to accommodate the entirety of its Third Round Obligation in areas served by sewer and water infrastructure or located in approved sewer and water service areas. The Court also finds that the waiver of N.J.A.C. 5:93-4.3(c)4, which is a condition of settlement, as set forth in paragraph 7.b. of the Settlement Agreement, is appropriate and consistent with said Rule; and

4. Harding's proposed plan for addressing its fair share obligations is facially constitutionally compliant and provides a fair and reasonable opportunity for Harding to meet its obligation under Mount Laurel IV, subject to Harding's satisfaction of the list of conditions set forth in the Court's Special Master's report of October 28, 2018, and subject to the Court's approval by way of a Final Compliance Hearing to be held as hereinafter set forth; and

5. A Final Compliance Hearing is hereby scheduled for March 1, ~~2019~~ at 1:30 p.m., by which time Harding shall have complied with the above-referenced conditions, shall have submitted to the Special Master for review and comment Harding's Housing Element and Fair Share Plan and all Resolutions and Ordinances required to implement the Housing Element and Fair Share Plan, and shall have provided for the Planning Board of the Township of Harding to finalize and adopt the Housing Element and Fair Share Plan and for the Harding Township Committee to endorse same and to adopt all necessary effectuating Resolutions and Ordinances; and

6. The temporary immunity previously granted to Harding is hereby extended until and through the day following the completion of the Final Compliance Hearing herein scheduled and the entry of an Order granting a Final Judgement in this matter; and

7. A copy of this Order shall be served upon all parties on the service list in this matter with 5 days of Harding's receipt thereof.



The Honorable Maryann L. Nergaard, J.S.C.

Appendix B:
2020 Third Round Final Judgment of Compliance and
Repose

Steven A. Kunzman, Esq. (Atty I.D. # 012731981)
Our File No.: C22242

**DIFRANCESCO, BATEMAN, KUNZMAN,
DAVIS, LEHRER & FLAUM, P.C.**
15 Mountain Boulevard
Warren, New Jersey 07059
Tele: 908-757-7800
Attorneys for Plaintiff Township of Harding

FILED

JUN 17 2020

**MICHAEL C. GAUS, J.S.C.
SUPERIOR COURT OF NJ**

| | |
|---|---|
| IN THE MATTER OF THE ADOPTION OF THE TOWNSHIP OF HARDING FOR A JUDGMENT OF COMPLIANCE OF ITS THIRD ROUND HOUSING ELEMENT AND FAIR SHARE PLAN. | SUPERIOR COURT OF NEW JERSEY CIVIL DIVISION: MORRIS COUNTY DOCKET NO: MRS-L-1672-15 <i>Civil Action</i> FINAL JUDGEMENT OF COMPLIANCE AND REPOSE |
|---|---|

THIS MATTER having been opened to the Court by DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys for the Plaintiff Township of Harding ("Township") by Steven A. Kunzman, Esq., and on Consent of Intervenor, Fair Share Housing Center, Inc. (hereinafter "FSCH"), by Bassam F. Gergi, Esq., and Intervenor S/K Mount Kemble Associates, LLC. ("S/K"), Inglesino, Webster, Wyciskala, & Taylor, LLC., by, Derek W. Orth, Esq., and upon approval of the Court Appointed Special Master, James T. Kyle, PP, AICP, ("Special Master"); and,

WHEREAS, the Court having entered an Conditional Declaratory Judgment of Compliance on March 28, 2019 ("Conditional Judgment"), which memorialized the determination by the Court that the Township is in compliance with its Constitutional obligation to zone in such a manner as to provide the realistic opportunity for the development of housing

affordable to low and moderate income households in accordance with what is commonly known as the Mount Laurel Doctrine and in accordance with the New Jersey Fair Housing Act, N.J.S.A. 52:27d-301, *et seq.*, including all Cycles or Rounds through June 30, 2025 as set forth in the Settlement Agreement entered into in this matter, subject to certain conditions; and,

WHEREAS, all criteria required to demonstrate Compliance as set forth in East/West Venture, 286 N.J. Super 311 (App. Div. 1996), have been satisfied, including that the Township has satisfied all conditions set forth in the Conditional Judgement, including:

- a) Modification of the bedroom composition of the two (2) new units to be constructed at the Farm at Harding 100% affordable project so that one is a two (2) bedroom unit and one is a three (3) bedroom unit to be in accordance with the requirements of the UHAC Regulations, N.J.A.C 5:80-26.3.
- b) Demonstration that the Universal Institute group home meets the requirements for crediting under the applicable COAH rules, N.J.A.C. 5:93-1, *et. seq.*
- c) Demonstration that the Cerebral Palsy of North Jersey group home meets the requirements for crediting under the applicable COAH rules, N.J.A.C. 5:93-1, *et. seq.*
- d) Adopt a redevelopment plan and enter into a redevelopment agreement for the Hurstmont /Glen Alpin Age Restricted development by October 31, 2019.
- e) Amend the affirmative marketing plan to comply with the requirement of settlement agreement for community organizations to receive notice of available units.

("Conditions"); and,

WHEREAS, the Special Master has advised the Court by letter of June 2, 2020 that all Conditions have been satisfied, and recommends entry of this Final Judgment of Compliance and Repose; and,

WHEREAS, Counsel for all of the Intervenors have consented to the entry of this Final Judgment of Compliance and Repose;

IT IS THEREFORE, ON THIS 17th DAY OF JUNE, 2020,
ADJUDGED, DECLARED AND ORDERED AS FOLLOWS:

1. The Court declares that the Township of Harding is in compliance with its Constitutional obligation to provide zoning that creates the realistic opportunity for the development of housing affordable to low and moderate income households as defined in what are commonly known as the Mount Laurel Doctrine and the New Jersey Fair Housing Act, N.J.S.A. 52:27d-301, *et seq.*, through and including all Cycles or Rounds up to and including any and all obligations that may have been determined to exist through June 30, 2025, as set forth in the Settlement Agreement in this matter which was approved by this Court by the Order of Fairness and Preliminary Compliance entered on November 14, 2018 and by the Conditional Judgment.
2. The Township is granted continuing repose and immunity from exclusionary zoning litigation until June 30, 2025.
3. All other requirements or provisions of the Conditional Judgment, that are not otherwise addressed in this Final Judgement, shall remain and are incorporated herein.

AND IT IS FURTHER ORDERED that a copy of this Judgment be served upon all interested parties in accordance with the procedure previously established in the Mount Laurel litigation matters.



Michael C. Gaus, J.S.C.

Appendix C:

Resolution #25-070 With Township's Compliant Seeking
Entry of a Declaratory Judgment

SURENIAN, EDWARDS, BUZAK & NOLAN LLC

311 Broadway, Suite A
Point Pleasant Beach, NJ 08742
(732) 612-3100

By: Michael J. Edwards: mje@surenian.com (Attorney ID: 032112012)
Attorneys for Declaratory Plaintiff, Township of Harding

**IN THE MATTER OF THE
APPLICATION OF THE TOWNSHIP OF
HARDING, COUNTY OF MORRIS,
STATE OF NEW JERSEY**

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MORRIS COUNTY**

DOCKET NO.: MRS-L-____

CIVIL ACTION
AFFORDABLE HOUSING
PER DIRECTIVE # 14-24

**COMPLAINT FOR DECLARATORY
RELIEF PURSUANT TO
DIRECTIVE# 14-24**

Declaratory Plaintiff, the Township of Harding, County of Morris, State of New Jersey (hereinafter, “Harding” or the “Township”), a municipal corporation of the State of New Jersey, with principal offices located at 21 Blue Mill Road, P.O. Box 666 New Vernon, NJ 07976, by way of this Declaratory Judgment Action (“DJ Action”) as authorized under Directive # 14-24 of the Administrative Office of the Courts, alleges and says:

Background

1. The Township of Harding is a municipal corporation of the State of New Jersey, and is a conforming municipality under the Highlands Regional Master Plan (“RMP”);
2. The Planning Board of the Township of Harding (hereinafter, “Planning Board”) is a municipal agency created and organized under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq., (“MLUL”), and, among other duties and obligations, is responsible for adopting the Housing Element and Fair Share Plan (“HEFSP”) of Harding’s Master Plan.

3. Through this DJ Action, Harding seeks the following relief in relation to its Fourth Round (2025-2035) affordable housing obligation: (a) to secure the jurisdiction of the Affordable Housing Alternative Dispute Resolution Program (the “Program”) pursuant to P.L. 2024, c.2 (hereinafter, the “Act”) and the Court, pursuant to Directive # 14-24; (b) to have the Program and the Court approve the Township of Harding’s Present and Prospective affordable housing obligations as set forth in the binding resolution adopted by the Township, attached hereto as **Exhibit 1**; (c) to have the Program and the Court approve a HEFSP to be adopted by the Planning Board and endorsed by the Council and issue a conditional or unconditional “Compliance Certification” pursuant to the Act or other similar declaration; (d) to the extent it is not automatically granted pursuant to the Act, through the filing of this DJ Action and binding resolution, to have the Program and the Court confirm Harding’s immunity from all exclusionary zoning litigation , including builder’s remedy lawsuits, during the pendency of the process outlined in the Act and for the duration of Fourth Round, i.e., through June 30, 2035; and (e) to have the Program and the Court take such other actions and grant such other relief as may be appropriate to ensure that the Township receive and obtain all protections as afforded to it in complying with the requirements of the Act, including, without limitation, all immunities and presumptions of validity necessary to satisfy its affordable housing obligations voluntarily without having to endure the expense and burdens of unnecessary third party litigation.

COUNT I

ESTABLISHMENT OF JURISDICTION UNDER P.L.2024, C. 2

4. The Township of Harding repeats and realleges each and every allegation as set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

5. The Act represents a major revision of the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 *et seq.*

6. Among other things, the Act abolished the Council on Affordable Housing (hereinafter, “COAH”), and replaced it with seven retired, on recall judges designated as the Program. Among other things, the Act authorized the Director of the Administrative Office of the Courts, (hereinafter, respectively, “Director” and “AOC”) to create a framework to process applications for a compliance certification.

7. On or about December 13, 2024, the Director issued Directive # 14-24, which among other things, required municipalities seeking compliance certification to file an action in the form of a declaratory judgment complaint and Civil Case Information Statement in the County in which the municipality is located within 48 hours after the municipality’s adoption of a binding resolution as authorized under the Act and attach a copy of said binding resolution to the DJ Action.

8. Harding adopted a binding resolution establishing its present and prospective affordable housing obligations within the statutory window of time set forth in the Act and in accordance with the methodology and formula set forth in the Act, a certified copy of which resolution is attached to this DJ Action as **Exhibit 1**.

9. Based on the foregoing, Harding has established the jurisdiction of the Program and the Court in regard to this DJ Action for a compliance certification as set forth hereinafter.

WHEREFORE, the Township of Harding seeks a declaratory judgment for the following relief:

- a. Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set

forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;

- b.** Declaring the present and prospective affordable housing obligations of the Township under the Act;
- c.** Declaring the approval of the Township's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Township Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, including, but not limited to, an adjustment predicated upon the Highland's Build Out Analysis and Regional Master Plan; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;
- d.** Declaring that the Township continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e.** Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-

24 to the Township of Harding for the period beginning July 1, 2025 and ending June 30, 2035; and

- f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT II

DETERMINATION OF THE PRESENT AND PROSPECTIVE NEED OF THE TOWNSHIP OF HARDING

10. Harding repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

11. The Act adopted the methodology to calculate every municipality's present and prospective need affordable housing obligation for the Fourth Round (2025-2035) and beyond.

12. Pursuant to the Act, a municipality desiring to participate in the Program is obligated to adopt a "binding resolution" determining its present and prospective affordable housing obligations to which it will commit based upon the methodology set forth in the Act.

13. Harding adopted a binding resolution including an expert report attached thereto, a copy of which resolution and expert report is attached hereto and made a part hereof as Exhibit 1 to this DJ Action.

14. The binding resolution maintains that the Present ("Rehabilitation") Need obligation of Harding is 0 and its Prospective Need obligation is 67.

15. Harding seeks the approval of and confirmation by the Program and the Court of the Present and Prospective affordable housing obligations as set forth in the binding resolution attached hereto and made a part hereof as **Exhibit 1** or the adjustment of those obligations consistent with the Act and the applicable COAH regulations.

16. Pursuant to the binding resolution, the Township of Harding reserves all rights to amend its affordable housing obligations in the event of a successful legal challenge, or legislative change, to the Act.

17. Pursuant to the binding resolution, Harding specifically reserves the right to seek and obtain 1) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 2) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or 3) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; 4) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 5) an adjustment based upon any ruling in litigation involving affordable housing obligations; and 6) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations.

WHEREFORE, the Township of Harding seeks a declaratory judgment for the following relief:

- a.** Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;
- b.** Declaring the present and prospective affordable housing obligations of Harding under the Act;
- c.** Declaring the approval of Harding's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated

upon lack of sanitary sewer or lack of water); and/or (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, including, but not limited to, an adjustment predicated upon the Highland's Build Out Analysis and Regional Master Plan; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

- d. Declaring that the Township continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to Harding for the period beginning July 1, 2025 and ending June 30, 2035; and
- f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT III

HOUSING ELEMENT AND FAIR SHARE PLAN

18. The Township of Harding repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

19. Pursuant to the Act, a Housing Element and Fair Share Plan (hereinafter, (“HEFSP”) must be prepared adopted by the Planning Board and endorsed, by June 30, 2025.

20. Harding hereby commits for its professionals to prepare the appropriate HEFSP to address its affordable housing obligations, as determined by the Program and the Court which HEFSP shall apply as appropriate, any applicable adjustments, including, without limitation, 1) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 2) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or 3) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; 4) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 5) an adjustment based upon any ruling in litigation involving affordable housing obligations; and 6) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations.

WHEREFORE, the Township of Harding seeks a declaratory judgment for the following relief:

- a.** Declaring that Harding has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;
- b.** Declaring the present and prospective affordable housing obligations of Harding under the Act;
- c.** Declaring the approval of Harding’s HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant,

developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations including, but not limited to, an adjustment predicated upon the Highland's Build Out Analysis and Regional Master Plan; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

- d.** Declaring that the Township of Harding continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e.** Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to the Township of Harding for the period beginning July 1, 2025 and ending June 30, 2035; and
- f.** Declaring such other relief that the program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT IV

CONFIRMATION OF IMMUNITY

21. The Township of Harding repeats and realleges each and every allegation set forth in the previous paragraphs of this declaratory judgment complaint as if set forth herein in full.

22. Pursuant to the Act, a municipality that complies with the deadlines in the Act for both determining present and prospective affordable housing obligations affordable housing obligations and for adopting an appropriate HEFSP shall have immunity from exclusionary zoning litigation.

23. The Township of Harding has met the deadline for the adoption and filing of its binding resolution (and the filing of this DJ Action in accordance with Directive # 14-24) not later than January 31, 2025 by adopting the binding resolution attached to this DJ Action as Exhibit 1, and has committed to the adoption of its HEFSP by the June 30, 2025.

24. Without waiving any judicial immunity from exclusionary zoning litigation that Harding possesses as a result of any applicable Judgment of Compliance and Repose entered in favor of the Township in Round 3, Harding has qualified for continued immunity under the Act while pursuing its certification of compliance in the instant matter.

WHEREFORE, the Township of Harding seeks a declaratory judgment for the following relief:

- a.** Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;
- b.** Declaring the present and prospective affordable housing obligations of Harding under the Act;
- c.** Declaring the approval of Harding's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant,

developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, including, but not limited to, an adjustment predicated upon the Highland's Build Out Analysis and Regional Master Plan; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

- d. Declaring that Harding continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to Harding for the period beginning July 1, 2025 and ending June 30, 2035; and
- f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

SURENIAN, EDWARDS, BUZAK & NOLAN LLC
Attorneys for the Declaratory Plaintiff
Township of Harding

Michael J. Edwards

By: _____
 Michael J. Edwards, Esq.

Dated: January 23, 2025

CERTIFICATION PURSUANT TO R. 4:5-1

Michael J. Edwards, Esq., of full age, hereby certifies as follows:

1. I am a member of the Firm of Surenian, Edwards, Buzak & Nolan LLC, attorneys for declaratory plaintiff, Township of Harding.
2. To the best of my knowledge, there is no other action pending in any court or any pending arbitration proceeding of which the matter in controversy herein is the subject and no such other action or arbitration proceeding is contemplated. To the best of my knowledge, there are no other parties who should be joined in this action.
3. The within Complaint was filed and served within the time prescribed by the Rules of Court.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

SURENIAN, EDWARDS, BUZAK & NOLAN LLC
Attorneys for the Declaratory Plaintiff
Township of Harding

Michael J. Edwards

By: _____
Michael J. Edwards, Esq.

Dated: January 23, 2025

CERTIFICATION PURSUANT TO R. 1:38-7(b)

Michael J. Edwards, Esq., of full age, hereby certifies as follows:

1. I am a member of the firm of Surenian, Edwards, Buzak & Nolan LLC, attorneys for Declaratory Plaintiff, Township of Harding.

2. I certify that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

SURENIAN, EDWARDS, BUZAK & NOLAN LLC
Attorneys for the Declaratory Plaintiff
Township of Harding

Michael J. Edwards

By: _____
Michael J. Edwards, Esq.

Dated: January 23, 2025

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, notice is hereby given that Michael J. Edwards, Esq., attorney for the Declaratory Plaintiff, Township of Harding is designated as trial counsel in the above captioned matter.

SURENIAN EDWARDS BUZAK & NOLAN LLC
Attorneys for Declaratory Plaintiff,
Township of Harding

Michael J. Edwards

By: _____
Michael J. Edwards, Esq.

Dated: January 23, 2025

**RESOLUTION TC 25-070
TOWNSHIP COMMITTEE
TOWNSHIP OF HARDING, MORRIS COUNTY, NEW JERSEY
JANUARY 22, 2025**

**RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF
HARDING COMMITTING TO ROUND 4 PRESENT AND PROSPECTIVE NEED
AFFORDABLE HOUSING OBLIGATIONS**

WHEREAS, the Township has a demonstrated history of voluntary compliance as evidenced by its Round 3 record; and

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), on July 2, 2015, the Township of Harding (hereinafter “Harding” or the “Township”) filed a Declaratory Judgment Complaint in Superior Court, Law Division seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”), to be amended as necessary, satisfies its “fair share” of the regional need for low and moderate income housing pursuant to the “Mount Laurel doctrine,” and

WHEREAS, that culminated in a Court-approved Housing Element and Fair Share Plan and a Final Judgment of Compliance and Repose, which precludes builder’s remedy lawsuits until July 1, 2025; and

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2 (hereinafter “A4” or “Amended FHA”); and

WHEREAS, A4 calculates the size of the regional affordable housing need as follows: “projected household change for a 10-year round in a region shall be estimated by establishing the household change experienced in the region between the most recent federal decennial census and the second-most recent federal decennial census. This household change, if positive, shall be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region, and to determine the regional prospective need for a 10-year round of low- and moderate-income housing obligations...”; and

WHEREAS, this means that the regional need equates to 40% of regional household growth; and

WHEREAS, the 1985 version of the Fair Housing Act and A4 both prohibit a result that would compel a municipality to spend its own money on compliance; and

WHEREAS, the theory which permits a municipality to meet its obligations without municipal subsidy is zoning for “inclusionary zoning”; and

WHEREAS, inclusionary zoning most typically requires a 15% or 20% set aside; and

WHEREAS, it is not clear how a regional need predicated upon 40% of anticipated growth can be met with 15-20% set asides and without municipal subsidy; and

WHEREAS, this is exacerbated by the fact that certain other municipalities in the region have an allocation of 0% of the prospective need (new construction obligation), irrespective of the growth in that particular municipality; and

WHEREAS, A4 yields a statewide new construction obligation of over 84,000 affordable units per year; and

WHEREAS, this is a substantially higher annual number than was imposed by COAH in the “Prior Round” or any iteration of its Round 3 regulations; and

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WHEREAS, A4 determines the size of the regional need, but does not calculate allocation of the need to individual municipalities; and

WHEREAS, instead, A4 required the Department of Community Affairs (“DCA”) to produce non-binding estimates of need on or before October 20, 2024, which it did provide on October 18, 2024 (“DCA Report”); and

WHEREAS, the DCA Report calculates the Township’s Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 0 units and a Prospective Need or New Construction Obligation of 83 units; and

WHEREAS, the Township accepts the conclusions in the DCA Report, except regarding the land capacity allocation factor; and

WHEREAS, as to the **Land Capacity Allocation Factor**, the Township notes that the DCA belatedly provided the data it used to establish this factor, i.e., on or about November 27, 2024 instead of by October 20, 2024; and

WHEREAS, the Township further notes that the link to the DCA GIS data that the DCA belatedly made available to municipalities includes the following language: “The land areas identified in this dataset are based on the best available data using publicly available data enumerated in N.J.S.A. 52:27D-304.3c.(4) to estimate the area of developable land, within municipal and regional boundaries, that may accommodate development. **It is important to note that the identified areas could be over or under inclusive depending on various conditions and that municipalities are permitted to provide more detailed mappings as part of their participation in the Affordable Housing Dispute Resolution Program.**” (emphasis added); and

WHEREAS, the DCA maintains that the areas the DCA identified as developable are indeed overinclusive and, consequently, Harding’s Professional Planner has prepared a report attached hereto as Exhibit A; and

WHEREAS, correcting the allocation factors results in the Township’s Round 4 Prospective Need Obligation being 67 units rather than the 83 units the DCA calculated; and

WHEREAS, Section 3 of A4 provides that: “the municipality’s determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7” of A4; and

WHEREAS, Township’s calculation of need is entitled to a “presumption of validity” because it complies with Sections 6 and 7 of A4; and

WHEREAS, the Township specifically reserves the right to adjust those numbers based on one or any of the foregoing adjustments: 1) a windshield survey or similar survey which accounts for a higher-resolution estimate of present need; 2) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 3) a Durational Adjustment (whether predicated upon lack of sewer or lack of water); and/or 4) an adjustment predicated upon regional planning entity formulas, inputs or considerations, including, but

**RESOLUTION TC 25-070
TOWNSHIP COMMITTEE
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JANUARY 22, 2025**

**RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF
HARDING COMMITTING TO ROUND 4 PRESENT AND PROSPECTIVE NEED
AFFORDABLE HOUSING OBLIGATIONS**

not limited to the Highlands Regional Master Plan and its build out, the Pinelands or Meadowlands regulations and planning document; and

WHEREAS, in addition to the foregoing, the Township specifically reserves all rights to revoke or amend this resolution and commitment, as may be necessary, in the event of a successful challenge to A4 in the context of the Montvale case (MER-L-1778-24), any other such action challenging A4, or any legislation adopted and signed into law by the Governor of New Jersey that alters the deadlines and/or requirements of A4; and

WHEREAS, in addition to the foregoing, the Township reserves the right to take a position that its Round 4 Present or Prospective Need Obligations are lower than described herein in the event that a third party challenges the calculations provided for in this Resolution (a reservation of all litigation rights and positions, without prejudice); and

WHEREAS, in light of the above, the Mayor and Committee find that it is in the best interest of Township to declare its obligations in accordance with this binding resolution and in accordance with the Act; and

WHEREAS, in addition to the above, the Acting Administrative Director issued Directive #14-24, dated December 13, 2024, and made the directive available later in the week that followed; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking a certification of compliance with the Act shall file an action in the form of a declaratory judgment complaint . . . within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner; and

WHEREAS, nothing in this Resolution shall be interpreted as an acknowledgment of the legal validity of the AOC Directive and the Township reserves any and all rights and remedies in relation to the AOC Directive; and

WHEREAS, the Township seeks a certification of compliance with the Act and, therefore, directs its Affordable Housing Counsel to file a declaratory relief action within 48 hours of the adoption of this resolution; and

BE IT RESOLVED on this 22nd day of January, 2025, by the Committee of the Township of Harding, Morris County, State of New Jersey, as follows:

1. All of the Whereas Clauses are incorporated into the operative clauses of this resolution.
2. The Mayor and Committee hereby commit to a Present Need Obligation of 0 units and the Round 4 Prospective Need Obligation of 67 units as described in this resolution subject to all reservations of rights, which specifically include:
 - a) The right to adjust the number based on a windshield survey, lack of land, sewer, water, regional planning inputs, or any combination thereof;

**RESOLUTION TC 25-070
TOWNSHIP COMMITTEE
TOWNSHIP OF HARDING, MORRIS COUNTY, NEW JERSEY
JANUARY 22, 2025**

**RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF
HARDING COMMITTING TO ROUND 4 PRESENT AND PROSPECTIVE NEED
AFFORDABLE HOUSING OBLIGATIONS**

b) As described in the WHEREAS section, all rights to revoke or amend this resolution in the event of a successful legal challenge, or legislative change, to A4;

c) All rights to take any contrary position in the event of a third-party challenge to the obligations.

3. The Township hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint within 48 hours after adopting this resolution attaching this resolution.

4. The Township hereby directs its Affordable Housing Counsel to (a) file this Resolution with the "Program" pursuant to the requirements on A4.

5. This resolution shall take effect immediately, according to law.

DATED: January 22, 2025

I, Lisa A. Sharp, Municipal Clerk of the Township of Harding, County of Morris, State of New Jersey, do hereby certify the foregoing resolution to be a true and correct copy of a resolution adopted by the Township Committee at the meeting held on January 22, 2025.



Lisa A. Sharp, Municipal Clerk

Vote on Resolution:

| | MOTION | FOR APPROVAL | AGAINST APPROVAL | ABSTAIN | ABSENT |
|----------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Ms. Chipperson | 2 nd | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Dr. Lacz | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Mr. Platt | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Mr. Yates | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Mr. Jones | 1 st | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Memorandum**

Page 1 of 5

TO: Township Committee of the Township of Harding, Morris County

CC: Robert J. Falzarano, Township Administrator, Township of Harding
Vince DeNave, Assistant Administrator, Township of Harding
Mike J. Edwards, Esq. Township Attorney, Township of Harding

FROM: McKinley Mertz, PP, AICP
Gabrielle Thurm, Associate Planner

RE: Fourth Round Obligation Calculations and Methodology in Accordance with P.L.2024, c.2

DATE: January 23, 2025

INTRODUCTION

On March 18, 2024, the affordable housing legislation known jointly as Senate Bill S50 and Assembly Bill A4 passed both houses of the legislature. Governor Murphy signed the bill (P.L.2024, c.2) into law on March 20, 2024, establishing a new methodology for determining municipalities' affordable housing obligations.

The New Jersey Department of Community Affairs ("DCA") subsequently released on October 20, 2024, a report outlining the Fourth Round (2025-2035) Fair Share methodology and its non-binding calculations of low- and moderate-income obligations for each of the State's municipalities. The report notes that the obligations were calculated in alignment with the formulas and criteria found in P.L.2024, c.2. The report details the process and the data that was utilized to carry out the DCA's calculations, with the intent of providing a reproduceable and transparent step-by-step record of the methodology applied.

Over a month after the release of the DCA's October 20th report, the DCA released detailed Geographic Information Systems ("GIS") mapping illustrating the location of the developable area that was used in their Land Capacity Analysis. In accordance with the DCA GIS data, "The land areas identified in this dataset are based on an the best available data using publicly available data enumerated in N.J.S.A. 52:27D-304.3c.(4) to estimate the area of developable land, within municipal and regional boundaries, that may accommodate development. **It is important to note that the identified areas could be over or under inclusive depending on various conditions and that municipalities are permitted to provide more detailed mappings as part of their participation in the Affordable Housing Dispute Resolution Program.**" (emphasis added)

The purpose of this memo is to provide a high-level summary of the methodology utilized by the DCA to calculate these Fourth Round obligations and analyze the accuracy of the data utilized by DCA. According to the amended affordable housing legislation, every municipality in the State is responsible for adopting by resolution its Fourth Round obligation numbers by January 31, 2025. Although the DCA has released its calculations, each municipality is permitted to conduct their own obligation calculation, in accordance with the requirements set forth in P.L.2024, c.2. This memo sets forth an analysis of the obligation calculation for the Township of Harding.



**DCA PROSPECTIVE NEED CALCULATION**

To calculate each municipality's Fourth Round Prospective Need, the DCA averaged the following three calculations to create an "average allocation factor":

Equalized Nonresidential Valuation Factor

This refers to the changes in nonresidential property valuations in a municipality that have occurred in the period between the beginning of the preceding round and the round currently being calculated. For the sake of calculating the Fourth Round obligation, this period begins in 1999.

The DCA calculated 1999 and 2023 equalized nonresidential valuations for each municipality, which were then (a) used to calculate the change that has occurred in this time period (b) aggregated at the Housing Region level. Each municipality's equalized nonresidential valuation change was then divided by the change at the Regional level to determine its Equalized Nonresidential Valuation Factor.

Income Capacity Factor

This refers to the extent of which a municipality's income level differs from that of the lowest-income municipality in its Housing Region, which is calculated as the average of two measures: (a) the municipal share of the regional sum of the differences between the median municipal household income and an income floor of \$100 below the lowest median household income in the Region; and (b) the municipal share described, weighted by the number of households in the municipality.

The DCA first calculated Housing Regional median household income floors by computing the lowest municipal median household income in each Housing Region and subtracting 100 from that number. Then the difference from the regional income floor was computed at the municipal level, by subtracting the Housing Region income floor from each municipality's median household income. These differences were then summed to produce aggregated income differences at the Housing Region level.

From these computations, the two measures described above were calculated: (a) each municipality's difference from the Housing Region income floor was divided by its Housing Region aggregated income differences to determine its share of Housing Region Income differences; and (b) each municipality's difference from the Housing Region income floor was multiplied by its number of households and then divided by its Housing Region aggregated income differences to determine its household-weighted income differences. Each municipality's (a) share of Housing

**Memorandum**

Page 3 of 5

Region income differences and (b) household-weighted income differences were aggregated at the Housing Region level and averaged to produce each municipality's Income Capacity Factor.

Land Capacity Factor

The total acreage of a municipality's land that is developable, (a) excluding non-vacant land and land subject to development limitations (i.e. steep slopes, wetlands, permanently preserved land, Category 1 waterways, and open water) and (b) assigning relative weights to the remaining vacant areas based on their State Planning Area and whether they falls within a special protection zone in the Highlands, Pinelands, or Meadowlands region. The DCA excluded lands that did not correspond to a Property Class Code denoting vacant lands or qualified farmland. The municipal Land Capacity Factor is the municipality's share of the vacant land in the entire Housing Region. The vacant land allocated to each municipality is based on polygons derived from the DCA methodology. The polygons are not based on parcel boundaries and may result in shapes that do not actually lend themselves to development. They are meant to be a general accounting of "land capacity" in the municipality.

The DCA methodology utilized ArcGIS software, publicly available data sets, and relied on certain assumptions that may lead to over counting vacant land due to a lack of specific local information including, but not limited to, recent development and development approvals, easements or other development restrictions, and rights-of-way.

Next, each municipality's Fourth Round Prospective Need was calculated by multiplying each Housing Region's Prospective Need by each of its municipality's average allocation factors.

Finally, these numbers were adjusted in accordance with the Affordable Housing Law to ensure that no Prospective Need obligations yielded an obligation in excess of either 1,000 units or 20% of the municipality's total number of households.

Utilizing the methodology described above, the DCA calculated the following Fourth Round obligations for Harding Township:

| DCA Fourth Round Obligations for Harding Township | | | | |
|--|--|-----------------------------|-------------------------------|----------------------------------|
| <i>Prospective Need</i> | <i>Equalized Nonresidential Valuation Factor</i> | <i>Land Capacity Factor</i> | <i>Income Capacity Factor</i> | <i>Average Allocation Factor</i> |
| 83 | 0.16% | 0.26% | 0.80% | 0.40% |



**HGA ANALYSIS OF HARDING'S FOURTH ROUND PROSPECTIVE NEED OBLIGATION**

NJDCA released an ArcGIS shapefile showing all of the polygons throughout the state that it identified as contributing to the "Land Capacity Factor." Our office reviewed the results of the methodology to identify any polygons that should be excluded from the Township's land capacity. The justification for excluding polygons identified by DCA is spelled out below and is generally based on specific local knowledge that was not captured by the broader statewide screening. Our office considered factors such as whether the polygon is listed on the Township's Recreation and Open Space Inventory (ROSI), is within an existing railway or road right-of-way, is part of a property that is not vacant, is constrained by wetlands that have been identified on surveys or site plans, is encumbered by easements, or has an approved site plan within the last five years.

HGA did not undertake any separate analysis of non-residential valuation or income trends as these are objective measures; therefore, the DCA's calculations of the Township's Equalized Nonresidential Valuation Factor and Income Capacity Factor remain unchanged throughout HGA's analysis. Nonetheless, the change in the Land Capacity Factor alters the Township's Average Allocation Factor.

POLYGONS TO BE REMOVED FROM LAND CAPACITY FACTOR ANALYSIS

After reviewing all the polygons outlined in the DCA Land Capacity Analysis Parcel Map, our office has determined 5 polygons that should be removed from the Township's Land Capacity Factor calculation. These polygons are outlined in the following paragraphs, and location maps for each polygon are included as an attachment to this memorandum.

Polygons 1-4

Polygons 1 through 4 are situated on Block 25.02 Lot 12. These polygons of land cannot be considered for development, as they are part of the Truck Stop owned by the New Jersey State Highway Department. This land to be removed from consideration amounts to approximately 11.7 acres.

Polygon 5

Polygon 5 is situated on Block 1 Lot 1. This polygon cannot be considered for development, as it is part of a property under the same ownership and in common use as the contiguous property located in Madison and developed with an office building. This land to be removed from consideration amounts to approximately 0.33 acres.



| Harding Township, Morris County | | | | |
|---|---------------------------|--|-------------------------|--|
| Summary of Lands to be Removed from Land Capacity Factor Calculation | | | | |
| Polygon ID | DCA Identification | Harding Township Block(s), Lot(s) | Weighted Acreage | Rationale |
| 1 | 30355 | Block 25.02 Lot 12 | 1.708473 | Owned by the New Jersey State Highway Department |
| 2 | 30357 | Block 25.02 Lot 12 | 2.573864 | Owned by the New Jersey State Highway Department |
| 3 | 30358 | Block 25.02 Lot 12 | 0.10809 | Owned by the New Jersey State Highway Department |
| 4 | 30359 | Block 25.02 Lot 12 | 7.417263 | Owned by the New Jersey State Highway Department |
| 5 | 30365 | Block 1 Lot 1 | 0.331977 | In common ownership and operation with contiguous parcel in Madison, developed with an office building |

CONCLUSION

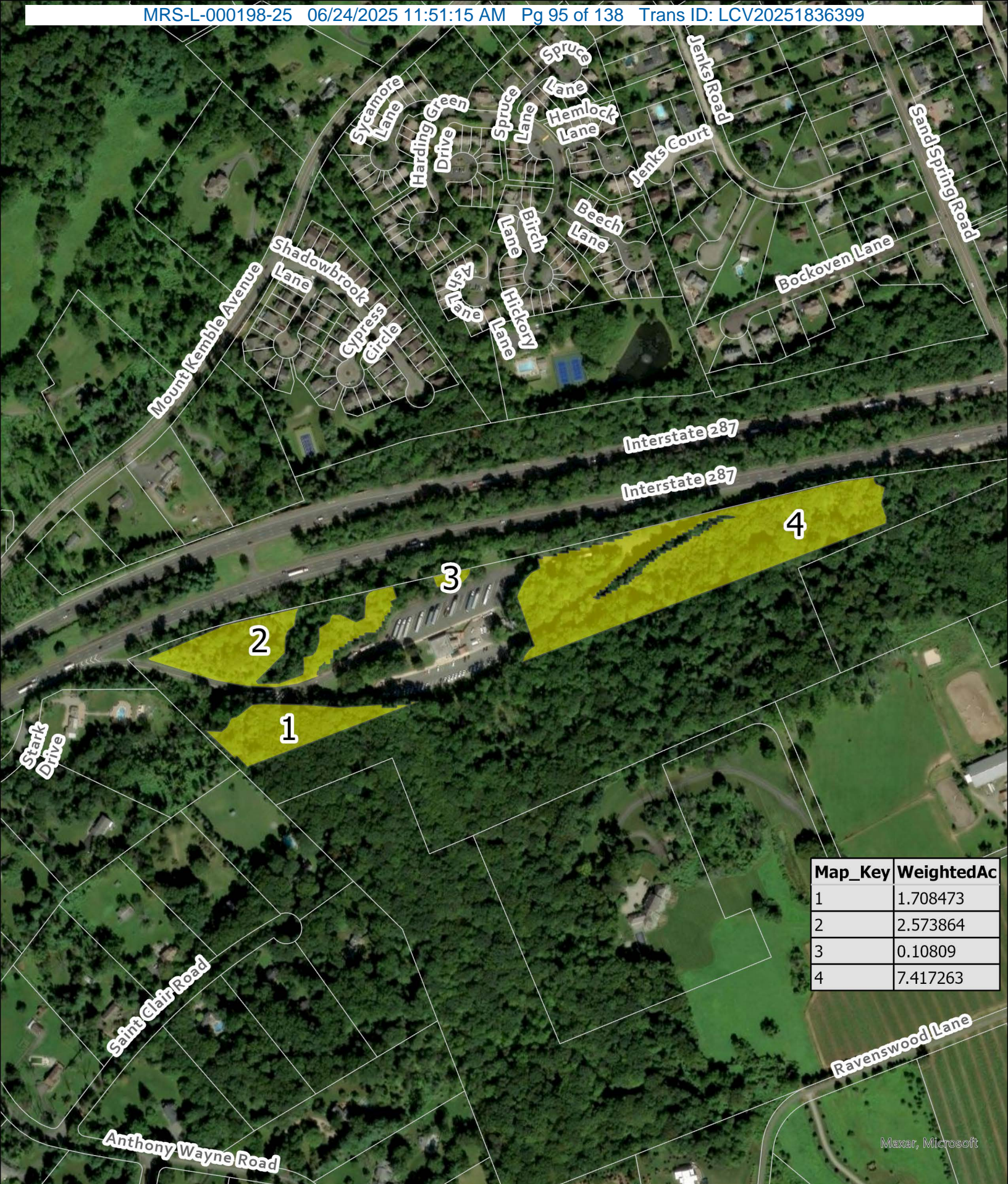
The total acreage of the 5 polygons to be removed from the Township's Land Capacity Factor calculation amounts to approximately 12.13 acres. This results in a reduced Land Capacity Factor from 0.26% to 0.03%, and a reduced overall Prospective Need Obligation from 83 units to 67 units. The results of our office's analysis are outlined in the following table with accompanying maps provided at the end of this memo.

| Modified Fourth Round Obligations for Harding Township | | | | |
|---|--|-----------------------------|-------------------------------|----------------------------------|
| <i>Prospective Need</i> | <i>Equalized Nonresidential Valuation Factor</i> | <i>Land Capacity Factor</i> | <i>Income Capacity Factor</i> | <i>Average Allocation Factor</i> |
| 67 | 0.16% | 0.03% | 0.80% | 0.33% |

RECOMMENDATION

It is our recommendation the Township Committee adopt a binding resolution determining a municipal Prospective Need obligation of 67 units, based on the recalculation of the Land Capacity Factor to account for methodological errors and supported by detailed mapping.

Should you have any questions regarding the above memorandum, please do not hesitate to contact our office.



| Map_Key | WeightedAc |
|---------|------------|
| 1 | 1.708473 |
| 2 | 2.573864 |
| 3 | 0.10809 |
| 4 | 7.417263 |

Maxar, Microsoft

Land Capacity Analysis

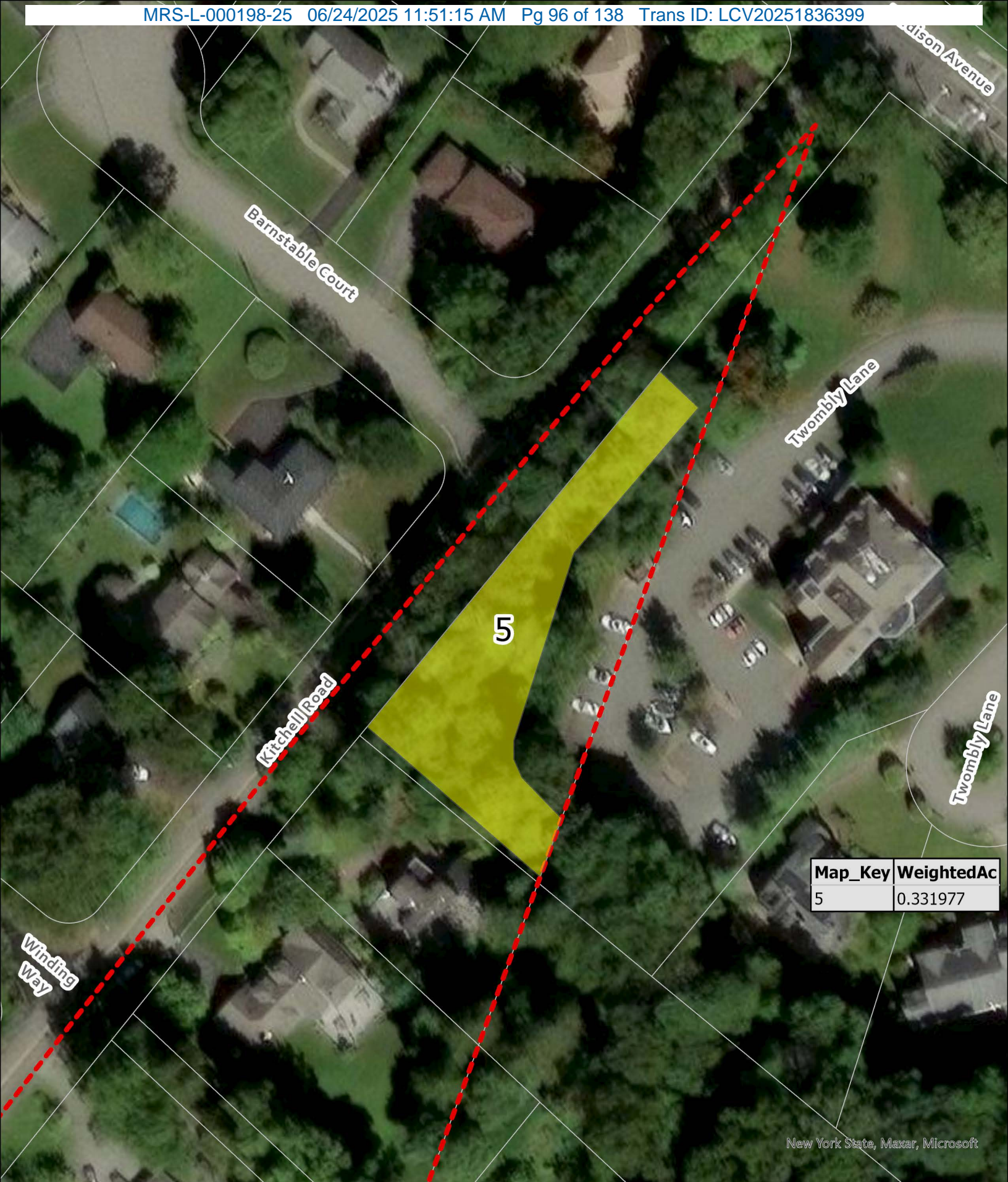
Harding Township, NJ

HGA
HEYER, GRUEL & ASSOCIATES

December 2024

0 170 340 680 Feet

Source: NJOGIS, NJDEP, NJDOT



| Map_Key | WeightedAc |
|---------|------------|
| 5 | 0.331977 |

New York State, Maxar, Microsoft



0 25 50 100 Feet

Source: NJOGIS, NJDEP, NJDOT

Land Capacity Analysis

Harding Township, NJ

HGA
HEYER, GRUEL & ASSOCIATES

December 2024

Appendix D:

New Jersey Builders' Association Objection; May 1, 2025
Order Affixing Fourth Round Obligations

BISGAIER HOFF, LLC

25 Chestnut Street, Suite 3
Haddonfield, New Jersey 08033

Tel: (856) 795-0150

Fax: (856) 795-0312

By: Richard J. Hoff, Jr., Esq. (NJ Bar No. 015811998)

Email: rhoff@bisgaierhoff.com

Co-Counsel for Defendant/Interested Party, New Jersey Builders Association

HILL WALLACK LLP

21 Roszel Road
Princeton, New Jersey 08540
(609) 924-0808

By: Thomas F. Carroll, III, Esq. (NJ Bar No. 022051983)

Email: tcarroll@hillwallack.com

Co-Counsel for Defendant/Interested Party, New Jersey Builders Association

| | |
|---|--|
| <p>IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF HARDING, a Municipal Corporation of the State of New Jersey,</p> <p style="text-align: center;">Plaintiff.</p> | <p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION MORRIS COUNTY</p> <p>DOCKET NO.: MRS-L-198-25</p> <p style="text-align: center;">CIVIL ACTION (<u>MOUNT LAUREL</u>)</p> <p style="text-align: center;">ANSWER/OBJECTION OF INTERESTED PARTY, NEW JERSEY BUILDERS ASSOCIATION</p> |
|---|--|

Defendant/Interested Party, New Jersey Builders Association (“NJBA”), with a principal place of business at 16 South Avenue West #122, Cranford, New Jersey 07016, and previously designated as an interested party by the Supreme Court in the matter of In re Adoption of N.J.A.C. 5:96 and N.J.A.C. 5:97, 215 N.J. 1 (2015)(“Mount Laurel IV”) and by the Hon. Judge Mary C. Jacobson, retired, in the matter of In the Matter of the Application of the Municipality of Princeton L-1550-15 (Law Div. March 8, 2018) (the “Princeton Decision”), by way of this Answer to the Complaint (“Complaint”) of Plaintiff, Township of Harding (“Plaintiff”) in this

matter, and in accordance with Section II.B of Administrative Directive #14-24 (“Directive #14-24”) of the Affordable Housing Dispute Resolution Program (the “Program”), N.J.S.A. 52:27D-304.2, - 304.3, and -304.1(f)(1)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (collectively, the “FHA”), and other applicable law, says that:

Paragraphs 1 through 24¹: NJBA denies each and every allegation and objects to any proposed relief set forth in the Complaint, to the extent that any such allegation or requested relief seeks to establish a Fourth Round (2025-2035) prospective need obligation for Plaintiff that is less than that established by the New Jersey Department of Community Affairs (“DCA”), as set forth in the DCA’s *Affordable Housing Obligations for 2025-2035 (Fourth Round)*

Methodology Background

(https://www.nj.gov/dca/dlps/pdf/FourthRoundCalculation_Methodology.pdf), and as audited by third party certified public accountants Mercadien, P.C.

(https://www.nj.gov/dca/dlps/pdf/FourthRoundCalculations_PeerReview.pdf) (collectively, the “DCA Fourth Round Numbers”). Plaintiff’s proposed prospective need obligation does not comply with the FHA or the New Jersey Constitution as construed by the Mount Laurel

Doctrine² for the reasons more fully set forth in the February 25, 2025 Report of J. Creigh

¹ NJBA is cognizant of the requirements of R. 4:5-3 relative to the form of an Answer. However, as Directive #14-24 does not mandate compliance with the New Jersey Court Rules in the filing of challenges pursuant to N.J.S.A. 52:27D-304.1.f(1)(a), and this is not an action in the Superior Court, but a proceeding before the Program, NJBA is proceeding with its objection in a uniform fashion that comports with the requirements of N.J.S.A. 52:27D-304.1.f(1)(a), (c). Should the Program interpret Directive #14-24 to require an Answer that fully comports with the requirements of R. 4:5-3, NJBA shall provide the same upon direction of the Program. However, it should be noted that such an amended Answer would not provide any substantive revision to NJBA’s challenge as the merits of that challenge are set forth in this current form of Answer with supporting report.

² The term Mount Laurel Doctrine refers to Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151 (1975) (“Mount Laurel I”), Southern Burlington County NAACP, et al v.

Rahenkamp, PP, AICP, a true and correct copy of which is attached hereto as **Exhibit “A”** (the “Rahenkamp Report”); which is incorporated as if fully set forth herein.

WHEREFORE, NJBA respectfully requests that the Court grant the following relief:

- a. DECLARING that the DCA Fourth Round Numbers are consistent with the FHA, the methodology set forth in the Princeton Decision, and other applicable law;
- b. DECLARING that DCA’s calculation of Plaintiff’s prospective need for the period 2025-2035 as set forth in the DCA Fourth Round Numbers is hereby established as Plaintiff’s prospective need for the period 2025-2035;
- c. DECLARING that Plaintiff’s municipal resolution setting forth its proposed prospective need for the period 2025-2035 is inconsistent with the requirements of the FHA, the Princeton Decision, and other applicable law;
- d. DENYING all relief sought in the Complaint to the extent that it seeks to establish a prospective need obligation for the period 2025-2035 that is inconsistent with the DCA Fourth Round Numbers;
- e. ORDERING that Plaintiff, on or before June 30, 2025, shall prepare and submit a Housing Element and Fair Share (with supporting ordinances) that addresses its prospective need for the period 2025-2035 as that prospective need has been established by the DCA;
- f. CONSOLIDATING, for purposes of a final decision on prospective need obligations for the period 2025-2035, all petitions/declaratory judgment Complaints wherein a

Township of Mt. Laurel, 92 N.J. 158 (1983) (“Mount Laurel II”), and its progeny, the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., and the implementing regulations of the New Jersey Council on Affordable Housing (“COAH”) N.J.A.C. 5:93 and/or N.J.A.C. 5:97, to the extent they have not invalidated by the Supreme Court in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 416 N.J. Super. 462 (App. Div. 2010), modified, 215 N.J. 578 (2013).

municipality, such as Plaintiff, has sought a reduction of its prospective need obligation below the obligations established by the DCA Fourth Round Numbers;

g. ORDERING that Plaintiff has violated constitutional and statutory rights under the laws of the State of New Jersey, thereby subjecting Plaintiff to paying NJBA's attorney's fees and costs pursuant to N.J.S.A. 10:6-2(c) and N.J.S.A. 10:6-2(f); and

h. ORDERING such additional relief as the Court deems just and equitable.

AFFIRMATIVE DEFENSES

Plaintiff's Calculation of Its Fair Share of the Region's Total, Prospective Need Obligation for the Period 2025-2035 is Inconsistent with the FHA and the New Jersey Constitution and Should Be Rejected by the Program in Favor of Accepting the DCA Fourth Round Numbers

By way of further response in support of this Affirmative Defense and in objection to Plaintiff's Complaint pursuant to N.J.S.A. 52:27D-304.1(f)(l)(c), NJBA asserts the following:

1. NJBA is an interested party within the meaning of the FHA as previously recognized by the Supreme Court and the Princeton Decision.
2. Plaintiff has not challenged the DCA's calculation of the total, prospective need for the region for the ten-year period (2025-2035) as such a calculation has been correctly established by the DCA in accordance with the requirement of N.J.S.A. 52:27D-304.2.
3. DCA's calculation of total prospective need for the region should therefore be accepted by the Program.
4. Pursuant to N.J.S.A. 52:27D-304.3, that total, prospective need for the region must then be allocated, in its entirety, to all municipalities within the region that are not classified as qualified urban aid municipalities.
5. In accordance with N.J.S.A. 52:27D-304.3, the DCA Fourth Round Numbers allocate the entirety of that total prospective need for the region subject to statutory capping.

6. Plaintiff is not a qualified urban aid municipality.

7. For reasons set forth in its municipal resolution, Plaintiff has asserted that its fair share of the total prospective need for the region is less than the prospective need number established for Plaintiff by the DCA Fourth Round Numbers.

8. For the reasons more fully set forth in the Rahenkamp Report attached hereto as **Exhibit “A”**, which is incorporated as if fully set forth herein, the calculation of total prospective need for the region and the allocation of that total prospective need to all municipalities within the region as set forth in the DCA Fourth Round Numbers are fully consistent with the statutory requirements of the FHA at N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3.

9. By proposing to reduce its prospective need from that calculated by the DCA, Plaintiff is, in turn, reducing the total prospective need for the region in contravention to the statutory requirements of N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3.

10. Moreover, in neither its Complaint nor its municipal resolution has Plaintiff reallocated that portion of the total, prospective need for the region that was assigned to Plaintiff by the DCA Fourth Round Numbers, but which Plaintiff claims is greater than the prospective need number that should be allocated to Plaintiff.

11. As a result of Plaintiff’s failure to reallocate the difference between the prospective need established and assigned to Plaintiff by the DCA Fourth Round Numbers and the prospective need asserted by Plaintiff in its municipal resolution, a portion of the total prospective need for the region that was correctly calculated by the DCA pursuant to N.J.S.A. 52:27D-304.2 is improperly and unconstitutionally lost.

12. For the reasons more fully set forth in the Rahenkamp Report attached hereto as **Exhibit “A,”** which is incorporated as if fully set forth herein, Plaintiff’s proposed reduction of the total, prospective need for the region is contrary to the provisions of the FHA, the Princeton Decision and the New Jersey Constitution, and is otherwise unlawful.

13. In accordance with the DCA Fourth Round Numbers, Plaintiff’s prospective need obligation for the period 2025-2035 should be established as 83 units, which, in accordance with the provisions of the FHA, represents Plaintiff’s proportionate fair share of the total, prospective need for the region.

14. Any claim by Plaintiff that it has insufficient land to meet the entirety of its prospective need as calculated per the DCA Fourth Round Numbers, either via development or redevelopment, should be properly deferred until the Plaintiff files a Housing Element and Fair Share Plan, which may include a request for a vacant land adjustment.

NJBA reserves the right to supplement this Answer with additional affirmative or other defenses.

BISGAIER HOFF, LLC
Co-Counsel for Defendant/Interested Party, New
Jersey Builders Association

A handwritten signature in blue ink, appearing to read 'R. Hoff', is written over a horizontal line.

Richard J. Hoff, Jr., Esq.

Dated: February 25, 2025

HILL WALLACK, LLP

Co-Counsel for Defendant/Interested Party, New
Jersey Builders Association

Thomas F. Carroll, III

Thomas F. Carroll, III, Esq.


Dated: February 25, 2025

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Richard J. Hoff, Jr., Esquire, and Thomas F. Carroll, III, Esq. are hereby designated as trial counsel for Defendant/Interested Party, New Jersey Builders Association.

BISGAIER HOFF, LLC

Co-Counsel for Defendant/Interested Party, New
Jersey Builders Association



Richard J. Hoff, Jr., Esq.

Dated: February 25, 2025

RULE 4:5-1 CERTIFICATION

1. I hereby certify that the subject matter of the within controversy does not form the basis of any other action presently pending in any court or arbitration proceeding to the best of my knowledge, information and belief and that no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, we know of no other parties that should be joined in this action at the present time.

2. I hereby certify that confidential, personal identifiers have been redacted from

documents now submitted to the Court/Program, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

BISGAIER HOFF, LLC

Co-Counsel for Interested Party, New Jersey
Builders Association



Richard J. Hoff, Jr., Esq.

Dated: February 25, 2025

RULE 4:6-1(d) CERTIFICATION

I hereby certify that the within Answer was filed within the time period allowed by
N.J.S.A. 52:27D-304.1 3f.(1)(b) and Directive #14-24.

BISGAIER HOFF, LLC

Co-Counsel for Interested Party, New Jersey
Builders Association



Richard J. Hoff, Jr., Esq.

Dated: February 25, 2025

EXHIBIT A



REPORT IN SUPPORT OF NJBA'S CHALLENGES TO THE PETITIONS OF THE NEW JERSEY MUNICIPALITIES SEEKING REDUCTIONS IN THEIR FAIR SHARE OBLIGATIONS

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J. Creigh Rahenkamp, NJPP #5321
Project Number: 25005

February 25, 2025

I. INTRODUCTION & SUMMARY OF FINDINGS

I have been retained by the New Jersey Builders Association (“NJBA”) and submit this report in support of NJBA’s objections to each of those municipalities that filed resolutions with the Affordable Housing Dispute Resolution Program (the “Program”) seeking a reduction of the prospective need allocations as calculated by the New Jersey Department of Community Affairs (“DCA”) for the period 2025-2035.

In summary, the submissions by the municipalities are inconsistent with and incompatible with the recent revisions to New Jersey’s Fair Housing Act, N.J.S.A. 52:27D-301, et seq (the “FHA” or the “Act”). In challenging the allocation performed by DCA, the municipal responses are universally singular in their focus – they seek to reduce the prospective need as to one municipality without accounting for that reduction in the regional aspect of the allocation model. The municipal tactic of individualized reduction occurs in three primary ways:

1. Municipalities mistake the factors and steps necessary to conduct a Vacant Land Adjustment (“VLA”) as part of the compliance phase effort to fit development to the specific circumstances of a municipality with the inherently inexact but uniform data and processes used for conducting a regional allocation.
2. They conflate potential “errors” in the data with simply substituting other sources of information which then is inherently unbalanced in the context of the regional allocation.
3. Each submission implements what is effectively a new methodology as applied to their respective municipality without applying that same methodology to the region.

These issues are further addressed and explained in the sections below.

The Act provides for the ability of a municipality or a consortium of municipalities to conduct their own allocation model, but that model is inherently one that would need to be applied in a uniform manner to all of the municipalities in a region. Municipalities could have done this, as they did during the Third Round litigation through Econsult or as a consortium formed for

the recent legal challenge to the amendments to the Act¹. If anyone felt DCA performed the analyses and calculations incorrectly, they could have prepared a comprehensive alternative analysis. Many professional planners have done their own computations to test DCA's work. I have found no such error and none of my colleagues have asserted that the math is wrong, or that the data series applied by the DCA are not those selected intentionally by the Legislature. It is perhaps more politically than mathematically challenging to put together such a municipal consortium for such an effort as the total Statewide and regional needs calculated by DCA are correct under the FHA. Therefore, any reduced allocations for certain municipalities resulting from a comprehensive alternative model would lead to increases for others given that the total to be allocated – the regional need – is fixed and indisputable.

And that may indeed be the point. Individual municipalities are seeking the individualized application of alternative data and approaches precisely because they could not cooperatively do so as a group if others had to pick up their slack. The net effect is that the approximate 159 municipalities that are seeking to reduce their DCA-calculated prospective need are doing so without accounting for those “lost” units elsewhere within the region, which results in a loss of approximately 14,000 affordable units from the total prospective, post-cap Statewide need of 80,798 units. It is worth remembering that approximately 280 municipalities have chosen the right course at this milestone moment in the process by accepting DCA's comprehensive and accurate work and many of those communities have large allocations. The improperly squeaky wheel should not receive an unjustified benefit.

The failure of any municipality or consortium of municipalities to respond to the requirement of the FHA to allocate the totality of the regional prospective need should lead the Program to sustain the DCA calculation in all cases as it is only the DCA that has adhered to the specific requirements of the FHA, applying the same analysis to the regional need, especially as to land capacity issues, as they applied when allocating that regional need.

¹ Borough of Montvale, et al v. State of New Jersey, et al., MER-L-1778-24.

II. THE BACKGROUND & CONTEXT OF THE FOURTH ROUND ALLOCATION MODEL

THE HISTORY OF ALLOCATION MODELLING

In Mount Laurel I, Justice Hall described the duty of a developing municipality stating that it:

[M]ust, by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income. It must permit multi-family housing, without bedroom or similar restrictions, as well as small dwellings on very small lots, low cost housing of other types and, in general, high density zoning, without artificial and unjustifiable minimum requirements as to lot size, building size and the like, to meet the full panoply of these needs.²

The broad challenge to the persistent abuse of the zoning power turned out to be difficult to enforce, so in 1983, Chief Justice Wilentz focused the bright line standard of compliance on the provision specifically of homes for low and moderate-income households. With “low-and-moderate income” defined by the Court as households making less than 80% of the median income in their area, the Mount Laurel doctrine directly affects approximately 40% of New Jersey’s population.³ Under the direction of Mount Laurel II, the needs of the future lower-income population would be numerically estimated and allocated to municipalities.⁴ This framework was developed in case law and set the foundation for the New Jersey Fair Housing Act.

Since Mount Laurel II there have been five (5) allocation models adopted and implemented:

- a. The Consensus Methodology addressed need from 1980 to 1990 and was created under Court direction.⁵ The four (4) allocation factors were covered

² Mount Laurel I, *supra*, 67 N.J. at 179, 187.

³ It should be noted that 40% is allegorical. Within the mechanics of the rules and models, the median income and relationship of household size is determined by HUD periodically and then applied to households (which can tend to be larger in aggregate at lower income levels) so that the actual percentage of the population that falls within the category can vary from 40% to 45%.

⁴ Mount Laurel II, *supra*, 92 N.J. at 205.

⁵ AMG Realty Co. v. Township of Warren, 207 N.J. Super. 388 (1984), is the leading case in setting the structure of

employment, the change in covered employment,⁶ a wealth measure using the municipality's median income as a share of the region's aggregate of all medians,⁷ and the gross acres (developed or vacant) in the growth area under the old State Development Guide Plan.⁸ As this model was developed in the context of town by town litigation, the "region" for each town was an area around that town and unique to itself. The projected need was based on the ODEA Economic/Demographic Model.

- b. First Round, prepared by COAH, was the first allocation model created by that agency and addressed the need from 1987-1993, although it and all subsequent models allow units created after 1980 to be credited.⁹ This model used the same four (4) factors as the Consensus Methodology except that the wealth factor was changed to the 1983 per capita income of the municipality times its population and then taken as a share of the regional total for that figure.¹⁰ This had the effect of shifting some of the obligation from small wealthy communities to larger suburban communities. The major innovation for this round was the creation of the six (6) permanent regions for determining the regional share for each municipality. The projected need was still based on the ODEA Economic/Demographic Model.
- c. Second Round, prepared by COAH, merged two 6-year compliance periods together and covered, in the aggregate, the 12-year period from 1987-1999. This allowed COAH to reduce retroactively the First Round obligation as part of a cumulative 12-year model. At the time, this was referred to as Cumulative Need. COAH's various unsuccessful rule-making efforts to cover the third round have

the allocation model that eventually became universally applied.

⁶ New Jersey Covered Employment Trends, Office of Demographic & Economic Analysis, Division of Planning & Research, Department of Labor.

⁷ The formula was the 1980 median divided by the regional median and that ratio was multiplied by the average of the two employment factors.

⁸ State Development Guide Plan, Division of State & Regional Planning, Department of Community affairs, 1980.

⁹ N.J.A.C. 5:92, especially Appendix A (1986).

¹⁰ New Jersey Legislative Data Book: 1986, Bureau of Government Research, Rutgers,

referred to this obligation as the Prior Round (sometimes also called the Prior Obligation).¹¹ The model introduced significant changes. First, the population projection used was the average of two models – the Economic/Demographic Model and the Historic Migration Model by ODEA. This has the effect of dampening need in edge areas and shifted some of the allocation towards the regions that had grown in the past. The economic component saw a shift from employment to the nonresidential real estate valuation and the change in the valuation of the prior 10-year period. This also tended to reallocate units from suburban employment centers to inner ring suburbs with older factories and shopping areas that still had real estate value even if employment was lower. The land factor was changed to an estimate of “vacant” land using remote sensing taking advantage of the then relatively new Geographic Information Systems (GIS) technology. The totals were then weighted based on the new State Plan’s area designations. This greatly shifted portions of the obligation from developed communities in the growth area to greenfields communities. It was still a 4-factor model.

- d. Third Round was delayed and ultimately addressed in what has been called the Jacobson methodology, reflecting the work of Judge Jacobson to oversee a 40+-day trial in the case of In the Matter of the Application of the Municipality of Princeton L-1550-15 (Law Div. March 8, 2018) (“Princeton Decision”) and subsequently issue a decision that worked through all of the many issues in developing that methodology. That decision is specifically referenced in the amendments to the FHA as a point of guidance.¹² The projection of need was again based on the average of the two projections prepared by the NJDOL, but required significant adjustment procedures due to changes in the way the data was published by NJDOL. The primary change to the allocation model was that the Third Round model followed the choice of the various COAH-

¹¹ N.J.A.C. 5:93, especially Appendix A (1994).

¹² The quantitative outcome of that trial was published as Statewide and Municipal Obligations Under Jacobson Opinion, dated March 18, 2018, prepared by Econsult Solutions.

published models for the round which reduced the allocation factors from four (4) to three (3), using non-residential valuation change alone and without a stock or total factor.

- e. Fourth Round is governed by the revisions to the FHA reflected in P.L. 2024, c.2 which covers from 2025 to 2035 and has been implemented through the work of the DCA pursuant to the specific methodology directives now contained with the Act.¹³ Following the recent revisions to the Act, it is a 3-factor allocation model as described more fully below.

THE LEGISLATURE TACKLES THE FOURTH ROUND MODEL

The Legislature had before it the experience of COAH regulations as well as the recent history of the Third Round model and considerable input, and came to very specific and detailed conclusions in the recently adopted revisions to the FHA specifying data sets and giving clear direction.

The first step in any model is the determination of how much low and moderate income housing we will need to meet the expanding population of our State. As indicated in describing the evolution of the allocation model there was a great deal of argument over which population projection to use. Historically, if one has a projection during a recession and the economy recovers, the projection will be wrong to the low side. Projections done in good economic times tended to over-project what happened during the next recession. And one thing that was learned in the long gap of non-compliance is that, without the Mount Laurel doctrine operating to produce approvals for inclusionary development, overall housing growth and therefore population growth stalls, which is hardly surprising as supply limitations arising from local zoning is the point of the doctrine. Similarly, converting the raw projection into households and therefore the number of units needed was hotly contested in the Third Round.

¹³ Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background, Fourth Round Calculation Workbook, Consulting Report by Mercadien, PC essentially auditing the DCA work.

Household sizes had been on a steady decline from World War II through 1990, but stayed flat and even showed signs of climbing again as the baby boom echo started having children in greater numbers. The Legislature adopted an entirely new approach that would eliminate these incessant arguments. Rather than rely on often speculative projections, the tool that was determined to be used was looking back at the growth that had actually happened in the last 10 years and simply applying that forward.

As DCA explained and calculated in its October 2024 report:

The Affordable Housing Law requires that “Projected household change for a 10-year round in a region shall be estimated by establishing the household change experienced in the region between the most recent federal decennial census, and the second-most recent federal decennial census.” The most recent federal decennial census is the 2020 Census, and the second-most recent census is the 2010 Census. DCA collected household data at the county level from the Table H14 of the 2010 Census Summary File 1 and Table DP1 of the 2020 Census Demographic Profile. These figures were aggregated to the Housing Region level and the difference between the two was computed, representing the increase in the number of households on the Final Summary tab of the Excel calculation model. The Affordable Housing Law requires that “this household change, if positive, shall be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region, and to determine the regional prospective need for a 10-year round of low- and moderate-income housing obligations.” Pursuant to this requirement, DCA divided the household change for each Housing Region by 2.5, producing Regional Prospective Need figures totaling 84,698 statewide.

Simple and workable, but that simplicity was obtained by looking back at the decade with the slowest growth since World War II reflecting the lack of multifamily approvals resulting from the gap in Mount Laurel enforcement that took place between the Second Round (1999) and the start of enforcement for the Third Round (2015). As a result, the legislative formula projects less housing supply than will likely be needed, but the manner of calculating that need is straightforward and unequivocal.

In allocating the regional need to individual municipalities, the four prior models had the same overall structure, with an allocation of that need to individual municipalities through the use

of factors correlated with economic capacity, relative wealth and a land capacity factor. The specific data sets used varied over time in an effort to use the best available data and create fair distributions.

For example, the Consensus Methodology and COAH'S First Round used covered employment as the economic factor because the amount of employment and change in employment were deemed to be the most relevant factors to the location for housing demand (a home is where a job goes to rest at night!). However, problems with the accuracy of employment data due to the prevalence of companies reporting based on post office locations or concentrating employment towards headquarters or data centers for reporting purposes led COAH to change to a nonresidential assessment factor as a replacement for the Second and Third Round models. As the Legislature was considering the Fourth Round, it received testimony and submissions suggesting that the employment data was now much improved, that the use of total and change as two factors in the allocation was a superior approach (weighting economic capacity stronger in the model) and that using non-residential valuations from 2015 to 2025 – the “normal” 10-year period prior that had been the norm in all models – produced widespread negative numbers as there had been a strong decline in nonresidential real estate valuation through that period that would have harmful effects on the operation of the model.¹⁴ In response, the 2024 revisions to the FHA stayed with nonresidential valuation, but set the start date for the range back to 1999 rather than 2015 so that inflation and a longer view of nonresidential valuation would remove the negative numbers in the model, and kept with a single factor weight for economic aspect of the model. In short, while I may disagree personally with some of these choices, the Legislature did not simply rubber stamp the COAH or Jacobson models, instead considering alternatives and tweaking the model for the Fourth Round to fit circumstances.

Similarly, the land capacity factor was closely examined by the Legislature. It received submissions and testimony suggesting that redevelopment had played a stronger role in recent

¹⁴ Among the many submissions, see “The Case for Allocation Reform: Why the 3rd Round Model with 4th Round Data fails as Housing Policy & What to Do About It”, J. Creigh Rahenkamp and Graham Petto, American Planning Association – New Jersey Chapter, undated.

housing development, and it was suggested by some commentators that the use of simply the gross acres in the growth area (weighting by category) as had been done in the Consensus and COAH's First Round model was again more appropriate than the "vacant land" approach adopted by COAH for the Second Round. In addition, advocates for housing suggested that the allocation factor would be more accurate if it reflected the redevelopment potential of each municipality and there were drafts of the bill that included the phrase "development and redevelopment" in defining the land capacity factor. The discussions around these two issues are instructive to the present issues. First, greenfield or first development of land still presents a large share of housing development. The economic and wealth factors already provide an allocation to all municipalities (other than exempt Urban Aid municipalities) so shifting the land factor to something more neutral could have had the effect of allocating more of the needed housing to communities that could be unable to accommodate it. Further, adding a responsibility to the agency executing the model to be able to assess the redevelopment potential of each municipality was a data challenge that could not be met – there is simply no way to know at a State level whether a dark retail center still has performing leases or is ready to redevelop, or which office park's owners are committed to trying to fill the empty spaces, and which are ready to move on. In fact, these decisions are often triggered by the compliance process itself as landowners become aware that their land might have the option to be developed for multifamily housing. Simply put, the Legislature had to balance the desire for complete accuracy in measuring total development capacity with the realistic availability of statewide data and had to choose workable surrogates that accommodated availability and workability in the context of a regional model.

Further, the issue of potential for discrepancies between regional and local environmental conditions and data was something that COAH also reviewed in the context of their Second Round rulemaking. As COAH explained in its Response to public comments:

COMMENT: The Council has generated estimates of undeveloped land based on a land satellite. The Council should develop a mechanism to alter the municipal housing allocations based on errors made by the satellite.

RESPONSE: The Council used the satellite data in order to direct housing need into areas that could accommodate the need in a manner that was sensitive to the SDRP. The satellite does not result in precise estimates of undeveloped land; but it classifies land consistently based on the image reflected from the Earth. **Because these measurements are uniform throughout the State, the Council has determined that the satellite is a reasonable and fair tool with which to calculate reasonable regional shares that may be used to allocate housing need to municipalities in each housing region (see Appendix B). Therefore, the Council will not accept challenges to a particular municipality.** Rather, based on an error in the calculation of undeveloped land, a party in the process seeking to alter the Landsat calculation must demonstrate that the regional share of undeveloped land is incorrect. **In other words, the focus in such a determination must not be on the estimate of undeveloped land for any one municipality; but rather on the relationship defined by the undeveloped land in a specific municipality divided by the undeveloped land in the housing region.**¹⁵

Similarly Judge Jacobson wrestled with the challenge of theoretically more accurate local data using tax information provided by Dr. Peter Angelides of Econsult as a potential change to the model as compared to the fairness of the remote sensing approach, even though it embodied known inaccuracies:

Mr. Reading (the court master) concluded that, although Dr. Angelides' reliance on municipal block and lot classification of land use instead of aerial surveys could offer a more accurate and up-to-date method, his approach depended upon classifications performed by individual municipal assessors, and therefore lacked statewide uniformity. Mr. Reading further concluded that any inaccuracies in the land imagery data due to recent development could be addressed **by adjustments made in each town's compliance process.** Mr. Reading once again recommended Dr. Kinsey's methodology as it conformed more closely to COAH's Second Round methodology.

The court concurs with Mr. Reading's assessment that, given yet another choice between two imperfect alternatives, following the Second Round approach is the best option, especially since the approach relied on data derived from a single consistent source that **can be corrected during the compliance process.**¹⁶

¹⁵ 25 NJR 5765, Comment 15. Emphasis added.

¹⁶ See Princeton Decision at p. 106. Emphasis added.

DCA EXECUTES THE LEGISLATED MODEL

DCA has published an allocation workbook, the GIS files used for the land capacity analysis, a methodology and background summary, and an independent audit of its work through a peer assessment.¹⁷

I am not aware of any challenge to the DCA's calculation of the Statewide prospective need, nor to each region's portion of that Statewide need. Further, as previously noted, given the new, clear standards for calculating that prospective need, any such challenge would be without basis as it is truly an exercise in arithmetic with the inputs being Census data that is not disputable. There is no doubt that under the FHA, the Statewide total prospective need is a pre-capped total of 84,698.

Regional Obligations Calculations - 2010 and 2020 Census

| Region | Regional Prospective Need | | 2010 Households - Decennial Census | 2020 Households - Decennial Census | Change | Change Divided by 2.5 (Assumed Low- and Moderate Income Household Growth) |
|--------------|---------------------------|--|------------------------------------|------------------------------------|----------------|---|
| 1 | 27,743 | | 803,704 | 873,062 | 69,358 | 27,743 |
| 2 | 20,506 | | 693,844 | 745,108 | 51,264 | 20,506 |
| 3 | 11,604 | | 446,114 | 475,123 | 29,009 | 11,604 |
| 4 | 13,822 | | 588,249 | 622,803 | 34,554 | 13,822 |
| 5 | 9,134 | | 461,569 | 484,404 | 22,835 | 9,134 |
| 6 | 1,889 | | 220,880 | 225,602 | 4,722 | 1,889 |
| TOTAL | 84,698 | | 3,214,360 | 3,426,102 | 211,742 | 84,698 |

Consistent with the FHA, COAH regulations and the Jacobson methodology, that total, prospective need must then be allocated to each non-urban aid municipality within the State in accordance with the allocation factors set forth in the FHA. The DCA performed that allocation on a regional basis consistent with the provisions of the FHA.

¹⁷ All accessible at: [New Jersey Department of Community Affairs](#) | (Last Verified 2/25/2025).

None of the many municipal submissions that I have read challenge the allocation factors, the data series or set used, or the math of the allocation tables. Each has sought to reduce their individual allocations of prospective need as assigned by the DCA without placing their objections in a regional context and calculating what their suggested approach would do to the allocation factors of other municipalities or the region as a whole. Moreover, those municipalities have done so without reallocating those units to other towns within the region, which is inconsistent with both the FHA and the long-standing approaches of COAH and the Princeton Decision.

III. THE NATURE OF THE ASSERTED MUNICIPAL ADJUSTMENTS

THE COMMITTED LANDS OR PIPELINE ISSUE

Many of the municipal submissions seek to reduce the acres of land assigned to their municipality by the DCA analysis by proposing to remove sites that have approvals under the MLUL. The argument is that since these sites are no longer available for future inclusionary development, they clearly aren't "vacant" in the context of the allocation model. This logic is flawed for four reasons.

First, neither the Act nor the DCA manual indicate that approved or pipeline projects are to be removed. DCA used land use data from the MOD IV files to help it sort through tree canopies in the aerial interpretation hiding homes or roads, etc., and it used building permit data to locate sites that were presently under construction. While I might argue that even some construction doesn't lock a site out for future consideration in the compliance stage, it was an even and fair approach from a Statewide perspective. Approval-based pipeline sites were not removed as a methodological step in the analysis of land in any municipality. Doing so through a single municipal adjustment is implementing a step not undertaken in the regional allocation and would result in an unfair adjustment. There is simply no statutory or logical authority for the removal of pipeline sites.

Second, the whole concept of pipeline projects being removed exactly parallels the conundrum faced by the Legislature in potentially including redevelopment sites in the allocation process. There is no conceivable way for the State (or anyone else) to know at a regional level which parcels have approvals and for what uses. Allowing any municipality to alter its responsibility based on this factor that cannot be known for all municipalities is inherently distorting and unfair.

Third, this confuses the allocation of need with a municipal response during compliance to the allocation. Part of the municipal response could be that the municipality does not have sufficient vacant land to address the entire housing obligation. There is a process to judge the capacity of such a community's vacant land – the vacant land adjustment (“VLA”) process. The first step of that process is determining the realistic development potential of each of the municipal vacant sites (“RDP”) in a parcel-by-parcel review as part of the compliance process. In setting an RDP, it is normal practice to remove committed/approved sites where the owner has communicated their desire to see through the development of their approved project. While part of the compliance process, this is not a step authorized for the allocation process.

Fourth, the sites identified as committed are often highly questionable and include, for example, decades old general development plan and site plan approvals for office parks where the last building was constructed a decade or more ago and in areas where other already constructed office parks are being converted to residential. Some pipeline removals were very large single-family lots that, even with the approved construction, would count as developable land in a VLA analysis. One is an approval for a warehouse complex on a site that sought inclusionary housing in the Third Round unsuccessfully and will undoubtedly be offered by its owners again in the Fourth Round, notwithstanding the approvals. Even where a site is a designated Third Round compliance site, it is not sufficiently committed to remove it from the allocation model as I have several clients in exactly that situation that have filed a letter of interest with the respective municipalities seeking to accommodate

additional units because they have that ability through redesign or use of portions of the site not used in the current design to accommodate substantially more housing.¹⁸

In short, the idea of a pipeline adjustment is not authorized by the Act, impossible to do on a regional or statewide basis, and counter-productive to the goal of producing affordable housing for the protected class.

DIFFERENT ENVIRONMENTAL KNOWLEDGE

Many of the municipal submissions assert that there are wetlands, floodplains or other environmental features known to them that are not reflected in the GIS files sourced from DEP by DCA. Or that there are lands constrained by some restriction against development not captured in the State database.¹⁹

First, the data sources to be used are specific in the Act. Using other sources – even if “true” – is not authorized and it inherently introduces unfairness into the allocation as any municipality using alternative sources biases the model unless that source is used for everyone. The issue isn’t whether the DEP model is perfectly “right”, but whether its alleged errors and inaccuracies are generally distributed fairly. Many of the submissions even show a map of a line for an environmental feature and don’t source where that line actually came from.

Second, it is often not clear that the alternative source is indeed “true” or more accurate than the DCA GIS. For example, wetlands are not wetlands officially until investigated by a professional, surveyed and submitted to DEP, reviewed – often on site – and agreed to in a

¹⁸ It is worth noting the Act at Section 304.1 3(f)(1)(c) requires that prior round inclusionary sites be reevaluated moving forward. It would certainly be ironic if such sites are subject to a review, but other “committed” sites are not! Clearly part of the VLA/RDP process is determining whether such sites would be available for future inclusionary development.

¹⁹ It should be remembered that COAH’s Second Round model created the vacant land allocation criteria, and intentionally chose not to remove any environmentally constrained land. The idea that environmentally constrained land should be part of the model came from the assessment funded by FSHC for the Jacobson trial. DEP elected to include such criteria but were not mandated to do so by the Act. The choice of slopes as a criterion is one that is particularly fraught with controversy.

regulatory process. Floodplains are determined by specific modelling. So, it is not at all apparent that the alternative sources used by some municipalities are, in fact, more accurate. They are just different than the DCA GIS in a way that favors a reduction for that one town.

Many of the submissions identify parcels that they believe the size or shape inhibit development, but these are the kinds of artifacts any GIS system will have applied statewide and there is no reason to believe that they are distributed in any particular way. Removing sites asserted to be “landlocked” or inaccessible is similar to the pipeline issue – tell someone that they can have high density residential zoning and watch how fast they buy an easement or an adjoining property to get access. Neither of these categories are appropriately removed in a focus on a single municipality.

As to “preserved land” or land restricted by some sort of deed restriction or program participation, the specific programs covered by the DCA GIS are explicit. Simply being subject to a different kind of restriction does not, or should not, have an impact on the allocation. To the extent that a municipality is able to demonstrate an “error” – that the land was restricted prior to the date that the data source used and is part of a program included in the mapping - then any such alleged error can be rectified during the VLA process. To the extent that a municipality wants to remove land that is not such an “error” then that is simply creating a sui generis methodology not applied to the region as a whole.

The Act was very clear on which data sources to use and requiring that the same sources and methodologies be used both locally and regionally.

(4) A municipality’s land capacity factor shall be determined. This factor shall be determined by estimating the area of developable land in the municipality’s boundaries, **and regional boundaries**, that may accommodate development through the use of the "land use / land cover data" most recently published by the Department of Environmental Protection, data from the American Community Survey and Comprehensive Housing Affordability Strategy dataset thereof, MOD-IV Property Tax List data from the Division of Taxation in the Department of the Treasury, and construction permit data from the Department of Community Affairs and weighing such land based on

the planning area type in which such land is located. After the weighing factors are applied, the sum of the total developable land area that may accommodate development in the municipality **and in the region** shall be determined. The municipality's share of its region's developable land shall be its land capacity factor.

None of the municipal submissions comply with this direction.

DIFFERENT ASSESSMENT KNOWLEDGE

Several of the municipal submissions suggest that the equalization ratio applied to their assessments is “wrong”, or rather the number that the local assessor used for that time period is different than the one reported in the DCA table. I have not seen any local submission explain methodologically why this might be, and they simply assert that the State table is wrong. Having done fiscal impact studies for many years in NJ, I find a mismatch between the State table and the local figures regularly – at a rate that I could not realistically believe is repeated error. I have always believed that the State was making adjustments to keep all of the ratios consistent across municipalities for use in the State's and Legislature's purposes. Again as with the environmental data, only comprehensively addressing the issue across all municipalities simultaneously makes sense in suggesting that the allocations need to change.

AND THERE ARE NO UPWARD ADJUSTMENTS?

It is telling that none of the submissions found a single area where the different environmental sources provided for less constrained lands. Further, under the Act, municipalities are required to review and give consideration to the lands offered by willing developers and yet among the many submissions I have reviewed, there was no such review. Are there truly no sites in the State where the site-specific information provided by developers about their offered sites showed more developable area than the remote sensing mapping indicated? That is hard to believe. I am not advocating that site-specific information should be part of the allocation model, but rather that if municipalities seek to

be allowed to use alternative information sources unique to their situation, then this should have been uniformly applied within that municipality as it cuts both ways.

The land factor weighs the developability of vacant land by its category in the aging State Plan. And we have no municipal submission measuring the areas in Planning Area 3 or 4, with a lower weighting, that has seen the expansion of sewer service and development that would effectively change the character of the area to that of Planning Area 2, with its higher weighting. Despite the fact that the State Plan's Impact Assessment stated that over 300 "centers" would be needed under the Plan to be successful in accommodating projected growth, the actual Plan was published without including these centers and a process was created for municipalities to petition for "center designation". This process has largely failed, but one could expect a fair municipal submission to have included vacant land in sewer service areas in Planning Areas 3 through 5 that are functionally centers, and should receive a higher weight. Again, this did not happen.

My point is not that these are factors that should be part of the allocation model. But rather they are an indication that the municipal submissions are disingenuous, cherry picking data and criteria to lower their number rather than fairly assessing the development capacity of their community in a regionally balanced manner.

IV. CONCLUSION

Municipalities are first protected in the allocation model from "overdevelopment" by two doctrines included within the model. There is a cap of 1,000 units per compliance period and there is a limit on the allocation that would exceed 20% of the current municipal housing stock. That protection is reflected by DCA's calculations which reduced the pre-capped Statewide need of 84,698 to a post-cap need of 80,798.

Further, the VLA/RDP process is part of the compliance stage that closely fits the allocated number to what can be realistically accomplished by a municipality. This was particularly remarked upon by Judge Jacobson in selecting a less-than-perfect but uniform allocation

approach for the land factor in the Princeton Decision. There can practically be no such thing as a perfect allocation approach. By the end of the compliance process, no municipality is ever required to develop more housing than it actually has the capacity and land resources to accommodate. A downward adjustment at the allocation stage does have a clearly improper (and unconstitutional) effect – reducing the affordable housing to be produced in a municipality that would have had the capacity to accommodate it appropriately.

My rough calculation of the total units that would be lost if not reallocated is approximately 14,000 units. Against the post-cap need of 80,798, this is approximately 17.3% of the total need. The idea that the allocations need to be reduced now given the trifecta – low allocation, generous credits²⁰ and the VLA/RDP process to come in the compliance phase – is contrary to the statutory criteria and the Mount Laurel doctrine, the needs of our low and moderate income households, and the economy that we all share that depends on their labor. It is my professional conclusion that the Program should reject municipal submissions that propose a reduction in prospective need allocations that are not predicated on a viable region-based critique that accounts for the entirety of the prospective need allocated to a given region. The type of municipality-specific reductions that have been proffered to the Program are not consistent with the Act or the allocation model within the Act. Therefore, the proposed reductions should be disallowed.

²⁰ There is an expanded array of bonus credits to be awarded for various types of housing and locations that yield compliance math, but not actual housing units, and these represent a dilution of the allocated need. Further, 2025-2035, the compliance window for the Fourth Round is within the late Second Round compliance period when the majority of current affordable housing was placed into service, will be eligible for extensions of those affordability controls. If those controls are extended, the Fourth Round will be marked not by the creation of new units, but the extension of controls for units already occupied by affordable households.

APPENDIX A:

RAHENKAMP BACKGROUND MATERIAL

I am a planner that has been in the field for 43 years and a licensed professional planner in NJ for 29 years. I served as an officer of the American Planning Association – New Jersey Chapter for eight years and presently serve as the Chair of that organizations Housing Committee. My background is further described in the attachment which follows.

I have considerable experience with issues related to affordable housing, the Mount Laurel Doctrine²¹ and regulations adopted by the Council on Affordable Housing (“COAH”). My most notable involvements include:

- a. I authored a report that was extensively quoted by the Court in Urban League of Essex Co. v. Township of Mahwah 207 N.J. Super. 169 (Law Div. 1984), which first detailed the implementation of the Supreme Court's mandate to purge "cost generative features" from local codes for inclusionary developments;
- b. I served as the expert for the prevailing plaintiffs in RDS v. Pohatcong (unpublished, Honorable Roger Mahon, 1996), which first addressed the relationship of the *NJ State Development & Redevelopment Plan* to the Mount Laurel Doctrine; and,
- c. I served as the planning expert for a landowner in Maneely v. Township of West Windsor (consolidated and decided in Toll Bros., Inc. v. Twp. of W. Windsor, 303 N.J. Super. 518, 574-76 (Law Div. 1996), aff'd o.b., 334 N.J. Super. 109 (App. Div. 2000), certif. granted in part on limited issues, 167 N.J. 599-600 (2001), aff'd, 173 N.J. 502 (2002)), which dealt with the enduring rights of inclusionary developers through subsequent allocation rounds.

I have also served as a Court appointed Master in Saddle Brook (Honorable Daniel P. Mecca), Green Township (Honorable Reginald Stanton) and Highbridge Borough (Honorable Roger Mahon). Engagements as a planner for landowners succeeded in achieving builder's remedies in Logan Township, Livingston Township and Fair Lawn Borough, and negotiated settlements in dozens of municipalities.

In the subfield of allocations of need in New Jersey, my first major role was gathering all of the data necessary to run municipal allocations under the Consensus Methodology that had been developed by the Courts prior to the implementation of the Fair Housing Act. This data was

²¹ The term Mount Laurel Doctrine refers to Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151 (1975) (“Mount Laurel I”), Southern Burlington County NAACP, et al v. Township of Mt. Laurel, 92 N.J. 158 (1983) (“Mount Laurel II”), and its progeny, the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., and its implementing regulations N.J.A.C. 5:93 and/or 5:97, to the extent they have not invalidated by the Supreme Court in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 416 N.J. Super. 462 (App. Div. 2010), modified, 215 N.J. 578 (2013).

included as an appendix in an ICLE publication in 1987.²² In the same publication, I also independently ran the allocation model COAH had developed for the First Round (1987-1993) based on its proposed regulations. I thereafter shared data with Dr. Robert Burchell, the chief investigator for the Center For Urban Policy Research (“CUPR”) and COAH’s consultant at the time. I served on Task Forces created by COAH to provide review and comment on the development of the allocation models for both Rounds 1 and 2. With regard to the Third Round, I reviewed each proposed model developed by COAH over the past decade and a half, and I had been invited to review and comment on Dr. David Kinsey’s work²³ at several key points in the development of his reports.

²² Mount Laurel II and the Fair Housing Act, Jeffrey R. Surenian, Esquire, NJ Institute for Continuing Legal Education, 1987.

²³ New Jersey Low and Moderate Income Housing Obligations for 1999-2025 Calculated Using the NJ COAH Prior Round (1987-1999) Methodology, David N. Kinsey, PhD., FAICP, NJPP, Fair Share Housing Center, April 16, 2015, revised July 17, 2015.

J. Creigh Rahenkamp, NJPP

Mr. Rahenkamp is extensively involved in research and analysis of evolving regulatory techniques and their impact on the economics of land development and social responsibility. He has frequently served as an expert witness in legal challenges, preparing reports and testimony for actions challenging inappropriate land use policies and restrictions or defending well-constructed regulations. He has been accepted as an expert by trial courts in several states, innumerable planning and zoning boards throughout the country, and has served as a Court-appointed Master in New Jersey.

As part of these services, he has been a key participant in litigation and settlement negotiations in numerous municipalities under various “fair share” doctrines in several states, including a role in the leading cases of Mount Laurel, Mahwah, Pohatcong, West Windsor, Livingston & Fair Lawn.

While litigation is a major focus of the practice, Mr. Rahenkamp regularly works with land developers through the feasibility assessment and land design process in an effort to meet the evolving needs of the market while managing regulatory risk prudently.

In addition, Mr. Rahenkamp has broad experience in the evaluation and preparation of economic development strategies for local and regional governments and site selection studies or market assessments for private industry.

Representative Projects

Larchmont, Mount Laurel Township, NJ: Preparation of expert reports detailing the feasibility of residential development under alternative regulatory constructs pursuant to Mt. Laurel I/II, including cost implications of affordable housing set-asides, fee structures, site design requirements, and procedural mechanisms leading to the adoption of Court approved ordinances and site-specific settlement agreements for several developers.

City of Harrisburg, PA: Analysis and evaluation of the restrictive role of a private redevelopment corporation which directed the redevelopment efforts in Harrisburg in support of a Federal antitrust suit which resulted in project approvals for several landowners.

Waldo Yards, Jersey City, NJ: Expert report reviewing the methodology and data prepared by the Port Authority, demonstrating its flaws and offering significant new research substantiating the choice of alternative locations for a major railcar maintenance facility. Work included community impact statements and assessments of future development potential resulting in action by the Governor of NJ to direct the Port Authority to revise their selection.

World Financial Center, Battery Park City, NY: Analysis of the impacts of Hoboken-Manhattan ferry service on the viability and function of the public spaces and corporate lobbies of the WFC. Recommendations for routing, improvements and timing of activities were created to better manage the pedestrian conflicts.

Department of Community Affairs, NJ: Preparation of site plans using the proposed Residential Site Improvement Standards to test the statewide code against a variety of design techniques and land use palettes to ensure that the code would not limit traditional PUD, TND or other mixed use design solutions. Provided additional commentary and recommendations for amendments.

Master Plans, Housing Elements and Open Space/Recreation Plans: City of Millville, NJ; City of Vineland, NJ; City of Lancaster, PA; Town of Hilton Head Island, SC; Saco, ME, Northampton County, PA; Borough of New Morgan, PA; Findlay Township, PA.

Education

Bachelor of Arts, University of Pennsylvania:
 Political Science & Economics Minor,
 Master of Professional Studies: Real Estate (Development),
 Georgetown University:
 Additional Graduate Work:
 University of Wisconsin: 4 Courses in Political
 Science/Economics
 University of Pennsylvania, Wharton School:
 Demographics, Economic Development.
 Princeton University, Woodrow Wilson School:
 Political Risk Analysis
 Temple University, Community & Reg. Planning:
 Planning Administration, Transportation
 Planning, Sustainability
 University of Maryland, Colvin Institute
 Fundamentals of Development Finance

Employment

August 1998 – Continuing:
 Creigh Rahenkamp & Associates, LLC
 December 1997 – August 1998: Schoor DePalma
 1995 – 1997: BartonPartners Architects & Planners
 1980 – 1995: John Rahenkamp Consultants, LLC

Publications

“Key Informant Interviews,” Land Development, NAHB Fall 1998.
 “Density Standards in the Post-Nollan Era,” Land Development, NAHB, Fall 1990 (w/ John Rahenkamp & William Hengst).
 “Fair Share Allocation,” and “COAH: The New Spatial Policy for New Jersey,” in Mount Laurel II and the Fair Housing Act, Jeffrey R. Surenian, New Jersey Institute of Continuing Legal Education, Newark, NJ: 1987.
 “Fair Share Housing in New Jersey,” in Growth Management: Keeping on Target? Douglas Porter, editor, Urban Land Institute, Washington, DC: 1986 (w/ John Rahenkamp).

Professional Memberships

NJ Professional Planner (August 1995, #5531)
 American Institute of Certified Planners (July 1990, Lapsed)
 American Planning Association
 New Jersey Chapter, Vice President 2012-2017
 Pennsylvania Chapter
 Private Practice Division
 Planning & Law Division
 Urban Land Institute
 Philadelphia Council
 National Association of Homebuilders
 New Jersey Builders Association
 Builders League of South Jersey
 Pennsylvania Builders Association
 National Council on Seniors Housing
 American Economic Association (Lapsed)
 American Political Science Association (Lapsed)

Appointments & Service:

Public Sector

PA State Land Use Advisory Panel:
 Member, 1999-2002 (Appointment by Governor)
 NJ Department of Community Affairs:
 Residential Development Ad Hoc Task Force, 1987
 Residential Site Improvement Standards,
 Professional Review Contract, 1995
 Housing Policy Task Force, 2008
 NJ Council on Affordable Housing (COAH):
 Data Development Task Force, 1986
 Rules Reexamination Task Force, 1991
 Allocation Approaches Task Force, 1992
 NJ Office of State Planning:
 Environmental Assessment Tech. Advisory Cte.,
 1988
 Advisory Committee on Infrastructure: Impact
 Assessment of the NJ Interim State Plan, 1992
 Pinelands Commission: Housing Task Force, 2005-2007
 Riverton Borough, NJ: Zoning Board of Adjustment,
 Member, 1990.

Private Sector

LGR Examinations: “Field Expert” to Develop Questions
 for the New Jersey Professional Planner Examination,
 1999
 American Planning Association, New Jersey Chapter
 (APANJ):
 Vice President of Conference Services, 2012-2018
 National Association of Homebuilders:
 Land Development Committee, 1996-2003
 Land Planning Subcommittee, Chair 1998
 Planning Policy Subcommittee, Chair 2000, Member
 1996-2003, 2012-2013
 National Smart Growth Working Group, 1998-2003
 Smart Growth Subcommittee, Member 2006.
 Pennsylvania Builders Association:
 Growth Management Task Force, 1992-1994, 1999-
 2000
 New Jersey Builders Association:
 Hall of Fame, Associate Inductee, 2007
 Land Use & Planning Committee, 1988-2017
 Affordable Housing Task Force, 1988-2017
 (Various)
 Builders League of South Jersey: Local Director, 1989-
 1994
 South Jersey Land Plan Coalition: Board of Directors,
 1990-93
 Judge/Selection Committees: NAHB Smart Growth
 Awards; APANJ Annual Planning Awards;
 NJBA SAM & APEX; BLSJ MAME; HBAM
 Pinnacle.

Representative Presentations

American Planning Association National Conventions:
 Inclusionary Zoning and Development Economics
 Market-Driven Agricultural Preservation
 The NJ Model Subdivision & Site Plan Ordinance
 Regulating for Design: Standards for PUD/TND
 Demographics & Zoning: Housing Need as Policy
 Impact Fees: A Contrarian's View

APANJ Annual Conferences:
 Various "How-to": Use Variance/Impact
 Assessment/Expert Witness/
 Commentary: COAH/State Plan
<https://www.youtube.com/watch?v=grL9BeOKmq4&feature=youtu.be>

Urban Land Institute Seminars:
 Project Feasibility & Regulatory Risk Analysis
 Fair Share Housing Implementation: Techniques &
 History

Institute for Continuing Legal Education:
 Allocation of Price Controlled Housing under COAH
 Planning Locally Under the NJ State Plan
 Growth Management Tools & Techniques
 Redevelopment Do's and Don'ts: NJ & PA
 Annual Land Use Institute: Various Panels

Continuing Legal Education International
 Planning within Redevelopment Procedures
 Various "How-to": COAH/State Plan/Smart Growth

Lorman Educational Services
 Affordable Housing in New Jersey
 Zoning, Subdivision & Land Development in New
 Jersey

National Association of Home Builders Conventions:
 Project Feasibility Analysis
 Managing Regulatory Risk/Growth Management Issues
 Workforce Housing Initiatives
 Measuring/Presenting the Fiscal Impact of
 Development
 Impact Fees & Local Infrastructure Finance Strategies

Atlantic Builders Conventions & Seminars:
 Marketing Green: Making Environmentalism Pay
 Market Driven Land Planning/Practical TND Solutions
 Various "How-to": COAH/State Plan/Access Code
 Planning Chaos: Restoring Planning to Regulations

Various State & Local Builders Associations:
 Educational Programs on the Market/Design Link, or
 Regulatory Risk Assessment & Management

Regional Planning Comes of Age Conference 2006: Housing
 Policy & Implementation Challenges

NJ Land Conservation Rally 2014: Non-Contiguous Cluster

PREPARED BY THE COURT:

**IN THE MATTER OF THE
DECLARATORY JUDGMENT
ACTION OF THE TOWNSHIP
OF HARDING, MORRIS
COUNTY PURSUANT TO P.L.
2024, CHAPTER 2 (N.J.S.A.
52:27D-304.1, et seq.),**

Petitioner.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CIVIL PART
MORRIS COUNTY
DOCKET NO. MRS-L-000198-25

Civil Action
Mt. Laurel Program

**DECISION AND ORDER FIXING
MUNICIPAL OBLIGATIONS FOR
“PRESENT NEED” AND “PROSPECTIVE
NEED” FOR THE FOURTH ROUND
HOUSING CYCLE**

FILED

MAY - 1 2025

Janine M. Allen, J.S.C.

THIS MATTER, having come before the Court on referral from and recommendation issued by the Affordable Housing Dispute Resolution Program (“Program”), pursuant to the Complaint for Declaratory Judgment filed on January 23, 2025 (“DJ Complaint”) by the Petitioner, **TOWNSHIP OF HARDING** (“Petitioner” or “Municipality”), pursuant to N.J.S.A. 52:27D-304.2, -304.3, and -304.1(f)(1)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (collectively, the “FHA”), and in accordance with Section II.A of Administrative Directive #14-24 (“Directive #14-24”) of the “Program”, seeking a certification of compliance with the FHA;

AND IT APPEARING that, the Municipality timely adopted Resolution TC 25-070 on January 22, 2025, seeking deviation from the “present need” and “prospective need” calculations allocated to it by the New Jersey Department of Community Affairs (“DCA”) in its report dated October 18, 2024 entitled *Affordable Housing Obligations for 2025-2035 (Fourth Round)* (the “DCA’s Fourth Round Report”), and based on the Municipality planners’ recommendation for 0 affordable housing units for “present need” and 67 units for a “prospective need” affordable

housing obligation for the Fourth Round housing cycle;

AND IT APPEARING that, a challenge to the Municipality's calculations was timely filed by the New Jersey Builders Association ("NJBA" or "Challenger") by and through its counsel, wherein NJBA disputed the Municipality's proposed obligation for prospective need, and supported DCA's present and prospective need obligations, with an expert report of J. Creigh Rahenkamp;

AND IT APPEARING that, pursuant to the Program, the Administrative Office of the Courts ("AOC") appointed and assigned the case to Program member, the Hon. Stephan C. Hansbury, J.S.C. (Ret.) ("Program Member") to manage the proceedings, host settlement conferences, and make recommendations to the Court in accordance with the FHA and the AOC's Directive #14-24 ("Directive #14-24"), and that the Program Member appointed James Kyle, PP, AICP, an independent affordable housing expert, as special adjudicator ("Special Adjudicator") in this case to work with, make recommendations to and assist the Program;

AND IT APPEARING that, on March 31, 2025, a settlement conference was conducted on notice to all parties with the participation of local officials, town planner, and attorneys for the Municipality and an attorney for the NJBA, and at which the parties engaged in extensive settlement negotiations, with the guidance and assistance of the Program Member and the Special Adjudicator;

AND IT APPEARING, that as a result of the settlement conference the Municipality and NJBA reached a resolution ("Settlement"); the Settlement was placed on the record on March 31, 2025;

AND THE COURT, having received the Program Member's report dated March 31, 2025, since posted to the eCourts jacket for this matter at Trans. ID: LCV20251021794, the findings,

terms, and recommendations of which are incorporated by reference as though more fully set forth herein (the “Report”);

AND THE COURT, having been advised that (i) the Special Adjudicator has recommended acceptance of the Settlement, (ii) the Program Member has recommended acceptance of the Settlement as reasonable and in furtherance of the interests of low- and moderate-income households in the Municipality (collectively, the “Recommendations”), and that (iii) the Program Member further recommends that the Court adopt the findings and recommendations set forth in the Report and enter an Order, *forthwith*, implementing the terms of Settlement and thereby fix the “present need” and “prospective need” obligations of the Municipality for the Fourth Round housing cycle;

AND THE COURT, having reviewed and considered the Program Member’s Report and Recommendations, having been satisfied that an arm’s length Settlement was reached and entered into by and between the parties that is fair and equitable as well as in the best interests of the protected class of low- and moderate-income households in the Municipality, and for good and sufficient cause having otherwise been shown:

IT IS, THEREFORE, on and as of this **1st day of May 2025** **ADJUDGED AND ORDERED**, that the Program Member’s Report and Recommendations for approval of the Settlement, be, and the same hereby **ACCEPTED** and **ADOPTED** in their entirety; and to that end, more specifically, it is further

ORDERED, as follows:

1. That the “present need” obligation of the Municipality, be, and hereby is fixed as **zero (0)** affordable units for the Fourth Round housing cycle.
2. That the “prospective

need” obligation of the Municipality, be, and hereby is fixed as seventy-five (75) affordable units for the Fourth Round Housing cycle; and

3. That the Petitioner is hereby authorized to proceed to the compliance phase with preparation and adoption of its proposed Housing Element and Fair Share Plan for the Fourth Round, incorporating therein the “present need” and “prospective need” allocations aforesaid (and which plan shall include the elements set forth in the “Addendum” attached to Directive #14-24), by or before June 30, 2025, as provided for and in accordance with Section III.A of Directive #14-24, and without further delay; and

4. That any and all “challenges” to the Petitioner’s Housing Element and Fair Share Plan as adopted by Paragraph 3 above must be filed by August 31, 2025, by way of Answer/Objection filed in the eCourts case jacket for this matter, and as provided for and in accordance with Section III.B of AOC Directive #14-24.

IT IS FURTHER ORDERED, that a copy of this Order shall be deemed served on the Petitioner, Petitioner’s counsel, and Challenger NJBA’s counsel upon its posting by the Court to the eCourts case jacket for this matter pursuant to R. 1:5-1(a) and R. 1:32-2A.

SO ORDERED:



HON. JANINE M. ALLEN, J.S.C.

Designated Mt. Laurel Judge – Morris/Sussex Vicinage

(X) Challenged.

R. 1:7-4(a): Having reviewed and considered the Program Member’s Report and Recommendations as well as the terms of Settlement placed on the record by the parties before the Program Member on March 31, 2025, the Court is satisfied that an arm’s length Settlement was reached and entered into by and between the parties, and that the terms of the Settlement attained are fair and equitable as well as in the best interests of the protected class of low- and moderate-income households in the Municipality. This Settlement disposes of all challenges filed.

Accordingly, the Court hereby adopts in full the Report and Recommendations of the Program Member and accepts the same for the detailed findings and reasons set forth therein. As a result, the Municipality retains all the protections of the above-referenced amendments to the FHA, continues to retain immunity from exclusionary zoning litigation, and that the Program retains jurisdiction for the compliance phase in accordance with the statutory framework and AOC Directive #14-24.

An appropriate form of Order implementing the Program Member's Report and Recommendations accompanies this statement of reasons.

SO ORDERED.

Appendix E:
2025 Settlement Agreement with Fair Share Housing
Center