

**BOROUGH OF MOUNTAIN LAKES
COUNTY OF MORRIS, NJ**

RESOLUTION 171-25

RESOLUTION AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT WITH THE FAIR SHARE HOUSING CENTER CONCERNING THE BOROUGH’S FOURTH ROUND AFFORDABLE HOUSING PLAN

WHEREAS, the New Jersey Supreme Court, through its rulings in Southern Burlington County NAACP v. Mount Laurel, 67 13 N.J. 151 (1975) and Southern Burlington County NAACP 14 v. Mount Laurel, 92 N.J. 158 (1983), determined that every municipality in New Jersey has a constitutional obligation to provide through its land use regulations a realistic opportunity for its fair share of its region’s present and prospective needs for housing for low- and moderate-income families; and

WHEREAS, on March 20, 2024, Governor Murphy signed P.L.2024, c.2. into law, establishing a new framework for determining and enforcing municipalities’ affordable housing obligations under the New Jersey Supreme Court’s Mount Laurel doctrine and the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et al.); and

WHEREAS, pursuant to N.J.S.A. 52:27D-304.1(f)(1)(b), (the “Amended Act”) the Borough filed a declaratory judgment action seeking approval of its adopted Fair Share Plan for the Fourth Round; and

WHEREAS, an objection to the plan was filed by the Fair Share Housing Center; and

WHEREAS, the Borough has participated in mandated mediation sessions which have resulted in a settlement agreement with the Fair Share Housing Center modifying the original Plan which the Borough Planner and Borough Attorney have recommended be submitted to the Court for approval.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Mountain Lakes, County of Morris, State of New Jersey, that:

1. The Municipal Clerk and Municipal Attorney and Borough Planner are authorized to take all actions required by N.J.S.A. 52:27D-301 to finalize and execute the Settlement Agreement with Fair Share Housing Center in the form attached hereto.
2. This Resolution shall take effect immediately.

XX

CERTIFICATION: I hereby certify the foregoing to be a true and correct copy of a resolution duly adopted by the Borough Council of Mountain Lakes, New Jersey, at a meeting held on December 8, 2025.

Cara Fox
Cara Fox, Borough Clerk

Name	Motion	Second	Aye	Nay	Absent	Abstain
Cannon		X	X			
Howley	X		X			
Menard			X			
Sheikh			X			
Tsai			X			
Muilenburg			X			
Barnett			X			

**MEDIATION AGREEMENT BEFORE THE AFFORDABLE HOUSING DISPUTE
RESOLUTION PROGRAM**

In the Matter of the Application of the Borough of Mountain Lakes, County of Morris
Docket No. MRS-L-244-25

WHEREAS, the Borough of Mountain Lakes (the “Borough” or “Mountain Lakes”) having filed a resolution of participation in the Affordable Housing Dispute Resolution Program (the “Program”) and a declaratory judgment action pursuant to N.J.S.A. 52:27D-301 et. seq. (the “Fair Housing Act”) on January 28, 2025; and

WHEREAS, the Court entered an order on May 2, 2025 setting the Borough’s Fourth Round fair share obligations as a Present Need of 0 units and a Prospective Need of 190 units, which no party appealed, and ordering the Borough to file a Housing Element and Fair Share Plan (“HEFSP”) by June 30, 2025; and

WHEREAS, the Borough having filed its HEFSP on June 24, 2025 (“Adopted HEFSP”); and

WHEREAS, Fair Share Housing Center (“FSHC”) having filed a challenge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) regarding the Borough’s HEFSP on August 31, 2025; and

WHEREAS, the Borough and FSHC have agreed to amicably resolve the issues set forth in the challenge through this mediation agreement and present this agreement for review by the Program and referral to the Mount Laurel judge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) and Administrative Directive #14-24, which if approved will result in a compliance certification for the Borough for the Fourth Round;

THEREFORE, the Borough and FSHC agree:

Fair Share Obligations

1. The Borough's Present Need or Rehabilitation Obligation is 0, the Borough's Prior Round Obligation (1987-1999) was 80, the Borough's Third Round Obligation (1999-2025) was 271, the Borough's Fourth Round Prospective Need (2025-2035) is 190.

Satisfaction of Fair Share Obligations

2. The Borough has no Present Need obligation.
3. The Borough's Prior Round realistic development potential ("RDP") was 18 Units and was met by the following mechanisms:
Inclusionary Zoning Fusee Site – 6
Regional Contribution Agreement (City of Orange) 12
4. The Borough's Third Round RDP was 17 and was met with the following mechanisms yielding 20 credits all built:
Inclusionary Zoning Fusee Site – 2
Inclusionary Zoning King of Kings /Enclave – 6
Medicaid Beds Sunrise – 4
Additional Site 367 Bloomfield Avenue– 4 plus 4 rental bonus credits
Unmet need mechanisms: Mandatory set aside, 3 additional credits, overlay zoning portion of Route 46
5. The Borough's Fourth Round Realistic Development Potential (RDP) is zero. Mechanisms to address unmet, including the 25% requirement through redevelopment:
 - a. The Borough agrees to continue to implement overlay zoning as described in Table 22 on Page 24 of the June 24, 2025 Housing Element and Fair Share Plan, but agrees to increase the permitted density on the existing Route 46 overlay zone from 14 to 16 units per acre. Requiring a 20% set aside rather than the 15% option.

- b. The Borough has agreed to create an additional overlay zone on Block 118.04, Lot 1(49 Bloomfield Avenue) as described on Page 26 of the June 24, 2025 Housing Element and Fair Share Plan.

Unit Type and Income Distribution Requirement

6. The Borough and FSHC agree that the Borough's HEFSP as presented above satisfies the unit type and income distribution requirement standards set forth in P.L. 2024, c. 2, (including but not limited to N.J.S.A. 52:27D-311(l), N.J.S.A. 52:27D-211(l), N.J.S.A. 52:27D-311(l), N.J.S.A. 52:27D-329.1) and that the Borough shall maintain satisfaction with such requirements for the Fourth Round. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311(a) and (b), and all other applicable law. All Prior Round and Third Round compliance shall continue to meet with the applicable percentages and standards for bonuses, family and senior housing, rental and family rental, very low-income units, and adaptability set forth in any prior settlement agreement between FSHC and the Borough, statutory requirements, and the Prior Round and Third Round regulations.
7. In all developments that produce affordable housing, the Borough and FSHC agree that, unless varied by a prior court order of the trial court, the below terms shall apply:
 - a. All of the affordable units shall fully comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. ("UHAC"), including but not limited to the required bedroom and income distribution, length of affordability controls, and phasing of affordable units.
 - b. The applicability of the updated form of UHAC versus the prior form of UHAC shall be as set forth in the statute and most current form of UHAC adopted by

HMFA. Any terms of a prior agreement, judgment, or grant of substantive certification as to prior round of obligations modifying UHAC as to affordability controls longer than the now current regulations or as to very low-income units shall remain in effect as to those prior rounds of obligations.

- c. The Borough agrees that in order to meet the low-income and very low-income requirement of the Fair Housing Act, it shall adopt an ordinance requiring for all affordable housing developments in its HEFSP that 50 percent of the affordable units within each bedroom distribution shall be required to be for low-income households earning 50 percent or less of the regional median income, including 13 percent of the affordable units within each bedroom distribution shall be required to be for very low-income households earning 30 percent or less of the regional median income.
- d. The Borough agrees to review its Affordable Housing Ordinance and other ordinances to ensure that it complies with the most up to date requirements of UHAC and revise those ordinances accordingly as part of its Fourth Round HEFSP and implementing ordinances.
- e. The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law. The affirmative marketing plan shall include the community and regional organizations shown in the draft affirmative marketing plan attached as Appendix K in the Housing Element and Fair Share Plan.

Process for Approval and Implementation

8. Pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) and Administrative Directive #14-24, the municipality and FSHC recognize that the Program and/or county level housing judge must still review this agreement and the resulting HEFSP and implementing ordinances and resolutions for compliance with the Fair Housing Act prior to issuing a compliance certification, as follows:
- a. The Borough and FSHC shall present this mediation agreement to the Program member for review upon full execution by both parties.
 - b. The Program Member shall review the agreement and if satisfied with compliance with the Fair Housing Act shall refer this matter to the Mount Laurel judge for review and entry of certification of compliance, conditioned on adoption of all implementing ordinances and resolutions.
 - c. The Borough shall adopt all implementing ordinances and resolutions no later than March 15, 2026, including but not limited to the outstanding items identified in the next paragraph. No later than 48 hours after adoption or March 15, 2026, whichever is sooner, the Borough shall file the information required by Paragraph 9 and any other adopted ordinances and resolutions on eCourts.
 - d. No later than April 15, 2026, the Borough and FSHC shall provide via filing on eCourts a form of consent order granting final compliance certification for the Court's review or identify any remaining issues of compliance that may be disputed at which point the court shall schedule a conference to review any such areas.
 - e. Both parties agree to implement the terms of this Agreement. If the Program, county level housing judge, or any appellate court rejects this Agreement, the parties reserve their right to rescind any action taken in anticipation of the Program's

approval and return to status quo ante. All parties shall have an obligation to fulfill the intent and purpose of this Agreement, unless to do so would be inconsistent with the final, unappealable adjudication of any Program or court ruling or judgment. The terms of this agreement may be enforced through an enforcement motion in this declaratory judgment or a separate action before the Program or the Superior Court, Law Division.

9. The Borough and FSHC agree that following conditions remain to be met prior to March 15, 2026 as conditions of compliance certification, and that the municipality shall provide these documents to FSHC in draft form for comment by January 1, 2026:
 - a. The Borough will adopt a Fourth Round Spending Plan in accordance with P.L. 2024, c. 2 and the forthcoming regulations at N.J.A.C. 5:99. The Borough agrees to provide a draft of the Spending Plan to FSHC by February 1, 2026.
 - b. The Borough will update and adopt its affordable housing ordinance, development fee ordinance, affirmative marketing plan, and other administrative documents in accordance with the forthcoming regulations at N.J.A.C. 5:80-26.1, et seq., and N.J.A.C. after they are adopted and before March 15, 2026. The Borough agrees to provide a draft of the aforementioned documents to FSHC by February 1, 2026.
10. The Borough and FSHC recognize that substantial changes in circumstances affecting the Borough's RDP are possible pursuant to the holding in Fair Share Housing Center v. Cherry Hill, 173 N.J. 393, (2002) and related law. In the event such a substantial changed circumstance occurs, the Borough shall have one hundred twenty (120) days to present to the trial court and FSHC a plan to address such change in circumstances on notice and opportunity to be heard from FSHC. The Borough agrees that any additional RDP

generated due to changed circumstances must be addressed in a manner that is consistent with controlling law.

11. The Borough's Compliance Certification shall be subject to required ongoing monitoring as follows:

- a. The Borough by February 15, 2026, and annually, agrees to electronically enter data into the AHMS system of the Department of Community Affairs of a detailed accounting of all development fees and any other payments into its trust fund that have been collected including residential and non-residential development fees, along with the current balance in the municipality's affordable housing trust fund as well as trust funds expended, including purposes and amounts of such expenditures, in the previous year from January 1st to December 31st.
- b. The Borough by February 15, 2026, and annually, agrees to electronically enter data into the AHMS system of the Department of Community Affairs of up-to-date municipal information concerning the number of affordable housing units actually constructed, construction starts, certificates of occupancy granted, and the start and expiration dates of deed restrictions. With respect to units actually constructed, the information shall specify the characteristics of the housing, including housing type, tenure, affordability level, number of bedrooms, date and expiration of affordability controls, and whether occupancy is reserved for families, senior citizens, or other special populations.
- c. For the midpoint realistic opportunity review as of July 1, 2030, pursuant to N.J.S.A. 52:27D-313, the Borough or other interested party may file an action through the Program seeking a realistic opportunity review and shall provide for

notice to the public, including a realistic opportunity review of any inclusionary development site as set forth in the adopted HEFSP that has not received preliminary site plan approval prior to the midpoint of the 10-year round. Any such filing shall be through eCourts or any similar system set forth by the Program with notice to any party that has appeared in this matter.

12. This Agreement may be executed in counterparts, all of which together shall constitute the same agreement, and any exhibits or schedules attached hereto shall be hereby made a part of this Agreement. This Agreement shall not be modified, amended or altered in any way except by a writing signed by each of the parties. Each party acknowledges that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each signatory is the proper person and possesses the authority to sign the Agreement, and that this Agreement was not drafted by any one of the parties, but was drafted, negotiated and reviewed by all parties, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections. No member, official or employee of the municipality shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement, which is prohibited by law, absent the need to invoke the rule of necessity.



On behalf of the Borough of Mountain Lakes:

On behalf of Fair Share Housing Center:

Date: 12/11/2025

Date: