

FILED

APR 15 2026

DANIEL R. LINDEMANN
J.S.C.

Surenian, Edwards, Buzak & Nolan LLC

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

Attorneys for Declaratory Plaintiff, Borough of Kenilworth

By: Erik C. Nolan (Attorney ID:014032006)

In the Matter of the
Application of Borough of
Kenilworth, County of Union.

SUPERIOR COURT OF NEW JERSEY
Law Division, Union County
Docket No. UNN-L-235-25

CIVIL ACTION
(Mount Laurel)

Consent Order Final Compliance
Certification (N.J.S.A.
52:27D-304(q))

THIS MATTER having come before the Court via the joint request of the Borough via Erik C. Nolan, Esq., as well as Fair Share Housing Center ("FSHC"), via counsel Joelle L. Paull, Esq. (on behalf of Fair Share Housing Center), seeking a Fourth Round Certification of Compliance with the Fair Housing Act ("FHA"); and

WHEREAS, the Borough of Kenilworth (the "Borough" or "Kenilworth") having filed on January 16, 2025 a Fourth Round Declaratory Judgment Complaint with the Affordable Housing Dispute Resolution Program (the "Program") and the Court, along with a resolution that accepted the Fourth Round Present and Prospective Need Obligations issued by the Department of

Community Affairs ("DCA"); and

WHEREAS, the Borough having filed an adopted Fourth Round Housing Element and Fair Share Plan by the required June 30, 2025 FHA deadline, and FSHC having filed a challenge to same by the required August 31, 2025 FHA deadline; and

WHEREAS, the Borough and FSHC having entered into and presented a settlement agreement (a.k.a. mediation agreement) to the Program and the Court, which was filed on eCourts on December 15, 2025, and which settlement agreement is incorporated herein by reference; and

WHEREAS, the Program having issued on January 27, 2026 a Report and Recommendation for approval of the settlement agreement and preliminary approval of the Borough's Fourth Round Housing Element and Fair Share Plan to be amended; and

WHEREAS, the Court having entered an Order on January 29, 2026 accepting and adopting the Program Member's Report and Recommendation for approval of the settlement agreement and preliminary approval of the Borough's Fourth Round Housing Element and Fair Share Plan to be amended; and

WHEREAS, the Borough having adopted on March 16, 2026 an Amended Housing Element and Fair Share Plan ("Amended HEFSP") and its implementing resolutions and ordinances, and having submitted same to FSHC and the Court on March 17, 2026; and

WHEREAS, Fair Share Housing Center ("FSHC") having reviewed

the Borough's filing in accordance with the parties' settlement agreement and confirmed that the Borough has partially complied with all terms outlined in the settlement agreement; and

WHEREAS, no other interested-party filed a challenge or any other communication; and

WHEREAS, the Court having reviewed the Borough's Amended HEFSP, attachments, and implementing ordinances and resolutions, incorporating therein any changes from the Program and Court's prior order(s) and determined that they meet the "objective standard" and are in compliance with the Fair Housing Act and the Mount Laurel doctrine so long as the conditions set forth in this order are met; and

WHEREAS, the Court incorporates the Court's prior orders and for good cause shown:

IT IS on this 15th day of April,
2026, **ORDERED** as follows:

1. The Borough's Amended Fourth Round HEFSP, attachments, and applicable implementing ordinances and resolutions, collectively referenced at SCHEDULE-1 hereto as Exhibit P-1 through Exhibit P-6 (inclusive) and herein as the "Implementing Ordinances & Resolutions", are hereby admitted into evidence and entered into the record.
2. Subject to the satisfaction of the Conditions of this Order and the deadlines established herein, the Borough of

Kenilworth's Amended Fourth Round Fair Share Plan (Exhibit P-2) is hereby approved and deemed to meet the "objective standard" pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) of complying with the Fair Housing Act and the Mount Laurel doctrine, and the Borough is hereby granted a Compliance Certification as to its Rehabilitation Obligation ("Present Need"), its Prior Round Obligation (1987-1999), its Third Round Obligation (consisting of both its Gap Obligation for 1999-2015 and its Prospective Need Obligation for 2015-2025), and its Fourth Round obligation pursuant to the Fair Housing Act (N.J.S.A. 52:27D-301, et. seq.) ("FHA"), the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1, et seq.) ("UHAC"), applicable Council on Affordable Housing (hereinafter "COAH") substantive rules, and Mount Laurel case law, including the New Jersey Supreme Court's Mount Laurel IV decision.

3. The Borough's Compliance Certification shall remain in effect for ten (10) years beginning on July 1, 2025 and ending on June 30, 2035, and during this ten (10) year period the Borough shall have repose from exclusionary zoning litigation, including, but not limited to, Builder's Remedy lawsuits, as provided for in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et. seq. The Borough's Compliance Certification shall remain subject, however, to

revocation or other Order of the Court that does or may hereafter issue, on notice of motion to the Borough and all interested parties and good cause shown, at any time during the pendency of the Fourth Round Housing cycle.

4. As per the Borough's Amended HEFSP and earlier court orders, the Borough's Present Need or Rehabilitation Obligation is 35, the Borough's Prior Round Obligation (1987-1999) is 83, the Borough's Third Round Obligation (1999-2025) is 271, and the Borough's Fourth Round Prospective Need (2025-2035) is 208 units.
5. The Borough will address its Present Need of 35 units via participation in the Union County Rehabilitation Program and the Borough's Rehabilitation Program administered by its Administrative Agent.
6. The Borough's Prior Round Obligation is 83 and is being addressed as part of the Fourth Round. The Borough did not receive a certification of compliance for the Prior Round.
7. The Borough's Third Round Obligation is 271 and is being addressed as part of the Fourth Round. The Borough did not receive a Judgment of Repose for the Third Round.
8. For the Fourth Round, the Borough has conducted a Vacant Land Adjustment ("VLA") which shows the Borough has a Realistic Development Potential ("RDP") of 31. The Borough

has a combined Prior Round, Third Round, and Fourth Round unmet need of 531.

9. The Borough will address its Fourth Round RDP of 31 as follows:

MECHANISM	LOCATION	TYPE	UNITS	BONUS	TENURES	STATUS
25 North 26 th Street Redevelopment Plan	Block 183, Lot 9	Redevelopment – Family Rentals	25	6	Rental	Adopted
Total			25	6		

10. The Borough will address its combined Unmet Need of 531, through the following mechanisms:

MECHANISM	LOCATION	TYPE	UNITS	TENURES	STATUS
North Michigan Ave Overlay Zone* (20 units / acre & 20% set-aside)	North Michigan Ave (22.71 total acres)	Inclusionary	91	TBD	Adopted
Market Street Overlay Zone (20 units / acre & 20% set-aside)	Market Street (14.47 total acres)	Inclusionary	57	TBD	Adopted
West Sumner Avenue Overlay Zone (20 units / acre & 20% set-aside)	West Sumner Avenue (12.28 total)	Inclusionary	46	TBD	Adopted

	acres)				
Mark Road Overlay Zone (20 units / acre & 20% set-aside)	Mark Road (39.74 total acres)	Inclusionary	159	TBD	Adopted
Mandatory Set-Aside Ordinance (MSO)	Borough-wide	MSO		TBD	Adopted

** A minimum of 11.25 acres from the North Michigan Avenue Overlay Zone are considered "likely to redevelop" to satisfy the minimum 25% "likely to redevelop" requirement of the Borough's Fourth Round Unmet Need in accordance with the Amended Fair Housing Act.*

11. The Borough and FSHC agree that following conditions remain to be met as conditions of compliance certification:

- The Borough shall amend its Spending Plan to specify the amount of funds set aside for Affordability Assistance. The Borough shall set aside 30% for affordability assistance or provide justification for the need to set aside a lower amount.
- The Borough shall provide the resolution appointing its Administrative Agent.
- The Borough shall provide all required manuals, including but not limited to the Borough Rehabilitation Program Manual and its Operating Manual.
- The Borough shall provide the above, by June 15, 2026.

12. 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 a 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.

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

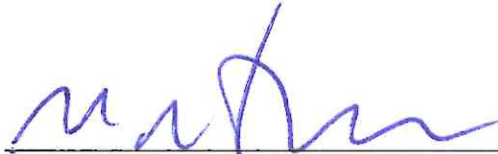
- The Borough by February 15, 2026, and annually, agrees to electronically enter data into the AHMS system of the Department of Community Affairs of a detailed accounting of all development fees and any other payments into its trust fund that have been collected including residential and non-residential 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.
- 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.

- 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.

14. The Court shall retain jurisdiction for the purpose of enforcing the terms and conditions of this Certification of Compliance and Repose and the Borough's adopted Fourth Round HEFSP.

15. A copy of this Order shall be entered on eCourts and shall be effective as of the date of filing.



Hon. Daniel R. Lindemann

On behalf of the Borough of Kenilworth:

Erik C. Nolan, Esq.

Erik C. Nolan, Esq.

On behalf of Fair Share Housing Center:



Joelle L. Paull, Esq.

SCHEDULE-1

P-1: Fourth Round Housing Element and Fair Share Plan. The Fourth Round plan was filed with the Program on June 25, 2025, after being adopted by the Planning Board on June 24, 2025 and endorsed by the Borough Council on July 2, 2025.

P-2: Amended Housing Element and Fair Share Plan. The Borough amended its Fourth Round Housing Element and Fair Share Plan to address the requirements of the FSHC Mediation Agreement. The Amended Fourth Round Plan was adopted by the Planning Board on February 24, 2026, and was endorsed by the Borough Council on March 16, 2026.

P-3: Overlay Zone Ordinances to address the Borough's unmet need. The Borough Council introduced the following overlay zones on February 18, 2026: The North Michigan Avenue Overlay Zone, the Market Street Overlay Zone, the West Sumner Avenue Overlay Zone, and the Market Road Overlay Zone. The Planning Board reviewed the ordinances for consistency with the Master Plan on February 24, 2026, and the ordinances were adopted by the Borough Council on March 16, 2026.

P-4: Spending Plan. The Borough's Fourth Round Spending Plan was adopted via resolution during the March 16, 2026 Borough Council meeting.

P-5: Affordable Housing Ordinance, Mandatory Set-Aside Ordinance and Development Fee Ordinance. At the February 18, 2026 Borough Council meeting the Borough introduced an Affordable Housing Ordinance. This ordinance also contains a Mandatory Set-Aside section and a Development Fee section. After introduction, the ordinance was sent to the Borough Planning Board for a consistency with the Master Plan review on February 24, 2026, and was adopted by the Borough Council on March 16, 2026.

P-6: Affirmative Marketing Plan: The Borough's Affirmative Marketing Plan was revised to comply with the new UHAC requirements, and was adopted at the Borough Council's March 16, 2026 meeting.