

FAIR SHARE HOUSING CENTER

510 Park Boulevard

Cherry Hill, New Jersey 08002

P: 856-665-5444

F: 856-663-8182

Attorneys for Movant

Fair Share Housing Center

By: Kevin D. Walsh, Esq. 030511999

Adam M. Gordon, Esq. 033332006

kevinwalsh@fairsharehousing.org

SUPREME COURT OF NEW JERSEY

**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)**

Supreme Court Docket
No. _____

On motion for leave to appeal
from:

SUPERIOR COURT
APPELLATE DIVISION

App. Div. Docket
No.: A-003323-15T1

On appeal from:
Superior Court, Law Division
Docket No. OCN-L-2460-15

**BRIEF AND APPENDIX OF FAIR SHARE
HOUSING CENTER IN SUPPORT OF ITS
MOTION FOR LEAVE TO APPEAL AND TO STAY**

Table of Contents

I.	Introduction	1
II.	Facts	4
	A. Interpretations of FHA by COAH and Appellate Division	4
III.	Procedural History	6
IV.	Legal Argument	9
	A. The Court should grant leave to appeal the Appellate Division's decision	9
	1. The Appellate Division's decision undermines the Court's decision in <u>Mount Laurel IV</u> by abandoning, rather than relying upon, the Prior Round rules and previous Appellate Division jurisprudence	9
	2. The Appellate Division's decision is based on a flawed analysis of the FHA that rejects settled principles of statutory construction	16
	B. The Appellate Division's decision should be stayed	23
V.	Conclusion	25

Table of Authorities

<u>AMG Realty Co. v. Warren Tp.</u> , 207 N.J. Super. 388 (Law Div. 1984)	18
<u>Brown v. City of Paterson</u> , 424 N.J. Super. 176 (App.Div. 2012)	24
<u>Crowe v. De Gioia</u> , 90 N.J. 126 (1982)	23
<u>DiProspero v. Penn</u> , 183 N.J. 477 (2005)	17
<u>Garden State Equal. V. Dow</u> , 216 N.J. 314 (2013) .	23
<u>George Harms Constr. Co. v. N.J. Turnpike Auth.</u> , 137 N.J. 8 (1994))	20
<u>In re Declaratory Judgment Actions Filed by Various Municipalities</u> , __ N.J. Super. __ (App. Div. 2016)	
<u>In Re Adoption of N.J.A.C. 5:96 and 5:97</u> , 221 N.J. 1 (2015) (" <u>Mount Laurel IV</u> ")	passim
<u>In re N.J.A.C. 5:94 and 5:95</u> , 390 N.J. Super. 1	4, 5, 12

(App. Div. 2007)	
<u>In re N.J.A.C. 5:96 and 5:97, 416 N.J. Super. 462</u> (App. Div. 2010)	6,12
<u>In re N.J.A.C. 5:96 and 5:97, 215 N.J. Super. 586</u> (2015)	12,17,19
<u>In re Election Law Enf't Comm'n Advisory Op. No.</u> <u>01-2008, 201 N.J. 254 (2010)</u>	19
<u>In re Hous. Element for the Twp. of Monroe, 444</u> <u>N.J. Super. 163 (Law Div. 2015)</u>	8,15
<u>In re Six Month Extension of N.J.A.C. 5:91-1, 372</u> <u>N.J. Super. 61 (App. Div. 2004) ("In re Six Month</u> <u>Extension")</u>	2,5,12,20, 21,22
<u>In re Township of Warren, 132 N.J. 1 (1993)</u>	17
<u>Kasper v. Bd. Of Trs., 164 N.J. 564 (2000)</u>	19
<u>Koch v. Director, Div. of Taxation, 157 N.J. 1</u> (1999)	22
<u>Malone v. Fender, 80 N.J. 129 (1979)</u>	21
<u>Matturri v. Bd. Of Trs. Of the Judicial Ret.</u> <u>Sys., 173 N.J. 368 (2002)</u>	21
<u>McNeil v. Leg. Apportionment Comm'n of N.J., 176</u> <u>N.J. 484 (2003)</u>	25
<u>Southern Burlington County v. Tp. Of Mount</u> <u>Laurel, 92 N.J. 158 (1983) (Mount Laurel II)</u>	17
<u>N.J.S.A. 52:27D-302(i)</u>	22
<u>N.J.S.A. 52:27D-307</u>	4,17,19
<u>N.J.S.A. 52:27D-313</u>	19
<u>N.J.S.A. 52:27D-301 to -329.19</u>	1
<u>N.J.A.C. 5:93 App. A</u>	2,4,11,13,21
<u>N.J.A.C. 5:93-4.2</u>	16
<u>N.J.A.C. 5:93-4.3</u>	16
<u>N.J.A.C. 5:94 App. A</u>	5
<u>N.J.A.C. 5:97, App. A</u>	6,13,21
<u>N.J.A.C. 5:99-2.3(a)</u>	6
<u>25 N.J.R. 5763(a)</u>	4,11.13

26	<u>N.J.R.</u> 2300(a)	4,11.13
36	<u>N.J.R.</u> 5895(a)	5
40	<u>N.J.R.</u> 2690	5
46	<u>N.J.R.</u> 924(a)	6
<u>R.</u>	2:2-2	9
<u>R.</u>	2:11-2	9
<u>L.</u>	2001, <u>c.</u> 435	19

Appendix Table of Contents

July 11, 2016 Appellate Division decision <u>In re Declaratory Judgment Actions Filed by Various Municipalities</u> , ____ N.J.Super. ____ (App. Div. 2016) ..	1-53
July 18, 2016 Appellate Division Disposition Denying Fair Share Housing Center's Emergent Application to Stay	54
September 17, 2015 Case Management Order of the Superior Court, Ocean County in <u>In All Declaratory Judgment Actions Filed by Various Municipalities</u> Docketed OCN L 2640-15	55-56
November 17, 2015 Second Revised Case Management Order of the Superior Court, Ocean County <u>In All Declaratory Judgment Actions Filed by Various Municipalities</u> Docketed OCN L 2640-15	57-60
Memo From Peter Angelides Econsult Solutions, Inc. to Jeffrey Surenian and Associates, LLC, Econsult Solutions, Inc. Response to Ocean County Third Revised Case Management Order, dated December 8, 2015 ..	61-71
February 18, 2016 Opinion of the Superior Court, Ocean County in <u>In All Declaratory Judgment Actions Filed by Various Municipalities</u> Docketed OCN L 2640-15	72-99
Second Revised Scheduling Order of the Superior Court, Mercer County in <u>The Matter of the Applications of the Townships of East Windsor</u> , Docket No. MER L 1522-15... entered on March 15 2015	100-102
April 14, 2016 Appellate Division Order granting Motion for Leave to Appeal and Denying Oral Argument in <u>In All Declaratory Judgment Actions Filed by Various Municipalities</u> , Docket No. A-407-15T1	103
April 26, 2015 Supreme Court Order Denying Fair Share Housing Center's applications for emergent relief and ordering oral argument and expedited scheduling in <u>In All Declaratory Judgment Actions Filed by Various Municipalities</u> , Docket No. A-3323-15	104-105
July 12, 2016 Ninth Revised Case Management Order by the Superior Court, Ocean County in <u>All Declaratory Judgment Actions Filed by Various Municipalities</u> , Docketed OCN L 2640-15	106-109
July 18, 2016 Amended Case Management Order by the Superior Court, Middlesex County in <u>In the Matter of</u>	110

the Adoption of South Brunswick, Docket No. MID-L-3878-15	
July 15, 2016 Amended Case Management and Hearing on Determination of Fair Share Housing Obligation Order by the Superior Court, Union County in <u>In the Matter of the Application of Municipalities Seeking Compliance</u>	111-115
Cherry Hill Township Public Notice of Fairness Hearing from the Courier Post, June 20, 2015	116-117
Township of Edison Public Notice of Compliance Hearing from the Home News Tribune, April 8, 2016	118-119
Township of Woodbridge Public Notice of Fairness Hearing from the Star-Ledger, March 26, 2016	120-121
New Jersey Council on Affordable Housing Revised Third Round Certifications, updated September 8, 2010 ..	122-123
New Jersey Council on Affordable Housing Third Round Chart of Towns participating with COAH, updated October 31, 2008	124-135

Table of Abbreviations

Movant Fair Share Housing Center's Appendix	Ma
---	----

I. Introduction

Fair Share Housing Center (FSHC) respectfully seeks the Court's review and stay of the Appellate Division's July 11, 2016 decision eviscerating the Mount Laurel doctrine and Fair Housing Act of 1985 (FHA), N.J.S.A. 52:27D-301 to -329.19, by wiping away sixteen years of housing needs, contrary to decades of consistent precedent defining "prospective need." In re Declaratory Judgment Actions Filed by Various Municipalities, ___ N.J. Super. ___ (App. Div. 2016), Ma1-53. That decision severely undermines this Court's decision in In re Adoption of N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), and impacts, according to all experts involved in this matter, tens of thousands of lower-income families.

In Mount Laurel IV, the Court, responding to the "exceptional situation" in which the Council on Affordable Housing (COAH) "has become nonfunctioning," directed trial court judges to administer the FHA. Id. at 5. The Court required trial courts to evaluate fair share plans based upon "previous methodologies employed in the First and Second Round Rules" and "computations of housing need and municipal obligations based on those methodologies." Id. at 30. And the Court also held that trial judges could "confidently" look to the "many aspects to the two earlier versions of Third Round Rules [that] were found valid by the appellate courts." Ibid. The Court thus set up a process in which trial judges would follow existing law in evaluating municipal determinations of need and

compliance, rather than becoming an "alternate form of statewide administrative decision maker." Id. at 29.

The Appellate Division's recent decision, however, disregarded over two decades of unwavering law, including the very sources identified by this Court as properly guiding the trial court process. The ruling contradicts a prior reported Appellate Division decision on the same issue, In re Six Month Extension of N.J.A.C. 5:91-1, 372 N.J. Super. 61, 74 (App. Div. 2004), no less than four separate COAH rulemaking processes, and decisions by all four trial judges who have considered the issue since Mount Laurel IV. Instead of following past precedent as directed by this Court, the Appellate Division charted an entirely new path, engaging in the very kind of policymaking analysis reinterpreting the FHA that this Court prohibited.

The Appellate Division's holding – that as time passes, fair share obligations disappear – only further incentivizes municipal delay and discourages the "prompt voluntary compliance" that this Court sought. Mount Laurel IV, supra, 221 N.J. at 33. Precisely because of concerns over incentivizing delay and harming the poor, COAH required, as part of the Prior Round methodology that this Court directed be used, that if need is not met it does not disappear. N.J.A.C. 5:93 App. A, 26 N.J.R. 2300(a), 2348 (June 6, 1994). In every version of the Third Round rules, even the unadopted, deeply flawed rule proposal that led to this process, COAH retained the requirement of cumulative obligations, with no

gaps. If municipalities that voluntarily allow for the construction of lower-income housing, as many did over the past sixteen years, end up in the same place as municipalities that stonewall and delay, it sends a profoundly damaging message to municipalities that accommodate the poor that they should not have bothered. The Appellate Division plainly erred in rejecting the consistent, unbroken precedent in support of this principle.

The Appellate Division's decision has no grounding in fairness and equity. The elimination of sixteen years of accumulated housing need will directly harm what all experts agree are at minimum tens of thousands of lower-income families, people with disabilities, and seniors. The failure of state and some local governments to act responsibly and to plan for regional needs is not a burden that the poor alone should carry, as the Prior Round methodology and Appellate Division panels found in addressing the issue of cumulative obligations in the past. The poor have already been harmed by the sixteen-year delay. While the trial judges reversed by the Appellate Division suggested a range of adjustments for this unique situation grounded in COAH's past practices, the Appellate Division's sweeping decision goes well beyond what the framework set up by this Court in Mount Laurel IV, by completely abandoning decades of consistent law.

In view of these errors, FSHC respectfully urges the Court to grant leave to appeal the Appellate Division's decision and to stay that decision pending the completion of the appeal.

II. Facts

A. Interpretations of FHA by COAH and Appellate Division

The FHA directs COAH "from time to time" to "[a]dopt criteria and guidelines" for "[m]unicipal determination of . . . present and prospective fair share of the housing need in a given region."

N.J.S.A. 52:27D-307. COAH first addressed the issue of successive calculations of need in 1994, as it promulgated rules for the Second Round. COAH determined that it would retain remaining unfulfilled prospective need from the First Round and include need from the "gap period" of nearly a year between the end of the First Round and the effective date of the Second Round rules. N.J.A.C. 5:93, App. A, 26 N.J.R. 2300(a), 2348 (June 6, 1994). COAH did so for two primary reasons: (1) "if [the unfulfilled need] is not met people are forced into more crowded housing or are obliged to pay more than 28 percent of their income for housing. Housing need is falsely reduced, and simultaneously the affordable housing situation worsens if no new housing is built"; and (2) "a municipal obligation does not disappear when the municipality fails to address it." Ibid.; 25 N.J.R. 5763(a), 5784 (December 20, 1993). COAH thus recognized that eliminating unfulfilled prior need would severely harm lower-income households and eviscerate the incentive structure for voluntary compliance at the heart of the FHA.

The Third Round originally was due to begin when the Second Round ended in 1999. In re N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1, 11 (App. Div. 2007). COAH, however, did not adopt Third Round

regulations until December 20, 2004. 36 N.J.R. 5895(a). COAH, the League of Municipalities, and more than 50 individual municipalities argued to the Appellate Division that any harm resulting from the five-year "gap period" would be ameliorated because "any delay in the determination of a municipality's ongoing obligation will be accounted for and recaptured in the third-round methodology." In re Six Month Extension, supra, 372 N.J. Super. at 82. The Appellate Division affirmed COAH's practice as consistent with "the FHA's policies and requirements." Id. at 94.

Thus, COAH's 2004 rules both retained the unmet Prior Round prospective need obligations and included a cumulative Third Round prospective need calculation of 52,726 from 1999 through 2014. N.J.A.C. 5:94 App. A. 284 municipalities, including the appellant below, Barnegat Township, petitioned COAH with fair share plans based on this cumulative calculation. Ma131. On January 25, 2007, the Appellate Division invalidated these regulations because they did not comply with the Mount Laurel doctrine or the FHA, but did not invalidate the cumulative prospective need requirement that another panel had just upheld less than three years earlier. In re N.J.A.C. 5:94 and 5:95, supra, 390 N.J. Super. at 32, 88.

On May 6, 2008, COAH adopted a second set of Third Round regulations, 40 N.J.R. 2690(a). These regulations again included a cumulative Third Round prospective need obligation from 1999 to 2018 of 115,666, an increase from the 2004 calculation due to both the longer time period involved and correcting many of the aspects

of the 2004 rules invalidated by the Appellate Division. N.J.A.C. 5:97 App. A. 306 municipalities, again including the appellant below, petitioned COAH, and 68 received substantive certification, based on plans meeting this cumulative obligation. Ma122-23.

On October 8, 2010, the Appellate Division invalidated the second set of Third Round regulations. In re N.J.A.C. 5:96 and 5:97, 416 N.J. Super. 462, 511-12 (App. Div. 2010). But once again the Appellate Division found no fault with the cumulative prospective need requirement, even as it otherwise reversed the methodology used to calculate obligations. Id. at 485. This Court affirmed without modifying this holding, and directed COAH to promulgate rules based on the Prior Round methodology within five months. In re N.J.A.C. 5:96 and 5:97, supra, 215 N.J. at 620.

In 2014, COAH proposed rules in response to the Supreme Court's remand after receiving an extension from the Court. These rules, too, employed a cumulative requirement for prospective need including all gap periods, allocating prospective need for a period from 1987-2024. See proposed N.J.A.C. 5:99-2.3(a); 46 N.J.R. 924(a), 1051 (June 2, 2015). However, COAH failed to adopt the rules. Mount Laurel IV, supra, 221 N.J. at 10. In response, FSHC filed a motion to enforce litigant's rights. That motion was granted by decision and order dated March 10, 2015. Id. at 35-36.

III. Procedural History

Following the Supreme Court's decision in In re N.J.A.C. 5:96 and 5:97, more than 300 municipalities filed declaratory judgment

actions. By order dated September 17, 2015, Ma55, the Hon. Mark A. Troncone, J.S.C. and the Hon. Marlene Lynch Ford, A.J.S.C.

consolidated all 13 Ocean County declaratory judgment proceedings for purposes of determining an appropriate fair share methodology.

On November 17, 2015, prior to any party alleging that no gap period existed, Judge Troncone issued an order sua sponte directing the parties to "submit written briefs and expert reports on whether an 'unanswered prior' or 'gap' obligation actually exist[s]."

Ma58. On December 8, 2015, Econsult, an expert for many municipalities, issued a report asserting that no gap period need existed, a position that it had never asserted in several reports it had submitted to the court up to that point, and which contradicted its own prior work as a consultant to COAH in developing the 2008 rules. Ma61; N.J.A.C. 5:97 App. A ("Econsult projections predict that New Jersey will add 377,190 households between 1999 and 2018"). After oral argument, and additional briefing and reports from Mr. Reading, Judge Troncone and Judge Ford issued a written decision on February 18, 2016 finding that "municipalities are constitutionally mandated to address this [gap period] obligation," rooting their analysis in past case law and COAH practice. Ma72. The Hon. Mary C. Jacobson, A.J.S.C. and the Hon. Douglas K. Wolfson, J.S.C., in parallel decisions, also held that the gap period need had to be met as part of the cumulative calculation of prospective need, with Judge Wolfson and Judges Troncone and Ford allowing for case-by-case deferral and/or

reduction of portions of that need. Ma100, 72; In re Hous. Element for the Twp. of Monroe, 444 N.J. Super. 163 (Law Div. 2015).

Judges Troncone and Ford's February 2016 decision did not establish a specific means of calculating gap period need. Rather, the court invited further submissions from all parties in preparation for trial. However, those proceedings were stayed after the Appellate Division granted Barnegat Township's motion for leave to appeal on April 14, 2016. Ma103. FSHC applied to the Supreme Court to vacate the Appellate Division's grant of leave to appeal. The Court denied FSHC's application on April 26, 2016 but directed that the appeal be argued by June 30, 2016. Ma104.

On July 11, 2016, the Appellate Division reversed the trial court, finding that the plain language of the FHA prohibited prospective need from 1999 from 2015 from being addressed. Three trial courts have already directed all parties to file reports on the impact of the Appellate Division's decision on calculation of both present and prospective need, including whether and how present need may capture some component of the gap period need, with trial proceedings scheduled as early as August 18. See, e.g., Ma106 (Judges Troncone and Ford); Ma110 (Judge Wolfson); Ma111 (Judge Kenny).

On July 18, 2016, the Honorable Marie E. Lihotz, P.J.A.D. denied FSHC's to file a motion to stay with the Appellate Division on an emergent basis. Ma110.

IV. Legal Argument

A. The Court should grant leave to appeal the Appellate Division's decision.

The Court should grant leave to appeal in this matter, R. 2:2-2, because immediate review is necessary to protect the public interest, because the Court should stand by its March 2015 order requiring the use of the Prior Round methodology, and because the Appellate Division's decision is contrary to established and binding law. The Court should expedite the matter upon grant of leave in order to rapidly provide much-needed guidance to trial judges in more than 300 proceedings. R. 2:11-2.

1. The Appellate Division's decision undermines the Court's decision in Mount Laurel IV by abandoning, rather than relying upon, the Prior Round rules and previous Appellate Division jurisprudence.

In the Court's decision in Mount Laurel IV, supra, 221 N.J. at 5, it directed trial courts how to administer the FHA after the Court found itself "in the exceptional situation in which the administrative process has become nonfunctioning, rendering futile the FHA's administrative remedy." In doing so, the Court directed trial courts to evaluate fair share plans based upon settled law, namely "previous methodologies employed in the First and Second Round Rules" and "computations of housing need and municipal obligations based on those methodologies." Id. at 30. The Court also stated that judges could "confidently" rely upon the "many aspects to the two earlier versions of Third Round Rules [that] were found valid by the appellate courts." Ibid. The Court thus

required trial courts to adjudicate municipal fair share plans based upon the Prior Round rules and components of the Third Round Rules found valid by the appellate courts, rather than engage in a de novo reinterpretation of the FHA as a "statewide administrative decision maker" might. Id. at 29. Finally, the Court held that its decision did not eliminate "prior round obligations" or "prior unfulfilled housing obligations." Ibid. Rather, "prior unfulfilled housing obligations should be the starting point for a determination of a municipality's fair share responsibility." Ibid. The Court thus created a clear path forward based on well-established law, one that would account for past obligations and, in adhering to prior methodology, could be implemented without further delay. Consistent with that expectation, the Court directed municipalities to file fair share plans demonstrating their compliance with Mount Laurel within five months of the deadline for filing declaratory judgment actions. Mount Laurel IV, supra, 221 N.J. at 27.

The Appellate Division's decision disrupts the Court's clear mandate of an expeditious review of fair share plans along a known and certain path. If this Court's directive that these proceedings should follow the Prior Round methodology and the valid portions of the Third Round rules has any meaning, a cumulative approach is mandatory. Indeed, there are few issues on which the Prior Round and Third Round rules have been as consistent as the cumulative nature of the prospective need obligation, including all gaps.

Even in its most troubled times, COAH has consistently interpreted the FHA as requiring cumulative and uninterrupted periods of need to be allocated to municipalities in conformance with the Mount Laurel doctrine. Thus, in its Prior Round rules that remain on the books today, and in the comments and responses that form part of rulemaking processes in 1994, 2004, 2008, and 2014, COAH interpreted the FHA as requiring cumulative and uninterrupted allocations of obligations. N.J.A.C. 5:93 App. A; N.J.A.C. 5:94 App. A; N.J.A.C. 5:97 App. A; Proposed N.J.A.C. 5:99-2.3(a); 46 N.J.R. 924(a), 1051 (June 2, 2015). COAH did so for two reasons that remain relevant today: the impact on "people are forced into more crowded housing or [who] are obliged to pay more than 28 percent of their income for housing" if homes are not built, and rewarding compliance and not delay by ensuring "a municipal obligation does not disappear when the municipality fails to address it." N.J.A.C. 5:93, App. A, 26 N.J.R. 2300(a), 2348; 25 N.J.R. 5763(a), 5784 (December 20, 1993).

Furthermore, the Court directed trial judges to rely upon prior Appellate Division jurisprudence. Mount Laurel IV, supra, 221 N.J. at 30. The cumulative nature of the housing obligation was, of course, among these aspects, having again and again been required by COAH and affirmed by the Appellate Division. The Appellate Division squarely addressed the issue in affirming COAH's position regarding the scope and cumulative nature of prospective need as within its powers under the FHA and found that the approach

COAH employed provided an adequate response to delays that the Appellate Division found to be "dramatic and inexplicable." In re Six Month Extension, supra, 372 N.J. Super. at 95-96. Addressing these delays, which constituted the first five years of the very same "gap period" at issue today, the Appellate Division held that "there is no statutory or constitutional impediment for COAH to incorporate the housing obligations in the gap years into the housing obligations in its succeeding methodology," id. at 96-97. Further, the Appellate Division's decisions in invalidating the 2004 and 2008 rules both cited Six Month Extension and did not invalidate the cumulative nature of the obligation. In re Adoption of N.J.A.C. 5:94 & 5:95, supra, 390 N.J. Super. at 88; In re Adoption of N.J.A.C. 5:96 and 5:97, supra, 416 N.J. Super. at 485. Judge Skillman's decision in 2010 specifically acknowledged "COAH's determinations of projected statewide and regional prospective need for the period from 1999 to 2018" and ordered COAH to "redetermine prospective need" without invalidating the cumulative nature of the obligation. Id. at 499. The Court affirmed that decision without modification on this point. In re Adoption of N.J.A.C. 5:96 and 5:97, supra, 215 N.J. at 586, 620. The Appellate Division's recent decision thus ignores and undermines the Court's directive that trial courts may rely upon past Appellate Division jurisprudence — as all four trial judges to review the issue did — suggesting that every legal issue surrounding Mount Laurel can be litigated de novo even if the Appellate Division has previously adjudicated it in a

published decision.

This decision, in addition to upsetting the process ordered by this Court, imposes severe harms on lower-income households — both in the sheer number of families and persons with disabilities it denies opportunities for homes and in the restructuring of incentives facing municipalities from building homes to delaying further. Not coincidentally, those are the very harms that COAH identified as the reason for adopting a cumulative approach to need in the first place in 1994. 26 N.J.R. 2300(a), 2348 (June 6, 1994); 25 N.J.R. 5763(a), 5784 (December 20, 1993). As the trial court decision below notes, "Most experts agreed the 'gap period' housing need, if included, would constitute anywhere from 40 to 60 percent of a municipalities affordable housing need obligation for the third round housing cycle." Aa8. Even the most conservative estimates of that need, by municipal expert Econsult Solutions, place it at upwards of 30,000 homes statewide; COAH's own adopted versions of the Third Round rules in 2004 and 2008, which the vast majority of municipalities participating in the present process developed plans to meet, and many municipalities implemented, put the need between 50,000 and 100,000 homes for this period. N.J.A.C. 5:94, App. A; N.J.A.C. 5:97, App. A. Those tens of thousands of families and persons with disabilities, among others, unjustly have had the promise of housing opportunities that are not defined by exclusionary zoning stripped away by a decision that overturns decades of precedent.

Additionally, the Court's decision incentivizes delay and fails to appreciate, or appropriately distinguish, those municipalities that actually complied in good faith with their obligations. During the period from 1999 to 2015, many municipalities met their prospective need obligations as assigned by COAH in 2004 and 2008 – which all concerned cumulative, gapless obligations for the Third Round starting in 1999. The Court recognized as such in its March 2015 decision by distinguishing between municipalities that had proceeded in good faith and municipalities that merely filed with COAH and did not proceed further. The more than 60 municipalities that received Third Round substantive certification from COAH, see In re N.J.A.C. 5:96 & 5:97, supra, 221 N.J. at 21, which constitute nearly one in four of the municipalities in the declaratory judgment process, all filed plans based on cumulative, gapless obligations. The Court conditionally endorsed those plans, recognizing that such plans might require "supplementation" based on the trial court processes. Id. at 26. Without addressing the impact on the Court's decision, the Appellate Division decision fundamentally altered the standards for those municipalities' fair share plans, rendering the prior grant of substantive certification irrelevant by abandoning the cumulative need framework on which their plans were based.

Meanwhile, towns that have stalled and delayed will be rewarded for their stonewalling; indeed, if they delay more, the decision suggests that they potentially further reduce their

obligations. The panel undermines the Court's effort at "prompt voluntary compliance" in Mount Laurel IV, id. at 33, and thus the broader public interest in actually producing homes and addressing our state's deep racial and economic segregation spurred by exclusionary zoning. The longer a municipality delays, the fewer homes it has to build. Such incentives also undermine the mediation and settlement the Court encouraged, id. at 29 (encouraging "conciliation" and "mediation" in accordance with the FHA). These processes had been productive until this point, leading to court-approved settlements in large municipalities such as Cherry Hill, Edison, and Woodbridge, Ma116-21, and over 100 likely additional settlements through the focused efforts of trial judges and special masters. The uncertainty the Appellate Division has created around the major issue of the "gap period" and the broader invitation to relitigate long-settled interpretations of the FHA, in contrast to this Court's decision, casts the mediation and settlement process into doubt.

This is not to say that gap period obligations must be instituted mechanically or without examination of the "records developed in individual actions before the courts." Ibid. Indeed, the decision by Judge Troncone, a similar decision by Judge Wolfson, and settlements already approved by trial judges all allow for municipal-specific adjustments or deferrals to gap period obligations based on the particular record before them. Ma72; Monroe, supra, 444 N.J. Super. at 176-77; Ma116-21. Furthermore,

the range of adjustments and caps available to municipalities under the Prior Round methodology, such as an adjustment for insufficient developable land or an adjustment for insufficient sewer, remain available to adjust gap period obligations as well. See, e.g., N.J.A.C. 5:93-4.2; N.J.A.C. 5:93-4.3. But there is a substantial difference between accommodating adjustments based on a particular record and precedent and departing as a general rule from over two decades of established law upon which this Court directed trial courts to rely.

The Appellate Division's decision makes new law and creates confusion when this Court directed lower courts to follow established law that creates no confusion. The Court should grant leave to appeal to correct the Appellate Division's error.

2. The Appellate Division's decision is based on a flawed analysis of the FHA that rejects settled principles of statutory construction.

The Appellate Division's disregard of the Court's March 2015 decision and its issuance of a decision that harms the public interest are especially inexplicable in view of the overwhelming weight of the law that requires the allocation of fair share obligations on a cumulative and uninterrupted basis. The Appellate Division reversed the trial court based on a distorted reading of the term "prospective need" that ignores three key issues central to statutory construction: the established meaning of the term at the time the Legislature passed the FHA, the operative statutory language in which that term appears, and the context of an

"exceptional situation" in which an agency did not carry out its statutory mandate. Mount Laurel IV, supra, 221 N.J. at 5.

First, the Legislature did not invent the term "prospective need" but took it from the jurisprudence of this Court and the lower courts. The very first finding of the FHA links the term "prospective need" to its genesis in court decisions. N.J.S.A. 52:27D-302a. As recently as 2013, this Court held that "[t]he FHA set a course that tracked the Mount Laurel II allocation methodology for satisfaction of present and prospective need based on housing region. COAH was not free to abandon that approach. Nor are we free to ignore the legislative choice. The FHA embodies the remedial approach applicable in this state at this time." In re N.J.A.C. 5:96 and 5:97, supra, 215 N.J. at 615 (emphasis added). Thus, the Legislature understood "prospective need" as a term of art based on established law at the time. See DiProspero v. Penn, 183 N.J. 477, 494-95 (2005) ("We hardly need state that the Legislature knows how to incorporate into a new statute a standard articulated in a prior opinion of this Court.").

This linkage is especially critical because by the time that the Legislature passed the FHA, courts had interpreted prospective need to incorporate a cumulative requirement. As this Court has noted, the main trial court decision to define prospective need after Mount Laurel II and before the passage of the FHA, formed the basis for COAH's Prior Round methodology. In re Warren, 132 N.J. 1, 13 (1993) ("COAH's methodology is substantially similar to that

used by Judge Serpentelli in AMG Realty Co. v. Township of Warren, 207 N.J. Super. 388, 398-410 (Law Div. 1984)."). In the AMG methodology, Judge Serpentelli held that prospective need was cumulative and did not disappear if not met:

Any reduction of the fair share based on the elimination of responsibility for the first four years would cause 40% of the decade's need to be lost. It would also encourage towns to hide from their obligation as long as they could, since the number would continue to reduce as long as it is based on a 1980-1990 projection.

[AMG Realty, supra, 207 N.J. Super. at 428.]

The Legislature's adoption of the FHA based upon Mount Laurel II thus incorporated the term of art "prospective need" as defined by the courts. If the Legislature had intended to change the meaning of "prospective need" to not include cumulative obligations, it would have said so. Instead, the FHA specifically incorporated the prospective need framework from Mount Laurel II, as this Court held just three years ago. In re N.J.A.C. 5:96 and 5:97, supra, 215 N.J. at 615.

Second, the Appellate Division ignored that the plain language of the statute not only anticipates, but mandates, multiple calculations of prospective need over time. The FHA requires that "It shall be the duty of the council, seven months after the confirmation of the last member initially appointed to the council, or January 1, 1986, whichever is earlier, and from time to time thereafter, to. . . [a]dopt criteria and guidelines for. . . [m]unicipal determination of its present and prospective fair share

of the housing need in a given region which shall be computed for a 10-year period." N.J.S.A. 52:27D-307. Thus, the Legislature understood that COAH would make an initial calculation of prospective need, which it did in 1987, and then make subsequent calculations in 1993, 1999, 2009, and 2019.¹ The FHA is silent on what happens if not all of the prospective need is met in a given period; it is silent on what happens if COAH does not do its job in a timely fashion; it is silent on what happens in the "exceptional situation" in which COAH does not do its job for sixteen years. Mount Laurel IV, supra, 221 N.J. at 5. The Legislature cannot be expected to set out contingency plans in case the agency ignores its directives. It is therefore unsurprising that the FHA does not directly address gap periods; under the statutory mandate, there should be no gap periods.

In light of the Legislature's silence on this issue, deference to agency interpretation is especially warranted. See Kasper v. Bd. of Trs., 164 N.J. 564, 581 (2000) (if statute "is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute"). In this circumstance, the courts should defer to the agency interpretation "unless the interpretation is 'plainly unreasonable.'" In re Elec. Law Enf't Comm'n Advisory Op., 201 N.J. 254, 262 (2010) (citation omitted).

¹The Legislature changed the period of calculation from six to ten years in 2001. See N.J.S.A. 52:27D-313; L. 2001, c. 435.

Over a decade ago, the Appellate Division appropriately deferred to the agency in reading the FHA to allow for the cumulative, uninterrupted calculation of gap-period needs. In re Six Month Extension, supra, 372 N.J. Super. at 95. In that case, the Appellate Division approved COAH's decision that "the third-round methodology will be cumulative and capture any obligation" resulting from "the gap between the second-round and third-round methodologies." Id. at 96. "With a straightforward application of the George Harms standards, in the context of the FHA's policies and requirements," the court concluded, "we discern no clear flaw, in principle, in the cumulative-requirement concept employed by COAH." Id. at 94. Thus, the Appellate Division explicitly found that a cumulative calculation of prospective need did not "violate[] express or implied legislative policies" of the FHA. George Harms Constr. Co. v. N.J. Turnpike Auth., 137 N.J. 8, 27 (1994).

In the decision at issue here, the Appellate Division tries, but fails, to distinguish Six Month Extension. The Appellate Division states that "[t]here, we were not asked to address, and we did not sanction, a gap-period affordable housing obligation, on top of prior unfulfilled obligations and present and prospective needs." Slip op. at 50. But that is exactly what the Six Month Extension panel did approve: the decision affirms the inclusion of the gap period within prospective need, while also recognizing that municipalities would have to meet prior unfulfilled obligations,

present need, and other aspects of prospective need. In re Six Month Extension, supra, 372 N.J. Super. at 96. The present matter's core holding is that nowhere in a prospective need obligation can gap period obligations be incorporated, whether as part of a "separate and discrete" component as the trial court found, or as part of a single cumulative obligation starting in 1999, as COAH's 2004 and 2008 rules provided. N.J.A.C. 5:94 App. A; N.J.A.C. 5:97 App. A. That holding squarely contradicts In re Six Month Extension, which specifically affirmed COAH's plans to capture the then-"gap period" from 1999 through 2004 in its cumulative prospective need obligation. In re Six Month Extension, supra, 372 N.J. Super. at 96.

Finally, the Appellate Division stands the doctrine of legislative acquiescence on its head. Acquiescence refers to legislative inaction in the face of a consistent agency interpretation. "[T]he Legislature's apparent acquiescence in [an agency's] practice must be 'granted great weight as evidence of its conformity with the legislative intent.'" Matturri v. Bd. Of Trs. Of the Judicial Ret. Sys., 173 N.J. 368, 382 (2002) (quoting Malone v. Fender, 80 N.J. 129, 137 (1979)). As noted above, COAH's consistent practice, in every version of its regulations for over 20 years, has been to adopt a cumulative obligation that accounted for gaps. Misconstruing this doctrine, the Appellate Division reasoned that, "during the sixteen-year gap period, the Legislature amended the FHA twelve times" without requiring a "retrospective

determination of gap-period obligations." In re Declaratory Judgment Actions, supra, slip op. at 34. But the Legislature had no need to make this supposed fix because gap periods were already covered.²

The Legislature, which is deemed to be aware of the regulations adopted by state agencies, in fact acquiesced in COAH's interpretation of the FHA that recognized gap period need and required it to be met. In 2008, the Legislature adopted "[c]ertain amendments to the enabling act of the Council on Affordable Housing. . . necessary to provide guidance to the council to ensure consistency with the legislative intent, while at the same time clarifying the limitations of the council in its rulemaking." L. 2008, c. 46, N.J.S.A. 52:27D-302(i). In many areas, from the income levels of households eligible for affordable housing to how Mount Laurel trust funds are administered, the Legislature overturned COAH's rules. Yet the Legislature did not disapprove COAH's treatment of the obligation as cumulative, even though at that point the cumulative obligation had been the subject of a published Appellate Division decision, In re Six Month Extension, supra, and two Third Round rulemaking processes.

²The Appellate Division also unpersuasively cites a statement of legislative intent from legislation introduced while the appeal was pending, which has not been enacted in either house. In re Declaratory Judgment Actions, supra, slip op. at 46, n.13. "Pending legislation, however, is of little value in determining legislative intent." Koch v. Director, Div. of Taxation, 157 N.J. 1, 13 (1999).

In the face of decades of consistent law, and a reported Appellate Division decision to the contrary, the Appellate Division's conclusion that the FHA prohibits cumulative prospective need obligations should not be permitted to stand. Nothing the panel cited, least of all its reliance on its own understanding of the FHA to the exclusion of the agency's interpretation, is sufficient to overcome the Court's order to rely upon past COAH practices and Appellate Division precedent, rather than to strike out in new directions.

B. The Appellate Division's decision should be stayed.

The Appellate Division's decision should be stayed pending the completion of the proceedings at the Supreme Court because the decision will result in confusion and delay in the pending Mount Laurel declaratory judgment proceedings; the decision will harm lower-income New Jerseyans; and the decision is clearly contrary to established law.

To evaluate an application for a stay, this Court in essence considers the soundness of [the lower] court's ruling and the effect of a stay on the parties and the public. See Crowe v. De Gioia, 90 N.J. 126 (1982). . . . When a case presents an issue of "significant public importance," a court must consider the public interest in addition to the traditional Crowe factors.

[Garden State Equal. v. Dow, 216 N.J. 314, 320-21 (2013).]

Here, clear and convincing evidence supports each of the three required Crowe factors. In addition, as a stay would maintain the status quo of the law as it stood before the Appellate Division

decision, the Court "may take a less rigid view than it would after a final hearing." See Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012).

First, a stay will prevent irreparable harm to lower-income New Jerseyans, whose access to a fair share of affordable housing in New Jersey depends on the courts' consistent and efficient application of Mount Laurel principles. All parties' experts agree that at minimum tens of thousands of homes hang in the balance. The Appellate Division's decision calls into question the basis of earlier grants of substantive certification, settlements, and ongoing trial proceedings that have relied on the decades of consistent law providing for a cumulative fair share obligation, and which have rewarded, rather than ignored, compliance. This outcome fosters confusion, delay, and additional litigation which this Court explicitly sought to avoid. In re N.J.A.C. 5:96 and 5:97, 221 N.J. at 5. This is not a speculative harm: Within one week after the Appellate Division's decision, three Mount Laurel judges are proceedings differently than they were ordered to by the Court. See Ma106-11 (trial court orders addressing new requirements imposed by Appellate Division).

Second, FSHC also has a high probability of success on the merits based on settled law. As argued above, this Court instructed the trial courts to follow settled law, which accounts for gap periods. Every set of regulations proposed or adopted by COAH since 1994 has included a cumulative approach to determining

prospective housing need, including all "gap periods," and multiple published Appellate Division decisions have affirmed this practice.

Third, the hardship to the parties of additional relitigation of issues outweighs any hardship resulting from the stay. All parties will be harmed if the trial courts are made to consider additional briefing, expert reports, and trial witnesses based on a flawed understanding of the law, only to have to reconsider the same issue again should this Court ultimately reverse.

Finally, this matter presents an issue of "significant public importance" that warrants the court's consideration of the public interest in addition to the traditional Crowe factors. See, e.g., McNeil v. Leg. Apportionment Comm'n of N.J., 176 N.J. 484 (2003) (granting stay of decision changing longstanding practices). The Appellate Division's decision impact hundreds of municipalities in New Jersey and tens of thousands of lower-income New Jersey families, seniors, and people with disabilities.

These factors weigh heavily in favor of granting a stay of the Appellate Division's unexpected and erroneous decision.

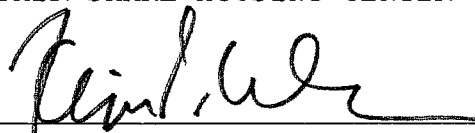
V. Conclusion

In sum, court and agency decisions for over two decades have consistently held that prospective need runs cumulatively, inclusive of any gap periods. The Court should grant leave to appeal and stay the decision below, thereby allowing the trial proceedings to continue in accordance with this Court's decision in Mount Laurel IV.

Dated:

7/20/2014

Respectfully submitted,
FAIR SHARE HOUSING CENTER

A handwritten signature in cursive script, appearing to read "Kevin D. Walsh", written over a horizontal line.

Kevin D. Walsh, Esq.

A handwritten signature in cursive script, appearing to read "Adam M. Gordon", written over a horizontal line.

Adam M. Gordon, Esq.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3323-15T1

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).

APPROVED FOR PUBLICATION

July 11, 2016

APPELLATE DIVISION

Argued June 6, 2016 — Decided July 11, 2016

Before Judges Lihotz, Fasciale and Nugent.

On appeal from an interlocutory order of
Superior Court of New Jersey, Law Division,
Ocean County, Docket No. L-2640-15.

Jeffrey R. Surenian argued the cause for
appellant Township of Barnegat (Jeffrey R.
Surenian & Associates, L.L.C., attorneys;
Mr. Surenian, Michael A. Jedziniak, Erik C.
Nolan, and Michael J. Edwards, on the
briefs).

Kevin D. Walsh argued the cause for
respondent Fair Share Housing Center (Mr.
Walsh and Adam M. Gordon, on the brief).

Stephen M. Eisdorfer argued the cause for
respondent New Jersey Builders Association
(Hill Wallack, L.L.P., attorneys; Mr.
Eisdorfer, Thomas F. Carroll, III, and Emily
P.W. Santoro, on the brief).

Edward J. Buzak argued the cause for
respondent NJ State League of Municipalities
(The Buzak Law Group, L.L.C., attorneys; Mr.
Buzak, on the brief).

Richard J. Hoff, Jr. argued the cause for respondent Highview Homes, L.L.C. (Bisgaier Hoff, L.L.C., attorneys; Mr. Hoff and Danielle Novak Kinback, on the brief).

Edward J. Boccher argued the cause for respondent Township of Brick (DeCotiis, Fitzpatrick & Cole, L.L.P., attorneys; Mr. Boccher, of counsel and on the brief; Louis N. Rainone and Wendy Rubinstein, on the brief).

Gilmore & Monahan, P.C., attorneys for respondents Township of Jackson and Township of Little Egg Harbor, join in the brief of appellant Township of Barnegat.

DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys for respondent Township of Toms River, join in the brief of appellant Township of Barnegat.

Gluck Walrath, L.L.P., attorneys for respondent Township of Ocean, join in the brief of appellant Township of Barnegat.

Dasti, Murphy, McGuckin, Ulaky, Koutsouris, & Connors, attorneys for respondent Township of Stafford, join in the brief of appellant Township of Barnegat.

Jonathan E. Drill argued the cause for amicus curiae The Municipal Group (Stickel, Koenig, Sullivan & Drill, L.L.C., attorneys; Mr. Drill, of counsel and on the brief).

Donald J. Sears argued the cause for amicus curiae Township of South Brunswick.

Ronald L. Israel argued the cause for amicus curiae Colts Neck Township (Chiesa Shahinian & Giantomasi, P.C., attorneys; Mr. Israel, on the brief).

Archer & Greiner, P.C., attorneys for amicus curiae Township of Middletown (Brian Michael

Nelson, of counsel and on the brief; Kira S. Dabby, on the brief).

Michael B. Steib, attorney for amicus curiae Township of Millstone.

Lowenstein Sandler, L.L.P., attorneys for amicus curiae American Planning Association-New Jersey Chapter, New Jersey Future, and the Housing & Community Development Network of New Jersey (Catherine Weiss and Katy Akopjan, on the brief).

Disability Rights New Jersey, amicus curiae, for itself, and The Supportive Housing Association of New Jersey, The Housing Community Development Network of New Jersey, Collaborative Support Programs of New Jersey, The Alliance for the Betterment of Citizens with Disabilities, The New Jersey Association of Community Providers, The Arc of New Jersey, New Jersey Association of Mental Health and Addiction Agencies, The Coalition of Mental Health Consumer Organizations, The System of Care Association, The New Jersey Psychiatric Rehabilitation Association, The Mental Health Association in New Jersey, Advancing Opportunities, Community Access Unlimited, The Community Health Law Project, and Autism New Jersey (Iraisa Orihuela-Reilly, Susan Saidel, and Joseph B. Young, on the brief).

The opinion of the court was delivered by

FASCIALE, J.A.D.

In the wake of the New Jersey Supreme Court's order requiring judicial oversight of municipal housing obligations to preclude exclusionary development schemes, see In re Adoption of N.J.A.C. 5:96 & 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (In re N.J.A.C. 5:96 II), we granted

the Township of Barnegat's¹ motion for leave to appeal from an interlocutory order entered by a designated Mount Laurel² judge, directing the court's Special Regional Master to include, as a new, "separate and discrete" component, an additional calculation for establishing a municipality's affordable housing need from 1999 to 2015 (the gap period).³ In entering the order, the judge concluded that a municipality's fair share affordable housing obligation for the third-round cycle is comprised of (1) its newly-created, court-imposed, "separate and discrete" gap-

¹ We granted leave to appeal on behalf of the Township of Barnegat, In re Twp. of Barnegat, L-1856-15, along with twelve consolidated declaratory judgment complaints filed by Ocean County municipalities: In re Borough of Beach Haven, L-2217-15; In re Township of Berkeley, L-1855-15; In re Township of Brick, L-1857-15; In re Township of Jackson, L-1879-15; In re Township of Lacey, L-1912-15; In re Township of Little Egg Harbor, L-1911-15; In re Township of Manchester, L-1910-15; In re Township of Ocean, L-1884-15; In re Borough of Pine Beach, L-1687-15; In re Borough of Point Pleasant, L-1858-15; In re Township of Stafford, L-1913-15; and Township of Toms River, L-1867-15.

² S. Burlington Cty. NAACP v. Twp. of Mount Laurel, 67 N.J. 151 (Mount Laurel I), appeal dismissed and cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975); and S. Burlington Cty. NAACP v. Twp. of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II).

³ The February 18, 2016 order includes a signature of another judge who handled two of these thirteen consolidated matters, and who joined the opinion of the Mount Laurel judge. Reference in our decision to the "court" or "judge" refers to the Mount Laurel judge who entered the order and rendered the opinion under review.

period obligation; (2) unmet prior round obligations from 1987 to 1999; (3) present need; and (4) prospective need.

We granted amicus status to the following entities that urged us to reverse the order: Colts Neck Township; Township of Millstone; Township of Middletown; Township of South Brunswick; The Municipal Consortium; and the Municipal Group.⁴ The New Jersey State League of Municipalities (NJLM) also appeared before the court as a respondent.

These entities contend the court is without legal authority to create a "separate and discrete" gap-period obligation. Instead, they maintain that a municipality's affordable housing obligation for the third-round cycle is comprised of unmet prior round obligations from 1987 to 1999, present need, and prospective need. They argue that prospective need projects into the future a town's housing obligation for ten years from the current time, not from the beginning of the gap period in 1999. They acknowledge that the identifiable housing need that arose during the gap period would be captured by a town's present need obligation, but they are adamant that there is no "separate and discrete" gap-period obligation.

⁴ The Municipal Group is a formal coalition of hundreds of municipalities organized to address fair share methodological issues in the aftermath of the Court's opinion in In re N.J.A.C. 5:96 II.

We granted amicus status to the following entities that urged us to affirm the order: Disability Rights New Jersey; the New Jersey Chapter of the American Planning Association; New Jersey Future; and the Housing and Community Development Network.

Fair Share Housing Center (Fair Share), New Jersey Builders Association (NJBA), and Highview Homes, L.L.C. (Highview) appeared before the court as intervenors and, pursuant to In re N.J.A.C. 5:96 II, Fair Share participated as an interested party. Fair Share agrees that a municipality's affordable housing obligation for the third-round cycle is comprised of unmet prior round obligations from 1987 to 1999, present need, and prospective need. Fair Share concedes that a town's prospective need requires calculations projecting forward ten years. Fair Share asserts, however, that prospective need also requires a municipality to perform housing calculations retroactively during the gap period. Therefore, Fair Share maintains that gap-period housing need comprises part of a town's calculation of its prospective need. As a result, Fair Share defines prospective need differently than those entities urging us to reverse the order. For Fair Share, prospective need covers a period of twenty-seven years: from 1999 to the present, and then ten years into the future. Thus, to the

extent a municipality is required to establish its prospective need from 1999 to the present, and then ten years into the future, Fair Share urges us to uphold the court-imposed "separate and discrete" gap-period housing obligation.

The narrow legal issue on appeal is whether a "separate and discrete" gap-period affordable housing obligation is authorized by (1) the core principles of the Mount Laurel doctrine, as codified in the Fair Housing Act of 1985 (FHA), N.J.S.A. 52:27D-301 to -329; and (2) In re N.J.A.C. 5:96 II. Resolution of this legal question specifically addresses whether a municipality's prospective need involves a retroactive housing obligation starting in 1999. Our focus, therefore, is on the propriety of the court's conclusion that such a "separate and discrete" obligation is "constitutionally mandated."

Applying the core principles of the Mount Laurel doctrine and the plain language of the FHA, including its unambiguous definition of "prospective need" - a forward "projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality," N.J.S.A. 52:27D-304(j) - and following the Supreme Court's admonition not to become an alternative administrative decision maker for unresolved policy issues surrounding the Third Round Rules, we hold that the FHA does not require a municipality to

retroactively calculate a new "separate and discrete" affordable housing obligation arising during the gap period. Pursuant to In re N.J.A.C. 5:96 II, "previous methodologies employed in the First and Second Round Rules should be used to establish present and prospective statewide and regional affordable housing need," and prior round unfulfilled obligations "should be the starting point for a determination of a municipality's fair share responsibility." Supra, 221 N.J. at 30 (emphasis added). As the Court instructed, subject to the guidelines and principles it outlined in In re N.J.A.C. 5:96 II, Mount Laurel judges

may confidently utilize similar discretion [used by the Council on Affordable Housing (COAH)] when assessing a town's plan, if persuaded that the techniques proposed by a town will promote for that municipality and region the constitutional goal of creating the realistic opportunity for producing its fair share of the present and prospective need for low- and moderate-income housing.

[Ibid. (emphasis added).]

We emphasize that under our tripartite system of government, the imposition of a new retrospective calculation, designed to establish affordable housing need during the gap period -- a new methodology that essentially addresses "unresolved policy details of replacement Third Round Rules" -- is best left for consideration by the Legislative and Executive branches of government, where public policy issues associated with such an

additional "separate and discrete" obligation can be fairly and fully debated in the public forum. The Legislature may craft new legislation addressing any gap period between housing cycles if that is the course it wishes to take. Enforcement of subsequent legislation promoting affordable housing needs - and its effect on a municipality's Mount Laurel obligation - would still be a matter that may be brought to the courts.

The judge did not determine whether any of the town's plans will satisfy their constitutional affordable housing obligations. At this point in the litigation, his main legal concern was whether to impose a "separate and discrete" affordable housing obligation for the gap period, in addition to a town's unmet prior round, present, and prospective obligations. Having resolved that legal question, the judge may now determine whether the towns have met their constitutional goal of creating "[a] realistic opportunity for producing its fair share of the present and prospective need for low- and moderate-income housing." In re N.J.A.C. 5:96 II, supra, 221 N.J. at 30 (emphasis added).

We therefore reverse the order and remand for further proceedings.

I.

We begin by reviewing the pertinent principles of the Mount Laurel doctrine, the enactment of the FHA, the role of COAH, and the Supreme Court's decision in In re N.J.A.C. 5:96 II.⁵

In Mount Laurel I, the Supreme Court concluded that developing municipalities must "presumptively make realistically possible an appropriate variety and choice of housing" through land use regulations. Supra, 67 N.J. at 174. The Court stated that such municipalities "cannot foreclose the opportunity of the classes of people mentioned for low[-] and moderate[-income] housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need." Ibid. The Court determined that land use regulations are encompassed in the State's police power, required such regulations to "promote public health, safety, morals or the general welfare," and concluded "a zoning enactment which is contrary to the general welfare is invalid." Id. at 175.

Approximately eight years later, the Court returned to the issue. In Mount Laurel II, supra, 92 N.J. 158, the Court

⁵ In general, the Court determined COAH failed to promulgate valid Third Round Rules, concluded that exhausting administrative remedies before COAH was therefore no longer necessary, and established procedures for affordable housing matters to proceed before designated Mount Laurel judges.

reaffirmed the doctrine and fashioned a judicial remedy for determining a municipality's constitutional obligation to provide for low- and moderate-income housing. In re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Hous., 215 N.J. 578, 587-89 (2013) (In re N.J.A.C. 5:96 I). Adding teeth to the doctrine, the Court sanctioned a builder's remedy, which permitted builder-plaintiffs to sue for the opportunity to construct housing at higher densities than a municipality would allow. Id. at 589. In strengthening the Mount Laurel doctrine, the Court explained that the core of the doctrine was a municipality "would satisfy [its] constitutional obligation by affirmatively affording a realistic opportunity for the construction of its fair share of the present and prospective regional need for low[-] and moderate[-income] housing." Mount Laurel II, supra, 92 N.J. at 205. The Court stated that a realistic opportunity depends on "whether there is in fact a likelihood – to the extent economic conditions allow – that the lower income housing will actually be constructed." Id. at 222. Although the Court devised a scheme to address resolution of litigation in this field, it reiterated its preference for legislative action. Id. at 212-13. Two years later, and in the aftermath of AMG Realty Co. v. Township of Warren, 207 N.J. Super. 388, 453 (Law Div. 1984), which

articulated a method for calculating affordable housing obligations that substantially impacted the likelihood of whether lower income housing would actually be constructed, the Legislature enacted the FHA.

The FHA codified the core constitutional holding undergirding the Mount Laurel obligation. In re N.J.A.C. 5:96 I, supra, 215 N.J. at 584. The FHA required "reasonable fair share housing guidelines and standards." N.J.S.A. 52:27D-302(d). The FHA created COAH, N.J.S.A. 52:27D-305, which was designed to provide an administrative alternative to litigating constitutional compliance in exclusionary zoning actions. In re N.J.A.C. 5:96 II, supra, 221 N.J. at 7-8, 11.

COAH's primary responsibility was to assign and determine municipal affordable housing obligations. Id. at 7 (citing N.J.S.A. 52:27D-305, -307). The FHA required COAH to enact and thereafter update regulations that established statewide affordable housing need; to assign an affordable housing obligation to each municipality for its designated region; and to identify the techniques available to municipalities in addressing the assigned obligation. Ibid. (citing N.J.S.A. 52:27D-307, -308). The criteria and guidelines that the FHA directed COAH to adopt were targeted for "[m]unicipal determination of its present and prospective fair share of the

housing need in a given region which shall be computed for a [ten]-year period." N.J.S.A. 52:27D-307(c)(1). The FHA defined prospective need:

"Prospective need" means a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. In determining prospective need, consideration shall be given to approvals of development applications, real property transfers and economic projections prepared by the State Planning Commission established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.).

[N.J.S.A. 52:27D-304(j).]

Although municipalities were free to resolve constitutional Mount Laurel obligations in the courts, the FHA preferred resolution in an administrative forum. In re N.J.A.C. 5:96 II, supra, 221 N.J. at 4.

The FHA encouraged and rewarded voluntary municipal compliance by (1) providing a period of immunity from civil lawsuits to towns that participated in the process for demonstrating constitutional compliance (the exhaustion-of-administrative-remedies requirement); and (2) providing a presumption of validity in any later exclusionary zoning litigation for municipalities who secured from COAH a substantive fair housing plan certification. Ibid. The

viability of these provisions was subject to COAH's updating of housing obligations, as well as related substantive and procedural rules. Ibid.

In 1986, COAH began adopting rules delineating the affordable housing obligations of municipalities. In re Adoption of N.J.A.C. 5:94 and 5:95 by the N.J. Coal. on Affordable Hous., 390 N.J. Super. 1, 23 (App. Div.), certif. denied, 192 N.J. 71 (2007) (In re N.J.A.C. 5:94). COAH adopted rules covering the periods of 1987 to 1993 – the First Round Rules – and 1993 to 1999 – the Second Round Rules. In re N.J.A.C. 5:96 I, supra, 215 N.J. at 590. These rules generally utilized a methodology for calculating affordable housing obligations employed before the Legislature enacted the FHA. Ibid.

In the First Round Rules, COAH defined present need as "the total number of deficient housing units occupied by low[-] or moderate[-income] households as of July 1, 1987." Ibid. (quoting N.J.A.C. 5:92-1.3). COAH used several factors to establish present need, such as "overcrowding, age of unit, and lack of plumbing, kitchen or heating facilities as indicators of dilapidated housing." Id. at 590-91.

The First Round Rules also incorporated the statutory definition of prospective need as "a projection of low[-] and

moderate[-income] housing needs based on development and growth . . . reasonably likely to occur in a region or a municipality." Id. at 591 (quoting N.J.A.C. 5:92-1.3). COAH analyzed statistics to project forward the number of "'low- and moderate-income households' that would form between 1987 and 1993." Ibid. (quoting N.J.A.C. 5:92, Appendix A at 92-49). In determining prospective need, COAH considered such things as municipalities' "approvals of development applications, real property transfers and economic projections prepared by the State Planning Commission." Ibid. (quoting N.J.A.C. 5:92-1.3).

For the Second Round Rules, COAH used the same methodologies employed in the First Round Rules. Id. at 592. COAH also adopted additional regulations granting credits and various adjustments to reduce municipalities' fair share figures. Ibid. (summarizing the adopted regulations granting credits and adjustments). Various legal challenges to the First and Second Round Rules failed. Ibid.

Essentially, the methodology of allocating municipalities' affordable housing obligations largely followed the remedial approaches established by Mount Laurel II and AMG Realty. Id. at 593. COAH first calculated the need for affordable housing in each of the State's regions, then allocated to each municipality its fair share of the present and prospective

regional need. Ibid. A municipality would be assigned a proportionate fair share of the region's housing need based on economic projections and its capacity to accommodate affordable housing. Ibid. A municipality would subject itself to the possibility of defending a builder's remedy challenge if it failed to create a realistic opportunity for satisfying its assigned share. Ibid.

Although the Second Round Rules expired in 1999, COAH belatedly promulgated its first iteration of the Third Round Rules in 2004.⁶ Ibid. The rule proposal published in the New Jersey Register explained that a municipality's fair share for the period from 1987 through January 1, 2014, would be calculated using three criteria:

(1) a municipality's "rehabilitation share" based on the condition of housing revealed in the data gathered for the 2000 Census, previously known as a municipality's indigenous need; (2) a municipality's unsatisfied prior round obligation (1987 through 1999), satisfaction of which will be governed by the second round rules; and (3) a municipality's "growth share" based on housing need generated by statewide job growth and residential growth from 1999 through 2014.

⁶ We characterized this delay as "dramatic," "inexplicable," and frustrating the public policies embodied by the Mount Laurel line of cases. In re Six Month Extension of N.J.A.C. 5:91 et seq., 372 N.J. Super. 61, 95-96 (App. Div. 2004) (In re Six Month), certif. denied, 182 N.J. 630 (2005).

[Id. at 593-94 (quoting In re N.J.A.C. 5:94, supra, 390 N.J. Super. at 27).]

During the gap period, we considered challenges to the validity of the Third Round Rules and remanded the matter to COAH on two occasions with instructions to adopt revised Third Round Rules.

Our first remand to COAH with instructions to adopt revised rules occurred in 2007. In re N.J.A.C. 5:94, supra, 390 N.J. Super. at 47. At that time, we sustained some but rejected many of the challenges to the first iteration of the Third Round Rules. Importantly, Judge Mary Catherine Cuff, writing for the panel, noted that "municipalities are responsible for fulfilling their prior round obligation." Id. at 28 (citing N.J.A.C. 5:94-2.1(a)(2)).

Judge Cuff's opinion rejected appellants'⁷ arguments that the "rehabilitation share" of a municipality's affordable housing obligation, sometimes also referred to as present need, should include "cost burdened" low- and moderate-income households that reside in standard housing and households that lack permanent housing or live in overcrowded housing; that COAH's methodology for identifying substandard housing was "arbitrary and unreasonable"; that the [T]hird [R]ound

⁷ The appellants challenged the validity of COAH's substantive rules for the third round that calculated affordable housing needs from 1999 to 2014, as well as the validity of several regulations.

[R]ules improperly eliminated the part of the first and second round methodologies that required reallocation of excess present need in poor urban municipalities to other municipalities in the region; that the use of regional contribution agreements to satisfy part of a municipality's affordable housing obligations violates the Mount Laurel doctrine and federal and state statutory provisions; that the allowance of bonus credits towards satisfaction of a municipality's affordable housing obligations unconstitutionally dilutes those obligations; and that the rule relating to vacant land adjustments violates the Mount Laurel doctrine and the FHA.

However, Judge Cuff's opinion invalidated the parts of the original [T]hird [R]ound [R]ules that reduced statewide and regional affordable housing need based on "filtering"; adopted a growth share approach for determining a municipality's fair share of prospective needs for affordable housing and excluded job growth resulting from rehabilitation and redevelopment in determining job growth; compelled developers to construct affordable housing without any compensating benefits; authorized a municipality to give a developer the option of payment of a fee in lieu of constructing affordable housing, but provided no standards for setting those fees; and authorized a municipality to restrict up to 50% of newly constructed affordable housing to households with residents aged fifty-five or over.

[In re Adoption of N.J.A.C. 5:96 and 5:97 by the N.J. Coal. on Affordable Hous., 416 N.J. Super. 462, 475-76 (App. Div. 2010) (emphasis added) (citations omitted), aff'd as modified, 215 N.J. 578 (2013).]

In 2010, Judge Stephen Skillman, also writing for a different panel, invalidated a substantial portion of the revised Third Round Rules, including the growth share methodology used by COAH, id. at 511-12; regulations concerning the preparation of fair share plans, id. at 487-88; presumptive incentives embodied in the regulations, id. at 488-93; and regulations concerning rental credits, id. at 493-95.

Judge Skillman upheld several of the regulations, however, such as the elimination of reallocated present need, id. at 500-02 (reasoning COAH possessed the authority to focus on municipalities' own obligations, see N.J.A.C. 5:97-2.4, rather than reallocating excess present need away from those overburdened with substantial housing); and COAH's decision to use the prior round obligations without updating the obligations based on actual household growth, id. at 498-500. Consequently, we redirected COAH to adopt new rules.

During the gap period, the New Jersey Supreme Court also invalidated revised Third Round Rules and issued deadlines for COAH to adopt new regulations. In re N.J.A.C. 5:96 I, supra, 215 N.J. at 619-20. Acknowledging the FHA had set a course tracking the Mount Laurel II allocation methodology for satisfaction of present and prospective need, the Court remarked that "the Third Round Rules' validity hinges in whether they are

consistent with the FHA." Id. at 612-17. In 2014, the Court granted COAH an additional five months to adopt new rules. In re N.J.A.C. 5:96 and 5:97, 220 N.J. 355, 355-56 (2014).

COAH failed to meet the extension deadline, which led the Court to grant Fair Share's motion in aid of litigants' rights in In re N.J.A.C. 5:96 II, supra, 221 N.J. at 5-6. The Court recognized the administrative process had become nonfunctioning. Id. at 5. As a result, the FHA's exhaustion-of-remedies requirement had been rendered futile. Ibid. Therefore, there no longer existed a legitimate basis to block access to the courts for resolution of municipal compliance with constitutional affordable housing. Ibid. Recognizing there existed various stages of municipal preparation during the gap period, the Court established a transitional process for exclusionary zoning actions to proceed. Ibid. The Court also emphasized:

Importantly, nothing herein should be understood to prevent COAH from fulfilling its statutory mission to adopt constitutional rules to govern municipalities' Third Round obligations in compliance with the FHA. Nor should the action taken by this Court, in the face of COAH's failure to fulfill its statutory mission, be regarded as impeding the Legislature from considering alternative statutory remedies to the present FHA.

[Id. at 6 (citation omitted).]

The Court developed a process which tracked the processes provided for in the FHA. Id. at 29. It did so to facilitate a return to agency proceedings in the event COAH promulgated new Third Round Rules. Ibid. In establishing the process for exclusionary zoning actions to proceed, the Court stated:

[I]t is not this Court's province to create an alternate form of statewide administrative decision maker for unresolved policy details of replacement Third Round Rules The courts that will hear such declaratory judgment applications or constitutional compliance challenges will judge them on the merits of the records developed in individual actions before the courts. However, certain guidelines can be gleaned from the past and can provide assistance to the designated Mount Laurel judges in the vicinages.

[Id. at 29-30 (emphasis added).]

The Supreme Court established procedures for addressing two classes of municipalities that were stranded by COAH's inability to adopt valid Third Round Rules. Id. at 24-29 (outlining the procedures for municipalities that "made the effort to comply promptly with the Third Round Rules and . . . received a grant of substantive certification," and municipalities that had "participating" status with COAH).

Although presented with numerous opportunities to do so, at no point did the Court, the Legislature, or the Appellate Division impose an additional separate gap-period obligation.

Rather, in establishing a municipality's fair share affordable housing obligation, the focus consistently remained on present and prospective housing need.

II.

We now turn to the proceedings conducted by the judge leading to his ruling that municipalities are "constitutionally mandated" to address the gap period as a "separate and discrete" component of their fair share Mount Laurel obligation.

Following the procedures established by the Court in In re N.J.A.C. 5:96 II, supra, 221 N.J. at 21-34, several Ocean County municipalities filed declaratory judgment actions seeking resolution of their Mount Laurel obligations. The judge undertook preliminarily to determine the present and prospective affordable housing needs of the municipalities. To reach this determination, the court reviewed several expert reports that expressed differing opinions on the subject.

The judge appointed Richard B. Reading as the Special Regional Master, who was to "assist the court in making the preliminary determination envisioned by the Supreme Court of the present and prospective needs." The judge allowed submissions of expert reports and expected to conduct a plenary hearing at which the court would address the conflicting expert opinions as

to the methodology for calculating the municipalities' affordable housing obligations.

On December 29, 2015, Mr. Reading submitted a report entitled "COAH's Un[-]adopted Third Round Methodology Calculation of 'Gap' Period Housing Needs." In this report, Mr. Reading listed these questions the judge identified in a case management order:

1) Is the methodology provided in Appendix D^[8] of the current iteration of the [un-adopted] Third Round Rules an appropriate and correct methodology?

2) Do the trial courts have the authority to require a municipality to address the . . . 'gap' obligation component as part of a municipality's prior obligation?^[9]

Mr. Reading concluded that the "methodology in Appendix D [did] not follow the methodologies utilized in the calculation of affordable housing needs employed in the [p]rior [r]ounds." He stated that "[a] review of the history of Mount Laurel did not disclose a methodology that expanded the calculation of fair share beyond [p]resent and [p]rospective [n]eed." He remarked that Sections 304 and 307 of the FHA established "prospective

⁸ Mr. Reading identified the un-adopted Third Round Rules as N.J.A.C. 5:99, Appendix D.

⁹ The third question, "[w]hat is the proper allocation of the 1000 unit cap . . . [and] how should the gap be applied to any 'gap period' need if one exists," is not at issue.

need as a period of ten years and includes a projection of housing needs based upon development and growth that is reasonably likely to occur." He determined that the "inclusion of the prior [gap period] within prospective need is contrary to prior round methodologies, the language of the FHA and history of determining affordable housing needs." As to "identifying and quantifying" the housing need from the gap period, Mr. Reading stated:

[The unmet need arising during the gap period] was discussed in terms of the disposition of [low- and moderate-income] housing needs that existed . . . in the past. These households would be partially included by the [low- and moderate-income] households in over[]crowded or deficient housing units that are encompassed in the new calculation of [p]resent [n]eed. Those [low- and moderate-income] households that have occupied sound (non-deficient) housing units are already [in] housing and would not represent an identifiable need. Some [low- and moderate-income] households formed during the gap period may no longer represent an affordable housing need due to a variety of reasons including death, changes in income, increase or decrease in household size, retirement and/or relocation outside of New Jersey. . . . Although it may be possible to generate an estimate of such a residual need, such an estimate would be speculative.

[(Emphasis added).]

Mr. Reading stated "there is a uniform consensus among the interested parties that the methodology provided in Appendix D

is not an appropriate and correct methodology for the calculation of affordable housing [gap-period] needs." He explained further that even though there existed this consensus rejecting COAH's un-adopted methodology, "an appropriate methodology for determining an affordable housing need [during the 1999-2015 'gap period' was] not . . . presented."¹⁰

On February 17, 2016, Mr. Reading issued a report entitled "Bridging the Gap, 1999-2015 'Gap' Period Affordable Housing Needs." In this report, Mr. Reading responded to expert opinions contained in reports submitted by Dr. David N. Kinsey, on behalf of Fair Share, and Econsult. After reviewing these opinions, Mr. Reading recommended to the judge that he "consider the inclusion of the [g]ap[-p]eriod, calculated distinctly and separately from [p]resent and [p]rospective [n]eed," which is a markedly different recommendation than what he expressed previously.

Mr. Reading stated Dr. Kinsey provided two alternatives for calculating affordable housing needs arising during the gap

¹⁰ Mr. Reading acknowledged, in a later report, Fair Share's contention that the gap-period should be included "within the extended 1999-2025 [p]rospective [n]eed." He also considered the NJLM and a report prepared by Econsult Solutions (Econsult), on behalf of a consortium of municipalities, stating there is no basis for "retrospective analysis of housing need, which has always been based on 'present and prospective need.'" (Emphasis added).

period: calculating the entire period from 1999-2025 as a prospective need, without a separation of the gap period and prospective need projection; and replicating COAH's 1994 recalculation of the 1987-1993 housing need (although Mr. Reading recognized that such a recalculation was done to adjust a prior (1987-1993) obligation, not to establish a methodology for addressing a lapse in assigned obligations).

Econsult provided a comprehensive methodology for establishing the 1987-1999 prior round obligations, the 2015 present need, and the 2015-2025 prospective need. Econsult's methodology did not include calculations for the gap period. Econsult critiqued Dr. Kinsey's two alternatives. As to the first alternative, Econsult maintained essentially that gap-period low- and moderate-income households living in deficient housing would be encompassed in present need, while low- and moderate-income households living in adequate housing would not represent an identifiable need. As to the second alternative, Econsult reiterated its position that present need and prospective need combine to represent the entire fair share need of, in its opinion, Dr. Kinsey's calculation of retrospective or gap-period needs.

In his February 17, 2016 report, Mr. Reading stated that the gap-period issue had become a legal issue. He acknowledged

that all parties agreed low- and moderate-income households were formed during the gap period and have secured housing, some of which were deficient or overcrowded, which would be reflected in present need. As to the proper methodology for calculating municipalities' affordable housing need arising during the gap period, he concluded:

The calculation of the current needs of the affordable hous[ing] formed during the [gap period] is not a process that is [e]mbedded in the [p]rior [r]ound methodology, [and] is not projected ([p]rospective) need, but should be undertaken as a separate and discrete component of affordable housing need. Prior submissions provided by [Fair Share] and Econsult on December 8, 2015 contended that the calculation for the [g]ap [p]eriod affordable housing needs were unnecessary because they were properly a part of the 1999-2025 [p]rospective [n]eed . . . or were unnecessary altogether because the FHA does not make any provision for a retrospective need

. . . .

Assertions that a determination of [g]ap [p]eriod affordable housing need cannot be reduced to a precise mathematical calculation devoid of all assumptions and estimates is not distinctly different than the preparation of estimates for . . . [p]resent . . . and [p]rospective [n]eed[,] [which] are likewise predicated upon estimates [and] . . . would . . . be no more impaired.

As a result, Mr. Reading recommended the court should sanction a completely new and different methodology than that used during

the first two rounds or in the FHA, one that "should be calculated as [a] separate and discrete component of affordable housing need utilizing data and procedures appropriate to a prior, rather than future period." In other words, he recommended a methodology that retrospectively calculated gap-period housing need, rather than, as he stated in his December 29, 2015 report, the unmet gap-period housing needs being included in "the new calculation of present need."

The next day, on February 18, 2016, the court adopted Mr. Reading's new recommendation and issued its opinion. As to the gap period, the court stated:

The court finds municipalities are constitutionally mandated to address [the gap-period] obligation. This "gap period" need is to be calculated as a separate and discrete component of a municipality's fair share obligation. This component[,] together with a municipality's unmet prior round obligations [from] 1987 to 1999[,] and its present need and prospective need[,] shall comprise its "fair share" affordable housing obligation for the third [round] housing cycle.

.

[I]t is ironic that both parties (or interests) appearing in [a] 2004 Appellate Division case are now advancing arguments before this court [that] they vehemently opposed in [In re Six Month].

.

Even if the municipalities were [therefore] not [now] estopped from advancing their position[,] and despite their efforts here to distinguish . . . [In re Six Month] . . . the court finds the underlying principles in [In re Six Month] . . . are the same as the matter here.

[(Emphasis added).]

III.

On appeal, the entities urging us to reverse the order argue that the judge erroneously imposed a new "separate and discrete" component of a municipality's fair share affordable housing obligation during the gap period. They contend the judge erred by: (1) failing to apply the plain language of the FHA; (2) ignoring the guidelines and principles established by In re N.J.A.C. 5:96 II; (3) applying the doctrine of judicial estoppel; and (4) acting as a replacement agency for COAH by resolving unresolved policy details of replacement Third Round Rules.

They assert that a municipality's fair share affordable housing obligation for the third-round cycle is comprised of: (1) the unmet prior round (before 1999) obligations; (2) present need; and (3) prospective need. They maintain, as Mr. Reading expressed in his December 29, 2015 report, that gap-period affordable housing needs would be captured in a town's calculation of its present need. They emphasize that imposing a retrospective gap-period obligation does not allow for a

realistic opportunity that the lower income housing will actually be constructed.

The entities urging us to affirm the order under review argue primarily that: (1) a municipality's prior round unfulfilled affordable housing obligations includes the gap period; (2) the FHA, as determined by COAH, provides for cumulative and uninterrupted calculations of prospective need; (3) COAH's interpretation of the FHA providing for gapless affordable housing need is reasonable; and (4) the judge's ruling complies with the FHA and In re N.J.A.C. 5:96 II.

Our standard of review is well settled. The sole question on appeal, whether a retrospective gap-period obligation is authorized by the core principles of the Mount Laurel doctrine, as codified in the FHA, and In re N.J.A.C. 5:96 II, is a legal issue not entitled to any special deference. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

IV.

Applying the plain language of the FHA, the guidelines and principles established by In re N.J.A.C. 5:96 II, and respecting the separation of powers doctrine,¹¹ we conclude that the judge

¹¹ The framers of the New Jersey Constitution articulated the separation of powers doctrine expressing that

(continued)

erroneously imposed a requirement that a municipality undertake a new, "separate and discrete" gap-period calculation – in addition to unmet prior round obligations, present, and prospective needs – to establish a municipality's fair share affordable housing obligation. We also reject the contention that judicial estoppel precludes reversal of the February 18, 2016 order under review.

A.

We start with the plain language of the FHA. Our paramount goal in interpreting a statute is to ascertain the Legislature's intent, and "generally[] the best indicator of that intent is the statutory language." DiProspero v. Penn, 183 N.J. 477, 492 (2005) (citation omitted). When interpreting a statute, we give words "their ordinary meaning and significance." Tumpson v. Farina, 218 N.J. 450, 467 (2014) (quoting DiProspero, supra, 183 N.J. at 492). Only when the statutory language is ambiguous and yields more than one plausible interpretation do we turn to

(continued)

[t]he powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.

[N.J. Const., art. III, ¶ 1.]

extrinsic sources, such as legislative history. DiProspero, supra, 183 N.J. at 492-93. Here, there is no ambiguity.

The plain language of the FHA refers to present and prospective need. Responding to the significantly high fair share obligations in the aftermath of AMG Realty, the Legislature enacted the FHA, finding that one of the "essential ingredients" to its response was "the establishment of reasonable fair share housing guidelines and standards." N.J.S.A. 52:27D-302(d). Consequently, the Legislature focused on present and prospective need, N.J.S.A. 52:27D-307(b), and charged COAH to adopt guidelines for "[m]unicipal determination of its present and prospective fair share of the housing need in a given region which shall be computed for a 10-year period," N.J.S.A. 52:27D-307(c)(1) (emphasis added).

The FHA defines prospective need not by looking backwards, but rather as a "projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality." N.J.S.A. 52:27D-304(j) (emphasis added). In determining prospective need, COAH considered such things as municipalities' "approvals of development applications, real property transfers and economic projections prepared by the State Planning Commission." In re N.J.A.C. 5:96 I, supra, 215 N.J. at 591 (quoting N.J.A.C. 5:92-1.3).

The FHA did not define present need, but in the valid First Round Rules, COAH defined present need as "the total number of deficient housing units occupied by low[-] or moderate[-income] households." Id. at 590 (quoting N.J.A.C. 5:92-1.3). COAH used several factors to establish present need, such as "overcrowding, age of unit, and lack of plumbing, kitchen or heating facilities as indicators of dilapidated housing." Id. at 590-91.

The judge noted that COAH, in each of its three unsuccessful attempts to promulgate Third Round Rules, referenced the gap period, albeit with different unapproved methodologies. Although the judge acknowledged COAH's reference to the gap period during its three iterations of the un-adopted Third Round Rules, we note that an agency is not at liberty to impose additional requirements onto a statute that do not exist on its face. See In re N.J.A.C. 5:96 I, supra, 215 N.J. at 614-15 (invalidating the growth share methodology in the Third Round Rules and explaining that COAH may not enact regulations plainly at odds with the FHA); see also Oberhand v. Dir., Div. of Taxation, 193 N.J. 558, 568 (2008) (explaining "an administrative agency's interpretation will not be followed when the agency extends a statute 'to give it a greater effect than its language permits'" (quoting GE Solid State v. Dir., Div. of

Taxation, 132 N.J. 298, 306 (1993)); Fedders Fin. Corp. v. Dir., Div. of Taxation, 96 N.J. 376, 392 (1984) (stating "[i]t is well established that [an agency's] regulatory authority cannot go beyond the Legislature's intent as expressed in the statute"); Serv. Armament Co. v. Hyland, 70 N.J. 550, 563 (1976) (explaining "an administrative interpretation which attempts to add to a statute something which is not there can furnish no sustenance to the enactment"). To the extent COAH interpreted the FHA to include a requirement beyond present and prospective need and fulfilling prior round obligations, we conclude such an interpretation is "at odds with the plain meaning of the [FHA]." Oberhand, supra, 193 N.J. at 568. The same proscription applies to the courts.

Importantly, during the sixteen-year gap period, the Legislature amended the FHA twelve times. It did not amend the FHA, however, to require a retrospective determination of gap-period obligations. Failure to so amend the FHA does not amount to Legislative authorization to retroactively adopt a new methodology for calculating affordable housing gap-period needs, even if COAH's un-adopted Third Round Rules sought to encapsulate the gap period. See GE Solid State, supra, 132 N.J. at 312-13 (rejecting that the Legislature's failure to interfere with an administrative interpretation is proof that the agency's

interpretation conforms with legislative intent or establishes legislative acquiescence); see also Airwork Serv. Div., Div. of Pac. Airmotive Corp. v. Dir., Div. of Taxation, 97 N.J. 290, 296 (1984) (explaining that administrative acquiescence is only relevant when "the Legislature's intent cannot otherwise be determined by a critical examination of the purposes, policies, and language of the enactment" (emphasis added)).

Fair Share, supported by Dr. Kinsey, interprets "prospective need" to mean that a town is required to look at affordable housing needs prospectively starting from 1999, in addition to a separate ten-year prospective need calculation from the present. In other words, Fair Share argues a town's "prospective need" would cover a period of twenty-seven years, from 1999 to ten years from now. We conclude such an interpretation is clearly at odds with the FHA's unambiguous definition of prospective need. As it is defined in the FHA, prospective need refers to a "projection" of growth in the future, namely a "projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality." By its nature, it does not involve retrospectively including a gap-period calculation.

In sum, to impose a gap-period requirement would inevitably add a new requirement not previously recognized under the FHA.

The Supreme Court has cautioned courts not to become a replacement agency for COAH in promulgating substantive rules. Rather, based on COAH's inaction, courts must work within the provisions of the FHA and should employ the first and second round methodologies to determine a municipality's compliance with its Mount Laurel obligations. Until COAH adopts Third Round Rules, or until the Legislature acts, the courts may not act as a legislature by imposing new, substantive obligations not recognized under the FHA.

B.

Next, the judge did not follow the guidelines established by the Court in In re N.J.A.C. 5:96 II. We will address the relief requested in In re N.J.A.C. 5:96 II, the Court's response, and then our application of the guidelines to the judge's ruling.

(i)

In In re N.J.A.C. 5:96 II, Fair Share, the NJBA, the NJLM, and various towns expressed their respective positions as to the guidance they believed the Court should provide to the designated Mount Laurel judges. We briefly summarize these competing positions to emphasize the Court's unwillingness to decide "unresolved policy details of replacement Third Round Rules" or to become a "replacement agency for COAH" by

essentially endorsing a new methodology for separately and discretely calculating affordable housing needs during the gap period.

[Fair Share] ask[ed] that the second-round methodology, with limited modifications, be directed for use in such [remand] proceedings and that newly authorized judicial actions proceed expeditiously and on a notice-and-opportunity-to-be-heard basis.

.

. . . [NJBA] contend[ed] that the administrative stalemate ha[d] permitted municipalities to "shelter themselves" from suit under COAH's jurisdiction without providing any additional affordable housing in years. They urge[d] the Court to fashion relief that [would] require courts to examine what towns have done to date in attempting to satisfy their constitutional obligations.

.

[Various towns] contend[ed] that trial courts would be tasked with determining whether a municipality's fair share allocation will be "cumulative" or applicable only to one compliance period. The[y] also contend[ed] that adjudicating such Mount Laurel matters would require courts to confront the myriad differences between the methodologies utilized in the prior rounds and those contained in the various iterations of COAH's Third Round Rules.

.

[NJLM] argue[d] that the 314 municipalities [which had submitted to

COAH's substantive certification under the earlier Third Round Rules] should not forfeit their protection from suit. According to NJLM, exclusionary zoning litigation would punish the municipalities, which [were] not responsible for COAH's most recent failure to adopt compliant Third Round Rules.

Notably, NJLM propose[d] an alternate solution, arguing that COAH ha[d] expended significant resources in developing the most recent proposed regulations, which efforts should not be wasted. NJLM suggest[ed] that the Court appoint "a former high-ranking policy-making official" to recruit three "professional planners" to assist in reviewing COAH's proposed Third Round Rules, the 3000 public comments, and any responses prepared by COAH's staff. NJLM propose[d] that this Court authorize those planners to revise the proposed Third Round Rules for review by the Court-selected "policy-making official." If the policy maker is satisfied, NJLM further propose[d] that he or she would present the revised regulations to this Court for approval, and for entry of an order directing COAH to adopt the Third Round Rules in that form.

[In re N.J.A.C. 5:96 II, supra, 221 N.J. at 12-16 (emphasis added).]

The Court responded to Fair Share's plea for guidance and, in light of the various stages of municipal preparation that had existed "as a result of the long period of uncertainty attributable to COAH's failure to promulgate Third Round Rules," the Court devised a transitional process before allowing exclusionary zoning actions to proceed. Id. at 20. In articulating the transitional process, and by expressing the

concomitant "guidelines . . . gleaned from the past [that] can provide assistance to the designated Mount Laurel judges," id. at 29-30, the Supreme Court did not include a new methodology for calculating additional housing obligations during the gap period. In our view, consideration of imposing such a new policy — that essentially addresses "unresolved policy details of replacement Third Round Rules" — is best left to the other two branches, where important public policy considerations can be fairly, fully, and openly debated.

(ii)

We now address the actual guidelines and principles listed by the Court for use by designated Mount Laurel judges handling declaratory judgment applications on constitutional-compliance applications. In enumerating these guidelines, the Court reiterated it did not intend to punish the towns that were "in a position of unfortunate uncertainty due to COAH's failure to maintain the viability of the administrative remedy." Id. at 23. Instead, the Court explained:

Our goal is to establish an avenue by which towns can demonstrate their constitutional compliance [i.e., present and prospective obligations] to the courts through submission of a housing plan and use of processes, where appropriate, that are similar to those which would have been available through COAH for the achievement of substantive certification. Those processes include conciliation, mediation,

and the use, when necessary, of special masters. The end result of the processes employed by the courts is to achieve adoption of a municipal housing element and implementing ordinances deemed to be presumptively valid if thereafter subjected to challenge by third parties.

[Id. at 23-24 (emphasis added).]

The Court then identified specific procedures, guidelines, and principles.

In In re N.J.A.C. 5:96 II, the Court reasserted that "previous methodologies employed in the First and Second Round Rules should be used to establish present and prospective statewide and regional affordable housing need." Id. at 30 (emphasis added). As a result, municipalities were required to demonstrate to the court computations of housing need and municipal obligations "based on those methodologies." Ibid. (emphasis added). The Court reminded the designated Mount Laurel judges they had the same discretion that COAH enjoyed when "assessing a town's plan, if persuaded that the techniques proposed by a town will promote for that municipality and region the constitutional goal of creating the realistic opportunity for producing its fair share of the present and prospective need for low- and moderate-income housing." Ibid. (emphasis added).

Importantly, the Court did not eradicate the prior round obligations. Ibid. Instead, the Court stated "municipalities

are expected to fulfill those obligations. As such, prior unfulfilled housing obligations should be the starting point for a determination of a municipality's fair share responsibility." Ibid. In reaching this conclusion, the Court cited Judge Cuff's recognition that "municipalities are responsible for fulfilling their prior round obligation," In re N.J.A.C. 5:94, supra, 390 N.J. Super. at 28, and Judge Skillman's approval, as a starting point, for the imposition of "the same prior round obligations [COAH] had established as the second round obligations in 1993," In re N.J.A.C. 5:96, supra, 416 N.J. Super. at 498-500.

Fulfilling prior round obligations, as described by the Court and in our 2007 and 2010 remand opinions, is decidedly different than imposing a new, retrospective, "separate and discrete" methodology for establishing affordable housing obligations during the gap period. A court-imposed "separate and discrete" retrospective gap-period calculation, on top of a town's existing and present and prospective fair share affordable housing obligations, would amount to the Court acting as a replacement agency for COAH, and would contravene the Court's unwillingness to decide unresolved policy issues relating to replacement Third Round Rules.

In addition to this assistance, the Court identified other principles that Mount Laurel designated judges should follow,

such as: our prior treatment of reallocation of present need¹²; bonus credits; cost-burdened poor; and the reduction of fewer surrogate indicators. In re N.J.A.C. 5:96 II, supra, 221 N.J. at 30-33. The Court emphasized that the courts should "employ flexibility in assessing a town's compliance and should exercise caution to avoid sanctioning any expressly disapproved practices from COAH's invalidated Third Round Rules." Id. at 33. Finally, the Court reiterated its "hope that an administrative remedy will again become an option for those proactive municipalities that wish to use such means to obtain a determination of their housing obligations and the manner in which those obligations can be satisfied." Id. at 34 (emphasis added).

(iii)

Here, the judge's ruling respectfully did not comport with In re N.J.A.C. 5:96 II. The Court repeated its instructions that "previous methodologies employed in the First and Second Round Rules should be used to establish present and prospective statewide and regional affordable housing need." Id. at 30. Further, it stated that "[t]he parties should demonstrate to the

¹² "The [S]econd [R]ound [R]ules define[d] reallocated present need as 'the share of excess deterioration in a region transferred to all communities of the region with the exception of Urban Aid Cities.'" In re N.J.A.C. 5:96 II, supra, 221 N.J. at 30 n.4 (alterations in original) (citations omitted).

court computations of housing need and municipal obligations based on those methodologies." Ibid. The Court stated that the starting point for a determination of a municipality's fair share responsibility is the prior round unfulfilled obligations. Ibid. Requiring municipalities to undertake a retrospective "separate and discrete" additional calculation for affordable housing need does not follow the First or Second Round Rules. It mandates an entirely new obligation unauthorized by the FHA.

The judge concluded that "New Jersey's affordable housing need is cumulative and there can be no gaps in time left unaddressed." He based this conclusion on his interpretation of Mount Laurel II, stating the Court "found the obligation to meet the prospective lower income housing need of the region is, by definition, one that is met year after year in the future, throughout the years of the particular projection used in calculating prospective need." However, the Court's statement was aimed at the practical effects of establishing prospective need, stating:

The Mount Laurel obligation to meet the prospective [looking forward not retrospectively] lower income housing need of the region is, by definition, one that is met year after year in the future, throughout the years of the particular projection used in calculating prospective need. In this sense the affirmative obligation to provide a realistic opportunity to construct a fair share of

lower income housing is met by a "phase-in" over those years; it need not be provided immediately. Nevertheless, there may be circumstances in which the obligation requires zoning that will provide an immediate opportunity -- for instance, zoning to meet the region's present lower income housing need. In some cases, the provision of such a realistic opportunity might result in the immediate construction of lower income housing in such quantity as would radically transform the municipality overnight. Trial courts shall have the discretion, under those circumstances, to moderate the impact of such housing by allowing even the present need to be phased in over a period of years. Such power, however, should be exercised sparingly. The same power may be exercised in the satisfaction of prospective need, equally sparingly, and with special care to assure that such further postponement will not significantly dilute the Mount Laurel obligation.

[Mount Laurel II, supra, 92 N.J. at 218-19 (emphasis added).]

The language quoted by the judge pertained to the Court's recognition that phasing in was an option for municipalities in calculating present and prospective need. Therefore, the judge's reliance on Mount Laurel II for the proposition that there can be no gap periods is respectfully misplaced. Furthermore, the FHA, enacted after Mount Laurel II, and the Court's opinion in In re N.J.A.C. 5:96 II do not support such a conclusion.

C.

Whether to establish a new methodology that imposes retrospective calculations for determining affordable housing needs during the gap period, which would be in addition to satisfying prior round unmet present and prospective obligations, is best left for consideration by the Legislative and Executive branches. As the Court explained in 2013, when it invalidated COAH's Third Round Rules:

The Legislature may determine to authorize new avenues for addressing regional need and the promotion of affordable housing. And, it may do so in ways that we do not attempt to circumscribe in this opinion because we do not know the breadth of considerations that may be brought forth through informational legislative hearings on the subject. Nevertheless, it is the Legislature that must devise the parameters to such an approach. It must craft new legislation if that is the course it wishes to take. Our courts can and should exercise caution and defer to such solutions when appropriately drafted by the Legislature. See N.J. Ass'n on [Corr.] v. Lan, 80 N.J. 199, 220 (1979) (acknowledging importance of deference to legislative enactments addressing general welfare (citation omitted)); Roe v. Kervick, 42 N.J. 191, 230 (1964) (recognizing value of deference when reasonable minds could differ and issue to be remedied "involves a concept which varies with the needs of the times").

Although the Legislature may consider enacting an alternative form of remedy for the promotion of affordable housing in the housing regions of this state, see Hills

[Dev. Co. v. Twp. of Bernards, 103 N.J. 1,] 65 [(1986)] ("No one should assume that our exercise of comity today signals a weakening of our resolve to enforce the constitutional rights of New Jersey's lower income citizens. The constitutional obligation has not changed; the judiciary's ultimate duty to enforce it has not changed; our determination to perform that duty has not changed."), enforcement of the constitutional obligation is still a matter that may be brought to the courts.

[In re N.J.A.C. 5:96 I, supra, 215 N.J. at 616-17.]

Deferring to the Legislature on such policy considerations is especially important here because COAH is a "legislatively created, unique device for securing satisfaction of Mount Laurel obligations." In re N.J.A.C. 5:96 II, supra, 221 N.J. at 29. As the Court stated, it is not our role to become a replacement agency for COAH by creating "an alternate form of statewide administrative decision maker for unresolved policy details of replacement Third Round Rules." Ibid. We discern no constitutional basis for the judiciary, much less this court, to intrude into the policy-making arena, an area traditionally reserved in our tripartite system of governance to the legislative¹³ and executive branches.

¹³ Although not dispositive on the legal question presented on appeal, there are two identical pending bills in the Assembly and Senate directly on point. The Legislative statement accompanying those bills states in pertinent part:

(continued)

D.

We reject the contention that the doctrine of judicial estoppel bars the challenge to the court's holding as to the gap-period issue. We review a trial court's decision to invoke judicial estoppel using an abuse of discretion standard. State, Div. of Motor Vehicles v. Caruso, 291 N.J. Super. 430, 438 (App. Div. 1996).

The law as to the doctrine of judicial estoppel is well settled. To protect the integrity of the court system, "[w]hen

(continued)

Although the [FHA] clearly states that the State Constitution's affordable housing obligation is comprised of "present and prospective need" for affordable housing only, some courts have misunderstood the intent of the Legislature behind the [FHA], and imposed a retroactive obligation for the so-called gap period. The purpose of this bill is to eliminate any possible misconception with respect to the Legislature's intent to ensure that determination of a municipality's fair share of affordable housing will be based upon the present and prospective need for affordable housing, as clearly set forth in the [FHA], and that a fair share obligation will not include a retrospective need that may have arisen during any "gap period" between housing cycles.

[Statement to Assemb. No. 3821, and Statement to S.B. No. 2254 at 7 (May 23, 2016) (emphasis added).]

a party successfully asserts a position in a prior legal proceeding, that party cannot assert a contrary position in subsequent litigation arising out of the same events." Kress v. La Villa, 335 N.J. Super. 400, 412 (App. Div. 2000) (emphasis added), certif. denied, 168 N.J. 289 (2001). It has been summarized as follows: "The principle is that if you prevail in Suit # 1 by representing that A is true, you are stuck with A in all later litigation growing out of the same events." Kimball Int'l, Inc. v Northfield Metal Prods., 334 N.J. Super. 596, 607 (App. Div. 2000) (citation omitted), certif. denied, 167 N.J. 88 (2001).

Judicial estoppel is not a favored remedy because of its draconian consequences. It is to be invoked only in limited circumstances:

It is . . . generally recognized that judicial estoppel is an "extraordinary remedy," which should be invoked only "when a party's inconsistent behavior will otherwise result in a miscarriage of justice." Ryan Operations G.P. v. Santiam-Midwest Lumber Co., 81 F.3d 355, 365 (3d Cir. 1996) (quoting Oneida Motor Freight, Inc. v. United Jersey Bank, 848 F.2d 414, 424 (3d Cir.) (Stapleton, J., dissenting), cert. denied, 488 U.S. 967, 109 S. Ct. 495, 102 L. Ed. 2d 532 (1988)); see also [Teledyne Indus., Inc., v. NLRB, 911 F.2d 1214,] 1218 [(6th Cir. 1990)] ("Judicial estoppel is applied with caution to avoid impinging on the truth-seeking function of the court because the doctrine precludes a contradictory position without examining the

truth of either statement."). Thus, as with other claim and issue preclusion doctrines, judicial estoppel should be invoked only in those circumstances required to serve its stated purpose, which is to protect the integrity of the judicial process.

[Id. at 608 (footnote omitted).]

In Ali v. Rutgers, 166 N.J. 280, 288 (2000), our Supreme Court confirmed that judicial estoppel is an "extraordinary remedy." The facts presented on this appeal do not warrant application of this remedy.

In invoking the doctrine of judicial estoppel and imposing a "separate and discrete" gap-period obligation, the judge relied on our opinion in In re Six Month. We conclude that the court's reliance is misplaced. We reach that conclusion primarily because the parties and issues in In re Six Month were substantially different than here, and since issuing our opinion in In re Six Month, the Court provided Mount Laurel judges with further guidelines and principles in In re N.J.A.C. 5:96 II.

As to the dissimilarity of issues, our focus in In re Six Month was on COAH's interim procedural rules designed to address a six-year period between 1999 and 2004. Supra, 372 N.J. Super. at 68. In In re Six Month, we identified the sole issue:

These [seven] appeals concern only N.J.A.C. 5:91-14.3, which provides a mechanism for municipalities previously certified in the second round to receive an extension of their substantive certification status and,

therefore, further protection from civil action remedies, for up to one year following the adoption of the third-round rules, well beyond the previously scheduled 1999 expiration of second-round standards and methodology.

[Ibid.]

Here, the issue is whether a retrospective "separate and discrete" gap-period obligation is authorized by (1) the core principles of the Mount Laurel doctrine, as codified in the FHA; and (2) In re N.J.A.C. 5:96 II. There, we were not asked to address, and we did not sanction, a gap-period affordable housing obligation, on top of prior unfulfilled obligations and present and prospective needs. Rather, we temporarily suspended substantive certifications granted by COAH pursuant to N.J.A.C. 5:91-14.3, subject to rule modifications. Id. at 105. As to the dissimilarity of parties, none of the Ocean County municipality entities participated in In re Six Month.

V.

In sum, we conclude that the core principles of the Mount Laurel doctrine, as codified in the FHA, and the guidelines and principles established by the New Jersey Supreme Court in In re N.J.A.C. 5:96 II, do not authorize a retrospective new "separate and discrete" affordable housing gap-period obligation. Following In re N.J.A.C. 5:96 II, a town should start with its unfulfilled prior round obligations and then establish its

present and prospective need in establishing a municipality's fair share Mount Laurel obligation.

Finally, we emphasize that our holding today does not ignore housing needs that arose in the gap period or a municipality's obligation to otherwise satisfy its constitutional fair share obligations. As Mr. Reading candidly acknowledged, "[low- and moderate-income] households formed during the gap period may no longer represent an affordable housing need due to a variety of reasons including death, changes in income, increase or decrease in household size, retirement and/or relocation outside of New Jersey." However, he also stated that housing need from the gap period would be "partially included" by those living in "over[]crowded or deficient housing units that are encompassed in the new calculation of [p]resent [n]eed." Therefore, the scope of present need should be dictated by identifiable housing need characteristics as found by the reviewing Mount Laurel judge when examining the evidence presented.¹⁴ In this context, the focus remains — as it has for the last forty years — on the constitutional obligation of realistically affording

¹⁴ The Municipal Group asserted in its amicus brief that "municipalities presented facts to show that developers constructed roughly 90,000 rental units affordable to low[-] or moderate-income households during the gap period."

opportunities for construction of a municipality's fair share of present and prospective need for low- and moderate-income housing.

We reach our conclusion emphasizing: (1) the core of the Mount Laurel doctrine is a municipality "would satisfy [its] constitutional obligation by affirmatively affording a realistic opportunity for the construction of its fair share of the present and prospective regional need for low[-] and moderate[-income] income housing," Mount Laurel II, supra, 92 N.J. at 205 (emphasis added); (2) a realistic opportunity depends on "whether there is in fact a likelihood -- to the extent economic conditions allow -- that the lower income housing will actually be constructed," id. at 222; (3) the FHA codified the core constitutional holding undergirding the Mount Laurel obligation, In re N.J.A.C. 5:96 I, supra, 215 N.J. at 584, and specifically defined "prospective need" as a forward projection of housing needs "based on development and growth . . . [which is] reasonably likely to occur in a region or a municipality," N.J.A.C. 5:92-1.3; (4) the FHA charged COAH with determining "State and regional present and prospective need for low[-] and moderate[-income] housing," In re N.J.A.C. 5:96 I, supra, 215 N.J. at 589 (emphasis added); (5) although the Legislature amended the FHA twelve times during the gap period, it did not

impose a retrospective "separate and discrete" gap-period obligation; (6) although the Appellate Division and the Supreme Court likewise had opportunities during the gap period to require a "separate and discrete" gap-period obligation, such an obligation was not imposed, and instead remained steadfast to the FHA's focus on State and regional present and prospective need for low- and moderate-income housing; (7) identified low- and moderate-income households formed during the gap period in need of affordable housing can be captured in a municipality's calculation of present need; and (8) under our tripartite system of jurisprudence, imposing a "separate and discrete" gap-period obligation is best left for consideration by the Legislative and Executive branches of government where the issues can be fairly and fully debated in the public forum.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

Superior Court of New Jersey
Appellate Division

Disposition on Application for Permission to File Emergent Motion

Case Name: In re Declaratory Judgment Actions Filed by Various Municipalities, Ocean County

Appellate Division Docket Number: (if available): A-3323-15T1

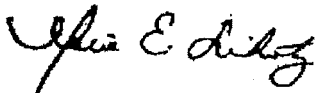
Trial Court or Agency Below: Law Division, Ocean County

Trial Court or Agency Docket Number: L-2640-15

DO NOT FILL IN THIS SECTION – FOR COURT USE ONLY

I. The application for leave to file an emergent motion on short notice is **DENIED** for the following reasons:

- ☒ The application on its face does not concern a threat of irreparable injury, or a situation in which the interests of justice otherwise require adjudication on short notice. The applicant may file a motion with the Clerk's Office in the ordinary course.
- ☐ The threatened harm or event is not scheduled to occur prior to the time in which a motion could be filed in the Clerk's Office and decided by the court. If the applicant promptly files a motion with the Clerk's Office it shall be forwarded to a Panel for decision as soon as the opposition is filed.
- ☐ The applicant did not apply to the trial court or agency for a stay, and obtain a signed court order, agency decision or other evidence of the ruling before seeking a stay from the Appellate Division.
- ☐ The application concerns an order entered during trial or on the eve of trial as to which there is no prima facie showing that the proposed motion would satisfy the standards for granting leave to appeal.
- ☐ The timing of the application suggests that the emergency is self-generated, given that no good explanation has been offered for the delay in seeking appellate relief. Due to the delay, we cannot consider a short-notice motion within the time frame the applicant seeks, without depriving the other party of a reasonable time to submit opposition. And the magnitude of the threatened harm does not otherwise warrant adjudicating this matter on short notice despite the delay. If the applicant promptly files a motion with the Clerk's Office it shall be forwarded to a Panel for decision as soon as the opposition is filed.
- ☐ Other reasons:

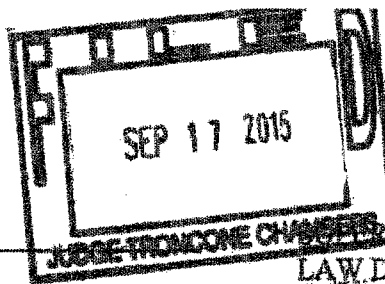


MARIE E. LIHOTZ, P.J.A.D.

July 18, 2016

Date

Prepared by the Court:



CLERK OF COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY

IN ALL 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)

Civil Action

(Consolidated Matter)

CASE MANAGEMENT
ORDER

CASE MANAGEMENT CONFERENCE
WITH SPECIAL REGIONAL MASTER

September 22, 2015
9:00 am -

SUBMISSION OF NJSLOM REPORTS

September 30, 2015

IDENTIFICATION OF HOUSING COMPLIANCE
ISSUES BY SPECIAL MASTERS

September 30, 2015

SUBMISSION OF POSITIONS BY PARTIES
ON ALL HOUSING COMPLIANCE ISSUES

October 7, 2015

MEDIATION SESSION #1 WITH ALL PLANNING
EXPERTS/CONSULTANTS AND MASTERS
(Attorney involvement optional)

October 14, 2015
October 15, 2015
9:00 am - 12:30 pm

SPECIAL REGIONAL MASTER PRELIMINARY
REPORT DUE TO COURT AND ALL PARTIES

October 30, 2015

CASE MANAGEMENT CONFERENCE

November 3, 2015
9:00 am -

WRITTEN RESPONSES TO SPECIAL REGIONAL
MASTER, PRELIMINARY REPORT DUE TO COURT

November 6, 2015

SPECIAL REGIONAL MASTER FINAL REPORT DUE
TRIAL BRIEFS TO COURT AND ALL PARTIES DUE

November 13, 2015
November 13, 2015

TRIAL ON CONSOLIDATED CASE

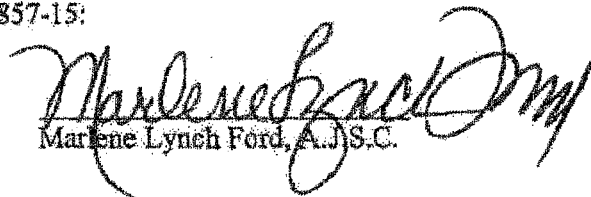
November 18, 2015
9:00 am -

CONTINUATION (if necessary)

November 19, 2015
9:00 am -

As to the matters of Township of Toms River bearing Docket No. OCN-L-1867-15 and
Township of Brick bearing Docket No. OCN-L-1857-15:

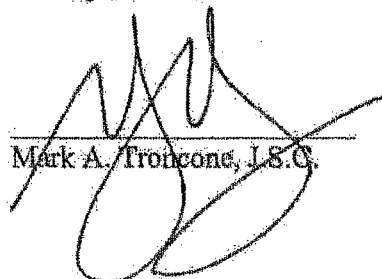
Dated: September 17, 2015


Marlene Lynch Ford, A.J.S.C.

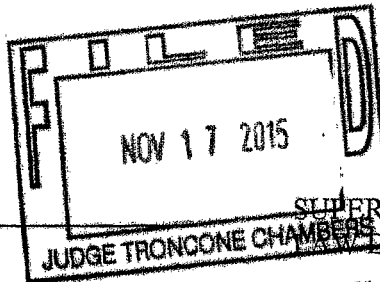
As to the remaining matters bearing the dockets:

In the Matter of the Township of Barnegat
OCN-L-1856-15
In the Matter of the Township of Berkeley
OCN-L-1855-15
In the Matter of the Borough of Beach Haven
OCN-L-2217-15 (2728-08)
In the Matter of the Township of Jackson
OCN-L-1879-15
In the Matter of the Township of Lacey
OCN-L-1912-15
In the Matter of the Township of Little Egg Harbor
OCN-L-1911-15
In the Matter of the Township of Manchester
OCN-L-1910-15
In the Matter of the Township of Ocean
OCN-L-1884-15
In the Matter of the Borough of Pine Beach
OCN-L-1687-15
In the Matter of the Borough of Point Pleasant
OCN-L-1858-15
In the Matter of the Township of Stafford
OCN-L-1913-15

Dated: September 17, 2015


Mark A. Troncone, J.S.C.

Prepared by the Court:



IN ALL 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)

Docket # OCN-L-2640-15

Civil Action

(Consolidated Matter)

SECOND REVISED
CASE MANAGEMENT
ORDER

THIS MATTER having been opened to the court upon its own motion due to the recent illness of its Special Regional Master, Richard Reading, and the need therefore to further revise its most recent case management order entered on November 4, 2015, and the court having convened an emergent case management conference on November 13, 2015, at which time the court having conferred with all parties and all parties were in agreement that the prior November order need to be revised, and for other good cause shown;

IT IS on this 17th day of November, 2015, **ORDERED** as follows:

1. Due to the illness of Special Regional Master, Richard Reading, the plenary hearing scheduled for November 18 and 19, 2015 has been adjourned to a later date to be scheduled by the court. In the interim, the municipalities shall utilize the allocation set forth in Mr. Reading's initial draft of his "Preliminary Assessment Report" as their preliminary affordable housing obligation and shall prepare and submit plans to achieve that number of affordable housing units.
2. In accordance with the prior order of the court, all municipalities shall file their initial affordable housing plans by **December 8, 2016**.

3. The court will conduct a hearing at **1:30 pm on December 8, 2016** to determine which municipalities have complied with the deadline. All municipalities submitting their initial affordable housing plans on or before that date shall, at that time, be granted a temporary thirty (30) day extension of the temporary period of immunity from Mount Laurel actions while their initial plans are reviewed by their special local master.
4. The Special Local Masters, Philip Caton and John Maczuga, will review the submissions of the municipalities and issue a recommendation to the court, on or before **December 29, 2016**, as to whether the submission represents a good faith effort by the municipality to satisfy its affordable housing obligation pursuant to the New Jersey Supreme Court decision in Mount Laurel IV, thus warranting a further extension of temporary immunity. Municipalities which file an initial plan meeting the preliminary allocation set forth in the Reading Report will presumptively be entitled to this further extension.
5. At **9:00 am on January 7, 2016**, the court will conduct a hearing to hear argument of counsel and comments by any interested party on the issue of the grant of a further extension of temporary immunity. Following argument and decision of the court on the immunity issue, the court will hear further legal argument and testimony on the legal issues presented in paragraph 6 below. Finally, the court shall prepare a scheduling order to further consider the individual municipal affordable housing plans.
6. On or before **December 8, 2015**, the parties shall submit written briefs and expert reports on the following issues:
 - a) Does an "unanswered prior" or "gap" obligation actually exist? In other words, is not such an obligation subsumed within the calculation for the present current need on the basis "present need" reflects all that was done

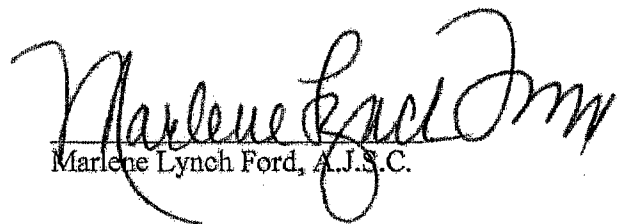
and not done during the period from 1999 to 2015 towards meeting a municipality's affordable housing obligation.

- b) If the answer to question is that such a prior obligation exists, do trial courts have the authority under current law to establish a municipal obligation beyond the current and prospective needs so as to include an additional municipal obligation for its unmet prior obligation.
- c) What is the proper allocation for the 1,000 unit cap? Also, how should the cap be applied to any "gap period" need if one exists?

Oral argument on these questions will be heard by the court on **January 7, 2016**, at **9:00 am**. At that time, the parties may present brief testimony of their expert to address question (a) above. Any expert testimony so proffered will be subject to cross examination. In addition, the court's special regional master, Richard Reading, will submit a report to the court on question (a) by **December 29, 2015**. If Mr. Reading requires additional time to submit his report, the hearing and argument on this matter will be adjourned by the court to a later date.

As to the matters of Township of Toms River bearing Docket No. OCN-L-1867-15 and Township of Brick bearing Docket No. OCN-L-1857-15:

Dated: November 17, 2015

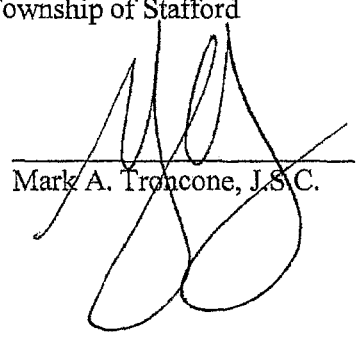

Marlene Lynch Ford, A.J.S.C.

As to the remaining matters bearing the dockets:

In the Matter of the Township of Barnegat
OCN-L-1856-15
In the Matter of the Township of Berkeley

OCN-L-1855-15
In the Matter of the Borough of Beach Haven
OCN-L-2217-15 (2728-08)
In the Matter of the Township of Jackson
OCN-L-1879-15
In the Matter of the Township of Lacey
OCN-L-1912-15
In the Matter of the Township of Little Egg Harbor
OCN-L-1911-15
In the Matter of the Township of Manchester
OCN-L-1910-15
In the Matter of the Township of Ocean
OCN-L-1884-15
In the Matter of the Borough of Pine Beach
OCN-L-1687-15
In the Matter of the Borough of Point Pleasant
OCN-L-1858-15
In the Matter of the Township of Stafford
OCN-L-1913-15

Dated: November 17, 2015


Mark A. Troncone, J.S.C.

Memo

To: Jeffrey R. Surenian, Jeffrey R. Surenian and Associates, LLC

From: Peter Angelides, Econsult Solutions, Inc.

Date: December 8, 2015

Re: Econsult Solutions Inc. Response to Ocean County Third Revised Case Management Order

Introduction

Econsult Solutions, Inc. (ESI) submits this Memorandum in response to three questions raised by Ocean County's Court's Third Case Management Order of November 18, 2015. The questions are as follows:

- a) The Supreme Court has ruled municipalities must address their prior round obligation. The current (un-adopted) iteration of the Third Round Rules provide for an upward adjustment of a municipality's Second Round obligation to account for the unanswered prior obligation or "gap" obligation based on projections for the years 1999 to 2014. This is calculated in Appendix D of those rules. The first iteration of the Third Round Rules provided for a reduction of the Second Round obligation based upon filtering and other secondary sources of affordable housing. That methodology was subsequently struck down by the Appellate Division. The second iteration simply carried forward the Second Round obligation without any increase or decrease.

The question to be briefed then: Is the methodology provided in Appendix D of the current iteration of the Third Round Rules an appropriate and correct methodology?

- b) Do the trial courts have the authority to require a municipality to address the unanswered prior obligation or "gap" obligation component as part of a municipality's prior obligation?

- c) What is the proper allocation for the 1,000 unit cap? Also, how should the cap be applied to any "gap period" need if one exists?

ESI's response will address in turn the relevant conceptual, statistical and legal issues bearing on the Court's question in the form of five sections:

1. The appropriate Prospective Need time period covers ten years and is forward-facing;
2. Present Need and Prospective Need together completely describe the need for affordable housing within the fair share framework;
3. The Supreme Court has ruled that "the prior unfulfilled housing obligations should be the starting point for the determination of a municipality's fair share responsibility";
4. No comparable legal obligation exists for the gap period; and
5. The 1,000 unit cap applies to the sum of Present Need and Prospective Need

We then conclude by summarizing our direct response to the three questions set for by the Court, as drawn from the discussion above.

1. The appropriate prospective need time period covers ten years and is forward-facing

The Fair Housing Act (FHA) sets forth a clear framework with respect to the definition of the prospective need time period.¹ In section 307, which sets forth the duties of the Council on Affordable Housing, the statute says that is the duty of the Council to:

Adopt criteria and guidelines for...municipal determination of its present and prospective fair share of the housing need in a given region **which shall be computed for a 10 year-period.**

[N.J.S.A. 52:27D-307(c)(1), (emphasis added)]

Further, the definition of prospective need in the FHA clearly indicates that the calculation is forward-facing. In section 304, which sets forth definitions used throughout the act, the definition of "prospective need" begins as follows:

Prospective need means a **projection** of housing needs based on development and growth which is reasonably **likely to occur** in a region or municipality...

[N.J.S.A. 52:27D-304(j), (emphasis added)]

¹ We note that we are not providing legal advice or legal opinions, but are instead setting forth our views based on an informed reading of the statute, Court decisions, and other relevant documents.

It is therefore clear from the text of the Fair Housing Act that the Prospective Need period, appropriately defined, covers ten years and is forward-facing, representing a projection of future growth in housing needs.

By requiring the obligation to be based upon projections of what will happen in the future, the Fair Housing Act incorporated the Supreme Court's concept of Prospective Need from Mount Laurel II, wherein it defined "prospective need" as a need based upon anticipated future growth:

The Mount Laurel obligation to meet the prospective lower income housing need of the region is, by definition, one that is met year after year in the future, throughout the years of the particular projection used in calculating prospective need."

[So. Burlington County N.A.A.C.P. v. Tp. of Mount Laurel, 92 N.J. 158, 219 (1983)
("Mount Laurel II") (emphasis added)]

While some attempts at calculating Round 3 fair share obligations have attempted to "back date" the start of the Prospective Need period to the conclusion of Round 2 in 1999, this approach is plainly at odds with the text of the FHA. Further, such a calculation creates structural problems,² in part because the Prior Round methodologies do not envision computing prospective need for a period that includes both forward-looking and retrospective components in the same calculation, and in part due to double counting that arises when the Present Need calculation does not align with the start of the Prospective Need period.

A prospective need period starting July 1, 2015, combined with a Prior Round concluding on June 30, 1999, therefore leaves a "gap period" from July 1, 1999 to June 30, 2015 for which no fair share obligations have been defined.

2. Present and Prospective Need together completely describe the need for affordable housing within the fair share framework

The FHA provides guidance on the categories of need that comprise fair share obligations. The FHA provides for the determination of present and prospective need at both the regional and municipal level, and does not define any additional categories of need beyond these (N.J.S.A. 52:27d-301 et. seq.).

Present Need and Prospective Need together comprise the full affordable housing need recognized by the FHA. These two categories are additive. Present need enumerates housing

² These issues are enumerated and explained in ESI's September 2015 *Review and Analysis or Report Prepared by David N. Kinsey PhD Entitled: "New Jersey Low and Moderate Income Housing Obligations for 1999 – 2025"* for the New Jersey State League of Municipalities

needs for low- and moderate-income (LMI) households currently living in deficient housing units. Prospective need enumerates housing needs for additional LMI households projected to be added over the ten year period. Together, these categories capture all recognized need as of the start of the Prospective Need period (Present Need), and all recognized need anticipated to be generated during the Prospective Need period (Prospective Need).

This framework is evident in the approach taken to the calculation of Round 1 housing obligations in 1986-87. In keeping with the FHA, the Round 1 methodology calculated obligations for Present Need and Prospective Need, which together represented the sum of all obligations. The Prospective Need calculation was strictly forward-facing, capturing the incremental need anticipated to be generated between 1987 and 1993. By definition, therefore, the Present Need calculated in Round 1 captured all LMI population and housing activity prior as of the current point in time. Said another way, the contributions of population shifts, income changes, housing market dynamics, and municipal affordable housing activities up to the beginning of Round 1 were all by definition and by design subsumed within the calculation of Present Need as of that time.

With respect to affordable housing need, the circumstances at the beginning of any round of calculations are no different than they were at the start of Round 1. Taken together, Present Need and Prospective Need completely describe the need for affordable housing within this framework, and any additional calculated "need" is not additive to the sum of these categories.

For example, the Round 2 methodology expresses concern that if prior round prospective need is not met, "people are forced into more crowded housing or are obliged to pay more than 28 percent of their income for housing" (26 N.J.R. 2348). In the first case, overcrowded housing serves as a metric of housing deficiency in the Present Need calculation. Therefore, if additional LMI households are currently living in crowded housing, they will be captured in the Present Need for the upcoming period. To calculate a need attributable to those same households from a prior period, and then add those "needs" together is a clear instance of double counting in the determination of need for the current period.

With respect to the proportion of income paid by LMI households, the Court established in *AMG Realty Co v Warren Tp* that cost-burden factors should not be included in the calculation of low- and moderate-income housing (207 N.J. Super. at 422-423). This point was also confirmed specifically by the Supreme Court's 2015 ruling (221 N.J. at 33). Accordingly, the FHA makes no reference to cost-burden when defining LMI households or LMI housing need. More broadly, those LMI households that are living in sound housing units as of the beginning of the upcoming period do not represent an identifiable affordable housing need for that period, regardless of when they were added to the state's population.

Therefore, from the standpoint of calculating the appropriate LMI housing need for the upcoming period, any additions to the sum of Present Need and Prospective Need are unwarranted. In other words, the gap period does not give rise to need on top of or in addition to the Present Need and Prospective Need.

We do recognize, however, that from a compliance standpoint, COAH and the Courts have an interest in assuring that municipalities are rewarded for compliance with their fair share obligations, rather than having those obligations fully reset at the start of each round.

3. **The Supreme Court has ruled that "the prior unfulfilled housing obligations should be the starting point for the determination of a municipality's fair share responsibility"**

The Supreme Court's March 2015 decision reads as follows with respect to prior round obligations:

...our decision today does not eradicate the prior round obligations; municipalities are expected to fulfill those obligations. As such, prior unfulfilled housing obligations should be the starting point for a determination of a municipality's fair share responsibility. Cf. In re Adoption of N.J.A.C. 5:96 & 5:97, supra, 416 N.J. Super. at 498-500 (approving, as starting point, imposition of "the same prior round obligations [COAH] had established as the second round obligations in 1993").

[221 N.J. 1 at 30 (emphasis added)]

In understanding this decision, it is useful to draw a distinction between affordable housing "need," which as described above represents identifiable LMI households in need of or anticipated to be in need of housing, and affordable housing "obligations," which represent legal requirements placed on municipalities related to fulfilling this need. These concepts and the associated figures are not one and the same. For a given region and a given period, the fair share methodology, correctly executed, yields a cumulative Present Need and Prospective Need equivalent to the identified current and future housing needs. In practice, however, the sum of municipal obligations assigned by COAH for a given round has not always matched the identifiable need for that round.

One reason for the divergence between identified need and assigned obligation relates to compliance incentives. If prior obligations determined by COAH and sanctioned by the Courts are reset with each round, the incentive for municipalities to comply with new obligations may be limited (although not eliminated, since non-complying municipalities would be subject to potential builder's remedy lawsuits during the course of the round). The Supreme Court has

ruled that Prior Round obligations (i.e. those from Round 1 and Round 2, 1987-1999) are not eradicated by the upcoming round. How those Round 1 and Round 2 obligations relate to obligations arising from the upcoming calculation of Present Need and Prospective Need is not specified by the Court, but the Court's statement that Prior Round (1987-1999) obligations "should be the starting point" suggests that unfulfilled Prior Round obligations serve as the minimum obligation for the upcoming period.

Further, the 2015 Supreme Court decision specifically references the approval of the Appellate Court in 2010 of "the same Prior Round obligations [COAH] had established in 1993" (416 N.J. Super). In that case, appellants including the Fair Share Housing Center disputed COAH's decision to maintain prior round housing obligations as calculated in 1993, rather than re-calculating those prior round obligations based on updated data, as had been done in other iterations of the methodology. The Court found as follows with respect to that issue:

COAH's rationale of providing municipalities with predictability and the ability to rely upon COAH's substantive certification of their prior round compliance plans constitutes a reasonable basis...

[416 N.J. Super at 500]

The approach of maintaining prior round obligations unadjusted, rather than re-calculated with updated data, is consistent with the compliance-based rationale described above. As previously discussed, from the standpoint of identifying affordable housing need for the current period, any unfulfilled prior round obligations are not additive to the sum of Present Need and Prospective Need. Therefore, a re-calculation of prior cycles is unnecessary—its result would provide no new information as to current and future affordable housing needs. The relevant question is thus to what extent municipalities have fulfilled the Prior Round (1987-1999) obligations set forth by COAH and the Courts. The correct standard for answering this question, as indicated by COAH and the Courts, is the obligation assigned to those municipalities in 1993, net of any applicable activity and credits since that time.

4. No comparable obligation exists for the gap period

As established above, the unfulfilled Prior Round (1987-1999) obligations hold legal force in the upcoming round not because they represent an unaccounted for component of affordable housing need, but because they represent an *obligation* legally determined by COAH, assigned to municipalities, and upheld by the Courts. No such obligation exists for the gap period. COAH has, on multiple occasions, advanced methodologies for the calculation of such obligations for "Round 3" each of which has been rejected by the Courts or has remained un-adopted.

Municipalities have therefore been assigned no legal obligations for this period against which their compliance can reasonably be judged.

As described above, as of the start of the upcoming period, all previous population and housing activity relevant to the calculation of housing *need* as per the FHA is captured within the upcoming Present Need calculation. Further, anticipated future growth over the period is captured in the Prospective Need calculation, while municipal compliance with legally assigned obligations is accounted for by using unfilled prior obligations as the starting point in calculations for the upcoming period. The addition of any units emerging from a retrospective calculation attempting to capture "prospective need" from the gap period would improperly represent the affordable housing need that exists as of today.

This point can be demonstrated by thinking through the current circumstances of incremental LMI households that were added to the New Jersey household population over that period of time. Take for instance a LMI household that moved into the state in 2010.³ As of the beginning of the upcoming cycle (2015), that household by definition is either:

- a) An LMI household living in deficient housing
- b) An LMI household living in non-deficient housing
- c) No longer an LMI household living in New Jersey⁴

In the case of (a), this household would be captured in the Present Need calculation for the upcoming cycle. To attribute a "need" for the same household based on the addition of that household to the LMI population within the gap period, and to then add that "need" to the sum of Present Need and Prospective Need for the upcoming cycle, is a clear instance of double counting of the same household.

In the case of (b), this household does not represent an identifiable need for the upcoming cycle within the Present Need and Prospective Need framework set forth in the FHA. This is confirmed by straightforward logic – since the household currently resides in a sound housing unit, construction or rehabilitation of an additional unit of affordable housing is not required to accommodate it.

Finally, in the case of (c), this household does not represent a housing need for the upcoming cycle. This household may have moved to another state, increased its income such that it no

³ We recognize that the incremental LMI household growth over a given period that forms the basis for the Prospective Need calculation is not simply the product of migration, but of a host of characteristics, including household formation, income changes (in and out of the LMI category), in and out migration, etc. This example is chosen purely for simplicity. The logic applied here holds for incremental LMI households generated through any of the mechanisms described herein.

⁴ As described in the previous footnote, this may occur through out-migration, a change in income status, a change in household composition, etc.

longer qualify as LMI, or may no longer exist. Regardless, the construction or rehabilitation of an additional unit of affordable housing over the upcoming period is not required to accommodate it.

Therefore, there is no identifiable housing need within the FHA framework that would be satisfied through the calculation of a retrospective "need" from the gap period. Nowhere does the FHA make provision for the Courts to calculate and assign such an additional, retrospective obligation for the gap period that represents neither an additive affordable housing need nor a previously known and legally assigned housing obligation.

5. The 1,000 unit municipal obligation cap applies to the sum of Present Need and Prospective Need for the upcoming period

In evaluating the application of the 1,000 unit municipal cap, it is again useful to return to the controlling text of the FHA, which describes its intended application. In describing the duties of COAH in Section 307, a 1993 amendment to the Fair Housing Act reads:

No municipality shall be required to address a **fair share** of housing units affordable to households with a gross household income of less than 80% of the median gross household income beyond 1,000 units within ten years.

[N.J.S.A. 52:27D-307(c) (emphasis added)]

The key phrase, "fair share," also appears earlier in Section 307 of the FHA. As quoted in Section 1 of this response, COAH is therein given the duty to:

Adopt criteria and guidelines for...municipal determination of its **present and prospective fair share** of the housing need in a given region which shall be computed for a 10-year-period.

[N.J.S.A. 52:27D-307(c)(1), (emphasis added)]

Here, the term "fair share" is used to apply to both Present Need and Prospective Need. This reading is supported by COAH's application of this statute in amendments to its Round 2 rules in May 1994 (in N.J.A.C. 5:93-14.1), which directly track the language of the statute, and apply the cap to a municipality's entire "fair share" obligation.

COAH's Round 3 regulations inexplicably deviated from the text of the FHA, applying the 1,000 unit cap against only prospective need obligations. This provision was challenged by Egg Harbor Township as part of the Appellate Court decision rejecting the "Growth Share" approach

in 2010. The Appellate Court did not rule on the issue because it invalidated the regulations pursuant to which COAH defined the Round 3 obligation of the Township⁵ (416 N.J. Super).

In addition to which categories of affordable housing obligations are covered, there is also the question of the time periods from which those obligations emerge and when they are expected to be fulfilled. Again, it is useful to return to the text of the FHA to understand the legislative intent of the 1,000 unit cap. Section 307(e), which sets forth the 1,000 unit cap, also sets forth criteria for challenging the application of that cap to a given municipality. It states that an interested party may demonstrate:

...that it is likely that the municipality through its zoning powers could create a realistic opportunity for more than 1,000 low and moderate income units within that ten-year period. For the purposes of this section, the facts and circumstances which shall determine whether a municipality's fair share shall exceed 1,000 units, as provided above, shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential units in the ten-year period preceding...

[N.J.S.A. 52:27D-307(e) (emphasis added)]

A plain reading of the FHA thus indicates that the 1,000 unit cap applies to a ten-year period. While the un-adopted 2014 COAH rules and some recent judicial decisions have attempted to allocate obligations over multiple periods, there is no textual basis in the FHA for such a determination.

The language of the 1,000 unit cap also makes no statement as to the point in time at which a municipality's fair share need was generated. The retrospective component of its application (the 5,000 certificates of occupancy standard detailed above) is included not as a reflection of need generated from the preceding period, but rather as a benchmark of realistic levels of affordable housing delivery. Notably, this ratio echoes the 20% cap on municipal obligations in the Prior Round, which limited municipal obligations to 20% of existing housing stock in order to avoid "drastic alteration" of communities (26 N.J.R. 2350). In each, the intent of the cap is to impose realistic limits on forward-looking obligations over a ten-year period. Therefore, if (contrary to the approach we deem appropriate) obligations from the gap period are created and added to the Present Need and Prospective Need obligations for the upcoming period, the sum of each of these categories would be subject to the 1,000 unit cap for the upcoming ten-year period.

⁵ This action eliminated the Round 3 obligation proposed by COAH, therefore reducing the Township's obligation below 1,000 and rendering the applicability of the 1,000-unit cap issue moot in the Court's opinion.

In the case of unfulfilled Prior Round (1987-1999) obligations, however, the ten-year framework from the time that obligations are assigned that is described above is likely no longer applicable. These Prior Round (1987-1999) obligations have been known since 1993, and therefore municipalities have had a considerable time period in which to respond to them. The unfulfilled component of those obligations, therefore, may not be subject to the ten-year cap applying to needs assigned for the upcoming period, and any gap obligations created and assigned within that period.

Conclusion

The discussion above has illuminated the conceptual, statistical and legal rationale behind ESI's response to the three questions posed by the Court's Third Case Management Order of November 18, 2015. Our conclusions address those questions directly, based on the arguments presented above:

- With respect to question A,⁶ the methodology set forth in Appendix D of COAH's un-adopted 2014 regulations is not an appropriate and correct methodology. Most importantly, this methodology assigns obligations for the gap period which have no conceptual basis in housing need for the upcoming period as established by the FHA nor any legal basis in a previously known and legally assigned housing obligation. Further, the methodology unnecessarily recalculates the Prior Round obligation as assigned in 1993, undermining COAH's compliance-based rationale for retaining unfulfilled Prior Round (1987-1999) obligations, which has been endorsed by the Courts.
- With respect to question B,⁷ the gap period does not generate any additive need for the upcoming period to that which is captured in the sum of Present Need and Prospective Need within the framework set forth in the FHA. Further, the FHA makes no provision for the incorporation of prior population dynamics into additional categories of need. However, the Supreme Court has ruled that the legally generated and Court-approved unfulfilled Prior Round (1987-1999) obligations are not eradicated, and serve as the starting point for the determination of fair share need for the upcoming cycle.

⁶ Is the methodology provided in Appendix D of the current iteration of the Third Round Rules an appropriate and correct methodology?

⁷ Do the trial courts have the authority to require a municipality to address the unanswered prior obligation or "gap" obligation component as part of a municipality's prior obligation?

- With respect to question C,⁶ the language of the FHA makes clear that the 1,000 unit cap applies to the sum of fair share obligations for the upcoming period, rather than any specific component. Should a gap period obligation be created and summed with Present Need and Prospective Need for the upcoming period, the full sum of these obligations should be subject to the 1,000 unit cap. However, the unfulfilled Prior Round (1987-1999) obligations, which serve as a starting point for the determination of fair share for the upcoming cycle, may not be subject to this cap, since these obligations have already been known to municipalities for more than two decades, rather than first assigned for the upcoming cycle.

In conclusion, we also note that the upcoming ESI "Solutions Report" will more fully address the application of unfulfilled Prior Round (1987-1999) obligations and municipalities' response to those obligations to the upcoming cycle, consistent with the principles set forth in this response.

⁶ What is the proper allocation for the 1,000 unit cap? Also, how should the cap be applied to any "gap period" need if one exists?

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS**

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CIVIL PART**

DOCKET NO.: OCN-L-2640-15
(Consolidated Action)

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)

Civil Action

OPINION

Decided February 18, 2016

Counsel: Jean L. Cipriani, Esquire and Robin La Bue, Esquire for the firm of Gilmore and Monahan, LLC on behalf of the Township of Jackson; the Township of Manchester; the Township of Lacey; and the Township of Little Egg Harbor

Jeffrey R. Surenian, Esquire, Michael A. Jedziniak, Esquire and Eric C. Nolan, Esquire for the firm of Jeffrey R. Surenian and Associates, LLC on behalf of the Township of Berkeley; the Borough of Pine Beach; the Borough of Beach Haven; the Township of Brick; and the Township of Barnegat

Steven A. Kunzman, Esquire for the firm of DiFrancesco Bateman Kunzman, PC on behalf of the Township of Toms River

Jerry J. Dasti, Esquire for the firm of Dasti Murphy McGuckin on behalf of the Township of Stafford

Andrew Bayer, Esquire for the firm of Gluck Walrath, LLP on behalf of the Township of Ocean

Kevin D. Walsh, Esquire and Adam M. Gordon, Esquire on behalf of Fair Share Housing Center, Intervenor in the Borough of Pine Beach

Edward J. Buzak, Esquire for the Buzak Law Group, LLC on behalf of the League of Municipalities, Intervenor in the consolidated matter

Richard J. Hoff, Jr. and Robert A. Kasuba for the firm of Bisgaier Hoff, LLC on behalf of Highview Homes, LLC, and Oaklane Little Egg Harbor, LLC, Intervenor in the matter of the Township of Jackson and the Township of Little Egg Harbor

Tracy A. Siebold, Esquire for the firm of Nehmad Perillo Davis on behalf of Volunteers of America Delaware Valley, Intervenor in the Township of Ocean matter

Thomas F. Carroll, III, Esquire and Stephen M. Eisdorfer, Esquire for the firm of Hill Wallack, LLP on behalf of New Jersey Builders Association, Intervenor in the matter of the Borough of Pine Beach

Daniel S. Eichorn, Esquire for the firm of Sokol Behot, LLP on behalf of Ocean Mews, 2015, LLC, Intervenor in the matter of the Township of Stafford

Richard T. O'Connor, Esquire for the firm of O'Connor and O'Connor on behalf of Manchester Development Group, Intervenor in the matter of the Township of Manchester

MARK A. TRONCONE, J.S.C.

NATURE OF THE PROCEEDING

This matter concerns the court's continuing review of various Declaratory Judgment actions filed by thirteen (13) Ocean County municipalities in accordance with the procedure established by the New Jersey Supreme Court in In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) ("Mount Laurel IV").¹

The primary issue addressed in this opinion is whether the court has the authority to impose an obligation upon municipalities to satisfy the affordable housing need which arose from 1999 to the present – the so-called "gap period" commencing from the end of the second

¹ Those municipalities include: Township of Barnegat, Borough of Beach Haven, Township of Berkeley, Township of Brick, Township of Jackson, Township of Lacey, Township of Little Egg Harbor, Township of Manchester, Township of Ocean, Borough of Pine Beach, Borough of Point Pleasant, Township of Stafford and Township of Toms River

round housing cycle. Since 1999, New Jersey's Council on Affordable Housing ("COAH") has, on three occasions, attempted and failed to adopt third round rules. This opinion will also address the circumstance of how this unanswered prior obligation would be resolved in those municipalities whose third round obligation, with the inclusion of this "gap" obligation, will exceed the statutory cap of a 1000 units for any one housing cycle.

For the reasons set forth below, the court is satisfied there exists a rational methodology to calculate and determine the affordable housing need which arose during the "gap period" of 1999 to 2015.² The court finds municipalities are constitutionally mandated to address this obligation. This "gap period" need is to be calculated as a separate and discrete component of a municipality's fair share obligation. This component together with a municipality's unmet prior round obligations 1987 to 1999 and its present need and prospective need shall comprise its "fair share" affordable housing obligation for the third housing cycle. Municipalities may petition the court during its review of their individual plans to defer up to 50 percent of its gap period component obligation to the fourth round housing cycle.

The court finds, however, it is constrained by the clear language of the FHA relating to the 1000 unit cap and thus no municipality shall be required to address a fair share obligation beyond 1000 units for the upcoming ten (10) year third round cycle. Therefore, the 1999 to 2015 gap component coupled with the present and prospective need components are subject to the 1000 unit cap.

THE PARTIES

In addition to the thirteen municipalities, a number of interested parties have intervened in the various individual municipal cases or in the consolidated proceeding established by

² The court acknowledges the gap period will now extend into 2016. However, for ease of reference the year 2015 will be used throughout the opinion as the end year of the gap period.

the court to determine the regional housing need and the allocation of that need to the constituent Ocean County municipalities.

The non-municipal parties involved in this aspect of the litigation include: Fair Share Housing Center (“Fair Share” or “FSHC”), a non-profit entity which advocates for the development of affordable housing throughout New Jersey; The New Jersey League of Municipalities (“NJLM”), an association created by state statute to assist and serve New Jersey municipalities and their officials; New Jersey Builders’ Association (“NJBA”), a trade organization promoting the interests of its members. In addition to the organizations listed above, various private land development companies have also intervened in this matter. They, together with NJBA, will collectively be referred to as “the builders” throughout this opinion. The individual municipalities and NJLM will collectively be referred to as “the municipalities” or “towns.”

PROCEDURAL HISTORY TO DATE OF THE
MOUNT LAUREL CASES PENDING BEFORE
THIS COURT

In order to fully explain the context of this matter, a brief recitation of the procedural history to date is helpful. On March 10, 2015, the New Jersey Supreme Court issued its decision in “Mount Laurel IV.” That action was commenced by Fair Share by the filing of a motion in aid of litigants’ rights due to the failure of COAH to promulgate the third round rules as directed by the Court in its decision, issued the preceding year, in In re Adoption of N.J.A.C. 5:96, 215 N.J. 578 (2014). Because of COAH’s inability or reluctance to act, the Court in Mount Laurel IV dissolved FHA’s exhaustion-of-administrative-remedies requirement and opened the courts to actions by parties concerned about municipal compliance with constitutional affordable housing

obligations. 221 N.J. at 5. Providing for an orderly procedure for such actions, the Supreme Court established a process whereby municipalities could obtain substantive certification from the courts provided that such towns either 1) achieved substantive certification from COAH under prior iterations of third round rules which were subsequently struck down by the Court or 2) had “participating” status before COAH, i.e., they were actively seeking approval of their affordable housing plans from COAH. The Court delayed the effective date of its order for ninety (90) days. Towns which sought continued protection from Mount Laurel lawsuits were then required to file declaratory judgment actions within thirty (30) days of the effective date.

Pursuant to the Court’s decision in Mount Laurel IV, qualified towns had five (5) months from the expiration of the thirty (30) day filing period, i.e., December 8, 2015, to prepare and submit their plans for judicial review. During this five (5) month period, the trial courts assigned to these cases could grant a period of temporary immunity from Mount Laurel lawsuits while the towns went about the business of preparing their affordable housing plans.

Soon after the commencement of the declaratory judgment actions by the Ocean County municipalities, this court appointed Philip B. Caton and John D. Maczuga, New Jersey-licensed professional planners with extensive experience in Mount Laurel matters, to assist the court and the municipalities as “special local masters.” Mr. Caton and Mr. Maczuga were each assigned individual municipalities.

During the court’s initial hearings with the parties, it soon became apparent the towns needed some direction from the court regarding the development of an appropriate methodology to determine their respective third round obligation. To that end, the court in consultation with its special local masters, established a procedure by which the court could determine, on a preliminary basis, the affordable housing obligation for each Ocean County municipality and

address those municipal compliance issues so as to provide a rational basis that would allow the towns to file its affordable housing plan to the court by the deadline imposed by the Supreme Court of December 8, 2015.

The procedure established by the court was based on the language in Mount Laurel IV where the Supreme Court stated:

In the end, a court reviewing the submission of a town that had participation status before COAH will have to render an individualized assessment of the town's housing element and affordable housing plan based on the court's determination of present and prospective regional need for affordable housing applicable to that municipality. **A preliminary judicial determination of the present and prospective need will assist in assessing the good faith and legitimacy of the town's plan, as proposed and as supplemented during the processes authorized under the FHA-conciliation, mediation, and use of special masters-and employed in the court's discretion.** The court will be assisted in rendering its preliminary determination on need by the fact that all initial and succeeding applications will be on notice to FSHC and other interested parties. 221 N.J. at 29. (emphasis supplied)

Accordingly, the court consolidated the thirteen individual municipal cases for the purpose of determining the towns' present and prospective needs. As directed by the Supreme Court in Mount Laurel IV, it was also decided in making this determination the court would, wherever possible, follow COAH's past methodology to calculate statewide housing need and then allocate that need to the housing regions previously established by COAH.³ Once the regional need was determined then the same would be allocated to the constituent Ocean County municipalities.⁴ This work required special expertise. Therefore, after inviting the submission of resumes by interested experts and upon the advice of the two local masters, the court appointed Mr. Richard B. Reading as the "Special Regional Master" to assist the court in making

³ Mount Laurel IV at p. 30

⁴ Ocean County is situated in COAH Region 4, together with Monmouth and Mercer Counties.

the preliminary determination envisioned by the Supreme Court of the present and prospective needs.⁵ A case management order was then entered by the court on September 17, 2015, which provided for an expedited process culminating in a plenary hearing following which the court would make a determination of the regional housing need and the allocation of that need to the municipalities which would serve as the basis for the preparation of the municipal housing plans. All parties consented to this procedure.

The case management order provided for two mediation sessions with all the masters and parties outside the presence of the court. The parties were to then submit expert reports setting forth a proposed fair share methodology for review by the regional master. After the receipt of these reports, Mr. Reading issued an initial draft of a report entitled "Preliminary Review and Assessment of Low and Moderate Income Housing Needs of Ocean County Municipalities" ("Preliminary Assessment") which set forth the regional fair share number and allocated the same to every Ocean County municipality. The parties were then invited to submit their comments to this initial draft and after consideration of these comments, Mr. Reading would issue the final draft of his Assessment.

However, before he could complete his final draft, Mr. Reading became ill and was unavailable for several months. Faced with this unexpected turn of events, the court, with the consent of the parties, directed the municipalities to utilize the fair share housing numbers set forth in Mr. Reading's initial draft as the basis upon which to prepare and submit their plans. This was done with the understanding that these numbers were subject to modification once Mr. Reading returned to health and could complete his work.

⁵ Mr. Reading was subsequently retained as the Special Regional Master by the Monmouth and Mercer County Superior Courts.

Accordingly, all thirteen municipalities, utilizing these preliminary numbers, completed their plans and submitted their proposed housing plans in advance of the December 8, 2015 deadline. At a hearing conducted on December 8, 2015, the court acknowledged the receipt of the towns' plans and directed local masters, Caton and Maczuga, to conduct a preliminary review of the submitted plans to determine whether the same constituted a good faith effort by the individual municipalities to meet their constitutional obligations. During this review, the court granted a one (1) month extension of the immunity period. On January 7, 2016, the court considered the reports of Mr. Caton and Mr. Maczuga and granted, with one exception, a further extension of immunity to July 31, 2016 to, first, allow time for Mr. Reading to complete his final report; second, for the court to then conduct a plenary hearing to decide compliance issues and determine the regional fair share number and allocation of the same to the constituent municipalities in Ocean County; and, finally for the towns to perfect their affordable housing plans and submit the same to the court for approval.

It was during Mr. Reading's absence that the issue of the so-called "gap period" came to the fore. Most experts agreed the "gap period" housing need, if included, would constitute anywhere from 40 to 60 percent of a municipalities affordable housing need obligation for the third round housing cycle. Important too, was the application of the 1000 unit cap to the "gap period" obligation for the third round. The parties also questioned that if a "gap period" obligation was to be included in a town's obligation for the third round cycle, would it be subject to the FHA's 1000 unit cap or would such an obligation be outside the cap?

All parties agreed that these issues needed to be addressed before the court made a ruling on the regional and municipal needs. Accordingly, the court invited the parties to submit briefs and reports from their respective experts on these issues and the court heard oral argument of

counsel. During oral argument, the court raised its concern whether the passage of time did not preclude the development of a methodology that could reliably calculate the sixteen (16) year “gap” obligation. Accordingly, the parties submitted additional expert reports addressing the same. All expert reports were to be reviewed by Mr. Reading. The court received the critique of these reports from Mr. Reading in advance of this opinion.

ARGUMENTS OF THE PARTIES

The parties to this action have extensively briefed and argued these issues before the court and their positions are clearly defined. The municipalities assert there can be no such gap obligation and point to the provisions of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 to 329 (“FHA”) which provide a municipality’s fair share obligation has only two (2) components, i.e. present and prospective need. Present need is the number of low and moderate households residing in substandard units. Prospective need is a future projection of how many new low and moderate income households will form or move into the community during the next ten years. The municipalities argue that since the FHA is silent on the issue of how to address an obligation which would arise during the period or “gap” between the end of one housing cycle and the start of another, the courts do not have the authority to create what in essence would be a new component of a municipality’s fair share obligation.

The municipalities advance other arguments for not including a new “gap” component. First, they assert the gap obligation would be accounted for within the present need calculation and that any attempt to add a component for a need arising during the gap period would result in some degree of double counting of affordable households. Second, the towns contend no methodology exists and none could be developed which accurately calculates the gap need. Any

attempt to do so would result in speculation. Finally, at oral argument the municipalities argued that to impose an obligation to address what is essentially a twenty six (26) year need within a ten (10) year housing cycle is unduly burdensome and therefore runs counter to the protections afforded the towns by the FHA to ensure the orderly development of affordable housing.

Regarding the application of the 1000 unit cap in those towns where a new gap component would push a municipality's fair share obligation over 1000 units or in those towns whose third round number already exceeds 1000 units, the municipalities again rely on the plain language of the FHA which states no municipality shall be required to address a fair share obligation beyond 1000 units within any ten (10) year housing cycle. N.J.S.A. 52:27D-307(e). This unambiguous language, in the opinion of the municipalities, bars COAH, and by implication, this court from exempting the "gap" obligation from the operation of a 1000 unit cap. In other words, if the court were to find a gap obligation exists and should therefore be addressed during the third round, this component should be subject to the cap just as the present and prospective need components are. Moreover, the municipalities urge this court to reject any formula or requirement which seeks to preserve the entire calculated gap obligation or a large portion of it by deferring the obligation to the next housing cycle or cycles as had been ordered by another New Jersey trial court.

In opposition to these arguments, Fair Share and the builders assert that basic fairness to those families in need of affordable housing mitigates in favor of including the gap period in the calculation of affordable housing need. They reject municipal claims that to do so would be overly burdensome to the towns. The courts must ensure the goal of providing affordable housing so that the actual need which arose during the 1999 to 2015 gap period is accomplished to the greatest extent possible. Further, Fair Share and the builders argue COAH and the

municipalities had previously recognized the need for affordable housing is cumulative, i.e., it accrues year by year and therefore there can be no “gaps.” The builders also claim that COAH and the municipalities represented to the courts that any such gap need would be folded into the third round’s prospective need. With regard to the 1000 unit cap, Fair Share and the builders argue that the gap period should be outside the FHA 1000 unit cap or alternatively be capped by the procedure adopted by another New Jersey trial court.

As noted above, the court raised the concern, shared by Regional Master Richard Reading, whether the need which arose during the gap period could be accurately “recaptured.” This concern was first voiced by the Appellate Division nearly twelve years ago in In re Six Month Extension of N.J.A.C., 372 N.J. Super. 61 (App. Div. 2004) (“In re Six Month Extension”). Thus, even if this court was satisfied in theory that an affordable housing need arose during the gap period and should be accounted for in the determination of a municipality’s fair share obligation, could such a need be accurately and reliably calculated by a rational methodology.

LEGAL ANALYSIS AND FINDINGS

A.

THE AFFORDABLE HOUSING NEED WHICH AROSE DURING THE “GAP PERIOD” CAN BE RELIABLY CALCULATED AND MUST BE INCLUDED IN THE DETERMINATION OF A MUNICIPALITY’S FAIR SHARE OBLIGATION FOR THE THIRD ROUND CYCLE

In So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983), (“Mount Laurel II”), the New Jersey Supreme Court found the “obligation to meet the prospective lower income housing need of the region is, by definition, one that is met **year after year** in the future,

throughout the years of the particular projection used in calculating prospective need.” Mount Laurel II, 92 N.J. at 218, 219. (emphasis supplied). Therefore, New Jersey’s affordable housing need is cumulative and there can be no gaps in time left unaddressed. This obligation is clear and, moreover, one that has been acknowledged without objection by both COAH and the municipalities themselves in the past.

Despite this, the municipalities now argue that the courts and COAH have historically limited a town’s affordable housing obligation to two (2) components, i.e., present and prospective need. The present need, also known as “rehabilitative share,” is the number of identifiable deficient housing units occupied by low and moderate income households. That number is generated by a calculation based upon the most recent census data. Prospective need is forward-looking. It is the number of low and moderate income households expected to be formed within the next ten (10) year housing cycle. N.J.S.A. 52:27D-304 (j).

Never before, the municipalities assert, have the courts or COAH attempted to recapture a past “gap” need to calculate the fair share obligation. Any attempt to do so would be constitutionally suspect since the FHA does not authorize the courts to recapture such a need. If it were to do so, the court would be acting either as a “super-legislature”, thus violating basic notions of separation of powers or acting as a replacement agency to COAH – something the Supreme Court expressly directed the court to avoid in Mount Laurel IV:

The judicial role here is not to become a replacement agency to COAH. The agency is *sui generis* – a legislative created, unique device for securing satisfaction of Mount Laurel obligations. In opening the courts ..., it is not this court’s province to create an alternate form of statewide administrative decision maker for unresolved policy details of replacement third round rules.... Mount Laurel IV at 29.

On the more practical side, the municipalities and their expert, Econsult Solutions, Inc., contend any attempt to recapture a past “gap” would inflate their obligation by double counting some households already included in the present need. Further, Econsult maintains it is a “practical impossibility” to develop a reliable methodology to determine the “gap” need. Therefore, municipalities should be able to rely upon the only process used in the past to determine their fair share obligation.⁶

For their part, the builders argue the municipalities should be “judicially estopped” from asserting their constitutional fair share housing obligation is not cumulative and therefore no obligation exists for the period from 1999 to 2015. They point to the municipalities’ position asserted before the Appellate Division in In re Six Month Extension.

Indeed, it is ironic that both parties (or interests) appearing in the 2004 Appellate Division case are now advancing arguments before this court they vehemently opposed in 2004. On one hand, the builders and Fair Share’s predecessors asserted:

By granting extended certifications and not finalizing third round numbers or releasing interim obligations that would quantify the municipalities’ continuing realistic obligation during the gap period, COAH has effectively excused New Jersey municipalities from meeting the obligations to provide their fair share of affordable housing, which obligations continue to accrue in the intervening time period. Appellants argue that the Mount Laurel doctrine’s fair share requirement **cannot be phased in or satisfied after the fact.**

372 N. J. Super. at 89. (emphasis supplied)

And, on the other hand, COAH together with the municipalities successfully contended:

[t]hat the gap between the Second Round and third round methodologies is less significant than it appears. The urge that the delay is not indefinite and that the third round methodology will be **cumulative and recapture** any obligation. Id. at 96 (emphasis supplied)

⁶ Econsult Solutions, Inc., “Analysis of the Gap Period (1999–2015)”, dated February 8, 2016, page 7

Further in the opinion, the Appellate Division noted both COAH and the municipalities stressed the FHA itself and the regulations adopted in accordance therewith contemplate municipalities would be able to adopt appropriate phasing schedules for meeting their fair share.

COAH and the municipal respondents contend... that N.J.A.C. 5:91-14.3 realistically – and properly – recognizes and deals with the gap between the expiration of the second round standards and COAH’s adoption of its third round methodology and rules. They stress that when the same type of gap occurred between the first and second rounds, COAH retroactively incorporated in succeeding methodology the statewide need for the period commencing with the end of the prior regime; thus achieving a cumulative result. Id. at 90.

The Appellate Division also noted COAH had steadfastly maintained its view that:

[t]he Council’s third-round methodology and rules, once adopted, will comply with the requirements of the FHA and the Mount Laurel doctrine. The third-round methodology will continue the work of the first- and second-round methodologies and implementing regulations by fairly and accurately determining the state-wide affordable housing need and by assigning that need to the State’s municipalities. The mere fact that there may be a “gap” between the second and third round compliance periods, does not violate the Mount Laurel doctrine. In fact there was a similar gap between the first and second round compliance periods as well as the first-round compliance period was from 1987 to 1993, yet the second round rules were not adopted until June 6, 1994. Nonetheless, the affordable housing need was calculated from July 1987 through July 1999, creating a continuous calculation period upon which the first and second-rounds were based. Likewise, the third-round numbers will ultimately capture the full housing need projected through 2010. Based upon this history, the Council saw fit to provide compliant towns with some degree of protection from a builder’s remedy lawsuit during this “gap” period by adopting rules which extend second round substantive certification. Id. at 82.

Although the Appellate Division struck down COAH’s regulations for extending second round substantive certifications on procedural grounds, the court there was satisfied with COAH’s stated position that the gap period obligation would be ultimately captured in the third

round rules. Clearly, the Appellate Division's decision in In re Six Month Extension was based upon both the COAH and municipal assertion there would be a seamless transition in the second to third round methodologies accounting for the affordable housing obligation arising in the gap period.

It is this court's view therefore that the municipalities are estopped from now abandoning the position, presumably made in good faith before the Appellate Division in 2004, that there should be no gap period obligation. New Jersey courts have ruled a party, who is successful in asserting a position upon which a court bases its decision, may not assert a contradictory position thereafter. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 2004). Clearly the Appellate Division relied on representations of COAH and the municipalities that there would be no gaps when assessing a town's fair share.

Even if the municipalities were not to be estopped from advancing their position and despite their efforts here to distinguish both the position they forcefully advocated before the Appellate Division in In re Six Month Extension and that court's subsequent opinion in reliance of the same, the court finds the underlying principles in that case, as first enunciated by the Supreme Court in Mount Laurel II, are the same as the matter here. A municipality's fair share obligation is cumulative; to the extent it has not been addressed during the gap period it must be and, so long as this obligation can be reliably calculated by rational means, it is to be included in the third round cycle.

The court further notes all three iterations of COAH's proposed third round rules provided the gap need would be incorporated into the towns' third round obligation.

The first version of COAH's third round rules provided:

The "growth share" for the period January 1, 2004 through January 1, 2014 shall initially be calculated based on municipal

growth projections pursuant to N.J.A.C. 5:94-2.2. Projections of population and employment growth shall be converted into projected growth share affordable housing obligations by applying a ratio of one affordable unit for every eight new market-rate residential units projected, plus one affordable unit for every 25 newly created jobs as measured by new or expanded non-residential construction within the municipality in accordance with Appendix E, as projected in the municipality pursuant to N.J.A.C. 5:94-2.4. The growth share projections shall be converted into actual growth share obligation when market-rate units and newly constructed and expanded non-residential developments receive permanent certificates of occupancy, pursuant to N.J.A.C. 5:94-2.5. **Although the overall statewide need calculations are figured from the last year of the prior round (1999) to the last year of the new round (2014), the municipality's portion of the statewide need is compressed into a delivery period that runs from January 1, 2004 to January 1, 2014. N.J.A.C. 5:94-2.1(d). (Emphasis supplied).**

The second version stated:

The actual growth share obligation shall be based on permanent certificates of occupancy issued within the municipality for market-rate residential units and newly constructed or expanded non-residential developments in accordance with chapter Appendix D. Affordable housing shall be provided in direct proportion to the growth share obligation generated by the actual growth. However, if the actual growth share obligation is less than the projected growth share obligation, the municipality shall continue to provide a realistic opportunity for affordable housing to plan for the projected growth share through inclusionary zoning or any of the mechanisms permitted by N.J.A.C. 5:97-6. The municipality may submit an implementation schedule as detailed in N.J.A.C. 5:94-3.2(a) that sets forth a detailed timetable for affordable units to be provided within the period of substantive certification that demonstrates realistic opportunity and a timetable for the submittal of all information and documentation required for each mechanism. The implementation schedule shall consider the economic viability of the proposed mechanism, including the availability of public subsidies, development fees and other source of financing. **Although the overall Statewide and regional need calculations are figured from the last year of the prior round (1999) to the last year of the new round (2018), the municipality's portion of the statewide need is compressed into a delivery period that runs from January 1, 2004 to December 31, 2018. N.J.A.C. 5:97-2.2(e). (Emphasis supplied).**

The third version prepared for COAH by Dr. Robert Burchell also incorporated the then 1999-2014 gap period into local municipality's affordable housing obligation for the third cycle. N.J.A.C. 5:99-2.1(a). Dr. Burchell's proposed rules, however, allowed the towns to equally split the delivery of these units over the third and fourth cycles. See, Appendix D to N.J.A.C. 5:98 and 5:99.

Therefore, although each version of the proposed third round rules differed in their approach in delivering the gap obligation, all three iterations required each municipality to account for all or a portion of these units in the upcoming third round. While the first two iterations of COAH's round three rules were invalidated by the courts, no reviewing court has struck down COAH's attempts to recapture the gap need. The only issue remaining therefore is whether the gap number can be reliably calculated.

It is this issue, raised by this court, and the one expressed below by the Appellate Division nearly twelve years ago which presents the greatest challenge:

We are constrained to observe that the permissive approach to the passage of time connoted by Mount Laurel II and Hills Dev. Co. was applied when the subject matter was new and COAH was only an idea or in its infancy. The passage of so much time since then places a different perspective on the principle. Nevertheless, although factual figures, when ultimately developed, might never provide an adequate basis for recapturing the gap-time obligations of particular municipalities, to conclude so now, on the records before us would be speculations. We are obliged to accept COAH's intentions and goals as stated and leave for future development and remediation ... any idea that real opportunity for affordable housing have been irretrievably lost during the gap in ways that do not comport with the policies and principles underlying the process. In re Six Month Extension at page 97 in the upcoming housing cycle.

In addition to, once again, confirming the “gap” need is to be addressed, the Appellate Division clearly foresaw the potential difficulties in determining the gap period need and suggested that this task would be left to those with the expertise to develop the “factual figures.”

THE REPORT OF SPECIAL REGIONAL MASTER RICHARD B. READING

To that end, the court here acknowledges the report of its Regional Master, Mr. Reading, a copy of which accompanies this opinion as “Appendix A”, who has received, reviewed and critiqued the detailed “gap period” methodology developed by Dr. David Kinsey on behalf of Fair Share and the reports of Econsult and other experts either criticizing or supporting that methodology.

The point of the court’s inquiry here was not to determine whether the gap methodology proposed by Dr. Kinsey is flawless or appropriate. The details relating to the proper methodology will be determined at the upcoming plenary hearing. Rather, the inquiry is twofold – first, can a “gap methodology” be developed so as to provide a rational, reasonable and reliable basis to calculate the gap need and, second, to determine whether the gap need should be incorporated into a single 1999 to 2025 “prospective need,” as originally proposed by Dr. Kinsey, or whether the gap need is more accurately recaptured when calculated as a separate and discrete component of a town’s fair share. On these two questions, the court must necessarily rely on expert opinion.

In his report, Mr. Reading concedes there is a challenge in arriving at a methodology for the gap period. This, is not because the calculation is any more difficult than that used in determining present or prospective need but due primarily to the lack of any pre-existing methodology.

The calculation of the current needs of the affordable households formed during the sixteen year Gap Period is not a process that is imbedded in the Prior Round methodology, is not a projected (Prospective) need, but should be undertaken as a separate and discrete component of affordable housing need. Prior submissions provided by FSHC and Econsult on December 8, 2015 contended that the calculation of the Gap Period affordable housing needs were unnecessary because they were properly a part of the 1999-2015 Prospective Need (FSHC) or were unnecessary altogether because the FHA does not make any provision for a retrospective need (Econsult). Furthermore, it was argued that the precise identification of the LMI households formed during the Gap Period that have a continuing need for affordable housing may be so speculative that it would appear to defy empirical calculation. The continuing needs of LMI households formed during the Gap period are different and distinct from the measurement of deficient housing units or the projection of future LMI households.

Accordingly, the Gap Period would necessitate a different methodology than those used for Present and Prospective Need.

Reading Report, page 14.

Mr. Reading further provides:

The fact that a task may require a different form of analysis should not preclude its attempt. Assertions that a determination of Gap Period affordable housing needs cannot be reduced to a precise mathematical calculation devoid of all assumptions and estimates is not distinctly different than the preparation of estimates for the other components of housing need. In this regard, the other components of affordable housing need, including Present Need and Prospective Need are likewise predicated upon estimates that are structured as calculations. The different nature of time frame encompassed by the Gap Period should not be an impediment to its quantification., **and a methodology that utilizes the actual data and yields a realistic outcome would, in reality, be no more impaired than the estimates of the Present and Prospective components of affordable housing need.**

Id. at page 14-15. (emphasis supplied).

Thus, Mr. Reading states the gap period methodology may actually be more reliable. In this regard, Mr. Reading notes that unlike prospective need which necessarily relies on assumption estimates and projections, the gap period will be based on data from actual events

“that is less subjective and yields results that are trustworthy and readily verifiable.” Id. at page 17.

Next, Mr. Reading found in reviewing the two alternatives presented by Dr. Kinsey, the method which calculates the gap need as a separate and discrete calculation is the preferable approach.

FSHC has presented two alternative methodologies for the calculation of Gap Period LMI housing needs. The first method (Alternative 1) follows their position that a Prospective Need period from 1999 and 2025 is the correct approach, but contends that this 26 year projection can readily be broken down into two projections; one from 1999 to 2015 (Gap Period) and one from 2015 to 2025 (Prospective Need). In the first alternative, the same projection methodology is used for both components, and despite the fact that the 1999-2015 Gap Period has already passed and has available data, is still treated as a projection from 1999. The second methodology advanced by FSHC is based upon a 1994 recalculation by COAH of the prior round (1987-1993) housing obligations due to more up to date information (1990 Census) that reflected a slower rate of population and housing growth.

The second alternative presented by FSHC is preferable to the first alternative to the extent that it addresses the housing needs in a prior period by utilizing actual data rather than projections and estimates. The second alternative is a move in the right direction, but needs to be further refined to incorporate more factual data and to include more information to accurately identify the LMI households formed, but not satisfied during the Gap Period. Of greater significance than FSHC's specific calculations is the fact that FSHC has acknowledged that a separate and discrete methodology can be prepared and utilized for the determination of Gap Period affordable housing needs. In this latter regard, one of the competing methodologies has recognized the existence of the Gap Period and, despite the rejection of COAH's last approach for its calculation, has confirmed that an alternative methodology could be developed and utilized for the Gap Period calculations.

Id. at page 16.

Finally, the court notes Mr. Reading's report addresses the potential of double counting of low and moderate-income households in both the gap period and the present need – a fear raised by the municipalities. As part of his recommendations for developing a methodology, Mr. Reading agrees the methodology ultimately employed must “adjust the Gap Period LMI households for 2015 LMI Present Need households...” Reading Report, “Recommended Procedure,” item 4, page 17. Again, the purpose here is not to adopt a specific methodology at this juncture. However, the court is confident that Mr. Reading will further address this concern and resolve it satisfactorily prior to recommending any methodology to the court.

The court finds Mr. Reading's report to be both comprehensive in its scope and clear in its recommendations. Accordingly, his recommendations as to the methods and processes to be employed in developing an accurate and reliable methodology to determine the gap period need is adopted by the court and shall be utilized by the parties when preparing their suggested methodologies to the court in advance of the upcoming trial.

B.

**THE 1999 to 2015 GAP PERIOD NEED
TOGETHER WITH A MUNICIPALITY'S PRESENT
NEED AND 2015 TO 2025 PROSPECTIVE NEED
CONSTITUTE THE COMPONENTS OF A MUNICIPALITY'S
THIRD ROUND FAIR SHARE OBLIGATION WHICH ARE
THEREFORE SUBJECT TO THE 1000 UNIT CAP
PROVISION OF THE FHA**

With the inclusion of the gap period, there are four components of a municipality's affordable housing obligation. The first component, in time, is the town's unmet or unsatisfied obligation, to the extent there remains one, from the first and second housing cycles. Next, as determined above, is a town's gap period obligation from 1999 to 2015. The third component is

the municipality's present need. The fourth and final component is the town's prospective need from the present to the end of the upcoming ten-year housing cycle. All but the first component is subject to FHA's 1000 unit cap.

The first component is clearly not. In Mount Laurel IV, the Supreme Court identified certain guiding principles that the trial courts should follow. The very first principle was that a town's prior affordable housing obligations of the first two rounds must be satisfied. Specifically, the Court stated "our decision today does not eradicate the prior round obligations. As such, prior unfulfilled housing obligations should be **the starting point** for a determination of a municipality's fair share responsibility." Mount Laurel IV at page 30 (emphasis supplied). Given this clear directive, these obligations must be met in full with no further abatement.⁷

The question then becomes which of the remaining components are subject to FHA's 1000 unit cap limitation. That statute provides that COAH and the courts cannot impose a fair share obligation on a municipality in excess of 1000 units per each ten-year housing cycle.

No municipality shall be required to address a fair share beyond 1000 units within ten years from the grant of substantive certification, unless it is demonstrated, following objection by an interested party and an evidentiary hearing, based upon the facts and circumstances of the affected municipality that is likely that the municipality through its zoning power could create a realistic opportunity for more than 1000 low and moderate income units within that ten-year period. N.J.S.A. 52:27D-307(e)

The FHA then specifies what those facts and circumstances would be:

For purposes of this section, the facts and circumstances which shall determine whether a municipality's fair share shall exceed 1,000 units, as provided above, shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential units in the ten-year period preceding the petition for substantive certification in connection with the objection filed.

Ibid.

⁷ This prior round obligation may already have been subject to adjustment by operation of the 1000 unit cap or the 20 percent cap.

The municipalities argue the FHA's 1000 unit cap should be applied to a municipality's entire fair share obligation, i.e., the present need and the prospective fair share for 2015 to 2025 **and** any "gap period" obligation determined to be applicable by the court.

The builders, on the other hand, urge the court to adopt the approach recently taken by the trial court in the recently reported case of In the Matter of the Adoption of the Housing Element of Monroe Township, Dkt. No. MID-3665-15 (Law Div. Middlesex Cty, October 5, 2015) ("Monroe Township"). In that case, the court determined it was never the intent of the Legislature to cap what in essence is a twenty six (26) year obligation at 1000 units. Instead, the court in Monroe Township split the town's obligation into two components, i.e., a 2015-2025 component and a gap period component. If the municipality's fair share obligation for the 2015-2025 period exceeded the 1000 unit cap, it could utilize the cap as provided for in the statute. The gap period obligation however was moved "outside" the statutory cap. In its place, the Monroe Township court created a pro-rated gap need cap of 1600. However, in order to lessen the impact on municipalities, the Monroe Township court allowed the municipality to spread its gap obligation equally over three cycles. Thus, for example, if a municipality had a present and prospective need obligation for 2015 to 2025 of 1200 units and a "gap" need for 1999 to 2015 of 1800 units, the town's 1200 unit present and prospective need would be capped at 1000 and the 1800 gap need would be separately capped at 1600 units. These gap units would then be spread over the next three cycles in three equal installments of approximately 533 units per cycle. Therefore, in this example, the municipality would be obligated to provide 1533 fair share units during the 2015-2025 third cycle plus 533 units in each in the next two cycles in addition to their then-calculated fair share need.

The builders argue by raising the cap for the gap obligation to 1600 but allowing the towns to phase in that obligation, the Monroe Township court was attempting to balance the legislative concerns of lessening the impact of such a large obligation upon towns but recognizing the intent of the Mount Laurel doctrine to preserve a town's past gap obligation, where possible, to thereby produce the most affordable housing units allowable. The municipalities however assert the Monroe Township court failed to observe the plain meaning of the FHA's 1000 unit cap provision. They further assert that the prorated 1600 unit gap obligation cap has no basis in law whether that be prior court decisions, prior COAH regulations or the FHA. They ask the court therefore to adhere to the plain language of the FHA.

The beginning point for determining the intent of a statute is the language of the statute itself. Courts must be bound by the axiom that when a legislature speaks by drafting a statute, the law says what the legislature meant. Thus, if the words of a statute are plain, clear and unambiguous, the "judicial inquiry is complete." Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992). In this state, the New Jersey Supreme Court has ruled:

When interpreting statutory language, the goal is to divine and effectuate the Legislature's intent. In furtherance of that goal, we begin each such inquiry with the language of the statute, giving the terms used therein then ordinary and accepted meaning. When the Legislature's chosen words lead to one clear and unambiguous result, the interpretative process comes to a close, without the need to consider further intrinsic aids. We seek out extrinsic evidence, such as legislative history, for assistance when statutory language yields "more than one plausible interpretation." (citations omitted). State v. Shelley, 205 N.J. 320, 323 (2011) citing to and quoting DiProspero v. Penn, 183 N.J. 477, 492-93.

The specific language of the FHA relative to the cap is precise, clear and unambiguous, i.e., no municipality is to have a fair share obligation beyond 1000 units in any ten (10) year cycle. The only possible ambiguity perhaps is the meaning of the term "fair share" in the context

of a sixteen (16) year gap. Does it refer only to the “present need and prospective need” calculation for the period of 2015 to 2025 thereby excluding the “gap period?” If so, then the argument advanced by the builders and adopted by the court in Monroe Township would be compelling.

Surprisingly, the FHA does not specifically define either the term “fair share” or “present need.” It does, however, define “prospective need” which could lead to a question as to whether “present need” is subject to the 1000 unit cap. However, Section 307 of the FHA in defining the duties of COAH specifically authorizes COAH to consider the municipality’s “fair share of the regions **present and prospective need**” when applying the 1000 unit cap. N.J.S.A. 52D-307(e). (emphasis supplied). The court is satisfied the present need is part of a town’s “fair share” and thus subject to the cap.

This court also finds the term “fair share” applies to a municipality’s present need and prospective need for 2015 to 2025 and to its 1999 to 2015 gap period. As noted above, COAH and the municipalities have previously asserted that any gap would be included in the next round’s prospective need and the Appellate Division had agreed with this assertion. Therefore, whether the gap period is folded into a new round’s prospective need or calculated as a separate and discrete component, the gap period is part of the fair share need. Moreover, in the unadopted third iteration of COAH’s third round rules, the 1999 to 2014 “gap period” is denoted as the “1999-2014 unanswered prior obligation” and involves projections for the years 1999 to 2014. “Fair Share of Prospective Need” or “Fair Share” is defined in those same rules as “a projection of affordable housing needs based upon the development and growth that is reasonably likely to occur in the region or municipality during the period of 2014 to 2024.” Thus, the unanswered prior obligation or gap obligation appears to be qualitatively the same as “prospective need” and

thus both are components of a municipality's "fair share." Therefore, both of these components constitute "fair share" and are subject to and within the cap.

In the final analysis, the court finds it is constrained by the clear language of the FHA and therefore the fair share obligation of any municipality, constituting the gap period from 1999 to 2015, the present need and the upcoming third round prospective needs, is subject to that statute's 1000 unit cap.

C.

**A MUNICIPALITY MAY DEFER, SUBJECT
TO THE DISCRETION OF THE COURT
UP TO 50 PERCENT OF ITS "GAP NEED"
OBLIGATION TO THE FOURTH ROUND
HOUSING CYCLE**

The court notes that most municipalities in Ocean County and the overwhelming majority of New Jersey municipalities do not, even when including the "gap period", have fair share obligations exceeding 1000 units for the third round. In some circumstances, their surviving "gap" obligation after the cap is applied may be substantial. Such towns would be obligated to provide their entire fair share within the next ten (10) year third round housing cycle. Such a result, in many cases, may unduly strain municipal services or otherwise detrimentally impact these towns. Mr. Reading, in his report, recommends the court consider a two cycle phase-in period for a town's gap period obligation. Mr. Reading notes such a deferral was proposed in COAH's unadopted third round rules. The court agrees with this approach and therefore such municipalities may petition the court to defer up to 50 percent of its "gap" obligation to the fourth round. This determination will be made during the court's review of the individual

municipal plans and will be based upon objective factors to be developed by the court with the assistance of its local masters.

Finally, the court acknowledges there may be a circumstance in Ocean County where a town's obligation may, with the inclusion of the gap period, be pushed beyond the 1000 unit cap. Indeed, Mr. Reading approximates there may be anywhere from thirty to forty municipalities throughout the state facing such an eventuality. The question thus presented is which component is capped. In those rare circumstances, and if it were to occur in Ocean County, the regional master, when allocating the regional need to such a town would first account for the present and prospective needs. This need will be given first priority. Then, the gap need units, 50 percent of which may be eligible to deferral, would be added and then the cap applied. For example, if a town's housing need is determined to be as follows: present need – 200 units; prospective need – 500 units; gap need – 400 units, the master is to first add the present and prospective need (200 units plus 500 units) and then add that portion of the gap need (300 units) to arrive at the 1000 unit cap. The remaining 100 gap units are eliminated and one half of the surviving 300 gap units (150 units) may be deferred to the fourth cycle.

CONCLUSION

Based upon the findings of this opinion, the Special Regional Master is hereby ORDERED to prepare his final report so as to:

1. Include, as a separate and discrete component, the affordable housing need which arose during the "gap period" encompassing the period from the end of the second round housing cycle in 1999 to the present into his methodology in determining the statewide and regional housing need and the allocation of that need to the constituent Ocean County municipalities.
2. Apply FHA's 1000 unit cap provision as directed by this opinion. A municipality's present and prospective need for the third round housing cycle

together with the gap period need shall all be subject to the cap. A municipality's present and prospective need shall be accounted for first and then the gap period need is to be added.

3. Include in his methodology a mechanism whereby all municipalities may seek to defer up to 50 percent of its gap period need to the fourth round housing cycle. The court's determination on the requested deferral shall be determined during the court's review of the individual affordable housing plans. The Special Local Masters shall prepare a report to the court and Mr. Reading within forty-five days setting forth suggested factors to be utilized in such a determination.

MARLENE LYNCH FORD, A.J.S.C., concurs with and joins in the opinion of the court.

FILED

MAR 15 2013

**SUPERIOR COURT OF NJ
MERCER VICINAGE
CIVIL DIVISION**

PREPARED BY THE COURT

**In the Matter of the Application of the
Township of East Windsor**

**In the Matter of the Application of the
Township of Lawrence**

**In the Matter of the Application of the
Township of Robbinsville**

**In the Matter of the Application of the
Municipality of Princeton**

In the Matter of the Application of Ewing

**In the Matter of the Application of the
Township of Hopewell**

In the Matter of West Windsor Township

**In the Matter of the Application of the
Borough of Hightstown**

**In the Matter of the Application of the
Township of Hamilton**

Petitioners.

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

**Civil Action
(Mt. Laurel)**

**SECOND REVISED SCHEDULING
ORDER**

DOCKET NUMBERS:

MER-L-1522-15

MER-L-1538-15

MER-L-1547-15

MER-L-1550-15

MER-L-1556-15

MER-L-1557-15

MER-L-1561-15

MER-L-1568-15

MER-L-1573-15

THIS MATTER having been opened by the court in response to the February 18, 2015, Opinion and February 24, 2016, Sixth Revised Case Management Order in the Ocean County Mt. Laurel litigation, docketed at OCN-L-2640-15; and the court wishing to ensure that its schedule is coordinated with the other Mt. Laurel litigations in its Region to promote efficiency and for the benefit of all parties; and the court realizing that, in light of the Ocean County order, it must modify its own scheduling order in order to accommodate such coordination; and the court having solicited and received comments from the parties regarding the merits of the February 18, 2015 Opinion;

and the court preferring to limit its issuance of decisions on methodology and compliance without a full hearing on the issues presented by the parties; and for good cause shown:

IT IS this 15th day of March, 2016, **HEREBY ORDERED** that:

1. The February 5, 2016, scheduling order is vacated only to the extent it is modified by this order.
2. The court hereby adopts and incorporates only that portion of the February 18, 2015, Ocean County Opinion requiring the municipalities to include the “gap period” unmet affordable housing needs when calculating their Third Round obligations. All remaining issues, including the precise means of calculating the “gap period” need, will be reserved until the plenary trial.
3. All final expert reports on behalf of the parties on the issues of compliance standards, methodology, and calculation of the regional and municipal fair share housing need and allocation shall be exchanged and submitted to the Court, Special Masters, municipalities, intervenors, and previously identified interested parties by April 1, 2016. This deadline also applies to any expert reports that any municipality will rely upon in lieu of Econsult’s report.
4. All expert reports filed or relied upon in accordance with this Order shall include, without the need for further discovery, the factual bases for any and all conclusions, including but not limited to any and all data, formulae, and methodologies relied upon as part of any determination in the report, consistent with New Jersey Rule of Evidence 703. If a party determines that the factual bases and conclusions for a report have not been sufficiently provided, it may serve a request to produce upon the party submitting

the report, and the party that receives the request shall respond within five (5) days.

The party submitting the report may, on short notice, move to quash the request to produce.

5. The parties shall submit critiques of any expert methodology report to the court by April 8, 2016.
6. Special Master Richard Reading shall submit to the court a Final Report setting on the issues of methodology and calculation of the regional and municipal fair share housing need and allocation to the court and provide copies to the individuals noted on the consolidated service list for the Mercer County Mt. Laurel litigations by April 29, 2016.
7. The schedule for depositions and trial on the issue of compliance standards, methodology and calculation of the regional, and municipal housing need and allocation shall be set at a case management conference scheduled for March 31, 2016, at 2:00 P.M. The court intends to coordinate discovery with the other counties in Region 4.
8. The court encourages the parties to pursue settlement efforts in cooperation with the Special Masters.


Mary C. Jacobson, A.J.S.C.

ORDER ON MOTION

IN RE DECLARATORY JUDGMENT
ACTIONS FILED BY VARIOUS
MUNICIPALITIES, COUNTY OF OCEAN

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. AM-000407-15T1
MOTION NO. M-005196-15
BEFORE PART B
JUDGE(S): MARIE E. LIHOTZ
WILLIAM E. NUGENT

MOTION FILED: 03/09/2016

BY: TOWNSHIP OF BARNEGAT

ANSWER(S) 03/21/2016

BY: NEW JERSEY BUILDERS ASSOCIATION

FILED: 03/23/2016

BY: FAIR SHARE HOUSING CENTER

SUBMITTED TO COURT: April 11, 2016

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
14th day of April, 2016, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR LEAVE TO APPEAL

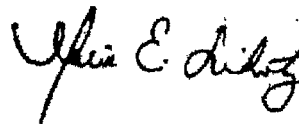
GRANTED

MOTION FOR ORAL ARGUMENT

DENIED

SUPPLEMENTAL:

FOR THE COURT:



MARIE E. LIHOTZ, P.J.A.D.

OCEAN L-002640-15
ORDER - REGULAR MOTION
MMH

FILED

IN RE DECLARATORY
JUDGMENT ACTIONS FILED
BY VARIOUS MUNICIPALITIES,
COUNTY OF OCEAN

APR 26 2016

ORDER

Theresa A. Healy
CLERK

APPLICANT: Fair Share Housing Center

This matter having come before the Court on Fair Share Housing Center's application for emergent relief, pursuant to Rule 2:9-8, seeking (1) vacation of an order of the Superior Court, Appellate Division, granting leave to appeal from a February 18, 2016 judgment of the Law Division, or (2) direct certification of the pending appeal (A-003323-15) and summary affirmance of the Law Division's judgment; and

A single Justice of this Court having referred the matter to the full Court for review; and

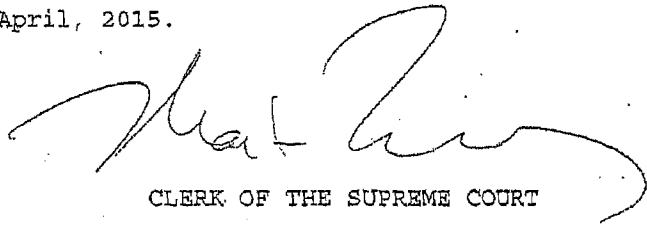
The Court having considered the application and the parties' submissions to the Appellate Division on the underlying motion for leave to appeal;

It is hereby ORDERED that Fair Share Housing Center's application for emergent relief is denied.

It is further ORDERED that the scheduling order entered by the Appellate Division Clerk's Office on April 21, 2016 be

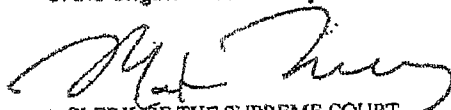
modified in a manner to provide for oral argument on the pending appeal (A-003323-15) before the Appellate Division on or before June 30, 2016. Jurisdiction is not retained.

WITNESS, the Honorable Jaynee LaVecchia, Presiding Justice,
at Trenton, this 26th day of April, 2015.



CLERK OF THE SUPREME COURT

The foregoing is a true copy
of the original on file in my office.



CLERK OF THE SUPREME COURT
OF NEW JERSEY

Prepared by the Court:

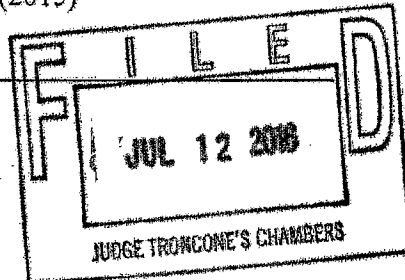
SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY

Docket # OCN-L-2640-15

IN ALL 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)

Civil Action

(Consolidated Matter)



NINTH REVISED
CASE MANAGEMENT
ORDER

THIS MATTER having been opened to the court upon its own motion to further revise the Eighth Revised Case Management Order, dated June 21, 2016; and the court having conferred with all parties;

IT IS on this 12th day of July, 2016, **ORDERED** as follows:

1. On or before July 29, 2016, Regional Master Richard B. Reading shall submit to the court his final methodology report setting forth the proposed regional housing need and allocation of said need to the constituent Ocean County municipalities. Copies shall be provided to all masters and parties.
2. All parties are to submit legal briefs to the court setting forth their respective position on the definition of "Present Need." The briefs may be accompanied by certifications of the parties' expert(s) addressing the issue. These briefs are to be submitted to the court via email on or before Thursday, July 21, 2016. Copies of these briefs, also via email, are to be served on the court masters and all parties.

3. On or before August 17, 2016, any party may submit to the court a critique of Mr. Reading's final report. Copies shall be provided to all masters and parties.
4. On or before August 24, 2016, Regional Master Richard B. Reading may submit a revised final report addressing any issues raised by the parties' critiques.
5. On or before August 5, 2016, the parties shall advise the court, in writing, of all experts they plan to call at the methodology trial.
6. Deposition of party experts of whom the court is currently aware and the Regional Master shall be conducted as follows:

Thursday, September 8 th -	Jeffrey G. Otteau
Monday, September 12 th -	Peter Angelides, Ph.D., AICP
Tuesday, September 13 th -	David N. Kinsey, Ph.D., PP, FAICP
Wednesday, September 14 th -	Daniel McCue; and Creigh Rahenkamp
Thursday, September 15 th -	Art Bernard, PP and Robert S. Powell, Jr., Ph.D.
Friday, September 16 th -	Richard B. Reading, Regional Court Master

All depositions shall take place at the Ocean County Courthouse commencing at 9:00 am each morning.

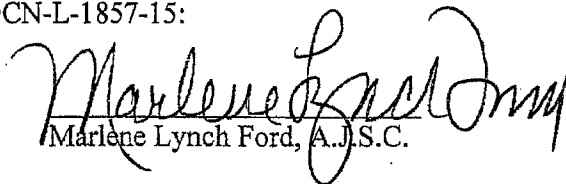
Each of the three litigation groups identified by the court, i.e., Fair Share Housing Center and other public interest groups, the builders (NJBA and private development companies) and the municipalities, including the New Jersey League of Municipalities, shall designate two "lead attorneys" who will initially pose all questions to the deponents. All attorneys who have entered an appearance in the consolidated case may attend the deposition and confer with the lead attorneys during the course of the deposition. Following completion of the deposition of the witness by the lead attorneys, any attorney in attendance may ask

questions. Depositions will conclude at 4:30 pm each day. Transcripts of all depositions will be provided to the court and all masters by September 23, 2016.

7. The parties shall submit trial briefs on or before Wednesday, September 28, 2016. A trial readiness conference will be conducted on Wednesday, September 28, 2016 at 1:30 pm.
8. The trial to determine the regional need and allocation of that need to Ocean County municipalities will commence at 9:00 am, Wednesday, October 5, 2016, and proceed each day thereafter until its conclusion. At trial, each litigation group shall designate two lead attorneys to present the case to the court. Only designated lead counsel shall conduct direct and cross examination of witnesses during the trial and make legal arguments to the court. However, all attorneys who have entered an appearance on the consolidated matter shall attend the trial, enter an appearance and confer and assist lead counsel during the same.

As to the matters of Township of Toms River bearing Docket No. OCN-L-1867-15 and Township of Brick bearing Docket No. OCN-L-1857-15:

Dated: July 12, 2016


Marlene Lynch Ford, A.J.S.C.

As to the remaining matters bearing the dockets:

In the Matter of the Township of Barnegat
OCN-L-1856-15
In the Matter of the Township of Berkeley
OCN-L-1855-15
In the Matter of the Borough of Beach Haven
OCN-L-2217-15 (2728-08)
In the Matter of the Township of Jackson
OCN-L-1879-15
In the Matter of the Township of Lacey
OCN-L- 1912-15
In the Matter of the Township of Little Egg Harbor
OCN-L-1911-15

In the Matter of the Township of Manchester
OCN-L-1910-15
In the Matter of the Township of Ocean
OCN-L-1884-15
In the Matter of the Borough of Pine Beach
OCN-L-1687-15
In the Matter of the Borough of Point Pleasant
OCN-L-1858-15
In the Matter of the Township of Stafford
OCN-L-1913-15

Dated: July 12, 2016



Mark A. Troncone, J.S.C.

T.H.

FILED

JUL 18 2016

JUDGE DOUGLAS K. WOLFSON

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX COUNTY
DOCKET NO. MID-L-3878-15**

IN THE MATTER OF THE ADOPTION OF
THE HOUSING ELEMENTS FOR THE
TOWNSHIP OF SOUTH BRUNSWICK
AND THE FAIR SHARE PLAN AND
IMPLEMENTING ORDINANCES.

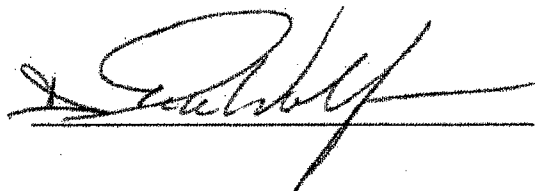
AMENDED CASE MANAGEMENT ORDER

THIS MATTER having come before the Court for a case management conference on July 12, 2016, and counsel for each party having attended the conference, and for good cause shown:

IT IS on this 18th day of July, 2016;

ORDERED THAT:

1. All expert reports and/or legal arguments on whether and to what extent South Brunswick's present need obligation was modified by the Ocean County Appeal, and if so, to what extent, shall be submitted on or before July 21, 2016;
2. All responses shall be submitted on or before August 16, 2016;
3. That the parties shall appear on August 18, 2016 at 9:00 am to continue the trial of South Brunswick's fair share obligation, limited, however, to the issue of South Brunswick's present need obligation;
4. To the extent that this Order is inconsistent with any prior Orders, this Order takes precedence over prior Orders;
5. A copy of this order shall be served upon all counsel within seven (7) days from the date hereof.



DOUGLAS K. WOLFSON, J.S.C.

FILED

JUL 15 2016

CAMILLE M. KENNY
J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY

Civil Action

AMENDED CASE MANAGEMENT AND
HEARING ON DETERMINATION OF FAIR
SHARE HOUSING OBLIGATION ORDER

IN THE MATTER OF THE
APPLICATION OF MUNICIPALITIES
SEEKING ORDERS OF
CONSTITUTIONAL COMPLIANCE IN
THE COUNTY OF UNION, PURSUANT
TO THE SUPREME COURT'S
DECISION IN In re Adoption of N.J.A.C.
5:96 & 5:97, 221 N.J. 1 (2015) (captions and
docket numbers attached hereto)

THESE MATTERS having come before the Court for a Case Management Conference on Tuesday, March 15, 2016 for all Mount Laurel matters currently pending in the County of Union, and counsel for each interested party having attended the conference, and the Court having issued a previous amended case management order on June 2, 2016, and a further case management conference having come before the Court on June 14, 2016 in In the Matter of the Application of the Township of Berkeley Heights, County of Union, Docket No. UNN-L-2405-15 (the "Berkeley Heights matter") and the Court having conducted a case-management conference in In the Matter of the Application of the City of Summit, Docket No. UNN-L-2440-15 (the "Summit matter"), in which the court agreed to also extend dates, as below and established certain parameters for processing the case that require amendment of the June 2, 2016 order, and for good cause shown :

IT IS on this 15th day of July, 2016, hereby ORDERED:

1. Trial Date: The trial date in the Berkeley Heights matter is hereby scheduled for September 6, 2016 at 9:30 a.m. and shall continue on September 7th and 9th and then through completion at the Court's discretion;

2. In the event the Berkeley Heights matter resolves prior to trial, the trial date for

In the Matter of the Application of the City of Summit, Docket No. UNN-L-

2440-15 is scheduled for September 13, 2016 at 9:30 am and shall continue

through completion at the Court's discretion;

- In the event the Summit matter settles prior to September 2, 2016, Counsel for Berkeley Heights may seek an adjournment to*
3. If both the Berkeley Heights matter and the Summit matter resolve prior to trial, an Order shall be entered setting forth a trial date two months thereafter and pre-trial schedule for two other municipalities;

4. Naming Of Expert Witnesses: On or before July 8, 2016 the interested parties in the Berkeley Heights matter shall advise the Court, in writing, of all experts they plan to call at trial. Interested parties in the Summit matter shall so advise the Court on or before July 15, 2016;

5. Expert Reports: All expert reports on behalf of the interested parties and interveners, regarding issues of methodology and calculation of the state, regional and municipal fair share housing need and allocation, shall be submitted to the Court, the Special Master, and all other interested parties on or before July ²²15, 2016. Similar expert reports are due in the Summit matter by July ²⁴22, 2016;

6. If interested parties have alternative positions on these issues, these shall be included when the expert reports are filed;

7. All expert reports filed or relied upon in accordance with this Order shall include, without the need for further discovery, the factual bases for any and all conclusions, including but not limited to any and all data, formulae, and methodologies relied upon as part of any determination in the report, consistent

with New Jersey Rule of Evidence 703. If a party asserts that the factual bases and conclusions for a report have not been provided sufficiently, it may serve a request to produce upon the party submitting the report, to which that party shall respond within five (5) days; however, that party may, on short notice, move to quash the request to produce;

8. **Depositions:** Oral depositions of experts are permitted on the issues of methodology and calculation of the state, regional and municipal fair share housing need and allocation shall be scheduled amicably if possible and if not possible, the court shall schedule a conference call to resolve these scheduling issues. Depositions in the Berkeley Heights Matter and the Summit matter shall be completed by September 1, 2016. The parties may schedule depositions at any time before this date, and the parties' decision to schedule depositions at a later date within this time period shall not be a basis for delaying the trial or any other deadline in this order. The interested parties may rely on depositions of experts taken in Mount Laurel litigation pending in other counties, whether they participated in those or not, and may, upon consent of the parties, determine only to supplement previously taken depositions;
9. Counsel for the Township of Berkeley Heights and counsel for the City of Summit must each meet and confer with all interested parties, including but not limited to Fair Share Housing Center and the Special Master, on or before July 22, 2016.
10. **Trial Briefs:** Trial briefs must include a critical analysis of the opposing parties' expert reports, and shall be submitted to the Court, the Special Master,

and all interested parties by September 2, 2016 in the Berkeley Heights matter and the Summit matter.

11. **Draft Plan:** The trial briefs in the Berkeley Heights matter and the Summit matter shall include the draft plan to be relied upon at the time of trial;
12. **Replies To Trial Briefs:** Replies to the trial briefs shall be submitted to the Court, the Special Master, and all interested parties on the day of trial;
13. **Pre-trial Conference:** A pre-trial conference will be held on August 31, 2016 at 10:30 a.m for both the Berkeley Heights matter and the Summit matter.
14. **Adopted/Endorsed HE/FSP Submission:** Within forty-five (45) days after the entry of the Court's Order establishing a Third Round municipal fair share allocation, a Housing Element and Fair Share Plan shall be adopted and endorsed and submitted to the Court, the Special Masters, the interveners, and all interested parties. The Court shall permit the municipality to file a motion to request an extension beyond the forty-five (45) day period, setting forth the reasons such an extension is needed;
15. **Immunity:** Immunity previously granted to a municipality shall be presumptively extended through this period for all pending Union County Mount Laurel matters, without the need for further application to the Court;
16. This Order takes precedence over prior Orders;
17. A copy of this Order has been served today upon all counsel of record by the Court via email and counsel for the Township of Berkeley Heights and the City of Summit shall serve the Order on all interested parties as directed by the New

Jersey Supreme Court in Mount Laurel IV within three (3) days from the date
hereof.

As to the matters bearing the dockets:

In the Matter of the Application of the Township of Clark, a Municipal
Corporation of the State of New Jersey

UNN-L-2441-15

In the Matter of the Application of the Borough of Garwood, a Municipality
of the State of New Jersey

UNN-L-2406-15

In the Matter of the Application of the Township of Scotch Plains, a
Municipality of the State of New Jersey

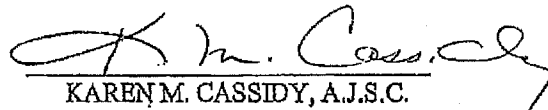
UNN-L-2407-15

In re Petition of the Township of Union, Union County, New Jersey

UNN-L-2414-15

In re: Township of Westfield Compliance with the Third Round Mount
Laurel Affordable Housing Obligation

UNN-L-2391-15


KAREN M. CASSIDY, A.J.S.C.

As to the matters bearing the dockets:

In the Matter of the Application of the Township of Berkeley Heights,
County of Union

UNN-L-2405-15

In the Matter of the Application of the City of Summit

UNN-L-2440-15


CAMILLE M. KENNY, J.S.C.

Courier-Post, Cherry Hill

Publication Logo
Unavailable

Publication Name:
Courier-Post, Cherry Hill

Publication URL:

Publication City and State:
Cherry Hill, NJ

Publication County:
Camden

Notice Popular Keyword Category:

Notice Keywords:
Fairness Hearing Cherry Hill 2015

Notice Authentication Number:
201605241247581903614
2906520855

Notice URL:

Notice Publish Date:
Saturday, June 20, 2015

Notice Content

PUBLIC NOTICE Township of Cherry Hill NOTICE OF (A) FAIRNESS HEARING ON A SETTLEMENT BETWEEN THE FAIR SHARE HOUSING CENTER PLAINTIFFS AND THE CHERRY HILL DEFENDANTS; AND (B) A MOUNT LAUREL COMPLIANCE HEARING ON THE 2011 HOUSING ELEMENT AND FAIR SHARE PLAN, AS AMENDED IN 2014, OF THE TOWNSHIP OF CHERRY HILL, COUNTY OF CAMDEN The Honorable Nan S. Famular, P.J.Ch. will conduct a Compliance and Fairness Hearing in the matter captioned Fair Share Housing Center, Inc.; Camden County Branch of the N.A.A.C.P.; and the Southern Burlington County Branch of the N.A.A.C.P. v. Township of Cherry Hill; Township of Cherry Hill Planning Board; and of Township of Cherry Hill Zoning Board, Superior Court of New Jersey, Law Division, Docket No.: L-04889-01, at the Camden County Hall of Justice, 101 South 5th Street, Camden, New Jersey 08103 on 10:00 a.m. on July 21, 2015. This Hearing will consider the following issues: (1) Whether a settlement agreement between (a) Fair Share Housing Center, Inc.; Camden County Branch of the N.A.A.C.P., the Southern Burlington County Branch of the N.A.A.C.P., Fair Share Housing Development and Evans Francis Estates, L/R (hereinafter "Plaintiffs") and (b) Township of Cherry Hill; Township of Cherry Hill Planning Board; and Township of Cherry Hill Zoning Board (hereinafter "Defendants") is fair and reasonable to low and moderate income households, (2) Whether the Housing Element and Fair Share Plan of the Township of Cherry Hill adopted on September 19, 2011 by the Cherry Hill Planning Board and endorsed on September 26, 2011 by the Cherry Hill Township Council, as amended on February 18, 2014 by the Cherry Hill Planning Board and endorsed on February 24, 2014 by the Cherry Hill Township Council (hereinafter collectively "Affordable Housing Plan"), along with other measures Defendants have satisfies the Township's responsibilities to provide affordable housing with respect to the prior round component of the Township's "fair share" as previously defined by the New Jersey Council On Affordable Housing ("COAH"), thereby entitling the Township to a Prior Round Judgment of Compliance and Repose. Specifically, the Court will evaluate the prior round component of the plan, based upon N.J.A.C. 5:93-1.1 et seq. If the Court is satisfied that the settlement agreement is fair and reasonable to low and moderate income households, the Court will enter an Order approving the settlement. That order will bind all parties and nonparties to the litigation identified above from subsequently challenging the rights and responsibilities provided by the settlement. If the Court concludes that the Affordable Housing Plan satisfies the Township's obligations with respect to the prior round component of its plan, as COAH has previously defined those responsibilities, it shall issue a Prior Round Judgment of Compliance and Repose from all exclusionary zoning lawsuits for a period of ten (10) years according to the Fair Housing Act of 1985. The Settlement Agreement For the purpose of settling this case, the Parties have reached a settlement memorialized in a Settlement Agreement that may be summarized as follows: 1. The Parties have agreed that the Township's Prior Round obligation is 1,829 units and that the Township is entitled based on affordable housing built between 1980 and 1986 to adjust that obligation down to 1,642 units leaving the Township with a "realistic development potential" or "RDP", defined below, of 1,465 units and "an unmet need" obligation, defined below, of 177 units. 2. The Parties have agreed upon the components of the Affordable Housing Plan and other units that can be used to address (a) the RDP and (b) unmet need.

3. The Parties have agreed that the Township has fully satisfied its RDP for Rounds 1 and 2 and developed a plan to address not only its RDP and unmet need from Rounds 1 and 2, but also a number in excess of that total obligation which will produce additional credits towards Round 3 and which will also count towards the Round 3 unmet need. 4. The Parties have agreed preliminarily that the Township's obligation for Round 3 is capped at 1,000 units and that the Township is entitled to adjust that 1,000-unit obligation down to 279 units leaving the Township with an RDP of 279 units for Round 3 and "an unmet need" obligation of 721 units for Round 3. 5. The Parties have agreed that if this 1,000-unit obligation is reduced as a result of subsequent administrative, legislative or judicial determination, the Township can secure the benefit of that reduction. 6. The Parties have agreed upon the projects that the Township can use to apply to the 279 unit Round 3 RDP. 7. The Parties have agreed that the Affordable Housing Plan creates measures to address an unmet need greater than the unmet need for the prior round and that this surplus can be applied to the unmet need for Round 3. 8. The Parties have agreed on the properties that generate the 279 unit RDP for Round 3, which are identified in the Affordable Housing Plan, and that, provided the Township addresses the RDP attributable to these sites, it may then zone these sites without any consideration of the need for affordable housing. 9. The Parties have agreed to provide assistance including financial assistance from the Township's affordable housing trust fund for a 100 percent affordable housing project commonly referred to as the Evans Francis Estates located at Block 521.17 Lot 40. 10. The Parties have agreed that the restraining order that the court has imposed restraining the use of land from any use other than inclusionary housing development shall expire, provided that the Township keep in place agreed upon measures to capture affordable housing from future development. For the purpose of the above summary, the realistic development potential or RDP is a number derived from a process designed to determine the maximum number of affordable units that could be generated if all vacant and underutilized parcels in Cherry Hill Township were developed at densities of at least six units per acre with a 20 percent set-aside. The unmet need is the remaining portion of the municipal obligation for which there is insufficient land to address. Pursuant to N.J.A.C. 5:93-1.1 et seq., a municipality has an obligation to create a realistic opportunity for satisfaction of the realistic development potential and a responsibility to address its unmet need. This is a very brief summary of a very detailed agreement. Anyone wishing to participate in the hearing regarding the Settlement Agreement is encouraged to review the entire agreement, inclusive of the exhibits, The Affordable Housing Plan. The Affordable Housing Plan asserts that the Township's Prior Round obligation is 1,669, that the Township is entitled to an adjustment to this number and that the Township has fully satisfied the adjusted number and more than satisfied its unmet need. The Township has placed other documents on file to support its claim that because of additional affordable housing activities and credits located since the adoption and endorsement of the Affordable Housing Plan, it has fully satisfied its 1,669-unit obligation. The Settlement Agreement references projects and mechanism in the Affordable Housing Plan, as well as additional mechanisms and projects identified in documents on file to address a higher Prior Round obligation of 1,829. The obligation being reviewed by the Court is based on this 1,829 unit obligation and also includes the additional mechanisms and projects to address that obligation, pursuant to the Settlement Agreement. The Township has presented to the Court and placed on file with the Township Clerk a copy of the (a) Settlement Agreement, (b) the Affordable Housing Plan and (c) various other related documents. All these documents are available for public inspection at the office of the Township Clerk at the Cherry Hill Township Municipal Building, 820 Mercer St., Room 107, Cherry Hill, NJ 08002 during normal business hours and have been posted on the Township's website at <http://www.cherryhill-nj.com/> on the page maintained for the Department of Community Development. All interested parties are hereby given an opportunity to appear and be heard at this Compliance/Fairness Hearing to present their position as to whether the Court should approve the Settlement Agreement and whether the Court should approve the Affordable Housing Plan and issue a Prior Round Judgment of Compliance and Repose. To participate in the Hearing, objections or comments by any interested party must be submitted in writing and filed on or before July 10, 2015, which is eleven days before the Compliance Hearing, at the following addresses: Hon. Nan S. Famular, P.J.Ch. Superior Court of New Jersey Camden County Courthouse, Hall of Justice 101 South 5th Street Camden NJ, 08103 Philip B. Caton, P.P., F.A.J.C.P Court-appointed Special Master Clarke Caton Hintz 100 Barrack Street Trenton, NJ 08608 Kevin D. Walsh, Esq. Counsel for Plaintiffs Fair Share Housing Center, Camden County Branch of the NAACP, and Southern Burlington County Branch of the NAACP Fair Share Housing Center 510 Park Blvd. Cherry Hill, NJ 08002 Jeffrey R. Surenian, Esq. Counsel for Cherry Hill Township Jeffrey R. Surenian and Associates LLC 707 Union Avenue Suite 301 Brielle, NJ 08730 Robert N. Wright, Esq. Cherry Hill Township Solicitor Township of Cherry Hill Municipal Building 820 Mercer Street Cherry Hill, NJ 08002 Allen S. Zeller, Esq. Counsel for Cherry Hill Township Planning Board and Zoning Board Zeller & Wieleczko, LLP 120 Haddonstone Ct. Cherry Hill, NJ 08034 Richard J. Hoff, Jr., Esq. Counsel for Intervenor Cherry Hill Land Associates Bisgafer Hoff 29 Chestnut Street, Suite 3 Haddonfield, NJ 08033 Ronald Morgan, Esq. Counsel for M & M Realty Partners, LLC and its affiliates Parker, McCay 9000 Midlantic Drive, Ste 300 PO Box 5054 Mt Laurel, NJ 08054-1539 John W. Verlaque, Esq. Counsel for M & M Realty Partners, LLC and its affiliates The Weingarten Law Firm, LLC, 1260 Stelton Road, Piscataway, NJ 08854 Tracy A. Siebold, Esq. Counsel for Kimco Nehmad Perillo & Davis, PC 4030 Ocean Heights Avenue Egg Harbor Township, NJ 08234 This Notice is intended to inform all interested parties of (a) the existence of a Settlement Agreement, and the possible consequences of Court approval of this Settlement; and (b) the existence of a duly adopted Affordable Housing Plan endorsed by the Township, and the consequences of the possible approval of same. This Notice does not indicate any view by the Court or the parties as to the merits of the lawsuit, the fairness, reasonableness, or adequacy of the proposed settlement, or whether the Court will approve the Settlement and/or the Affordable Housing Plan. (\$238,50)

Back

Home News TribunePublication Logo
Unavailable**Publication Name:**
Home News Tribune**Publication URL:****Publication City and State:**
Somerville, NJ**Publication County:**
Somerset**Notice Popular Keyword Category:****Notice Keywords:**
Fairness Hearing Edison**Notice Authentication Number:**
201605241240221378162
2906520855**Notice URL:****Notice Publish Date:**
Friday, April 08, 2016**Notice Content**

TOWNSHIP OF EDISON NOTICE OF COMPLIANCE HEARING FOR THE TOWNSHIP OF EDISON, COUNTY OF MIDDLESEX ("TOWNSHIP"), FOR THE TOWNSHIP'S HOUSING ELEMENT AND FAIR SHARE COMPLIANCE PLAN FOR THE AFFORDABLE HOUSING PERIOD 1987-2025 Docket No. MID-L-3944-15 PLEASE TAKE NOTICE that on Thursday, May 12, 2016, beginning at 2:00 P.M., there will be a Compliance Hearing (the "Hearing") before the Honorable Douglas K. Wolfson, J.S.C. at the Middlesex County Superior Court Courthouse, Chambers 408, 56 Paterson Street, New Brunswick, NJ 08903. The purpose of the Hearing is two-fold. First, the Court will determine whether the terms of a Settlement Agreement (the "Settlement Agreement") between the Township and Defendants/Intervenor, Fair Share Housing Center ("FSHC") and Oakwood Plaza Associates, Hidden Ridge, LLC, Blueberry Village, Inc., MetroPlex Associates and Rivendell Heights, LLC, K-Land No. 66, LLC, owners of real property in the Township (the "Township"), is fair and reasonable to the low income and moderate income households. A related consideration for the Hearing is for the Court to consider whether the Township's Updated Housing Element and Fair Share Plan (hereinafter the "Affordable Housing Plan") and Updated Spending Plan, which the Township Planning Board and the Township Council are anticipated to endorse prior to the Hearing, and anticipate adopting after the Hearing, subject to the court's approval, satisfies the Township's obligation to provide a realistic opportunity to satisfy its Rehabilitation, Prior Round and Third Round "fair share" of the regional need for housing affordable to low income and moderate income households pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301, et seq., the substantive, applicable regulations of the New Jersey Council on Affordable Housing ("COAH"), the New Jersey Supreme Court's March 10, 2015 decision in the matter of In re N.J.A.C. 5:96 & N.J.A.C. 5:97, 221 N.J. 1 (2015) and other applicable laws. The Affordable Housing Plan fully addresses the existing components of the Township's affordable housing obligations for the period 1987-2025. These include the Prior Round (1987-1999), new construction obligation of 965 units, a rehabilitation obligation of 421 units and a Third Round (1999-2025) and new construction obligation of 1310 units, which are subject to possible future modification. The Affordable Housing Plan provides a detailed list of the Township's total affordable housing obligation, all compliance mechanisms that demonstrate the Township's compliance with those affordable housing obligations, which includes amendments to the Township's Affordable Housing Ordinance to include inclusionary zoning obligations and the proposed rezoning of certain properties. The full text of the Settlement Agreement and the Township's Affordable Housing Plan will be available for public inspection and/or photocopying (at requestor's expense) on April 12, 2016, during normal business hours at the Township Clerk's Office located at 100 Municipal Boulevard, Edison NJ. The Township's Updated Spending Plan will be available on April 22, 2016 at the Clerk's Office. On the date of the Hearing, the Court will conduct a joint Fairness and Compliance Hearing to determine whether the Settlement Agreement, Affordable Housing Plan and Updated Spending Plan, are fair to low and moderate income households and creates a realistic opportunity for satisfaction of the Township's affordable housing obligations pursuant to the Mount Laurel decisions and their progeny, the Fair Housing Act (N.J.S.A. 52:27D-301, et seq.) and the applicable procedural and substantive regulations of COAH and the Supreme Court's March

10, 2015 decision in the matter of In re N.J.A.C. 5:96 & N.J.A.C. 5:97, 221 N.J. 1 (2015) to satisfy the Township's affordable housing responsibilities for the period 1987-2025. The Township seeks a Judgment of Compliance and Repose formally approving the Affordable Housing Plan and Updated Spending Plan, subject to appropriate conditions, if any, that may be imposed by the Court, which Judgment of Compliance will entitle the Township to protection from any Mount Laurel builder's remedy lawsuits for a period of time to be determined by the Court. Any interested third party that seeks to appear and be heard at the May 12, 2016 Hearing on the Settlement Agreement or the Township's Affordable Housing Plan and Updated Spending Plan, shall have the opportunity to present any position on the Settlement Agreement and Township Affordable Housing Plan and Updated Spending Plan. Objections or comments by any interested person must be filed with the Court at the above address on or before May 2, 2016 with duplicate copies being forwarded by mail and e-mail to the attention of the following: Leslie G. London, Esq. McManimon, Scotland & Baumann, LLC 75 Livingston Avenue Roseland, NJ 07068 llondon@msbnj.com Adam Gordon, Esquire Kevin Walsh, Esquire Fair Share Housing Center 510 Park Blvd Cherry Hill, NJ 08002-3318 adamgordon@fairsharehousing.org kevinwalsh@fairsharehousing.org Richard J. Hoff Jr., Esquire Bisgaler Hoff, LLC 25 Chestnut Street, Suite 3 Haddonfield, NJ 08033 rhoff@bisgalerhoff.com Donna M. Jennings, Esq. Wilentz, Goldman & Spitzer, P.A. 90 Woodbridge Center Drive, Suite 900 Woodbridge, New Jersey 07095 djennings@wilentz.com Elizabeth McKenzie, PP 9 Main Street Flemington, NJ 08822 ecmcke@gmail.com This Notice is provided pursuant to directive of the Court and is intended to inform interested parties of the Settlement Agreement, the Township's Affordable Housing Plan and Updated Spending Plan, and inform such parties that they are able to comment on said Settlement Agreement, Housing Plan and Updated Spending Plan, before the Court reviews and evaluates whether to approve the Settlement Agreement, Housing Plan and Updated Spending Plan. This Notice does not indicate any view by the Court as to the fairness of the Settlement Agreement or the adequacy of the Township's Affordable Housing Plan and Updated Spending Plan. (\$111.76)

[Back](#)

The Star-Ledger, NewarkPublication Logo
(unavailable)**Publication Name:**
The Star-Ledger, Newark**Publication URL:****Publication City and State:**
Newark, NJ**Publication County:**
Essex**Notice Popular Keyword Category:****Notice Keywords:**
Fairness Hearing Woodbridge**Notice Authentication Number:**
201605241241055303560
2906520855**Notice URL:****Notice Publish Date:**
Saturday, March 26, 2016**Notice Content**

NOTICE OF FAIRNESS HEARING FOR CONSIDERATION OF THE HOUSING ELEMENT AND FAIR SHARE COMPLIANCE PLAN OF THE TOWNSHIP OF WOODBRIDGE, COUNTY OF MIDDLESEX ("TOWNSHIP") Docket No. MID-L-03862-15 PLEASE TAKE NOTICE that on Wednesday, April 27, 2016, beginning at 10:00 AM., a "Fairness and Compliance Hearing" (the "Hearing") will be conducted before the Honorable Douglas K. Wolfson, J.S.C. at the Middlesex County Superior Court Courthouse, Chambers 408, 56 Paterson Street, New Brunswick, NJ 08903. Upon conclusion of the Hearing, the Court will determine whether the terms of a Settlement Agreement (the "Settlement Agreement") between the Township and Intervenor, Fair Share Housing Center ("FSHC"), to resolve the within Declaratory Judgment action, is fair and reasonable to low income and moderate income households and whether the Township's proposed Housing Element and Fair Share Plan (hereinafter the "Affordable Housing Plan"), satisfies the Township's obligation to provide a realistic opportunity for the creation of affordable housing pursuant to its constitutional responsibilities under the Mount Laurel Doctrine. Particularly, the Court will consider whether the Affordable Housing Plan, which has been adopted by the Township Planning Board and endorsed by the Township Council, subject to the Court's approval, satisfies the Township's obligation to provide a realistic opportunity for the creation of affordable housing. The Affordable Housing Plan addresses the Township's Present Need Obligation (or rehabilitation obligation) of 381 housing units, its Prior Round Obligation of 955 housing units and its Third Round Prospective Need Obligation of 607 units, all as determined pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301, et seq., the substantive, applicable regulations of the New Jersey Council on Affordable Housing ("COAH"), the New Jersey Supreme Court's March 10, 2015 decision in the matter of *In re N.J.A.C. 5:96 & N.J.A.C. 5:97, 221 N.J. 1* (2015), and other applicable laws. The Township seeks a Judgment of Compliance and a Judgment of Repose, and which will afford the Township, among other things, a period of ten years of protection from any builder's remedy lawsuits brought pursuant to the Mount Laurel Doctrine. The Affordable Housing Plan sets forth those compliance mechanisms the Township will employ to address its affordable housing obligation. The full text of the Settlement Agreement and the Township's Affordable Housing Plan is available for public inspection and/or photocopying (at requestor's expense) during normal business hours at the Township Clerk's office located at 1 Main Street, Woodbridge New Jersey and is posted on the Township's website at www.twp.woodbridge.nj.us. Any Interested person may seek to appear and be heard at the Hearing to address the Township's Affordable Housing Plan and the Settlement Agreement, and offer any comments or objections, provided any such person first files with the Court at the above address, its comments or objections, in writing, no later than ten (10) days prior to the Hearing and serves and emails such objections or comments upon the following: Edward J. Boccher, Esquire DeCottils Fitzpatrick & Cole, LLP 500 Frank W. Burr Blvd, Suite 31 Teaneck, NJ 07666 eboccher@decottislaw.com; Adam Gordon, Esquire Kevin Walsh, Esquire Fair Share Housing Center 510 Park Blvd Cherry Hill, NJ 08002-3318 adamgordon@fairsharehousing.org kevinwalsh@fairsharehousing.org Elizabeth McKenzie, PP Special Master 9 Main Street Flemington, NJ 08822 ecmcke@gmail.com. This Notice is provided pursuant to Order of the Court and is intended to inform interested persons of the

Settlement Agreement and the Township's Affordable Housing Plan and inform such persons that they may comment upon the Settlement Agreement and Affordable Housing Plan before the Court reviews and evaluates whether to approve the Settlement Agreement and Affordable Housing Plan. This Notice does not indicate any view by the Court as to the fairness of the Settlement Agreement or the adequacy of the Township's Affordable Housing Plan. \$206.15

[Back](#)

COAH REVISED THIRD ROUND CERTIFICATIONS

Updated September 8, 2010

Muni Code	Municipality	County	Petition Date	Certification Date	Rehab Share Obligation	Rehab Adjust	Net Rehab	Rehab Complete	Rehab Proposed	Rehab addressed thru New Construction	Prior Round Obligation	Prior Round Adjustment	Net Prior Round Obligation	Unmet Need	Prior Round Complete**	Prior Round Proposed	Bonuses	Growth Share Obligation	Growth Share Adjustment	Net Growth Share Obligation	Growth Share Complete	Growth Share Proposed	Bonuses
0201	Allendale Borough	Bergen	12/31/08	10/14/09	4	0	4	0	4	0	137	0	137	0	71	35	34	54	-34	20	0	20	0
0208	Cresskill Borough	Bergen	12/30/08	09/08/10	26	0	26	0	26	0	70	0	70	0	52	0	18	50	0	50	19	21	10
0209	Demarest Borough	Bergen	12/30/08	03/10/10	4	0	4	1	3	0	66	-43	23	33	13	15	5	47	-27	20	0	15	5
0253	River Vale Township	Bergen	12/18/08	03/10/10	0	0	0	0	0	0	121	0	121	0	48	43	30	53	-25	28	0	32	7
0255	Rockleigh Borough	Bergen	12/31/08	11/12/09	1	0	1	0	1	0	84	-72	12	0	9	0	3	31	-16	15	12	10	0
0259	South Hackensack Township	Bergen	12/31/08	08/12/09	10	0	10	1	9	0	50	-49	1	49	0	1	0	40	-30	10	0	10	0
0302	Beverly City	Burlington	12/30/08	06/10/09	16	0	16	12	0	4	18	-18	0*	18	16	0	0	16	63	79	24	64	0
0311	Eastampton Township	Burlington	12/22/08	05/14/09	17	0	17	0	13	4	49	0	49	0	37	0	12	73	0	73	59	0	18
0315	Florence Township	Burlington	12/31/08	07/08/09	36	0	36	5	31	0	114	0	114	0	88	0	28	158	0	158	62	86	17.75
0326	North Hanover Township	Burlington	12/30/08	05/14/09	16	0	16	2	0	14	1	0	1	0	1	0	0	21	0	21	113	0	0
0327	Palmira Borough	Burlington	12/30/08	09/09/09	20	0	20	7	13	0	39	0	39	0	19	15	5	180	0	180	0	136	44
0334	Springfield Township	Burlington	12/30/08	06/10/09	3	0	3	5	0	0	54	0	54	0	42	3	9	46	-1	45	6	29	11
0412	Collingswood Borough	Camden	12/30/08	09/09/09	105	0	105	39	66	0	0	0	0	0	0	0	0	45	0	45	2	33	10
0417	Haddonfield Borough	Camden	12/31/08	03/10/10	29	0	29	0	29	0	192	-155	37	66	24	93	9	15	-15	0	5	18	0
0427	Pennsauken Township	Camden	12/22/08	06/10/09	203	0	203	80	123	0	0	0	0	0	0	0	0	359	0	359	359	0	0
0428	Pine Hill Borough	Camden	12/30/08	04/08/09	38	0	38	18	0	20	22	0	22	0	16	0	6	135	0	135	324	0	0
0431	Somerdale Borough	Camden	12/29/08	11/12/09	16	0	16	10	6	0	95	-91	4	91	3	0	1	48	0	48	0	36	12
0502	Cape May City	Cape May	12/29/08	10/14/09	8	0	8	0	8	0	58	-58	0*	58	0	38	0	6	0	6	0	27	0
0503	Cape May Point Borough	Cape May	12/31/08	07/08/09	0	0	0	0	0	0	0	-34	0	0	0	0	0	1	0	1	0	6	0
0510	Stone Harbor Borough	Cape May	12/31/08	10/14/09	0	0	0	0	0	0	141	-141	0	141	0	70	0	0	0	0	0	10	0
0610	Milville City	Cumberland	12/23/08	05/14/09	129	0	129	40	89	0	0	0	0	0	0	0	0	225	436	661	545	68	165
0711	Maplewood Township	Essex	12/23/08	06/10/09	125	0	125	44	81	0	51	0	51	0	51	0	0	69	45	114	61	50	15.25
0713	Montclair Township	Essex	12/19/08	08/12/09	369	-242	127	56	71	0	0	0	0	0	0	0	0	162	0	162	146	4	40
0717	Orange City	Essex	12/31/08	08/12/09	469	0	469	78	0	391	0	0	0	0	0	0	0	100	0	100	0	104	0
0719	South Orange Village Township	Essex	12/31/08	01/13/10	54	0	54	42	12	0	63	0	63	0	49	0	14	65	0	65	16	68	1
0722	West Orange Township	Essex	12/30/08	12/09/09	324	0	324	188	136	0	226	0	226	0	215	0	11	341	0	0	37	243	85
0801	Clayton Borough	Gloucester	12/31/08	10/14/09	51	0	51	22	29	0	94	0	94	0	24	46	24	89	0	89	10	82	0
1007	Delaware Township	Hunterdon	12/30/08	08/12/09	8	0	8	8	0	0	23	0	23	0	18	1	4	54	-2	52	3	36	13
1008	East Amwell Township	Hunterdon	12/31/08	12/09/09	9	0	9	0	9	0	40	0	40	0	30	0	10	55	0	55	12	43	0
1009	Flemington Borough	Hunterdon	12/30/08	07/08/09	17	0	17	0	17	0	38	-34	4	34	38	0	0	39	-18	21	11	7	5
1011	Frenchtown Borough	Hunterdon	12/30/08	05/14/09	7	0	7	5	2	0	2	0	2	0	2	0	0	8	0	8	5	2	2
1020	Milford Borough ^	Hunterdon	12/31/08	07/08/09	6	0	6	0	6	0	5	0	5	0	6	0	0	6	0	6	0	6	0
1021	Raritan Township	Hunterdon	12/31/08	07/15/10	16	0	16	0	16	0	360	0	360	0	320	0	40	515	0	515	46	342	128
1022	Readington Township	Hunterdon	12/30/08	10/14/09	0	0	0	0	0	0	394	0	394	0	356	0	38	192	0	192	28	130	37
1023	Stockton Borough	Hunterdon	12/30/08	09/09/09	4	0	4	0	4	0	6	0	6	0	0	6	0	6	0	6	0	8	0
1026	West Amwell Township	Hunterdon	12/30/08	05/14/09	4	0	4	0	4	0	16	0	16	0	13	0	3	52	0	52	16	29	8
1107	Lawrence Township	Mercer	12/30/08	04/08/09	47	0	47	39	8	0	891	0	891	0	755	0	148	524	0	524	359	132	48
1112	Robbinsville Township	Mercer	12/31/08	10/26/09	17	0	17	0	17	0	293	-7	286	0	251	0	35	317	0	317	133	147	37
1202	Cranbury Township	Middlesex	12/31/08	04/21/10	6	0	6	0	6	0	217	0	217	0	165	0	52	269	0	269	52	150	67
1204	East Brunswick Township	Middlesex	12/16/08	08/12/09	46	0	46	46	0	0	648	0	648	0	618	0	30	497	0	497	144	249	124
1215	Old Bridge Township	Middlesex	12/31/08	07/08/09	142	0	142	0	142	0	439	0	439	0	380	0	59	711	-56	655	377	137	163
1217	Piscataway Township	Middlesex	12/30/08	08/12/09	144	0	142	3	141	0	736	0	736	0	604	0	134	457	-80	377	101	259	50
1218	Plainsboro Township	Middlesex	12/30/08	06/10/09	44	0	44	0	44	0	205	0	205	0	153	0	52	445	-52	393	142	177	75
1222	South Plainfield Borough	Middlesex	12/31/08	10/14/09	101	0	101	1	100	0	379	-37	342	0	260	0	79	299	0	299	10	230	74
1313	Englishtown Borough	Monmouth	12/30/08	12/09/09	7	0	7	0	7	0	37	0	37	0	21	7	9	27	0	27	3	17	7
1326	Manalapan Township	Monmouth	12/30/08	07/15/10	36	0	36	36	0	0	706	0	706	0	662	2	42	437	-160	277	0	208	69
1332	Middletown Township	Monmouth	12/31/08	10/14/09	154	0	154	28	126	0	1,561	0	1,561	0	1,098	169	294	463	-230	233	2	333	3
1401	Boonton Town ^	Morris	12/29/08	10/26/09	57	-39	18	4	14	0	11	0	11	0	11	0	0	51	0	51	33	30	0
1413	Harding Township ^	Morris	12/30/08	05/14/09	0	0	0	0	0	0	83	0	83	0	62	0	21	40	-5	35	10	18	7.75
1428	Netcong Borough ^	Morris	12/31/08	10/14/09	10	0	10	7	0	3	0	0	0	0	0	0	0	26	0	26	0	48	0.00
1436	Roxbury Township ^	Morris	12/23/08	08/12/09	35	0	35	35	0	0	255	0	255	0	193	0	63	349	-54	295	182	40	73
1523	Pine Beach Borough	Ocean	12/29/08	03/10/10	0	0	0	0	0	0	41	-41	0	37	0	1	0	26	-16	10	5	13	0
1531	Stafford Township	Ocean	12/31/08	12/09/09	24	0	24	3	21	0	555	0	555	0	326	168	61	530	-11	519	127	284	108
1709	Pennsville Township	Salem	12/31/08	05/14/09	19	0	19	0	0	19	228	0	228	0	136	87	5	72	-62	10	2	48	0
1714	Upper Pittsgrove Township	Salem	12/31/08	06/10/09	4	0	4	4	0	0	27	0	27	0	11	9	7	40	0	40	2	36	2
1801	Bedminster Township ^	Somerset	12/30/08	12/09/09	0	0	0	0	0	0	154	0	154	0	216	0	38	249	0	249	478	0	0
1802	Bernards Township ^	Somerset	12/30/08	05/13/10	12	0	12	33	0	0	508	0	508	0	478	0	30	368	0	368	102	277	2.5
1808	Franklin Township	Somerset	12/30/08	07/15/10	142	0	142	60	82	0	766	0	766	0	626	0	140	1,145	-180	965	507	596	241.0

COAH REVISED THIRD ROUND CERTIFICATIONS

Muni Code	Municipality	County	Petition Date	Certification Date	Rehab Share Obligation	Rehab Adjust	Net Rehab	Rehab Complete	Rehab Proposed	Rehab addressed thru New Construction	Prior Round Obligation	Prior Round Adjustment	Net Prior Round Obligation	Unmet Need	Prior Round Complete**	Prior Round Proposed	Bonuses	Growth Share Obligation	Growth Share Adjustment	Net Growth Share Obligation	Growth Share Complete	Growth Share Proposed	Bonuses
1812	Millstone Borough	Somerset	12/30/08	12/09/09	2	0	2	0	0	2	21	0	21	0	0	15	6	4	0	4	0	4	0
1815	Peapack-Gladstone Borough ^	Somerset	12/30/08	09/09/09	6	0	6	0	6	0	82	0	82	0	64	0	18	37	0	37	2	26	9
1817	Rocky Hill Borough	Somerset	12/30/08	05/14/09	4	0	4	4	0	0	25	0	25	0	19	0	6	11	0	11	0	11	0
1902	Andover Township	Sussex	12/29/08	10/26/09	0	0	0	0	0	0	55	0	55	0	4	37	14	137	0	137	4	128	19
1911	Hardyston Township ^	Sussex	12/19/08	05/14/09	9	0	9	9	0	0	18	0	18	0	10	3	5	213	0	213	0	204	53
1917	Sandyston Township	Sussex	11/25/08	10/26/09	6	0	6	6	0	0	13	0	13	0	0	10	3	36	0	36	0	36	0
2019	Union Township	Union	03/17/10	09/08/10	199	0	199	87	112	0	233	0	233	0	233	0	0	827	-695	132	112	18	2
2104	Blairstown Township	Warren	12/23/08	07/08/09	16	0	16	16	0	0	12	0	12	0	9	0	3	118	0	118	2	87	29
2106	Freylinghuysen Township ^	Warren	12/15/08	06/10/09	6	0	6	3	3	0	6	0	6	0	4	0	2	32	0	32	15	12	8
2113	Knowlton Township	Warren	12/31/08	10/14/09	14	0	14	3	11	0	14	0	14	0	10	0	4	60	0	60	0	45	15
			68	68	3,453	-281	3,170	1,090	1,648	457	11,848	-780	11,102	527	8,940	874	1,664	12,173	-1,225	10,607	4,827	5,775	1,920.25

^ Highlands Municipality

* Realistic Development Potential (RDP)

** Includes RCA units transferred

3rd ROUND COAH TOWNS

October 31, 2008									
MUNICIPALITY	COUNTY	Status	COAH Judisdiction	3rd Round File Date	3rd Round Petition Date	Repetition Date	COAH Compliance Report Date	Denial / Dismissal Date	Final Certification Date
Brigantine City	ATLANTIC	petition	x		12/22/05				
Buena Borough	ATLANTIC	certified	x		03/13/06		10/18/2006		11/01/06
Galloway Township	ATLANTIC	petition	x		05/11/07				
Linwood City	ATLANTIC	petition	x		06/26/07				
Mullica Township	ATLANTIC	petition	x		12/19/05				
County totals		5	5	0	5	0	1	0	1
Allendale Borough	BERGEN	waiver**	x						
Alpine Borough	BERGEN	petition	x		12/19/05				
Bogota Borough	BERGEN	petition	x		12/19/05				
Carlstadt Borough	BERGEN	petition	x		05/30/07				
Closter Borough	BERGEN	petition	x		12/27/06				
Cresskill Borough	BERGEN	petition	x		01/31/06				
Edgewater Borough	BERGEN	petition	x		09/02/05				
Engelwood City	BERGEN	petition	x		03/02/06				
Englewood Cliffs Borough	BERGEN	petition	x		04/24/06				
Fair Lawn Borough	BERGEN	dismissed			12/19/05			11/07/07	
Fairview Borough	BERGEN	petition	x		08/02/06				
Fort Lee Borough	BERGEN	petition	x		12/20/05				
Glen Rock Borough	BERGEN	repetition	x		11/03/05	10/19/06			
Hackensack City	BERGEN	petition	x		12/29/06				
Haworth Borough	BERGEN	petition	x		12/16/05				
Hillsdale Borough	BERGEN	petition	x		05/10/07				
Ho-Ho-Kus Borough	BERGEN	petition	x		12/15/05				
Lyndhurst Township	BERGEN	petition	x		01/30/06				
Mahwah Township	BERGEN	petition	x		12/19/05				
Maywood Borough	BERGEN	petition	x		09/14/06				
Midland Park Borough	BERGEN	waiver**	x						
Moonachie Borough	BERGEN	filing expired		02/27/06					
New Milford Borough	BERGEN	petition	x		12/20/05				

3rd ROUND COAH TOWNS

MUNICIPALITY	COUNTY	Status	COAH Judisdiction	3rd Round File Date	3rd Round Petition Date	Repetition Date	COAH Compliance Report Date	Denial / Dismissal Date	Final Certification Date
North Arlington Borough	BERGEN	dismissed			08/23/05		8/8/2006	09/13/06	
Northvale Borough	BERGEN	petition	x		12/20/05				
Norwood Borough	BERGEN	petition	x		12/20/05				
Oakland Borough	BERGEN	petition	x		04/03/06				
Old Tappan Borough	BERGEN	petition	x		12/16/05				
Oradell Borough	BERGEN	petition	x		01/03/06				
Palisades Park Borough	BERGEN	petition	x		10/22/07				
Paramus Borough	BERGEN	petition	x		12/20/05				
Park Ridge Borough	BERGEN	petition	x		12/20/05				
Ramsey Borough	BERGEN	petition	x		12/19/05				
Ridgefield Borough	BERGEN	petition	x		12/19/05				
Ridgefield Park Village	BERGEN	petition	x		12/16/05				
River Vale Township	BERGEN	repetition	x		07/26/05	02/27/07			
Rochelle Park Township	BERGEN	petition	x		12/20/05				
Rockleigh Borough	BERGEN	petition	x		12/21/05				
Rutherford Borough	BERGEN	petition	x		11/07/05				
Saddle Brook Township	BERGEN	petition	x		12/20/05				
South Hackensack Township	BERGEN	petition	x		01/27/06				
Teaneck Township	BERGEN	petition	x		12/09/05				
Teterboro Borough	BERGEN	petition	x		12/15/05				
Upper Saddle River Borough	BERGEN	petition	x		06/05/06				
Waldwick Borough	BERGEN	petition	x		09/01/06				
Westwood Borough	BERGEN	waiver**	x						
Woodcliff Lake Borough	BERGEN	waiver**	x						
Wood-Ridge Borough	BERGEN	filing	x	03/19/07					
Wyckoff Township	BERGEN	petition	x		11/22/05				
County totals		49	46	2	43	2	1	2	0
Beverly City	BURLINGTON	petition	x		11/09/05				
Burlington City	BURLINGTON	petition	x		12/19/05				
Burlington Township	BURLINGTON	petition	x		12/20/05				

3rd ROUND COAH TOWNS

MUNICIPALITY	COUNTY	Status	COAH Judisdiction	3rd Round File Date	3rd Round Petition Date	Repetition Date	COAH Compliance Report Date	Denial / Dismissal Date	Final Certification Date
Eastampton Township	BURLINGTON	petition	x		11/21/05				
Florence Township	BURLINGTON	petition	x		12/16/05				
Hainesport Township	BURLINGTON	petition	x		05/15/06				
Lumberton Township	BURLINGTON	petition	x		12/19/05				
Moorestown Township	BURLINGTON	petition	x		11/28/05				
New Hanover Township	BURLINGTON	petition	x		12/06/05				
North Hanover Township	BURLINGTON	petition	x		12/08/05				
Palmyra Borough	BURLINGTON	petition	x		12/20/05				
Riverside Township	BURLINGTON	petition	x	12/19/05	04/04/06				
Riverton Borough	BURLINGTON	petition	x		12/15/05				
Springfield Township	BURLINGTON	waiver**	x						
Wrightstown Borough	BURLINGTON	petition	x		12/21/05				
County totals		15	15	1	14	0	0	0	0
Barrington Borough	CAMDEN	petition	x		11/06/06				
Collingswood Borough	CAMDEN	petition	x		12/16/05				
Gloucester Township	CAMDEN	petition	x		12/20/05				
Haddonfield Borough	CAMDEN	petition	x		12/16/05				
Lindenwold Borough	CAMDEN	petition	x		08/05/05				
Merchantville Borough	CAMDEN	dismissed	x					03/25/08	
Mt. Ephraim Borough	CAMDEN	petition	x		12/06/06				
Pennsauken Township	CAMDEN	petition	x		03/23/06				
Pine Hill Borough	CAMDEN	petition	x		06/01/06				
Runnemede Borough	CAMDEN	petition	x		11/27/06				
Somerdale Borough	CAMDEN	petition	x		12/19/05				
Stratford Borough	CAMDEN	petition	x		12/21/05				
Voorhees Township	CAMDEN	waiver**	x						
Winslow Township	CAMDEN	petition	x		12/19/05				
County totals		14	14	0	12	0	0	1	0
Avalon Borough	CAPE MAY	petition	x		11/06/06				
Cape May Point Borough	CAPE MAY	petition	x		12/16/05				

3rd ROUND COAH TOWNS

MUNICIPALITY	COUNTY	Status	COAH Judisdiction	3rd Round File Date	3rd Round Petition Date	Repetition Date	COAH Compliance Report Date	Denial / Dismissal Date	Final Certification Date
Middle Township	CAPE MAY	petition	x		12/20/05				
Ocean City	CAPE MAY	petition	x		10/04/06				
Stone Harbor Borough	CAPE MAY	petition	x		12/12/05				
Woodbine Borough	CAPE MAY	petition	x		06/18/07				
County totals		6	6	0	6	0	0	0	0
Commercial Township	CUMBERLAND	petition	x		12/13/05				
Deerfield Township	CUMBERLAND	petition	x		09/28/06				
Millville City	CUMBERLAND	petition	x		08/18/05				
Vineland City	CUMBERLAND	petition	x		03/31/06				
County totals		4	4	0	4	0	0	0	0
Cedar Grove Township	ESSEX	petition	x		07/31/06				
Maplewood Township	ESSEX	petition	x		05/15/07				
Montclair Township	ESSEX	petition	x		12/12/05				
Nutley Township	ESSEX	petition	x		12/20/05				
Orange City	ESSEX	petition	x		12/02/05				
Roseland Borough	ESSEX	petition	x		07/11/06				
South Orange Village Township	ESSEX	petition	x		12/20/05				
Verona Township	ESSEX	petition	x		12/15/05				
West Orange Township	ESSEX	petition	x		12/14/05				
County totals		9	9	0	9	0	0	0	0
Clayton Borough	GLOUCESTER	petition	x		01/23/06				
Deptford Township	GLOUCESTER	repetition	x		08/04/05	11/21/06			
Elk Township	GLOUCESTER	petition	x		11/30/05				
Harrison Township	GLOUCESTER	filing	x	05/11/07					
Mantua Township	GLOUCESTER	repetition	x		07/27/05	11/01/06			
Monroe Township	GLOUCESTER	repetition	x		07/27/05	05/11/06			
Pitman Borough	GLOUCESTER	petition	x		12/21/05				
South Harrison Township	GLOUCESTER	petition	x		12/20/05				
County totals		8	8	1	7	3	0	0	0
Bayonne City	HUDSON	petition	x		12/16/05				

3rd ROUND COAH TOWNS

MUNICIPALITY	COUNTY	Status	COAH Judisdiction	3rd Round File Date	3rd Round Petition Date	Repetition Date	COAH Compliance Report Date	Denial / Dismissal Date	Final Certification Date
Harrison Town	HUDSON	petition	x		03/22/06				
Hoboken City	HUDSON	petition	x		12/20/05				
Kearny Town	HUDSON	petition	x		10/26/06				
Secaucus Town	HUDSON	petition	x		12/20/05				
Weehawken Township	HUDSON	petition	x		12/19/06				
West New York Town	HUDSON	petition	x		04/19/06				
County totals		7	7	0	7	0	0	0	0
Alexandria Township	HUNTERDON	petition	x		09/26/06				
Bethlehem Township	HUNTERDON	waiver**							
Califon Borough	HUNTERDON	waiver**							
Clinton Town	HUNTERDON	repetition	x		06/17/05	07/11/06			
Clinton Township	HUNTERDON	petition	x		02/06/07				
Delaware Township	HUNTERDON	petition	x		12/14/05				
East Amwell Township	HUNTERDON	petition	x	11/03/05	12/05/05				
Flemington Borough	HUNTERDON	petition	x		12/20/05				
Franklin Township	HUNTERDON	petition	x		12/16/05				
Frenchtown Borough	HUNTERDON	petition	x		12/16/05				
Glen Gardner Borough	HUNTERDON	petition	x		12/08/05				
Holland Township	HUNTERDON	petition	x		05/15/07				
Kingwood Township	HUNTERDON	petition	x		12/14/05				
Lambertville City	HUNTERDON	petition	x		12/20/05				
Lebanon Township	HUNTERDON	petition	x		12/20/05				
Milford Borough	HUNTERDON	petition	x		12/20/05				
Raritan Township	HUNTERDON	petition	x		12/20/05				
Readington Township	HUNTERDON	petition	x		12/16/05				
Stockton Borough	HUNTERDON	petition	x		05/11/07				
Tewksbury Township	HUNTERDON	petition	x		12/16/05				
Union Township	HUNTERDON	petition	x		12/07/05				
West Amwell Township	HUNTERDON	petition	x		12/15/05				
County totals		22	20	1	20	1	0	0	0

3rd ROUND COAH TOWNS

MUNICIPALITY	COUNTY	Status	COAH Judisdiction	3rd Round File Date	3rd Round Petition Date	Repetition Date	COAH Compliance Report Date	Denial / Dismissal Date	Final Certification Date
East Windsor Township	MERCER	petition	x		12/20/05				
Ewing Township	MERCER	petition	x		2/15/07				
Hamilton Township	MERCER	petition	x		12/20/05				
Hightstown Borough	MERCER	petition	x		12/20/05				
Hopewell Borough	MERCER	petition	x		12/6/06				
Hopewell Township	MERCER	petition	x		12/19/05				
Lawrence Township	MERCER	petition	x		12/20/05				
Pennington Borough	MERCER	filing	x	05/11/07					
Princeton Borough	MERCER	petition	x		12/15/05				
Princeton Township	MERCER	petition	x		12/20/05				
Washington Township	MERCER	petition	x		12/20/05				
West Windsor Township	MERCER	petition	x		12/16/05				
County totals		12	12	1	11	0	0	0	0
Cranbury Township	MIDDLESEX	petition	x		12/07/05				
Dunellen Borough	MIDDLESEX	petition	x		02/08/06				
East Brunswick Township	MIDDLESEX	petition	x		12/14/05				
Edison Township	MIDDLESEX	petition	x		05/14/07				
Highland Park Borough	MIDDLESEX	petition	x		12/16/05				
Helmetta Borough	MIDDLESEX	petition	x		10/04/06				
Metuchen Borough	MIDDLESEX	petition	x		07/13/06				
Middlesex Borough	MIDDLESEX	petition	x		01/10/08				
Monroe Township	MIDDLESEX	petition	x		12/20/05				
North Brunswick Township	MIDDLESEX	waiver**	x						
Old Bridge Township	MIDDLESEX	petition	x		09/13/05				
Piscataway Township	MIDDLESEX	petition	x		12/20/05				
Plainsboro Township	MIDDLESEX	petition	x		12/13/05				
South Amboy City	MIDDLESEX	petition	x		12/06/06				
South Brunswick Township	MIDDLESEX	petition	x		12/16/05				
County totals		15	15	0	14	0	0	0	0
Aberdeen Township	MONMOUTH	petition	x		12/16/05				

3rd ROUND COAH TOWNS

MUNICIPALITY	COUNTY	Status	COAH Judisdiction	3rd Round File Date	3rd Round Petition Date	Repetition Date	COAH Compliance Report Date	Denial / Dismissal Date	Final Certification Date
Allentown Borough	MONMOUTH	petition	x		05/16/06				
Atlantic Highlands Borough	MONMOUTH	repetition	x		12/20/05	12/15/06			
Belmar Borough	MONMOUTH	petition	x		10/10/06				
Freehold Township	MONMOUTH	petition	x		05/15/07				
Holmdel Township	MONMOUTH	petition	x		12/20/05				
Howell Township	MONMOUTH	petition	x		12/12/06				
Little Silver Borough	MONMOUTH	petition	x		12/12/05				
Manalapan Township	MONMOUTH	petition	x		12/20/05				
Manasquan Borough	MONMOUTH	waiver**	x						
Marlboro Township	MONMOUTH	petition	x		12/20/05				
Middletown Township	MONMOUTH	petition	x		12/20/05				
Millstone Township	MONMOUTH	petition	x		05/11/07				
Neptune City Borough	MONMOUTH	petition	x	12/15/05	12/12/07				
Neptune Township	MONMOUTH	petition	x		12/23/05				
Oceanport Borough	MONMOUTH	petition	x		07/20/06				
Red Bank Borough	MONMOUTH	petition	x		12/19/05				
Roosevelt Borough	MONMOUTH	denied			02/17/05	12/14/05	11/23/2005	12/14/05	
Rumson Borough	MONMOUTH	petition	x		12/20/05				
Spring Lake Borough	MONMOUTH	petition	x		11/04/05				
Tinton Falls Borough	MONMOUTH	petition	x		05/16/07				
Upper Freehold Township	MONMOUTH	petition	x	12/19/05	10/04/06				
County totals		22	21	2	21	2	1	1	0
Boonton Town	MORRIS	petition	x		10/30/06				
Butler Borough	MORRIS	petition	x		08/29/06				
Chatham Borough	MORRIS	petition	x		01/09/06				
Chatham Township	MORRIS	petition	x		12/19/05				
Chester Borough	MORRIS	petition	x		10/18/05				
Chester Township	MORRIS	petition	x		12/13/05				
Denville Township	MORRIS	petition	x		07/26/06				
Dover Town	MORRIS	petition	x		12/19/05				

3rd ROUND COAH TOWNS

MUNICIPALITY	COUNTY	Status	COAH Judisdiction	3rd Round File Date	3rd Round Petition Date	Repetition Date	COAH Compliance Report Date	Denial / Dismissal Date	Final Certification Date
East Hanover Township	MORRIS	petition	x		12/06/06				
Florham Park Borough	MORRIS	petition	x		12/15/05				
Hanover Township	MORRIS	petition	x		12/21/05				
Harding Township	MORRIS	petition	x		12/15/05				
Jefferson Township	MORRIS	petition	x		12/07/06				
Kinnelon Borough	MORRIS	petition	x		11/29/05				
Lincoln Park Borough	MORRIS	petition	x		12/20/05				
Long Hill Township	MORRIS	petition	x		12/19/05				
Madison Borough	MORRIS	petition	x		04/03/06				
Mendham Borough	MORRIS	petition	x		12/12/05				
Mendham Township	MORRIS	petition	x		07/29/05				
Mine Hill Township	MORRIS	petition	x		09/28/06				
Montville Township	MORRIS	petition	x		12/15/05				
Morris Township	MORRIS	petition	x		12/20/05				
Mountain Lakes Borough	MORRIS	petition	x		12/16/05				
Mount Olive Township	MORRIS	repetition	x		12/02/05	11/13/06			
Parsippany-Troy Hills Township	MORRIS	petition	x		12/16/05				
Pequannock Township	MORRIS	petition	x		12/07/05				
Randolph Township	MORRIS	petition	x		12/06/05				
Riverdale Borough	MORRIS	petition	x		11/03/05				
Rockaway Borough	MORRIS	dismissed			12/19/05				
Rockaway Township	MORRIS	dismissed			12/09/05			11/07/07	
Roxbury Township	MORRIS	petition	x		12/13/05				
Washington Township	MORRIS	certified	x		09/09/05		12/19/2006		01/10/07
Wharton Borough	MORRIS	petition	x		12/08/05				
County totals		33	31	0	33	1	1	1	1
Barnegat Township	OCEAN	petition	x		12/20/05				
Bay Head Borough	OCEAN	filing expired		09/06/06					
Berkeley Township	OCEAN	petition	x		12/19/05				
Lacey Township	OCEAN	petition	x		12/19/05				

3rd ROUND COAH TOWNS

MUNICIPALITY	COUNTY	Status	COAH Judisdiction	3rd Round File Date	3rd Round Petition Date	Repetition Date	COAH Compliance Report Date	Denial / Dismissal Date	Final Certification Date
Little Egg Harbor Township	OCEAN	petition	x		12/20/05				
Ocean Township	OCEAN	petition	x		12/20/05				
Pine Beach Borough	OCEAN	repetition	x		10/03/05	01/26/07			
Stafford Township	OCEAN	petition	x		07/11/05				
County totals		8	7	1	7	1	0	0	0
Clifton City	PASSAIC	petition	x		04/05/06				
Little Falls Township	PASSAIC	petition	x		12/15/05				
North Haledon Borough	PASSAIC	petition	x		05/14/07				
Pompton Lakes Borough	PASSAIC	petition	x		02/03/06				
Ringwood Borough	PASSAIC	petition	x		12/16/05				
Wanaque Borough	PASSAIC	petition	x		02/15/07				
Wayne Township	PASSAIC	petition	x		12/16/05				
West Milford Township	PASSAIC	petition	x	12/20/05	12/10/07				
West Paterson Borough	PASSAIC	petition	x		12/20/05				
County totals		9	9	1	9	0		0	0
Alloway Township	SALEM	petition	x	01/18/06	06/02/06				
Oldmans Township	SALEM	filing	x	12/06/07					
Pennsville Township	SALEM	cert overturned by court	x		10/27/05		5/23/2006		6/14/2006*
Pittsgrove Township	SALEM	filing	x	07/03/07					
Upper Pittsgrove Township	SALEM	petition	x		12/15/05				
County totals		5	5	3	3	0	1	0	1
Bedminster Township	SOMERSET	petition	x		12/12/05				
Bernards Township	SOMERSET	petition	x		12/06/05				
Bernardsville Borough	SOMERSET	petition	x		12/20/05				
Branchburg Township	SOMERSET	waiver**	x						
Bridgewater Township	SOMERSET	petition	x		12/07/05				
Far Hills Township	SOMERSET	petition	x		02/06/07				

3rd ROUND COAH TOWNS

MUNICIPALITY	COUNTY	Status	COAH Judisdiction	3rd Round File Date	3rd Round Petition Date	Repetition Date	COAH Compliance Report Date	Denial / Dismissal Date	Final Certification Date
Franklin Township	SOMERSET	2nd repetition	x		12/20/05	8/20/07; 12/26/07			
Millstone Borough	SOMERSET	repetition	x		12/20/05	10/24/07			
Montgomery Township	SOMERSET	petition	x		12/16/05				
North Plainfield Borough	SOMERSET	petition	x		12/20/05				
Peapack & Gladstone Borough	SOMERSET	petition	x		12/16/05				
Raritan Borough	SOMERSET	petition	x		10/27/06				
Rocky Hill Borough	SOMERSET	petition	x		12/13/06				
Warren Township	SOMERSET	petition	x		12/07/05				
Watchung Borough	SOMERSET	petition	x		12/16/05				
County totals		15	15	0	14	2	0	0	0
Andover Borough	SUSSEX	petition	x	12/16/05	12/13/07				
Andover Township	SUSSEX	petition	x		12/05/05				
Branchville Borough	SUSSEX	petition	x		08/30/07				
Byram Township	SUSSEX	petition	x		05/14/07				
Frankford Township	SUSSEX	petition	x		12/01/05				
Franklin Borough	SUSSEX	petition	x		09/20/05				
Green Township	SUSSEX	petition	x		12/14/05				
Hamburg Borough	SUSSEX	filing	x	12/20/07					
Hardyston Township	SUSSEX	petition	x		12/13/05				
Hopatcong Borough	SUSSEX	petition	x		12/19/05				
Lafayette Township	SUSSEX	repetition	x		12/13/05	11/09/06			
Montague Township	SUSSEX	petition	x		12/19/05				
Newton Town	SUSSEX	petition	x		01/17/07				
Sandyston Township	SUSSEX	petition	x		12/19/05				
Sparta Township	SUSSEX	petition	x		12/16/05				
Stanhope Borough	SUSSEX	repetition	x		12/01/06	04/30/08			
Stillwater Township	SUSSEX	petition	x		12/15/05				
Vernon Township	SUSSEX	petition	x		12/16/05				
County totals		18	18	2	17	2	0	0	0

3rd ROUND COAH TOWNS

MUNICIPALITY	COUNTY	Status	COAH Judisdiction	3rd Round File Date	3rd Round Petition Date	Repetition Date	COAH Compliance Report Date	Denial / Dismissal Date	Final Certification Date
Berkeley Heights Township	UNION	petition	x		12/20/05				
Clark Township	UNION	repetition	x		12/20/05	11/27/06			
Fanwood Borough	UNION	petition	x		04/05/06				
Linden City	UNION	petition	x		04/07/08				
New Providence Borough	UNION	petition	x		12/20/05				
Rahway City	UNION	petition	x		12/15/05				
Scotch Plains Township	UNION	petition	x		04/03/06				
Springfield Township	UNION	petition	x		12/23/05				
Union Township	UNION	petition	x		12/16/05				
County totals		9	9	0	9	1	0	0	0
Allamuchy Township	WARREN	repetition	x		06/07/05	01/17/06			
Alpha Borough	WARREN	petition	x		12/20/05				
Belvidere Town	WARREN	petition	x		12/16/05				
Blairstown Township	WARREN	repetition	x		09/20/05	06/26/06			
Franklin Township	WARREN	petition	x		12/21/05				
Greenwich Township	WARREN	petition	x		12/16/05				
Hackettstown Town	WARREN	petition	x		05/02/06				
Hardwick Township	WARREN	petition	x		12/14/05				
Harmony Township	WARREN	petition	x		05/15/07				
Hope Township	WARREN	petition	x		12/16/05				
Independence Township	WARREN	petition	x		12/16/05				
Knowlton Township	WARREN	petition	x		05/10/07				
Liberty Township	WARREN	petition	x		12/19/05				
Lopatcong Township	WARREN	petition	x		01/10/06				
Mansfield Township	WARREN	petition	x		08/02/06				
Oxford Township	WARREN	petition	x		12/20/05				
Washington Borough	WARREN	petition	x		12/16/05				
Washington Township	WARREN	petition	x		11/21/05				
White Township	WARREN	certified	x		12/12/05		12/20/2006		01/10/07
County totals		19	19	0	19	2	1	0	1

3rd ROUND COAH TOWNS

MUNICIPALITY	COUNTY	Status	COAH Judisdiction	3rd Round File Date	3rd Round Petition Date	Repetition Date	COAH Compliance Report Date	Denial / Dismissal Date	Final Certification Date
STATE TOTALS		304	295	15	284	17	6	5	4

* Certification revoked by the NJ Appellate Division in a 1/25/2007 decision

** N.J.A.C. 5:95-15.3 states that to remain under the jurisdiction of the Council for the third round fair share obligation, a municipality shall either file a newly adopted Housing Element and Fair Share Plan addressing the third round obligation with the Council or petition for third round