

**PREPARED BY THE AFFORDABLE HOUSING PROGRAM:**

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In the Matter of Township of  
Clinton, County of Hunterdon

Superior Court of New Jersey  
Law Division, Civil Part

Docket No. HNT-L-49-25

**Program Decision Recommendation -  
Housing Element and Fair Share Plan**

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THIS MATTER, having come before the Affordable Housing Dispute Resolution Program (Program), pursuant to the Complaint for Declaratory Judgment filed in this matter on January 23, 2025 (DJ Complaint) by the Petitioner, Township of Clinton (Township), pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et. seq. (FHA), and in accordance with Administrative Directive #14-24 and its Addenda, seeking a certification of compliance with the FHA;

AND IT APPEARS that on April 8, 2025, the Hon. William G. Mennen, J.S.C. entered an Order as follows:

- (a) Establishing the Township’s Fourth Round “present need” at zero;
- (b) Establishing the Township’s Fourth Round “prospective need” at 150;
- (c) Directing the Township to prepare and adopt a Housing Element and Fair Share Plan on or before June 30, 2025; and

(d) Granting the Township immunity from exclusionary zoning litigation; and

AND the Township having timely adopted and filed its Proposed Fourth Round Housing Element and Fair Share Plan (HEFSP);

AND challenges to the Township's Fourth Round HEFSP having been timely filed by interested parties: Fair Share Housing Center ("FSHC"), CNC Ventures LLC ("CNC"), and ExxonMobil Technology and Engineering Company ("ExxonMobil"), alleging that the HEFSP failed to comply with the FHA and/or Mount Laurel doctrine;

AND CRC Communities at Headley Farms Estates, Inc. ("CRC") filed a conditional challenge not to object to the Township's Fourth Round HEFSP but as an interested party that has a right to participate in the challenges to the HEFSP;

AND the Program having appointed Special Adjudicator Sanyogita S. Chavan, AICP, PP, to the matter;

AND the Program Member having conducted a settlement conferences on November 14, 2025, and December 19, 2025, during which no settlement agreement was reached;

AND the essential components of the Township's HEFSP include, but are not limited to, the following:

(a) The Township's Present Need (Rehabilitation) Obligation is zero (0);

- (b) The Township's Prospective Need Obligation (2025-2035) is 150;
- (c) The Township's First and Second Rounds Obligations (1987-1999) is 335;
- (d) The Township's Third Round Obligation (1999-2025) is 337;
- (e) The Township shall satisfy its Prior Round and Fourth Round Obligations as follows:

### Prior Round Obligations

The Township's Prior Round Obligation is 335 and has been met with the mechanisms:

NAME	TYPE	UNITS	BONUSES	TENURES	STATUS
Prior Cycle Credits (Pre-1986)		13			Completed
RCA with New Brunswick	RCA	108		RCA	Completed
Village Green at Annandale	Inclusionary	4		Family Rental	Completed
The Mews	Inclusionary	35	3	Senior Housing	Completed
CRC Longview	Group Home	4	4	Special Needs	Pending Site Plan Approval*
142-144 West Main Street	Gut Rehabilitation	3	2	Family Rental	Completed
Willows at Annandale	100% Affordable	66	66	Family Rental	Completed

Annandale Village, LLC	Inclusionary	1		Family Rental	Site Plan Approval
Clinton Woods	100% Affordable (Municipally sponsored)	26		Family Rental	Completed
Total (335)		260	75**		

\*Was scheduled for July 2025 as per the June 2025 HEFSP

\*\*Bonus credits capped at 25% of the total obligation

### Third Round Obligations

The Township’s Third Round Obligation is 337. The Obligation shall be met with the following mechanisms:

NAME	TYPE	UNITS	BONUSES	TENURES	STATUS
Headley Farm Estate	Inclusionary	104		Family Rental	Has secured water and sewer.*
108 Alton Place	Inclusionary	28		Family Rental	Has secured water and sewer.*
Grayrock Road (AH-10 Zone)	Inclusionary	7		Family Rental	Approved (3 units) (4 units are durational adjustment)
Clinton Woods	100% Affordable (Municipally sponsored)	58	58	Family Rental	Completed
Willows at Spruce Run	100% Affordable (Municipally sponsored)	80		Family Rental	Under construction
Willows at Spruce Run	Municipally sponsored Group Home	2		Special Needs	Under construction

Total (337)	279	58		
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\*It was originally slated as a durational adjustment site, but the Township has noted that they have secured water and sewer disposal capacity.

### Fourth Round Obligations

The Township's Fourth Round Obligation is 150. The Township conducted a VLA resulting in a RDP of 22 units and an unmet need of 128 (25% of the unmet need = 32). The Township intends to satisfy the 54 units of RDP (22) and 25% of the unmet need (32) through the following mechanisms:

NAME	TYPE	UNITS	BONUSES	TENURES	STATUS
9 Main St./Village Green	Inclusionary	2	1	Family rentals	To be rezoned.
Willows at Spruce Run	100% Affordable (Municipally sponsored)	6		Family Rental	Under construction
Willows at Spruce Run	100% Affordable (Municipally sponsored)	8	8	Special Needs	Under construction
3 Grayrock Road	100% Affordable (Municipally sponsored)	25	4	Family Rental	Approved
Total (51)		41	13 (capped at 25%)		

AND the Program Member having conducted a session on December 19, 2025, during which oral argument was heard on the challenges to the Township's HEFSP of the interested parties;

AND the Program Member having considered the filings by the parties, the written recommendation of the Special Adjudicator (attached hereto as Exhibit A) and oral argument and for the reasons more fully set forth in the Statement of Reasons (attached hereto as Exhibit B) hereby recommends an ORDER directing that:

- (a) The HEFSP of the Township **has not been determined to be compliant** with the FHA and the Mount Laurel doctrine;
- (b) The challenges of the interested parties will remain as active challenges to be addressed by the Court;
- (c) Notwithstanding any remaining dispute with any interested party, the Township shall follow the procedure set forth in N.J.S.A. §52:27D-304.1(f)(2)(c) and (d), requiring that, on or before March 15, 2026, the Municipality shall adopt and file its proposed amended HEFSP as well as the implementing ordinances and resolutions proposed within the amended HEFSP, which adoptions shall be subject to change based on any forthcoming settlement if negotiations remain ongoing as of that date or, in the alternative, adopt a binding resolution by March 15, 2026, to commit to adopting the implementing ordinances and resolutions following settlement of the dispute, with necessary adjustments to reflect the settlement terms;

- (d) Thereafter, the court shall schedule a HEFSP Confirmation Hearing (or, if and as may later be determined necessary by the Mt. Laurel judge, a Fairness and/or Compliance Hearing) to consider approval of the Township's amended HEFSP and the issuance of a Certification of Compliance and Repose; and
- (e) Grant the Township continued immunity from exclusionary zoning litigation for the duration of the compliance process conditioned upon the Township's compliance with its order and good faith implementation of the HEFSP and good faith participation in the compliance process.

**Respectfully Submitted by the Program:**

By:

/s/ *Thomas C. Miller*  
**Hon. Thomas C. Miller, A. J.S.C. (Ret.)**

Dated: January 29, 2026



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*Via eCourts and Electronic Mail*

**Hon. Thomas C. Miller, J.S.C., Ret.**

**Affordable Housing Dispute Resolution Program**

Richard J. Hughes Justice Complex

P.O. Box 037

Trenton, New Jersey 08625

Re: *In the Matter of the Application of the Township of Clinton, County of Hunterdon*

Docket No. HNT-L-49-25

Your Honor:

I submit this correspondence in my capacity as Special Adjudicator for the purpose of advising the Court and setting forth my recommendations with respect to the Township of Clinton (“Township”) housing plan and the challenges filed by CNC Ventures, LLC, ExxonMobil Technology and Engineering Company, and Fair Share Housing Center under the Affordable Housing Dispute Resolution Program. A settlement was not reached between the three parties. In addition, CRC Communities at Headley Farms Estates, Inc. (“CRC”) filed a conditional challenge, not as an objection to the Township’s housing plan but as an interested party that has a right to participate in the challenges filed by the above referenced parties. The following report sets forth the Statement of Reasons to support my recommendations for granting **conditional compliance**.

The Township’s Housing Plan Element and Fair Share Plan (“HEFSP”) received three objections from the parties referenced above.

- The objection filed by Joshua D. Bauers, Esq. on behalf of Fair Share Housing Center (“FSHC”), dated August 31, 2025.
- The objection filed by Richard J. Hoff, Esq., of Brisgaier Hoff, LLC, on behalf of CNC Ventures, LLC (“CNC”), dated August 28, 2025.
- The objection filed by Thomas P. Scrivo, Esq. of O’Toole Scrivo, LLC, on behalf of ExxonMobil Technology and Engineering Company (“ExxonMobil”) dated August 29, 2025.

The following summarizes Clinton’s participation in the Program. In addition to the formal settlement conferences listed below, there were several other discussions that I had with the parties and between the parties to try to reach settlement.

- January 23, 2025: Declaratory judgement filed by the Township
- April 8, 2025: Order on the Municipal Obligations for “Present Need” and “Prospective Need” for the Fourth Round Housing Cycle issued by the Honorable William G. Mennen, J.S.C.
- June 30, 2025: Submission of adopted HEFSP to the Program.
- June 30, 2025: Planning Board Resolution adopting the HEFSP
- June 30, 2025: Municipal Resolution endorsing the HEFSP adopted by the Planning Board.
- August 29, 2025: Objection to Clinton’s HEFSP filed by CNC.
- August 29, 2025: Objection to Clinton’s HEFSP filed by ExxonMobil.
- September 2, 2025: Objection to Clinton’s HEFSP filed by FSHC.

- September 2, 2025: Objection filed by CRC, not to object to the Township's Fourth Round HEFSP, but as an interested party.
- November 14, 2025: Settlement Conference between all parties.
- December 19, 2025: Session

### **Background**

This report reviewed the HEFSP and the supplemental submissions provided by all the parties against the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq) ("FHA"), the adopted rules by the Council on Affordable Housing ("COAH") (N.J.A.C. 5:93, N.J.A.C. 5:97), to the extent applicable, relevant case law, the Uniform Housing Affordability Control Rules, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), Division of Local Planning Service Fair Housing Act Rules (N.J.A.C. 5:99), and the Administrative Directives issued by the Program (#14-24, Addendum to #14-24).

- FSHC in its August 31, 2025, correspondence expressed concerns about the VLA and RDP calculations and that more sites should be included in the RDP than what the Township is proposing. As per FSHC, the issue is not lack of land, but lack of sewer based on their involvement in the prior round. The Township took a durational adjustment in the prior round but opted for a VLA route in the fourth round. Their main concern was whether the VLA calculations were in accordance with the statutes.
- CNC, which is also the Beaver Brook Country Club (BBCC), questioned the feasibility of the prior round sites. Their concern was that the VLA underestimated the Township's land capacity and low-balls the assigned density.
- ExxonMobil asserted that their site should have been included in the RDP calculations, the VLA methodology is flawed.

As mentioned earlier, CRC was not objecting to the Township's HEFSP but as their project is included in the Third Round Plan, and that they were an interested party in the challenges. **CRC asserts that they have made significant progress in terms of getting water allocation, worked with the Highlands, and provided all the documentation to the DEP.**

### **Prior Round, Third Round, and Fourth Round Obligation and mechanisms**

As mentioned earlier, there was one settlement conference and a session. I have reviewed the factual recitals, the delineation of the Township's Fourth Round obligations, the mechanisms proposed to satisfy those obligations, and the procedural and monitoring provisions governing implementation.

#### **Prior Round**

The Township's prior round obligation of 335 units was satisfied through prior cycle credits, RCA with New Brunswick, inclusionary development, a group home, 100% affordable housing, and gut rehabilitation to provide 3-units. All but the group home has been completed.

### *Findings*

The Township has fully satisfied the prior round obligation. The June 2025 HEFSP noted that a site plan was pending. The status should be updated and necessary documents must be submitted by the Township.

### **Third Round**

The Township's Third Round Obligation is 337 units. The Township is proposing to satisfy this through inclusionary development, 100% affordable housing, a group home. Out of all the sites, two inclusionary projects, namely the Headley Farm Estate and 108 Alton Place, were identified as durational adjustment sites. However, the Township informed the Program that these projects have secured water and sewer. Clinton Woods, a 100% affordable housing project, providing 116 credits and bonus credits is complete while Willows at Spruce Run is under construction.

### *Findings*

The Township has fully satisfied the third-round obligation. The sites that were identified as durational adjustment sites are no longer so and can realistically produce affordable housing:

- CRC, on behalf of Headley Farm Estate, has submitted a resolution authorizing the execution of the settlement agreement and water agreement in which the Town of Clinton will be supplying 113,160 gallons of water per day. Additionally, CRC has submitted a letter from the Highlands Council confirming that the entire site is within the Highlands Designated Center (with portions in the Highlands Resource Zone (HERZ) and that areas outside of the HERZ are eligible for sewer service with a package treatment plant in accordance with the pertinent NJDEP regulations.
- The 108 Alton Place has a "will-serve" sewer letter from the Clinton Township Sewerage Authority dated November 7, 2025, and the Township was advised that water reservation was granted to 108 Alton Place. The Township shall provide the water reservation agreement and resolution, once available.

### *Conditionally compliant*

The Township is required to provide the water reservation agreement and resolution for 108 Alton Place project, once available.

### **Present Need (Rehabilitation) Obligation**

The Township has a present need obligation of zero (0) units; therefore, Clinton Township does not have an obligation to address this obligation in the Fourth Round.

### **Fourth Round Prospective Need Obligation**

The Township has a fourth-round obligation of 150 units. The Township conducted a VLA which resulted in an RDP of 22 units and an unmet need of 128, 25% of which is 32. The Township intends to satisfy the

54-unit obligation through surplus units from the Third Round Willows at Spruce Run, which is under construction, and through 3 Grayrock Road, which is a 25-unit 100% Affordable Municipally sponsored project. This project was approved by the Planning Board on August 18, 2025, and memorialized on October 6, 2025.

### ***Findings***

- The Township of Clinton is in the New Jersey Highlands region where 97% of its land area is located in the Highlands Planning Area and remaining 3% in the Preservation Area. Most importantly, as per the requirements of the Highlands Act, the Land Use Capability Zone divides the area into three distinct zones. In that the Existing Community Zone consists of areas of existing development patterns and tends to have limited environmental constraints. The remaining two are Protection Zone and Conservation Zone. Out of the total area, 16.7% are road right-of-way. Of the remaining approximately 83.3%, 22.7% of the area is within the Existing Community Zone while the remaining 60.6% are areas with environmental constraints.
- The Township has been a fully conforming municipality since May 2016. Plans prepared during the third round relied on the second-round regulations (N.J.A.C. 5:93-1 et. seq.), which predates the Highlands Act and therefore does not include standards or language as related to Highlands conforming municipalities. Therefore, the Township using durational adjustment at that time was proper.
- As a Highlands confirming municipality, the Township has limited ability to extend sewer and water outside the existing community zone. Therefore, VLA was a correct approach adopted by the Township. Any HEFSP must be approved by the Highlands Council and in this instance, the Township has provided a letter of approval from the Highlands Council. NJAC 52:27D-310.h requires that the HEFSP provide an analysis of compliance with the Highlands Regional Master Plan for Highlands conforming municipalities such as Clinton Township. The Township has provided correspondence from Highlands dated July 29, 2025, that the HEFSP is compliant with the RMP, 2024 Affordable Housing RMP Amendment, and the built-out update tool provided by Highlands to guide municipalities within the Highlands area to conduct the build out analysis.

### ***Compliance***

The HEFSP with the VLA and proposed mechanisms to address the RDP and unmet need is compliant with the Fair Housing Act.

### **Analysis of the Challenges**

- The main objection to Clinton's HEFSP from FSHC, ExxonMobil, and CNC was utilizing the VLA vis-à-vis the durational adjustment.
- Both ExxonMobil and CNC assert that the HEFSP does not include sites such as theirs that can redevelop. CNC recommends that their site should be identified as a durational adjustment site.
- ExxonMobil states that their site should replace CRC Headley Farm site that was included in the Third Round.

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- The statutes are clear that an objection should be whether the proposed HEFSP is compliant with the FHA and Mount Laurel doctrine.
- The Township has provided documentation that the proposed projects provide a realistic opportunity for affordable housing.

### **Findings and Recommendations**

- In conclusion, the Township's HEFSP is conditionally complaint, in that the Township should provide the documentation as requested earlier in this report. Accordingly, I recommend that the Court dismiss the challenges.
- The Township should revise the administrative documents to reflect the newly adopted regulations from HMFA and DCA including, but not limited to, affordable housing ordinance, affirmative marketing plan, and spending plan.

Respectfully Submitted,

A handwritten signature in black ink that reads "Sanyogita S. Chavan".

Sanyogita S. Chavan, AICP, PP  
Special Adjudicator

**PREPARED BY THE AFFORDABLE HOUSING PROGRAM:**

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In the Matter of Clinton Township	Superior Court of New Jersey Law Division, Civil Part  Docket No. HNT-L-49-25
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**Program Recommendation and Statement of Reasons**

**I. IN GENERAL**

Clinton Township adopted its Fourth Round Housing Element and Fair Share Plan (“HE & FSP”) on June 30, 2025, and filed the same on June 30, 2025. The Township’s Fourth Round obligations are as follows:

Present Need: 0

Prospective Need: 150

The Program’s Special Adjudicator in this matter is Sanyogita Chavan, A.I.C.P., P.P.

**I. CHALLENGES FILED TO THE TOWNSHIP’S PLAN**

Four Challenges were filed to the Township's plan including by CNC Ventures, LLC (“CNC”), Exxon-Mobil Tech (Exxon Mobil), CRC Communities as Headly (“CRC” OR “CRC-Headley”), and the Fair Share Housing Center (“FSHC”).

The FSHC challenged the Township HE&FSP by arguing that the Township must (1) revise its plan to include a properly conducted Vacant Land Adjustment instead of just relying on the Highlands Build-Out, (2) identify realistic sites including sites for redevelopment, (3) revise its documentation to be in conformance with its to-be-updated plan, (4) the Township should be required to address its durational adjustment including its lack of sewer capacity and (5) to the extent that the Township takes a VLA it must address its unmet need and the “ 25% requirement”.

CNC through the report of its planning expert Creigh Rahenkamp, A.I.C.P, PP., raises many of the same deficiencies noted by the FSHC. CNC also indicates that the Township's plan has not provided a fair and reasonable consideration of sites offered for development for affordable housing by willing developers. CNC, which does business at Beaver Brook Country Club, has made its surplus property located at block 79.01 Lot 4 and Block 79.02 Lot 10 available for development for affordable housing. CNC claims to have water and sanitary sewer availability in order to develop the site in the manner it proposes. Notably, the Township has taken the position that the CNC project is not realistic in that its property has various restrictions that would impede or prevent development of the site and that its claims about sewer availability are at worst fallacious and at best contested and unclear. CNC disputes those claims.

Exxon-Mobil challenged the Township's plan by submitting a planning report from Kate Keller, AICP, PP. Exxon-Mobil is the owner of a 75.7 acre tract in the Township. A portion of the site is developed with the Exxon Mobil research facility. The remainder is mostly agricultural lands. Exxon-Mobil has offered a portion of the vacant tract, namely Lot 17 and/or 30 for inclusionary development. Exxon-Mobil has challenged the Township's plan by arguing that (1) it has miscategorized Lots 17 and 30 in its VLA, (2) many of the Township's Third Round compliance mechanisms are no longer realistic (Headley Farm and 108 Alton Place), (3) the Township has mischaracterized its discussions with Exxon-Mobil regarding the tracts in issue and (4) the Exxon-Mobil tracts should be included in the Township's Fourth Round plan. The specifics of the challenge are more particularly set forth in the report of its expert planner, Ms. Keller.

Also, Exxon-Mobil has presented several concept iterations to the Township which are also described in Ms. Keller's report. Exxon-Mobil asserts that it can assist the Township in realizing its unrealized Third and Fourth Round obligations (128 unit Fourth Round "unmet need" and 132 "infeasible" Third Round units).

Notably, the Township contends that the Exxon-Mobil plan is unrealistic as it will be severely restricted by applicable Highlands restrictions and the availability of sewer infrastructure and capacity.

CRC filed a conditional challenge, not to object to the Township's Fourth Round HE & FSP, but rather as an interested party as CRC's interests are challenged by the CNC and Exxon- Mobil challengers. CRC is the owner of the "Headley Farm" which is a project that was included in the Township's Third Round plan for a 400 total unit development with a 26% set aside (104 affordable units). In fact, the Headley Farm was included in the Third Round plan as part of the settlement with the FSHC and approved as part of the Judgment of Compliance and Repose issued by the Court. It is and was the subject of a durational adjustment for sewer and water.

At the mediation session held by the Program Member on November 14, 2025, CRC advised that it would be submitting documentation to support its claim that its project was moving forward and is realistic. For instance, CRC indicates that it has secured a commitment from the local water utility to provide public water; it has received a favorable consistency determination from the Highlands Commission; it has or is about to apply to the NJDEP for a WQMP amendment which will allow for on-site sewer on the property and it is on the verge of applying for site plan approval from the Township.

## **II. THE HEARING IN THIS MATTER AND THE PROGRAM RECOMMENDATION**

The Program conducted a "hearing" or "session" in this matter on December 19, 2025. At that time the parties were able to present their final arguments "on the

record” to complete the record before the program prior to the Program's recommendation to the Court.

The hearing was disadvantaged by the late filings of reports and amendments to the HE&FSP by the Township. Those late submissions caused a situation whereby the Challengers were not able to properly respond to the Township's positions. This Program Member will address that situation, as part of the Program's analysis and recommendation.

Preliminarily, certain aspects of the Township's plan can be addressed and, in this Program Member's view, be resolved. The Township's prior round obligation of 335 units was satisfied through prior cycle credits, an RCA with New Brunswick, inclusionary development, a group home, 100% affordable housing project and rehabilitation. All but the group home are completed. (See Special Adjudicator report of Sanyogita Chavan dated January 24, 2026 attached to the Program Decision Recommendation at Exhibit A). This Member concurs with the Special Adjudicator's opinion that the Township should be determined to have satisfied prior round obligations subject to the Township's continuing obligation to update its plan and submit necessary documentation.

With regards to the Township's Third-round, its obligation is for 337 units. The Township is proposing to satisfy its obligation through inclusionary development, 100% affordable housing and a group home. Two sites were identified

as durational adjustment sites, namely CRC Headley Farms and 108 Alton Place. The Township advised the Program that Clinton Woods, a 100% affordable project that provides 116 credits and bonus credits is complete and that the Willows at Spruce Run project is under construction.

The CRC Headley Farms Project involves a development on the property located at block 46 Lots 33 and 33.01. The proposed project includes 400 total units and a 26% set aside that will yield 104 low and moderate income units. The project was included in the Township's Third Round plan. Since there was not enough water and sewer capacity available to accommodate the project, the property was included in the plan subject to a durational adjustment.

“Exxon” has challenged the inclusion of the CRC project by claiming it is not a realistic opportunity. “Exxon” asserts that the project should have been replaced in the Township’s plan as the Township has failed to demonstrate meaningful progress to produce affordable housing units due to various issues.

In this Program Member’s view, however, the CRC Headley Project has demonstrated significant progress and it deserves to remain in the plan. The project has (1) obtained full allocation of water for the project; (2) received affirmative consistency determination from the Highlands Counsel for its WQMP amendment; (3) it has submitted its Preliminary Submission and Site Plan approval and its submission has been deemed complete by the Clinton Township Planning Board and

(4) it has elected to proceed with an on-site waste water disposal system, thereby circumventing the issue of sewer availability.

This Program Member finds that the CRC Headley Project has made impressive and real progress towards bringing the project to fruition. In fact, removal of the project would be counter to the goal of actually providing low and moderate income units within the Township. As such this Program Member recommends that the portion of Exxon's challenge that requests that the CRC Headley Project be removed from the plan be rejected. Further it is recommended that the CRC Headley Project be maintained in the Township's plan. With regards to 108 Alton Place, the proposed project now has a "will serve" letter from the Clinton Township Sewerage Authority dated November 7, 2025. Also, the Township has advised that water reservation was granted to the project. The water reservation agreement has yet to be provided. Subject to receipt of that document this Member concurs with Special Adjudicator Chavan that the Township's continued inclusion of 108 Alton Place in its plan be determined to be conditionally compliant subject to provision of the required documentation.

The remainder of the Township's plan presents a dilemma for the Program, however. First, from a due process standpoint, the Township's late filing results in a situation that simply makes it unfair for the Program to make a recommendation to the court. The challengers were simply not provided with a fair opportunity to address

the complex issues that this case presents. Additionally, in this Program Member's view, there is simply not a sufficient factual record in order for the complex issues in the case to be given the analysis and consideration that is warranted.

The primary issue that is presented here is whether the Township's reliance upon the Highlands Vacant Land Analysis (HVLA) is compliant with applicable law. The Challengers urge that the Township should be required to (1) revise its HE&FSP to include a properly conducted Vacant Land Analysis (VLA); (2) that the Township must further identify realistic sites, including sites appropriate for redevelopment; and (3) commit to revise its HE&FSP and supporting documents accordingly.

The Township<sup>1</sup> counters that it is already subject to the land use rules and regulations of the Highlands Council and the Highlands Regional Master Plan (RMP). As a result, the Township offers that it must update and adopt a "housing element, fair share plan and implementing ordinances to reflect current conditions and resource protection requirements of the RMP".

Further, as a fully confirming Highlands municipality, the Township acknowledges that it must perform a "HVLA" to ensure that its HE&FSP complies with a RMP. The Township contends that the HVLA effectively and even

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<sup>1</sup> Through Counsel and its Planner's report

conservatively is a substitute for a VLA performed pursuant to the Fair Housing Act and any regulations promulgated thereto.

The FSHC and the other Challengers contend that the HVLA is overly broad, and incomplete so that it cannot serve as a viable substitute for a properly prepared VLA. The FSHC, through its expert planner, the renowned Dr. David Kinsey, contends that the Highlands Council build-out analysis does not account for and does not properly analyze other possibilities including redevelopment and the appropriate density increases that redevelopment possibilities may require. Dr. Kinsey buttresses his argument with actual case studies from High Bridge and Parsippany to demonstrate how the HVLA may “miss” certain real opportunities for the creation of affordable housing.

In this matter each of the competing parties offer arguments as to the reasons which make their particular approach more compelling. In this Program Member’s view, these competing positions cannot be fairly and justly analyzed with the inadequate “paper” record before it. The Program is simply not equipped or designed to elicit and develop the factual record in order to properly address this issue. At least on its face it appears that the Dr. Kinsey opinions appear to be soundly based in that in certain circumstances affordable housing opportunities may be missed when the HVLA is solely relied upon. In fact, that circumstance has been borne out in the specific references pointed out by Dr. Kinsey. Without having a

properly prepared VLA, and a “Venn” analysis, it is uncertain whether those redevelopment opportunities remain undiscovered in Clinton Township. Further, it seems counter-intuitive that a municipality like Clinton Township would not have sufficient vacant land to meet its constitutional obligations so that a more rigorous vetting of the facts and circumstances should be required.

This Program Member recommends that the Court continue these proceedings in a manner deemed appropriate by the court to create the necessary record in order to evaluate the competing and seemingly irreconcilable circumstances offered by the parties.

The same procedure is recommended to be employed regarding the issues involved with the CNC challenge. In their challenge CNC claims that there are no impediments to its development of affordable housing. The Township disputes that claim by raising issues about water and sewer availability and deed (or filed map) restrictions that would inhibit or prohibit the development of the site. As a result, the Township contends that further development of that site is not feasible or even possible. CNC denies and disputes those claims.

This Program Member finds that the factual disputes regarding those issues require a more in-depth inquiry and analysis than is permitted here.

In the meantime, this Program Member recommends that the Court extend the Township’s immunity from exclusionary zoning suits pending resolution of the

issues before the Court so long as the Township continues to participate in good faith. It is also recommended that the Court require the Township to explore alternatives to its plan in the event it does not succeed on the legal arguments that it has offered in support of its plan. This finding and recommendation is subject to further judicial review in accordance with applicable law and Administrative Directive #14-24, Civil-Affordable Housing Dispute Resolution Program-Implementation of L.2024,c.1. (Dec.13, 2024) #14-24. Such review may include the scheduling of a HEFSP Confirmation Hearing (or, if and as may later be determined necessary by the Mt. Laurel judge, a Fairness and/or Compliance Hearing) to consider approval of the Township's Amended HEFSP and issuance of a Certificate of Compliance and Repose.

**Respectfully Submitted by the Program:**

By:

/s/ *Thomas C. Miller*

**Hon. Thomas C. Miller, A.J.S.C. (Ret.)**

Dated: January 29, 2026