



SPECIAL MASTER'S REPORT  
FOR A *MOUNT LAUREL* FAIRNESS HEARING  
TOWNSHIP OF CRANFORD | UNION COUNTY, NEW JERSEY

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IMO Application of the Township of Cranford  
Docket No. UNN-L-3976-18

February 7, 2020

Prepared for:

The Honorable Robert J. Mega, J.S.C.  
Superior Court of New Jersey  
Union County Courthouse  
2 Broad Street  
Elizabeth, New Jersey 07207

Prepared By:

A handwritten signature in black ink, appearing to be 'KL' with a stylized flourish.

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Kendra Lelie, PP, AICP, LLA  
New Jersey Professional Planning License No. 5537



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## 1.0 INTRODUCTION

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This report has been prepared and submitted in my capacity as Special Master to assist the Court in the upcoming Fairness Hearing before the Hon. Robert J. Mega, J.S.C. on February 19, 2020 In the Matter of the Application of the Township of Cranford, Docket No. UNN-L-3976-18. The purpose of this hearing and this report is to determine whether the November 2019 Settlement Agreement between the Township of Cranford (hereinafter “Cranford” or the “Township”) and Fair Share Housing Center (hereinafter “FSHC”) is fair to the interests of low- and moderate-income households.

The February 19, 2020 hearing was noticed in the Star Ledger on November 27, 2019. This notice properly summarized the salient points of the Agreement, directed any interested members of the public to the Township Clerk’s office where they may review the Agreement, described the purpose of the Court hearing, and invited written comments on the Agreement to be filed no later than January 13, 2020. One objection was submitted by Hartz Mountain Industries, Inc (hereafter “Hartz”) on January 13, 2020.

## 2.0 BACKGROUND

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In Township was placed under the jurisdiction of the Court in January 2008 pursuant to a complaint filed by Lehigh Acquisition Corp. entitled Lehigh Acquisition Corp v. Township of Cranford et al., Docket No. UNN-L-0140-08. An additional complaint was filed against the Township in 2008 entitled Cranford Development Associates, LLC at als. v. Township of Cranford et al., Docket No. UNN-L-3759-08. The Township adopted the 2008 Housing Element and Fair Share Plan in December of 2008.

On December 9, 2011, Honorable Lisa F. Crystal, J.S.C. issued an Order Granting Relief in the Exclusionary Zoning complaint filed by Cranford Development Associates. As a result, the 2008 Township Housing Plan Element and Fair Share Plan was amended in accordance with the Order and adopted by the Township Planning Board on May 2, 2012.

The Township prepared a 2013 Housing Plan Element and Fair Share Plan and on May 22, 2013, Honorable Lisa F. Crystal, J.S.C. entered a Third Round Judgment of Compliance and Repose (JOR) approving the Township Third Round Housing Plan Element and Fair Share Plan which provided a repose period until December 31, 2018.

On November 20, 2018, the Township filed a complaint for Declaratory Judgement. The Court later permitted Hartz as an intervenor in this case in addition to FSHC serving as an interested party.



### 3.0 CONTEXT FOR REVIEW

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Before addressing the documents that have been submitted for the Court’s consideration, I would like to acknowledge the parties’ efforts in achieving settlement. Settlement of Mount Laurel litigation – so long as it meets the appropriate standards for judicial approval – is clearly preferable to the adjudication of a dispute. Among the most prominent advantages to settlement is that it creates a more civil atmosphere for the further interactions between the parties, such as the ongoing monitoring of the Township’s progress in addressing its fair share obligations and resolving differences that may arise in the future. In this way settlements typically facilitate the local compliance process and thereby expedite the delivery of affordable housing.

The Agreement will be evaluated according to guidelines established by the Court in two principal cases: Morris County Fair Housing Council v. Boonton Twp. 197 N.J. Super. 359, 369-71 (Law Div. 1984) and East/West Venture v. Borough of Fort Lee 286 N.J. Super. 311 (App. Div. 1996). These cases require agreements in Mount Laurel litigation to be subject to a “Fairness Hearing.” The scope of the Fairness Hearing was determined by the Appellate Division in a decision that upheld the hearing process conducted by then–Assignment Judge Peter Ciolino in East/West Venture v. Borough of Fort Lee.

In its 1996 decision, the Appellate Court ruled that a settlement between a builder Plaintiff and municipal Defendant in a Mount Laurel case may be approved by the Trial Court after a hearing which establishes that the settlement “adequately protects the interest of lower-income persons on whose behalf the affordable units proposed by the settlement are to be built” and that based upon adequate findings of fact, that the settlement is “fair and reasonable” to the members of the protected class 286 N.J. Super.311, 329 (App. Div. 1996). The Appellate Court provided specific factors for Trial Courts to consider in making fairness determinations. These factors, adjusted as necessary for application in a settlement such as this, between a public interest advocate and a municipality will be detailed in a subsequent section of this report.

This report relies on the “Second Round” regulations of the NJ Council on Affordable Housing (hereinafter “COAH”) (N.J.A.C. 5:93) to the greatest extent practicable in the course of this review for the Court. This approach encourages uniformity in the interpretation of the Mount Laurel doctrine and is consistent with both legislative and judicial directives.

The Fair Housing Act (P.L. 1985, c. 222) states,

“The interest of all citizens, including low and moderate income families in need of affordable housing, would be best served by a comprehensive planning and implementation response to this constitutional obligation.” (N.J.S.A. 52:27D-302(c))



Furthermore, the New Jersey Supreme Court, in its decision in The Hills Development Co. v. Town of Bernards, 103 NJ 1 (1986) (commonly known as Mount Laurel III) upheld the constitutionality of the Fair Housing Act, and stated,

“Instead of varying and potentially inconsistent definitions of total need, regions, regional need, and fair share that can result from the case-by-case determinations of courts involved in isolated litigation, an overall plan for the entire state is envisioned, with definitions and standards that will have the kind of consistency that can result only when full responsibility and power are given to a single entity [COAH].” (103 N.J. at 25)

Lastly, in the decision, the Supreme Court also stated that to the extent that Mount Laurel cases remained before the courts,

“...any such proceedings before a court should conform wherever possible to the decisions, criteria and guidelines of the Council.” (103 N.J. at 63)

On March 10, 2015 the N.J. Supreme Court delivered In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (hereinafter “Mount Laurel IV”). This decision acknowledged COAH’s inability or unwillingness to adopt constitutional rules for the so-called “Third Round” of municipal affordable housing compliance. In the absence of regulatory guidance from COAH or Legislative action, the decision instructs the Trial Courts to once again evaluate the constitutionality of municipal Fair Share Plans.

While the Supreme Court has invalidated COAH’s attempts to promulgate Third Round rules, the Second Round rules (*N.J.A.C. 5:93*) are still largely intact. In fact, these rules have been relied upon by the Trial Courts in numerous compliance and fairness hearings during the “gaps” in COAH’s rule-making since the Second Round ended in 1999. Furthermore, in the Mount Laurel IV decision the NJ Supreme Court directed the Trial Courts to continue to rely on the Second Round rules, with certain specific exceptions. The parties to the Settlement Agreements have been guided by these instructions and this Report relies on COAH’s Second Round rules and established COAH and Court precedent to evaluate the Settlement Agreement before the Court. This will promote the uniformity of approach which is clearly indicated in the Supreme Court’s decisions.



## 4.0 THE SETTLEMENT AGREEMENT

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This report analyzes the settlement agreement between Cranford and FSHC. The Settlement Agreement was executed by the Cranford Township Mayor Patrick Giblin signed on November 12, 2018 and Kevin Walsh, Esq. on behalf of Fair Share Housing Center on November 8, 2019. The Agreement sets forth the extent of Cranford’s rehabilitation share, prior round, and third round fair share obligations, provides a brief description of the compliance mechanisms by which Cranford proposes to address those obligations, and sets forth other terms relevant to compliance and monitoring.

### The Obligation

The parties to the Settlement Agreement have agreed upon the following fair share obligations for the Township for the period from 1987 through July 1, 2025:

- Rehabilitation Share: 85 units
- Prior Round (1987 – 1999) Obligation: 148 units
- Third Round (1999 – 2025) Obligation: 440 units

The source of the rehabilitation share and prior round obligation is that which was calculated by Dr. David N. Kinsey, PhD, PP, FAICP in his May 2016 report titled, “New Jersey Low and Moderate Income Housing Obligations for 1999-2025 Calculated Using the NJ COAH Prior Round (1987-1999) Methodology”. Notwithstanding the source of the prior round obligation, this report did not recalculate the prior round obligation calculated by COAH for their 2008 substantive rules, *N.J.A.C. 5:97 Appendix C*.

The source of the 440-unit third round obligation is based on the methodology determined by the Hon. Judge Jacobson, A.J.S.C. in her March 2018 decision, In the Matter of the Application of the Municipality of Princeton, Docket. No. MER-L-1550-15 (Law Div., Mercer Cty., March 29, 2018). The obligation was extrapolated and applied to all New Jersey municipalities by Econsult Solutions, in “Statewide and Municipal Obligations Under Jacobson Opinion”. In addition, the Settlement Agreement recognizes and addresses (for settlement purposes only) an additional 20-unit obligation as required by the Honorable Camille M. Kenny, J.S.C. in the January 16, 2019 Order In CDA v. the Township of Cranford, UNN-L-3759-08.

The Settlement Agreement contains a provision stating that if a decision or action of a court of competent jurisdiction in Morris County or by administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature results in the calculation of a municipal obligation more than 20% lower than the 440-unit Third Round obligation set forth in the report (or an obligation of 352 units or lower), the Township may request that its obligation be adjusted to that lower number.



Notwithstanding such an adjustment, the Township would be required to fully implement the compliance plan contained in the Agreement but would be able to carry over any resulting surplus units and credits into the fourth round.

### Compliance Efforts

Additional information is necessary to confirm that these mechanisms satisfy the crediting requirements of the Settlement Agreement, the Uniform Housing Affordability Code (“UHAC”), the Fair Housing Act, and COAH’s rules. Notwithstanding, there is no evidence at this time that the units will not be eligible to satisfy their respective obligations. The Township will need to submit documentation, including but not limited to evidence of affordability controls and facilitating ordinances, for the credit eligibility of each affordable unit and project to be verified. It should be noted that it is typical for such information to be submitted and reviewed as condition of a Court Order addressing Fairness of a settlement agreement with FSHC. To assist ensuring compliance with the time limits in the Settlement Agreement, **I recommend that all crediting documentation and a draft affordable housing ordinance be submitted to the Special Master and FSHC within 60 days of the Court’s approval of the Settlement Agreement.** Review of these documents well in advance of the Settlement Agreement’s time limitation of 120 days could identify and rectify any flaws prior to the Township taking official action on the documents.

### *Rehabilitation Obligation*

The Township will participate in the Union County Housing Rehabilitation Program, which is limited to owner-occupied units, and will implement a supplemental municipal rehabilitation program for renter-occupied units. The municipal program is necessary for the Township to be compliant with *N.J.A.C. 5:93-5.2(f)*, which states rental units may not be excluded from the rehabilitation program. Operating manuals for both the County and municipal programs must be submitted as part of the crediting documentation to ensure the programs meet the requirements of *N.J.A.C. 5:93-5.2*.

### *Prior Round Obligation*

The Township satisfies the 148-unit prior round obligation with several affordable housing projects – of which all units are constructed and occupied. The table below provides a summary of these mechanisms. The mechanisms provided satisfy the minimums and maximum micro-requirements for the Prior Round including a maximum of 37 age-restricted units, a minimum of 37 rental units and a maximum rental bonus credit of 37 units.



Satisfaction of the 148-unit Prior Round Obligation				
Program	Type	Units	Bonus Credits	Total Credits
Lincoln Apartments	Age-restricted rental	37	0	37
Riverfront Developers (16 of 19)	Family rental	16	13	29
SERV	Special Needs Housing	3	3	6
Birchwood (formally CDA)	Family rental	34	0	34
Lehigh Acquisition aka Woodmont (21 of 24)	Family rental	21	21	42
<b>Total</b>		<b>111</b>	<b>37</b>	<b>148</b>

*Third Round Obligation*

The Township is eligible for a vacant land adjustment, pursuant to *N.J.A.C. 5:93-4.2*. Municipalities, such as Cranford, that do not have adequate capacity of developable land to fulfil the entirety of the affordable housing obligation are eligible for an adjustment of the obligation that reflects a realistic development potential (hereinafter “RDP”) and the unmet need. The RDP represents the portion of the new construction affordable housing obligation that can realistically be addressed with inclusionary development on lots identified as being developable in the vacant land adjustment. The unmet need is calculated as the difference between the total obligation and the RDP.

As detailed in Appendix A. to the Settlement Agreement, the Township’s calculated RDP is 131 units + an additional 20 units as agreed to for a total RDP of 151 units, as such the unmet need is 289 units (440-151). The vacant land adjustment was completed in accordance with *N.J.A.C. 5:93-4.2*. More specifically, the Township evaluated vacant (property class 1) lands, public lands (property class 15c) and additional properties which were under-developed or otherwise may offer an opportunity for inclusionary affordable housing as provided for in *N.J.A.C 5:93-4.2(d)* which states the Council on Affordable Housing (COAH) may look to the existing land use map and determine “which sites are most likely to develop for low and moderate income housing”. Environmental constraints, such as but not limited to wetlands, and



municipally owned recreation lands were excluded from generating an RDP. The Township utilized densities ranging from 8 to 50 du/ac and a 20% affordable housing set-aside to calculate the RDP.

I have reviewed the Vacant Land Analysis (VLA) in accordance with N.J.A.C. 5:93-4.2 and am satisfied that the Township VLA conforms with the COAH rules and accepted historical procedures in the determination of the 151-unit RDP. The objector raises several issues with the methodology incorporated in determining the RDP which I will address in Section 5 of this report as it relates to the “Fairness” evaluation. As a summary, the following projects and sites contribute to the RDP:

- 5 units from the 2013 JOR at 8 units/acre density
- 1 unit from an existing group home
- 9 units from 2017 Zoning Board of Adjustment approvals
- 88 units from 2017 rezoning request (Hartz) at 18 units/acre density
- 11 units from properties located in the downtown zoning districts at a density of 20-30 units/acre
- 7 units from existing family rental projects (completed in 2013-2017) ranging from 32-38.5 units/acre
- 8 units from proposed inclusionary projects at a density of 47 units/acre
- 2 units from Township owned property considered for redevelopment
- 20 units from the January 16, 2019 Order from the Honorable Judge Kenny

The RDP for the Hartz site may increase as identified in the Settlement Agreement (Item 10.c) if after one year from the Court’s approval of the Settlement Agreement, six (6) acres of the property remain available and not utilized for a public purpose, an RDP will be generated pursuant to N.J.A.C. 5:93-4.2.

The Township satisfies the third round RDP with a mix of existing and proposed family, senior and special needs projects and associated bonus credits. The table below provides a summary of the third round strategies.

Satisfaction of the 151-unit RDP					
Program	Type	Status	Units	Bonus Credits	Total Credits
Riverfront Developers (3 of 19)	Family rental	Existing (2013)	3	3	6
Lehigh Acquisition aka Woodmont (3 of 24)	Family rental	Existing (2015)	3	3	6



Satisfaction of the 151-unit RDP					
Program	Type	Status	Units	Bonus Credits	Total Credits
Needlepoint	Family rental	Existing (2017)	1	1	2
Lincoln Apartments	Age-restricted rental	Existing (1990)	37	0	37
Homefirst (Parkway Village)	Supportive/Special Needs	Existing (2014)	4	0	4
Homefirst (117 Benjamin)	Supportive/Special Needs	Existing (2014)	3	0	3
Bridgeway	Supportive/Special Needs	Existing (1996)	2	0	2
SERV	Supportive/Special Needs	Existing (2007)	4	0	4
CAU	Supportive/Special Needs	Existing (1999)	6	0	6
310 Centennial	Family Rental	Under Construction	2	2	4
109 Walnut	Family Rental	Completed	4	4	8
EF Britten	Family Rental	Proposed	3	3 <sup>(1)</sup>	6
North Avenue Redevelopment	Family Rental	Proposed	8	2 <sup>(1)</sup>	10
Myrtle Avenue	Supportive/Special Needs	Proposed	8	8	16
201 Walnut (Wells Fargo)	Family Rental	Proposed	8	7 <sup>(4)</sup>	15



Satisfaction of the 151-unit RDP					
Program	Type	Status	Units	Bonus Credits	Total Credits
750 Walnut (Hartz)	Inclusionary/Redevelopment Family/Age-Restricted	Proposed	49 <sup>(5)</sup>	0	49
Market to Affordable	-	Proposed	5 <sup>(2)</sup>	0	5
CAU/Other	Supportive/Special Needs	Proposed	7 <sup>(3)</sup>	0	7
<b>Total</b>			<b>157</b>	<b>33</b>	<b>190<sup>(6)</sup></b>

- (1) In order for the Township to take rental bonus credits for these projects, I recommend that the crediting documentation for these projects include a redevelopers agreement, developers agreement or agreement from the property owner(s) indicating acceptance of the proposed and/or existing zoning for family rental housing on the subject parcel(s) be submitted to the Special Master and FSHC within 60 days of the Court’s approval of the Settlement Agreement.
- (2) The Settlement Agreement requires the Township to complete at least 2 units by July 1, 2022; at least 4 units by 2023 and all 5 units by the end of year 2024 and at least four of the units shall be affordable to low-income households. However, the Settlement Agreement also acknowledges that the Township may identify other acceptable affordable housing mechanisms including any combination of supportive housing units or newly constructed municipally sponsored units in lieu of the market to affordable units proposed. In accordance with the Settlement Agreement, Township shall provide a report at or before the compliance hearing satisfying the conditions and requirements found at N.J.A.C. 5:97-6.9 (Market to Affordable program requirements).
- (3) The Settlement Agreement requires that if that if an existing supportive/special needs home operated by CAU is utilized toward the proposed supportive and special needs bedrooms, the Township shall enter into separate agreements with FSHC and CAU prior to the compliance hearing to ensure the group home(s) continue to operate as eligible group homes.
- (4) Pursuant to the Settlement Agreement, the Township shall adopt a redevelopment plan for this site within one year of the Court approval of the Settlement Agreement requiring that at least the 15% set aside be provided on site and that COAH’s phasing requirements be followed. In addition, the



redevelopment agreement shall specify that the affordable unit shall be rental. In addition to the Settlement Agreement conditions, in order for the Township to apply rental bonus credits to this project, I recommend that the Township provide an agreement from the developer or property owner indicating acceptance of the proposed zoning for family rental housing on the subject parcel(s) be submitted to the Special Master and FSHC within 60 days of the Court's approval of the Settlement Agreement.

- (5) The Settlement Agreement requires two paths for inclusionary zoning on this site. The first option is to adopt a Redevelopment Plan with the power to condemn and naming a redeveloper for the project within one year of Court approval of the Agreement. Within 18 months to 21 months from the Court approval of the Agreement, the Township shall be required to transfer the property to the named redeveloper. If the power to condemn is utilized, the Township is, at their discretion, able to require that the market-rate units are age-restricted (not to exceed 196 market-rate units). The second option the Township may exercise is to rezone the property at a gross density of 9 units per acre or 221 family units of which 20% or 45 units would be available to low- and moderate-income households. To ensure the implementation of at least one of the agreed upon options as part of the compliance plan, I recommend the Township identify which option they wish to pursue prior to the compliance hearing and provide the required information (inclusionary zoning ordinance or draft Area in Need of Redevelopment and Redevelopment Plan) to determine the credit worthiness of this mechanism.
  
- (6) The Township compliance plan anticipates a 39-unit surplus. The Settlement Agreement permits this surplus to address a future increase in the RDP due to a changed circumstance with certain notice provisions to FSHC and the Court. In addition, the Settlement Agreement specifically acknowledges that the Township will have the right to satisfy an increase of RDP in a manner and location it deems appropriate pursuant to N.J.A.C. 5:93-4.2. Specifically, N.J.A.C. 5:93-4.2(g), states that "The municipality need not incorporate into its housing element and fair share plan all sites used to calculate the RDP if the municipality can devise an acceptable means of addressing its RDP."



The Township’s 289-unit unmet need will be addressed through overlay zoning and a mandatory set-aside ordinance. The table below provides a summary of these mechanisms.

<b>Satisfaction of the Unmet Need</b>		
<b>Program</b>	<b>Density-Set aside</b>	<b>Applicable Area</b>
Downtown Core (D-C) District Overlay Zoning	35 du/acre – 20%	38.8 acres 39 parcels (10 acres contain 1-story buildings)
Downtown Business (D-B) District Overlay	30 du/acre – 20%	32.3 acres 18 parcels (9.5 acres contain 1-story buildings)
Downtown Transitional (D-T) District Overlay Zoning	25 du/acre – 20%	7.5 acres 4 parcels (1.2 acres contain 1-story buildings)
Elise St. /Burnside Ave. Overlay Zoning	12 du/acre	
Park Street (Block 555, Lots 1,2,3,7) Overlay Zoning	12 du/acre	
Mandatory Set-aside Ordinance (Township)	To be determined	



## 5.0 OBJECTION

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One objection was received, and it was issued on behalf of Hartz Mountain Industries, Inc. (hereinafter “Hartz”). Accompanying the objection is a report entitled “Objection to Cranford Settlement Agreement” prepared by Art Bernard, PP (hereinafter the “Objection”). Fair Share Housing Center issued a response to the objection on January 27, 2020. The Township issued a response to the objection on January 27, 2020 with a supporting report entitled “Planner’s Report” issued on January 28, 2020 prepared by Francis J. Banisch III, AICP/PP.

The upcoming hearing is to evaluate the fairness of the Settlement Agreement and *preliminary* compliance of the affordable housing mechanisms set forth in the Agreement. This is a critical point since several objections within the Objection relate to Compliance Plan details, rather than only on the Township’s Settlement Agreement which is the subject of the upcoming Fairness Hearing. Reliance on the Compliance Plan details has resulted in some misplaced objections which are addressed below. Provided the Settlement Agreement is approved, the points raised in the objection relating to the specifics of the Compliance Plan will be addressed at the subsequent Compliance Hearing as the Township is required to adopt a housing element and fair share plan that provides additional detail and crediting documentation on all affordable housing mechanisms set forth in the Agreement. Consequently, this also means there remain multiple opportunities for public comment and question on the mechanisms and supporting documentation.

The Objection raises several issues related to the Township’s RDP calculation, compliance mechanisms and treatment of the Hartz site in the compliance plan. The following provides a summary and response to the planning related concerns raised in the Objection.

### **RDP Calculation: Crediting and Process**

The Objection argues that the Realistic Development Potential (RDP) calculation is incorrect as any crediting for past housing activity should be applied to the Third Round obligation and not to the RDP. As indicated in the Township’s response (Banisch Planner’s Report) to the Objection and as noted by Mr. Bernard, COAH has had a long-standing process of crediting housing activity toward the RDP and not the pre-credited Third Round obligation. In addition, this COAH process is now common practice in the settlements of VLA towns with FSHC to credit recent housing activity toward the RDP.

The Objection raises issues with the actual process of determining which sites contribute to the RDP. Mr. Bernard points to N.J.A.C. 5:93-4.2(d) which states the following:



*(d) The Council shall review the existing land use map and inventory to determine which sites are most likely to develop for low- and moderate-income housing. All vacant sites shall initially be presumed to fall into this category. In addition, the Council may determine that other sites, that are devoted to a specific use which involves relatively low-density development would create an opportunity for affordable housing if inclusionary zoning was in place. Such sites include but are not limited to: golf courses not owned by its members; farms in SDRP planning areas one, two and three; driving ranges; nurseries; and nonconforming uses. The Council may request a letter from the owner of sites that are not vacant indicating the site's availability for inclusionary development.*

Specifically, the Objection argues that the sites included in the RDP should only include vacant sites and sites containing low density development. Mr. Bernard argues that there are no standards in determining whether more intensely developed sites should result in an RDP assignment. The clear reading of N.J.A.C 5:93-4.2(d) above indicates that COAH was to review all land use in the municipality and determine which sites are most likely to develop for low-and moderate-income housing. The sites used to establish the RDP include sites that the Township and FSHC determined (with my input and oversight) likely to develop for low-and moderate-income housing.

I am satisfied that the Township properly applied the COAH rules at N.J.A.C. 5:93-4 in determining the RDP.

**Hartz Site Treatment in the Agreement:**

RDP Assignment

The Objection indicates that the assignment of the RDP to the Hartz site at 18 dwelling units per acre versus 30 dwelling units per acre, which Mr. Bernard opines is suitable and represents the “full development potential” for the site, and the exclusion of six acres that is anticipated for a public utility artificially lowers the RDP for the site. As indicated at N.J.A.C. 5:93-4.2(f), the determination of the density for each site that is not excluded from the Vacant Land Analysis and which contributes toward the RDP is based on the balance of considering the character of the area surrounding the site and the need to provide affordable housing.

*(f) The Council shall consider the character of the area surrounding each site and the need to provide housing for low- and moderate-income households in establishing densities and set-asides for each site, or part thereof, remaining in the inventory. The minimum presumptive density shall be six units per acre and the maximum presumptive set-aside shall be 20 percent.*



While the Objection mentions that the site is suitable at a density assignment of 30 dwelling units per acre because Walnut Street, in which the site fronts on one side is a wide street that would be able to handle the volume of traffic, Mr. Bernard also points to a site in a different municipality indicating it has similar site characteristics and found to be acceptable at a similar density. Mr. Bernard does not provide additional information or arguments regarding the character of the surrounding area of the Hartz site. The COAH rule regarding density assignment does not contemplate the comparison of a site to another site within a different municipality. Mr. Banisch in his Planner's Report in response to the Objection provides a comprehensive summary of the surrounding neighborhoods and land uses adjacent to the Hartz site in support of the RDP density assignment as well as the proposed inclusionary housing zoning density. He concludes that the average density in the surrounding residential neighborhoods ranges from 2.5 dwelling units per acre to 8 dwelling units per acre.

As indicated at N.J.A.C. 5:93-4.2(f), the presumptive minimum density is 6 dwelling units an acre when assigning a density to a site for RDP calculation purposes. The Township has assigned a density at 18 du/acre which is an increase of three times the presumptive density but provided inclusionary zoning at a density compatible to the surrounding neighborhood. In essence, for settlement purposes the Township has agreed to address the net dwelling units not being addressed through the proposed inclusionary zoning ([88] 18 du/acre RDP – [49]10 du/acre = 39 net du) elsewhere within the municipality that would be more appropriate for higher density development, which is permitted via N.J.A.C. 5:93-4.2(g) as provided below.

*The municipality may address its RDP through any activity approved by the Council, pursuant to N.J.A.C.5:93-5. The municipality need not incorporate into its housing element and fair share plan all sites used to calculate the RDP if the municipality can devise an acceptable means of addressing its RDP. The RDP shall not vary with the strategy and implementation techniques employed by the municipality.*

In fact, this rule actually permits the Township to exclude the Hartz site from the means of addressing the RDP altogether. Instead, the Agreement permits two zoning options that, as provided for in the Township's Planner's Report, are compatible with the surrounding area of the Hartz site.

In review of the mapping, photographs and conclusions provided in the Township Planner's Report, I am convinced that the RDP assignment density of 18 dwelling units per acre is appropriate given the mixed uses and density of the surrounding neighborhoods and land uses and complies with N.J.A.C. 5:93-4.2.

The second objection as it relates to the RDP assignment to the Hartz property is the exclusion of 6 acres of property for the potential future siting of a public utility. The Objection indicates that this artificially reduces the RDP. The Agreement relies on N.J.A.C. 5:93-4.2 (e)(5)(ii), which states that land utilized for



“open space, conservation or parkland may be excluded from the RDP calculation, to exclude the subject 6 acres from the RDP calculation. Specifically, N.J.A.C. 5:93-4.2 (e)(5)(ii) states:

*If less than three percent of the municipality’s total land area is designated for conservation, parklands or open space, the municipality may reserve up to three percent of its total land area for such purposes. However, the acquisition of such sites must be initiated by the municipality within one year of substantive certification. Sites that are not purchased and limited to conservation, parklands or open space within that timeframe, shall, if determined necessary by the Council, be zoned to permit inclusionary development.*

The Agreement interprets this section of the Second Round Rules that if land is used for a public purpose then it may be excluded from the RDP calculation. As indicated below, N.J.A.C. 5:93-1.3 provides a definition for “open space” which can be interpreted as land that is set aside for public use.

*“Open-space” means any parcel or area of water or land essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space: provided that such areas may be improved with only those buildings, structures, streets and off street parking and other improvements that are designed to be incidental to the natural openness of the land.*

I accept the Agreement’s categorization of the 6 acres as “open space” as it would be used for a public purpose or in this instance a public utility. **However, I recommend the Township provide an accounting that the 6 acres complies with the requirement that it does not exceed the three percent threshold of open space, conservation or parklands as part of their compliance documentation.** The anticipates that such open space, conservation or parkland sites may be planned for and provides for a timing threshold of one year from “substantive certification” for the provision of securing the land under an acceptable means. The Agreement provides a more aggressive timing threshold of one year from the Court’s approval of the Agreement instead of a Judgment of Compliance (which is the judicial equivalent of COAH’s substantive certification) to meet the requirement of N.J.A.C. 5:93-4.2 (e)(5)(ii).

I am satisfied with the Agreement’s handling of excluding the 6 acres from the RDP calculation at this point and providing a more aggressive timeframe for compliance with N.J.A.C. 5:93-4.2 (e)(5)(ii) with the condition that the Township provide the required documentation relating to the three percent threshold calculation of open space, parkland and conservation land within the municipality.



### **RDP v. Unmet Need Site Compliance Application**

The Objection indicates that the Hartz site should not be included in the compliance of the RDP and instead be considered an Unmet Need site because the site is not vacant or considered low density and because it is neither of these N.J.A.C. 5:93-4.2(h) would be applied to the Hartz site:

*If the RDP described in (f) above is less than the precredited need minus the rehabilitation component, the Council shall review the existing municipal land use map for areas that may develop or redevelop. Examples of such areas include, but are not limited to: a private club owned by its members; publicly owned land; downtown mixed use areas; high density residential areas surrounding the downtown; areas with a large aging housing stock appropriate for accessory apartments; and properties that may be subdivided and support additional development. After such an analysis, the Council may require at least any combination of the following in an effort to address the housing obligation:*

1. *Zoning amendments that permit apartments or accessory apartments;*
2. *Overlay zoning requiring inclusionary development or the imposition of a development fee consistent with N.J.A.C.5:93-8. In approving an overlay zone, the Council may allow the existing use to continue and expand as a conforming use, but provide that where the prior use on the site is changed, the site shall produce low- and moderate-income housing or a development fee; or*
3. *Zoning amendments that impose a development fee consistent with N.J.A.C. 5:93-8.*

N.J.A.C. 5:93-4.2(h) refers to a concept of unmet need that while the RDP is addressed through specific affordable housing programs there may still be an obligation remaining after the RDP is subtracted from the pre-credited third round obligation and therefore the municipality must still make efforts to address this unmet need component. The Objector argues that the Township erred in addressing the RDP obligation with the proposed inclusionary zoning and opines that the rules would utilize a site like the Hartz site toward the unmet need obligation.

However, N.J.A.C. 5:93-4.2(g) permits a municipality to address the RDP through any means as permitted by N.J.A.C. 5:93-5 which includes inclusionary housing. The use of a site toward the RDP with an inclusionary zoning mechanism actually provides more of a realistic opportunity to provide affordable housing as opposed to an overlay zone associated with the unmet need which permits the base zoning to



remain in effect and gives the property owner merely the option to implement the overlay zoning rather than the requirement of inclusionary zoning.

I am not aware of anything in the rules that would not permit the Township to utilize a site that is “ripe for redevelopment” (Bernard Objection, p 18) toward satisfying the RDP. The Agreement acknowledges the same and has provided very aggressive timeframes for the redevelopment of the site. I am satisfied and opine that the use of the Hartz site toward the RDP actually provides for more of a realistic opportunity for the production of affordable housing than if it were an unmet need site with an overlay zoning option.

The Objection also includes an argument that if the Township is permitted to utilize the site toward the RDP obligation, that the proposed density for inclusionary zoning is not sufficient given the RDP obligation.

As detailed herein, the FSHC Settlement Agreement sets forth how the Township will satisfy the entirety of the obligation. Municipalities are not required to incorporate intervenor sites or sites generating RDP into their compliance plan. This is specifically addressed in N.J.A.C. 5:93-4.2(g), “The municipality may address its RDP through any activity approved by the Council, pursuant to N.J.A.C.5:93-5. The municipality need not incorporate into its housing element and fair share plan all sites used to calculate the RDP if the municipality can devise an acceptable means of addressing its RDP.” It is also addressed in N.J.A.C. 5:93-5.3, “Municipalities may create new low- and moderate-income units within their borders by sponsoring their construction, with or without a non-profit corporation, or by zoning sites for inclusionary development.”

The Township has not excluded the Hartz site from addressing the RDP as permitted by N.J.A.C. 5:93-4.2(g) but instead has proposed an inclusionary zoning option involving either redevelopment at 10 dwelling units per acre or a straight inclusionary zoning at 9 dwelling units per acre. However, the Objector opines that this is not the most efficient use of the property and does not represent the site’s full development potential at 30 dwelling units per acre.

As indicated at N.J.A.C. 5:93-4.2(f), the determination of the density for each site that is not excluded from the Vacant Land Analysis and which contributes toward the RDP is based on the balance of considering the character of the area surrounding the site and the need to provide affordable housing. The Township’s Planner’s Report provides an analysis of the surrounding area and concludes that the surrounding existing residential neighborhood ranges in density from 2.5 dwelling units per acre to 8 dwelling units per acre and as such concludes that 9-10 dwelling units per acre density would be compatible with the existing character of the area surrounding the Hartz site.

I am satisfied that the density provided through inclusionary zoning, whether via a redevelopment area or not, creates a realistic opportunity for the provision of affordable housing units while meeting the intent of N.J.A.C. 5:93-4.2(f).



### **Other Sites Addressing RDP**

The Objection identifies several sites described within the Agreement, including the E.F. Britten site, North Avenue Redevelopment Area and Wells Fargo site, that should also not be used to satisfy the RDP obligation because they are not vacant or considered low-density. As indicated above as it relates to the Hartz site, N.J.A.C. 5:93-4.2(g) permits a municipality to address the RDP through any means as permitted by N.J.A.C. 5:93-5 which includes inclusionary housing.

The use of the developed sites toward the RDP with an inclusionary zoning mechanism actually provides more of a realistic opportunity to provide affordable housing as opposed to an overlay zone associated with the unmet need which permits the base zoning to remain in effect and gives the property owner merely the option to implement the overlay zoning rather than the requirement of inclusionary zoning.

In addition, the Objection raises concerns with the Myrtle Special Needs Housing, the Market to Affordable Program and the proposed Supportive and Special Needs bedrooms as mechanisms to be used to address the RDP because there is not sufficient information provided. Given that this is a hearing on fairness and not compliance, the objection is misplaced. As part of the compliance process the Township is required to provide all necessary documentation to ensure the proposed projects are credit worthy in accordance with the Prior Round rules.

For these reasons, I am satisfied with the affordable housing mechanisms proposed within the Agreement to address the RDP.

### **Unmet Need Response**

The Objection indicates that the Township efforts to provide overlay zoning to address the unmet need is not sufficient to produce a “great deal of housing”. The opinion from Mr. Bernard is based on the uncertainty of what the overlay ordinances will include or not include to provide sufficient incentives for the production of affordable housing. Given that this is a hearing on fairness and not compliance, this objection is misplaced as the overlay ordinances will be drafted and reviewed prior to the compliance hearing.

I am satisfied with the overlay districts in concept and at the densities provided in the Agreement on their face to address the unmet need.



## 6.0 FAIRNESS ANALYSIS

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Under the East/West Venture case the Court established criteria for evaluating the fairness of settlements between municipalities and builder plaintiffs in exclusionary zoning cases. By contrast, this settlement involves a municipality as plaintiff and a public interest organization and builders as interested parties/interveners. Consequently, the East/West Venture fairness criteria must be adapted to serve the instant matter.

The Settlement Agreement must be subjected to the fairness analysis embodied in the East/West Venture case referenced above. Before doing so, it is worth noting, as the Court did in Morris County Fair Housing Council v. Boonton Township 197 N.J. Super., that “...it may be assumed that generally a public interest organization will only approve a settlement which it conceives to be in the best interest of the people it represents.” FSHC was heavily involved in all aspects of this case including the Township’s fair share allocation and the Township’s compliance plan. FSHC is the only public interest advocacy organization in New Jersey devoted exclusively to promoting the production of housing affordable to low and moderate income households. Consequently, FSHC’s endorsement of the Settlement Agreements is a compelling indication that it believes the Agreement to be fair and reasonable.

The Appellate Court established, in the East/West Venture case, the standard that must be used in evaluating the fairness of a settlement in a Mount Laurel lawsuit. It was clearly stated in the East/West Venture case that the hearing on the proposed settlement is not a plenary trial. The Court’s responsibility is to determine based upon adequate finding of facts, whether “the settlement adequately protects the interests of the lower-income persons on whose behalf the affordable units proposed by the settlement are to be built”. The determination of whether the fairness standard is met is based on a five-part analysis as provided by the East/West Venture case, as follows:

1. Consideration of the number of affordable units being constructed.
2. The methodology by which the number of affordable units provided is derived.
3. Any other contributions provided by the plaintiff (municipality) in lieu of affordable units (not applicable in this case).
4. Other components of the Agreement that contribute to the satisfaction of the constitutional obligation.
5. Other factors that may be relevant to the “fairness” issue of the settlement.



### **Criteria 1 + 2 (Number of Affordable Units + Methodology)**

Evaluation of the Township's fair share obligation must begin with Cranford's fair share allocation under alternative methodologies. As stated, the source of the rehabilitation share and prior round obligation is that which was calculated by Dr. David N. Kinsey, PhD, PP, FAICP in his May 2016 report, although the prior round obligation reflects that which COAH previously calculated. The source of the 440-unit third round obligation is an upward adjustment of the methodology determined by the Hon. Judge Jacobson, A.J.S.C. in her March 2018 decision.

FSHC commissioned Dr. David Kinsey to prepare a fair share methodology which would calculate the regional need for the 1999-2025 period and allocate that housing need to the constituent municipalities in each housing region. As part of this effort, Dr. Kinsey authored several reports with variations to his methodology that have been submitted to various Superior Courts. The fourth statewide report dated May 2016 allocated Cranford a third round obligation of 979 units. Dr. Kinsey released a different report in July 2016 that stated a third round obligation of 1,062 units.

A consortium of 288 municipalities retained Econsult Solutions Inc. (hereinafter "Econsult") to prepare a fair share methodology. Econsult produced a series of expert reports and included an allocation mechanism for each municipality. According to Econsult's April 2017 report, Cranford was allocated a Present Need of 86 units, a Prior Round Need of 148 units and a total Third Round Need of 203 units, comprised of a Gap Present Need of 66 units and a Prospective Need of 137 units. Econsult's position is that municipalities should not be responsible for gap period (1999 – 2015) housing need. Nonetheless, in accordance with the Supreme Court's Decision in re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) ("Mount Laurel V"), Econsult did calculate gap period obligations in April of 2017.

On January 17, 2017 The New Jersey Supreme Court found In Re Declaratory Judgment Actions Filed By Various Municipalities, County Of Ocean, Pursuant To The Supreme Court's Decision In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1(2015). that the "gap period", defined as 1999 to 2015, generates an affordable housing obligation. The decision requires an expanded definition of municipal present need obligation to include low- and moderate-income ("LMI") households that were formed during the gap period and are entitled to their delayed opportunity to seek affordable housing. The rehabilitation share (also referred to as present need) obligation, has historically been an estimate of LMI households living in substandard housing at the beginning of an affordable housing round. Although some parties argued the gap obligation should be calculated as part of the prospective need, the Supreme Court found that such a position is not supported by the Fair Housing Act ("FHA"), which defines prospective need as a projection of new LMI



households formed during a future housing cycle. Accordingly, the municipal affordable housing obligation is now composed of the following four parts:

- present need (rehabilitation);
- prior round (1987 to 1999, new construction);
- present need (1999 to 2015, new construction); and
- prospective need (third round, 2015 to 2025, new construction).

While the structure of the obligation identified in the Settlement Agreement is different than the findings of this Supreme Court decision (i.e. no redefined present need and a prospective need specific to 1999 – 2025), the Township’s obligation reflects that which was calculated for the 1999-through-2025 time period by the Hon. Judge Jacobson, A.J.S.C. in her March 2018 decision.

On March 8, 2018, Judge Mary Jacobson ruled on a constitutional fair share obligation and methodology for Mercer County. Econsult released an updated report on March 28, 2018 applying Judge Jacobson’s methodology to all municipalities in the state. Using Judge Jacobson’s methodology, Cranford was allocated a Present Need of 86 units, a Prior Round of 148 units, and a total Third Round need of 440 units consisting of a 231-unit gap period obligation, and a 209-unit Third Round Prospective Need obligation.

All three experts’ recommendations are set forth in the table below and compared with the proposed Settlement Agreement:

OBLIGATION	FSHC MAY '16	ESI APRIL '17	ESI MARCH '18	SETTLEMENT AGREEMENT
PRESENT NEED	85	86	86	85
PRIOR ROUND	148	148	148	148
TOTAL THIRD ROUND	<b>979</b>	<b>203</b>	<b>440</b>	<b>440</b>
<i>GAP PRESENT NEED</i>	<i>444</i>	<i>66</i>	<i>231</i>	-
<i>PROSPECTIVE NEED</i>	<i>535</i>	<i>137</i>	<i>209</i>	

In the absence of any consensus on the methodology and in light of the considerable spread in the third round calculations presented by the experts for the respective parties I find the fair share resolution set forth in the Settlement Agreement to be fair and reasonable to the region’s low- and moderate-income households. This opinion is supported by the following:

- The 85-unit Present Need matches Dr. Kinsey’s original calculation and represents only a slight decrease from the 86-unit Present Need calculated by Econsult in 2018;



- The parties have both accepted COAH’s Prior Round obligation of 148 units; this is in accordance with Mount Laurel IV “...prior unfulfilled housing obligations should be the starting point for a determination of a municipality’s fair share responsibility;” In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1, 30 (2015) (“Mount Laurel IV”);
- The parties’ acceptance of the 440-unit total Third Round obligation is reasonable to the interests of low- and moderate-income households as it matches the obligation calculated using Judge Jacobson’s methodology and represents a compromise between the third round obligations calculated by the experts for the respective parties;
- The municipal compliance plan’s provides adequate and realistic prospects for successfully delivering affordable housing. The Settlement Agreement commits Cranford to implement new mechanisms, including inclusionary zoning, that creates an opportunity for the development of very-low, low-, and moderate-income housing in areas of the Township suited for redevelopment. In addition, the Settlement Agreement commits Cranford to address its Prior and Third Round RDP obligations with up to 268 affordable actual affordable housing units through a variety of affordable housing mechanisms and programs. The Settlement Agreement also commits the Township to adopt 5 overlay districts applying to an area of 75+ acres with the upward goal of achieving 130-490 affordable housing units. Finally, the Township is committed to create a municipal housing rehabilitation program.
- For reasons cited in Section 5 of this report, I am satisfied with the methodology employed in calculating the RDP and Unmet Need obligations.

#### **Criteria 4 + 5 (Other Agreement Components + Relevant Fairness Factors)**

Under the East/West Venture fairness analysis any other contributions being made by the developer (read “municipality” for this case) must be considered, along with any other components which contribute to the municipality’s satisfaction of its Mount Laurel obligation.

As stated above, the Township has agreed with FSHC that as part of the compliance methods that will address the rehabilitation share, prior round, and third round obligations, including the creation of new inclusionary zoning. In addition, the Settlement Agreement carries a series of features which advance the goal of meeting the housing needs of low- and moderate-income households, as follows:

1. The Township agrees to prepare and adopt an amended Housing Element and Fair Share Plan, an associated Spending Plan, and “all ordinances required to be adopted as part of this Agreement” within 150 days of the approval of the Settlement Agreement by the Court after a Fairness Hearing (section 22). With regard to the Spending Plan, the Agreement requires that “any funds deemed ‘committed’ by the Court” must be expended within four years of the issuance of a final judgment.



2. At least half of all housing units addressing the Third Round Prospective Need shall be affordable to low- and very low-income households, with 13% of the affordable housing units being reserved for very low-income households. The remainder of the affordable units shall be affordable to moderate-income households.
3. At least 25% of the Township's Third Round Prospective Need shall be met through rental units, at least half of which will be rental units available to families.
4. At least half of the units addressing the Third Round Prospective Need in total must be available to families.
5. No more than 25% of the affordable units addressing the Township's Prior Round and Third Round obligation shall be age-restricted and the Township agrees not to request a waiver of that requirement.
6. Rental bonuses shall be calculated in accordance with COAH's Second Round rules N.J.A.C. 5:93 – 5.15 (d) and shall not exceed the rental obligation.
7. All affordable housing units created pursuant to the Settlement Agreement shall comply with UHAC rules, with the exception of #2 above in which those rules have been superseded by an amendment to the Fair Housing Act.
8. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.
9. The Settlement Agreement precludes Cranford from applying for a reduction of its Third Round affordable housing plan components in the event that the Court, Legislature, or any agency enforcing the Fair Housing Act takes an action that establishes a lower obligation.

In addition, the Settlement Agreement carries a series of "housing compliance features" which advance the goal of meeting the housing needs of low- and moderate-income households, as follows:

10. The Township has agreed to implement all necessary zoning for proposed inclusionary zoning projects prior to the compliance hearing. The Township will also adopt a redevelopment plan for at least one site, possibly two, within one year of the Court's approval of the Agreement.
11. The Township has agreed to provide signed agreements with the provider of Special Needs and Supportive housing in order to be eligible for bonus credits prior to the compliance hearing. In addition, the Township agrees to the option to enter into a separate agreement in order to claim



credits toward an existing Special Needs and Supportive group home located at 112 Glenwood Road prior to the compliance hearing.

12. The Township agrees to a stringent time frame for the delivery of affordable housing units from the Market to Affordable program and if those units are not delivered within the timeframe agreed to, the Township will provide alternative compliance techniques including supportive and special needs housing or a municipality-sponsored affordable housing project. In addition, the Township will comply with the documentation requirements of N.J.A.C. 5:97-6.9 prior to the compliance hearing.
13. The Township agrees to adopt the necessary overlay zoning for five areas to address the majority of the Township's unmet need obligation.
14. The Township has agreed to adopt a mandatory set aside ordinance.
15. The Township agrees to expand and adopt a revised affirmative marketing plan. The Township will update its affirmative marketing plan to include FSHC and other named organizations in its list of community and regional organizations, and both the Township and any other developers or administrative agencies conducting affirmative marketing and shall provide notice to those organizations of any available units.
16. On the first anniversary of the approval of this Agreement after a Fairness Hearing, and every anniversary thereafter through the end of this Agreement, the Township agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to FSHC, using forms developed for this purpose by the NJ Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or any other forms endorsed by myself or FSHC.
17. On the first anniversary of the execution of the Settlement Agreement, and every anniversary thereafter through the end of the Agreement, the Township agrees to provide a status report of all affordable housing trust fund activity.
18. The Township shall submit its midpoint realistic opportunity review on or before July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313. This midpoint review permits any interested party, such as FSHC in this case, to request by motion a Court hearing regarding whether any sites in the Township's compliance plan no longer present a realistic opportunity for affordable housing development and should be replaced. While this review is statutorily sanctioned, in the event a Court finds that an affordable housing site or other compliance mechanism should be replaced I recommend that the Township be given the opportunity to supplement its Fair Share Plan to correct any deficiency while being protected by immunity from builder remedy litigation. This



municipal opportunity to remedy a defect is certainly warranted since the plan which is being amended will have been approved by the Court.

19. Within 30 days of the third anniversary of the approval of the Township's Housing Element and Fair Share Plan at a Compliance Hearing, and every third year thereafter, the Township will publish on its website and submit to FSHC a status report regarding its satisfaction of the very low-income requirement pursuant to N.J.S.A. 52:27D – 329.1.

All the requirements cited above contribute to Cranford Township's satisfaction of its Mount Laurel obligation. Moreover, the very act of settling this litigation advances and expedites Mount Laurel compliance.

## **7.0 CONCLUSION**

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As directed by the Court, I have evaluated the Agreements by and between the Township of Cranford and Fair Share Housing Center based on the authority, procedures, and standards set forth in Morris County Fair Housing Council v. Boonton Twp. 197 N.J. Super. 359, 369-71 (Law Div. 1984) and East/West Venture v. Bor. of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996). For the reasons set forth in the body of this report I find the subject agreements fair and reasonable to the interests of the protected class and recommend it to the Court for approval, subject to the two (2) conditions on pages 5, 9, 10 and 15 of this Report.

It should be noted that the Settlement Agreement with FSHC encompasses both an agreement on the magnitude of the Township's Second and Third Round fair share obligations as well as a preliminary plan through which the parties anticipate the Township will meet its obligation. Should the Court approve the FSHC Agreement, the Township still must perfect the Settlement and re-apply to the Court for final approval and a grant of repose at a Compliance Hearing.

The Settlement Agreement with FSHC cites most of the actions which the parties must take to qualify for final Court approval and need not be reiterated here. The most important documents will be the Township's responsibility: The Housing Element of the Master Plan and a Fair Share Plan which incorporates a Spending Plan and Affirmative Marketing Plan, the zoning amendments required by the Agreement, and any other ordinances necessary to implement the Agreement (Fair Share / Affordable Housing Ordinance, etc.). The Housing Element must be duly adopted by the Planning Board and endorsed by the Township's Governing Body, and the zoning amendments to implement the Fair Share Plan must be adopted by the Governing Body and effective upon approval by the Court. The Township is required to adopt the Housing Element and Fair Share plan within 150 days of the Court's approval of the Settlement Agreement



As cited in the Settlement Agreement with FSHC, I recommend the Court set a time limit of 150 days within which the Township and FSHC will complete the actions/documents necessary for final judicial approval. This includes the adoption of the Housing Element and Fair Share Plan and its required components, such as the inclusionary zoning. I also recommend that the Court set a limit of 60 days for the Township to submit all crediting documentation. The Compliance Hearing can then be scheduled and noticed to the public.

<https://kylemcmamus.sharepoint.com/sites/KyleMcManusAssociates/Special Master Projects/Cranford/Fairness Hearing/Master Report/20.02.05 Cranford Fairness.2.docx>