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**IN THE MATTER OF THE
APPLICATION OF THE TOWNSHIP
OF UPPER, COUNTY OF CAPE MAY**

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAPE MAY COUNTY

DOCKET NO.: CPM-L-303-15

Civil Case
(*Mount Laurel II*)

**FINAL JUDGMENT OF COMPLIANCE
AND REPOSE**

THIS MATTER having been opened to the Court by Jeffrey R. Surenian and Associates, LLC, on behalf of declaratory plaintiff, Township of Upper (hereinafter “the Township” or “Upper”) via a Declaratory Judgment Complaint filed on July 2, 2015 to approve the Township’s Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”) in response to In re N.J.A.C. 5:96 & N.J.A.C. 5:97, 221 N.J. 1 (2015)(“Mount Laurel IV”); and the Court having granted the Township immunity from Mount Laurel lawsuits from the time of the filing of the Township’s Declaratory Judgment action (hereinafter “DJ Action”); and the Court having appointed Steven P. Perskie, Esq. as the Special Mount Laurel Court Master (hereinafter the “Court Master Perskie”); and Fair Share Housing Center (“FSHC”) having participated in the Township’s DJ Action as an “interested party” and by way of settlement, as a formal Intervenor; and FSHC’s expert, David Kinsey, PhD, P.P., F.A.I.C.P., having issued an expert report that calculated fair share obligations for all of the municipalities in the state; and the Township’s professionals and Adam Gordon, Esq., of FSHC having entered into mediation supervised by

Court Master Perskie to try to settle the Township's DJ Action globally; and the Township and FSHC having entered into a Settlement Agreement on February 12, 2018 (hereinafter the "FSHC Settlement Agreement"); and said FSHC Settlement Agreement having set agreed upon fair share obligations and how the Township would satisfy same; and FSHC having intervened into the Township's DJ Action by settlement or by motion; and, after mediation, the Township having reached terms; and the FSHC Settlement Agreement having been approved by the Court during a properly noticed Fairness Hearing on April 10, 2018 and the Court having entered an Order approving the FSHC Settlement Agreement on April 23, 2018 and the Township having subsequently prepared a Housing Element and Fair Share Plan, and all supporting documentation in accordance with the FSHC Settlement Agreement and the recommendations of the Court Master, which was then adopted by the Township's Planning Board and endorsed by the Township Council; and the Fair Share Plan, and all of its attached exhibits, having been put on file for public review at Township Hall 30 days prior to the scheduled Compliance Hearing date of August 28, 2018; and the Compliance Hearing having been held on August 28, 2018, during which Exhibits P-1 to P-5 were marked into evidence; and, during which, Tracy Siebold, Esq. having appeared on behalf of the Osprey Point Homeowners Association and having raised and objection/and or sought clarification as to certain components of the Plan; and the Court having considered the testimony taken during the Compliance Hearing, as well as the comments of counsel; and the Court having reviewed all of the documents submitted into evidence during the Compliance Hearing; and good cause having been shown;

It is hereby ordered on this _____ day of _____, 2018, as follows:

1. Subject to the satisfaction of the Conditions in Paragraph 9 of this Order, the Township of Upper's 2018 Master Plan Revision Housing Element Fair Share Plan Spending

Plan dated August 2018, (the “2018 HEFSP”), is hereby approved and the Township is granted Final Judgment of Compliance and Repose as to its Rehabilitation Obligation, its Prior Round Obligation (1987-1999), and its Third Round Obligation (consisting of both its Gap Obligation for 1999-2015 and its Prospective Need Obligation for 2015-2025) pursuant to the Court approved Settlement Agreement entered into between the Township and FSHC on February 12, 2018, the Fair Housing Act (N.J.S.A. 52:27D-301, et. seq.)(“FHA”), the Uniform Housing Affordability controls (N.J.A.C. 5:80-26.1, et seq.) (“UHAC”), applicable Council on Affordable Housing (hereinafter “COAH”) substantive rules, and Mount Laurel case law, including the New Jersey Supreme Court’s Mount Laurel IV decision.

2. The Township’s Judgment of Compliance and Repose shall remain in effect for ten (10) years beginning on July 2, 2015 and ending on July 2, 2025, and during this ten (10) year period the Township shall have repose from all Mount Laurel lawsuits, including, but not limited to, Builders’ Remedy lawsuits, except for actions brought to enforce the terms of this Settlement Agreement.

3. As per the Court approved Settlement Agreement between the Township and FSHC, and as established in the Township’s Fair Share Plan, the Township’s Present Need or Rehabilitation Obligation is 14, the Township’s Prior Round Obligation (1987-1999) is 317, and the Township’s Third Round Obligation (1999-2025) is 233.

4. The parties agree that the Township lacks sufficient sewer to meet its total new construction obligation (Prior Round 317 + Round 3 233 = 550) and therefore agree that 440 of the 550 total new construction obligation, the compliance mechanisms to address which are included in the settlement, will be deferred and subject to the procurement of sewer.

5. The Township intends to satisfy the other portion of its plan (110 of the 550 new construction obligation) as follows:

Development	Type	Tenure	Status	Units	Bonus	Credits
8 Foxborough Road	Group Home	Special Needs Rental	Complete	3	3	6
Habitat for Humanity (21 Ocean Ave. – B 628, L 13)	100% Affordable	Family Sale	Complete	1		1
Holly Berry (90 Route 50 – B 453, L 182.03)	100% Affordable	Family Rental	Complete	1	1	2
Heritage Acres Mobile Home Park (Block 639, Lots 15.01 and 15.02)	Inclusionary	Family Rental	Approved for on-site treatment plant	26	26	52
Osprey Cove/2058 South Shore Road LLC (Route 9 and Route 50)	Inclusionary	20 Family Rental	Approved and Under Construction	20	20	40
sAdditional Habitat for Humanity units	100% Affordable	Family For-Sale	Proposed	4		4
Additional Market to Affordable Unit – Contract w Triad	100% Affordable	Family For-Sale or For-Rent	1 completed 4 Proposed	5		5
Total				60	50	110

6. The Township will address the residual/deferred 440-unit obligation with 444 proposed credits, including 295 credits from the Marmora Town Center, 79 credits from Stagecoach 100% Affordable Senior Housing project, 24 units from Heritage Links inclusionary, 20 units from Hidden Pond inclusionary, plus applicable rental bonuses.

7. The Township's deferred portion is subject to the procurement of sewer for those particular techniques. The requirements included in N.J.A.C. 5:93-4.3(c)3 and 4 related to inclusion in a fair share plan when the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and

moderate income housing in the housing element are hereby waived in accordance with N.J.A.C. 5:93-4.3(c)4, which permits waiver of such requirements when a municipality has a plan that will provide water and/or sewer to sufficient sites to address the municipal housing obligation within the repose period.

8. The Parties agree that the Township has satisfied its 14-unit present need obligation through a Township operated rehab program.

9. The following Conditions shall be addressed and resolved by the Township within 120 days of the entry of this Order as may be extended by further Order of the Court for good cause, as necessary:

- a. The Township will amend its Marmora Town Center Ordinance, P-5, in a manner consistent with the FSHC Settlement, including adding language to specify the affordable housing set aside and obligation for both the Hidden Pond and Heritage Links projects and any other modifications that may be required pursuant to the terms of the FSHC Settlement Agreement.
- b. The Township shall permit the development of Osprey Cove with a 20-unit set aside, which shall be provided on-site or off-site, in lieu of the 28-unit set aside obligation pursuant to the FSHC Settlement Agreement.
- c. The Township shall adopt a modified spending plan to further specify project-specific expenditures.
- d. The Township shall have its affordable housing zoning ordinances certified by the Pinelands Commission.
- e. The Township shall adopt appropriate zoning to permit the development of the Stagecoach Road project in accordance with the current 2018 Master Plan Reexamination and the FSHC Agreement.

10. Once the Township satisfies all of the conditions in Paragraph 9 herein, the Township and FSHC will enter into a Consent Order indicating that all of the conditions have been satisfied, and said Order will be submitted to the Court for execution.

11. In the event the actions required by Paragraph 9 are not completed in a timely fashion, this Court retains jurisdiction to hear any challenge(s) by FSHC, or any other interested party, to the Borough's entitlement to the continued immunity granted herein.

12. The Court retains jurisdiction over this matter solely for purposes of enforcement of this Judgment of Compliance and Repose and the Settlement Agreement entered by the Township and Fair Share Housing Center on February 12, 2018.

13. Counsel for the Township shall provide copies of this Order to the Township's Service List within seven (7) days of receipt.

HONORABLE NELSON C. JOHNSON, J.S.C.

DOCUMENTS MARKED INTO EVIDENCE AT HEARING

- P1** - August 2018 Housing Element and Fair Share Plan
- P2** - Planning Board Resolution dated 8-8-2018
- P3** - Governing Body Resolution dated 8-13-2018
- P4** - Notice Certification of Michael J. Edwards, Esq. dated 8-24-2018
- P5** - Ordinance No.: 011-2018 Amending revised general ordinance Chapter XX (Zoning) of the code of Upper Township.